

IN THE SUPERIOR COURT OF PENNSYLVANIA

No. 713 MDA 2015

**DANIEL BERG, individually and as the Executor of the Estate of SHARON
BERG a/k/a SHERYL BERG,**

Appellee,

v.

NATIONWIDE MUTUAL INSURANCE COMPANY, INC.,

Appellant.

Appeal from the Court of Common Pleas for Berks County's
April 21, 2015 Entry of Judgment

REPRODUCED RECORD
Vol. III of V, Pages 1766a to 2914a

DECHERT LLP
Robert C. Heim (Pa. 15758)
Michael S. Doluisio (Pa. 75060)
Sabrina L. Reliford (Pa. 206805)
William T. McEnroe (Pa. 308821)
Ellen L. Mossman (Pa. 319149)
Cira Centre
2929 Arch Street
Philadelphia, PA 19104-2808
Tel: (215) 994-4000

*Counsel for Appellant Nationwide Mutual
Insurance Company, Inc.*

TABLE OF CONTENTS

VOLUME I (Pages 1a to 699a)

1.	Trial Court Docket Entries	R.1a – 33a
2.	01/23/1998 Praecipe for Writ of Summons.....	R.34a – 38a
3.	05/04/1998 Complaint	R.39a – 88a
4.	07/14/1998 Order.....	R.89a – 92a
5.	08/20/1998 Second Amended Complaint.....	R.93a – 133a
6.	11/30/1998 Order.....	R.134a – 136a
7.	12/30/1998 Fourth Amended Complaint.....	R.137a – 216a
8.	1/20/1999 Nationwide’s Preliminary Objections to Fourth Amended Complaint	R.217a – 352a
9.	02/11/1999 Stipulation and Order	R.353a – 355a
10.	03/18/1999 Order.....	R.356a – 359a
11.	04/29/1999 Fifth Amended Complaint.....	R.360a – 444a
12.	05/18/1999 Nationwide’s Preliminary Objections to Fifth Amended Complaint.....	R.445a – 563a
13.	06/21/1999 Order.....	R.564a – 567a
14.	06/23/1999 Order.....	R.568a – 571a
15.	09/23/1999 Order.....	R.572a – 575a
16.	10/25/1999 Eighth Amended Complaint.....	R.576a – 613a
17.	01/20/2000 Nationwide’s Answer to Eighth Amended Complaint.....	R.614a – 641a
18.	06/08/2000 Bergs’ Motion for Sanctions	R.642a – 680a

- 19. 06/12/2000 Order.....R.681a – 683a
- 20. 09/08/2004 Opinion and Order Denying Bergs’
Motion for Sanctions and In Camera ReviewR.684a – 694a
- 21. 12/13/2004 Order of BifurcationR.695a – 699a

VOLUME II (Pages 700a to 1765a)

- 22. 12/13/2004 Transcript of Trial Proceedings.....R.700a – 977a
 - *Direct Examination of Michael Grumbein*R.769a
 - *Cross Examination of Michael Grumbein* R.822a/R.825a
 - *Redirect Examination of Michael Grumbein*.....R.826a

 - *Direct Examination of Kathleen Holben*R.838a
 - *Cross Examination of Kathleen Holben*R.859a
 - *Redirect Examination of Kathleen Holben*R.874a

 - *Direct Examination of Dean Jones*.....R.876a
 - *Cross Examination of Dean Jones*..... R.955a/R.962a/R.964a
 - *Redirect Examination of Dean Jones*.....R.966

- 23. 12/14/2004 Transcript of Trial Proceedings.....R.978a – 1224a
 - *Direct Examination of Doug Witmer*..... R.994a/R.996a
 - *Cross Examination of Doug Witmer*
..... 1024a/R.1053a/R.1062a
 - *Redirect Examination of Doug Witmer*.....R.1062a
 - *Recross Examination of Doug Witmer*.....R.1068a

 - *Direct Examination of Steve Potosnak*R.1069a

 - *Direct Examination of Sharon Berg*R.1083a
 - *Cross Examination of Sharon Berg* .. R.1095a/R.118a/R.1128a
 - *Redirect Examination of Sharon Berg*R.1128a
 - *Recross Examination of Sharon Berg*.....R.1129a

 - *Direct Examination of Donald Phillips* R.1131a/R.1139a
 - *Cross Examination of Donald Phillips*
..... R.1142a/R.1148a/R.1149a

- *Direct Examination of Tom Campuzano*R.1153a
- *Cross Examination of Tom Campuzano*R.1156a
- *Redirect Examination of Tom Campuzano*R.1163a
- *Recross Examination of Tom Campuzano*R.1164a

- *Direct Examination of Bruce Bashore*.....R.1172a
- *Cross Examination of Bruce Bashore*..... R.1204a/R.1209a
- *Redirect Examination of Bruce Bashore*R.1213a
- *Recross Examination of Bruce Bashore*R.1219a

- 24. 12/15/2004 Transcript of Trial Proceedings.....R.1225a – 1475a
 - *Direct Examination of David Wert*R.1235a
 - *Cross Examination of David Wert*..... R.1247a/1260a
 - *Redirect Examination of David Wert*.....R.1268a
 - *Recross Examination of David Wert*.....R.1270a

 - *Direct Examination of David Bowen*.....R.1271a
 - *Cross Examination of David Bowen*
..... R.1272a/R.1273/R.1274a
 - *Redirect Examination of David Bowen*.....R.1275a

 - *Direct Examination of Ronald E. Stitzel*.....R.1276a
 - *Cross Examination of Ronald E. Stitzel*
.....R.1282a/R.1291a/R.1294a/R.1309a
 - *Redirect Examination of Ronald E. Stitzel*.....R.1293a
 - *Recross Examination of Ronald E. Stitzel*R.1307a

 - *Direct Examination of Richard Wenrich*R.1310a
 - *Cross Examination of Richard Wenrich*..... R.1314a/R.1315a

 - *Direct Examination of Douglass Joffred*R.1317a
 - *Cross Examination of Douglass Joffred*
..... R.1355a/R.1387a/R.1398a
 - *Redirect Examination of Douglass Joffred*.....R.1399a

 - *Direct Examination of Daniel Berg, Sr.*R.1418a
 - *Cross Examination of Daniel Berg, Sr.*R.1442a

- 25. 12/16/2004 Transcript of Trial Proceedings.....R.1476a – 1652a
 - *Cross Examination of Daniel Berg, Sr.* R.1488a/R.1506a

- *Redirect Examination of Daniel Berg, Sr.*R.1514a
 - *Direct Examination of Ernest M. O’Leary*R.1522a
 - *Direct Examination of William Anderton* R.1563a/R.1569a
 - *Cross Examination of William Anderton*
.....R.1568a/R.1583a/R.1597a/R.1600a
 - *Redirect Examination of William Anderton*.....R.1601a
 - *Recross Examination of William Anderton*.....R.1602a

 - *Direct Examination of Bruce Bashore*.....R.1609a
 - *Cross Examination of Bruce Bashore*..... R.1615a/R.1617a

 - *Direct Examination of Dwight Varnes*.....R.1621a
 - *Cross Examination of Dwight Varnes* R.1629a/R.1630a

 - *Direct Examination of Daniel Readinger*R.1630a
 - *Cross Examination of Daniel Readinger*R.1632a

 - *Direct Examination of Keith Creider*.....R.1634a
 - *Cross Examination of Keith Creider* R.1637a/R.1640a
26. 12/17/2004 Transcript of Trial Proceedings.....R.1653a – 1765a

VOLUME III (Pages 1766a to 291a)

27. Trial Exhibit 1 (*List of Motions in Limine*)R.1766a – 1776a
28. Trial Exhibit 4 (*Photographs*)R.1777a – 1778a
29. Trial Exhibit 5 (*Blue Ribbon Repair Svc. Agreement*) R.1779a – 1793a
30. Trial Exhibit 6 (*Letter dated 12/2/97*)R.1794a – 1802a
31. Trial Exhibit 7 (*Letter dated 11/3/97*)R.1803a – 1804a
32. Trial Exhibit 8 (*Claim Log*)R.1805a – 1875a
33. Trial Exhibit 9 (*Lease agreement*).....R.1876a – 1878a
34. Trial Exhibit 10 (*Stipulation*)R.1879 – 1880a
35. Trial Exhibit 11 (*Letter dated 4/22/98*)R.1881a – 1883a

36.	Trial Exhibit 13 (<i>Claim Log Entry</i>)	R.1884a – 1886a
37.	Trial Exhibit 14 (<i>Claim Log Entry</i>)	R.1887a – 1889a
38.	Trial Exhibit 15 (<i>Letter dated 5/19/98</i>)	R.1890a – 1891a
39.	Trial Exhibit 16 (<i>Bill K.C. Auto Body</i>)	R.1892a – 1893a
40.	Trial Exhibit 18 (<i>Letter dated 10/2/92</i>)	R.1894a – 1899a
41.	Trial Exhibit 21 (<i>Stipulation</i>)	R.1900a – 1901a
42.	Trial Exhibit 26 (<i>File</i>).....	R.1902a – 1918a
43.	Trial Exhibit 27 (<i>Letter dated 1/13/99</i>)	R.1919a – 1920a
44.	Trial Exhibit 29 (<i>Bill</i>)	R.1921a – 1923a
45.	Trial Exhibit 30 (<i>Photocopy of check</i>).....	R.1924a – 1925a
46.	Trial Exhibit 31 (<i>Photocopy of check</i>).....	R.1926a – 1927a
47.	Trial Exhibit 33 (<i>Curative Instructions</i>).....	R.1928a – 1929a
48.	12/20/2004 Molded Verdict.....	R.1930a – 1934a
49.	09/26/2005 Bergs’ Reply to Nationwide’s Interrogatories Dated May 18, 2005	R.1935a – 1947a
50.	04/21/2006 Order.....	R.1948a – 1949a
51.	12/03/2006 Stipulation and Order	R.1950a – 1952a
52.	06/05/2007 Transcript of Trial Proceedings.....	R.1953a – 1992a
	• <i>Cross Examination of Terry Shaw</i>	R.1967a
	• <i>Redirect Examination of Terry Shaw</i>	R.1969a
	• <i>Recross Examination of Terry Shaw</i>	R.1970a
	• <i>Direct Examination of George Moore</i>	R.1971a
	• <i>Cross Examination of George Moore</i>	R.1974a
	• <i>Redirect Examination of George Moore</i>	R.1977a
	• <i>Cross Examination of Jeffrey Gooderham</i>	R.1978a
	• <i>Redirect Examination of Jeffrey Gooderham</i>	R.1985a

- *Recross Examination of Jeffrey Gooderham*R.1990a
53. 06/06/2007 Transcript of Trial Proceedings.....R.1993a – 2025a
- *Direct Examination of James Chett*.....R.2000a
 - *Cross Examination of James Chett*.....R.2001a
 - *Redirect Examination of James Chett*..... R.2010a/R.2023a
 - *Recross Examination of James Chett*.....R.2013a
54. 06/07/2007 Transcript of Trial Proceedings..... R.2026a - 2085a
- *Direct Examination of Katherine Van Gorder*R.2029a
 - *Cross Examination of Katherine Van Gorder*R.2029a
 - *Redirect Examination of Katherine Van Gorder*
..... R.2030a/2031a/2032a
 - *Recross Examination of Katherine Van Gorder*
..... R.2030a/2031a/2035a
 - *Direct Examination of Benjamin Mayerson*R.2040a
 - *Cross Examination of Benjamin Mayerson*R.2050a
 - *Redirect Examination of Benjamin Mayerson*.....R.2069a
 - *Cross Examination of David Cole*R.2074a
 - *Redirect Examination of David Cole*.....R.2078a
 - *Recross Examination of David Cole*.....R.2078a
55. 06/08/2007 Transcript of Trial Proceedings.....R.2086a – 2125a
- *Direct Examination of Bruce Bashore*.....R.2089a
 - *Cross Examination of Bruce Bashore*.....R.2096a
 - *Redirect Examination of Bruce Bashore*R.2107a
 - *Direct Examination of Constance Foster*R.2112a
 - *Cross Examination of Constance Foster*R.2118a
56. 06/11/2007 Transcript of Trial Proceedings.....R.2126a – 2146a
57. Trial Exhibit 34 (*NW Material Damage*)R.2147a – 2156a
58. Trial Exhibit 35 (*Procedure Manual*).....R.2157a – 2165a
59. Trial Exhibit 36 (*Pennro Litigation Strategy*).....R.2166a – 2170a

60.	Trial Exhibit 37 (<i>PA Best Claims Practices</i>).....	R.2171a – 2237a
61.	Trial Exhibit 39 (<i>Affidavit</i>)	R.2238a – 2239a
62.	Trial Exhibit 42 (<i>Fee Petition</i>)	R.2240a – 2241a
63.	Trial Exhibit 44 (<i>Billing Records</i>).....	R.2242a – 2352a
64.	Trial Exhibit 45 (<i>Itemization</i>)	R.2353a – 2356a
65.	Trial Exhibit 46 (<i>Log</i>).....	R.2357a – 2431a
66.	Trial Exhibit 47 (<i>Policy</i>).....	R.2432a – 2468a
67.	Trial Exhibit 48 (<i>Material Damage – BCP</i>).....	R.2469a – 2482a
68.	Trial Exhibit 49 (<i>Pamphlet</i>).....	R.2483a – 2485a
69.	06/12/2007 Motion for Directed Verdict	R.2486a – 2498a
70.	07/10/2007 Verdict on UTPCPL Treble Damages.....	R.2499a – 2502a
71.	07/10/2007 Verdict on Bad Faith	R.2503a – 2505a
72.	10/29/2007 Order.....	R.2506a – 2509a
73.	12/28/2007 Notice of Appeal	R.2510a – 2520a
74.	01/17/2008 Bergs’ Concise Statement of Errors to Be Complained of on Appeal	R.2521a – 2527a
75.	03/14/2008 Statement in Lieu of Memorandum Opinion ...	R.2528a – 2558a
76.	06/03/2011 Memorandum Opinion	R.2559a – 2579a
77.	12/17/2013 Transcript of Trial Proceedings.....	R.2580a – 2669a
	• <i>Direct Examination of Jeanine Snyder</i>	R.2609a
	• <i>Cross Examination of Jeanine Snyder</i>	R.2619a
78.	12/18/2013 Transcript of Trial Proceedings.....	R.2670a – 2690a
	• <i>Direct Examination of Jeffrey Silver</i>	R.2677a
	• <i>Cross Examination of Jeffrey Silver</i>	R.2685a

79. 12/19/2013 Transcript of Trial Proceedings.....R.2691a – 2914a
- *Direct Examination of Sean Costello*.....R.2694a
 - *Cross Examination of Constance Foster*R.2737a
 - *Direct Examination of Constance Foster*R.2744a
 - *Cross Examination of Constance Foster*R.2789a
 - *Redirect Examination of Constance Foster*.....R.2894a
 - *Recross Examination of Constance Foster*.....R.2900a

VOLUME IV (Pages 2915a to 3903a)

80. Trial Exhibit 50 (*Attorney correspondence*).....R.2915a – 2931a
81. Trial Defendant’s Exhibit 51
(*Letter from Matthew Stool dated 6/1/98*).....R.2932a – 2933a
82. Trial Exhibit 52 (*Nationwide Objections of 6/27/13*).....R.2934a – 2944a
83. Trial Defendant’s Exhibit 52
(*Letter from Michael Nelson dated 8/20/98*).....R.2945a – 2946a
84. Trial Exhibit 53 (*Order of 8/21/13*).....R.2947a – 2949a
85. Trial Defendant’s Exhibit 53
(*Letter from Michael Nelson dated 9/16/98*).....R.2950a – 2952a
86. Trial Exhibit 54
(*Nationwide Verified Answers to Interrogatories*).....R.2953a – 2966a
87. Trial Defendant’s Exhibit 54
(*Letter from Benjamin Mayerson dated 10/13/98*).....R.2967a – 2969a
88. Trial Exhibit 55 (*Subpoena to Saul Ewing*).....R.2970 – 2972a
89. Trial Defendant’s Exhibit 56
(*Letter from Benjamin Mayerson dated 10/26/98*).....R.2973a – 2974a
90. Trial Exhibit 57(*Nationwide Second Supplemental Answers to Interrogatories*)R.2975a – 2987a
91. Trial Defendant’s Exhibit 58
(*Letter from Ben Mayerson dated 10/27/98*).....R.2988a – 2989a

92.	Trial Defendant’s Exhibit 60 (<i>Letter from Michael Nelson dated 11/23/98</i>).....	R.2990a – 2992a
93.	Trial Exhibit 61 (<i>Electronic Communication to Nationwide Counsel</i>)	R.2993a – 2995a
94.	Trial Defendant’s Exhibit 61 (<i>Letter from Julie A. Clark dated 12/24/98</i>).....	R.2996a – 2997a
95.	Trial Exhibit 62 (<i>Order of 12/4/13; memo of Tom Dietrich; Nationwide vs. Fleming</i>).....	R.2998a – 3009a
96.	Trial Defendant’s Exhibit 62 (<i>Letter from Julia A. Clark dated 1/8/99</i>)	R.3010a – R.3012a
97.	Trial Exhibit 67 (<i>Nationwide Answer of 5/3/13 to Bergs’ Request for Admissions</i>)	R.3013a – R.3029a
98.	Trial Exhibit 69 (<i>One-page Synopsis</i>)	R.3030a – 3031a
99.	Trial Exhibit 70 (<i>Letter dated 10/13/05 with Attached Billing Records</i>).....	R.3032a – 3891a
100.	Trial Exhibit 76 (<i>One-page Billing Record</i>).....	R.3892a – 3893a
101.	Trial Exhibit 77 (<i>Plaintiffs’ Amended Notice to Attend</i>).....	R.3894a – 3895a
102.	Trial Exhibit 79 (<i>Chapter 62, Motor Vehicle Physical Damage Appraisers</i>).....	R.3896a – 3903a
<u>VOLUME V (Pages 3904a to 4849a)</u>		
103.	02/25/2014 Bergs’ Fee Petition & Statement of Damages..	R.3904a – 3973a
104.	03/14/2014 Nationwide’s Response in Opposition to Bergs’ Fee Petition	R.3974a – 4259a
105.	03/17/2014 Bergs’ Hours Log & Response to Response in Opposition to the Bergs’ Fee Petition	R.4260a – 4442a
106.	03/20/2014 Nationwide’s Sur-Reply to Bergs’ Response to Response in Opposition to Bergs’ Fee Petition.....	R.4443a – 4452a
107.	03/21/2014 Transcript of Oral Argument.....	R.4453a – 4461a

108.	06/21/2014 Opinion and Verdict <i>Reproduced in full at Appellant Brief, Appendix 1</i>	
109.	07/11/2014 Nationwide’s Motion for Post Trial Relief and Memorandum In Support Thereof	R.4463a – 4579a
110.	08/22/2014 Bergs’ Answer in Opposition to Motion for Post Trial Relief and Memorandum of Law	R.4580a – 4655a
111.	09/10/2014 Nationwide’s Reply in Support of Motion for Post-Trial Relief	R.4656a – 4738a
112.	09/10/2014 Nationwide’s Motion to Supplement the Trial Record	R.4739a – 4775a
113.	10/30/2014 Bergs’ Motion to Mold the Verdict.....	R.4776a – 4788a
114.	11/17/2014 Nationwide’s Answer to Bergs’ Motion to Mold the Verdict and Memorandum of Law.....	R.4789a – 4814a
115.	11/24/2014 Order.....	R.4815a – 4816a
116.	12/01/2014 Bergs’ Reply in Support of Motion to Mold the Verdict.....	R.4817a – 4831a
117.	03/19/2015 Order.....	R.4832a – 4833a
118.	04/21/2015 Entry of Judgment	R.4834a – 4835a
119.	04/23/2015 Notice of Appeal	R.4836a – 4847a
120.	05/28/2015 Nationwide’s Concise Statement of Errors Complained of on Appeal <i>Reproduced in full at Appellant Brief, Appendix 3</i>	
121.	07/23/2015 Opinion <i>Reproduced in full at Appellant Brief, Appendix 2</i>	

Trial Exhibit 1

ITEMIZED LIST OF MOTIONS IN LIMINE
FILED BY DEFENDANT NATIONWIDE MUTUAL INSURANCE CO.

1. Motion To Preclude Testimony Of Michael Burks, Thomas Compuzone, Jack Aigner, George Moore, David Cole, Stephanie Finkbiner, Barbara Shuttlesworth, Lisa Buenzle, Julie Clark, Matthew Stool, Bruce Wunsch, Jennifer Arenschoield And Representative From CCC Information Services, Inc., (For Failure Of The Plaintiffs To Timely Identify Them As Potential Witnesses At Trial)
2. Motion To Preclude Evidence, Testimony And Argument Pertaining To Allegations Of Agency Relationship Between Nationwide And Lindgren Chrysler Plymouth, Inc. (Because No Such Relationship Is Alleged In The Pleadings)
3. Motion To Preclude Evidence, Testimony And Argument Pertaining To Irrelevant Insurance Practices (Not An Issue In Nationwide's Handling Of Plaintiffs' Claim, Including)
 - (1) Any Allegations That Nationwide Requires Or Encourages The Specification Of Non-Original Equipment Manufacturer Parts In The Repair Of Insured Vehicles
 - (2) Any Evidence, Argument Or Testimony Pertaining To Alleged Practices Or Procedures Used In The Settlement Of Total Loss Claims



COPY OF EXHIBIT NO. 1 (Page 1 of 10)

- (3) Any Evidence, Argument Or Testimony Regarding The Preparation Of A "Total Loss Appraisal" With Regard To The Plaintiffs' Claim
- (4) Any Evidence, Argument Or Testimony Of Any Alleged Nationwide Program, Mandate Or Initiative To Reduce Average Claims Payments, Including The "Average Cost Management" Program.
- (5) Any Evidence, Argument Or Testimony Pertaining To Automobile Glass Claims
- (6) Any Evidence, Argument Or Testimony Pertaining To Nationwide's Use Of "Automated Appraisal Software" In The Evaluation Of Material Damage Claims
- (7) Any Evidence, Argument Or Testimony Pertaining To Nationwide's Alleged Practice Of Encouraging Or Requiring Blue Ribbon Body Shop To Reduce "Leakage"
- (8) Any Evidence, Argument Or Testimony Pertaining To Nationwide's Alleged Practice Of Conducting Random Inspections
- (9) Any Evidence, Argument Or Testimony Pertaining To The "Blue Ribbon Repair Shop Performance Analysis And Action Plan"

(10) Any Evidence, Argument Or Testimony Pertaining To The "ACE Intents Manual" Is Irrelevant And Should Be Precluded

(11) Any Evidence, Argument Or Testimony Pertaining To "Betterment" Deductions Or "Appearance Allowances"

(12) Any Evidence, Argument Or Testimony Pertaining To Nationwide's Alleged Practice Of "Systematically Referring Policy Holders To Repair Facilities Willing To Discount Appraisals And Repairs In Exchange For Continued Business Referrals"

(13) Any Evidence, Argument Or Testimony Relating To The Blue Ribbon Repair Program

4. Motion To Preclude Evidence, Testimony And Argument Relating To Plaintiffs' Claim For Attorney's Fees (That Is Not Supported By Detailed Time Records)

5. Motion To Preclude Evidence, Testimony And Argument Pertaining To The Pennsylvania Motor Vehicle Physical Damage Appraiser Act (In Relation To Plaintiffs' Claim That Nationwide Violated This Act By Directing Plaintiffs To Lindgren's Body Shop - This Act Applies Only To Individual Appraisers And Does Not Regulate The Behavior Of Insurance Companies Prior To Appraisal Process)

6. Motion To Preclude Evidence, Testimony And Argument Pertaining To Lease Payments Made On Plaintiffs' Vehicle Prior To April 22, 1998 (As There Is No Such Cognizable Claim Against Nationwide And Such A Dispute Over Whether Such Payments Should Have Been Made Is Between Plaintiffs And The Lessor Of The Vehicle)
7. Motion To "Trifurcate" Trial (Trial On Breach Of Contract, Negligence, Fraud And Civil Conspiracy Claims; A Second Trial On Unfair Trade Practices And Bad Faith Claims And A Third Trial On Punitive Damage Claims)
8. Motion To Preclude Evidence And Argument Relative To Bad Faith Trials One Or Two And Unfair Trade Practice Claims (Because Such Claims May Not Be Tried In Front Of A Jury And/Or Nationwide's Financial Condition (In Trials One, Two Or Three, As Being Irrelevant))
9. Motion To Preclude Evidence, Testimony And Argument Pertaining To Alleged Discovery Misconduct (As Being Irrelevant And Such Claims Having Been Previously Rejected By Judge Scott Lash) Relative To:
 - (1) Nationwide's Purportedly Improper Redactions Of The Activity Log Pertaining To Plaintiffs' Automobile Insurance Claim For Damage To Their 1996 Jeep Grand Cherokee

- (2) Any Objections Made By Nationwide's Counsel During The Deposition Of Nationwide Adjuster, Stephen Potosnak, On October 11, 2000
 - (3) The Honesty Of Nationwide Employee, Michael Grumbein, During His Deposition, Including His Deposition Testimony Regarding Re-Inspection Reports
 - (4) The Meaning Of The Term "Blue Ribbon Claim Log" Referenced In Materials Obtained By The Plaintiffs
 - (5) Any Other Allegations Of Improper Discovery Conduct Made By Plaintiffs Against Nationwide In Plaintiffs' June 8, 2000, Motion For Sanctions, Plaintiffs' July 2, 2003, Motion For Partial Summary Judgment For Bad Faith Insurance Practices, Attorneys' Fees, And To Compel The Production Of Documents And Plaintiffs' February 4, 2004, Motion For Sanctions
10. Motion To Preclude Expert Testimony Of James Schwartzman, Esquire, Relative To Nationwide's Alleged Discovery Misconduct (Because Such Testimony Would Be Irrelevant)
 11. Motion To Preclude Evidence, Testimony And Argument Pertaining To The Law Firm Of Nelson Levine Deluca And Horst LLC (Nationwide's Law Firm) And Attorney Michael Nelson And Motion To Quash Subpoena Of Michael Nelson (As Being Irrelevant) Relative To:

- (1) The Nature Of Nelson Levine De Luca And Horst LLC's Practice, Including The Practice Areas In Which Nelson Levine De Luca And Horst LLC Concentrates
- (2) The Attorney-Client Relationship Between Nelson Levine De Luca And Horst LLC And Nationwide, Including References To The Amount And Type Of Work Performed By Nelson Levine De Luca And Horst LLC On Nationwide's Behalf
- (3) The Employment History Of Michael Nelson, Including His Previous Employment At Post & Schell And Metropolitan Life Insurance Company
- (4) The History And Growth Of Nelson Levine De Luca And Horst LLC
- (5) Any Allegations That The Services Provided By Nelson Levine De Luca And Horst LLC In This Matter Contributed Significantly To The Formation And Growth Of Nelson Levine De Luca And Horst LLC
- (6) Any References To Marketing Materials Prepared By Nelson Levine De Luca And Horst LLC
- (7) Any References To Articles Or Other Publications Prepared By Current Or Former Partners Or Associates Of Nelson Levine De Luca And Horst LLC

- (8) Any References To The Title Or Contents Of Seminars, Lectures Or Other Presentations Prepared By Current Or Former Partners Or Associates Of Nelson Levine De Luca And Horst LLC
 - (9) Any Marketing Material Prepared By Nelson Levine De Luca And Horst LLC, Including Material Obtained From Nelson Levine De Luca And Horst LLC's Internet Website
 - (10) Any Articles Or Other Publications Prepared By Current Or Former Partners Or Associates Of Nelson Levine De Luca And Horst LLC, Including The Following Article: Peter A. Von Mehren, Michael R. Nelson And Mark H. Rosenberg, The Insurance Carrier As Fiduciary: Inappropriate Judicial Lawmaking By Activist Judges In The Context Of Regulated Contracts, 54 Fed'n Defendant. & Corp. Counsel Q.37 (2003)
12. Motion To Preclude Evidence, Testimony And Argument Of Prior Litigation In Which Nationwide Or Other Insurers Were Parties To Establish Liability Of Bad Faith (As Being Irrelevant) Relative To:
- (1) The Testimony From Attorney Todd Wiseman In The Case Of *McDaniel v. Nationwide*, Attached As Exhibit 136 To Plaintiffs' Motion For Partial Summary Judgment And Exhibit 1 To The Motion In Limine

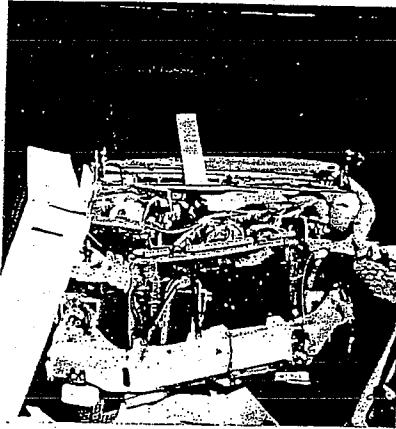
- (2) Statements Made By The Pennsylvania Superior Court In *Bonenberger v. National Mut. Ins. Co.*, 791 A.2d 378, 382-83 (Pa. Super. Ct. 2002) Pertaining To Nationwide Mutual Insurance Company
- (3) The Trial Court Opinion Of *Bonenberger v. Nationwide Mut. Ins. Co., M. Johnson*, Attached As Exhibit 137 To Plaintiffs' Motion For Partial Summary Judgment And Exhibit 2 To The Motion In Limine
- (4) The Memorandum Report Of United States Magistrate Judge Linnea R. Johnson In *Weintraub v. Johnson*, Attached As Exhibit 138 To Plaintiffs' Motion For Partial Summary Judgment And Exhibit 3 To The Motion In Limine
- (5) Statements Made By The United States Court Of Appeals For The Third Circuit In *Polessi v. National Mut. Ins. Co.*, 23 F.3d 747, 752 (3d Cir. 1994) Pertaining To Nationwide Mutual Insurance Company
- (6) The Litigation Captioned *Pack Brothers Paint And Body Shop, Inc. And Ronnie Pack v. Nationwide Mut. Ins. Co.*
- (7) The Litigation Captioned *Whitworth v. Nationwide And CCC Information Services, Inc.*
- (8) The Arizona Supreme Court's Opinion In *Hawkins v. Allstate Ins. Co.*, 733 P.2d 1073, 1082 (Ariz. 1987)

- (9) The Unpublished Decision Of The Arizona Court Of Appeals In A Case Captioned *Olson v. State Farm*
- (10) The Final Judgment In The Matter Of *United States Of America v. Assoc. Of Casualty And Surety Co., American Mutual Ins. Alliance And The National Assoc. Of Mutual Casualty Companies*, Attached As Exhibit 143 To Plaintiffs' Motion For Partial Summary Judgment And Exhibit 6 To The Motion In Limine
- (11) The4 Facts At Issue In *State Farm Mut. Ins. Co. v. Campbell*, 538 U.S. 408 (2003)
- (12) The Oral Argument Of Professor Laurence Tribe Before The United State Supreme Court In *State Farm Mut. Ins. Co. v. Campbell*, Attached As Exhibit 146 To Plaintiffs' Motion For Partial Summary Judgment And Exhibit 7 Hereto
- 13. Motion To Preclude Expert Testimony Of Kathern Van Gardner, Economics Expert Relative To Victim Of Nationwide (Because It Lacks The Reasonable Certainly Required For Admissibility Of Expert Testimony)
- 14. Motion To Preclude Testimony Of Kathline Holban, Timothy Gall And Jeffrey Gooderhan, Esquire, All Of Whom Are Nationwide Employees (Because They Were Not Timely Identified As Witnesses Within 15 Days From The Date Of

This Court's Pretrial Settlement Conference Disposition Order)

15. Motion To Preclude Testimony Of Charles Barone (That Is Beyond The Fair Scope Of Responses To Expert Interrogatories) Relative To Expert Testimony Of Mr. Barone Regarding Allegations That Nationwide Knew That Co-Defendant Lindgren Chrysler Plymouth Intentionally Concealed The Allegedly Substandard Repair Of Plaintiffs' Vehicle, But Failed To Advise Plaintiffs; That Nationwide Violated The Regulations And The Statutes Controlling Auto Insurance Claims By Exerting Improper Influence And Control Over Douglas Joffred's Appraisal Duties And Action Taken On Behalf Of [Nationwide]; That Nationwide Wrongfully Directed Plaintiffs To Lindgren As A Blue Ribbon Repair Shop When Nationwide Allegedly Knew That Lindgren Was Not Competent To Pull The Damaged Frame Or Perform Structural Repairs; And That Plaintiffs' Insured Vehicle Should Have Been Declare A Total Loss

Trial Exhibit 4



COPY OF EXHIBIT NO. 4

Trial Exhibit 5

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

BOX 2655
HARRISBURG, PA 17105-2655

Received 3-27-96



March 22, 1996

Herb Motor's Inc.
25 West Penn Avenue
Wernsville, PA 17565



ATTENTION: Dan Ruoss

Dear Dan Ruoss,

Thank you for returning the Blue Ribbon Repair Program questionnaire. Enclosed you will find a copy of the Blue Ribbon Repair Service Agreement. Please read the Agreement and become familiar with the document. I will be contacting you shortly to set up a time to meet and go over this Agreement. If you have any questions feel free to give me a call at 717-657-6976.

Sincerely,

Mike Grumbein

Mike Grumbein
Blue Ribbon Repair Coordinator

MWG:tb



NATIONWIDE MUTUAL INSURANCE COMPANY
NATIONWIDE MUTUAL FIRE INSURANCE COMPANY
NATIONWIDE LIFE INSURANCE COMPANY
NATIONWIDE GENERAL INSURANCE COMPANY
HOME OFFICE: COLUMBUS, OHIO

COPY OF EXHIBIT NO. 5 (Page 1 of 14)

Not original Agreement

Received
3-27-96

See last sheet

BLUE RIBBON REPAIR SERVICE AGREEMENT

This Blue Ribbon Repair Service Agreement ("Agreement") is made, entered into and effective as of _____, 19____, by and between NATIONWIDE MUTUAL INSURANCE COMPANY, One Nationwide Plaza, Columbus, Ohio, 43215, (hereinafter "Nationwide") and _____ (hereinafter "Repair Facility").

Nationwide and Repair Facility agree that this Agreement sets forth the obligations and responsibilities of Repair Facility to write damage appraisals and/or perform repairs on vehicles participating in the Blue Ribbon Repair Service Program. The procedures and guidelines set out below in conjunction with the Blue Ribbon Repair Service Manual ("BRRS" Manual), a copy of which is attached to and made a part of this contract, constitute contractual obligations of the parties and are specifically designed to support a direct appraisal and repair program. Repair Facility acknowledges and understands that vehicle owners may decide to repair their vehicle at Repair Facility and that to qualify for immediate repair, the total loss threshold cannot be exceeded (including consideration for old damage and condition of the vehicle), the assignment cannot state that coverage must be verified, and the owner must give Repair Facility approval to proceed with repairs. The parties further agree that under no circumstances under this Agreement does Nationwide agree to defend or indemnify Repair Facility.

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

* Repair Facility _____

License No: _____ Owner _____
(If Applicable)

Address _____ Manager

_____ Asst. Manager

Primary Appraiser Secondary Appraiser

License No: _____ License No: _____
(If Applicable) (If Applicable)

Phone Number _____ Business Hrs. _____

Fax Number _____

* In the case of multiple locations, each facility must read and execute a contract.

As noted above, Repair Facility agrees to comply with the following procedures and guidelines:

FENAL BRRS 11896

COPY OF EXHIBIT NO. 5 (Page 2 of 14)

I. PROCEDURES

CUSTOMER SERVICE

1. Agrees to be able to handle a minimum of 15 appraisals per day for Nationwide Insurance Companies.
2. Promptness in contacting the vehicle owner and writing the damage appraisal is essential. Our service requirement is to contact the vehicle owner immediately after receiving the assignment. Appointments and appraisals should be completed within 24 hours of notice of assignment. If this is not possible, the claims representative should be notified immediately. The claims representative's name is noted on the assignment.
3. The Repair Facility will inform the vehicle owner about the entire appraisal process, including suggested methods of repair, and parts selection.
4. The Repair Facility will prepare an appraisal that includes all damage which is visible and verifiable at the time of inspection. Suspected prior damage and betterment/depreciation will be specifically identified and noted on the appraisal. *Any charges to the owner greater than the deductible, if applicable, must be identified and explained to the vehicle owner.*
5. The Repair Facility will provide the vehicle owner with a copy of the appraisal.

II. GUIDELINES

The following appraisal guidelines will be adhered to by the Repair Facility with respect to any vehicle appraised at the facility.

GENERAL

1. Provide continuing formal education for all management and technical personnel to ensure that proper repair techniques are utilized. Repair Facility personnel are encouraged to participate in I-CAR training related to their job functions and achieve ASE certification. Additional training available from manufacturers, distributors, and suppliers of motor vehicles, vehicle components, and repair equipment is also encouraged.
2. Subject to all statutes and Department of Insurance regulations, Nationwide Insurance Company's personnel are authorized to send assignments to this Repair Facility for the purpose of preparing an auto damage appraisal and/or initiating repair. All assignments will be in accordance with existing statutes and regulations and consistent with Nationwide Insurance Company's claim policies and procedures. Nationwide Insurance Company's personnel will utilize this program in such a way as to maximize customer service. Nationwide Insurance Companies have no obligation to refer vehicles to the Repair Facility.

APPRAISING

The Repair Facility will utilize an electronic communication system, excluding telephone and facsimile transmissions, for receiving assignments or handling "walk-in" Nationwide customers, and returning completed appraisals/supplements to Nationwide Insurance Companies. The Repair Facility will utilize an automated appraisal system with procedural page logic to prepare appraisals/supplements on vehicles participating through the program.

1. On the day the vehicle arrives, the Repair Facility will prepare an accurate itemized appraisal. *The vehicle should not be disassembled when disassembly will render the vehicle non-driveable unless the Repair Facility determines that repairs can begin immediately.* Repair Facility however, agrees to proceed with temporary repairs which can be performed rendering a non-driveable vehicle driveable. Upon completing the appraisal, it must be returned electronically to Nationwide by the Repair Facility through the appraisal system (MMX, CCC, ADP). A copy of the appraisal will be retained at the Repair Facility and a copy provided to the vehicle owner including any verbal or written notices required by state statute and/or Department of Insurance regulation. *If a major tear down is required to prepare a complete appraisal, or if the vehicle is a total loss, the Repair Facility will immediately notify the Claim Representative by phone for instructions/authorization on how to continue.*
2. This Repair Facility agrees to generate appraisals and perform repairs on vehicles participating through this program at the rates, charges, and discounts quoted. Repair Facility agrees to provide Nationwide thirty (30) days advance notice prior to any change in price quotations.
3. The Repair Facility will utilize digital imaging and take a minimum of four images identifying the claim or claim number, vehicle owner's name and date of loss. The images should include: (a) License Plate - 1, (b) Damage - 2, (c) VIN and mileage - 1. *These images shall be sent EDI to the appropriate Nationwide Claim Representative and the images should accompany the Appraisal.*
4. Damage to mechanical parts and components and other items such as convertible and vinyl tops will require the Repair Facility to provide sufficient information for the purpose of verifying depreciation in accordance to guidelines.
5. Damaged vehicles will be randomly selected for reinspection by our representatives. If the vehicle is repaired at the Repair Facility, all pertinent bills and invoices must be available for review. In the event of a variance in the appraisal, the loss may be re-adjusted and credit issued to the appropriate party.
6. The Repair Facility will include quality replacement non-OEM parts in the appraisal in accordance with the following guidelines:

Jennifer
+ George

- Current and one prior model year vehicle with less than 15,000 miles are excluded.
 - ~~Parts must be warranted in writing by the manufacturer and/or supplier for the applicable remaining time period offered by the original equipment manufacturer's Warranty.~~
 - ~~The part manufacturer or supplier must provide the Repair facility with appropriate certification and warranty, and it must be passed on to the vehicle owner.~~
 - ~~All non-OEM outer body sheet metal and fascia parts must be CAPA certified and marked so the identity of the manufacturer may be determined after the part has been installed on the vehicle.~~
 - All statutes and Department of Insurance regulations take precedence over our written guidelines.
 - The use of non-OEM parts must be disclosed to the vehicle owner by Repair Facility at the time of the appraisal.
 - No anti-lock brake system ("ABS") parts or component parts can be replaced with used parts.
 - Repair Facility, in using used suspension and steering parts, must inspect such parts and, if necessary, overhaul such parts to assure compliance with industry safety standards.
7. The Repair Facility will include used and rebuilt/reconditioned parts in the appraisal and notify Nationwide Blue Ribbon Repair customers of usage. Parts usage must be in accordance with the following guidelines:
- Current vehicle and one prior model year with less than 15,000 miles are excluded.
 - A copy of Nationwide's Blue Ribbon Guarantees (appraisal and parts) must accompany the Blue Ribbon appraisal.
 - Safety related items (e.g. air bags, anti-lock brakes etc.) should never be replaced with used parts. *Wheels, rear axle assemblies, trailing axles, steering columns and steering wheels are not to be considered safety related steering or suspension parts.*
 - Used, rebuilt and reconditioned parts must be of at least like kind and quality compared to the pre-loss condition of the part being replaced.
 - Nationwide's Blue Ribbon Guarantee regarding parts usage must accompany the appraisal.
8. The following guidelines will be observed, when appropriate, in preparing the appraisal:
- Repair a damaged part when feasible and cost effective, as opposed to replacing.
 - When sheet metal parts are needed, check for parts in the following order: (1) Used parts, (2) Reconditioned/rebuilt parts, (3) Aftermarket parts and (4) OEM parts. *State statute takes precedence over company guidelines. Betterment is not required with used, rebuilt, reconditioned or aftermarket parts.*
 - Safety-related items (as described in "Appraising", Paragraph 7 above) should never be replaced with used parts.
 - Rechromed bumpers and recycled fascia covers will be used (when available) on all vehicles except the current and one prior year model with less than 15,000 miles.

FINAL BRRS 1.15.96

4

COPY OF EXHIBIT NO. 5 (Page 5 of 14)

9. Glass:

- BRRS Repair Facility will utilize Nationwide's BRGS program on the repair/replacement of glass and will be paid a total sum of \$25.00 as a handling fee. Any repair/replacement of glass performed by BRRS facility employees, should be charged according to the following schedule.

Windshield Domestic	% offNAGS	55%
Windshield Foreign	% offNAGS	55%
Tempered Domestic BG	% offNAGS	40%
Tempered Foreign BG	% offNAGS	40%
Labor Windshield	\$ per claim	\$30.00
Labor Tempered	\$ per claim	\$30.00
Kit	Urethane	\$11.00

All glass repair/replacement must meet all federal standards for safety. The procedures and materials must follow OEM installation guidelines.

10. Depreciation/Betterment:

The following guidelines will be observed, when appropriate, in assessing betterment. *Personal inspection, to determine the condition of the damaged part to be replaced, should always take precedence over published guidelines. Betterment will not apply to risk, rebuilt, reconditioned or aftermarket parts.*

When a covered loss requires the replacement of certain depreciable parts, it is the Repair Facility's duty to ensure that betterment is taken on these parts and any related labor charges for these parts. When betterment is appropriate, the vehicle owner is responsible for the deductible (if applicable), plus a portion of the new part cost. *All betterment assessments must be fully explained to the vehicle owner.*

- The following assemblies should be depreciated using a 1% betterment for every 1,500 miles on the vehicle, up to a maximum of 75%:

Engine	Transmissions	Rear Axles/Housings
--------	---------------	---------------------

- Tire depreciation will be calculated based on a pro-rata amount of tread remaining to original depth, measured in /32nds. Depreciation should include the cost of installation and balancing (not to exceed 75%).
- Overall refinish should be depreciated at 10% per year (not to exceed 75%). Depreciation should not be considered when panel painting.
- Vinyl tops, convertible tops and seats should be depreciated 20% per year (not to exceed 75%).

Any items that do not appear above or are in question should be directed to the claims representative for instruction.

11. Appearance allowances should be attempted on all cosmetic damage. Some examples are: Minor scratches to chrome bumpers, fascia covers and wheels, scuffs to side of tires, etc.
12. Front end alignment is allowable only in those cases where there is obvious or related damages to frame, suspension, wheels or tires. If tires indicate prior front end misalignment, no alignment should be allowed and the reason appropriately documented on the appraisal report and explained to the vehicle owner.
13. Any sublet repairs must be performed in accordance with the guidelines outlined in the BRRS Manual.
14. All correspondence sent to the claim office must contain a claim or policy number, insured's name and date of loss.

ADVANCE CHARGES

Advance charges for towing and storage shall be paid by the repairing facility and added to the appraisal prepared on that specific vehicle. A copy of the paid towing and storage receipts should be imaged and accompany the appraisal and the photo images when they are sent to the assigning claim office.

STORAGE

No storage will be paid on repairable assignments. In the case of a total loss, storage charges will begin thirty (30) days after total loss notification is given by Repair Facility to Nationwide.

TOTAL LOSS HANDLING PROCEDURE

When a total loss warning appears, complete the appraisal and send it to our Claims Representative. Contact the claims office for further instruction.

SPECIAL NOTE: When the total loss warning has not been activated due to appraised damage not exceeding the threshold BUT pre-existing damages / condition of the vehicle / or age of the vehicle indicates the vehicle should be considered a total loss, contact the Claims Representative immediately before initiating repair.

Total loss vehicles should not remain at the BRRS facility beyond 7 days after notification has been provided to the appropriate Nationwide Claim Representative. Should a total loss vehicle remain at the BRRS facility beyond 7 days, the BRRS facility should contact a claims representative of Nationwide for salvage disposition instructions.

RATES

See the attached Repair Facility Profile, attached hereto and incorporated into this Agreement.

These guidelines should be followed if the owner elects to have their vehicle repaired at the BRRS facility.

1. The vehicle owner's approval is required prior to initiating repairs. If the assignment states to verify coverage, the Repair Facility must contact the Claims Representative for approval before repairs can begin.
2. The Repair Facility will provide the vehicle owner with a written warranty on workmanship for as long as the vehicle owner retains possession of the vehicle. Parts and/or materials offered by Repair Facility under this Agreement are subject to the warranty of the manufacturer and/or supplier. The Repair Facility will assist the vehicle owner in the resolution of all applicable warranty claims. A copy of the repair warranty, when repairs are completed, should be given to the vehicle owner explaining the terms and conditions of the warranty. The Repair Facility agrees to request vehicle owner to complete the Customer Satisfaction Index Questionnaire and return directly to the designated Nationwide office address.
3. Replacement or repair of any structural components should be made in strict accordance with recommended vehicle manufacturer specifications, I-CAR guidelines, or generally acceptable industry standards.
4. Repaired vehicles will be clean and provided to the vehicle owner for inspection before requesting payment and/or endorsement of the check.
5. All complaints about Repair Facility under the Blue Ribbon Repair Program require immediate contact by Repair Facility to vehicle owner and resolution of such complaint within three (3) business days of receipt of complaint. If a complaint cannot be resolved within that time, the Claims Representative identified on the assignment notice must be contacted for assistance.
6. The Repair Facility agrees to demonstrate a concern for preventing the use of stolen parts.

REPAIR STATUS AND UPDATES

1. The Repair Facility will formulate the damage appraisal and complete repairs in accordance with the procedures and guidelines stated in this document. If, during the course of repairs, hidden damage is discovered or alternative repair/replacement procedures are recommended or necessary, the Repair Facility will obtain approval from the owner of the vehicle and contact the Claim Representative prior to commencement of repairs. All repair changes must be communicated to the Claims Representative in the form of a supplemental appraisal, via electronic communication through the service provider to Nationwide. If repair completion is delayed for any reason, Repair Facility

FINAL BRRS 1/13/96

7

COPY OF EXHIBIT NO. 5 (Page 8 of 14)

1155

R. 1787a

agrees to contact the vehicle owner, BRRS Claims Representative or BRRS manager.

SHOP EQUIPMENT/SERVICES

The Repair Facility shall maintain shop equipment capable of providing the following services. In the event the Repair Facility cannot provide any of the following services in-house, it may sublet the service, provided the sub-contractor is capable of adhering to the following provisions in this Agreement:

- Two/Four wheel alignments
- Air conditioning service
- Collision mechanical service
- Towing
- Electronic repairs

Repair Facility further agrees to comply with the following during the term, and any renewal of the term, of this Agreement:

MINIMUM REPAIR FACILITY REQUIREMENTS

1. The Repair Facility will utilize equipment capable of restoring damaged vehicles to their pre-accident function and appearance.
2. The Repair Facility will utilize painting systems, methods and materials capable of duplicating an O.E.M. type finish.
3. The Repair Facility will utilize materials that will duplicate O.E.M. corrosion protection.
4. The Repair Facility will utilize materials and procedures when installing glass that is the equivalent to OEM-type installation and meets applicable Department of Transportation standards for safety.
5. The Repair Facility must meet the following standards and/or equipment requirements:
 - * Minimum of five years in business.
 - * Facility is owned or leased back to owner.
 - * Employee/Management on-going training program i.e. ASE, I-CAR, Auto Manufacturing, Suppliers, etc.
 - * Passes all applicable licenses/permits; city, county, state and federal and have a valid, current EPA number.
 - * A spray booth meeting all federal regulations and local, city, county and state zoning laws.

- * A paint mixing system.
- * Facility liability insurance, limits and expiration date (2 million dollar limit minimum)
- * Workers' Compensation Insurance
- * Vehicle appraisal area (protected where climate requires).
- * Secured storage area.
- * Customer waiting area with rest room facilities.
- * Ability to schedule appraisal appointments.
- * Computerized estimating system with procedural page logic and communication link.
- * Appraisal completed within 24 hours of vehicle arrival.
- * Source covering frame, upper and lower body dimensions and wheel alignment specifications.
- * Ability to perform multiple repair pulls on frame/unibody.
- * Image captive equipment i.e. digital or video camera with EDI ability.
- * Allow reinspections during normal business hours.
- * GMAW and spot welder.
- * Provide lifetime written warranty equal to Nationwide's guarantee.
- * Ability to provide rental vehicles.
- * Total loss valuation capability.
- * Agrees to utilize a primary and back up appraiser approved by Nationwide.

REGULATORY ISSUES

1. The Repair Facility will comply with all applicable Department of Insurance, federal, state and local regulations.
2. The Repair Facility will demonstrate a concern for the environment by complying with all safety and environment standards.

FINAL BRRS 1/13/96

9

COPY OF EXHIBIT NO. 5 (Page 10 of 14)

1157

R. 1789a

3. The Repair Facility agrees to prevent illegal and fraudulent activities and/or practices. Any suspected illegal or fraudulent practice will be brought to the attention of and investigation by Nationwide's Special Investigation Unit via fraud hotline (1-800-474-7633).

SUPPLEMENTS

All supplements must be in the form of an automated appraisal and communicated to the vehicle owner in any reasonable fashion and communicated to the Claims Representative via electronic communication prior to continuation of repair (not phone or fax). Digital images must be obtained to support supplemental damage and forwarded to the Claims Representative with the supplemental repair appraisal.

REPAIR AUTHORIZATION/PAYMENT

1. Unless the Repair Facility has been advised of a pending coverage or liability issue, repairs may begin immediately after the appraisal has been returned electronically to Nationwide and the vehicle owner's authorization is secured.
2. Upon receipt of the appraisal, Nationwide will issue a check payable to the vehicle owner and the Repair Facility minus any applicable deductible and/or depreciation. A two party check will be mailed directly to the Repair Facility unless the vehicle owner requests otherwise. Payment can be accomplished when an authorization to pay direct to the Repair Facility has been signed by the vehicle owner. If the vehicle is not repaired at the Repair Facility, the Repair Facility must return the check to Nationwide so an appropriate check can be made to the vehicle owner and applicable lienholder(s). *Under no circumstances should the check be endorsed and given to the vehicle owner if no repair or partial repairs were completed.*

TERM AND TERMINATION

1. Term. This Agreement shall continue in effect from the effective date of this Agreement for a period of 12 months whereupon this Agreement shall automatically renew for another 12 month period or for such other period agreed upon by the parties, although any such renewal would be subject to Repair Facility meeting or exceeding the various requirements and other performance standards as may be set forth in this Agreement.
2. Summary Suspension. Notwithstanding Paragraph 1 above, the parties agree that Nationwide may suspend Repair Facility immediately upon notice if it fails to satisfy any requirement under this Agreement, including, but not limited to, reducing deductibles, including prior damage on the damage appraisal, and substituting aftermarket/like kind and quality parts for original manufacturers equipment, or if Nationwide feels, in their sole discretion, that the original objectives are not or cannot be met under this Agreement through Repair Facility or in the case of suspected fraud. Any suspended Repair Facility shall be reinstated only upon Nationwide's satisfaction, in its sole discretion, that Repair Facility will be able to satisfy the requirements of this Agreement.

X

3. Obligation After Termination. The expiration or termination of this Agreement shall not affect any rights or obligations which shall have previously accrued to the parties or shall afterwards accrue to the parties, including, but not limited to the ownership and confidentiality provisions of this Agreement.

OTHER

- 1. Independent Contractor. The Repair Facility shall at all times remain an independent contractor, and under no circumstance shall it be an agent, servant or employee of Nationwide.
- 2. Indemnification: The Repair Facility agrees to indemnify, defend, save and hold harmless Nationwide Enterprise with respect to all losses, costs, expenses, liabilities, damages, claims and assessments (including attorney's fees, court costs and litigation costs) resulting from the Repair Facility's failure to comply with the guidelines set forth/or other negligence under this Agreement. If Repair Facility becomes aware of any lawsuit involving Nationwide it shall promptly notify Nationwide.
- 3. Either party may terminate this agreement at any time with a written thirty (30) day notice to the other party. Notices may be sent by mail to the following address:

State: _____
 Office: _____
 Address: _____

4. Repair Facility agrees to carry the insurance coverages at or above the specified limits listed below:

<u>Insurance Type</u>	<u>Limits</u>	<u>Provisions</u>
Commercial General Liability	\$2,000,000 per occurrence	The policy shall include Products/Completed Operations coverage. Nationwide shall be named as Additional Insured on the policy.
Garagekeepers Legal Liability	\$500,000 per occurrence	Nationwide shall be named as Additional Insured on the policy.
Workers' Compensation	Statutory Amount Per Claim	
Employer's Liability	\$500,000 per occurrence	
Automobile Liability	\$1,000,000 per accident	Nationwide shall be named as Additional Insured on the policy.

5. Governing Law. This Agreement shall in all respects be governed and construed in accordance with the laws of the State of Ohio.

6. Assignment. This Agreement shall not be assigned or transferred by either party without the prior written consent of the other party.
7. Survival of Rights of Parties. The expiration or termination of this Agreement shall not release either party from any liability or obligation incurred under this Agreement prior to such termination or expiration.
8. Waiver/Severability. The failure to enforce any of the provisions of this Agreement shall not be construed as a waiver of that right or any other provision or right. In the event that any of the provisions of this Agreement shall be invalid, this Agreement shall be construed as if such invalid provision was not herein contained.
9. Amendments. This Agreement may not be modified or changed in any manner except by written amendment duly executed by both parties hereto.
10. Force Majeure. If either party to this Agreement is rendered unable, wholly or in part, by an act of God, civil disobedience, strike or other force majeure situations to carry out its obligations under this Agreement, that party shall give to the other party prompt written notice and its obligations shall be suspended to the extent that they are affected by the force majeure and the affected party uses reasonable diligence to meet its obligations hereunder as quickly as possible.
11. Third-Party Beneficiaries. The obligations of each party to this Agreement shall accrue solely to the benefit of the other party and no person or entity shall be a third-party beneficiary of this Agreement.
12. Reasonable Care. Repair Facility shall use reasonable care and diligence in the exercise of its powers and the performance of its duties hereunder.
13. No Agency. Irrespective of the specific authority granted to Repair Facility by Nationwide to handle motor vehicle repairs under this Agreement, Repair Facility is not an agent of or on behalf of Nationwide for any purpose whatsoever.
14. Prior Agreements. This Agreement rescinds and supersedes any and all pre-existing agreements between Repair Facility and Nationwide Enterprise relative to this subject matter herein.
15. Confidentiality. Notwithstanding any other provision of this Agreement the parties agree that each other's systems, data base, claims data, Repair Facility identification, agent identification and any other internal processes or information and documents are proprietary in nature and each party further agrees that it will not use such information in a manner inconsistent with this Agreement nor disclose such information to any third party, or to any party who does not have a demonstrated need to know for purposes of this Agreement. Any and all confidentiality obligations under this Agreement shall not terminate with the expiration or termination of this Agreement.

16. Ownership. Repair Facility acknowledges and agrees that all claims data, agent identification information, and any other data belonging to Nationwide remains the sole and exclusive property of Nationwide and shall not be used in any manner inconsistent with the above confidentiality provision of Paragraph 15 or the terms and conditions of this contract.

If any portion of this agreement is unenforceable, it shall not affect the enforceability of any other portion of this agreement.

NATIONWIDE MUTUAL INSURANCE
COMPANY
"Nationwide"

"Repair Facility"

By: _____

By: _____

Title: Claims Technical Consultant

Title: _____

Date: _____

Date: _____

By: _____

Title: Vice President, MD/Property

Date: _____

Trial Exhibit 6

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA



241 ROHRERSTOWN RD * LANCASTER PA 17603 *

December 2, 1997

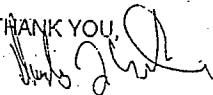
Daniel G & Sharon E Berg
RD 3658
MOHNTON PA 19540-9804

OUR INSURED : Daniel G & Sharon E Berg
OUR CLAIM NUMBER : 58 37 C 137421 09-04-1996 01
DATE OF ACCIDENT : 09-04-1996

DEAR MR MAYERSON,
AS PER OUR PHONE CONVERSATION TODAY, I AM NOT DIRECTLY INVOLVED WITH THE CLAIM YOU ARE REFERENCING . THE MANAGER FOR THE BLUE RIBBON DIRECT REPAIR SHOPS IN PENNSYLVANIA IS RON STITZEL. HIS NUMBER IS 717.235.1221.

PLEASE FIND TO FOLLOW VIA FAX, A COPY OF THE ESTIMATE.

SHOULD YOU HAVE ANY MORE QUESTIONS PLEASE CALL MR STITZEL.

THANK YOU,

DOUGLAS L. WITMER

NATIONWIDE MUTUAL INSURANCE COMPANY
DOUG WITMER
Claims Department
717-399-5676

*8 PAGES
IN THIS LETTER*

EXHIBIT
6
12-15-04 AR

NW153

Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act which is a crime and subjects such a person to criminal and civil penalties.

COPY OF EXHIBIT NO. 6 (Page 1 of 8)

AGE REPORT
09/20/96 at 09:36
23 133 1742

BERG
D.R. 18273-0004602
Est: D. JOFFRED

LINDGREN CHRYSLER-PLYMOUTH INC.

1600 LANCASTER AVE.
READING, PA 19607-
(610) 775-0311

Owner: DANIEL BERG
Address: RD 3658
MOHNTON PA 19540

Day Phone: (610) 856-7095-
Other Ph: ()
Deductible: \$ 500.00

Insurance Co.: NATIONWIDE INSURANCE COMPANY Phone: 717-657-6463
Claim No.: 5837C13742109049601D/B11 Adj.: JENNIFER COFFMAN

96 JEEP GRAND CHEROKEE 4X4 LAREDO 4D UTV CHARGOLD 8-5.2L-FI
Vin: 1J4GZ58Y7TC227842 License: BAJ5964 PA Prod Date: 12/95 Odometer: 1305

Power steering	Power brakes	Power windows
Power locks	Power mirrors	Tinted glass
Dual mirrors	Air conditioning	Rear defogger
Tilt wheel	Cruise control	Keyless entry
Power window wiper	Anti-lock brakes (4)	Driver airbag
Passenger airbag	4 wheel disc brakes	Luggage/roof rack
Cloth seats	Bucket seats	Recline/lounge seats
Aluminum wheels	Clear coat paint	Metallic paint

NO.	OP.	DESCRIPTION OF DAMAGE	QTY	PART COST	LABOR	PAINT	MISC
1		FRONT BUMPER					
2	Repl	Bumper cover w/fog lamp	1	270.00	Incl	2.4	
3		Add for Clear Coat	1	0.00	0.0	1.0	
4	Repl	Bumper cover bracket	1	8.70	0.0	0.0	
5	Repl	Bumper cover retainer	1	0.85	0.0	0.0	
6	Repl	Bumper cover stud plate	1	28.25	0.0	0.0	
7	Repl	RT Bumper cover side bracket	1	15.25	0.0	0.0	
8	Repl	LT Bumper cover side bracket	1	13.50	0.0	0.0	
9	Repl	Absorber	1	46.75	1.2	0.0	
10	Repl	License bracket	1	14.75	0.3	0.0	
11		FRONT PANELS					
12	Repl	Grille bright	1	140.00	Incl	0.0	
13	Repl	Grille bracket	1	3.35	0.0	0.0	
14	Repl	Hdr.pnl w/o hd lamp lvng	1	86.50	3.5	0.0	
15		FRONT LAMPS:					
16	Repl	Aim headlamps	1	0.00	0.5	0.0	
17	Repl	RT Headlamp assy	1	87.50	Incl	0.0	
18	Repl	LT Headlamp assy	1	87.50	Incl	0.0	
19	Repl	RT Gear pinion adjusting	1	0.95	Incl	0.0	
20	Repl	LT Gear pinion adjusting	1	0.95	Incl	0.0	

NW 154

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

AGE REPORT
 09/20/96 at 09:36
 23 133 1742

BERG
 D.R. 18273-0004602
 Est: D. JOFFRED

LINDGREN CHRYSLER-PLYMOUTH INC.

1600 LANCASTER AVE.
 READING, PA. 19607-
 (610) 775-0311

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

NO.	OP.	DESCRIPTION OF DAMAGE	QTY	PART COST	LABOR	PAINT	MISC
21	Repl	RT Gear horizontal adjusting	1	1.35	Incl	0.0	
22	Repl	LT Gear horizontal adjusting	1	1.35	Incl	0.0	
23	Repl	RT Gear vertical adjusting	1	1.35	Incl	0.0	
24	Repl	LT Gear vertical adjusting	1	1.35	Incl	0.0	
25	Repl	RT Gear vertical drive gear	1	0.95	Incl	0.0	
26	Repl	LT Gear vertical drive gear	1	0.95	Incl	0.0	
27	Repl	RT Adjust screw horizontal	1	3.95	Incl	0.0	
28	Repl	LT Adjust screw horizontal	1	3.95	Incl	0.0	
29	Repl	RT Adjust screw pivot	1	3.10	Incl	0.0	
30	Repl	LT Adjust screw pivot	1	3.10	Incl	0.0	
31	Repl	RT Adjust screw vertical	1	3.95	Incl	0.0	
	Repl	LT Adjust screw vertical	1	3.95	Incl	0.0	
	Repl	RT Drive gear retainer	1	1.00	0.0	0.0	
34	Repl	LT Drive gear retainer	1	1.00	0.0	0.0	
35	Repl	RT Bulb	1	11.00	Incl	0.0	
36	Repl	LT Bulb	1	11.00	Incl	0.0	
37	Repl	RT Lock ring	1	1.25	0.0	0.0	
38	Repl	LT Lock ring	1	1.25	0.0	0.0	
39	Repl	RT Lock ring seal	1	5.10	0.0	0.0	
40	Repl	LT Lock ring seal	1	5.10	0.0	0.0	
41	Repl	LT Turn signal lamp	1	27.50	Incl	0.0	
42	Repl	LT Bulb	1	4.60	0.0	0.0	
43	Repl	LT Side marker lamp	1	25.50	Incl	0.0	
44	Repl	LT Bulb amber	1	0.95	0.0	0.0	
45	Repl	LT Welt	1	5.85	0.0	0.0	
46	Repl	LT Fog lamp assy	1	75.50	Incl	0.0	
47	Repl	LT Fog lamp assy bracket	1	81.50	0.0	0.0	
48	Repl	LT Bulb	1	12.50	0.3	0.0	
49	Repl	LT Bulb wiring	1	13.25	0.0	0.0	
50		COOLING					
51		Rpl Radiator Supt Assy	1	0.00	7.5	0.0	
52*	Repl	Tie bar	1	39.75	Incl	0.0	
53	Repl	Tie bar brace	1	6.25	0.0	0.0	
54*	Repl	RT Side panel	1	41.75	Incl	0.5	
55*	Repl	LT Side panel	1	41.75	Incl	0.5	
56		Overlap Minor Panel	1	0.00	0.0	-0.2	
	Repl	RT Side panel bracket	1	8.00	0.0	0.0	
	Repl	LT Side panel bracket	1	8.00	0.0	0.0	
59	Repl	Lower support	1	46.75	Incl	0.0	

NW 155

AGE REPORT
09/20/96 at 09:36
23 133 1742

BERG
D. R. 18273-0004602
Est: D. JOFFRED

LINDGREN CHRYSLER-PLYMOUTH INC.

1600 LANCASTER AVE.
READING, PA 19607-
(610) 775-0311

NO.	OP.	DESCRIPTION OF DAMAGE	QTY	PART COST	LABOR	PAINT	MISC
60	Repl	Air deflector	1	11.00	Incl	0.0	
61*	Repl	Lower c'member	1	57.00	Incl	0.5	
62		Overlap Minor Panel	1	0.00	0.0	-0.2	
63*	Repl	Rdtr sl t uppr x-membr sd	2	6.20	0.0	0.0	
64	Repl	Rdtr sl t uppr x-membr cntr	1	6.20	0.0	0.0	
65	Repl	RT Radiator seal to radiator s	1	2.35	0.0	0.0	
66	Repl	LT Radiator seal to radiator s	1	4.20	0.0	0.0	
67*	Repl	Radiator	1	280.00	Incl	0.0	
68	Repl	Radiator insulator lower	1	2.35	0.0	0.0	
69*	Repl	Fan blade	1	42.50	0.7	0.0	
70*	Repl	Clutch w/o max cooling	1	145.00	0.9	0.0	
	Repl	Shroud	1	41.25	Incl	0.0	
	Repl	Shroud hole cover	1	27.25	0.0	0.0	
73	Repl	Shroud bracket	1	2.45	0.0	0.0	
74*	Repl	COOLANT	1	0.00	0.0	0.0	T 12.95
75	Repl	Skid plate front suspension	1	51.00	0.3	0.0	
76	Repl	Skid plate support bracket	1	8.70	0.0	0.0	
77		AIR COND & HEATER					
78*	Repl	AC Service evacuate & recharge	1	0.00	1.4	0.0	
79*	Repl	Condenser	1	275.00	1.8	0.0	
80*		R&I Upper housing	1	0.00	3.5	0.0	
81		HOOD					
82	Repl	Hood	1	365.00	1.2	3.0	
83		Overlap Major Adjacent Panel	1	0.00	0.0	-0.4	
84		Add for Clear Coat	1	0.00	0.0	0.5	
85		Add for Underside	1	0.00	0.0	1.5	
86	Repl	Insulator	1	44.25	Incl	0.0	
87*	Repl	Insulator retainer	9	7.65	0.0	0.0	
88	Repl	Latch	1	20.50	Incl	0.0	
89	Repl	Safety catch	1	10.00	Incl	0.0	
90	Repl	Striker	1	7.35	0.2	0.0	
91	Repl	Release cable	1	16.50	0.8	0.0	
92	Repl	RT Hinge from 11/15/93	1	45.25	0.3	0.3	
93	Repl	LT Hinge from 11/15/93	1	45.00	0.3	0.3	
94	Repl	Nameplate Jeep bright	1	20.75	0.3	0.0	
95		FENDER					
	Repl	RT Fender	1	183.00	2.5	2.5	
98		Overlap Major Adjacent Panel	1	0.00	0.0	-0.4	
		Add for Clear Coat	1	0.00	0.0	0.4	

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

Page: 3

Nw 156

COPY OF EXHIBIT NO. 6 (Page 4 of 8)

AGE REPORT
03/20/96 at 09:36
23 133 1742

BERG
D.R. 18273-0004602
Est: D. JOFFRED

LINDGREN CHRYSLER-PLYMOUTH INC.

1600 LANCASTER AVE.
READING, PA 19607-
(610) 775-0311

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

NO.	OP.	DESCRIPTION OF DAMAGE	QTY	PART COST	LABOR	PAINT	MISC
99		Add for Edging	1	0.00	0.0	0.5	
100		Add To Drill Mldg Holes	1	0.00	0.3	0.0	
101		Deduct for Body Overlap	1	0.00	-0.7	0.0	
102	Repl	LT Fender	1	183.00	2.5	2.5	
103		Overlap Major Adjacent Panel	1	0.00	0.0	-0.4	
104		Add for Clear Coat	1	0.00	0.0	0.4	
105		Add for Edging	1	0.00	0.0	0.5	
106		Add To Drill Mldg Holes	1	0.00	0.3	0.0	
107		Deduct for Body Overlap	1	0.00	-0.7	0.0	
108	Repl	RT Fender bracket	1	9.25	0.0	0.0	
109	Repl	LT Fender bracket	1	9.10	0.0	0.0	
	Repl	LT Splash shield	1	24.25	0.3	0.0	
	Repl	Splash shield rivet	6	8.70	0.0	0.0	
112*	Repl	Splash shield retainer	6	8.10	0.0	0.0	
113		R&I RT Lower cladding Laredo	1	0.00	0.3	0.0	
114		R&I LT Lower cladding Laredo	1	0.00	0.3	0.0	
115*	Repl	RT Apron panel from 2/14/94	1	40.00	8.5	1.0	
116		Overlap Minor Panel	1	0.00	0.0	-0.2	
117		Deduct for Body Overlap	1	0.00	-1.0	0.0	
118*	Repl	LT Apron panel from 2/14/94	1	66.00	8.5	1.0	
119		Overlap Major Non-Adj. Panel	1	0.00	0.0	-0.2	
120		Deduct for Body Overlap	1	0.00	-1.0	0.0	
121*	Repl	RT Wheelhouse brace	1	70.00	3.0	0.0	
122*	Repl	LT Wheelhouse brace	1	63.00	3.0	0.0	
123	Repl	Guide outer	1	22.75	0.0	0.0	
124*	Repl	RT Front side rail	1	275.00	8.5	0.0	
125*	Repl	LT Front side rail	1	315.00	8.5	0.0	
126		ELECTRICAL					
127*	Repl	Battery tray	1	11.50	Incl	0.0	
128	Repl	Thermo cover	1	15.00	0.0	0.0	
129*	Repl	Battery cable 8 cylinder	1	94.50	0.8	0.0	
130*		R&I Body & cable	1	0.00	0.8	0.0	
131*	Repl	ABS control unit	1	300.00	1.5	0.0 M	
132	Repl	ABS control unit bracket	1	5.00	0.0	0.0	
133		R&I Cruise servo	1	0.00	0.5	0.0 M	
134	Repl	Cruise servo bracket	1	8.55	0.0	0.0	
		ENGINE					
		R&I engine assy	1	0.00	8.5	0.0 M	
137*	Repl	Cover	1	33.00	Incl	0.0	

NW 157

AGE REPORT
 09/20/96 at 09:36
 23 133 1742

BERG
 D.R. 18273-0004602
 Est: D. JOFFRED

LINDGREN CHRYSLER-PLYMOUTH INC.

1600 LANCASTER AVE.
 READING, PA 19607-
 (610) 775-0311

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

NO.	OP.	DESCRIPTION OF DAMAGE	QTY	PART COST	LABOR	PAINT	MISC
138	Repl	Element	1	25.00	0.0	0.0	
139*	Repl	Lower case	1	61.50	Incl	0.0	
140*	Repl	Duct	1	12.25	0.3	0.0	
141*	Repl	RT Insulator	1	55.00	0.8	0.0	
142*	Repl	LT Insulator	1	55.00	0.8	0.0	
143*	Repl	Trans c'member	1	54.00	1.0	0.0	
144*	Repl	Trans mount	1	55.00	0.8	0.0	
145*	Repl	Adapter	1	25.00	0.8	0.0	
146	Repl	Adapter bracket	1	7.75	0.0	0.0	
147		EMISSION SYSTEM					
148*	Repl	Vapor canister	1	43.50	2.0	0.0	
		FRONT SUSPENSION					
149*	Repl	Bleed brake system w/ABS	1	0.00	0.5	0.0	
151*		R&I axle assy	1	0.00	4.0	0.0	
152*		R&I SUSP. (BOTH SIDES)	1	0.00	7.5	0.0	
153*	Repl	Stabilizer bar	1	75.00	0.9	0.0	
154*	Repl	Stabilizer bar link	1	22.25	0.6	0.0	
155*	Repl	Stabilizer bar bushing	2	4.60	0.0	0.0	
156	Repl	Stabilizer bar clamp	1	4.10	0.0	0.0	
157*		FOUR WHEEL ALIGN	AL 1	0.00	0.0	0.0	T 60.00
158		STEERING GEAR & LINKAGE					
159*	Repl	P/S pump & cylinder w/o tow pk	1	255.00	1.6	0.0	
160	Repl	P/S pmp mnt brckt uppr & cylnd	1	25.00	0.0	0.0	
161*	Repl	Pulley & cylinder	1	14.00	0.5	0.0	
162*	Repl	Pressure hose & cylinder	1	29.25	1.0	0.0	
163*	Repl	Return hose & cylinder	1	8.50	1.0	0.0	
164		STEERING COLUMN					
165*	Repl	Lower shaft from 1/6/95	1	140.00	1.0	0.0	
166	Repl	Shield	1	13.25	0.0	0.0	
167*		R&I steering column w/o tilt	1	0.00	1.5	0.0	
168		STEERING GEAR & LINKAGE					
169*	Repl	Gear assy w/o tow pkg	1	370.00	1.5	0.0	
170*	Repl	Pitman arm	1	26.25	0.7	0.0	
171		STEERING WHEEL					
172*		R&I Strng whl w/tilt w/lthr w/o	1	0.00	0.6	0.0	
173		WINDSHIELD					
	Repl	Reveal molding upper	1	13.00	0.0	0.0	
	Repl	RT Reveal molding side	1	23.50	0.0	0.0	
176	Repl	LT Reveal molding side	1	23.50	0.0	0.0	

NW 158

GE REPORT
 09/20/96 at 09:36
 23 133 1742

BERG
 D.R. 18273-0004602
 Est: D. JOFFRED

LINDGREN CHRYSLER-PLYMOUTH INC.

1600 LANCASTER AVE.
 READING, PA 19607-
 (610) 775-0311

NO.	OP.	DESCRIPTION OF DAMAGE	QTY	PART COST	LABOR	PAINT	MISC
177*		R&I W/SHIELD	1	0.00	0.0	0.0	T 93.75
178*	Repl	Link assy	1	117.00	1.0	0.0	
179		COWL					
180	Repl	Cowl grille from 2/4/94	1	33.75	0.6	0.0	
181*	Repr	Plenum	1	0.00	3.0	0.5	
182		INSTRUMENT PANEL					
183*		R&I instrument panel complete	1	0.00	3.3	0.0	
184		RESTRAINT SYSTEMS					
185	Repl	System diagnosis	1	0.00	0.5	0.0	M
186*	Repl	Sensor	1	86.00	0.4	0.0	
187*		SET-UP FOR UNIBODY	1	0.00	2.0	0.0	
		UNIBODY REPAIR-FRONT	1	0.00	7.0	0.0	
		FRONT DOOR					
190		RT R&I door assy w/power units	1	0.00	1.2	0.0	
191		LT R&I door assy w/power units	1	0.00	1.2	0.0	
192*	Repl	Dcl "Grnd Chrk" w/o Crv snd	2	43.50	0.0	0.0	
193*		TINT & BLEND	1	0.00	0.0	1.5	
194*		FLEX AGENT PER BUMPER	AL 1	0.00	0.0	0.0	T 8.00
195*		CORROSION PROTECTION	AL 1	0.00	0.0	0.0	T 8.00
196*		HAZARDOUS WASTE REMOVAL	1	0.00	0.0	0.0	T 5.00
197*		R&I RUGS & SEATS	1	0.00	4.0	0.0	
		Towing Charges	1	0.00	0.0	0.0	X 110.00
Subtotals ==>				6321.05	133.8	19.3	297.70

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

NEW 159

AGE REPORT
09/20/96 at 09:36
23 133 1742

BERG
D.R. 18273-0004602
Est: D. JOFFRED

LINDGREN CHRYSLER-PLYMOUTH INC.

1600 LANCASTER AVE.
READING, PA 19607-
(610) 775-0311

Parts		6321.0
Parts Discount \$ 6321.05 - 10%		-632.1
Body Labor 122.8 units @ \$34.00		4175.2
Paint Labor 19.3 units @ \$34.00		656.2
Paint/Materials		300.0
Mech. Labor 11.0 units @ \$47.00		517.0
Sublet/Misc		297.7

SUBTOTAL	\$	11635.0
Tax on \$ 11525.04 at 6.0000%		691.5

GRAND TOTAL	\$	12326.5
ADJUSTMENTS:		
Deductible		-500.0

CUSTOMER PAYS	\$	500.0
INSURANCE PAYS	\$	11826.5

ANY PERSON WHO KNOWINGLY AND WITH INTENT TO FRAUD ANY INSURANCE COMPANY OR OTHER PERSON FILES AN APPLICATION FOR INSURANCE OR STATEMENT OF CLAIM CONTAINING ANY MATERIALLY FALSE INFORMATION OR CONCEALS FOR THE PURPOSE OF MISLEADING, INFORMATION CONCERNING ANY FACT MATERIAL THERETO COMMITS A FRAUDULENT INSURANCE ACT, WHICH IS A CRIME AND SUBJECTS THE PERSON TO CRIMINAL AND CIVIL PENALTIES.

Estimate based on MOTOR CRASH ESTIMATING GUIDE. Non-asterisk(*) items are derived from the Guide DR3M95. Database Date 7/96

Double asterisk(**) items indicate part supplied by a supplier other than the original equipment manufacturer.

CAPA items have been certified for fit and finish by the Certified Auto Parts Association.

EZEst - A product of CCC Information Services Inc.

Page: 7

NW 160

COPY OF EXHIBIT NO. 6 (Page 8 of 8)

1169

R. 1802a

Trial Exhibit 7

NOV. -03' 97 (MON) 13:43 "NATIONWIDE" INSURANCE

TEL: 717 39 5679971

P. 003

NOV 03 '97 10:44AM MAYERSON LAW TRAPPE

P. 2/2

THE MAYERSON LAW OFFICES, P.C.

ATTORNEYS
HY MAYERSON
MARGARET R. CONNORS
ERIC BUSCH*
BENJAMIN J. MAYERSON
MICHAEL G. MOYER*

123 WEST MAIN STREET
TRAPPE, PA. 19426
TEL (610) 489-2800
FAX (610) 489-2366

OFFICES ALSO AT
SPRING CITY, PA. 19475

BUSINESS MANAGER
MARIA DELORA
1ST PARTY/MEDICAL PARALEGAL
JANICE SUZINA

November 3, 1997

VIA: FAX ONLY

Doug Witmer
Nationwide Insurance Company

Re: Berg v. Lindgren

Dear Mr. Witmer:

Please be advised that this office represents Daniel Berg in regard to a claim being presented against Lindgren Chrysler-Plymouth arising out of faulty repair work done at their facility.

It is my understanding that you are Mr. Berg's first party property damage adjuster for the claim arising out of this automobile accident.

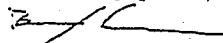
Please direct all future communications regarding this claim through my office. Please do not contact Lindgren Chrysler-Plymouth as your communications may have an impact on Mr. Berg's pending litigation against Lindgren. If Lindgren contacts you please direct them to my office and/or forward their correspondence to my office for further handling.

Please forward me a copy of your file including all maintenance records, bills, receipts, estimates and notes or correspondence between you and Lindgren Chrysler-Plymouth as it relates to this claim.

I am preparing a complaint to be filed against Lindgren and the Chrysler Corporation. I have retained an expert to examine the vehicle. If Nationwide requires an opportunity to examine the vehicle please advise.

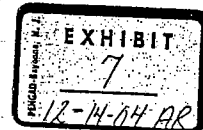
Please call me so we might discuss this matter further.

Very truly yours,


Ben Mayerson

BJM/bs

NW 137



COPY OF EXHIBIT NO. 7

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

Trial Exhibit 8

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0001

Date Time Creator Assignee Cov Claimant

Date: 07/22/1998 Time: 10:56AM
To: LEGAL1 - Legal LEAP Clerk
cc: COLED1 - David Cole
From: David Cole
Subject: Berg v. Nationwide
New suit opening.

07/22/1998 10:28AM COLED1 COLED1 COLL Daniel G & Sharon E Berg
Attorney opened for COLL on Daniel G & Sharon E Berg assigned to
COLED1



05/20/1998 07:35AM BASHORB SUSEMIP

0200 ADVISORY COMMENTS: CTC - Berg, Daniel G & Sharon E Rec'd call from Automotive Legal Services. TT Terry Shaw. Terry had appt. to meet ph to inspect his vehicle on Sat. (5-16-98). Terry went to the ph's home but ph was not there. Terry will call ph and set up another appt.

05/19/1998 08:16AM BASHORB SUSEMIP

DOC sent to: The Mayerson Law Offices, P.C. from BRUCE BASHORE (Re:) Free Form (not used yet) (Comments:) none (Print Instr:) none; no Separator printed

COPY OF EXHIBIT NO. 8 (Page 1 of 70)

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0002

Date Time Creator Assignee Cov Claimant
05/12/1998 05:20PM BASHORB WITMERD COLL Daniel G & Sharon E Berg
Check for \$250.00 payable to Automotive Legal Services P O Box 626
Dresher PA 19025 - -011525 - Manual

05/12/1998 05:16PM BASHORB WITMERD
0200 ADVISORY COMMENTS: CTC - Berg, Daniel G & Sharon E called
automotive legal services to inspect ph vehicle and take photos. I
will send a \$250 retainer to Automotive Legal Services. They will
check vehicle for quality of repairs and if any problems what needs
to be done to correct the problem.

To: GRAYV - Vickie Gray Date: 05/07/1998 Time: 07:21AM
cc: OBETZ1 - OBETZ FILE CENTER
From: OBETZ FILE CENTER
Subject: FILE NEEDED

Good morning. I have tried several different ways to locate this file
and nothing is coming up on my system. If you have any questions,
please feel free to give me a call. Thank you, Crystal

To: OBETZ1 - OBETZ FILE CENTER Date: 05/05/1998 Time: 12:21PM
cc: GRAYV - Vickie Gray
From: Vickie Gray
Subject: FILE NEEDED

PLEASE SEND THE FOLLOWING FILE TO VICKIE GRAY, PO BOX 2655, HARRISBURG,
PA 17105. FILE NUMBER IS 58 37 C 132421 09049601. THANKS.

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****

Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0003

Date Time Creator Assignee Cov Claimant

05/06/1998 08:05AM POTOSNS UNASSIGN

MET WITH LINDGREN'S ATTY AND DOUG AT SHOP AS PER DOUG'S REQUEST. ATTY IS FREDERICK MCGAVIN, PHONE 610-376-9742 (KEN MEYERS ALSO ATTY AT THAT FIRM INVOLVED). ATTY ASKED ME WHAT I SAW AND I TOLD HIM AS PER MY PRIOR LOG NOTES. HE STATED THAT DID NOT COINCIDE WITH WHAT THEIR INDEPENDENT FOUND IN FEB 98, HE SAW ONLY MINOR PROBLEMS APPARENTLY. I TOLD HIM I CAN ONLY TELL HIM WHAT I SAW LAST WEEK, AS THIS WAS THE FIRST TIME I SAW THE TRUCK. CALLED BRUCE FROM SHOP, HE WILL HAVE COPIES OF LEGAL PAPERWORK MAILED TO SHOP, AS SHOP'S ATTY DID NOT REC. AT THIS POINT, IT DOES NOT LOOK AS IF SHOP IS WILLING TO BUY BACK

To: GRAYV - Vickie Gray Date: 05/07/1998 Time: 07:21AM
cc: OBETZ1 - OBETZ FILE CENTER
From: OBETZ FILE CENTER
Subject: FILE NEEDED

Good morning. I have tried several different ways to locate this file and nothing is coming up on my system. If you have any questions, please feel free to give me a call. Thank you, Crystal

To: OBETZ1 - OBETZ FILE CENTER Date: 05/05/1998 Time: 12:21PM
cc: GRAYV - Vickie Gray
From: Vickie Gray
Subject: FILE NEEDED

PLEASE SEND THE FOLLOWING FILE TO VICKIE GRAY, PO BOX 2655, HARRISBURG, PA 17105. FILE NUMBER IS 58 37 C 132421 09049601. THANKS.

To: FOSTERL1 - Leah Foster Date: 05/05/1998 Time: 11:26AM
cc: BASHORB - Bruce Bashore
From: Bruce Bashore
Subject: Atty for BRRP
<..MORE..>

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0004

Date Time Creator Assignee Cov Claimant
<...CONTINUED...>
The Attorney for Lindgren Chrysler is Fredrick McGavin and Kenneth Myers. Phone # 610-376-9742.

05/04/1998 11:04AM BASHORB SUSEMIP

0200 ADVISORY COMMENTS: CTC - Berg, Daniel G & Sharon E rec'd papers from ph's atty. Ph filed a civil action in Berks Co. against Lendgren Chrysler which is a Blue Ribbon Shop and Nationwide. Gave all paper work to Leah in legal at 10 am today.

Date: 04/30/1998 Time: 08:02AM
To: CARLSOB - Bev Carlson
To: BASHORB - Bruce Bashore
cc: POTOSNS - STEPHEN J. POTOSNAK

From: STEPHEN J. POTOSNAK

Subject: BERG JEEP

FYI, SEE LOG. BRUCE, I HAVE NOT HEARD BACK FROM SHOP AS OF THIS AM. STEVE.

Date: 04/30/1998 Time: 08:01AM
To: BASHORB - Bruce Bashore
cc: POTOSNS - STEPHEN J. POTOSNAK

From: STEPHEN J. POTOSNAK

Subject:

04/30/1998 08:01AM POTOSNS UNASSIGN

0100 ADVISORY COMMENTS: TECH MGR - Berg, Daniel G & Sharon E REINSP PH TRUCK 4/28 AT AW GOLDEN'S AS PER REQUEST FROM BEV CARLSON AND BRUCE BASHORE. THIS WAS ARRANGED THROUGH PH'S ATTORNEY, I DID NOT DISCUSS TRUCK OR FINDINGS WITH PH. HAD TRUCK ON LIFT. RT FNDR HANGING OUT FROM REAR EDGE, RF MLDG HANGING LOOSE. HOOD GAPS UNEVEN ON BOTH SIDES. UPON LOOKING AT FRONT TIRES/ WHEELS, LF IN SUBSTANTIALLY IN COMPARISON TO RF, WHICH IS EVEN WITH EDGE OF FNDR, (MAKES REAR APPEAR SHIFTED TO RIGHT). RF APRON AND RAIL NOT REPLACED, RT APRON STILL SPLIT IN SEVERAL AREAS. RT RAIL STILL HAS DAMAGE NEAR SWAY BAR MOUNT. FAN BLADE CLOSER TO LS SIDE OF SHROUD THAN RS, APPEARS TO HAVE CONTACTED SHROUD AT SOME POINT AND BROKE SHROUD NEAR UPPER MOUNTING POINT ON RAD SUPT. AS VIEWD FROM REAR, APPEARS FRONT SHEETMETAL
<...MORE...>

COPY OF EXHIBIT NO. 8 (Page 4 of 70)

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****

Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998

PH: Berg, Daniel G & Sharon E. Time: 14:18:10

Requester: David Cole Page # 0005

Date Time Creator Assignee Cov Claimant

<...CONTINUED...>

SHIFTED TO LT. CONCLUSION, APPEARS UPPER BODY SWAY WAS NOT PULLED COMPLETELY BACK BEFORE REPLACEMENT OF PARTS BEGAN. REVIEWED WITH DENNIS AT SHOP SAME DAY 4/28, AND REQUESTED REVISED COPY TO SEE IF RT RAIL AND APRON REPLACEMENT WAS REMOVED. REC CALL FROM DOUG AT SHOP 4/29, ATTY HAS ALL PAPERWORK, HE WILL HAVE TO GET REVISIONS BACK FROM HIM. EXPLAINED FINDINGS TO DOUG, SUGGESTED COURSE OF ACTION TO SHOP. DOUG ASKED ME TO CALL GENERAL MGR GREG MILLER AS WELL. I CALLED AND EXPLAINED TO HIM AS WELL. GREG STATED HE HAS CALL INTO ATTY, WILL ADVISE ASAP. SPOKE WITH BRUCE BASHORE AND REVIEWED. WAITING FOR CALL BACK FROM SHOP WITH DECISION.

04/23/1998 09:37AM CARLSOB UNASSIGN

0614 COMPLAINTPER BRUCE'S DIRECTION HE WANTS STEVE TO LOOK AT THIS VEH ASAP.... FAXED STEVE A COPY OF THE ATTORNEY LETTER FROM TODAY AND CALLED HIM TO MAKE SURE HE GOT THE FAX.....

04/23/1998 09:11AM CARLSOB UNASSIGN

0614 COMPLAINTRECV'D FAX FROM DOUG WITMER FROM THE MAYERSON LAW OFFICES, PC.....THE LETTER WAS ADDRESSED TO RON STITZEL.....I FAXED THE LETTER TO RON....ALSO CALLED HIM AND LEFT A VOICE MAIL MESSAGE.....

03/12/1998 10:10AM CARLSOB BLACKAI

DOC sent to: unknown from BEV CARLSON (Re:) Free Form (AUTO & RENTAL PAYMENT) (Comments:) none (Print Instr:) Mail

Date: 03/12/1998 Time: 09:48AM

To: STITZER - Ronald Stitzel
cc: CARLSOB - Bev Carlson

From: Bev Carlson

Subject: COMPLAINT

RON, SENT LETTER.....BEV.

03/12/1998 09:37AM CARLSOB BLACKAI

DOC sent to: unknown from BEV CARLSON (Re:) Free Form (not used yet) (Comments:) none (Print Instr:) Mail

<...MORE...>

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0004

Date Time Creator Assignee Cov Claimant

<...CONTINUED...>

The Attorney for Lindgren Chrysler is Fredrick McGavin and Kenneth Myers. Phone # 610-376-9742.

05/04/1998 11:04AM BASHORB SUSEMIP

0200 ADVISORY COMMENTS: CTC - Berg, Daniel G & Sharon E rec'd papers from ph's atty. Ph filed a civil action in Berks Co. against Lendgren Chrysler which is a Blue Ribbon Shop and Nationwide. Gave all paper work to Leah in legal at 10 am today.

Date: 04/30/1998 Time: 08:02AM
To: CARLSOB - Bev Carlson
To: BASHORB - Bruce Bashore
cc: POTOSNS - STEPHEN J. POTOSNAK

From: STEPHEN J. POTOSNAK

Subject: BERG JEEP

FYI, SEE LOG. BRUCE, I HAVE NOT HEARD BACK FROM SHOP AS OF THIS AM. STEVE.

Date: 04/30/1998 Time: 08:01AM
To: BASHORB - Bruce Bashore
cc: POTOSNS - STEPHEN J. POTOSNAK

From: STEPHEN J. POTOSNAK

Subject:

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0005

Date Time Creator Assignee Cov Claimant

04/23/1998 09:11AM CARLSOB UNASSIGN

0614 COMPLAINTRECVD FAX FROM DOUG WITMER FROM THE MAYERSON LAW OFFICES,PC.....THE LETTER WAS ADDRESSED TO RON STITZEL.....I FAXED THE LETTER TO RON....ALSO CALLED HIM AND LEFT A VOICE MAIL MESSAGE.....

03/12/1998 10:10AM CARLSOB BLACKAI

DOC sent to: unknown from BEV CARLSON (Re:) Free Form (AUTO & RENTAL PAYMENT) (Comments:) none (Print Instr:) Mail

To: STITZER - Ronald Stitzel Date: 03/12/1998 Time: 09:48AM
cc: CARLSOB - Bev Carlson

From: Bev Carlson

Subject: COMPLAINT

RON, SENT LETTER.....BEV

03/12/1998 09:37AM CARLSOB BLACKAI

DOC sent to: unknown from BEV CARLSON (Re:) Free Form (not used yet) (Comments:) none (Print Instr:) Mail

<..MORE..>

COPY OF EXHIBIT NO. 8 (Page 7 of 70)

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0006

Date Time Creator Assignee Cov Claimant
<...CONTINUED...>

To: CARLSOB - Bev Carlson Date: 03/12/1998 Time: 09:12AM
cc: STITZER - Ronald Stitzel
From: Ronald Stitzel
Subject: COMPLAINT

Please read COMPLAINT log note from 3/12.

To: STITZER - Ronald Stitzel Date: 03/12/1998 Time: 08:36AM
cc: CARLSOB - Bev Carlson
From: Bev Carlson
Subject: COMPLAINT

RON, YOUR FAX ON THIS IS ON THE WAY.....SEE LOG NOTE FROM TODAY ON THIS.....CAN YOU PLEASE SEND HIM A LETTER.....THANKS BEV

03/12/1998 09:11AM STITZER UNASSIGN

COMPLAINT: spoke to Ben Mayerson and told him the total dollar amount that we paid out. He wants a copy of all the paperwork on the damages and rental. Called Bev and advised her to send all paperwork pertaining to rental and estimates to document payments made.

To: CARLSOB - Bev Carlson Date: 03/12/1998 Time: 09:12AM
cc: STITZER - Ronald Stitzel
From: Ronald Stitzel
Subject: COMPLAINT

Please read COMPLAINT log note from 3/12.

To: STITZER - Ronald Stitzel Date: 03/12/1998 Time: 08:36AM
cc: CARLSOB - Bev Carlson
From: Bev Carlson
Subject: COMPLAINT

RON, YOUR FAX ON THIS IS ON THE WAY.....SEE LOG NOTE FROM TODAY ON THIS.....CAN YOU PLEASE SEND HIM A LETTER.....THANKS BEV

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0007

Date Time Creator Assignee Cov Claimant

03/12/1998 08:33AM CARLSOB UNASSIGN

0614 COMPLAINT ...RECV'D FAX INFO FROM DOUG WITMER.....CALLED THE ATTORNEY AND TOLD HIM I WAS THE CONTACT PERSON....HE SAID HE FORGOT....HE WANTED ANYTHING IN THE FILE WE PAID ON THIS CLAIM.....I TOLD HIM THE ONLY THING WE HAD WAS THE FAXED EST FROM LINDGREN AND A COPY OF THE RENTAL BILL DOUG PAID....HE SAID HE HAD A COPY OF THE EST BUT WOULD I FAX HIM A COPY OF THE RENTAL BILL WE PAID...I TOLD HIM YES AND FAXED IT YESTERDAY AFTERNOON....HE SAID HE HAD DELAT WITH RON STITZEL ON THIS AS WELL.....I SAID YES I KNEW....HE ASKED ME IF I WOULD HAVE RON SEND HIM A LETTER STATING THIS WAS ALL THAT WE HAD IN THE FILE PERTAINING TO THE FILE...I SAID I WOULD CONTACT RON.....I FAXED A COPY OF THE INFO I RECEIVED YESTERDAY AS WELL AS THE RENTAL BILL...I WILL CALL RON AND SEND A CRM AS WELL....

03/11/1998 03:13PM WITMERD WITMERD

<>0025 CONTACT CARLSOB CALLED CARLSOB WILL FAX LETTER TO HER 657.6835

To: STITZER - Ronald Stitzel Date: 01/07/1998 Time: 08:16AM
cc: CARLSOB - Bev Carlson

From: Bev Carlson

Subject: COMPLAINT

SEE LOG NOTE.....THANKS FOR YOUR HELP.....BEV

01/07/1998 08:15AM CARLSOB UNASSIGN

0614 COMPLAINT ...CALLED DOUG AT LINDGREN PER RON'S INSTRUCTIONS AND TOLD HIM HE NEEDS TO CONTACT THE ATTORNEY HIMSELF....NW IS NOT INVOLVED AT THIS POINT...THE ATTORNEY WANTS TO DEAL DIRECTLY WITH THE BRRP SHOP TO RESOLVE...CRM TO RON...

To: CARLSOB - Bev Carlson Date: 01/06/1998 Time: 07:57PM
cc: STITZER - Ronald Stitzel

From: Ronald Stitzel

Subject: COMPLAINT

<..MORE..>

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0008

Date Time Creator Assignee Cov Claimant
<...CONTINUED...>

The attorney does not want us to contact the shop unless he calls us.
He wants to handle the problem per my original log note. Call Doug at
Lindgren and let him know that he has to call the attorney as we are not
getting involved at this time.

To: STITZER - Ronald Stitzel Date: 01/06/1998 Time: 03:32PM
cc: CARLSOB - Bev Carlson

From: Bev Carlson

Subject: COMPLAINT

RON.....SEE MY LOG NOTE.....I HAVE HEARD NOTHING FROM THE
ATTORNEY....DO YOU WANT ME TO DO ANYTHING....I LEFT A PAGE MESSAGE FOR
YOU TO CONTACT DOUG....LET ME KNOW WHAT YOU WANT....THANKS BEV

To: CARLSOB - Bev Carlson Date: 01/06/1998 Time: 07:57PM
cc: STITZER - Ronald Stitzel

From: Ronald Stitzel

Subject: COMPLAINT

The attorney does not want us to contact the shop unless he calls us.
He wants to handle the problem per my original log note. Call Doug at
Lindgren and let him know that he has to call the attorney as we are not
getting involved at this time.

To: STITZER - Ronald Stitzel Date: 01/06/1998 Time: 03:32PM
cc: CARLSOB - Bev Carlson

From: Bev Carlson

Subject: COMPLAINT

RON.....SEE MY LOG NOTE.....I HAVE HEARD NOTHING FROM THE
ATTORNEY....DO YOU WANT ME TO DO ANYTHING....I LEFT A PAGE MESSAGE FOR
YOU TO CONTACT DOUG....LET ME KNOW WHAT YOU WANT....THANKS BEV

01/06/1998 03:30PM CARLSOB UNASSIGN

0614 COMPLAINT...RECV'D CALL FROM DOUG AT LINDGREN...HE RECEIVED INFO
ON THIS VEH FROM THE ATTORNEY...I TOLD HIM RON STITZEL WAS INVOLVED
IN THIS...I GAVE HIM RON'S # AND I PAGED RON TO HAVE HIM CONTACT DOUG
ASAP...ALSO SENT A CRM TO RON....

COPY OF EXHIBIT NO. 8 (Page 10 of 70)

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0009

Date Time Creator Assignee Cov Claimant

12/04/1997 12:17PM CARLSOB UNASSIGN

0614 COMPLAINT...RECV'D PAPER FILE FROM DOUG WITMER...THE ONLY THING IN IT THAT IS DIFFERENT IS THE INFO ON THE INJURIES AND THE APPLICATION FOR BENEFITS...THE 16 PAGES THAT WERE FAXED TO ME IS ALL THAT PERTAINS TO THE BRRP PORTION OF THE CLAIM...I CALLED RON AND GAVE HIM THIS INFO AND HE WANTS ME TO KEEP THE PAPER FILE AT MY DESK SO WE KNOW WHERE EVERYTHING IS....

12/04/1997 07:04AM POTOSNS UNASSIGN

SPOKE TO RON STITZEL ON THIS FILE. AS PER HIS INSTRUCTIONS, I REVIEWED FAXED INFO AND WILL AWAIT CONTACT FROM RON FOR FURTHER INSTRUCTIONS. RON STATED HE MAY NEED ME TO REINSP VEHICLE.

Date: 12/03/1997 Time: 09:14PM
-To: POTOSNS - STEPHEN J. POTOSNAK
cc: STITZER - Ronald Stitzel

From: Ronald Stitzel

Subject: Complaint

Please see log note for additional informtion.

12/03/1997 09:12PM STITZER UNASSIGN

0200 ADVISORY COMMENTS: PDS - Berg, Daniel G & Sharon E Spoke to Atty Mayerson today concerning representation letter. I made him aware of Nationwide's committment to help resolvè Mr. Berg's problem in a timely manner and the Blue Ribbon Program procedures. I told him that Steve Potosnak would be the Blue Ribbon field inspector and Bev Carlson would be the contact person for all inquiries and requests. We agreed that it would not be necessary to have PDS Potosnak inspect PH vehicle at this time. He will gather information from PH and inspecting shop and forward to us if necessary. He is attempting to resolve problem with Lindgren direct under the repair warranty. I explained that I was the acting Blue Ribbon Manager
<..MORE..>

COPY OF EXHIBIT NO. 8 (Page 11 of 70)

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0010

Date Time Creator Assignee Cov Claimant

<...CONTINUED...>

while Mike O'Leary is on vacation and gave him Bev Carlson's phone number and address.

Atty Mayerson will contact Bev for any additional inquiries and keep her abreast of proceedings. His phone number is 610-489-800 and fax is 610-489-2366.

To: CARLSOB - Bev Carlson
cc: OLEARYM - Mike O'leary
cc: STITZER - Ronald Stitzel

Date: 12/03/1997 Time: 09:01PM

From: Ronald Stitzel

Subject: BERG COMPLAINT

Please see log note.

To: OLEARYM - Mike O'leary
cc: CARLSOB - Bev Carlson
cc: STITZER - Ronald Stitzel

Date: 12/03/1997 Time: 12:08PM

From: Bev Carlson

Subject: BERG COMPLAINT

MIKE, SINCE YOU WERE OUT AND I RECEIVED A 16 PAGE FAX TODAY 12/3 ON THIS AND SINCE RON IS IN CHARGE I CONTACTED RON AND HE INSTRUCTED ME TO SEND HIM THE FAX. I ALSO SENT A COPY TO STEVE PER RON'S INSTRUCTIONS... DOUG SAID HE SENT A FAX TO ME ON 11/3 AND HAS A FAX CONFIRMATION TO THAT EFFECT... NO ONE HERE RECEIVED IT INCLUDING MYSELF... THIS IS THE FIRST INFO ON PAPER THAT I RECEIVED... THE ONLY CONTACT I HAD WITH DOUG ON THIS MATTER WAS ON 11/3 WHEN WE SPOKE ON THE PHONE...

12/03/1997 01:46PM CARLSOB UNASSIGN

0614 COMPLAINT ...RECV'D CALL FROM RON THAT HE HAS SPOKE WITH ATTORNEY... THE ATTORNEY IS WILLING TO HAVE LINDGREN HANDLE THE REPAIRS... HE ALSO WANTS A RENTAL FOR THE PH... THE ATTORNEY IS ALSO GETTING ADDITIONAL INFO... RON TOLD HIM THAT STEVE WOULD HANDLE FOR THE INSPECTION OF THE VEH... RON GAVE HIM STEVES NAME AND #... RON ALSO GAVE HIM MY NAME AND # AS THE CONTACT PERSON... IF I RECEIVE ANYTHING ON THIS I'M TO MAKE SURE THAT RON AND STEVE BOTH GET A COPY OF IT IMMEDIATELY... RON WILL PUT HIS OWN LOG NOTE IN AS SOON AS HE IS ABLE....

<...MORE...>

Date: 12/03/1997 Time: 09:01PM

COPY OF EXHIBIT NO. 8 (Page 12 of 70)

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0011

Date Time Creator Assignee Cov Claimant
<...CONTINUED...>

To: CARLSOB - Bev Carlson
cc: OLEARYM - Mike O'leary
cc: STITZER - Ronald Stitzel

From: Ronald Stitzel

Subject: BERG COMPLAINT

Please see log note.

To: OLEARYM - Mike O'leary
cc: CARLSOB - Bev Carlson
cc: STITZER - Ronald Stitzel

Date: 12/03/1997 Time: 12:08PM

From: Bev Carlson

Subject: BERG COMPLAINT

MIKE, SINCE YOU WERE OUT AND I RECEIVED A 16 PAGE FAX TODAY 12/3 ON THIS AND SINCE RON IS IN CHARGE I CONTACTED RON AND HE INSTRUCTED ME TO SEND HIM THE FAX. I ALSO SENT A COPY TO STEVE PER RON'S INSTRUCTIONS... DOUG SAID HE SENT A FAX TO ME ON 11/3 AND HAS A FAX CONFIRMATION TO THAT EFFECT... NO ONE HERE RECEIVED IT INCLUDING MYSELF... THIS IS THE FIRST INFO ON PAPER THAT I RECEIVED... THE ONLY CONTACT I HAD WITH DOUG ON THIS MATTER WAS ON 11/3 WHEN WE SPOKE ON THE PHONE...

To: CARLSOB - Bev Carlson
cc: OLEARYM - Mike O'leary
cc: STITZER - Ronald Stitzel

Date: 12/03/1997 Time: 09:01PM

From: Ronald Stitzel

Subject: BERG COMPLAINT

Please see log note.

To: OLEARYM - Mike O'leary
cc: CARLSOB - Bev Carlson
cc: STITZER - Ronald Stitzel

Date: 12/03/1997 Time: 12:08PM

From: Bev Carlson

Subject: BERG COMPLAINT

MIKE, SINCE YOU WERE OUT AND I RECEIVED A 16 PAGE FAX TODAY 12/3 ON THIS AND SINCE RON IS IN CHARGE I CONTACTED RON AND HE INSTRUCTED ME TO SEND <...MORE...>

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0012

Date Time Creator Assignee Cov Claimant

<...CONTINUED...>
HIM THE FAX. I ALSO SENT A COPY TO STEVE PER RON'S INSTRUCTIONS... DOUG SAID HE SENT A FAX TO ME ON 11/3 AND HAS A FAX CONFIRMATION TO THAT EFFECT... NO ONE HERE RECEIVED IT INCLUDING MYSELF... THIS IS THE FIRST INFO ON PAPER THAT I RECEIVED... THE ONLY CONTACT I HAD WITH DOUG ON THIS MATTER WAS ON 11/3 WHEN WE SPOKE ON THE PHONE...

To: CARLSOB - Bev Carlson Date: 12/03/1997 Time: 09:01PM
cc: OLEARYM - Mike O'leary
cc: STITZER - Ronald Stitzel

From: Ronald Stitzel
Subject: BERG COMPLAINT
Please see log note.

To: OLEARYM - Mike O'leary Date: 12/03/1997 Time: 12:08PM
cc: CARLSOB - Bev Carlson
cc: STITZER - Ronald Stitzel

From: Bev Carlson
Subject: BERG COMPLAINT

MIKE, SINCE YOU WERE OUT AND I RECEIVED A 16 PAGE FAX TODAY 12/3 ON THIS AND SINCE RON IS IN CHARGE I CONTACTED RON AND HE INSTRUCTED ME TO SEND HIM THE FAX. I ALSO SENT A COPY TO STEVE PER RON'S INSTRUCTIONS... DOUG SAID HE SENT A FAX TO ME ON 11/3 AND HAS A FAX CONFIRMATION TO THAT EFFECT... NO ONE HERE RECEIVED IT INCLUDING MYSELF... THIS IS THE FIRST INFO ON PAPER THAT I RECEIVED... THE ONLY CONTACT I HAD WITH DOUG ON THIS MATTER WAS ON 11/3 WHEN WE SPOKE ON THE PHONE...

12/03/1997 09:52AM WITMERD WITMERD

<>0025 CONTACT RON STITZEL VIA FAX I AM IN RECEIPT OF A CONFIRMATION REPORT WITH AN "OK" STATUS FAXED TO 235-0304 ON DEC 3 9:41 AM-- 2 PAGES-- TO RON STITZEL

12/03/1997 09:43AM WITMERD WITMERD

<>0025 CONTACT RON STITZEL RECEIVED CALL FROM RON WANTS ME TO FAX CONFIRMATION REPORT OF 11/3 TO HIM AT 235-0304 WILL FAX NOW

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E. Time: 14:18:10
Requester: David Cole Page # 0014

Date Time Creator Assignee Cov Claimant

12/02/1997 04:18PM WITMERD WITMERD

DOC sent to: Daniel G & Sharon E Berg from DOUG WITMER (Re:) Free Form (not used yet) (Comments:) none (Print Instr:) Mail

12/02/1997 04:07PM WITMERD WITMERD

<>0025 CONTACT RON STITZEL RECEIVED VM MESS FROM RETURN CALL THAT I PAGED TO RON MY PHONE CLOCK SAYS IT WAS 3:37 PM THE TIMES ARE SLIGHTLY OFF FROM CLASS TIME--WILL CALL HIM NOW AT NUMBER HE PROVIDED TO ME--877.9555--TALKED TO RON STITZEL- HE INFORMED ME TO CALL BEV AND HAVE HER FAX THE 16 PAGES I FAXED TO HER -TO STEVE POTOSNAK- STEVE WILL CONTACT RON AND THEY WILL HANDLE AS PER RON IT IS OK TO FAX ESTIMATE TO LAWYER

12/02/1997 03:45PM WITMERD WITMERD

DOC sent to: Daniel G & Sharon E Berg from DOUG WITMER (Re:) Free Form (not used yet) (Comments:) none (Print Instr:) Mail

12/02/1997 03:42PM WITMERD WITMERD

<>0025 CONTACT ATTY RECEIVED MESS FROM ATTY FOR BERG HE WANTS ESTIMATES AND ECT FROM FILE I TOLD HIM I WILL CHECK WITH PERSON IN CHARGE OF CLAIM AND RESPOND BACK TO HIM CALLED BEV CARLSON AT 657.6895--SHE NEVER RECEIVED FAXED LETTER TO HER ATTENTION ON 11/3 I AM IN RECEIPT OF A CONFIRMATION REPORT ON 11/3 WITH A "OK" STTIS TO HER WILL RE FAX TO HER--CALLED AND LEFT MESS ON VM THAT A FAX OF EVERYTHING IS IN ROUTE

<..MORE..>

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0015

Date Time Creator Assignee Cov Claimant
<...CONTINUED...>

To: CARLSOB - Bev Carlson Date: 11/03/1997 Time: 12:20PM
cc: OLEARYM - Mike O'leary
From: Mike O'leary

Subject: SEE LOG--THANKS DOUG

Please get all the details and follow up with me. Thanks

To: WITMERD - Doug Witmer Date: 11/03/1997 Time: 11:58AM
cc: NIEVESE - Ed Nieves
cc: OLEARYM - Mike O'leary
cc: STITZER - Ronald Stitzel
cc: POTOSNS - STEPHEN J. POTOSNAK

From: Ronald Stitzel

Subject: SEE LOG--THANKS DOUG

This is no longer my shop. Steve Potosnak is now handling Lindgren. I am unaware of any problems with this claim. Steve's phone number is 610-682-4814 and his fax is 610-682-7270.
Mike - I cc'd you in case you want you or Bev involved.

To: STITZER - Ronald Stitzel Date: 11/03/1997 Time: 11:11AM
cc: WITMERD - Doug Witmer
cc: NIEVESE - Ed Nieves

From: Doug Witmer

Subject: SEE LOG--THANKS DOUG

PLEASE CRM WITH FAX NUMBER SO I CAN FORWARD TO YOU THE LETTER OF REP.--LET ME KNOW OF WHAT ASSISTANCE I CAN BE--THANKS DOUG

To: WITMERD - Doug Witmer Date: 11/03/1997 Time: 11:07AM
cc: NIEVESE - Ed Nieves
cc: JONESD6 - E. Dean Jones

From: Ed Nieves

Subject: SEE LOG--THANKS DOUG

DOUG:
LINDGREN IS ONE OF OUR BLUE RIBBON SHOPS AND AS FAR AS I CAN TELL FROM THE LOG THIS WAS HANDLED AS A BLUE RIBBON ASSIGNMENT.
<...MORE...>

***** ACTIVITY LOG *****
Claim Key: 5837C-137421 09041996 01
PH: Berg, Daniel G & Sharon E
Requester: David Cole
Print Date: 07/29/1998
Time: 14:18:10
Page # 0016

Date Time Creator Assignee Cov Claimant

Date: 11/03/1997 Time: 10:13AM
: NIEVESE - Ed Nieves
: JONESD6 - E. Dean Jones
: WITMERD - Doug Witmer

om: Doug Witmer

bject: SEE LOG--THANKS DOUG

PLEASE READ MY LOG AND CRM WITH DIRECTION THANKS DOUG

Date: 11/03/1997 Time: 12:20PM
CARLSOB - Bev Carlson
OLEARYM - Mike O'leary

m: Mike O'leary

ject: SEE LOG--THANKS DOUG

lease get all the details and follow up with me. Thanks

Date: 11/03/1997 Time: 11:58AM
WITMERD - Doug Witmer
NIEVESE - Ed Nieves
OLEARYM - Mike O'leary
STITZER - Ronald Stitzel
POTOSNS - STEPHEN J. POTOSNAK

l: Ronald Stitzel

ect: SEE LOG--THANKS DOUG

is is no longer my shop. Steve Potosnak is now handling Lindgren. I
unaware of any problems with this claim. Steve's phone number is
0-682-4814 and his fax is 610-682-7270.
ke - I cc'd you in case you want you or Bev involved.

Date: 11/03/1997 Time: 11:11AM
STITZER - Ronald Stitzel
MORE..>

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0017

Date Time Creator Assignee Cov Claimant
<...CONTINUED...>

cc: WITMERD - Doug Witmer
cc: NIEVESE - Ed Nieves

From: Doug Witmer

Subject: SEE LOG--THANKS DOUG

PLEASE CRM WITH FAX NUMBER SO I CAN FORWARD TO YOU THE LETTER OF
REP.--LET ME KNOW OF WHAT ASSISTANCE I CAN BE--THANKS DOUG

To: WITMERD - Doug Witmer Date: 11/03/1997 Time: 11:07AM
cc: NIEVESE - Ed Nieves
cc: JONESD6 - E. Dean Jones

From: Ed Nieves

Subject: SEE LOG--THANKS DOUG

DOUG:
LINDGREN IS ONE OF OUR BLUE RIBBON SHOPS AND AS FAR AS I CAN TELL FROM
THE LOG THIS WAS HANDLED AS A BLUE RIBBON ASSIGNMENT.

To: NIEVESE - Ed Nieves Date: 11/03/1997 Time: 10:13AM
To: JONESD6 - E. Dean Jones
cc: WITMERD - Doug Witmer

From: Doug Witmer

Subject: SEE LOG--THANKS DOUG

PLEASE READ MY LOG AND CRM WITH DIRECTION THANKS DOUG

To: CARLSOB - Bev Carlson Date: 11/03/1997 Time: 12:20PM
cc: OLEARYM - Mike O'leary

From: Mike O'leary

<...MORE...>

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996.01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0018

Date Time Creator Assignee Cov Claimant

<...CONTINUED...>
Subject: SEE LOG--THANKS DOUG

Please get all the details and follow up with me. Thanks

To: WITMERD - Doug Witmer Date: 11/03/1997 Time: 11:58AM
cc: NIEVESE - Ed Nieves
cc: OLEARYM - Mike O'leary
cc: STITZER - Ronald Stitzel
cc: POTOSNS - STEPHEN J. POTOSNAK

From: Ronald Stitzel

Subject: SEE LOG--THANKS DOUG

This is no longer my shop. Steve Potosnak is now handling Lindgren. I am unaware of any problems with this claim. Steve's phone number is 610-682-4814 and his fax is 610-682-7270.
Mike - I cc'd you in case you want you or Bev involved.

To: STITZER - Ronald Stitzel Date: 11/03/1997 Time: 11:11AM
cc: WITMERD - Doug Witmer
cc: NIEVESE - Ed Nieves

From: Doug Witmer

Subject: SEE LOG--THANKS DOUG

PLEASE CRM WITH FAX NUMBER SO I CAN FORWARD TO YOU THE LETTER OF REP.--LET ME KNOW OF WHAT ASSISTANCE I CAN BE--THANKS DOUG

To: WITMERD - Doug Witmer Date: 11/03/1997 Time: 11:07AM
cc: NIEVESE - Ed Nieves
cc: JONESD6 - E. Dean Jones

From: Ed Nieves

Subject: SEE LOG--THANKS DOUG

DOUG:
LINDGREN IS ONE OF OUR BLUE RIBBON SHOPS AND AS FAR AS I CAN TELL FROM THE LOG THIS WAS HANDLED AS A BLUE RIBBON ASSIGNMENT.

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0019

Date Time Creator Assignee Cov Claimant
<...CONTINUED...>
IN POSSESSION OF ASAP.

ANY FURHTER QUESTIONS LET ME KNOW.

To: NIEVESE - Ed Nieves Date: 11/03/1997 Time: 10:13AM
To: JONESD6 - E. Dean Jones
cc: WITMERD - Doug Witmer

From: Doug Witmer

Subject: SEE LOG--THANKS DOUG

PLEASE READ MY LOG AND CRM WITH DIRECTION THANKS DOUG

To: CARLSOB - Bev Carlson Date: 11/03/1997 Time: 12:20PM
cc: OLEARYM - Mike O'leary

From: Mike O'leary

Subject: SEE LOG--THANKS DOUG

Please get all the details and follow up with me. Thanks

To: WITMERD - Doug Witmer Date: 11/03/1997 Time: 11:58AM
cc: NIEVESE - Ed Nieves
cc: OLEARYM - Mike O'leary
cc: STITZER - Ronald Stitzel
cc: POTOSNS - STEPHEN J. POTOSNAK

From: Ronald Stitzel

Subject: SEE LOG--THANKS DOUG

This is no longer my shop. Steve Potosnak is now handling Lindgren. I am unaware of any problems with this claim. Steve's phone number is 610-682-4814 and his fax is 610-682-7270.
Mike - I cc'd you in case you want you or Bev involved.

To: STITZER - Ronald Stitzel Date: 11/03/1997 Time: 11:11AM
cc: WITMERD - Doug Witmer
cc: NIEVESE - Ed Nieves

From: Doug Witmer

Subject: SEE LOG--THANKS DOUG
<...MORE...>

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0020

Date Time Creator Assignee Cov Claimant

<...CONTINUED...>

PLEASE CRM WITH FAX NUMBER SO I CAN FORWARD TO YOU THE LETTER OF
REP.--LET ME KNOW OF WHAT ASSISTANCE I CAN BE--THANKS DOUG

To: WITMERD - Doug Witmer Date: 11/03/1997 Time: 11:07AM
cc: NIEVESE - Ed Nieves
cc: JONESD6 - E. Dean Jones

From: Ed Nieves

Subject: SEE LOG--THANKS DOUG

DOUG:
LINDGREN IS ONE OF OUR BLUE RIBBON SHOPS AND AS FAR AS I CAN TELL FROM
THE LOG THIS WAS HANDLED AS A BLUE RIBBON ASSIGNMENT.

To: NIEVESE - Ed Nieves Date: 11/03/1997 Time: 10:13AM
To: JONESD6 - E. Dean Jones
cc: WITMERD - Doug Witmer

From: Doug Witmer

Subject: SEE LOG--THANKS DOUG

PLEASE READ MY LOG AND CRM WITH DIRECTION THANKS DOUG

To: CARLSOB - Bev Carlson Date: 11/03/1997 Time: 12:20PM
cc: OLEARYM - Mike O'leary

From: Mike O'leary

Subject: SEE LOG--THANKS DOUG

Please get all the details and follow up with me. Thanks

To: WITMERD - Doug Witmer Date: 11/03/1997 Time: 11:58AM
cc: NIEVESE - Ed Nieves
<...MORE...>

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0021

Date Time Creator Assignee Cov Claimant

<...CONTINUED...>

cc: OLEARYM - Mike O'leary
cc: STITZER - Ronald Stitzel
cc: POTOSNS - STEPHEN J. POTOSNAK

From: Ronald Stitzel

Subject: SEE LOG--THANKS DOUG

This is no longer my shop. Steve Potosnak is now handling Lindgren. I am unaware of any problems with this claim. Steve's phone number is 610-682-4814 and his fax is 610-682-7270.
Mike - I cc'd you in case you want you or Bev involved.

To: STITZER - Ronald Stitzel Date: 11/03/1997 Time: 11:11AM
cc: WITMERD - Doug Witmer
cc: NIEVESE - Ed Nieves

From: Doug Witmer

Subject: SEE LOG--THANKS DOUG

PLEASE CRM WITH FAX NUMBER SO I CAN FORWARD TO YOU THE LETTER OF REP.--LET ME KNOW OF WHAT ASSISTANCE I CAN BE--THANKS DOUG

To: WITMERD - Doug Witmer Date: 11/03/1997 Time: 11:07AM
cc: NIEVESE - Ed Nieves
cc: JONESD6 - E. Dean Jones

From: Ed Nieves

Subject: SEE LOG--THANKS DOUG

DOUG:
LINDGREN IS ONE OF OUR BLUE RIBBON SHOPS AND AS FAR AS I CAN TELL FROM THE LOG THIS WAS HANDLED AS A BLUE RIBBON ASSIGNMENT.

To: NIEVESE - Ed Nieves Date: 11/03/1997 Time: 10:13AM
To: JONESD6 - E. Dean Jones
<..MORE..>

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0022

Date Time Creator Assignee Cov Claimant
<...CONTINUED...>
cc: WITMERD - Doug Witmer

From: Doug Witmer
Subject: SEE LOG--THANKS DOUG
PLEASE READ MY LOG AND CRM WITH DIRECTION THANKS DOUG

To: CARLSOB - Bev Carlson Date: 11/03/1997 Time: 12:20PM
cc: OLEARYM - Mike O'leary

From: Mike O'leary
Subject: SEE LOG--THANKS DOUG

Please get all the details and follow up with me. Thanks

To: WITMERD - Doug Witmer Date: 11/03/1997 Time: 11:58AM
cc: NIEVESE - Ed Nieves
cc: OLEARYM - Mike O'leary
cc: STITZER - Ronald Stitzel
cc: POTOSNS - STEPHEN J. POTOSNAK

From: Ronald Stitzel
Subject: SEE LOG--THANKS DOUG

This is no longer my shop. Steve Potosnak is now handling Lindgren. I am unaware of any problems with this claim. Steve's phone number is 610-682-4814 and his fax is 610-682-7270.
Mike - I cc'd you in case you want you or Bev involved.

To: STITZER - Ronald Stitzel Date: 11/03/1997 Time: 11:11AM
cc: WITMERD - Doug Witmer
cc: NIEVESE - Ed Nieves

From: Doug Witmer
Subject: SEE LOG--THANKS DOUG

PLEASE CRM WITH FAX NUMBER SO I CAN FORWARD TO YOU THE LETTER OF REP.--LET ME KNOW OF WHAT ASSISTANCE I CAN BE--THANKS DOUG

To: WITMERD - Doug Witmer Date: 11/03/1997 Time: 11:07AM
cc: NIEVESE - Ed Nieves
<...MORE...>

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0023

Date Time Creator Assignee Cov Claimant
<...CONTINUED...>

cc: JONESD6 - E. Dean Jones

From: Ed Nieves

Subject: SEE LOG--THANKS DOUG

DOUG:
LINDGREN IS ONE OF OUR BLUE RIBBON SHOPS AND AS FAR AS I CAN TELL FROM
THE LOG THIS WAS HANDLED AS A BLUE RIBBON ASSIGNMENT.

To: NIEVESE - Ed Nieves
To: JONESD6 - E. Dean Jones
cc: WITMERD - Doug Witmer

Date: 11/03/1997 Time: 10:13AM

From: Doug Witmer

Subject: SEE LOG--THANKS DOUG

PLEASE READ MY LOG AND CRM WITH DIRECTION THANKS DOUG

To: CARLSOB - Bev Carlson
cc: OLEARYM - Mike O'leary

Date: 11/03/1997 Time: 12:20PM

From: Mike O'leary

Subject: SEE LOG--THANKS DOUG

Please get all the details and follow up with me. Thanks

To: WITMERD - Doug Witmer
cc: NIEVESE - Ed Nieves
cc: OLEARYM - Mike O'leary
cc: STITZER - Ronald Stitzel
cc: POTOSNS - STEPHEN J. POTOSNAK

Date: 11/03/1997 Time: 11:58AM

From: Ronald Stitzel

<...MORE...>

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01
PH: Berg, Daniel G & Sharon E
Requester: David Cole

Date Time Creator Assignee Cov Claimant
<...CONTINUED...>
Page # 0024
Print Date: 07/29/1998
Time: 14:18:10

Subject: SEE LOG--THANKS DOUG

This is no longer my shop. Steve Potosnak is now handling Lindgren. I am unaware of any problems with this claim. Steve's phone number is 610-682-4814 and his fax is 610-682-7270.
Mike - I cc'd you in case you want you or Bev involved.

To: STITZER - Ronald Stitzel Date: 11/03/1997 Time: 11:11AM
cc: WITMERD - Doug Witmer
cc: NIEVESE - Ed Nieves

From: Doug Witmer

Subject: SEE LOG--THANKS DOUG

PLEASE CRM WITH FAX NUMBER SO I CAN FORWARD TO YOU THE LETTER OF REP.--LET ME KNOW OF WHAT ASSISTANCE I CAN BE--THANKS DOUG

To: WITMERD - Doug Witmer Date: 11/03/1997 Time: 11:07AM
cc: NIEVESE - Ed Nieves
cc: JONESD6 - E. Dean Jones

From: Ed Nieves

Subject: SEE LOG--THANKS DOUG

DOUG:
LINDGREN IS ONE OF OUR BLUE RIBBON SHOPS AND AS FAR AS I CAN TELL FROM THE LOG THIS WAS HANDLED AS A BLUE RIBBON ASSIGNMENT.

To: NIEVESE - Ed Nieves Date: 11/03/1997 Time: 10:13AM
To: JONESD6 - E. Dean Jones
cc: WITMERD - Doug Witmer

From: Doug Witmer

Subject: SEE LOG--THANKS DOUG

<...MORE...>

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0025

Date Time Creator Assignee Cov. Claimant
<...CONTINUED...>

PLEASE READ MY LOG AND CRM WITH DIRECTION THANKS DOUG

To: CARLSOB - Bev Carlson Date: 11/03/1997 Time: 12:20PM
cc: OLEARYM - Mike O'leary

From: Mike O'leary
Subject: SEE LOG--THANKS DOUG

Please get all the details and follow up with me. Thanks

To: WITMERD - Doug Witmer Date: 11/03/1997 Time: 11:58AM
cc: NIEVESE - Ed Nieves
cc: OLEARYM - Mike O'leary
cc: STITZER - Ronald Stitzel
cc: POTOSNS - STEPHEN J. POTOSNAK

From: Ronald Stitzel
Subject: SEE LOG--THANKS DOUG

This is no longer my shop. Steve Potosnak is now handling Lindgren. I am unaware of any problems with this claim. Steve's phone number is 610-682-4814 and his fax is 610-682-7270.
Mike - I cc'd you in case you want you or Bev involved.

To: STITZER - Ronald Stitzel Date: 11/03/1997 Time: 11:11AM
cc: WITMERD - Doug Witmer
cc: NIEVESE - Ed Nieves

From: Doug Witmer
Subject: SEE LOG--THANKS DOUG

PLEASE CRM WITH FAX NUMBER SO I CAN FORWARD TO YOU THE LETTER OF REP.--LET ME KNOW OF WHAT ASSISTANCE I CAN BE--THANKS DOUG

To: WITMERD - Doug Witmer Date: 11/03/1997 Time: 11:07AM
cc: NIEVESE - Ed Nieves
cc: JONESD6 - E. Dean Jones

From: Ed Nieves
Subject: SEE LOG--THANKS DOUG

<..MORE..>

***** ACTIVITY LOG *****
Claim Key: 5837C-137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0026

Date Time Creator Assignee Cov Claimant

<...CONTINUED...>
DOUG:
LINDGREN IS ONE OF OUR BLUE RIBBON SHOPS AND AS FAR AS I CAN TELL FROM
THE LOG THIS WAS HANDLED AS A BLUE RIBBON ASSIGNMENT.

To: NIEVESE - Ed Nieves Date: 11/03/1997 Time: 10:13AM
To: JONESD6 - E. Dean Jones
cc: WITMERD - Doug Witmer

From: Doug Witmer
Subject: SEE LOG--THANKS DOUG
PLEASE READ MY LOG AND CRM WITH DIRECTION THANKS DOUG

To: CARLSOB - Bev Carlson Date: 11/03/1997 Time: 12:20PM
cc: OLEARYM - Mike O'leary

From: Mike O'leary
Subject: SEE LOG--THANKS DOUG
Please get all the details and follow up with me. Thanks

To: WITMERD - Doug Witmer Date: 11/03/1997 Time: 11:58AM
cc: NIEVESE - Ed Nieves
cc: OLEARYM - Mike O'leary
cc: STITZER - Ronald Stitzel
cc: POTOSNS - STEPHEN J. POTOSNAK

From: Ronald Stitzel
Subject: SEE LOG--THANKS DOUG

This is no longer my shop. Steve Potosnak is now handling Lindgren. I
am unaware of any problems with this claim. Steve's phone number is
610-682-4814 and his fax is 610-682-7270.
Mike - I cc'd you in case you want you or Bev involved.
<..MORE..>

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0027

Date Time Creator Assignee Cov Claimant
<...CONTINUED...>

To: STITZER - Ronald Stitzel Date: 11/03/1997 Time: 11:11AM
cc: WITMERD - Doug Witmer
cc: NIEVESE - Ed Nieves

From: Doug Witmer
Subject: SEE LOG--THANKS DOUG

PLEASE CRM WITH FAX NUMBER SO I CAN FORWARD TO YOU THE LETTER OF
REP.--LET ME KNOW OF WHAT ASSISTANCE I CAN BE--THANKS DOUG

To: WITMERD - Doug Witmer Date: 11/03/1997 Time: 11:07AM
cc: NIEVESE - Ed Nieves
cc: JONESD6 - E. Dean Jones

From: Ed Nieves
Subject: SEE LOG--THANKS DOUG

DOUG:
LINDGREN IS ONE OF OUR BLUE RIBBON SHOPS AND AS FAR AS I CAN TELL FROM
THE LOG THIS WAS HANDLED AS A BLUE RIBBON ASSIGNMENT.

To: NIEVESE - Ed Nieves Date: 11/03/1997 Time: 10:13AM
To: JONESD6 - E. Dean Jones
cc: WITMERD - Doug Witmer

From: Doug Witmer
Subject: SEE LOG--THANKS DOUG

PLEASE READ MY LOG AND CRM WITH DIRECTION THANKS DOUG

To: CARLSOB - Bev Carlson Date: 11/03/1997 Time: 12:20PM
cc: OLEARYM - Mike O'leary

<..MORE..>

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0028

Date Time Creator Assignee Cov Claimant
<...CONTINUED...>
From: Mike O'leary

Subject: SEE LOG--THANKS DOUG

Please get all the details and follow up with me. Thanks

To: WITMERD - Doug Witmer Date: 11/03/1997 Time: 11:58AM
cc: NIEVESE - Ed Nieves
cc: OLEARYM - Mike O'leary
cc: STITZER - Ronald Stitzel
cc: POTOSNS - STEPHEN J. POTOSNAK

From: Ronald Stitzel

Subject: SEE LOG--THANKS DOUG

This is no longer my shop. Steve Potosnak is now handling Lindgren. I am unaware of any problems with this claim. Steve's phone number is 610-682-4814 and his fax is 610-682-7270.
Mike - I cc'd you in case you want you or Bev involved.

To: STITZER - Ronald Stitzel Date: 11/03/1997 Time: 11:11AM
cc: WITMERD - Doug Witmer
cc: NIEVESE - Ed Nieves

From: Doug Witmer

Subject: SEE LOG--THANKS DOUG

PLEASE CRM WITH FAX NUMBER SO I CAN FORWARD TO YOU THE LETTER OF REP.--LET ME KNOW OF WHAT ASSISTANCE I CAN BE--THANKS DOUG

To: WITMERD - Doug Witmer Date: 11/03/1997 Time: 11:07AM
cc: NIEVESE - Ed Nieves
cc: JONESD6 - E. Dean Jones

From: Ed Nieves

Subject: SEE LOG--THANKS DOUG

DOUG:
LINDGREN IS ONE OF OUR BLUE RIBBON SHOPS AND AS FAR AS I CAN TELL FROM THE LOG THIS WAS HANDLED AS A BLUE RIBBON ASSIGNMENT.

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0029

Date Time Creator Assignee Cov Claimant

To: NIEVESE - Ed Nieves Date: 11/03/1997 Time: 10:13AM
To: JONESD6 - E. Dean Jones
cc: WITMERD - Doug Witmer

From: Doug Witmer
Subject: SEE LOG--THANKS DOUG

PLEASE READ MY LOG AND CRM WITH DIRECTION THANKS DOUG

To: CARLSOB - Bev Carlson Date: 11/03/1997 Time: 12:20PM
cc: OLEARYM - Mike O'leary

From: Mike O'leary
Subject: SEE LOG--THANKS DOUG

Please get all the details and follow up with me. Thanks

To: WITMERD - Doug Witmer Date: 11/03/1997 Time: 11:58AM
cc: NIEVESE - Ed Nieves
cc: OLEARYM - Mike O'leary
cc: STITZER - Ronald Stitzel
cc: POTOSNS - STEPHEN J. POTOSNAK

From: Ronald Stitzel
Subject: SEE LOG--THANKS DOUG

This is no longer my shop. Steve Potosnak is now handling Lindgren. I am unaware of any problems with this claim. Steve's phone number is 610-682-4814 and his fax is 610-682-7270.
Mike - I cc'd you in case you want you or Bev involved.

To: STITZER - Ronald Stitzel Date: 11/03/1997 Time: 11:11AM
cc: WITMERD - Doug Witmer
cc: NIEVESE - Ed Nieves

From: Doug Witmer
<..MORE..>

COPY OF EXHIBIT NO. 8 (Page 31 of 70)

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0030

Date Time Creator Assignee Cov Claimant
<...CONTINUED...>
Subject: SEE LOG--THANKS DOUG

PLEASE CRM WITH FAX NUMBER SO I CAN FORWARD TO YOU THE LETTER OF
REP.--LET ME KNOW OF WHAT ASSISTANCE I CAN BE--THANKS DOUG

To: WITMERD - Doug Witmer Date: 11/03/1997 Time: 11:07AM
cc: NIEVESE - Ed Nieves
cc: JONESD6 - E. Dean Jones

From: Ed Nieves
Subject: SEE LOG--THANKS DOUG

DOUG:
LINDGREN IS ONE OF OUR BLUE RIBBON SHOPS AND AS FAR AS I CAN TELL FROM
THE LOG THIS WAS HANDLED AS A BLUE RIBBON ASSIGNMENT.

To: NIEVESE - Ed Nieves Date: 11/03/1997 Time: 10:13AM
cc: JONESD6 - E. Dean Jones
cc: WITMERD - Doug Witmer

From: Doug Witmer
Subject: SEE LOG--THANKS DOUG

PLEASE READ MY LOG AND CRM WITH DIRECTION THANKS DOUG

To: CARLSOB - Bev Carlson Date: 11/03/1997 Time: 12:20PM
cc: OLEARYM - Mike O'leary

From: Mike O'leary
Subject: SEE LOG--THANKS DOUG

Please get all the details and follow up with me. Thanks

<...MORE...> Date: 11/03/1997 Time: 11:58AM

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0031

Date Time Creator Assignee Cov Claimant
<...CONTINUED...>
To: WITMERD - Doug Witmer
cc: NIEVESE - Ed Nieves
cc: OLEARYM - Mike O'leary
cc: STITZER - Ronald Stitzel
cc: POTOSNS - STEPHEN J. POTOSNAK

From: Ronald Stitzel
Subject: SEE LOG--THANKS DOUG

This is no longer my shop. Steve Potosnak is now handling Lindgren. I am unaware of any problems with this claim. Steve's phone number is 610-682-4814 and his fax is 610-682-7270.
Mike - I cc'd you in case you want you or Bev involved.

To: STITZER - Ronald Stitzel Date: 11/03/1997 Time: 11:11AM
cc: WITMERD - Doug Witmer
cc: NIEVESE - Ed Nieves

From: Doug Witmer
Subject: SEE LOG--THANKS DOUG

PLEASE CRM WITH FAX NUMBER SO I CAN FORWARD TO YOU THE LETTER OF REP.--LET ME KNOW OF WHAT ASSISTANCE I CAN BE--THANKS DOUG

To: WITMERD - Doug Witmer Date: 11/03/1997 Time: 11:07AM
cc: NIEVESE - Ed Nieves
cc: JONESD6 - E. Dean Jones

From: Ed Nieves
Subject: SEE LOG--THANKS DOUG

DOUG:
LINDGREN IS ONE OF OUR BLUE RIBBON SHOPS AND AS FAR AS I CAN TELL FROM THE LOG THIS WAS HANDLED AS A BLUE RIBBON ASSIGNMENT.

<...MORE...> Date: 11/03/1997 Time: 10:13AM

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01
PH: Berg, Daniel G & Sharon E
Requester: David Cole

Print Date: 07/29/1998
Time: 14:18:10
Page # 0032

Date Time Creator Assignee Cov Claimant

<...CONTINUED...>

To: NIEVESE - Ed Nieves
To: JONESD6 - E. Dean Jones
cc: WITMERD. - Doug Witmer

From: Doug Witmer

Subject: SEE LOG--THANKS DOUG

PLEASE READ MY LOG AND CRM WITH DIRECTION THANKS DOUG

To: CARLSOB - Bev Carlson
cc: OLEARYM - Mike O'leary
Date: 11/03/1997 Time: 12:20PM

From: Mike O'leary

Subject: SEE LOG--THANKS DOUG

Please get all the details and follow up with me. Thanks

To: WITMERD - Doug Witmer
cc: NIEVESE - Ed Nieves
cc: OLEARYM - Mike O'leary
cc: STITZER - Ronald Stitzel
cc: POTOSNS - STEPHEN J. POTOSNAK
Date: 11/03/1997 Time: 11:58AM

From: Ronald Stitzel

Subject: SEE LOG--THANKS DOUG

This is no longer my shop. Steve Potosnak is now handling Lindgren. I am unaware of any problems with this claim. Steve's phone number is 610-682-4814 and his fax is 610-682-7270.
Mike - I cc'd you in case you want you or Bev involved.

To: STITZER - Ronald Stitzel
cc: WITMERD - Doug Witmer
cc: NIEVESE - Ed Nieves
Date: 11/03/1997 Time: 11:11AM

From: Doug Witmer

Subject: SEE LOG--THANKS DOUG

PLEASE CRM WITH FAX NUMBER SO I CAN FORWARD TO YOU THE LETTER OF REP.--LET ME KNOW OF WHAT ASSISTANCE I CAN BE--THANKS DOUG

<...MORE...>

Date: 11/03/1997 Time: 11:07AM

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0033

Date Time Creator Assignee Cov Claimant
<...CONTINUED...>
To: WITMERD - Doug Witmer
cc: NIEVESE - Ed Nieves
cc: JONESD6 - E. Dean Jones

From: Ed Nieves
Subject: SEE LOG--THANKS DOUG

DOUG:
LINDGREN IS ONE OF OUR BLUE RIBBON SHOPS AND AS FAR AS I CAN TELL FROM
THE LOG THIS WAS HANDLED AS A BLUE RIBBON ASSIGNMENT.

To: NIEVESE - Ed Nieves Date: 11/03/1997 Time: 10:13AM
To: JONESD6 - E. Dean Jones
cc: WITMERD - Doug Witmer

From: Doug Witmer
Subject: SEE LOG--THANKS DOUG
PLEASE READ MY LOG AND CRM WITH DIRECTION THANKS DOUG

To: YOTTEYG - Gael Yottey Date: 11/03/1997 Time: 10:19AM
cc: WITMERD - Doug Witmer

From: Doug Witmer
Subject: RETRIEVE FILE FROM OBETZ-THANKS DOUG

To: YOTTEYG - Gael Yottey Date: 11/03/1997 Time: 10:19AM
cc: WITMERD - Doug Witmer

From: Doug Witmer
<...MORE...>

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
Claim Key: 5837G 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0034

Date Time Creator Assignee Cov Claimant
<...CONTINUED...>
Subject: RETRIEVE FILE FROM OBETZ-THANKS DOUG

To: CARLSOB - Bev Carlson Date: 11/03/1997 Time: 12:20PM
cc: OLEARYM - Mike O'leary

From: Mike O'leary

Subject: SEE LOG--THANKS DOUG

Please get all the details and follow up with me. Thanks

To: WITMERD - Doug Witmer Date: 11/03/1997 Time: 11:58AM
cc: NIEVESE - Ed Nieves
cc: OLEARYM - Mike O'leary
cc: STITZER - Ronald Stitzel
cc: POTOSNS - STEPHEN J. POTOSNAK

From: Ronald Stitzel

Subject: SEE LOG--THANKS DOUG

This is no longer my shop. Steve Potosnak is now handling Lindgren. I am unaware of any problems with this claim. Steve's phone number is 610-682-4814 and his fax is 610-682-7270.
Mike - I cc'd you in case you want you or Bev involved.

To: STITZER - Ronald Stitzel Date: 11/03/1997 Time: 11:11AM
cc: WITMERD - Doug Witmer
cc: NIEVESE - Ed Nieves

From: Doug Witmer

Subject: SEE LOG--THANKS DOUG

PLEASE CRM WITH FAX NUMBER SO I CAN FORWARD TO YOU THE LETTER OF REP.--LET ME KNOW OF WHAT ASSISTANCE I CAN BE--THANKS DOUG

To: WITMERD - Doug Witmer Date: 11/03/1997 Time: 11:07AM
cc: NIEVESE - Ed Nieves
cc: JONESD6 - E. Dean Jones

From: Ed Nieves

<...MORE...>

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0035

Date Time Creator Assignee Cov Claimant
<...CONTINUED...>
Subject: SEE LOG--THANKS DOUG

DOUG:
LINDGREN IS ONE OF OUR BLUE RIBBON SHOPS AND AS FAR AS I CAN TELL FROM
THE LOG THIS WAS HANDLED AS A BLUE RIBBON ASSIGNMENT.

To: NIEVESE - Ed Nieves Date: 11/03/1997 Time: 10:13AM
To: JONESD6 - E. Dean Jones
cc: WITMERD - Doug Witmer
From: Doug Witmer
Subject: SEE LOG--THANKS DOUG
PLEASE READ MY LOG AND CRM WITH DIRECTION THANKS DOUG

To: CARLSOB - Bev Carlson Date: 11/03/1997 Time: 12:20PM
cc: OLEARYM - Mike O'leary
From: Mike O'leary
Subject: SEE LOG--THANKS DOUG
Please get all the details and follow up with me. Thanks

To: WITMERD - Doug Witmer Date: 11/03/1997 Time: 11:58AM
cc: NIEVESE - Ed Nieves
cc: OLEARYM - Mike O'leary
cc: STITZER - Ronald Stitzel
cc: POTOSNS - STEPHEN J. POTOSNAK
From: Ronald Stitzel
Subject: SEE LOG--THANKS DOUG

This is no longer my shop. Steve Potosnak is now handling Lindgren. I
am unaware of any problems with this claim. Steve's phone number is
<...MORE...>

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0036

Date Time Creator Assignee Cov Claimant
<...CONTINUED...>

610-682-4814 and his fax is 610-682-7270.
Mike - I cc'd you in case you want you or Bev involved.

To: STITZER - Ronald Stitzel
cc: WITMERD - Doug Witmer
cc: NIEVESE - Ed Nieves

Date: 11/03/1997 Time: 11:11AM

From: Doug Witmer

Subject: SEE LOG--THANKS DOUG

PLEASE CRM WITH FAX NUMBER SO I CAN FORWARD TO YOU THE LETTER OF
REP.--LET ME KNOW OF WHAT ASSISTANCE I CAN BE--THANKS DOUG

To: WITMERD - Doug Witmer
cc: NIEVESE - Ed Nieves
cc: JONESD6 - E. Dean Jones

Date: 11/03/1997 Time: 11:07AM

From: Ed Nieves

Subject: SEE LOG--THANKS DOUG

DOUG:
LINDGREN IS ONE OF OUR BLUE RIBBON SHOPS AND AS FAR AS I CAN TELL FROM
THE LOG THIS WAS HANDLED AS A BLUE RIBBON ASSIGNMENT.

To: NIEVESE - Ed Nieves
To: JONESD6 - E. Dean Jones
cc: WITMERD - Doug Witmer

Date: 11/03/1997 Time: 10:13AM

From: Doug Witmer

Subject: SEE LOG--THANKS DOUG

PLEASE READ MY LOG AND CRM WITH DIRECTION THANKS DOUG

<...MORE...>

Date: 11/03/1997 Time: 12:20PM

COPY OF EXHIBIT NO. 8 (Page 38 of 70)

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01
PH: Berg, Daniel G & Sharon E
Requester: David Cole

Print Date: 07/29/1998
Time: 14:18:10
Page # 0037

Date Time Creator Assignee Cov Claimant

<...CONTINUED...>
To: CARLSOB - Bev Carlson
cc: OLEARYM - Mike O'leary

From: Mike O'leary
Subject: SEE LOG--THANKS DOUG

Please get all the details and follow up with me. Thanks

To: WITMERD - Doug Witmer Date: 11/03/1997 Time: 11:58AM
cc: NIEVESE - Ed Nieves
cc: OLEARYM - Mike O'leary
cc: STITZER - Ronald Stitzel
cc: POTOSNS - STEPHEN J. POTOSNAK

From: Ronald Stitzel
Subject: SEE LOG--THANKS DOUG

This is no longer my shop. Steve Potosnak is now handling Lindgren. I am unaware of any problems with this claim. Steve's phone number is 610-682-4814 and his fax is 610-682-7270.
Mike - I cc'd you in case you want you or Bev involved.

To: STITZER - Ronald Stitzel Date: 11/03/1997 Time: 11:11AM
cc: WITMERD - Doug Witmer
cc: NIEVESE - Ed Nieves

From: Doug Witmer
Subject: SEE LOG--THANKS DOUG

PLEASE CRM WITH FAX NUMBER SO I CAN FORWARD TO YOU THE LETTER OF REP.--LET ME KNOW OF WHAT ASSISTANCE I CAN BE--THANKS DOUG

To: WITMERD - Doug Witmer Date: 11/03/1997 Time: 11:07AM
cc: NIEVESE - Ed Nieves
cc: JONESD6 - E. Dean Jones

From: Ed Nieves
Subject: SEE LOG--THANKS DOUG

DOUG:
LINDGREN IS ONE OF OUR BLUE RIBBON SHOPS AND AS FAR AS I CAN TELL FROM THE LOG THIS WAS HANDLED AS A BLUE RIBBON ASSIGNMENT.

***** ACTIVITY LOG *****
 Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
 PH: Berg, Daniel G & Sharon E Time: 14:18:10
 Requester: David Cole Page # 0038

 Date Time Creator Assignee Cov Claimant

To: NIEVESE - Ed Nieves Date: 11/03/1997 Time: 10:13AM
 To: JONESD6 - E. Dean Jones
 cc: WITMERD - Doug Witmer
 From: Doug Witmer
 Subject: SEE LOG--THANKS DOUG
 PLEASE READ MY LOG AND CRM WITH DIRECTION THANKS DOUG

11/03/1997 10:12AM WITMERD WITMERD

<>0025 CONTACT RECEIVED CALL FROM BEN MAYERSON ATTY FOR PH-THYE
 ARE PREPARING A COMPLAINT AGAINST LINDGREN CHRY/PLY FOR WORK NOT DONE
 PROPERLY RECEIVED A LETTER OF REPRESENTATION FROM ATTY VIA FAX-ATTY
 WANTS COPY OF FILE SENT TO HIM AND A RETURN CALL TO HIM WITH THE EST
 AND AMOUNT NATIONWIDE PAID TO LINDGREN-TOLD ATTY I WILL CHECK WITH
 MANAGEMENT AND RETURN CALL ASAP

05/01/1997 07:59AM STITZER WITMERD : COLL Daniel G & Sharon E Berg
 Check for \$160.33 payable to LINDGREN CHRYSLER PLYMOUTH INC 1600
 LANCASTER AVE READING PA 19607 - Mechanical Check

05/01/1997 07:59AM JONESD6 WITMERD
 NOA for Check Authorization approved by JONESD6 for STITZER

04/30/1997 10:17AM STITZER WITMERD
 NOA for Check Authorization sent to JONESD6 from WITMERD

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0039

Date Time Creator Assignee Cov Claimant

04/30/1997 10:15AM STITZER UNASSIGN

PROVIDER LINDGREN CHRYSLER PLYMOUTH INC CONTRACTOR added

04/30/1997 10:13AM STITZER UNASSIGN

0200 ADVISORY COMMENTS: PDS - Berg, Daniel G & Sharon E Error in check issued. Was short by \$160.33. Issued another check.

04/14/1997 08:05AM STITZER WITMERD COLL Daniel G & Sharon E Berg

Check for \$11975.66 payable to LINDGREN CHRYSLER PLYMOUTH INC 1600 LANCASTER AVE READING PA 19607 - Mechanical Check

04/14/1997 08:04AM JONESD6 WITMERD

NOA for Check Authorization approved by JONESD6 for STITZER

04/12/1997 06:56PM STITZER WITMERD

NOA for Check Authorization sent to JONESD6 from WITMERD

04/12/1997 06:54PM STITZER UNASSIGN

PROVIDER LINDGREN CHRYSLER PLYMOUTH INC CONTRACTOR added

04/12/1997 06:50PM STITZER UNASSIGN

0200 ADVISORY COMMENTS: PDS - Berg, Daniel G & Sharon E Reviewed file after shop sked me about payment. Appears that WITMERD did not follow up on FAX. Paid loss to shop.

04/12/1997 06:49PM STITZER WITMERD COLL Daniel G & Sharon E Berg

RESERVE HOLD for COLL on Daniel G & Sharon E Berg assigned to WITMERD

COPY OF EXHIBIT NO. 8 (Page 41 of 70)

1211

R. 1846a

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0040

Date Time Creator Assignee Cov Claimant

03/10/1997 02:28PM WELKERK BLACKAI MEDBEN SHARON BERG

RESERVE closed for MEDBEN on SHARON BERG

03/10/1997 02:28PM WELKERK BLACKAI MEDBEN BERG, SHARON

0100 ADVISORY COMMENTS: TECH MGR - BERG, SHARON CASE BASE FILE
REVIEW....CLOSING ON CASE. BILLING PROCESSED.

03/10/1997 02:22PM BLACKAI BLACKAI MEDBEN SHARON BERG

Check for \$126.67 payable to READING HOSPITAL & MEDICAL CENTER PO BOX
16051 READING PA 19612 - Mechanical Check

03/10/1997 09:12AM WELKERK BLACKAI MEDBEN BERG, SHARON

0100 ADVISORY COMMENTS: TECH MGR - BERG, SHARON CASE BASE FILE
REVIEW....CLOSING AFTER ER BILLING PROCESSED. RECORDS REQUESTED BUT
NOT HERE YET. NO FURTHER CARE ANTICIPATED.

03/07/1997 01:49PM BLACKAI BLACKAI

REVIEWED FOR CASE. ONLY ONE BILL IN FILE - AWAITING RECORDS. AMOUNT
\$126.67. PAY AND CLOSE OR CASE AT \$500.00.

03/07/1997 01:48PM BLACKAI BLACKAI

PC TO READING HOSPITAL. BILLING OFFICE VERIFIED THAT BILL IS FOR
HOSPITAL AND ER DOCTOR CHARGE. THIS IS ONLY BILL.

03/07/1997 01:44PM BLACKAI BLACKAI

PC TO SHARON BERG. SPOKE TO HUSBAND. HE INDICATED THE ONLY TX WAS
DAY OF ACCIDENT TO BE CHECKED OUT. SHE IS FINE.

To: WITMERD - Doug Witmer
cc: BIXLERT - Troy Bixler

Date: 02/14/1997 Time: 10:03AM

From: Troy Bixler

<...MORE...>

COPY OF EXHIBIT NO. 8 (Page 42 of 70)

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0041

Date Time Creator Assignee Cov Claimant
<...CONTINUED...>
Subject: COLL COV

Spoke with shop , they will fax total bill to your fax #
THANK YOU!!

To: BIXLERT - Troy Bixler
cc: WITMERD - Doug Witmer

Date: 02/14/1997 Time: 09:17AM

From: Doug Witmer

Subject: COLL COV

I DID NOT RECEIVE ANY BILL FOR THIS-IF YOU HAVE IT PLEASE CRM/FAX TO ME
717 399-5679---THANKS DOUG

To: WITMERD - Doug Witmer
To: BIXLERT - Troy Bixler
cc: LANED1 - DOUGLAS T. LANE

Date: 02/06/1997 Time: 02:17AM

From: DOUGLAS T. LANE

Subject: COLL COV

FELLA'S THE SHOP NEEDS THEIR MONEY. THEY BUMPED ME ON A REINSPECTION. WE
PAID THE PD?

To: WITMERD - Doug Witmer
cc: BIXLERT - Troy Bixler

Date: 02/14/1997 Time: 10:03AM

From: Troy Bixler

Subject: COLL COV

Spoke with shop , they will fax total bill to your fax #
THANK YOU!!

To: BIXLERT - Troy Bixler
cc: WITMERD - Doug Witmer

Date: 02/14/1997 Time: 09:17AM

From: Doug Witmer

Subject: COLL COV

I DID NOT RECEIVE ANY BILL FOR THIS-IF YOU HAVE IT PLEASE CRM/FAX TO ME
717 399-5679---THANKS DOUG
<...MORE...>

COPY OF EXHIBIT NO. 8 (Page 43 of 70)

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01
PH: Berg, Daniel G & Sharon E
Requester: David Cole
***** Page # 0042 *****

Print Date: 07/29/1998
Time: 14:18:10

Date Time Creator Assignee Cov Claimant
<...CONTINUED...>

Date: 02/06/1997 Time: 02:17PM

To: WITMERD - Doug Witmer
To: BIXLERT - Troy Bixler
cc: LANEDI - DOUGLAS T. LANE

From: DOUGLAS T. LANE

Subject: COLL COV

FELLA'S THE SHOP NEEDS THEIR MONEY. THEY BUMPED ME ON A REINSPECTION. WE PAID THE PD?

Date: 02/14/1997 Time: 10:03AM

To: WITMERD - Doug Witmer
cc: BIXLERT - Troy Bixler

From: Troy Bixler

Subject: COLL COV

Spoke with shop , they will fax total bill to your fax #
THANK YOU!!

Date: 02/14/1997 Time: 09:17AM

To: BIXLERT - Troy Bixler
cc: WITMERD - Doug Witmer

From: Doug Witmer

Subject: COLL COV

I DID NOT RECEIVE ANY BILL FOR THIS-IF YOU HAVE IT PLEASE CRM/FAX TO ME
717 399-5679---THANKS DOUG

Date: 02/06/1997 Time: 02:17PM

To: WITMERD - Doug Witmer
To: BIXLERT - Troy Bixler
cc: LANEDI - DOUGLAS T. LANE

From: DOUGLAS T. LANE

Subject: COLL COV

FELLA'S THE SHOP NEEDS THEIR MONEY. THEY BUMPED ME ON A REINSPECTION. WE PAID THE PD?

Date: 02/14/1997 Time: 10:03AM

To: WITMERD - Doug Witmer
<...MORE...>

COPY OF EXHIBIT NO. 8 (Page 44 of 70)

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0043

Date Time Creator Assignee Cov Claimant
<...CONTINUED...>

cc: BIXLERT - Troy Bixler

From: Troy Bixler

Subject: COLL COV

Spoke with shop , they will fax total bill to your fax #
THANK YOU!!

To: BIXLERT - Troy Bixler
cc: WITMERD - Doug Witmer

Date: 02/14/1997 Time: 09:17AM

From: Doug Witmer

Subject: COLL COV

I DID NOT RECEIVE ANY BILL FOR THIS-IF YOU HAVE IT PLEASE CRM/FAX TO ME
717 399-5679---THANKS DOUG

To: WITMERD - Doug Witmer
To: BIXLERT - Troy Bixler
cc: LANED1 - DOUGLAS T. LANE

Date: 02/06/1997 Time: 02:17PM

From: DOUGLAS T. LANE

Subject: COLL COV

FELLA'S THE SHOP NEEDS THEIR MONEY. THEY BUMPED ME ON A REINSPECTION. WE
PAID THE PD?

02/11/1997 02:48PM BLACKAL BLACKAL

DOC sent to: READING HOSPITAL & MEDICAL CENTER from ANNE BLACK (Re:)
Request for Medical Documentation - Hospital/Dr. (Comments:) RQST
RCDS (Print Instr:) Mail

To: WITMERD - Doug Witmer
cc: BIXLERT - Troy Bixler

Date: 02/14/1997 Time: 10:03AM

From: Troy Bixler

Subject: COLL COV

Spoke with shop , they will fax total bill to your fax #
THANK YOU!!
<...MORE...>

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0044

Date Time Creator Assignee Cov Claimant
<...CONTINUED...>

To: BIXLERT - Troy Bixler Date: 02/14/1997 Time: 09:17AM
cc: WITMERD - Doug Witmer
From: Doug Witmer
Subject: COLL COV

I DID NOT RECEIVE ANY BILL FOR THIS-IF YOU HAVE IT PLEASE CRM/FAX TO ME
717 399-5679---THANKS DOUG

To: WITMERD - Doug Witmer Date: 02/06/1997 Time: 02:17PM
To: BIXLERT - Troy Bixler
cc: LANEDI - DOUGLAS T. LANE

From: DOUGLAS T. LANE

Subject: COLL COV

FELLA'S THE SHOP NEEDS THEIR MONEY. THEY BUMPED ME ON A REINSPECTION. WE
PAID THE PD?

To: WITMERD - Doug Witmer Date: 02/14/1997 Time: 10:03AM
cc: BIXLERT - Troy Bixler

From: Troy Bixler

Subject: COLL COV

Spoke with shop , they will fax total bill to your fax #
THANK YOU!!

To: BIXLERT - Troy Bixler Date: 02/14/1997 Time: 09:17AM
cc: WITMERD - Doug Witmer

From: Doug Witmer

Subject: COLL COV

I DID NOT RECEIVE ANY BILL FOR THIS-IF YOU HAVE IT PLEASE CRM/FAX TO ME
717 399-5679---THANKS DOUG

To: WITMERD - Doug Witmer Date: 02/06/1997 Time: 02:17PM
To: BIXLERT - Troy Bixler
cc: LANEDI - DOUGLAS T. LANE
<..MORE..>

COPY OF EXHIBIT NO. 8 (Page 46 of 70)

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0045

Date Time Creator Assignee Cov Claimant
<...CONTINUED...>

From: DOUGLAS T. LANE

Subject: COLL COV

FELLA'S THE SHOP NEEDS THEIR MONEY. THEY BUMPED ME ON A REINSPECTION. WE PAID THE PD?

To: WITMERD - Doug Witmer Date: 02/14/1997 Time: 10:03AM
cc: BIXLERT - Troy Bixler

From: Troy Bixler

Subject: COLL COV

Spoke with shop , they will fax total bill to your fax #
THANK YOU!!

To: BIXLERT - Troy Bixler Date: 02/14/1997 Time: 09:17AM
cc: WITMERD - Doug Witmer

From: Doug Witmer

Subject: COLL COV

I DID NOT RECEIVE ANY BILL FOR THIS-IF YOU HAVE IT PLEASE CRM/FAX TO ME
717 399-5679---THANKS DOUG

To: WITMERD - Doug Witmer Date: 02/06/1997 Time: 02:17PM
To: BIXLERT - Troy Bixler
cc: LANEDI - DOUGLAS T. LANE

From: DOUGLAS T. LANE

Subject: COLL COV

FELLA'S THE SHOP NEEDS THEIR MONEY. THEY BUMPED ME ON A REINSPECTION. WE PAID THE PD?

To: BLACKAL - Anne Black Date: 02/04/1997 Time: 00:01AM

From: CLASS

Subject: Continuous Claims Rep FWP

<..MORE...>

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0046

Date Time Creator Assignee Cov Claimant
<...CONTINUED...>
Continuous Claims Rep FWP

01/29/1997 01:35PM BLACKAI BLACKAI

<<<FPB FORMS RECEIVED, INJURIES DESCRIBED AS NECK SPRAIN. SEEN AT
READING HOSPITAL. PREVIOUS HX: BROKEN NECK. NOTHING ELSE
DOCUMENTED ON FORMS.

To: WITMERD - Doug Witmer
cc: BIXLERT - Troy Bixler

Date: 01/21/1997 Time: 03:39PM

From: Troy Bixler

Subject: Why did you close coll covg?

To: WITMERD - Doug Witmer
cc: BIXLERT - Troy Bixler

Date: 01/21/1997 Time: 03:39PM

From: Troy Bixler

Subject: Why did you close coll covg?

01/16/1997 08:13AM WITMERD WITMERD COLL Daniel G & Sharon E Berg

RESERVE closed for COLL on Daniel G & Sharon E Berg

01/15/1997 03:47PM CARLSOB UNASSIGN

REC'D AUTHORIZATION TO PAY DIRECT FROM LINDGEN

01/07/1997 01:56PM BLACKAI BLACKAI

DOC sent to: unknown from ANNE BLACK (Re:) PIP Package for - PA
(Comments:) SHARON (Print Instr:) Mail

COPY OF EXHIBIT NO. 8 (Page 48 of 70)

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0047

Date Time Creator Assignee Cov Claimant

01/07/1997 01:54PM BLACKAI BLACKAI

PC TO S/B. SHE STATED SHE COMPLETED AND RETURNED FORMS AWHILE AGO. I EXPLAINED THAT I WOULD MAIL OUT ANOTHER SET AND SHE WOULD NEED TO RETURN TO ME. SHE SAID SHE IS DOING OK MEDICALLY. SHE JUST REINJURED AN OLD NECK INJURY.

12/30/1996 08:58AM BLACKAI BLACKAI

PC TO PH. LEFT MESSAGE WITH MAN FOR S/B TO CALLBACK. NEED TO VERIFY IF FORMS RETURNED.

12/30/1996 08:55AM BLACKAI BLACKAI

DOC sent to: READING HOSPITAL & MEDICAL CENTER from ANNE BLACK (Re:)
Free Form (FPB FORMS NOT REC'D-PARTY) (Comments:) ack bill, no aob
(Print Instr:) Mail cc: Daniel G & Sharon E Berg RD 3658
MOHNTON PA 19540-9804

To: BLACKAI - Anne Black Date: 12/24/1996 Time: 00:01AM
From: CLASS
Subject: Continuous Claims Rep FWP
Continuous Claims Rep FWP

To: WITMERD - Doug Witmer Date: 12/20/1996 Time: 12:22PM
cc: JONESD6 - E. Dean Jones
From: E. Dean Jones
Subject: Continuous Manager FWP

WHAT IS STATUS OF THIS COLL ASSIGNMENT TO YOU?

To: JONESD6 - E. Dean Jones Date: 12/20/1996 Time: 00:01AM
From: Doug Witmer
Subject: Continuous Manager FWP

<...MORE...>

COPY OF EXHIBIT NO. 8 (Page 49 of 70)

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
 Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
 PH: Berg, Daniel G & Sharon E Time: 14:18:10
 Requester: David Cole Page # 0048

 Date Time Creator Assignee Cov Claimant
 <...CONTINUED...>
 Continuous Manager FWP

To: WITMERD - Doug Witmer Date: 12/20/1996 Time: 12:22PM
 cc: JONESD6 - E. Dean Jones

From: E. Dean Jones

Subject: Continuous Manager FWP

WHAT IS STATUS OF THIS COLL ASSIGNMENT TO YOU?

To: JONESD6 - E. Dean Jones Date: 12/20/1996 Time: 00:01AM

From: Doug Witmer

Subject: Continuous Manager FWP

Continuous Manager FWP

To: WITMERD - Doug Witmer Date: 12/20/1996 Time: 12:22PM
 cc: JONESD6 - E. Dean Jones

From: E. Dean Jones

Subject: Continuous Manager FWP

WHAT IS STATUS OF THIS COLL ASSIGNMENT TO YOU?

To: JONESD6 - E. Dean Jones Date: 12/20/1996 Time: 00:01AM

From: Doug Witmer

Subject: Continuous Manager FWP

Continuous Manager FWP

To: WITMERD - Doug Witmer Date: 12/10/1996 Time: 00:01AM

From: CLASS

Subject: Continuous Claims Rep FWP

<..MORE..>

COPY OF EXHIBIT NO. 8 (Page 50 of 70)

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01
PH: Berg, Daniel G & Sharon E
Requester: David Cole
Print Date: 07/29/1998
Time: 14:18:10
Page # 0049

Date Time Creator Assignee Cov Claimant
<...CONTINUED...>
Continuous Claims Rep FWP

11/26/1996 12:03PM BLACKA1 BLACKA1

PC TO PH. LEFT MESSAGE FOR SHARON TO CALL ME BACK. LEFT MESSAGE WITH DANIEL.

To: BLACKA1 - Anne Black Date: 11/26/1996 Time: 00:01AM
From: CLASS
Subject: Continuous Claims Rep FWP
Continuous Claims Rep FWP

11/20/1996 10:30AM WELKERK BLACKA1 MEDBEN BERG, SHARON

0100 ADVISORY COMMENTS: TECH MGR - BERG, SHARON FILE REVIEW...MEDBEN ON FORMULA. WAITING FOR F.P.FORMS. READING HOSP. BILLING HERE...SPRAIN UPPER ARM/SHOULDER. FOLLOWUP TO OBTAIN FORMS.

11/20/1996 10:28AM WELKERK BLACKA1 MEDBEN Daniel G & Sharon E Berg
RESERVE closed for MEDBEN on Daniel G & Sharon E Berg

11/11/1996 10:53AM BLACKA1 BLACKA1

REVIEWED FILE. AWAITING AOBs. ONE BILL REC'D TO DATE.

11/11/1996 10:52AM BLACKA1 BLACKA1

DOC sent to: READING HOSPITAL & MEDICAL CENTER from ANNE BLACK (Re:) Free Form (FPB FORMS NOT REC'D-PARTY) (Comments:) ack bill, no aob (Print Instr:) Mail cc: Daniel G & Sharon E Berg RD 3658 MOHNTON PA 19540-9804

11/11/1996 10:50AM BLACKA1 UNASSIGN

PROVIDER READING HOSPITAL & MEDICAL CENTER HOSPITAL added

<...MORE...>

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0050

Date Time Creator Assignee Cov Claimant
<...CONTINUED...>

To: BLACKAL - Anne Black Date: 11/11/1996 Time: 00:01AM
From: CLASS
Subject: Continuous Claims Rep FWP
Continuous Claims Rep FWP

To: BLACKAL - Anne Black Date: 11/08/1996 Time: 04:12PM
From: Index Bureau
Subject: Injury Index Hit

The Injury Index bureau has returned the following information:
----- Initiating Claim -----
Initiating Control #: 9630612787
Return Reason Code: Initial
Case File #: 5837C 137421090496
Claim Report Date: 110196
Customer: NATIONWIDE INSURANCE
Customer Address: PO BOX 2655 *
HARRISBURG PA 171050000
Claimant Name: SHARON BERG
Claimant Address: RD 3658
MOHNTON PA 195400000
Claimant SSN: 194423929
Claimant DOB or AGE: 031652
Claim Type: AUTO
Accident Date: 090496
Accident Injuries: NECK
Accident Address: PA 000000000
Insured Name: BERG, DANIEL G & SHARON E
----- Matching Claim -----
Document Control #: 9528229694
Reason for match: CLAIMANT ADDRESS IS SIMILAR
Return Reason Code: Initial
Case File #: 00373703
Claim Report Date: 100995
Customer: INFINITY GROUP
Customer Address: PO BOX 830695
BIRMINGHAM AL 352830695
Claimant Name: NICOLE L BERG
Claimant Address: RD 3658
MOHNTON PA 195400000
<...MORE...>

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0051

Date Time Creator Assignee Cov Claimant
<...CONTINUED...>
Claimant SSN: 000000000
Claimant DOB or AGE: 061773
Claim Type: AUTO
Accident Date: 071195
Accident Injuries: UNKKNOWN
Accident Address: PA 000000000
Insured Name: BERG, NICOLE L PA000000000
Insured Address: UNKNOWN 000000000

10/29/1996 03:08PM BLACKA1 BLACKA1

DOC sent to: unknown from ANNE BLACK (Re:) PIP Package for - PA
(Comments:) SHARON BERG (Print Instr:) SASE Mail

10/29/1996 03:06PM BLACKA1 UNASSIGN BERG, SHARON

INDEX - INITIAL INDEX SENT FOR CLMT: BERG, SHARON CURRENT
INFORMATION WITH INDEX BUREAU: *CLAIM KEY: 5837C
137421090496

*POLICYHOLDER: BERG, DANIEL G & SHARON E
*TYPE OF CLAIM: AUTO
*LOSS STATE: PA
*CLAIMANT NAME:

SHARON BERG
*CLAIMANT ADDRESS: RD 3658
MOHNTON PA 19540
*CLAIMANT DOB: 19520316
*CLAIMANT SSN:

194423929
*CLAIMANT OCCUPATION:
*CLAIMANT INJURIES: NECK
*FACILITY INFO:
ADDRESS: *LAW FIRM

INFO:
ADDRESS: * INDICATES NEW OR CHANGED INFORMATION.

10/29/1996 03:06PM BLACKA1 BLACKA1

PC TO SHARON BERG. SHE WAS TREATED AT READING HOSPITAL THE NIGHT OF
THE ACCIDENT. NO XRAY OR AMBULANCE. SHE DOES NOT NEED ANY FURTHER
TX. SHE HAS RETURNED TO HER PRE-ACCIDENT CONDITION. SHE DID HAVE
NECK PROBLEMS FROM YEARS AGO. SHE MISSED ONE DAY OF WORK.

***** ACTIVITY LOG *****
 Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
 PH: Berg, Daniel G & Sharon E Time: 14:18:10
 Requester: David Cole Page # 0052

Date Time Creator Assignee Cov Claimant
 10/29/1996 03:02PM BLACKA1 BLACKA1 MEDBEN SHARON RFR

10/29/1996 03:02PM BLACKA1 UNASSIGN
 CLAIMANT SHARON<BERG added

10/25/1996 09:17AM BLACKA1 BLACKA1
 PC TO PH. LEFT MESSAGE FOR SHARON TO CALL ME BACK. SHE WILL BE HOME
 AFTER 12:30PM TODAY.

To: BLACKA1 - Anne Black Date: 10/16/1996 Time: 07:44AM
 cc: DETWEIJ - Julie Detweiler
 From: Julie Detweiler
 Subject: medben

Sharon Berg sought treatment-check if more than the one bill I think I
 gave to you-and if not attempt to process under the MEDBEN I opened. See
 me if questions Thanks.

To: DETWEIJ - Julie Detweiler Date: 10/15/1996 Time: 04:04PM
 cc: BLACKA1 - Anne Black
 From: Anne Black
 Subject: medben

julie, this medben is closed but the log states you opened it, should I
 reopen or do I need to do something else (add clmt, etc.).

To: BLACKA1 - Anne Black Date: 10/16/1996 Time: 07:44AM
 cc: DETWEIJ - Julie Detweiler
 From: Julie Detweiler
 Subject: medben
 <...MORE...>

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0053

Date Time Creator Assignee Cov Claimant
<...CONTINUED...>

Sharon Berg sought treatment-check if more than the one bill I think I gave to you-and if not attempt to process under the MEDBEN I opened. See me if questions Thanks.

To: DETWEIJ - Julie Detweiler Date: 10/15/1996 Time: 04:04PM
cc: BLACKAL - Anne Black

From: Anne Black

Subject: medben

julie, this medben is closed but the log states you opened it, should I reopen or do I need to do something else (add clmt, etc.).

To: BLACKAL - Anne Black Date: 10/16/1996 Time: 07:44AM
cc: DETWEIJ - Julie Detweiler

From: Julie Detweiler

Subject: medben

Sharon Berg sought treatment-check if more than the one bill I think I gave to you-and if not attempt to process under the MEDBEN I opened. See me if questions Thanks.

To: DETWEIJ - Julie Detweiler Date: 10/15/1996 Time: 04:04PM
cc: BLACKAL - Anne Black

From: Anne Black

Subject: medben

julie, this medben is closed but the log states you opened it, should I reopen or do I need to do something else (add clmt, etc.).

To: BLACKAL - Anne Black Date: 10/16/1996 Time: 07:44AM
cc: DETWEIJ - Julie Detweiler

From: Julie Detweiler

Subject: medben

Sharon Berg sought treatment-check if more than the one bill I think I gave to you-and if not attempt to process under the MEDBEN I opened. See <...MORE...>

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0054

Date Time Creator Assignee Cov Claimant
<...CONTINUED...>
me if questions Thanks.

To: DETWEIJ - Julie Detweiler Date: 10/15/1996 Time: 04:04PM
cc: BLACKAL - Anne Black

From: Anne Black

Subject: medben

julie, this medben is closed but the log states you opened it, should I reopen or do I need to do something else (add clmt, etc.).

10/15/1996 12:36PM NOCEB NOCEB BI Shawn Seisler
Check for \$93.21 payable to Shawn Seisler 40 Joshua Circle Reinholds PA 17569 - Manual Check

10/15/1996 12:35PM NOCEB NOCEB BI Shawn Seisler
Check for \$600.94 payable to Shawn Seisler 40 Joshua Circle Reinholds PA 17569 - Manual Check

10/14/1996 02:31PM NOCEB NOCEB PD Shawn Seisler
Check for \$12731.02 payable to ERIE INSURANCE EXCHANGE A/S/O JENNIFER L SEISLER & SHAWN R SEISLER P. O. BOX 2013 MECHANICSBURG PA 170550710 - Mechanical Check

10/14/1996 02:31PM BURRISS NOCEB
NOA for Check Authorization approved by BURRISS for NOCEB

10/14/1996 01:32PM NOCEB NOCEB
NOA for Check Authorization sent to BURRISS from NOCEB

10/14/1996 01:22PM NOCEB NOCEB
0120 INVESTIGATION: POLICE RPT - PH PULLED FROM S/S TO TURN LEFT ONTO ALLEGHENY RD INTO THE PATH OF CLT WHO WAS TRAV ON ALLEGHENYVILLE RD WITH ROW. PH PULLED IN THE RF OF CLT VEH. POI ARE PH LF TO CLTS
<...MORE...>

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01
PH: Berg, Daniel G & Sharon E
Requester: David Cole
Print Date: 07/29/1998
Time: 14:18:10
Page # 0055

Date Time Creator Assignee Cov Claimant

<...CONTINUED...>

RF. SCENE INSPECTION REVEALED A WINDING ROAD BUT NO VIEW
OBSTRUCTIONS FROM S/S LOOKING ONTO ALLEGHENYVILLE RD. POSTED SPEED
IN THE VICINITY OF THE ACC IS 40MPH. DON'T SEE MUCH IN THE WAY OF
COMP NEG. WITH POI'S.

10/14/1996 08:48AM DETWEIJ UNASSIGN COLL Berg, Daniel G & Sharon E

0100 ADVISORY COMMENTS: FILE SPEC - Berg, Daniel G & Sharon E Recd
medical bill for S/B inFP3-no coverage opened. Assigned to HAML for
contact and forms.

To: NOCEB - Barb Noce Date: 10/14/1996 Time: 07:06AM
cc: GUMMOD - DONNA GUMMO.
From: DONNA GUMMO
Subject: TORT

BARB, THIS TORT WAS INPUT ON 9-30-96. YOU SHOULD HAVE RECEIVED A
MESSAGE FROM DEAN ARGOT ON THIS SUBJECT. THERE WAS A PROBLEM WITH CPS
PASSING THRU TO CLASS. HOME OFFICE WAS WORKING ON IT. YOU MAY WANT TO
CHECK WITH DEAN. THANKS, DONNA

To: GUMMOD - DONNA GUMMO Date: 10/11/1996 Time: 03:03PM
cc: NOCEB - Barb Noce
From: Barb Noce
Subject: TORT

THE CLT SUMMARY SCREEN STILL SHOWS TORT "U" I HAVE A DRAFT TO POST, I
CANNOT POST IT UNTIL TORT IS CHANGED TO LIMITED.

To: NOCEB - Barb Noce Date: 10/14/1996 Time: 07:06AM
cc: GUMMOD - DONNA GUMMO
From: DONNA GUMMO
<..MORE..>

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01
PH: Berg, Daniel G & Sharon E
Requester: David Cole
Print Date: 07/29/1998
Time: 14:18:10
Page # 0056

Date Time Creator Assignee Cov Claimant
<...CONTINUED...>
Subject: TORT

BARB, THIS TORT WAS INPUT ON 9-30-96. YOU SHOULD HAVE RECEIVED A MESSAGE FROM DEAN ARGOT ON THIS SUBJECT. THERE WAS A PROBLEM WITH CPS PASSING THRU TO CLASS. HOME OFFICE WAS WORKING ON IT. YOU MAY WANT TO CHECK WITH DEAN. THANKS, DONNA

To: GUMMOD - DONNA GUMMO Date: 10/11/1996 Time: 03:03PM
cc: NOCEB - Barb Noce
From: Barb Noce
Subject: TORT

THE CLT SUMMARY SCREEN STILL SHOWS TORT "U" I HAVE A DRAFT TO POST, I CANNOT POST IT UNTIL TORT IS CHANGED TO LIMITED.

To: NOCEB - Barb Noce Date: 10/14/1996 Time: 07:06AM
cc: GUMMOD - DONNA GUMMO
From: DONNA GUMMO
Subject: TORT

BARB, THIS TORT WAS INPUT ON 9-30-96. YOU SHOULD HAVE RECEIVED A MESSAGE FROM DEAN ARGOT ON THIS SUBJECT. THERE WAS A PROBLEM WITH CPS PASSING THRU TO CLASS. HOME OFFICE WAS WORKING ON IT. YOU MAY WANT TO CHECK WITH DEAN. THANKS, DONNA

To: GUMMOD - DONNA GUMMO Date: 10/11/1996 Time: 03:03PM
cc: NOCEB - Barb Noce
From: Barb Noce
Subject: TORT

THE CLT SUMMARY SCREEN STILL SHOWS TORT "U" I HAVE A DRAFT TO POST, I CANNOT POST IT UNTIL TORT IS CHANGED TO LIMITED.

To: NOCEB - Barb Noce Date: 10/14/1996 Time: 07:06AM
cc: GUMMOD - DONNA GUMMO
From: DONNA GUMMO
<...MORE...>

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0057

Date Time Creator Assignee Cov Claimant
<...CONTINUED...>
Subject: TORT

BARB, THIS TORT WAS INPUT ON 9-30-96. YOU SHOULD HAVE RECEIVED A MESSAGE FROM DEAN ARGOT ON THIS SUBJECT. THERE WAS A PROBLEM WITH CPS PASSING THRU TO CLASS. HOME OFFICE WAS WORKING ON IT. YOU MAY WANT TO CHECK WITH DEAN. THANKS, DONNA

To: GUMMOD - DONNA GUMMO Date: 10/11/1996 Time: 03:03PM
cc: NOCEB - Barb Noce

From: Barb Noce

Subject: TORT

THE CLT SUMMARY SCREEN STILL SHOWS TORT "U" I HAVE A DRAFT TO POST, I CANNOT POST IT UNTIL TORT IS CHANGED TO LIMITED.

10/11/1996 11:52AM WITMERD WITMERD

0140 EVALUATION OF DAMAGES: VEHICLE DAMAGE - Berg, Daniel G & Sharon E ENTERPRISE RENTAL CALLED AND LEFT MESS AS WELL AS AGENT LEFT MESS IF NATIONWIDE CAN EXTEND RENTAL TO PH-RETURNED CALL TO AGENT AND PH THAT I WILL ASK ED NIEVES AND REPORT BACK TO THEM

To: NOCEB - Barb Noce Date: 10/11/1996 Time: 11:08AM
cc: GUMMOD - DONNA GUMMO

From: DONNA GUMMO

Subject: TORT

ALREADY DONE ON 9-30-96. THANKS, PASER

To: PASER - PA Claims Services Date: 10/11/1996 Time: 10:26AM
cc: NOCEB - Barb Noce

From: Barb Noce

Subject: TORT

LIMITED TORT APPLIES TO CLT ID S/S1.

To: NOCEB - Barb Noce Date: 10/11/1996 Time: 11:08AM
<..MORE..>

***** ACTIVITY LOG *****

Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0058

Date Time Creator Assignee Cov Claimant
<...CONTINUED...>
cc: GUMMOD - DONNA GUMMO

From: DONNA GUMMO
Subject: TORT

ALREADY DONE ON 9-30-96. THANKS, PASER

To: PASER - PA Claims Services Date: 10/11/1996 Time: 10:26AM
cc: NOCEB - Barb Noce

From: Barb Noce
Subject: TORT

LIMITED TORT APPLIES TO CLT ID S/S1.

To: NOCEB - Barb Noce Date: 10/11/1996 Time: 11:08AM
cc: GUMMOD - DONNA GUMMO.

From: DONNA GUMMO
Subject: TORT

ALREADY DONE ON 9-30-96. THANKS, PASER

To: PASER - PA Claims Services Date: 10/11/1996 Time: 10:26AM
cc: NOCEB - Barb Noce

From: Barb Noce
Subject: TORT

LIMITED TORT APPLIES TO CLT ID S/S1.

To: NOCEB - Barb Noce Date: 10/11/1996 Time: 11:08AM
cc: GUMMOD - DONNA GUMMO

From: DONNA GUMMO
Subject: TORT

ALREADY DONE ON 9-30-96. THANKS, PASER

<...MORE...>

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0059

Date Time Creator Assignee Cov Claimant
<...CONTINUED...>

To: PASER - PA Claims Services Date: 10/11/1996 Time: 10:26AM
cc: NOCEB - Barb Noce

From: Barb Noce

Subject: TORT

LIMITED TORT APPLIES TO CLT ID S/S1.

10/11/1996 10:25AM NOCEB UNASSIGN BI Shawn<Seifler

CLAIMANT Shawn<Seisler changed from Prev Name Shawn<Seifler 40
Joshua Circle Reinholds PA 17569 717 3360445 610 8567550

To: NOCEB - Barb Noce Date: 10/11/1996 Time: 00:01AM

From: CLASS

Subject: First Claims Rep FWP

First Claims Rep FWP

10/07/1996 12:00PM WITMERD WITMERD LOU Daniel G & Sharon E Berg

Check for \$740.08 payable to ENTERPRISE RENT A CAR 125 MORGANTOWN
ROAD READING PA 196111947 - Mechanical Check

10/07/1996 11:58AM WITMERD UNASSIGN

PROVIDER ENTERPRISE RENT A CAR RENTAL AGENCIES added

To: PASER - PA Claims Services Date: 09/30/1996 Time: 10:53AM
cc: NOCEB - Barb Noce

From: Barb Noce

Subject: TORT

LIMITED TORT APPLIES TO CLT ID S/S1. THANKS.

<..MORE..>

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0060

Date Time Creator Assignee Cov Claimant
<...CONTINUED...>

To: PASER Date: 09/30/1996 Time: 10:53AM
cc: NOCEB - PA Claims Services
- Barb Noce

From: Barb Noce

Subject: TORT

LIMITED TORT APPLIES TO CLT ID S/SI. THANKS.

09/30/1996 10:19AM NOCEB NOCEB

SUBSEQUENT CONTACT TT S/S THIS AM, HE IS DOING FINE, NO SIGNIFICANT INJ TO THE WRIST. NEG FOR FX, JUST DIAG AS A SPRIAN, NO BRACES, ETC. TOOK IT EASY WITH THE WRIST, DID SOME LIGHT DUTY WORK. ONLY MISSED 9 HOURS. THE PERSONNEL OFF WILL FAX ME WAGE INFO. OOP ARE 9 HOURS WAGE, 5 DAYS RENTAL & ADV DED OF \$250. I WILL DELIVER SETTLEMENT CHECK THIS WEEK IN PERSON.

09/27/1996 12:52PM NOCEB NOCEB BI Seifler, Shawn

Called Clmt: Seifler, Shawn Left Msg on Ans Mchn

09/27/1996 06:58AM STAMBAL NOCEB

Sent PR, RI from Ph and CC letter to Barb Noce.

To: STAMBAL Date: 09/26/1996 Time: 01:58PM
cc: NOCEB - Linda Stambaugh
- Barb Noce

From: Barb Noce

Subject: PH RI/POLICE REPORT

PLEASE SEND ME PH RI AND THE POLICE REPORT.

<..MORE..>

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0061

Date Time Creator Assignee Cov Claimant
<...CONTINUED...>

To: STAMBAL - Linda Stambaugh Date: 09/26/1996 Time: 01:58PM
cc: NOCEB - Barb Noce

From: Barb Noce

Subject: PH RI/POLICE REPORT

PLEASE SEND ME PH RI AND THE POLICE REPORT.

09/26/1996 01:05PM BURRISS NOCEB

09/26/1996 01:02PM BURRISS UNASSIGN PD Shawn<Seifler
LOSS Reassigned for PD on Shawn<Seifler to NOCEB

09/26/1996 01:02PM BURRISS NOCEB PD Shawn<Seifler
LOSS Reassigned for PD on Shawn<Seifler from 58BERK-BI

09/26/1996 01:02PM BURRISS UNASSIGN BI Shawn<Seifler
LOSS Reassigned for BI on Shawn<Seifler to NOCEB

09/26/1996 01:02PM BURRISS NOCEB BI Shawn<Seifler
LOSS Reassigned for BI on Shawn<Seifler from 58BERK-BI

09/26/1996 10:43AM STAMBAL STAMBAL PD Shawn<Seifler
LOSS Reassigned for PD on Shawn<Seifler to 58BERK-BI

COPY OF EXHIBIT NO. 8 (Page 63 of 70)

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0062

Date Time Creator Assignee Cov Claimant

09/26/1996 10:43AM STAMBAL UNASSIGN PD Shawn<Seifler
LOSS Reassigned for PD on Shawn<Seifler from STAMBAL

09/26/1996 10:43AM STAMBAL UNASSIGN BI Shawn Seifler
RESERVE OPEN for BI on Shawn Seifler assigned to 58BERK-BI

09/26/1996 10:41AM STAMBAL STAMBAL

0150 RESOLUTION STRATEGY: - CC adj advised their insured looking for 8 to 9 hours of loss work due to his wrist injury. They are going to be sending their subro papers in. Advised we will open BI for their insured. Proximate cause of accident is ph pulling out but ph feels clmts traveling too fast. This intersection is difficult to see because of a large barn on the corner.

09/26/1996 10:37AM STAMBAL STAMBAL

Rec'd call from Erie Ins advising they are going to be subrogating but wanted to tell us their insured Shawn lost 8 to 9 hrs of work because of his injury. All she knows it was a wrist injury. He carries LIMITED TORT. They paid 1 medical bill for him.

09/26/1996 10:35AM STAMBAL UNASSIGN PD Shawn<Seifler

CLAIMANT Shawn<Seifler changed from Shawn<Seifler 40 Joshua Circle Reinholds PA 17569 Prev Home Ph UNKNOWN Prev Bus Ph UNKNOWN

09/26/1996 10:33AM STAMBAL UNASSIGN PD Shawn<Seifler

CLAIMANT Shawn<Seifler changed from Shawn<Seifler Prev Addr Unknown Prev City/State/Zip BLANK UNKNOWN UNKNOWN

09/25/1996 09:20AM COFFMAJ1 COFFMAJ1

TALKED TO SHOP TOLD THEM THAT I GAVE BACK TO THE FIELD DUE TO THE AMOUNT OF THE ESTIMATE, NEEDS FIELD ASSIGNMENT. TOLD SHOP TO CALL ME IF THEY DO NOT HEAR ANYTHING.

<..MORE..>

COPY OF EXHIBIT NO. 8 (Page 64 of 70)

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01
PH: Berg, Daniel G & Sharon E
Requester: David Cole

Print Date: 07/29/1998
Time: 14:18:10
Page # 0063

Date Time Creator Assignee Cov Claimant
<...CONTINUED...>

To: WITMERD - Doug Witmer Date: 09/25/1996 Time: 08:59AM
cc: COFFMAJ1 - Jennifer Coffman

From: Jennifer Coffman

Subject:

DOUG, BRRP STANDARDS ANY ESTIMATE OVER \$10,000 NEEDS FIELD ASSIGNMENT.
ANY QUESTIONS CALL ME 717-657-6463. THANKS.

To: COFFMAJ1 - Jennifer Coffman Date: 09/24/1996 Time: 03:24PM
cc: WITMERD - Doug Witmer

From: Doug Witmer

Subject:

VEH IS NOT A TOTAL LOSS- I INSPECTED VEH AND TOLD B/S THAT I WOULD
ADVISE TO YOU TO HAVE VEH TAKEN TO A SHOP TO HAVE FRAME REPAIRED SINCE
THEY OBVIOUSLY CAN NOT DO THE JOB WITH THE EQUIPMENT THEY HAVE-THE
REPAIRS ARE APPROX 50% OF ACV NATIONWIDE WILL NEVER RECOVER THE
DIFFERENCE IN SALVAGE VALUE--THANKS DOUG

To: WITMERD - Doug Witmer Date: 09/25/1996 Time: 08:59AM
cc: COFFMAJ1 - Jennifer Coffman

From: Jennifer Coffman

Subject:

DOUG, BRRP STANDARDS ANY ESTIMATE OVER \$10,000 NEEDS FIELD ASSIGNMENT.
ANY QUESTIONS CALL ME 717-657-6463. THANKS.

To: COFFMAJ1 - Jennifer Coffman Date: 09/24/1996 Time: 03:24PM
cc: WITMERD - Doug Witmer

From: Doug Witmer

Subject:

VEH IS NOT A TOTAL LOSS- I INSPECTED VEH AND TOLD B/S THAT I WOULD
ADVISE TO YOU TO HAVE VEH TAKEN TO A SHOP TO HAVE FRAME REPAIRED SINCE
THEY OBVIOUSLY CAN NOT DO THE JOB WITH THE EQUIPMENT THEY HAVE-THE
REPAIRS ARE APPROX 50% OF ACV NATIONWIDE WILL NEVER RECOVER THE
DIFFERENCE IN SALVAGE VALUE--THANKS DOUG
<...MORE...>

COPY OF EXHIBIT NO. 8 (Page 65 of 70)

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0064

Date Time Creator Assignee Cov Claimant
<...CONTINUED...>

To: WITMERD - Doug Witmer Date: 09/25/1996 Time: 08:59AM
cc: COFFMAJ1 - Jennifer Coffman

From: Jennifer Coffman

Subject:

DOUG, BRRP STANDARDS ANY ESTIMATE OVER \$10,000 NEEDS FIELD ASSIGNMENT.
ANY QUESTIONS CALL ME 717-657-6463. THANKS.

To: COFFMAJ1 - Jennifer Coffman Date: 09/24/1996 Time: 03:24PM
cc: WITMERD - Doug Witmer

From: Doug Witmer

Subject:

VEH IS NOT A TOTAL LOSS- I INSPECTED VEH AND TOLD B/S THAT I WOULD
ADVISE TO YOU TO HAVE VEH TAKEN TO A SHOP TO HAVE FRAME REPAIRED SINCE
THEY OBVIOUSLY CAN NOT DO THE JOB WITH THE EQUIPMENT THEY HAVE-THE
REPAIRS ARE APPROX. 50% OF ACV NATIONWIDE WILL NEVER RECOVER THE
DIFFERENCE IN SALVAGE VALUE--THANKS DOUG

To: WITMERD - Doug Witmer Date: 09/25/1996 Time: 08:59AM
cc: COFFMAJ1 - Jennifer Coffman

From: Jennifer Coffman

Subject:

DOUG, BRRP STANDARDS ANY ESTIMATE OVER \$10,000 NEEDS FIELD ASSIGNMENT.
ANY QUESTIONS CALL ME 717-657-6463. THANKS.

To: COFFMAJ1 - Jennifer Coffman Date: 09/24/1996 Time: 03:24PM
cc: WITMERD - Doug Witmer

From: Doug Witmer

Subject:

VEH IS NOT A TOTAL LOSS- I INSPECTED VEH AND TOLD B/S THAT I WOULD
ADVISE TO YOU TO HAVE VEH TAKEN TO A SHOP TO HAVE FRAME REPAIRED SINCE
THEY OBVIOUSLY CAN NOT DO THE JOB WITH THE EQUIPMENT THEY HAVE-THE
<..MORE..>

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0065

Date Time Creator Assignee Cov Claimant

<... CONTINUED...>

REPAIRS ARE APPROX 50% OF ACV NATIONWIDE. WILL NEVER RECOVER THE
DIFFERENCE IN SALVAGE VALUE--THANKS DOUG

09/23/1996 11:47AM STAMBAL STAMBAL

0120 INVESTIGATION: POLICE RPT - Reviewed PR, No charges against anyone. Ph did stop for stop sign then began to make a left turn onto Alleghenyville Rd. Clmt on Alleghenyville Rd to left of ph struck ph on the l/f. Impact occurred 3'11" from the center lane. clmt contends to traveling 40mph. speed limit on the road is 40mph.

09/16/1996 01:46PM STAMBAL STAMBAL

Rec'd letter from Erie that they will be subrogating once they settle with their insured.

09/16/1996 01:46PM STAMBAL UNASSIGN ***** ERIE INS CO.

PARTY CLMT CARRIER ERIE INS CO. ATTN: KATHLEEN RITCHEY
CL#010170259389 changed from Prev Name ERIE INS CO. CL #010170259389
Prev Addr BLANK Prev City/State/zip BLANK

09/11/1996 03:46PM WITMERD WITMERD

0140 EVALUATION OF DAMAGES: VEHICLE DAMAGE - Berg, Daniel G & Sharon E called b/s they have est of 12k but feel veh should be a total loss since unibody is twisted told wil insp-called ph at home told of assignment

09/11/1996 02:13PM STAMBAL UNASSIGN ***** Unknown

PARTY CLMT CARRIER ERIE INS CO. CL #010170259389 changed from Prev Name Unknown

09/11/1996 02:12PM STAMBAL UNASSIGN PD Unknown

CLAIMANT Shawn<Seifler changed from Prev Name Unknown Unknown
UNKNOWN UNKNOWN

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0066

Date Time Creator Assignee Cov Claimant

09/11/1996 02:11PM STAMBAL STAMBAL

0120 INVESTIGATION: RI SUMMARY - Berg, Daniel G & Sharon E Spoke to Sharon she was SB on Gehard Rd at a stop sign. There is a large barn and bushes on the corner to her left. She checked left then right then left again and saw nothing and started to come out to make a left onto Allgehenyville Rd. As she started out clmt to her left on Alleghenville was approaching very fast. The speed limit is 40MPH and she knows he was going faster than that. Clmt impacted the left front and front side spun ph around 4 times and she hit a pole. police did investigate. No witnesses. Ph did go to hospital to have neck checked out as she had broken her neck back in the early 80's. she is fine is not seeking any other tx. No injury to clmt. Clmt has no passengers. Ph had no passengers.

09/11/1996 12:16PM STAMBAL STAMBAL

DOC sent to: BRECKNOCK TWP POLICE DEPT from LINDA STAMBAUGH (Re:)
Request for Police Report (Comments:) none (Print Instr:) Mail
Check Attachment

09/11/1996 12:13PM STAMBAL STAMBAL PD Unk

Check for \$5.00 payable to BRECKNOCK TWP POLICE DEPT BOX 3286
BERKS CO RD 3 MOHNTON PA 19540 - Mechanical
Check

09/11/1996 12:12PM STAMBAL UNASSIGN

PROVIDER BRECKNOCK TWP POLICE DEPT POLICE added

09/11/1996 12:11PM STAMBAL STAMBAL

Called ph spoke to Mr. He will have his wife call to give stmt. He is not sure of name of street his wife was on.

09/11/1996 09:35AM GRAYV WITMERD COLL Daniel G & Sharon E <Berg

LOSS Reassigned for COLL on Daniel G & Sharon E <Berg from
58LANC-MD

COPY OF EXHIBIT NO. 8 (Page 68 of 70)

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0067

Date Time Creator Assignee Cov Claimant
09/11/1996 09:35AM GRAYV UNASSIGN COLL Daniel G & Sharon E <Berg
LOSS Reassigned for COLL on Daniel G & Sharon E <Berg to WITMERD

09/10/1996 01:50PM COFFMAJ1 COFFMAJ1
SHOP ASKED FOR TEAR DOWN TIME TALKED TO RON GAVE OKAY IF
TOTAL....SHOP WILL FORWARD ESTIMATE AND PHOTOS.

09/10/1996 01:49PM COFFMAJ1 UNASSIGN COLL Daniel G & Sharon E <Berg
LOSS Reassigned for COLL on Daniel G & Sharon E <Berg to 58LANC-MD
- TOTAL LOSS...CAR IS AT LINDGREN....THEY HAVE ESTIMATE.

09/10/1996 01:49PM COFFMAJ1 UNASSIGN COLL Daniel G & Sharon E <Berg
LOSS Reassigned for COLL on Daniel G & Sharon E <Berg from
58HARRBR26LIND - TOTAL LOSS...CAR IS AT LINDGREN....THEY HAVE
ESTIMATE.

09/05/1996 03:18PM STAMBAL STAMBAL
Called PH: Berg, Daniel G & Sharon E No Answer

09/04/1996 02:41PM SHOMPEJ STAMBAL PD Unknown
LOSS Reassigned for PD on Unknown from 58HBGAL

09/04/1996 02:41PM SHOMPEJ UNASSIGN PD Unknown
LOSS Reassigned for PD on Unknown to STAMBAL

09/04/1996 01:17PM OOR UNASSIGN PD UNK
RESERVE HOLD for PD on UNK assigned to 58HBGAL -- 91 Claims Services

Trial Exhibit 9

22. **TERMINATION UPON DEFAULT:** If you terminate this Lease because of my default, you have the right to return the Vehicle to me at any time and I will refund to you any down payment and charges due to me. If you do not return the Vehicle to me, I will retain the Vehicle and I will be responsible for any damage to the Vehicle. You may also be responsible for any damage to the Vehicle if you do not return it to me. If you do not return the Vehicle to me, I will be responsible for any damage to the Vehicle. You may also be responsible for any damage to the Vehicle if you do not return it to me. If you do not return the Vehicle to me, I will be responsible for any damage to the Vehicle. You may also be responsible for any damage to the Vehicle if you do not return it to me.

23. **INSURANCE:** I am required to obtain and maintain the insurance coverage indicated in Paragraph 15 so long as I am in possession of the Vehicle. Such insurance must be in effect before the Vehicle is delivered to me and may not be cancelled until after I return the Vehicle to you. The insurance must be reasonably acceptable to you. The policy must provide you with not less than 10 days' written notice of cancellation or reduction in coverage, for any reason. Collision, Liability and/or Comprehensive insurance must name me as the insured and you as an additional insured and loss-payer on the Collision, Liability and/or Comprehensive insurance policies. At your request I must promptly furnish you with satisfactory evidence that the required insurance coverage is in effect. If the Vehicle is damaged and I file a claim with the insurer, you will pay me any insurance proceeds which you have received if I am not the total loss. I must notify you and the insurance company within 48 hours of any insurable event causing loss. I must cooperate fully with you and the insurance company in providing full, complete and accurate information about the loss. I authorize you to file a claim with the insurer on my behalf and to sign my name to any check or draft representing the proceeds of insurance.

24. **OPERATION OF THE VEHICLE; TICKETS:** I will use the Vehicle only in compliance with law. I will not use or permit the use of the Vehicle as a public ferry, school bus, ambulance or emergency vehicle, or police or private security vehicle. Nor will I use or permit the use of the Vehicle in any racing or demolition contest or stunt driving activity, or to haul gasoline, liquid gas or other combustible substances. I will not tow or recover the Vehicle. I will permit use of the Vehicle only by sale and licensed drivers. I will comply with all laws regarding the reporting of accidents. I will promptly pay any fine or defend any action on a summons issued in connection with this Lease, whether or not I am legally determined to be at fault. If I do not defend an action on a summons and you pay a fine on my behalf because I fail or refuse to do so, you will send the amount you advance to the name I use on this Lease.

25. **REFUNDABLE SECURITY DEPOSIT:** On termination of this Lease, you will apply my Refundable Security Deposit to the same I owe on this Lease and refund any sum remaining. I agree that you need not pay interest on my Refundable Security Deposit and that you may keep it with your general funds.

26. **DELIVERY:** If I request that you provide a Vehicle to me of a certain make, model, color or with certain specified equipment and accessories, you will use your best efforts to find that vehicle and lease it to me. By signing the Delivery Receipt for the Vehicle described on the form, I agree that the Vehicle meets with my satisfaction and I satisfy conditions to my request.

27. **LIABILITY:** If this Lease is signed by more than one of us, each of us shall be liable, separately and together, for the payment and performance of all my obligations under this Lease.

28. **ASSUMPTION OF LIABILITY AND INDEMNITY:** I assume liability for and will indemnify you and the Bank against any claims, damages, penalties, fines or losses which may be brought against you or the Bank in connection with the manufacture, selection or delivery of the Vehicle, or which relate to its ownership, possession, condition, use or operation. This Paragraph will survive termination of the Lease and repossession of the Vehicle.

29. **GARAGING THE VEHICLE:** I must ensure that you will keep the Vehicle out of the place of garaging. I must obtain your written consent if I intend to keep the Vehicle out of the state of my residence for a period greater than 30 days.

30. **EXTENDING THE LEASE:** Subject to the Terms of this Lease, with your consent I may extend this Lease on a month-to-month basis for up to 6 additional months. I must obtain your consent at least 30 days before the Lease is scheduled to end.

31. **PERFORMANCE OF LESSEE'S DUTIES:** I am required by this Lease to do something and don't do it, you may, if you choose, do it for me. I agree to pay your costs or expenses relating to my failure to perform my duties, I will indemnify you from any liability or obligation you may incur in doing (or not doing) anything I am required to do under this Lease.

32. **TITLE:** You are the owner of the Vehicle which will be titled in your name. You will retain the Certificate of Title to the Vehicle. I am leasing the Vehicle and have no rights in the Vehicle other than to possess and use it as provided in this Lease.

33. **DEALER ASSIGNMENT:** Dealer's signature on the front side of this Lease shall also operate to assign Dealer's right, title, and interest in and to the Lease to First Valley Bank, Bethlehem, Pennsylvania.

34. **NO ASSIGNMENT OR SUBLEASE BY LESSEE:** I will not assign any of my rights under this Lease, nor will I sublease the Vehicle, without your written consent.

35. **NO WAIVER:** If you do not exercise any of your rights and remedies at any time, you do not waive the right to do so at a later time.

36. **NOTICES:** Notices may be given personally or by Certified Mail, Return Receipt Requested, or by Mailgram, to the address of the other party as provided in Paragraph 1. Notices shall be deemed given in letter or to Bank when they are personally given or actually received at the address shown in Paragraph 1. Notices shall be deemed given to me when they are personally given or when placed in the mail or with Mailgram, addressed to me at the address shown in Paragraph 1 or, if different, at the address then shown on your records, even though I might not actually receive your mailed notice.

37. **GOVERNING LAW:** I agree that the laws of the State of Pennsylvania shall govern this Lease and its obligations.

38. **ENTIRE AGREEMENT:** This Lease is the entire agreement between me and you. Any provision of this Lease is hereby incorporated by reference into this Lease. I may incur additional rental costs subsequent to executing this Lease if the manufacturer's factory price of the Vehicle is increased prior to delivery of the Vehicle to me, and accordingly, my monthly payments will be increased by an amount equal to the amount of such increase, plus any other costs incurred hereby, divided by the number of months specified in the Lease term.

39. **OPTION TO PURCHASE:** Upon my exercise of the purchase option and your receipt of all amounts payable, I understand that you shall transfer title to the Vehicle to me, without penalty, expressed or implied, of its merchantability or its fitness for a particular purpose or its other value in respect to the Vehicle. I AGREE, KNOWLEDGE AND UNDERSTAND THAT THIS LEASE IS A TRUE LEASE AND THAT I WILL HAVE NO EQUITY OR OTHER OWNERSHIP RIGHTS IN THE VEHICLE AND ANY AND ALL REPLACEMENTS, PARTS OR ADDITIONS TO THE VEHICLE, UNLESS I PURCHASE THE VEHICLE BY EXERCISING THE PURCHASE OPTION PROVIDED IN PARAGRAPH 16 OF THIS LEASE.

SUMMARY OF LESSEE'S RESPONSIBILITIES:

- (1) I will pay a charge for mileage in excess of the Contract.
- (2) I will pay of registration fees and taxes.
- (3) I will maintain the stipulated insurance coverage.
- (4) I will return the Vehicle in the designated condition.
- (5) I will maintain the Vehicle.
- (6) I am not obligated to purchase the Vehicle but may choose to do so.
- (7) My Security Deposit does not take the place of my monthly payment obligations over the entire term.
- (8) If this Lease is terminated early, I will pay all charges stated in this Contract.

GUARANTEE: Lending to or equity based, the undersigned (if more than one, jointly and severally) guarantee the performance of the obligations of the lessee under this Lease in the amount of \$10,000.00. This guarantee shall be in full satisfaction of any claim against the undersigned for the full amount due including attorney's fees, and liability without payment, demand, present, future or contingent, and shall be a condition precedent to the recovery of any amount due to the lender. The undersigned agree to hold the lender harmless from any and all claims, damages, penalties, fines or losses which may be brought against the lender or its agents, employees or representatives in connection with the making, servicing or collection of this loan. This agreement shall be binding on the undersigned and their heirs, assigns and personal representatives.

Guarantee
Guarantee

Trial Exhibit 10

The following stipulation has been entered, with regard to the following Nationwide employees:

The testimony of Jedd Gooderham and Tim Ball would be consistent with the testimony of Kathleen Holby in this matter. Their testimony would be different from their testimony during the B. Bronberger trial with regard to the Best Claims Practices Manual.

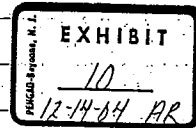
These individuals will not be called by Plaintiff's case

[Signature]
Coryl CATHEN

[Signature]
Ben Maxerson

No objection

[Signature]
Kathleen G. Myers
Attorney for Defendant



Trial Exhibit 11

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

THE MAYERSON LAW OFFICES, P.C.

ATTORNEYS
HY MAYERSON
MARGARET R. CONNORS
BENJAMIN J. MAYERSON
MICHAEL G. MOYER*

* also member of New Jersey bar

123 WEST MAIN STREET
TRAPPE, PA. 19426
TEL (610) 489 - 2800
FAX (610) 489 - 2366

OFFICES ALSO AT
SPRING CITY, PA 19475

BUSINESS MANAGER
MARK DEZURA
1ST PARTY/MEDICAL PARALEGAL
JANICE SUZINA

April 22, 1998

VIA: FAX & FIRST CLASS MAIL

Ron Stitzel, Manager
Blue Ribbon Direct Repair Shops - PA
Nationwide Insurance
241 Rohrerstown Rd
Lancaster, PA 17603

Re: My clients: Daniel & Sharon Berg
Your insured: Daniel & Sharon Berg
Claim No: 5837C137421 09041996 01
D/A: 09/04/96

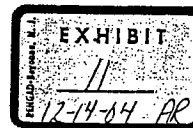
Dear Mr. Stitzel:

As you are aware, I represent the Berg family for fraudulent and/or grossly negligent repair work done to their Jeep Cherokee at Lindgren Chrysler Plymouth. As you are also aware, the Berg family were directed to Lindgren Chrysler Plymouth by Nationwide via Nationwide's Blue Ribbon Repair Program.

On April 14, 1998, depositions of Lindgren Chrysler Plymouth's body shop manager and general manager were conducted pursuant to a Writ of Summons and Court Order. The purpose of the depositions were to determine whether Nationwide is an appropriate defendant in this action.

Lindgren has issued a Rule to File Complaint which requires the Bergs to file a complaint within twenty days of the depositions. This period expires on May 44, 1998.

We have retained an expert who has indicated that the vehicle is no longer crash worthy. Lindgren had the vehicle examined by an independent expert through Crawford and Company. I suggest Nationwide also have the vehicle inspected as soon as possible by an independent expert for purposes of litigation if we are otherwise unable to resolve this matter.



COPY OF EXHIBIT NO. 11 (Page 1 of 2)

Ron Stitzel
Nationwide Insurance
April 22, 1998
Page 2.

The vehicle is a leased vehicle and requires a \$100,000/\$300,000 liability policy of insurance pursuant to the terms of the lease. The Berg family has been forced to purchase a new vehicle to ensure their safety. The Berg family cannot afford to pay the lease payments and liability insurance on the Cherokee and their new vehicle.

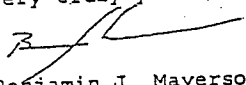
As a result, the Berg family is going to sell the Cherokee. Please allow this letter to serve as a formal notice that this vehicle is going to be disposed of in the next six weeks. If you need more time to retain an appropriate expert please advise.

Please also advise if Nationwide will purchase the vehicle from the Berg family. If Nationwide will not purchase the vehicle then please advise what Nationwide will do pursuant to the terms, conditions and warranties of its Blue Ribbon Repair Program, its policy of insurance with the Berg family.

A complaint must be filed by May 4, 1998. The Bergs must sell the Cherokee due to financial constraints. Time is of the essence.

Please advise at your earliest opportunity. Enclosed are copies of the relevant pleadings.

Very truly yours,


Benjamin J. Mayerson

BJM/bs

Enclosures with hard copy

cc: Kenneth C. Myers, Esquire, counsel for Lindgren

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

COPY OF EXHIBIT NO. 11 (Page 2 of 2)

1245

R. 1883a

Trial Exhibit 13

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
 Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
 Claimant: Berg, Daniel G & Sharon E Time: 14:18:10
 Requester: David Cole Page # 0004

 Date Time Creator Assignee Cov Claimant
 <...CONTINUED...>
 The Attorney for Lindgren Chrysler is Fredrick McGavin and Kenneth Myers. Phone # 610-376-9742.

05/04/1998 11:04AM BASHORB SUSEMIP

0200 ADVISORY COMMENTS: CTC - Berg, Daniel G & Sharon E rec'd papers from ph's atty. Ph filed a civil action in Berks Co. against Lendgren Chrysler which is a Blue Ribbon Shop and Nationwide. Gave all paper work to Leah in legal at 10 am today.

Date: 04/30/1998 Time: 08:02AM

To: CARLSOB - Bev Carlson
 To: BASHORB - Bruce Bashore
 cc: POTOSNS - STEPHEN J. POTOSNAK

From: STEPHEN J. POTOSNAK

Subject: BERG JEEP

FYI, SEE LOG. BRUCE, I HAVE NOT HEARD BACK FROM SHOP AS OF THIS AM. STEVE.

Date: 04/30/1998 Time: 08:01AM

To: BASHORB - Bruce Bashore
 cc: POTOSNS - STEPHEN J. POTOSNAK

From: STEPHEN J. POTOSNAK

Subject:



NW 47

COPY OF EXHIBIT NO. 13 (Page 1 of 2)

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
aim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
Requester: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0005

Date Time Creator Assignee Cov Claimant

07/23/1998 09:11AM CARLSOB UNASSIGN
0614 COMPLAINTRECV'D FAX FROM DOUG WITMER FROM THE MAYERSON LAW OFFICES,PC.....THE LETTER WAS ADDRESSED TO RON STITZEL.....I FAXED THE LETTER TO RON....ALSO CALLED HIM AND LEFT A VOICE MAIL MESSAGE.....

03/12/1998 10:10AM CARLSOB BLACKA1
DOC sent to: unknown from BEV CARLSON (Re:) Free Form (AUTO & RENTAL PAYMENT) (Comments:) none (Print Instr:) Mail

To: STITZER - Ronald Stitzel Date: 03/12/1998 Time: 09:48AM
cc: CARLSOB - Bev Carlson
From: Bev Carlson
Subject: COMPLAINT
RON, SENT LETTER.....BEV

03/12/1998 09:37AM CARLSOB BLACKA1
DOC sent to: unknown from BEV CARLSON (Re:) Free Form (not used yet) (Comments:) none (Print Instr:) Mail

<..MORE..>

NW 48

Trial Exhibit 14

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0004

Date Time Creator Assignee Coy Claimant
<...CONTINUED...>
The Attorney for Lindgren Chrysler is Fredrick McGavin and Kenneth Myers. Phone # 610-376-9742.

05/04/1998 11:04AM BASHORB SUSEMIP

0200 ADVISORY COMMENTS: CTC - Berg, Daniel G & Sharon E rec'd papers from ph's atty. Ph filed a civil action in Berks Co. against Lendgren Chrysler which is a Blue Ribbon Shop and Nationwide. Gave all paper work to Leah in legal at 10 am today.

To: CARLSOB - Bev Carlson Date: 04/30/1998 Time: 08:02AM
To: BASHORB - Bruce Bashore
cc: POTOSNS - STEPHEN J. POTOSNAK

From: STEPHEN J. POTOSNAK

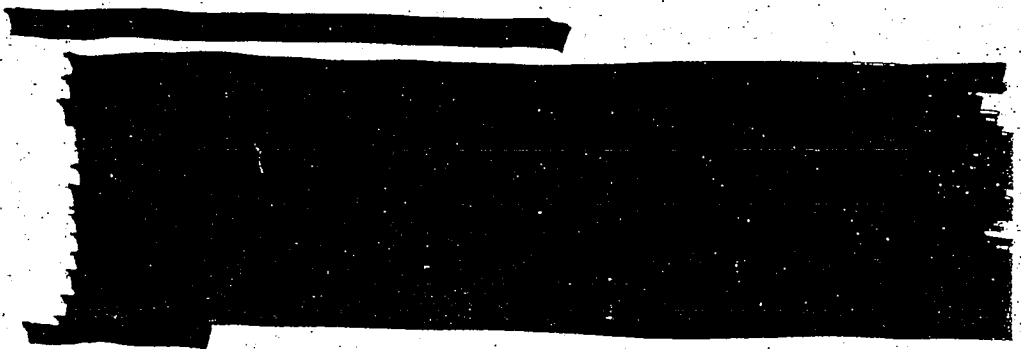
Subject: BERG JEEP

FYI, SEE LOG. BRUCE, I HAVE NOT HEARD BACK FROM SHOP AS OF THIS AM. STEVE.

To: BASHORB - Bruce Bashore Date: 04/30/1998 Time: 08:01AM
cc: POTOSNS - STEPHEN J. POTOSNAK

From: STEPHEN J. POTOSNAK

Subject:



COPY OF EXHIBIT NO. 14 (Page 1 of 2)

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0005

Date Time Creator Assignee Cov Claimant

[REDACTED]

[REDACTED]

[REDACTED]

04/23/1998 09:11AM CARLSOB UNASSIGN

0614 COMPLAINTRECVD FAX FROM DOUG WITMER FROM THE MAYERSON LAW OFFICES, PC.....THE LETTER WAS ADDRESSED TO RON STITZEL.....I FAXED THE LETTER TO RON....ALSO CALLED HIM AND LEFT A VOICE MAIL MESSAGE.....

03/12/1998 10:10AM CARLSOB BLACKA1

DOC sent to: unknown from BEV CARLSON (Re:) Free Form (AUTO & RENTAL PAYMENT) (Comments:) none (Print Instr:) Mail

To: STITZER - Ronald Stitzel Date: 03/12/1998 Time: 09:48AM
cc: CARLSOB - Bev Carlson

From: Bev Carlson

Subject: COMPLAINT

RON, SENT LETTER.....BEV

03/12/1998 09:37AM CARLSOB BLACKA1

DOC sent to: unknown from BEV CARLSON (Re:) Free Form (not used yet) (Comments:) none (Print Instr:) Mail

<...MORE...>

COPY OF EXHIBIT NO. 14 (Page 2 of 2)

Trial Exhibit 15

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA



1000 NATIONWIDE DR PO BOX 2655 HARRISBURG PA 17105

May 19, 1998

The Mayerson Law Offices, P.C.
Benjamin Mayerson
123 West Main Street
Trappe, PA 19426

OUR INSURED : Daniel G & Sharon E Berg
OUR CLAIM NUMBER : 58 37 C 137421 09-04-1996 01
DATE OF ACCIDENT : 09-04-1996

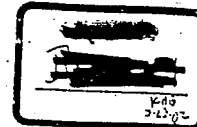
Dear Mr. Mayerson:

As per our telephone conversation on May 12, 1998, Nationwide Insurance would like the opportunity to have an independent expert inspect the Berg's Jeep Cherokee. I have contacted Automotive Legal Services and they will be contacting the Bergs to set up an inspection within the next two weeks.

If the independent expert finds any problems with the repairs that resulted from the above listed accident, Nationwide Insurance will have these problems corrected at a shop of the Berg's choice. If the vehicle cannot be repaired to pre-accident condition Nationwide with purchase the vehicle from the Bergs.

NATIONWIDE MUTUAL INSURANCE COMPANY
BRUCE BASHORE
Claims Department
717-657-6712

cc: Kenneth Myers, Esquire Counsel for Lindgren



Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime and subjects such a person to criminal and civil penalties.

130 - 000702 - 01

COPY OF EXHIBIT NO. 15

1253

R. 1891a

Trial Exhibit 16

EXHIBIT
 116
 12-15-84 AR

K/C AUTO BODY SHOP



4800 PHILA. PIKE
 READING, PA. 19606
 PHONE: 779-1605

NAME: Lundgren Body Shop DATE: 10/15/96 A.M. / P.M.
 ADDRESS: _____ PHONE: _____ Yes No
 WRITTEN BY: Love PERSON: _____ A.M. / P.M.

ITEM No.	INSTRUCTIONS	LABOR
	Set top	2.0
	R&R to patch	1.0
	pull rails and upper body. Invt and lift roof down pull and jack to align.	8.0
	11.0 hrs @ \$30.00	330.00
	Pt # 213902	
	to 28842	
	BERG	

Vendor No. 337
 Acct. No. 213902
 Rec. No. _____

IF RESPONSIBLE FOR LOSS OR DAMAGE TO US OR ARTICLES LEFT IN CARES IN CASE OF THEFT OR ANY OTHER CAUSE BEYOND OUR CONTROL.

we authorize the above repair work to be done along with the necessary material, and we grant you and/or your employees permission to operate the car, truck or vehicle here described on streets, highways or elsewhere for the purpose of testing and/or inspection. An auto mechanic's fee is hereby acknowledged above car, truck or vehicle to insure the sum of repairs thereto.

INTERNAL SUMMARY		
CHARGE	CASH	
		TOTAL LABOR
		TOTAL PARTS
		OUTSIDE REPAIRS
		ACCESSORIES
		INSPECTION FEE
		TAX
		TOTAL

Address: Lundgren
 To: Lundgren
 Please enter our order for the following:
 QUANTITY: _____ DESCRIPTION: _____ PRICE: _____ AMOUNT: _____
 Ship Via: _____
 One 10.1 19 96
 YOUR TRUCK MUST SHOW OUR PURCHASE ORDER NUMBER
 No 028185

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

COPY OF EXHIBIT NO. 16

Trial Exhibit 18

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

EXHIBIT
tabbies
Rouss-2
MLK 6/19/03

BOX 2655 • HARRISBURG, PENNSYLVANIA 17105
HOME OFFICE: COLUMBUS, OHIO



October 2, 1992

Herb Motor's
25 W. Penn Street
Wernsville, Pa. 17565
Attention: Danny Rouss

You have been chosen to be on Nationwide Insurance Company's Direct Repair Program. We would like to thank you for your participation and look forward to doing business with you. Attached you will find some guidelines that will need to be followed. I will be in touch with you in the near future to discuss this program.

Thank you for your consideration.

Sincerely,

Jack Mengel
Jack Mengel,
District Claims Manager
Nationwide Insurance Company
805 Estelle Drive
Suite # 104
Lancaster, Pa. 17601
(717) 898-5061

EXHIBIT
18
12-15-04 AK

NATIONWIDE MUTUAL INSURANCE COMPANY
NATIONWIDE MUTUAL FIRE INSURANCE COMPANY
NATIONWIDE LIFE INSURANCE COMPANY
NATIONWIDE GENERAL INSURANCE COMPANY

COPY OF EXHIBIT NO. 18 (Page 1 of 5)

~~Original~~
~~Agreement~~

**NATIONWIDE'S
MATERIAL DAMAGE
STANDARDS**

* 1st - 10 Days
of Storage or
Total loss will
be free.

COPY OF EXHIBIT NO. 18 (Page 2 of 5)

BLUE RIBBON REPAIR STANDARDS

Used Parts

Used parts will be sought on all vehicles except current year or vehicles with under 15,000 miles. If used parts are not available, aftermarket parts availability should be explored.

Exchange or Aftermarket Bumpers

Exchange or aftermarket bumpers, rubber covers, shocks or reinforcements shocks will be sought on all vehicles except current year or vehicles with under 15,000 miles. Cost differences between exchange, aftermarket and discounted parts must be carefully weighed.

Aftermarket Parts

When used parts are not available, an effort must be made to locate aftermarket parts to affect the most economical repair. The vehicle owner should be notified of our decision to utilize aftermarket parts to repair their vehicle. In those states requiring disclosure, the body shop should ensure that the disclosure meets the specifications outlined in the regulation.

Overlap and Included

All flat rate and parts prices will be carefully checked. Overlap and included operations should be properly removed.

Wheel Alignment

Wheel alignment should be considered only when the frame, wheel or other integral parts of the suspension have received damage; or the impact was such that an alignment was warranted.

Repair vs. Replacement

Items which are safely and economically repairable and acceptable in appearance should be repaired.

Repair Time

Repair time should be correctly estimated.

Paint Labor and Material

The body shop will note, in the paint column of the estimate, the flat rate for each panel to be painted. They will also note reductions for overlap and spot painting. Block or segment estimating of painting is encouraged and should be utilized when applicable.

Frame and Unibody

All frame damage will be checked and illustrated on the estimate. Labor time should be calculated and shown in hours rather than a whole dollar amount.

Blue Ribbon Direct Repair Service Program

This document is a record made solely for the internal use of Nationwide Insurance Company. It is not for distribution outside of the company, except that a copy may be given to a shop that has completed a survey form and is participating in the program.

PROCEDURES

The following procedures are to be adhered to:

Nationwide Claims Personnel will be authorized to make direct referrals to selected repair shops in accordance with claimshandling guidelines. Nationwide Claims Personnel will offer the BRS (Blue Ribbon Service) to maximize customer service, in addition to our drive-in-claim service and field inspections.

Priority service will be given by the B.R. facility to vehicles being repaired under our program. Service and communication to the vehicle owner must be of the highest level. Work progress and delays must be communicated to the vehicle owner and Nationwide whenever current volume prevents a high degree of service. The shop will immediately advise the Nationwide representative.

A control log will be maintained by the shop for all vehicles referred under this program. The control log will be furnished by Nationwide. The log must be available for examination by a Nationwide representative at all times.

The shop will immediately pick up non-driveable vehicles and pay any towing, storage, and accident-related charges. These charges are to be included in the estimate. A copy of these paid bills will be sent along with the estimate to the Nationwide representative.

An estimate is to be prepared the same day that the vehicle arrives at the shop. After the vehicle is inspected, the shop will prepare an itemized estimate including only the damage which is visible and verifiable at the time of the initial inspection. Upon completion, the estimate will be sent via FAX to the Nationwide representative. If a teardown is necessary to complete a proper estimate, the shop will immediately notify the Nationwide representative. In the event that the vehicle is deemed a total loss, the shop is to immediately notify the Nationwide representative so that proper action can be taken.

COPY OF EXHIBIT NO. 18 (Page 4 of 5)

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

Blue Ribbon Repair Service Program (Page 2)

A copy of the repair estimate is to be mailed to a Nationwide representative along with a minimum of two (2) photos showing the damaged and undamaged portions of the vehicle. The repairs may begin immediately after the vehicle owner authorizes repairs, and Nationwide has advised the shop that there is no coverage question.

A copy of the estimate of repairs will be provided for the vehicle owner. Nationwide will issue a joint check payable to the vehicle owner and the shop, less any applicable deductible and/or depreciation. The check will be mailed to the shop.

Prior damage will not be included as an item for repair on the estimate. However, notation of prior damage will be made on the estimate.

Damage to exhaust systems, vinyl roofs, convertible tops, batteries, mechanical parts, and tires will be reported to the Nationwide representative immediately for the purpose of depreciation charges, if any. Tires will be billed out at dealers's cost.

Cosmetic damage is not to be included on the estimate. The shop will contact the Nationwide representative with the information to make an adjustment with the vehicle owner.

Hidden damage will be handled in the same manner as the original estimate. Additional photos will be required. Vehicles with extensive damage must have the engine and transmission checked to determine if these items are damaged or not prior to proceeding with repairs.

In the event that a rental vehicle is required, arrangements will be made to have the rental delivered to the shop. An approved rental agency should be used. Rental costs should be controlled.

A Nationwide representative will be allowed during normal working hours to periodically spot-check estimates and vehicles that are under repair or completed. All invoices pertinent to the vehicle being repaired must be made available. The loss may be readjusted and credits issued to Nationwide and/or the shop. These credits will be recorded on the shop log sheet.

The shop shall maintain and use the equipment described in the Nationwide Survey. New or updated equipment will be reported to a Nationwide representative.

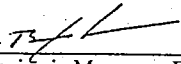
Shop personnel will be I-CAR trained, ASE certified and/or participate in an ongoing training program. Nationwide is to be advised of any and all programs shop personnel participate in. Any changes in body shop management shall be reported to Nationwide immediately.

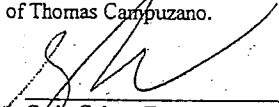
Upon completion of repairs, all vehicles will be cleaned and available for inspection and/or road test (as warranted), prior to requesting endorsement of check or any payment.

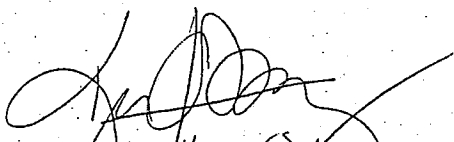
Trial Exhibit 21

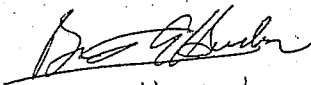
STIPULATION

Defendant Nationwide Mutual Insurance Company and Plaintiffs Berg hereby stipulate that Plaintiffs will not offer the Pennsylvania Best Claim Practices Manual and the attached Pennro Litigation Strategy (the "Manual") into evidence, nor will they quote from, read from or otherwise reference any information from the manual during closing that was not testified to by witnesses during this trial. Defendant Nationwide agrees not to call additional witnesses to rebut the testimony of Thomas Campuzano.


Benjamin Mayerson, Esq.
Counsel for Plaintiffs


Craig Cohen, Esq.
Counsel for Nationwide


Ken Myers
Counsel for Ludwig


Brett Huckabee
Counsel for KC Auto



COPY OF EXHIBIT NO. 21

Trial Exhibit 26



241 ROHRERSTOWN RD * LANCASTER PA 17603 *

December 2, 1997

Daniel G & Sharon E Berg
RD 3658
MOHNTON PA 19540-9804

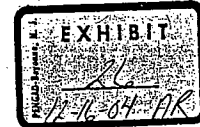
OUR INSURED : Daniel G & Sharon E Berg
OUR CLAIM NUMBER : 68 37 C 137421 09-04-1996 01
DATE OF ACCIDENT : 09-04-1996

DEAR BEV,
THIS LETTER IS FOR THE PURPOSE OF A COVER LETTER. THE FIRST 6 PAGES INCLUDING THIS LETTER ARE THE ORIGINAL SENT ON 11/3. THE FOLLOWING PAGES ARE THE ESTIMATE AND THE FOLLOW UP LETTER I RECEIVED FROM THE LAWYER AT THE LANCASTER FSO

NATIONWIDE MUTUAL INSURANCE COMPANY
DOUG WITMER
Claims Department
717-399-5676

*16 PAGES
ATTN BEV
INLL THIS ONE!
CARLSON
THANKS*

Doug Witmer
Claims Representative
Naticwide Insurance
241 Rohrerstown Road
Lancaster, PA 17603
Phone: (717) 399-5676



Any person who knowingly and with intent to defraud any insurance company or other person files an

applying the

NW 125

717 399 5679971 PAGE 001

COPY OF EXHIBIT NO. 26 (Page 1 of 16)

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

241 Rohrerstown Road
Lancaster, PA 17603
Phone (717) _____
Fax (717) 399-5679



FACSIMILE COVER

Please Deliver the following to:

Name: BEV CARLSON
(PH) (65) - CRRS

From: DOUG WITMER
Date: 11/3 Time: 145

Comments: _____

We are transmitting 3 pages (including this cover).

NW 184
NATIONWIDE MUTUAL INSURANCE COMPANY
NATIONWIDE MUTUAL FIRE INSURANCE COMPANY
NATIONWIDE LIFE INSURANCE COMPANY
NATIONWIDE GENERAL INSURANCE COMPANY

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

THE MAYERSON LAW OFFICES, P.C.

ATTORNEYS
HY MAYERSON
MARGARET R. CONNORS
ERIC BUSCH*
BENJAMIN J. MAYERSON
MICHAEL G. MOYER*

123 WEST MAIN STREET
TRAPPE, PA. 19426
TEL (610) 489-2100
FAX (610) 489-2166

BUSINESS MANAGER
KARLA BEZURA
1ST PARTY / MEDICAL PARALEGAL
JANICE IUDINA

OFFICES ALSO AT
SPRING CITY, PA 19475

* the number of the lawyer bar

FAX TRANSMITTAL MEMO

DATE/TIME OF:

TRANSMITTED TO: Doug Witmer

FROM: Ben Mayerson

RE: Berg's Jeep Cherokee

FAX NUMBER:

This transmission consists of a total of _____ pages which include cover sheet. Original to be mailed? YES NO

If you do not receive these pages, you may:

1. Call our office at the telephone number listed above, or
2. Transmit you query through our telefax number.

CONFIDENTIALITY NOTICE:

This information contained in the telecommunications message is privileged and confidential, and intended only for the use of the individual (s) and/or entity (ies) named above. If you are not the intended recipient, you are hereby notified that any unauthorized disclosure, copying, distribution or taking of any action in reliance on the contents of the telecopied materials is strictly prohibited and review by any individual other than the intended recipient shall not constitute waiver of the attorney/client privilege. If you have received this transmission in error, please immediately notify us by telephone (610-489-2800) to arrange for return of the materials. Thank you.

Comment:

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

DEC 02 1997 15:54

DEC -02 '97(TUE) 15:48 NATIONWIDE INSURANCE

717 390 5679971

P. 004

NOV 03 '97 10:44AM MAYERSON LAW TRAPPE

P.2/2

THE MAYERSON LAW OFFICES, P.C.

ATTORNEYS
RY MAYERSON
MARGARET R. CONNORS
ERIC BUSCH*
BENJAMIN J. MAYERSON
MICHAEL G. MOYER*

121 WEST MAIN STREET
TRAPPE, PA. 19426
TEL (610) 489-2400
FAX (610) 449-2366

OFFICES ALSO AT
SPRING CITY, PA 19475

BUSINESS MANAGER
KARLE DEZURKA
1ST PARTY/MEDICAL PARALEGAL
JANICE SUZINA

November 3, 1997

VIA: FAX ONLY

Doug Witmer
Nationwide Insurance Company

Re: Berg v. Lindgren

Dear Mr. Witmer:

Please be advised that this office represents Daniel Berg in regard to a claim being presented against Lindgren Chrysler-Plymouth arising out of faulty repair work done at their facility.

It is my understanding that you are Mr. Berg's first party property damage adjuster for the claim arising out of this automobile accident.


Please direct all future communications regarding this claim through my office. Please do not contact Lindgren Chrysler-Plymouth as your communications may have an impact on Mr. Berg's pending litigation against Lindgren. If Lindgren contacts you please direct them to my office and/or forward their correspondence to my office for further handling.

Please forward me a copy of your file including all maintenance records, bills, receipts, estimates and notes or correspondence between you and Lindgren Chrysler-Plymouth as it relates to this claim.

I am preparing a complaint to be filed against Lindgren and the Chrysler Corporation. I have retained an expert to examine the vehicle. If Nationwide requires an opportunity to examine the vehicle please advise.

Please call me so we might discuss this matter further..

Very truly yours,



Ben Mayerson

BJM/bs

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

COPY OF EXHIBIT NO. 26 (Page 4 of 16)

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

Payee Name	Amount	Date	Check #	Issuer	Stop Pay
L. MOGREN CHRYSLER PL	11,975.56	04-14-1997	58-104811	Ronald Stille	
READING HOSPITAL & M	126.57	03-10-1997	58-168856	Kate Binek	
Shane Seisler	600.94	08-15-1996	58-130172	Barb Noce	
Shane Seisler	43.23	08-15-1996	58-130153	Barb Noce	
ERIE INSURANCE EXCHA	12,731.02	10-14-1996	58-132246	Barb Noce	
ENTERPRISE REAL ESTATE	740.08	10-07-1996	58-125454	Doug Winer	
BRECKNOCK TWP POLICE	5.00	09-11-1996	58-103001	Linda Stambaugh	

Check # 104811 through 104811

104811

104811

DEC. -02' 97(TUE) 15:49 NATIONWIDE INSURANCE

TEL: 717 399 6679971

P. 006

NOV. -03' 97(MON) 13:44 NATIONWIDE INSURANCE

TEL: 717 399 6679971

P. 001

CONFIRMATION REPORT

TRANSMISSION
TRANSACTION(S) COMPLETED

NO.	DATE/TIME	DESTINATION	DURATION	PGS	STATUS	MODE
749	NOV. 3 13:42		717 637 6835 0' 00' 49"	003	OK	N ECM

241 Rohrerstown Road
Lancaster, PA 17603
Phone (717) _____
Fax (717) 399-6679



FACSIMILE COVER

Please Deliver the following to:

Name:

BEV CARLSON
(DA) (65) - CERTS

From:

DOUG WITMEYER

Date:

11/3

Time:

145

Comments:

NW 127

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

COPY OF EXHIBIT NO. 26 (Page 6 of 16)

DAMAGE REPORT
09/20/96 at 09:36
23 133 1742

BERG
D.R. 18273-0004602
Est: D. JOFFRED

LINDGREN CHRYSLER-PLYMOUTH INC.

1600 LANCASTER AVE.
READING, PA 19607-
(610) 775-0311

Owner: DANIEL BERG
Address: RD 3658
MOHNTON PA 19540

Day Phone: (610) 856-7095-
Other Ph: ()
Deductible: \$ 500.00

Insurance Co.: NATIONWIDE INSURANCE COMPANY Phone: 717-657-6463
Claim No.: 5837C137421090496010/B11 Adj.: JENNIFER COFFMAN

96 JEEP GRAND CHEROKEE 4X4 LAREDO 4D UTV CHARGOLD 8-5.2L-FI
Vin: 1J4GZ58Y7TC227842 License: BAJ5964 PA Prod Date: 12/95 Odometer: 13059

Power steering	Power brakes	Power windows
Power locks	Power mirrors	Tinted glass
Dual mirrors	Air conditioning	Rear defogger
Tilt wheel	Cruise control	Keyless entry
Rear window wiper	Anti-lock brakes (4)	Driver airbag
Passenger airbag	4 wheel disc brakes	Luggage/roof rack
Cloth seats	Bucket seats	Recline/lounge seats
Aluminum wheels	Clear coat paint	Metallic paint

NO.	OP.	DESCRIPTION OF DAMAGE	QTY	PART COST	LABOR	PAINT	MISC
1		FRONT BUMPER					
2	Repl	Bumper cover w/fog lamp	1	270.00	Incl	2.4	
3		Add for Clear Coat	1	0.00	0.0	1.0	
4	Repl	Bumper cover bracket	1	8.70	0.0	0.0	
5	Repl	Bumper cover retainer	1	0.85	0.0	0.0	
6	Repl	Bumper cover stud plate	1	28.25	0.0	0.0	
7	Repl	RT Bumper cover side bracket	1	15.25	0.0	0.0	
8	Repl	LT Bumper cover side bracket	1	13.50	0.0	0.0	
9	Repl	Absorber	1	46.75	1.2	0.0	
10	Repl	License bracket	1	14.75	0.3	0.0	
11		FRONT PANELS					
12	Repl	Grille bright	1	140.00	Incl	0.0	
13	Repl	Grille bracket	1	3.35	0.0	0.0	
14	Repl	Hdr.pnl w/o hdlamp lvng	1	86.50	3.5	0.0	
15		FRONT LAMPS					
16	Repl	Aim headlamps	1	0.00	0.5	0.0	
17	Repl	RT Headlamp assy	1	87.50	Incl	0.0	
18	Repl	LT Headlamp assy	1	87.50	Incl	0.0	
19	Repl	RT Gear pinion adjusting	1	0.95	Incl	0.0	
20	Repl	LT Gear pinion adjusting	1	0.95	Incl	0.0	

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

DAMAGE REPORT
03/20/96 at 09:36
23 133 1742

BERG
D.R. 18273-0004602
Est: D. JOFFRED

LINDGREN CHRYSLER-PLYMOUTH INC.

1600 LANCASTER AVE.
READING, PA 19607-
(610) 775-0311

NO.	OP.	DESCRIPTION OF DAMAGE	QTY	PART			MISC
				COST	LABOR	PAINT	
21	Repl	RT Gear horizontal adjusting	1	1.35	Incl	0.0	
22	Repl	LT Gear horizontal adjusting	1	1.35	Incl	0.0	
23	Repl	RT Gear vertical adjusting	1	1.35	Incl	0.0	
24	Repl	LT Gear vertical adjusting	1	1.35	Incl	0.0	
25	Repl	RT Gear vertical drive gear	1	0.95	Incl	0.0	
26	Repl	LT Gear vertical drive gear	1	0.95	Incl	0.0	
27	Repl	RT Adjust screw horizontal	1	3.95	Incl	0.0	
28	Repl	LT Adjust screw horizontal	1	3.95	Incl	0.0	
29	Repl	RT Adjust screw pivot	1	3.10	Incl	0.0	
30	Repl	LT Adjust screw pivot	1	3.10	Incl	0.0	
31	Repl	RT Adjust screw vertical	1	3.95	Incl	0.0	
32	Repl	LT Adjust screw vertical	1	3.95	Incl	0.0	
33	Repl	RT Drive gear retainer	1	1.00	0.0	0.0	
34	Repl	LT Drive gear retainer	1	1.00	0.0	0.0	
35	Repl	RT Bulb	1	11.00	Incl	0.0	
36	Repl	LT Bulb	1	11.00	Incl	0.0	
37	Repl	RT Lock ring	1	1.25	0.0	0.0	
38	Repl	LT Lock ring	1	1.25	0.0	0.0	
39	Repl	RT Lock ring seal	1	5.10	0.0	0.0	
40	Repl	LT Lock ring seal	1	5.10	0.0	0.0	
41	Repl	LT Turn signal lamp	1	27.50	Incl	0.0	
42	Repl	LT Bulb	1	4.50	0.0	0.0	
43	Repl	LT Side marker lamp	1	25.50	Incl	0.0	
44	Repl	LT Bulb amber	1	0.95	0.0	0.0	
45	Repl	LT Welt	1	5.85	0.0	0.0	
46	Repl	LT Fog lamp assy	1	75.50	Incl	0.0	
47	Repl	LT Fog lamp assy bracket	1	81.50	0.0	0.0	
48	Repl	LT Bulb	1	12.50	0.3	0.0	
49	Repl	LT Bulb wiring	1	13.25	0.0	0.0	
50		COOLING					
51		Rpl Radiator Supt Assy	1	0.00	7.5	0.0	
52*	Repl	Tie bar	1	39.75	Incl	0.0	
53	Repl	Tie bar brace	1	6.25	0.0	0.0	
54*	Repl	RT Side panel	1	41.75	Incl	0.5	
55*	Repl	LT Side panel	1	41.75	Incl	0.5	
56		Overlap Minor Panel	1	0.00	0.0	-0.2	
57	Repl	RT Side panel bracket	1	8.00	0.0	0.0	
58	Repl	LT Side panel bracket	1	8.00	0.0	0.0	
59	Repl	Lower support	1	46.75	Incl	0.0	

Page: 2

COPY OF EXHIBIT NO. 26 (Page 8 of 16)

DAMAGE REPORT
09/20/96 at 09:36
23 133 1742

BERG
D.R. 18273-0004602
Est: D. JOFFRED

LINDGREN CHRYSLER-PLYMOUTH INC.

1600 LANCASTER AVE.
READING, PA 19607-
(610) 775-0311

NO.	OP.	DESCRIPTION OF DAMAGE	QTY	PART COST	LABOR	PAINT	MISC
60	Repl	Air deflector	1	11.00	Incl	0.0	
61*	Repl	Lower c'member	1	57.00	Incl	0.5	
62		Overlap Minor Panel	1	0.00	0.0	-0.2	
63*	Repl	Rdtr sl t uppr x-membr sd	2	6.20	0.0	0.0	
64	Repl	Rdtr sl t uppr x-membr cntr	1	6.20	0.0	0.0	
65	Repl	RT Radiator seal to radiator s	1	2.35	0.0	0.0	
66	Repl	LT Radiator seal to radiator s	1	4.20	0.0	0.0	
67*	Repl	Radiator	1	280.00	Incl	0.0	
68	Repl	Radiator insulator lower	1	2.35	0.0	0.0	
69*	Repl	Fan blade	1	42.50	0.7	0.0	
70*	Repl	Clutch w/o max cooling	1	145.00	0.9	0.0	
71	Repl	Shroud	1	41.25	Incl	0.0	
72	Repl	Shroud hole cover	1	27.25	0.0	0.0	
73	Repl	Shroud bracket	1	2.45	0.0	0.0	
74*	Repl	COOLANT	1	0.00	0.0	0.0	T 12.95
75	Repl	Skid plate front suspension	1	51.00	0.3	0.0	
76	Repl	Skid plate support bracket	1	8.70	0.0	0.0	
77		AIR COND & HEATER					
78*	Repl	AC Service evacuate & recharge	1	0.00	1.4	0.0	
79*	Repl	Condenser	1	275.00	1.8	0.0	
80*		R&I Upper housing	1	0.00	3.5	0.0	
81		HOOD					
82	Repl	Hood	1	365.00	1.2	3.0	
83		Overlap Major Adjacent Panel	1	0.00	0.0	-0.4	
84		Add for Clear Coat	1	0.00	0.0	0.5	
85		Add for Underside	1	0.00	0.0	1.5	
86	Repl	Insulator	1	44.25	Incl	0.0	
87*	Repl	Insulator retainer	9	7.65	0.0	0.0	
88	Repl	Latch	1	20.50	Incl	0.0	
89	Repl	Safety catch	1	10.00	Incl	0.0	
90	Repl	Striker	1	7.35	0.2	0.0	
91	Repl	Release cable	1	16.50	0.8	0.0	
92	Repl	RT Hinge from 11/15/93	1	45.25	0.3	0.3	
93	Repl	LT Hinge from 11/15/93	1	45.00	0.3	0.3	
94	Repl	Nameplate Jeep bright	1	20.75	0.3	0.0	
95		FENDER					
96	Repl	RT Fender	1	183.00	2.5	2.5	
97		Overlap Major Adjacent Panel	1	0.00	0.0	-0.4	
98		Add for Clear Coat	1	0.00	0.0	0.4	

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

DAMAGE REPORT
09/20/96 at 09:36
23 133 1742

BERG
D.R. 18273-0004602
Est: D. JOFFRED

LINDGREN CHRYSLER-PLYMOUTH INC.

1500 LANCASTER AVE.
READING, PA 19607-
(610) 775-0311

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

NO.	OP.	DESCRIPTION OF DAMAGE	QTY	PART COST	LABOR	PAINT	MISC
99		Add for Edging	1	0.00	0.0	0.5	
100		Add To Drill Mldg Holes	1	0.00	0.3	0.0	
101		Deduct for Body Overlap	1	0.00	-0.7	0.0	
102	Repl	LT Fender	1	183.00	2.5	2.5	
103		Overlap Major Adjacent Panel	1	0.00	0.0	-0.4	
104		Add for Clear Coat	1	0.00	0.0	0.4	
105		Add for Edging	1	0.00	0.0	0.5	
106		Add To Drill Mldg Holes	1	0.00	0.3	0.0	
107		Deduct for Body Overlap	1	0.00	-0.7	0.0	
108	Repl	RT Fender bracket	1	9.25	0.0	0.0	
109	Repl	LT Fender bracket	1	9.10	0.0	0.0	
110	Repl	LT Splash shield	1	24.25	0.3	0.0	
111*	Repl	Splash shield rivet	6	8.70	0.0	0.0	
112*	Repl	Splash shield retainer	6	8.10	0.0	0.0	
113		R&I RT Lower cladding Laredo	1	0.00	0.3	0.0	
114		R&I LT Lower cladding Laredo	1	0.00	0.3	0.0	
115*	Repl	RT Apron panel from 2/14/94	1	40.00	8.5	1.0	
116		Overlap Minor Panel	1	0.00	0.0	-0.2	
117		Deduct for Body Overlap	1	0.00	-1.0	0.0	
118*	Repl	LT Apron panel from 2/14/94	1	66.00	8.5	1.0	
119		Overlap Major Non-Adj. Panel	1	0.00	0.0	-0.2	
120		Deduct for Body Overlap	1	0.00	-1.0	0.0	
121*	Repl	RT Wheelhouse brace	1	70.00	3.0	0.0	
122*	Repl	LT Wheelhouse brace	1	63.00	2.0	0.0	
123	Repl	Guide outer	1	22.75	0.0	0.0	
124*	Repl	RT Front side rail	1	275.00	8.5	0.0	
125*	Repl	LT Front side rail	1	315.00	8.5	0.0	
126		ELECTRICAL					
127*	Repl	Battery tray	1	11.50	Incl	0.0	
128	Repl	Thermo cover	1	15.00	0.0	0.0	
129*	Repl	Battery cable 8 cylinder	1	94.50	0.8	0.0	
130*		R&I Body & cable	1	0.00	0.8	0.0	
131*	Repl	ABS control unit	1	300.00	1.5	0.0	M
132	Repl	ABS control unit bracket	1	5.00	0.0	0.0	
133		R&I Cruise servo	1	0.00	0.5	0.0	M
134	Repl	Cruise servo bracket	1	8.55	0.0	0.0	
135		ENGINE					
136		R&I engine assy	1	0.00	8.5	0.0	M
137*	Repl	Cover	1	33.00	Incl	0.0	

DAMAGE REPORT
09/20/96 at 09:36
23 133 1742

BERG
D.R. 18273-0004602
Est: D. JOFFRED

LINDGREN CHRYSLER-PLYMOUTH INC.

1600 LANCASTER AVE.
READING, PA 19607-
(610) 775-0311

NO.	OP.	DESCRIPTION OF DAMAGE	QTY	PART COST	LABOR	PAINT	MISC
138	Repl	Element	1	25.00	0.0	0.0	
139*	Repl	Lower case	1	61.50	Incl	0.0	
140*	Repl	Duct	1	12.25	0.3	0.0	
141*	Repl	RT Insulator	1	55.00	0.8	0.0	
142*	Repl	LT Insulator	1	55.00	0.8	0.0	
143*	Repl	Trans c'member	1	54.00	1.0	0.0	
144*	Repl	Trans mount	1	55.00	0.8	0.0	
145*	Repl	Adapter	1	25.00	0.8	0.0	
146	Repl	Adapter bracket	1	7.75	0.0	0.0	
147		EMISSION SYSTEM					
148*	Repl	Vapor canister	1	43.50	2.0	0.0	
149		FRONT SUSPENSION					
150*	Repl	Bleed brake system w/ABS	1	0.00	0.5	0.0	
151*		R&I axle assy	1	0.00	4.0	0.0	
152*		R&I SUSP. (BOTH SIDES)	1	0.00	7.5	0.0	
153*	Repl	Stabilizer bar	1	75.00	0.9	0.0	
154*	Repl	Stabilizer bar link	1	22.25	0.6	0.0	
155*	Repl	Stabilizer bar bushing	2	4.60	0.0	0.0	
156	Repl	Stabilizer bar clamp	1	4.10	0.0	0.0	
157*		FOUR WHEEL ALIGN	AL 1	0.00	0.0	0.0	T 60.00
158		STEERING GEAR & LINKAGE					
159*	Repl	P/S pump & cylinder w/o tow pk	1	255.00	1.6	0.0	
160	Repl	P/S pmp mt brckt uppr & cylnd	1	25.00	0.0	0.0	
161*	Repl	Pulley & cylinder	1	14.00	0.5	0.0	
162*	Repl	Pressure hose & cylinder	1	29.25	1.0	0.0	
163*	Repl	Return hose & cylinder	1	8.50	1.0	0.0	
164		STEERING COLUMN					
165*	Repl	Lower shaft from 1/6/95	1	140.00	1.0	0.0	
166	Repl	Shield	1	13.25	0.0	0.0	
167*		R&I steering column w/o tilt	1	0.00	1.5	0.0	
168		STEERING GEAR & LINKAGE					
169*	Repl	Gear assy w/o tow pkg	1	370.00	1.5	0.0	
170*	Repl	Pitman arm	1	26.25	0.7	0.0	
171		STEERING WHEEL					
172*		R&I Strng whl w/tilt w/lthr w/o	1	0.00	0.6	0.0	
173		WINDSHIELD					
174	Repl	Reveal molding upper	1	13.00	0.0	0.0	
175	Repl	RT Reveal molding side	1	23.50	0.0	0.0	
176	Repl	LT Reveal molding side	1	23.50	0.0	0.0	

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

DAMAGE REPORT
03/20/96 at 09:36
23 133 1742

BERG
D.R. 18273-0004602
Est: D. JOFFRED

LINDGREN CHRYSLER-PLYMOUTH INC.

1600 LANCASTER AVE.
READING, PA 19607-
(610) 775-0311

NO.	OP.	DESCRIPTION OF DAMAGE	QTY	PART COST	LABOR	PAINT	MISC
177*		R&I W/SHIELD	1	0.00	0.0	0.0	T 93.75
178*	Repl	Link assy	1	117.00	1.0	0.0	
179		COWL					
180	Repl	Cowl grille from 2/4/94	1	33.75	0.6	0.0	
181*	Repr	Plenum	1	0.00	3.0	0.5	
182		INSTRUMENT PANEL					
183*		R&I instrument panel complete	1	0.00	3.3	0.0	
184		RESTRAINT SYSTEMS					
185	Repl	System diagnosis	1	0.00	0.5	0.0	M
186*	Repl	Sensor	1	85.00	0.4	0.0	
187*		SET-UP FOR UNIBODY	1	0.00	2.0	0.0	
188*		UNIBODY REPAIR-FRONT	1	0.00	7.0	0.0	
189		FRONT DOOR					
190		RT R&I door assy w/power units	1	0.00	1.2	0.0	
191		LT R&I door assy w/power units	1	0.00	1.2	0.0	
192*	Repl	Dcl "Grnd Chrk" w/o Drv snd	2	43.50	0.0	0.0	
193*		TINT & BLEND	1	0.00	0.0	1.5	
194*		FLEX AGENT PER BUMPER	AL 1	0.00	0.0	0.0	T 8.00
195*		CORROSION PROTECTION	AL 1	0.00	0.0	0.0	T 8.00
196*		HAZARDOUS WASTE REMOVAL	1	0.00	0.0	0.0	T 5.00
197*		R&I RUGS & SEATS	1	0.00	4.0	0.0	
		Towing Charges	1	0.00	0.0	0.0	X 110.00
Subtotals ==>				6321.05	133.8	19.3	297.70

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

DAMAGE REPORT
09/20/96 at 09:36
23 133.1742

BERG
D.R. 10273-0004602
Est: D. JOFFRED

LINDGREN CHRYSLER-PLYMOUTH INC.

1600 LANCASTER AVE.
READING, PA 19607-
(610) 775-0311

Parts		6321.05
Parts Discount \$ 6321.05 - 10%		-632.11
Body Labor 122.8 units @ \$34.00		4175.20
Paint Labor 19.3 units @ \$24.00		556.20
Paint/Materials		300.00
Mech. Labor 11.0 units @ \$47.00		517.00
Sublet/Misc		297.70

SUBTOTAL	\$	11635.04
Tax on \$ 11525.04 at .6.0000%		691.50

GRAND TOTAL	\$	12326.54
ADJUSTMENTS:		
Deductible		-500.00

CUSTOMER PAYS	\$	500.00
INSURANCE PAYS	\$	11826.54

ANY PERSON WHO KNOWINGLY AND WITH INTENT TO DEFRAUD ANY INSURANCE COMPANY OR OTHER PERSON FILES AN APPLICATION FOR INSURANCE OR STATEMENT OF CLAIM CONTAINING ANY MATERIALLY FALSE INFORMATION OR CONCEALS FOR THE PURPOSE OF MISLEADING, INFORMATION CONCERNING ANY FACT MATERIAL THERETO COMMITS A FRAUDULENT INSURANCE ACT, WHICH IS A CRIME AND SUBJECTS THE PERSON TO CRIMINAL AND CIVIL PENALTIES.

Estimate based on MOTOR CRASH ESTIMATING GUIDE. Non-asterisk(*) items are derived from the Guide DR3M95. Database Date 7/96
Double asterisk(**) items indicate part supplied by a supplier other than the original equipment manufacturer.
CAPA items have been certified for fit and finish by the Certified Auto Parts Association.
EZEst - A product of CCC Information Services Inc.

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

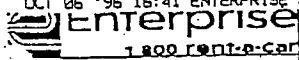
DEC -02 '97(TUE) 15:51 NATIONWIDE INSURANCE

TEL: 717. 300. 5679971

P. 014

OCT 06 '96 16:41 ENTERPRISE RENT-A-CAR

TO: 717 399 56799 F01



Att: Doug Witmer

MO 8:00A- 6:00P TU 8:00A- 6:00P
WE 9:00A- 6:00P TH 8:00A- 6:00P
FR 8:00A- 6:00P SA 8:00A- 12:00P
SU CLOSED

PENRAC, INC.
125 MORGANTOWN ROAD
READING, PA 19611-1947

610-376-4722

5741 SU CLOSED

RENTAL TYPE		SOURCE #		ID #		RENTAL AGREEMENT NO.		D377273	
10/3/96		G85379		420		NO CHARGE			
1542 PM 9/14/96		ADDRESS RD 3656		CITY MOHNTON		STATE PA		ZIP 19540	
HOME PHONE 610-856-7085		OFFICE PHONE 610-370-6000		OTHER PHONE		CALENDAR DAY		HOURS	
ORIGINAL VEHICLE		COLOR SANDRET		LICENSE NO 6DK730L		OWNER'S LICENSE 156308C		STATE PA	
MODEL SKYL		YEAR 79		DOB 3/16/62		HEIGHT		WEIGHT	
MILEAGE IN		MILEAGE OUT		SOCIAL SECURITY #		EMPLOYER READING HOSPITAL		EXPIRES 3/31/00	
DRIVEN		CONDITION AGREED TO		BILL TO		ADDRESS		CITY	
		X RENTER		TO NATIONAL WOLFE - LANCASTER**		241 ROEBERSTOWN RD		LANCASTER PA 17603	
REPLACEMENT VEHICLE		COLOR		LICENSE NO		STATE		EXP	
MODEL		25		4775750		PA		9/30/00	
MILEAGE IN		MILEAGE OUT		PERMISSION GRANTED FOR VEHICLE TO LEAVE THE STATE		AUTH BY ENTERPRISE'S REP		DATE	
DRIVEN		X RENTER		YES		C		9/04/96	
CONDITION AGREED TO		RENTER		DATE		EMPL		AMOUNT DUE	
		X RENTER		9/04/96		00262		740188	
TWO WHEEL RETURN		DATE/TIME		DRID DEF		AMOUNT		PAID BY	
EXT TO		9/04/96						GSM	
EXT TO				ADOTL DEF				CHECK	
EXT TO				ADOTL DEF				CA CARD	
EXT TO				ADOTL DEF				CHANGE	
EXT TO				ADOTL DEF				RECEIPT FOR CASH REFUND	
EXT TO				ADOTL DEF				DATE RECEIVED	
EXT TO				ADOTL DEF				AMOUNT	
EXT TO				ADOTL DEF				CLAIM INFORMATION	
ADDITIONAL INFORMATION		POL OR CL		INS NAME		LOSS DATE		SECRET I	
CL# 5837C137421		6837C137421		9/04/96		717-775-0311		TOTAL **	
DATE of Loss: 9/14/96								NW128	
Ins: Belg								JEEP	

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

AUDITOR'S COPY

RES # 453077

D377273FCN

84897

DEC. -02 97(TUE) 15:52 NATIONWIDE INSURANCE
MAYERSON LAW - TRAPPE Fax:6104892366

TEL:717 390 5679971
Dec 2 '97 14:34 P.01

THE MAYERSON LAW OFFICES, P.C.
THE MEETING HOUSE LAW BUILDING & GALLERY

ATTORNEYS
HY MAYERSON
MARGARET R. CONNORS
ERIC BUSCH*
BENJAMIN J. MAYERSON
MICHAEL G. MOYER*

123 MAIN STREET
TRAPPE, PA. 19426
TEL (610) 489 - 2300
FAX (610) 489 - 2366

OFFICES ALSO AT
SPRING CITY, PA 19473

BUSINESS MANAGER
MARK DEZURA
1ST PARTY / MEDICAL PARALEGAL
JANICE SUZINA

* also known as New Jersey bar

TRANSMITTAL MEMO

DATE/TIME OF TRANSMISSION : 12/2/97
TRANSMITTED TO : Doug Witmer
FROM : Ben mayerson
RE : Dan Berg

THIS TRANSMISSION CONSISTS OF A TOTAL OF 2 PAGES WHICH INCLUDE COVER SHEET...
ORIGINAL TO BE MAILED? YES NO

IF YOU DO NOT RECEIVE THESE PAGES, YOU MAY:

1. CALL OUR OFFICE AT THE TELEPHONE NUMBER LISTED ABOVE, OR
2. TRANSMIT YOUR QUERY THROUGH OUR TELEFAX NUMBER.

CONFIDENTIALITY NOTICE:

THIS INFORMATION CONTAINED IN THE TELECOMMUNICATIONS MESSAGE IS PRIVILEGED AND CONFIDENTIAL, AND INTENDED ONLY FOR THE USE OF THE INDIVIDUAL (S) AND/OR ENTITY (IES) NAMED ABOVE. IF YOU ARE NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY UNAUTHORIZED DISCLOSURE, COPYING, DISTRIBUTION OR TAKING OF ANY ACTION IN RELIANCE ON THE CONTENTS OF THE TELECOPIED MATERIALS IS STRICTLY PROHIBITED AND REVIEW BY ANY INDIVIDUAL OTHER THAN THE INTENDED RECIPIENT SHALL NOT CONSTITUTE WAIVER OF THE ATTORNEY/CLIENT PRIVILEGE. IF YOU HAVE RECEIVED THIS TRANSMISSION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE (TOLL FREE # 1-800-220-3235) TO ARRANGE FOR RETURN OF THE MATERIALS. THANK YOU.

COMMENTS:

ENCLOSURES: (1)

(2)
(3)

NW 129

COPY OF EXHIBIT NO. 26 (Page 15 of 16)

1384

R. 1917a

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

DEC. -02 '97(TUE) 15:52 NATIONWIDE INSURANCE.
MAYERSON LAW - TRAPPE fax:6104892366

TEL:717 390 5679971
Dec 2 '97 14:34 P.02

P.016

THE MAYERSON LAW OFFICES, P.C.

ATTORNEYS
HY. MAYERSON
MARGARET R. CONNORS
ERIC BUSCH*
BENJAMIN J. MAYERSON
MICHAEL G. MOYER*

123 WEST MAIN STREET
TRAPPE, PA. 19426
TEL (610) 489-2800
FAX (610) 489-2366

OFFICES ALSO AT
SPRING CITY, PA 19475

BUSINESS MANAGER
MARK DEZURA
1st PARTY/MEDICAL PARALEGAL
JANICE TUDZINA

December 2, 1997

VIA: FAX ONLY

Doug Witmer
Nationwide Insurance Company

Re: Berg v. Lindgren

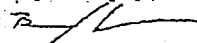
Dear Mr. Witmer:

On November 3, 1997, I wrote you a letter requesting certain information. On November 25, 1997, I wrote again after no response to my letter as well as several phone messages. I left another message this afternoon and trust the combination of this fax and my previous requests will invoke a responding telephone call from you at your most earliest convenience.

The Unfair Claims Settlement Practices Act, Title 31 section 146.5 titled, Failure to Acknowledge Pertinent Information, states at section (c), "An appropriate reply shall be made within 10 working days on . . . communications from a claimant which reasonably suggest that a response is expected." It has now been a month and you have not responded to my initial request, my second request nor any of my numerous phone messages.

Please favor me with an immediate phone call.

Very truly yours,


Ben Mayerson

BJM/bs
cc: Dan Berg

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

NW 130

Trial Exhibit 27

JAN 13 1999 16:40 FR

TO 9:51:00 AM '99

POST & SCHELL, P.C.
ATTORNEYS AT LAW

1800 JOHN F. KENNEDY BOULEVARD
PHILADELPHIA, PA 19103-7480

(215) 587-1000
FACSIMILE: (215) 387-1444

ADAMS PLACE - SUITE 3
701 WHITE HORSE ROAD
YORKSHIRE, NJ 08043
(609) 627-8900
FAX: (609) 627-4481

4TH FLOOR
801 HAMILTON MALL
ALLENTOWN, PA 18101
(610) 433-0103
FAX: (610) 433-3072

237 N. PRINCE STREET
LANCASTER, PA 17603
(717) 291-4532
FAX: (717) 291-1600

240 GRANOVIA AVENUE
CAMP HILL, PA 17011
(717) 731-1070
FAX: (717) 731-1065

THE BERKSHIRE - SUITE 205
301 WASHINGTON STREET
READING, PA 19603
(610) 375-2230
FAX: (610) 375-2263

January 13, 1999

MATTHEW STOOL
(215) 587-1170
MStool@PostSchell.com

FILE NO. 100499

VIA FACSIMILE AND REGULAR MAIL

Mr. Bruce Wunsch
Assistant Treasurer
Summit Bank
1 Bethlehem Plaza
Bethlehem, PA 18018

RE: Berg v. Lindgren Plymouth, Inc. and Nationwide
Mutual Fire Insurance Co., et al.
CCP, Berks County, No. 98-813

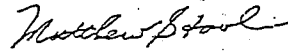
Dear Mr. Wunsch:

As you know, this office represents Nationwide Mutual Fire Insurance Company in the captioned matter. Please be advised that Nationwide has a binding contract with Summit Bank for the purchase of the Berg's vehicle. This contract is evidenced by the attached documents.

We insist that this contract be honored and that the title to the vehicle be forwarded to this office immediately. Please understand that if the Bank does not perform pursuant to its agreement with Nationwide, we will initiate the proper legal action to enforce the Company's rights under the contract with Summit Bank.

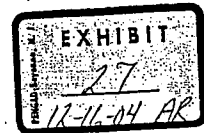
Thank you.

Very truly yours,



MATTHEW STOOL

MS/mas



COPY OF EXHIBIT NO. 27

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

Trial Exhibit 29

AMAGE REPORT
 02/14/97 at 11:48
 TAX ID# 23 133 1742

BERG
 D.R. 18273-0005371
 Est: D. JOFFRED

LINDGREN CHRYSLER-PLYMOUTH INC.
 PHONE 610-775-0311
 1600 LANCASTER AVE.
 READING, PA 19607-
 (610) 775-9443-FAX

Owner: DANIEL BERG
 Address: RD 3658
 MOHNTON PA 19540

Day Phone: (610) 856-7095-
 Other Ph: ()
 Deductible: \$ 0.00

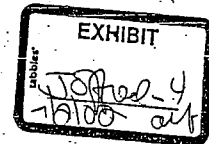
Insurance Co.: NATIONWIDE INSURANCE COMPANY Phone: 717-657-6463
 Claim No.: 5837C13742109049601D/B11 Adj.: PHIL SUSEMIHL

96 JEEP GRAND CHEROKEE 4X4 LAREDO 4D UTV CHARGOLD 8-5.2L-FI
 Vin: 1J4GZ58Y7TC227842 License: BAJ5964 PA Prod Date: 12/95 Odometer: 1305

Power steering	Power brakes	Power windows
Power locks	Power mirrors	Tinted glass
Dual mirrors	Air conditioning	Rear defogger
Tilt wheel	Cruise control	Keyless entry
Rear window wiper	Anti-lock brakes (4)	Driver airbag
Passenger airbag	4 wheel disc brakes	Luggage/roof rack
Cloth seats	Bucket seats	Recline/lounge seats
Aluminum wheels	Clear coat paint	Metallic paint

NO.	OP.	DESCRIPTION OF DAMAGE	QTY	PART COST	LABOR	PAINT	MISC
1*		R&I P/S PUMP & BRKTS X	1		2.4		
2*		REPLACE SERPENTINE BELT	1				
3*		REPLACE VALVE COVER FILTER	1				
4*		REPLACE VALVE COVER TUBE	1				
5*		BELT	1	37.44			
6*		BRACKET	1	16.00			
7*		BRACKET	1	9.85			
8*		FILTER	1	6.35			
9*		TUBE	1	7.75			
Subtotals ==>				77.39	2.4	0.0	0.0

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA



Page: 1

000123

COPY OF EXHIBIT NO. 29 (Page 1 of 2)

AMAGE REPORT
02/14/97 at 11:48
TAX ID# 23 133 1742

BERG
D.R. 18273-0005371
Est: D. JOFFRED

LINDGREN CHRYSLER-PLYMOUTH INC.
PHONE 610-775-0311
1600 LANCASTER AVE.
READING, PA 19607-
(610) 775-9443-FAX

Parts		77.39
Parts Discount \$	77.39 - 10%	-7.74
Body Labor	2.4 units @ \$34.00	81.60
SUBTOTAL		\$ 151.25
Tax on \$	151.25 at 6.0000%	9.07
GRAND TOTAL		\$ 160.32

ANY PERSON WHO KNOWINGLY AND WITH INTENT TO DEFAUD ANY INSURANCE COMPANY OR OTHER PERSON FILES AN APPLICATION FOR INSURANCE OR STATEMENT OF CLAIM CONTAINING ANY MATERIALLY FALSE INFORMATION OR CONCEALS FOR THE PURPOSE OF MISLEADING, INFORMATION CONCERNING ANY FACT MATERIAL THERETO COMMITS A FRAUDULENT INSURANCE ACT, WHICH IS A CRIME AND SUBJECTS THE PERSON TO CRIMINAL AND CIVIL PENALTIES.

Estimate based on MOTOR CRASH ESTIMATING GUIDE. Non-asterisk(*) items are derived from the Guide DR34095. Database Date 0/0
Double asterisk(**) items indicate part supplied by a supplier other than the original equipment manufacturer.
CAPA items have been certified for fit and finish by the Certified Auto Parts Association.
EZESt - A product of CCC Information Services Inc.

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

Page: 2

000124

COPY OF EXHIBIT NO. 29 (Page 2 of 2)

1392

R. 1923a

Trial Exhibit 30

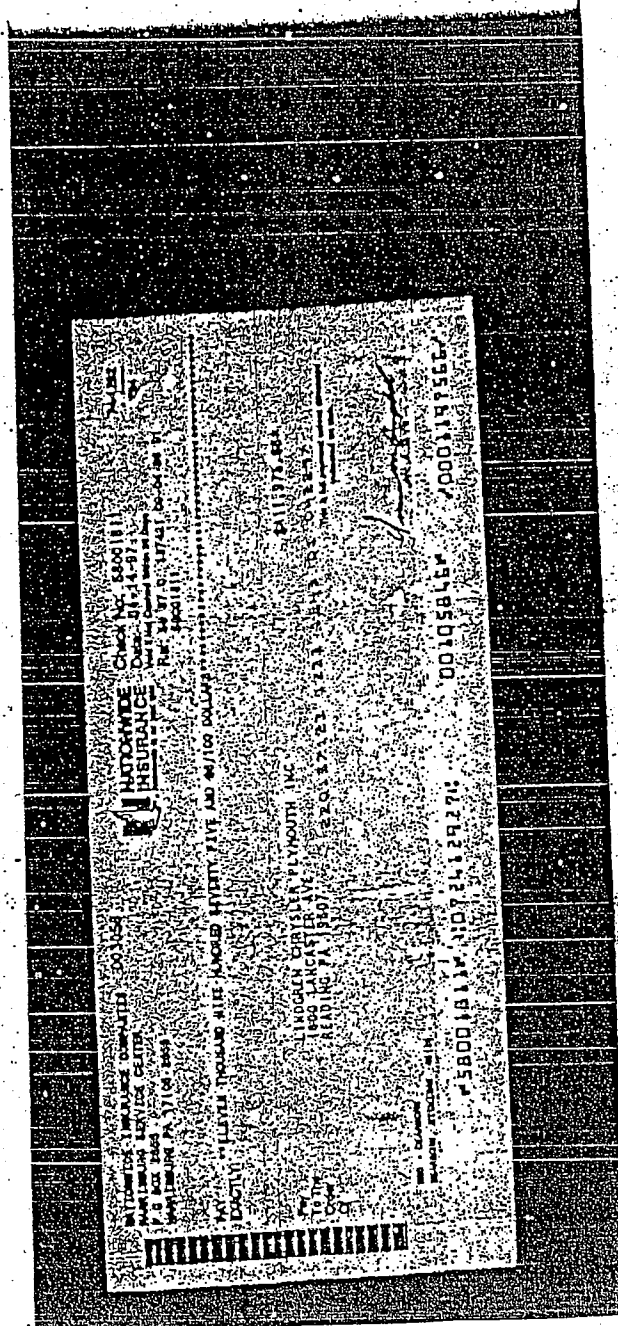


EXHIBIT
 30
 12-16-04 AK

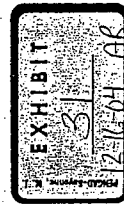
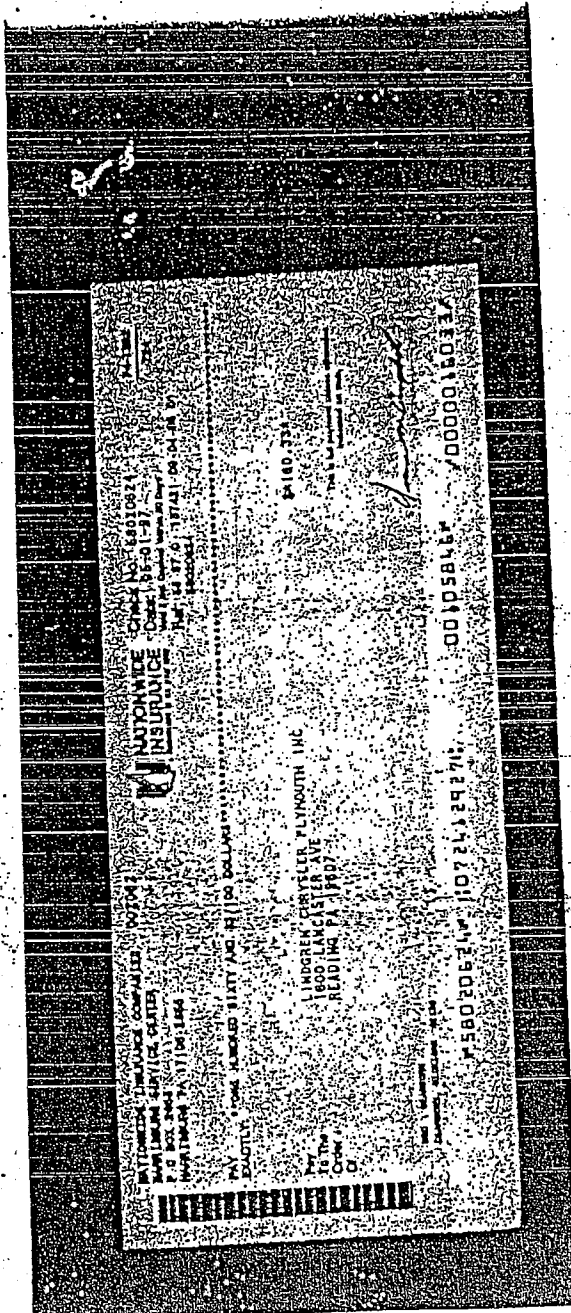
JUL 29 '98 15:11

PAGE.004

COPY OF EXHIBIT NO. 30

Trial Exhibit 31

JUL 29 '98 15:59



PAGE.002

COPY OF EXHIBIT NO. 31

Trial Exhibit 33

Curative Instructions

Discovery Abuses/Discovery Misconduct

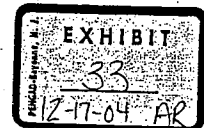
During litigation, the parties engaged in a pre-trial process called discovery, where the parties exchanged documents and other information. In discovery, attorneys are allowed to withhold or redact certain information from documents based on relevance or legal privileges and protections. Mr. Mayerson's intimation that Nationwide improperly redacted or withheld information during discovery is improper. He has previously been instructed by this Court to refrain from mentioning this issue in front of the jury and he has chosen to disregard this instruction. Therefore, you are hereby instructed that Mr. Mayerson's closing remarks with regard to this issue should be disregarded, as should any inference you may draw from those remarks.

Appraisers' Act

Mr. Mayerson has suggested that Mr. Joffred's lack of an appraisers' license at the time of the Bergs' appraisal is somehow unlawful, illegal, or a violation of the Appraisers' Act. Mr. Mayerson's remarks are improper. He has previously been instructed by this Court to refrain from mentioning this issue in front of the jury and he has chosen to disregard this instruction. Therefore, you are hereby instructed that Mr. Mayerson's closing remarks with regard to this issue should be disregarded, as should any inference you may draw from those remarks.

Pennsylvania Best Claims Practices

Mr. Mayerson's reference to the testimony of Kathleen Holben is not consistent with this Court's recollection of that testimony. He has previously been instructed by this Court to limit his remarks in front of the jury to the content of Mrs. Holben's testimony and he has chosen to disregard this instruction. Therefore, you are hereby instructed that Mr. Mayerson's closing remarks with regard to this witness's testimony should be disregarded, as should any inference you may draw from those remarks.



COPY OF EXHIBIT NO. 33

12/20/04 Molded Verdict

8802/2/1

DAN BERG and SHERRY
BERG, H/W,
Plaintiffs

vs.

LINDGREN CHRYSLER-PLYMOUTH,
INC., and LINDGREN AND
MANSKE, INC., and NATIONWIDE
INSURANCE COMPANY,
Defendants

vs.

K.C. AUTO BODY, INC.,
Additional Defendant

: IN THE COURT OF COMMON PLEAS OF
: BERKS COUNTY, PENNSYLVANIA
:
: CIVIL ACTION - LAW
:
:
: No. 98-813
:
:
:
:
:
:
:
:
:

MOLDED VERDICT

AND NOW, this 20th day of December, 2004, relative to Phase I of this case, the jurors empanelled in the within action found as follows:

1. In favor of Defendants Lindgren Chrysler-Plymouth, Inc., Lindgren & Manske, Inc., and Nationwide Insurance Company and against the Plaintiffs, Dan Berg and Sherry Berg, on the Plaintiffs' claims for common law fraud against those Defendants;

2. In favor of Defendants Lindgren Chrysler-Plymouth, Inc., Lindgren & Manske, Inc., and Nationwide Insurance Company and against the Plaintiffs, Dan Berg and Sherry Berg, on the Plaintiffs' claims for civil conspiracy against those Defendants;

1/2/2008

3. In favor of the Plaintiffs, Dan Berg and Sherry Berg, and against Defendants Lindgren Chrysler-Plymouth, Inc., and Lindgren & Manske, Inc., on the Plaintiffs' claim for violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law against those Defendants in the amount of \$1,925.00; and

4. In favor of the Plaintiffs, Dan Berg and Sherry Berg, and against Defendant Nationwide Insurance Company on the Plaintiffs' claim for violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law against that Defendant in the amount of \$295.00.

BY THE COURT:


ALBERT A. STALLONE, J.

Pro due 16.00

RECEIVED
PROTHONOTARY'S OFFICE
2008 DEC 20 P 5: 20
BERKS COUNTY, PA
MARIANNE R. SUTTON
PROTHONOTARY

INSTRUCTIONS TO THE PROTHONOTARY:

Please file the original order and distribute certified copies as follows:

Benjamin J. Mayerson, Esquire

Craig A. Cohen, Esquire

Kenneth C. Myers, Esquire

Brett A. Huckabee, Esquire

Computer

Judge Albert A. Stallone

BBZ/1

PROTHONOTARY	BY	TO	DATE
Order sent to Judge			
Copies Sent			
Forwarded for Processing			
Forwarded for Processing			
Entered in Hearing Book			
Forwarded to Comp. Room	UC		12/21/04
Forwarded to File Room			
File Located			
Filing Completed	J		12/21/04
Request for Env:	Add'l: _____	Copies: _____	
Request Rec'd:			

DEPT.

DEC 21 12 50

12/21/04

12/21/04

A Certified Copy of this Molded Verdict & Notice
 was issued to Benjamin J. Mayerson Esq
Craig A. Cohen Esq
Kenneth C. Myers Esq &
Brett A. Huskabee Esq
 by first class mail by Colby [Signature]
 Deputy Prothonotary on 12/21/04
 and to Computer Room
 Inter Office Mail. _____

DEC 21 12 50

RECEIVED
 DEPT. OF JUSTICE
 CIVIL RIGHTS DIVISION
 COMPLAINTS SECTION

12/21/04 - Per Senior Judge Stallone's Office - This case has been "bifurcated" for Trial - This molded verdict "Does NOT" "F"inish this case.
 R. 1934a

9/26/05 Bergs' Reply to Nationwide's
Interrogatories dated 5/18/05

PT82/2T/E

The Mayerson Law Offices, P.C.
By: Hy Mayerson, Esquire
Attorney I.D.#03062
Benjamin J. Mayerson, Esquire
Attorney I.D.#73742
3540 Schuylkill Road
Spring City, PA 19475
(610) 948-4800

Attorneys For Plaintiffs

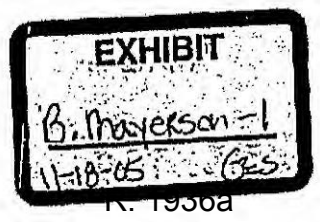
Daniel Berg and Sheryl Berg	:	Court of Common Pleas
H/W	:	Berks County, PA
	:	
vs.	:	
	:	No. 98-813
Lindgren Chrysler-Plymouth,	:	
Inc., and	:	
Nationwide Mutual Insurance	:	
Company, Inc., and	:	
K.C. Auto Body, Inc.	:	Civil Action - Law

**PLAINTIFF BERGS' REPLY TO
DEFENDANT NATIONWIDE MUTUAL INSURANCE COMPANY'S
INTERROGATORIES
WITH REGARD TO ATTORNEYS' FEES AND COSTS DATED MAY 18, 2005**

1. How many hours to date have been billed, recorded, or otherwise documented in writing with respect to this litigation?

ANSWER: The total number of hours expended as of September 23, 2005, is 3,565.60. By way of further reply, Plaintiffs' law firm expended as much time and effort as was necessary to develop theories of liability, gather evidence, and try the case.¹ This work was greatly

¹Appellate courts recognize that the *contingency* nature of an § 8371 claim for counsel fees increases the likelihood that counsel will work only as diligently as necessary. See Willow Inn, Inc. v. Public Serv. Mut. Ins. Co., 399 F.3d 224 (2004). "Section 8371's attorney fees and costs provisions vindicate the statute's policy by enabling plaintiffs such as Willow Inn to bring § 8371 actions alleging bad faith delays to secure counsel on a contingency fee. . . . and the structure of § 8371 enlists counsel to perform a filtering function akin to prosecutorial discretion, because rational attorneys will refuse to work on a contingent fee arrangement when their investigation reveals the bad faith allegations of prospective clients to be meritless." *Id.* at 236.



exacerbated by co-defendants' efforts to conceal, hide or otherwise cover-up the conduct of its employees in a blatant attempt to undermine the truth finding process. Plaintiffs contend it was Defendant Nationwide's *intent* to artificially drive-up Plaintiffs' litigation expenses in an effort to either price Plaintiffs out of the litigation, or as part of a broader plan to send a message to the Plaintiff legal community.

This contention, amply supported by the record, is documented in Nationwide's own claim manual titled, *Best Claim Practices*. This document, marked as Exhibit "2", Trial Transcript Volume II, page 1141, contains a section titled, *Claim Handling Philosophy and Strategy for 1993 and Beyond*, wherein Nationwide documents its claim handling philosophy and strategy as follows:

A. Philosophy

.....

2. Continued reinforcement of Nationwide being a "defense-minded" carrier in the minds of the plaintiff legal community.

.....

B. Strategy

1. Litigation Avoidance

.....

- E. Implement a more aggressive posture in handling cases of lesser probable exposure (ie: cases not exceeding \$25,000.00). Create and reinforce a defense minded perception.

In support of Plaintiffs' response above, Plaintiffs rely upon the reasoning in Mathias v. Accor Econ. Lodging, Inc., 347 F.3d 672, (7TH Cir. Oct. 21, 2003), adopted by the Superior Court of Pennsylvania in Hollock v. Erie Ins. Exch., 2004 PA Super 13, 842 A.2d 409 (2004), wherein Judge Posner addressed the use of financial power to subdue plaintiffs as follows:

Finally, if the total stakes in the case were capped at \$50,000 (2 x [\$5,000 + \$20,000]), the plaintiffs might well have had difficulty financing this lawsuit. It is here that the defendant's aggregate net worth of \$1.6 billion becomes relevant. . . . Where wealth in the sense of resources enters is in enabling the defendant to mount an extremely aggressive defense against suits such as this by doing so to make litigating against it very costly, which in turn may make it difficult for the plaintiffs to find a lawyer willing to handle their case, involving as it does only modest stakes, for the usual 33-40 percent contingent fee.

In other words, the defendant is investing in developing a reputation intended to deter plaintiffs. It is difficult otherwise to explain the great stubbornness with which it has defended this case, making a host of frivolous evidentiary arguments despite the very modest stakes even when the punitive damages awarded by the jury are included.

Id. at 677. See also Hollock v. Erie Ins. Exch., 2004 PA Super 13, 842 A.2d 409, 2004 Pa. Super. LEXIS 28 (Pa. Super. Ct., 2004), wherein the Superior Court of Pennsylvania explicitly adopted this reasoning in the context of an action for insurer bad faith:

However, where the compensatory award is small in spite of the defendant's egregious conduct, it may be appropriate to award a larger amount of punitive damages to limit the defendant's ability to profit from its action and to deter further misconduct. *Matthias*, 347 F.3d 672 at 677. The defendant's wealth may in such an instance become relevant, for its large resources may enable the defendant to mount an extremely aggressive defense, which in turn can prove very costly to a plaintiff and potentially deter it from pursuing the matter.

Id. at 421. Plaintiffs submit Nationwide intended to artificially increase the cost of this litigation, and having now succeeded, it complains that the costs are excessive. In response to Nationwide's accusations of excessive fees, Plaintiffs offered to accept/stipulate that the fee will be the amount Nationwide paid to defend this matter. Nationwide opposed Plaintiffs efforts to discovery how much Nationwide paid its law firm(s) to defend this matter.

2. When did your attorneys compile the billing records you submitted to Nationwide in support of your claims for attorney's fees? Please describe in detail the manner in which these billing records were assembled.

ANSWER: The billing records submitted in support of Plaintiffs' claim for attorneys' fees and costs were assembled by the attorneys and staff of The Mayerson Law Offices, P.C., during the weeks prior to the pre-trial conference and bi-furcated jury trial. Supplemental records are being compiled and submitted with this response.

The manner in which these billing records were assembled was to physically review the entire file and estimate the number of hours expended on each task during the early part of the litigation when no formal time records were created, which was then added to the total hours expended in the latter part of the litigation when time records were implemented. The estimated portion does not account for considerable re-drafting and editing of pleadings prior to filing, or of letters prior to mailing. It is a conservative estimation of actual time expended.

The manner in which the billing records were assembled for the period *after* billing records were created contemporaneous with the work performed was for the office staff to gather each attorney's time records for submission. Attorney Ben Mayerson, who performed most of the work, tracked his hours by recording into the computer file the time he began working, the time he stopped working, and when feasible, a brief description of the task being worked upon. Initially, time intervals were recorded in 15 minute intervals always rounding down. For instance, if work began at 9:05 AM, Attorney Ben Mayerson entered 09:15 AM into the time sheet. If the task being worked upon took less than five minutes, and did not generate a document, no fee was claimed. Attorney Ben Mayerson also did extensive work from home when necessary, or when otherwise appropriate. This work was further corroborated by electronic messages sent from home to the office documenting the time of day work began and ended. These electronic messages are attached pursuant to Court Order.

Current hours billed are recorded in intervals of one tenth of an hour, rather than in 15 minute intervals. Letters *generated* by the Mayerson Law Offices, P.C. were billed with a minimum of 0.25 hours, while letters received and reviewed by the Mayerson Law Offices, P.C. were billed at a minimum of 0.10 hours. This method is supported by custom and practice as reported by regional law firms that customarily do billable work, and actually represents a conservative method as many firms charge a minimum of 0.30 hours per letter generated.

The reason billing records were not created until late in this litigation is because Plaintiffs' law firm is a personal injury law firm handling cases for consumers on a contingency fee basis (usually at a rate of 33 - 40% of total recovery), and is not accustomed to tracking hours. The Mayerson Law Offices, P.C., does not require a retainer fee, nor are hourly rates generally quoted to clients. The Berg matter was not the typical case handled by this firm in as much as it involved, initially at least, allegations of fraudulent collision repairs. During the preliminary investigation it became apparent that Plaintiffs' insurer, Nationwide Mutual, was unwilling to supply repair documents and photographs it necessarily possessed. Thereafter, the case developed into one of civil conspiracy and insurer bad faith.

3. Did your attorneys prepare billing records contemporaneous to performing tasks in connection with the litigation of this case? Please state the average length of time between the performance of these tasks and the preparation of billing records.

ANSWER: See reply to interrogatory two above, incorporated herein by reference. By way of further reply, the only billing records prepared contemporaneously with the tasks performed were those created midway through the litigation after Plaintiffs' law firm began this important task. All billing records comprised prior thereto were either created immediately prior to the pre-trial conference, or in response to Nationwide's discovery requests dated May 18, 2005, and the

Court's Order dated August 15, 2005.

The average length of time between the work performed and the preparation of the billing records is approximately 4.5 years. However, the estimates were created by physically examining the work product and *not* from memory.

4. Please list all attorneys, including associates, who have worked on the litigation in this case.

ANSWER:

- Benjamin J. Mayerson, Esquire
- Hy Mayerson, Esquire
- Margaret Connors, Esquire
- Donald Litman, Esquire
- David E. Schreiber, Esquire
- Lori Sklar, Esquire

5. Please list all non-attorneys, including paralegals, secretaries, and other administrative personnel, who have worked on the litigation in this case.

ANSWER:

- Barbara Shuttleworth, Paralegal
- Deborah A. Tyczkowski, Paralegal
- Jennifer Arenschiold, Paralegal
- Bette Hutton, Former Office Manager
- Stephanie Finkbiner, Office Manager
- Eric Witte, Courier
- Michael Giorgio, MIS Manager
- Mary Tyson, Secretary
- Susan Dries, Secretary
- Donna Horst, Secretary
- Sandy Stimson, Secretary

6. What is the hourly attorney's fee for each attorney who has worked on this litigation?

ANSWER: This firm has not previously performed work on an hourly basis and has therefore

not previously created a fee schedule. The following is a suggested fee range based upon years of experience.

Benjamin J. Mayerson, Esquire:

5/94 - 5/99: \$125 per hour (first five years of practice)
6/99 - 5/02: \$150 per hour (practicing years six through eight)
6/02 - 5/04: \$175 per hour (practicing years eight and nine)
6/04 - 5/05: \$200 per hour (tenth year of practice)
6/05 - 5/06: \$225 per hour (eleventh year of practice)

Hy Mayerson, Esquire: \$350.00/hr
Margaret Connors, Esquire: \$225.00/hr
Donald Litman, Esquire: \$225.00/hr
David E. Schreiber, Esquire: \$200.00/hr

7. **Please identify the total number of hours billed or recorded, by individual timekeeper, with respect to the litigation of the Plaintiffs' claims.**

ANSWER:

Benjamin J. Mayerson, Esquire:2179.65
Hy Mayerson, Esquire:180.00
Margaret R. Connors, Esquire:130.05
Donald Litman, Esquire:79.85
David E. Schreiber, Esquire: .85
Jennifer Arenschiold, Paralegal:738.20
Donna Horst, Secretary:110.70
Eric Witte, Courier:132.75
Barbara Shuttleworth, Paralegal:3.85
Michael A. Giorgio, MIS Manager: 8.25

See attached.

8. **With respect to attorney's fees sought by plaintiff in this action, please identify the total amount of fees, the number of hours by timekeeper billed or recorded, and the hourly rates for such timekeepers.**

ANSWER: The total amount of fees claimed by Plaintiffs in this matter are \$536,428.75. The hourly rates for the support staff timekeepers are as follows:

Jennifer Arenschiold, Paralegal: \$35.00/hr

Barbara Shuttleworth, Paralegal: \$35.00/hr
Michael Giorgio, MIS Manager: \$25.00/hr
Donna Horst, Secretary: \$25.00/hr
Eric Witte, Courier: \$18.00/hr

See answers #6, 7 and #13.

9. Please identify the total number of hours billed in the preparation of Plaintiffs' Motion for Summary Judgment, and provide a specific accounting of each task performed in the preparation of this Motion.

ANSWER: The title of the document is actually, *Motion for Partial Summary Judgement, In Favor of Plaintiff Bergs, and Against Defendant Nationwide Mutual Insurance Company, for Bad Faith Insurance Practices, Attorney Fees and To Compel Production of Documents.*

Plaintiffs' counsel spent approximately 386.00 hours preparing the motion, reviewing Nationwide's reply and arguing the motion. This includes billing entries identified as "Comprehensive Motion" and/or "Motion to Expand Discovery." See Billing Summary attached to Plaintiffs' response to Requests for Production of Documents.

The goal of the motion was three fold; secure partial summary judgement on insurer bad faith, expand the scope of discovery, and prepare for trial. Thus, although the number of hours appears voluminous for a motion for summary judgement, the goal was also to marshal the evidence into a comprehensive, logical and cohesive format in an effort to secure additional evidence and prepare for trial. Material allegations set forth within the motion were meticulously supported by deposition testimony and other evidence, which was either used during the jury trial, or will be relied upon in the bench trial. In short, the motion continues to be a useful tool as an index and library of evidence. It was invaluable during the jury trial and will continue to be a source of information during the bench trial.

The second goal of the motion, to expand the scope of discovery, was supported with extensive documentation illustrating the broader problem of Nationwide's efforts to reduce *Average Claim Payments* (ACP) through *Aggressive Cost Management* programs (ACM). The documentation included evidence (as an offer of proof) that the *Blue Ribbon Repair Program* was part of a broader effort by Nationwide to reduce *average claim payments* for material damage claims, by injecting arbitrary cost containment quota into the appraisal and repair of insured losses, i.e. Lindgren was required to satisfy monthly and yearly quota on percentage use of used parts, aftermarket parts, *betterment* deductions, and *leakage*. This practice, if proven, supports a finding of bad faith inasmuch as every insurer must evaluate each claim "on its merits alone" and "may not look to its own economic considerations, seek to limit its potential liability, and operate in a fashion designed to 'send a message.'" See Bonenberger v. Nationwide Mut. Ins. Co., 791 A.2d 378, 381 (Pa. Super. 2002).

Included within the 150 exhibits were copies of Nationwide's internal publications documenting a company directive to reduce *average claim payments* to a level lower than its competitors through *Aggressive Cost Management* programs, such as *Blue Ribbon*.

In support of its request for court assistance, Plaintiffs' motion presented extensive evidence (as an offer of proof) of Nationwide's efforts to conceal, hide or otherwise cover-up the conduct of its employees in a blatant attempt to undermine the truth finding process. Sorting through the half truths and missing documents was tedious but necessary if Plaintiffs were to prove their case by *clear and convincing evidence*. Defendant Nationwide understood the significance of Plaintiffs' heightened burden of proof and sought to capitalize upon same by withholding the necessary evidence. The number of hours expended in the preparation of this

3/17/2014

motion would have been necessary at some point prior to trial. The fact that Plaintiffs performed this necessary detail as part of a comprehensive motion should not be used to discount hours of work.

Obviously, Nationwide would have preferred Plaintiffs give up when the evidence became too expensive to secure or complicated to manage. Instead, Plaintiffs forged ahead and dissected the evidence of Nationwide's bad conduct in a comprehensive document as part of an ongoing effort to prepare for trial.

Finally, Plaintiffs have at all times offered to resolve the attorney fee issue by accepting the exact amount Nationwide paid to defendant this matter while knowing it had no reasonable basis for so doing. Nationwide identified Lindgren as an approved *Blue Ribbon Repair Facility* and offered Plaintiffs a *Blue Ribbon Guarantee* on the quality of repairs as an incentive to induce Plaintiffs to have their claim appraised and repaired by Nationwide's business partner. Nationwide saved *at least* \$600 on the claim payment via, inter alia, a 10% parts discount it enjoyed only if the vehicle was repaired by Defendant Lindgren. When the repairs went badly and a claim submitted, Nationwide began concealing its knowledge of the extensive repair defects. Nationwide's knowledge of the defects and potential fraud is documented in its claim log in a fact specific report entered on April 30, 1998. Nevertheless, Nationwide withheld its knowledge, and this claim log entry, through five years of protracted litigation.²

10. Please identify the total number of hours billed in the retention and preparation of any expert witnesses that Plaintiffs did not choose to call at trial.

²Plaintiffs respectfully request the Court examine the time and effort Nationwide expended in preparing its own Motion for Summary Judgment in the event the Court views favorably Nationwide's objections to this portion of Plaintiffs' fee request.

ANSWER: While this matter is not yet concluded, and a second phase yet to be scheduled, the following are hours incurred in the retention and preparation of experts not yet called to testify:

Charlie Barone:	58.2 hrs
Katherine Van Gorder:	0.80 hrs
James Schwartzmann, Esquire:	28.30 hrs

See supporting documentation in Costs attached.

11. Please set forth in detail the educational background of Plaintiffs' counsel.

ANSWER: See Affidavit of Hy Mayerson attached. See also Curriculum Vitae of Margaret R. Connors, Esquire, attached. Attorney Ben Mayerson's educational background is as follows:

1986 graduate of Owen J. Roberts High School;
 1991 graduate of Indiana University of Pennsylvania;
 1994 graduate of Widener University School of Law;
 1997-2005 continuing legal education courses on insurer bad faith.

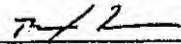
12. Please set forth in detail the professional background of Plaintiffs' counsel, including the number of years each attorney has practiced law.

ANSWER: See Affidavit of Hy Mayerson attached. See also Curriculum Vitae of Margaret R. Connors, Esquire, attached. Attorney Ben Mayerson has been practicing law since 1994.

13. Please identify with specificity the expenses incurred by Plaintiffs and/or their counsel in the litigation of this case, including (but not limited to) any expenses incurred in the retention of expert witnesses, administrative expenses, filing fees, and the costs of any investigation.

ANSWER: Plaintiffs have incurred litigation expenses in the amount of \$58,954.19 as of September 2, 2005. See attached. These expenses will increase, particularly if the second trial phase is reached.

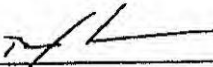
The Mayerson Law Offices, P.C.

By: 
 Benjamin J. Mayerson, Esquire
 Attorney for Plaintiffs

Date: 9/26/05

VERIFICATION

Benjamin J. Mayerson, Esquire, states that he is the attorney for the within named Plaintiffs in this action and verifies that the statements made in the foregoing Answers to Interrogatories of Defendant Nationwide dated May 18, 2005, are true and correct to the best of his knowledge, information and belief. The undersigned understands that the statements therein are made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.



Benjamin J. Mayerson, Esquire

Date: 9/20/05

4/21/06 Order

1/3/2008

40

DANIEL BERG AND
SHARON BERG,
Plaintiffs

IN THE COURT OF COMMON PLEAS
OF BERKS COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

vs.

No. 98-813

LINDGREN CHRYSLER PLYMOUTH,
INC.

Stallone, J.

and
LINDGREN AND MANSKE, INC.

and
NATIONWIDE MUTUAL
INSURANCE CO.,

Defendants

and

K.C. AUTO BODY, INC.,
Additional Defendant

ORDER

AND NOW, this 21st day of April, 2006, upon consideration of the attached Motion, the Stipulations of the Defendants, and the position stated by the Plaintiffs, the Motion is hereby granted and K.C. Auto Body, Inc. is removed as a party in the present action. The caption shall be amended to remove K.C. Auto Body, Inc. as an Additional Defendant.

The caption, as amended, shall appear on all future documents filed of record in this case.

By the Court,

[Handwritten Signature]

J.

BERKS COUNTY, PA
MARIANNE R. SUTTON
PROTHONOTARY

2006 APR 21 P 1:48

RECEIVED
PROTHONOTARY'S OFFICE

R. 1949a

[Handwritten Stamp]
4246

12/3/06 Stipulation and Order

NELSON LEVINE de LUCA & HORST, LLC
By: Craig A. Cohen, Esquire
Attorney I.D. No. 55887
Four Sentry Parkway, Suite 300
Blue Bell, PA 19422
(610) 862-6500
Attorneys for Defendant,
Nationwide Mutual Insurance Company

DANIEL BERG and SHERYL BERG
Plaintiffs,

v.

LINDGREN CHRYSLER-PLYMOUTH, INC.,
ET AL.
and

NATIONWIDE MUTUAL INSURANCE CO.
Defendants.

COURT OF COMMON PLEAS
BERKS COUNTY

NO. 98-813

STIPULATION

The above-named parties hereby **STIPULATE** and **AGREE**, by and through their undersigned counsel, to the following:

Plaintiffs Daniel and Sheryl Berg hereby stipulate that Plaintiffs' claim for attorneys' fees and costs in this matter is limited solely to their bad faith claim against Defendant Nationwide Mutual Insurance Company. Plaintiffs waive their right to any award of attorneys' fees and costs under their Unfair Trade Practices and Consumer Protection Law ("UTCPL") claim 73 P.S. § 201-1 *et seq.*, which was adjudicated during the first phase of trial.

Plaintiffs do not waive their right to offer the verdict reached in the first phase of trial as evidence of bad faith against Nationwide. Nationwide does not waive its right to argue that the verdict reached in the first phase of trial may not be offered as evidence of bad faith against Nationwide.

In exchange for Plaintiffs agreeing to the terms set forth above, Defendant Nationwide hereby agrees to withdraw its Cross-Claim against Defendant Lindgren for contribution and/or indemnity as set forth in Nationwide's Cross-Claim of January 20, 2000.

Defendant Lindgren hereby agrees to withdraw its Cross-Claim against Defendant Nationwide for contribution and/or indemnity as set forth in Lindgren's Cross-Claim of January 27, 2000.

NELSON LEVINE de LUCA & HORST, LLC

LAW OFFICES OF KENNETH C. MYERS

By: _____

Craig A. Cohen, Esquire
Attorneys for Defendant
Nationwide Mutual Insurance Company

By: _____

Kenneth C. Myers, Esquire
Attorneys for Defendant Lindgren

Dated: _____

11/28/06

Dated: _____

22 November 2006

MAYERSON, MAYERSON, SCHREIBER & MCDEVITT, P.C.

By: _____

Benjamin J. Mayerson, Esquire
Attorneys for Plaintiffs Daniel and Sheryl Berg

Dated: _____

11/17/06

Accordingly, Defendant Lindgren is dismissed as a party Defendant.

APPROVED

BY THE COURT:

Dated: December 3,
2006

Marianne R. Sutton, Prothonotary

NOTICE IS HEREBY GIVEN OF THE ENTRY OF THIS ORDER OR DECREE PURSUANT TO RULE P.C.P. 236. YOU ARE NOTIFIED THAT THIS ORDER/DOCUMENT HAS BEEN FILED IN THE PROTHONOTARY'S OFFICE OF BERKS COUNTY AND THIS IS AN EXTRACT FROM THE RECORD OF SAID COURT CERTIFIED THIS 5 DAY OF December 2006
Marianne R. Sutton, Prothonotary

Deputy

RECEIVED
PROTHONOTARY'S OFFICE
2006 DEC - 4 P 5: 10
BERKS COUNTY, PA
MARIANNE R. SUTTON
PROTHONOTARY

6/5/07 Trial Transcript

DANIEL AND SHERYL BERG : In the Court of Common Pleas
: of Berks County, Pennsylvania
: Civil Action - Law
VS. :
: :
: :
: :
NATIONWIDE MUTUAL :
INSURANCE COMPANY : No. 98-813

BENCH TRIAL
Tuesday, June 5, 2007
through
Monday, June 11, 2007
Reading, Pennsylvania

Before THE HONORABLE ALBERT A. STALLONE, Senior Judge,
Specially Presiding

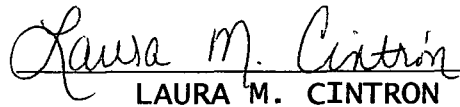
NOTICE OF LODGING TRANSCRIPT OF RECORD

TO: THE HONORABLE ALBERT A. STALLONE, Senior Judge
3rd Floor, Courthouse
633 Court Street
Reading, Pennsylvania 19601

CRAIG COHEN, ESQUIRE
Four Sentry Parkway
Suite 300
Blue Bell, Pennsylvania 19422

Notice is hereby given that on Tuesday, September 4, 2007, the transcript of the record as ordered to be transcribed in the above-captioned case will be lodged in the Prothonotary's Office. A copy of the within transcript may be obtained from the Prothonotary's Office upon payment to the Prothonotary's Office in the amount of \$1,305.00. If no objection is made to said transcript within 5 days from said date, it will be duly certified by the undersigned and filed of record in the case, in accordance with Pa.R.A.P. 1922(a).

Date: September 4, 2007


LAURA M. CINTRON

Official Court Reporter

DANIEL AND SHERYL BERG : In the Court of Common Pleas
: of Berks County, Pennsylvania
: Civil Action - Law
VS. :
: :
: :
: :
NATIONWIDE MUTUAL :
INSURANCE COMPANY : No. 98-813

BENCH TRIAL - VOLUME I OF II
Tuesday, June 5, 2007
through
Monday, June 11, 2007
Reading, Pennsylvania

Before THE HONORABLE ALBERT A. STALLONE, Senior Judge,
Specially Presiding

NOTICE OF LODGING TRANSCRIPT OF RECORD

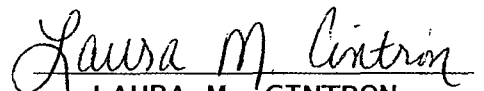
TO: THE HONORABLE ALBERT A. STALLON, Senior Judge
3rd Floor, Courthouse
633 Court Street
Reading, Pennsylvania 19601

BEN MAYERSON, ESQUIRE
HY MAYERSON, ESQUIRE
3540 Schuylkill Road
Route 724
Spring City, Pennsylvania 19475

CRAIG COHEN, ESQUIRE
Four Sentry Parkway
Suite 300
Blue Bell, Pennsylvania 19422

Notice is hereby given that on Tuesday, September 4, 2007, the transcript of the record as ordered to be transcribed in the above-captioned case will be lodged in the Prothonotary's Office. If no objection is made to said transcript within 5 days from said date, it will be duly certified by the undersigned and filed of record in the case, in accordance with Pa.R.A.P. 1922(a).

Date: September 4, 2007


LAURA M. CINTRON
Official Court Reporter

1 DANIEL AND SHERYL BERG : In the Court of Common Pleas
 2 : of Berks County, Pennsylvania
 3 : Civil Action - Law
 4 vs. :
 5 :
 6 :
 7 :
 8 :
 9 :
 10 :
 11 :
 12 :
 13 :
 14 :
 15 :
 16 :
 17 :
 18 :
 19 :
 20 :
 21 :
 22 :
 23 :
 24 :
 25 :

BENCH TRIAL
 Tuesday, June 5, 2007
 through
 Monday, June 11, 2007
 Reading, Pennsylvania

Before THE HONORABLE ALBERT A. STALLONE, Senior Judge,
 Specially Presiding

APPEARANCES:

For the Plaintiffs: BEN MAYERSON, ESQUIRE
 HY MAYERSON, ESQUIRE
 3540 Schuylkill Road
 Route 724
 Spring City, Pennsylvania 19475

For the Defendant: CRAIG COHEN, ESQUIRE
 Four Sentry Parkway
 Suite 300
 Blue Bell, Pennsylvania 19422

ALSO PRESENT: Sheryl Berg, Plaintiff
 Daniel Berg, Plaintiff

DISTRIBUTION: Original and two (2) copies filed with the
 Clerk of Courts - Criminal, for
 distribution to each attorney.

LAURA M. CINTRON
 Official Court Reporter

3

1 (Reading, Pennsylvania, Tuesday, June 5, 2007 at 9:30 a.m.)
 2 (The Defendant is present.)
 3 (REPORTER'S NOTE: At the direction of the Trial
 4 Judge, this transcript shall be considered as containing an
 5 exception to every ruling by the Court.)
 6 (Whereupon, an off-the-record discussion was held.)
 7 THE COURT: Let's get back on the record. We were
 8 handling some housekeeping matters for the last 25 minutes as
 9 to how we will proceed in this matter, which is the Phase 2
 10 of Berg versus Nationwide Mutual Insurance Company, Inc.
 11 And now defense counsel is about to bring to the
 12 Court's attention some matters which he feels should be
 13 decided in the form of in limine motions at this time. Lets
 14 hear them.
 15 MR. COHEN: Okay. The first one, Your Honor, is Mr.
 16 Mayerson had previously identified an ex-Nationwide employee
 17 by the name of Milan Merkobrad. The first name is M-I-L-A-N.
 18 The last name is M-E-R-K-O-B-R-A-D. We noticed and brought
 19 out of state a potential rebuttal witness, but I am advised
 20 by Mr. Mayerson that he doesn't intend on calling
 21 Mr. Merkobrad. I'd like to release that witness and I want
 22 to make sure that after I send him back to Texas you don't
 23 have a change of heart and call Mr. Merkobrad.
 24 MR. B. MAYERSON: AS I indicated to Mr. Cohen last
 25 week --

2

INDEX TO WITNESSES

<u>Plaintiff's Evidence:</u>	<u>VD</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Terry Shaw	--	--	45	54	57
George Moore	--	61	74	86	--
Jeffrey Gooderham	--	--	90	118	137
James Chett	152	173	179	216,266	226
Katherine Van Gorder	282	285	286	289,294,298	290, 295,310
Benjamin J. Mayerson	--	331	369	445	--
David Cole	459	--	468	481	484

<u>Defendant's Evidence:</u>	<u>VD</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Bruce Bashore	--	521	550	596	--
Constance Foster	603	615	637	--	--

INDEX TO EXHIBITS

<u>Exhibit No.</u>	<u>Marked</u>	<u>Admitted</u>	<u>Refer.</u>
33	Three pages photographs	49	669 746-748
34	NW Material Damage	62	669 749-757
35	Procedure Manual	71	669 758-765
36	Pennro Litigation Strategy	93	666 766-769
37	PA Best Claims Practices	120	668 770-835
38	Affidavit	132	669 836
39	Affidavit	135	669 837
40	Financial Highlights	302	W/D 838
41	Letter	332	669 839-840
42	Fee Petition	334	-- 841
43	Letter	378	669 842
44	Billing Records	369	669 843-952
45	Itemization	413	669 953-955
46	Log	471	669 956-1029
47	Policy	526	669 1030-1065
48	Material Damage - BCP	546	669 1066-1078
49	Pamphlet	546	669 1079-1080

4

1 THE COURT: Tell me whether you intend to call him or
 2 not. And this is the kind of thing that will weigh heavily
 3 on my mind when you say the Court has a discretion to reward
 4 damages up to an amount and sort out who is playing games in
 5 this matter and who is not playing games and who is taking
 6 the matter seriously keeping in mind the schedule of this
 7 Court. Do you intend to call that person as a witness?
 8 MR. B. MAYERSON: No.
 9 THE COURT: So he can release his rebuttal witness.
 10 Fine. That's what I mean by try to save some time.
 11 MR. COHEN: Plaintiffs have identified an individual
 12 by the name of Walter Cohen.
 13 THE COURT: who? who has identified him?
 14 MR. COHEN: Plaintiffs have identified an individual.
 15 Mr. Cohen is an attorney at the Obermayer firm in Harrisburg,
 16 I guess. Mr. Mayerson's identification of Mr. Cohen --
 17 MR. B. MAYERSON: We are not calling him, Your Honor.
 18 We are trying to shorten the case.
 19 THE COURT: Does that answer your question?
 20 MR. COHEN: Yes. Just as a matter of clarification
 21 --
 22 THE COURT: I don't want to listen to any more about
 23 it. He says he's not going to call him. Go to the next
 24 matter.
 25 MR. COHEN: There's a stack of documents that

IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

1 Plaintiffs have indicated they were going to introduce into
2 the record with regard to the consent decree of 1963.

3 MR. B. MAYERSON: We're not using them.

4 THE COURT: It makes it very simple. See, those few
5 words mean more than if you would have made a big speech. By
6 the time you got to the end of the speech I wouldn't remember
7 how you started.

8 MR. B. MAYERSON: I'm trying.

9 THE COURT: That's very good. You should. You're
10 two years older than I saw you last time.

11 MR. COHEN: Plaintiff's counsel faxed to me on June
12 3rd, Sunday, an order from another case in York County dating
13 back from 2003, a case called Sheraton versus Nationwide
14 Mutual Insurance Company. It relates to the Pennsylvania
15 Best Claims Practices matter. I don't want to get into the
16 substance of the order because I think it's prejudicial to
17 have Your Honor read it, but I will say this just came in on
18 Sunday. It's in violation of Your Honor's rule that any
19 exhibits had to be provided during 15 days before trial. It
20 was not provided during discovery. I'm going to ask Your
21 Honor not provide it.

22 MR. B. MAYERSON: It's on our exhibit list. It's a
23 document from the Schaeffer versus Nationwide matter, so it
24 was identified and it's in your disposition order.

25 MR. COHEN: This particular order in Sheraton was

1 never provided to us despite the fact that it may be on your
2 exhibit list. You may have identified the Schaeffer case,
3 but not the Sheraton case. It was never identified and never
4 produced in discovery aside from the fact that it's
5 irrelevant to the case. It's an order having to do with the
6 Bonenberger case and the Pennsylvania Best Claims Practice.
7 The Plaintiff's are trying to link up with what another court
8 did with what this Court should did. We believe the Court
9 should make a determination with the facts of this case and
10 the merits of this case and not what another court did. It
11 came to us on Sunday and if you provided it to us before
12 there'd be no reason to on Sunday.

13 THE COURT: Give me a reasonable explanation as to
14 why you didn't send it to him before.

15 MR. B. MAYERSON: The documents we secured in the
16 matter in a banker's box. I wrote to Mr. Cohen and asked
17 him, Do you want any of those documents or do you need them?
18 It was a Nationwide case. I was going to -- well, I can get
19 it for you tomorrow if you'd like, Your Honor.

20 THE COURT: Lets revisit it then tomorrow because
21 that's the thing that interests me at this particular point.
22 You have to have some good reason as to why you did not
23 provide it to him.

24 MR. B. MAYERSON: I do, Your Honor, in accordance
25 with the order, with this Court's order. It's the only

1 document we're using out of the banker's box in an effort to
2 narrow down the case. This is the only one we're doing. I
3 was doing him a service and saying here is the document we
4 intend to use from the Schaeffer matter.

5 THE COURT: See whether you can work it out by
6 tomorrow. If not, we'll get to that matter at the
7 appropriate time.

8 MR. COHEN: Your Honor, the Plaintiffs also sent to
9 me on June 1st a copy of an order in a case called Nationwide
10 versus Fleming, which is an opinion from the Pennsylvania
11 superior Court with regard to some privileged determinations
12 and privileged challenges to Nationwide's documents. Again,
13 this has no relevance to this case. It's another case
14 involving other issues to determine or decided on its own
15 merits. There is a decision by the Superior Court involving
16 a determination of privilege. It would be improper to offer
17 that as evidence in this case. I mean, if Plaintiffs want to
18 argue this on appeal to the Pennsylvania Superior Court,
19 that's fine, but at this time what another Court did with
20 regard to --

21 THE COURT: And if you want to put it in a post-trial
22 brief, which would seem to me to be the appropriate place, if
23 any, for that kind of material but not as evidence in the
24 case.

25 MR. B. MAYERSON: If I may respond though?

1 THE COURT: Go ahead.

2 MR. B. MAYERSON: The date of the opinion is May
3 21st, 2007. It is one-week old. It's turning and it
4 permeates many issues, and I would hope the Court would take
5 the time to review it when making rulings on Nationwide's
6 claims of attorney/client privilege.

7 MR. COHEN: Before you digest the case for His Honor,
8 I'm going to object. I mean, I think it's improper for
9 counsel to direct you to a case that he believes is
10 supportive of his position. Again, if he wants to argue it
11 in a post-trial motion or on appeal, this is a matter of law
12 from the Superior Court in a case. It's not a factual
13 determination and I argue it's prejudicial to present to the
14 Court at this time.

15 THE COURT: I'll deal with that at the appropriate
16 time in the case with whatever you intend to do with it, and
17 perhaps I'll have a better feel of the situation at that
18 point. I'm not ruling at this point.

19 MR. COHEN: Okay. There are a few witnesses that Mr.
20 Mayerson did not identify during discovery. For example,
21 there are two representatives of a body shop by the name of
22 Penn-DeL Auto Body; Michael Burke and George Moore.

23 Mr. Mayerson, I assume, wants to call these
24 individuals to testify with regard to documents that this
25 body shop may have gotten and argue in some way that this

9

1 contradicts testimony from other Nationwide people. These
2 individuals were never disclosed in discovery. We never had
3 an opportunity to depose these individuals. To this day I've
4 never spoken to these individuals. I don't know what the
5 testimony is going to be, and I'm not prepared for
6 cross-examination.

7 THE COURT: Who are they? Lets take one by one.
8 Maybe he can make them available to you so you can --

9 MR. B. MAYERSON: Mike -- Michael Burke and George
10 Moore. Both of them are from Penn-Del Auto Body, a former
11 Blue Ribbon Repair Center.

12 THE COURT: Can you make them available to Mr. Cohen?
13 MR. B. MAYERSON: Certainly.

14 THE COURT: When?
15 MR. B. MAYERSON: They're here now.

16 THE COURT: You're not going to call them this
17 morning or are you?
18 MR. B. MAYERSON: You want to make sure I'm not
19 pulling any monkey business. They were identified before the
20 last trial and the documents were supplied to opposing
21 counsel February, 2004. That's three years ago. After the
22 trial there was a discovery period. My deposition was taken
23 --

24 MR. COHEN: That is a misrepresentation to the Court.
25 There was discovery for purposes of fees only. Discovery was

10

1 never reopened again. I never had an ability to take these
2 depositions, and I certainly don't feel, with all due respect
3 to the Court and Mr. Mayerson, that I should be in a position
4 to take a deposition in the middle of trial of witnesses that
5 -- this case is ten years old. These witnesses should have
6 been identified during discovery and now I'm prejudiced
7 because I don't have the ability to take their testimony, get
8 it transcribed, cross-examine them during trial on their
9 testimony. It's just not fair. We made all of our witnesses
10 and documents available during discovery.

11 MR. B. MAYERSON: Your Honor, these documents were --
12 THE COURT: Witnesses we're talking about, not
13 documents?
14 MR. B. MAYERSON: The witnesses were discovered and
15 immediately upon discovering the witnesses --

16 THE COURT: How did you let Mr. Cohen know who these
17 witnesses were and what purpose they would serve in your
18 case?
19 MR. B. MAYERSON: We subpoenaed the records providing
20 them an opportunity to get a copy at the same time and the
21 records went to their counsel.

22 THE COURT: No, no, no. You gave them an opportunity
23 to get the records at the same time, but that does not
24 provide defense counsel with the information that here is
25 someone who we intend perhaps to call in this case as a

11

1 witness who might have some material information for the
2 Court relative to a certain matter. There is none of that.
3 That's what I gather.

4 MR. B. MAYERSON: Your Honor, I would go back and
5 check. I don't see I told him exactly what they were going
6 to testify to. They were going to authenticate these
7 documents that Nationwide management had testified did not
8 exist and I found them. It's material evidence and I
9 notified them three years ago.

10 MR. COHEN: Mr. Mayerson identified both of these
11 witnesses for the first time in his pretrial memo August 6th,
12 '04, but certainly after discovery was closed. I never had
13 the opportunity --

14 THE COURT: But that was the time for you to object
15 then. And if you --

16 MR. COHEN: We did object. We filed a motion in
17 limine Your Honor wouldn't take into consideration.

18 THE COURT: At that time?
19 MR. COHEN: Prior to trial. We had 15 motions in
20 limine.

21 THE COURT: Where is it? I have all the motions in
22 limine. Go get them.

23 MR. B. MAYERSON: We filed a reply, which I don't
24 have here today.

25 THE COURT: Okay. You say this is a motion in limine

12

1 that you had filed.

2 MR. COHEN: Your Honor refers to the certificate of
3 service that was sent in September of '04 and that
4 specifically seeks to preclude Michael Burke and George
5 Moore.

6 THE COURT: As well as others.
7 MR. COHEN: As well as others. As well as Barbara
8 Schultzworth.

9 THE COURT: My daughter-in-law, I see. Is she a
10 witness in this case?
11 MR. B. MAYERSON: No, she was going to be called.
12 MR. COHEN: I'm sure she will be now.

13 THE COURT: Well, here it is. It's a motion in
14 limine and it was filed at that particular time and even
15 though you filed a response to it --

16 MR. B. MAYERSON: Your Honor, we supplied them the
17 documents in February of 2004. There was plenty of time for
18 them. We never opposed a deposition. It is quite
19 self-serving.

20 THE COURT: In other words, you say that you
21 subpoenaed the documents to them subsequent to the filing of
22 this motion in limine.

23 MR. B. MAYERSON: What's the date of the motion in
24 limine?
25 THE COURT: It says September the 15th, '04, so

13

1 apparently what you submitted to them --
2 MR. B. MAYERSON: February of '04.
3 THE COURT: Is that February?
4 MR. B. MAYERSON: We submitted it to them.
5 THE COURT: Wait a minute. The motion in limine is
6 that a 9/15/04 or what is that, the date, 9/15/04. September
7 15th of '04, that's when the motion in limine was filed.
8 MR. B. MAYERSON: We gave them copies in February of
9 '04 about six months before.
10 THE COURT: Why would they file this then?
11 MR. B. MAYERSON: I don't understand the question.
12 THE COURT: Well, apparently --
13 MR. B. MAYERSON: They filed it because they want to
14 preclude material evidence from the trial.
15 MR. COHEN: Your Honor, let me make this simple.
16 They gave us the documents in February of '04, just the
17 documents. We called them up and say, what is this?
18 These are documents from Penn-Del. We're calling
19 Michael Burke and George Moore.
20 You never let us know about Michael Burke and George
21 Moore. Discovery is closed. We'll be filing a motion in
22 limine. They responded, made their arguments. Your Honor
23 didn't want to hear any of our motions in limine.
24 THE COURT: I didn't have to consider that motion at
25 that time.

14

1 MR. COHEN: So we're arguing we're going to be
2 prejudiced and we want these people precluded.
3 MR. B. MAYERSON: There were several motions
4 withdrawn at the start of the trial. I'm not sure if that
5 was one of them or not.
6 MR. COHEN: Your Honor, they were not withdrawn with
7 any prejudice. I withdrew them pursuant to raising any of
8 these issues.
9 THE COURT: When are you putting these two witnesses
10 on the stand?
11 MR. B. MAYERSON: I'd like to call a Nationwide
12 witness first, but I don't think they're here, so I will call
13 these witnesses -- one of them first -- and I'm only going to
14 call one of them; George Moore, I suppose. It's primarily to
15 authenticate three documents. I expect the testimony to take
16 no more than 20 minutes tops.
17 THE COURT: Is that the only outstanding matter as
18 far as this particular motion in limine is concerned?
19 MR. COHEN: I'd have to take another look at it.
20 There may be another witness on here that -- David Cole.
21 THE COURT: What about David Cole?
22 MR. B. MAYERSON: David Cole was handling the matter
23 the moment we filed our suit. He is an attorney but he was
24 not operating as an attorney. He was operating as a Claims
25 Manager, and the law is quite clear that roles are not the

15

1 same. And the opinion that Mr. Cohen does not want you to
2 read is directly on point and discusses how narrow the
3 attorney/client privilege actually is and it is far more
4 narrow than Nationwide represents it to be.
5 THE COURT: This motion is denied. What's the next
6 one?
7 MR. COHEN: Katherine Van Gorder. Katherine Van
8 Gorder is -- I'm not sure what she is. I think she's a
9 bookkeeper, and she has authored a report based on her going
10 on to the internet, pulling Nationwide's financial statement
11 and making certain pronouncements about how Nationwide's "X"
12 worth is what, and one percent of one percent and would equal
13 a certain amount subcertain. I don't know that she's
14 qualified at all to make such a pronouncement. But if all
15 she did was go on to the internet and pull financial
16 statements out, we believe it's completely improper
17 testimony, certainly under the Frye doctrine in Pennsylvania.
18 She's not qualified to testify to the net worth. It would be
19 completely improper to take a percentage of what that net
20 worth would be to punitive damages.
21 If Your Honor is so inclined to find punitive damages
22 in the case, we can stipulate to the fact that Nationwide is
23 a very big company and has a lot of money. And, I mean, we
24 don't need a bookkeeper coming in here making certain
25 pronouncements about Nationwide's net worth.

16

1 MR. B. MAYERSON: There are five points that
2 Katherine Van Gorder and Nationwide will stipulate to them
3 and she got them from A.M. Best Insurance Guide Book.
4 THE COURT: Lets take one at a time, which is the
5 first one?
6 MR. B. MAYERSON: May I run out and get them?
7 THE COURT: (Nods.)
8 (Whereupon, Mr. B. Mayerson left the retiring room to
9 retrieve documents.)
10 (Whereupon, Mr. B. Mayerson returned to the retiring
11 room.)
12 MR. B. MAYERSON: Thank you, Your Honor.
13 Incidentally, this is our motion in limine that we filed in
14 the first day.
15 MR. COHEN: No, Your Honor. This is with regard to
16 Katherine Van Gorder.
17 MR. B. MAYERSON: Number one.
18 THE COURT: Go ahead.
19 MR. B. MAYERSON: Defendant, Nationwide Mutual
20 Insurance Company maintains an A-plus rating which is defined
21 by A.M. Best Company as having --
22 MR. COHEN: I'm sorry, Your Honor, but all he's doing
23 is reading to you exactly what Katherine Van Gorder would
24 testify to, which means he's presenting the objectionable
25 evidence to the fact finder. He's reading right out of his

IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

17

1 proposed findings of fact.

2 THE COURT: Well, that's what he's saying. If you

3 are willing to agree to these five findings of fact it will

4 obviate the necessity of bringing Van Gorder in to testify.

5 Now if you're saying you cannot agree to those, then fine,

6 we'll go back to the motion.

7 MR. COHEN: Katherine Van Gorder's opinion was back

8 in 2003.

9 THE COURT: That's not the issue at this point.

10 MR. COHEN: I can't agree to that. I don't know that

11 Nationwide is still an A-plus company.

12 THE COURT: He can't stipulate to that.

13 MR. B. MAYERSON: Mrs. Van Gorder -- I don't have her

14 C.V. here.

15 MR. COHEN: I do.

16 MR. H. MAYERSON: That should be Exhibit 1 and made

17 part of Exhibit 1 at trial.

18 MR. COHEN: They were --

19 MR. B. MAYERSON: Would you like to read it?

20 THE COURT: No.

21 MR. B. MAYERSON: From 1972 to '80 she was the

22 founder, owner and manager of a public bookkeeping and tax

23 practice utilizing five full-time employees and managing

24 rental properties.

25 From '80 to '82 she was a bookkeeper using a manual

18

1 double-entry system. It was used for family-owned company

2 with multiple subsidiaries. That position was with many

3 different states and PUC regulations. She developed an

4 inventory control system.

5 From '82 to '88 she was a Financial Manager in charge

6 of the Accounting Department with responsibility for all

7 financial transactions, pay roll and inventory control for

8 CGS Scientific Corporation.

9 From '88 to '89 she was a Controller for Omega Design

10 Corporation with a one-year contract to implement the

11 completion of a computerized accounting system with links

12 from the administration modules to all departments.

13 THE COURT: Are these qualifications to give the

14 opinions a few months ago as far as Nationwide and its

15 financial statement? I don't hear anything that bears on

16 anything at all. She was a Controller here and there and

17 worked at different places.

18 MR. B. MAYERSON: Ms. Van Gorder is a bookkeeper of

19 20 or more years.

20 THE COURT: So what? She has no experience in

21 insurance. What specific qualifications does she have to

22 give the opinions I understand that she would give if the

23 Court would allow her to testify?

24 MR. B. MAYERSON: She researched the relevant manuals

25 and based on her experience was able to digest those relevant

19

1 manuals published yearly with financial statements. All

2 she's really doing is conveying to the Court what is readily

3 available in these texts, and that's why there should be a

4 stipulation to this.

5 Initially I need to make one important point before

6 you make your ruling. And that is under Pennsylvania law,

7 unlike the federal law, in order to award punitive damages,

8 the trier of fact must consider the Defendant's wealth and

9 ability to absorb a punitive award. So all Ms. Van Gorder is

10 being able to do is to sustain Nationwide is a very wealthy

11 company. And if we can work out a stipulation with counsel,

12 and here is a proposed stipulation, that any single digit

13 multiplier that this Court might award based on a reasonable

14 calculation of what the attorney's fees might be, that it's

15 something that Nationwide could absorb without risking its

16 financial stability.

17 MR. COHEN: Let me just read something from her

18 report.

19 THE COURT: No. Answer his question. Don't change

20 the subject.

21 MR. COHEN: That a single digit multiplier of an

22 award is something that Nationwide can absorb?

23 THE COURT: What's a single digit multiplier?

24 MR. B. MAYERSON: One to nine.

25 THE COURT: So if it was five times the award, that

20

1 would be five times --

2 MR. B. MAYERSON: Right.

3 THE COURT: -- the award of counsel fees --

4 MR. B. MAYERSON: Right.

5 THE COURT: -- for punitive damages?

6 MR. B. MAYERSON: Right.

7 THE COURT: So that if the award of counsel fees was

8 \$500,000, as an example, you're saying that they could pay

9 \$2,500,000 in the form of punitive damages?

10 MR. B. MAYERSON: Correct, Your Honor.

11 MR. COHEN: I'm not in a position to agree to that.

12 I can't. I'm not authorized on behalf of the company.

13 THE COURT: Your motion is denied. Lets go to the

14 next one. I'm not going to sit here listening to this for

15 the next day. I only have so much time.

16 MR. COHEN: How about if I stipulate to this? How

17 about if I stipulate that Nationwide would not go out of

18 business if it was hit with a five times multiplier of

19 attorneys fees? I mean, I don't know what absorb means.

20 MR. B. MAYERSON: That's acceptable to us.

21 MR. COHEN: I'm not going to subject myself to

22 malpractice.

23 MR. B. MAYERSON: How about a waiver of the objection

24 that the Court didn't consider their exact wealth?

25 MR. COHEN: I don't know what you just said.

21

1 MR. B. MAYERSON: I think the Campbell decision that
2 came down that said a nine to one ratio needed to dispense to
3 look at a company's financial portfolio because it linked it
4 to the punitive damages to the compensatory damages that a
5 wealthy defendant could absorb is single digit ratio of most
6 verdicts; millions, you're talking about an oil catastrophe
7 or something, but it's still the law on the books.
8 THE COURT: I don't understand what you're saying.
9 MR. B. MAYERSON: I don't think there's anyway that a
10 verdict in this case is going to be above \$5 million and
11 you're willing to stipulate that Nationwide can absorb a \$5
12 million dollar verdict without a problem and there's no issue
13 on that; is that correct?
14 MR. COHEN: No, I can't stipulate to that. I can't.
15 I might as well call my malpractice carrier. I'm not
16 authorized to make that kind of stipulation. Do I think
17 Nationwide will go out of business and effect Nationwide's
18 practice; no, but I can't sit here and stipulate.
19 Nationwide is a mutual company. Their rates are
20 based on what they have to pay out.
21 MR. B. MAYERSON: Are there any of these points that
22 you can stipulate to?
23 MR. COHEN: I believe I can stipulate that Nationwide
24 is a big company and makes multiple millions of dollars a
25 year.

22

1 MR. B. MAYERSON: One of these six, their total
2 assets reported in 2002.
3 MR. COHEN: But it would appear it is difficult to
4 pin down a meaningful net value of such a conglomerate
5 without access to the total financial package. That in and
6 of itself suggests that all she did was the same thing that
7 anybody could do; go onto the internet, pull off their annual
8 statement and make some kind of conclusions about how big
9 Nationwide is and what one percent of one percent is.
10 THE COURT: And perhaps that's the best evidence that
11 the Plaintiff can submit.
12 MR. COHEN: That's impossible to believe, Your Honor,
13 that Plaintiff's couldn't --
14 THE COURT: Well, I don't know. I don't know what
15 other evidence there may be. That's up to the Court to
16 decide whether or not that evidence is credible enough upon
17 which to make a judgment and a verdict of punitive damages.
18 Lets get it in and we'll hear it. We're not going to hear
19 this case in the next few days. I can tell you that right
20 now, especially if we keep going like this. I'm not going to
21 lose my cool because I don't care how far we get in the next
22 two or three days in this case. This is your case.
23 MR. COHEN: Okay.
24 THE COURT: I don't have ten days, okay. Now, if you
25 can get Chief Justice Cappy to arrange our schedules in this

23

1 county so we can devote ten days to this kind of a case, I
2 would be glad to comply.
3 MR. COHEN: I understand, Your Honor.
4 THE COURT: No, you don't understand.
5 MR. COHEN: We have two witnesses that we're calling
6 in our case. Plaintiff's have a litany in this case that
7 have nothing to do with the Berg's case. These are all
8 irrelevant. It is whittled down to the marrows of nonsense.
9 THE COURT: I understand that.
10 MR. COHEN: Katherine Van Gorder is nothing more than
11 a bookkeeper.
12 THE COURT: I am not going to give the Plaintiff a
13 basis to appeal if I can avoid it.
14 MR. COHEN: That's fine.
15 THE COURT: Or you a basis to appeal if I can do
16 that.
17 MR. COHEN: The last thing that we want to --
18 THE COURT: If they get a judgment and you appeal it
19 and it's reversed, they're right back to where they started.
20 MR. COHEN: Let me make this suggestion.
21 THE COURT: The real suggestion is I don't understand
22 why you can't settle this case. This is not going to be a \$5
23 million dollar case. I don't see how a 23 hundred dollar
24 award of compensatory --
25 MR. COHEN: Two hundred ninety-five dollars, Your

24

1 Honor. The 25 hundred was against Lindgren.
2 THE COURT: Good point.
3 MR. COHEN: Two hundred ninety-five dollars against
4 Nationwide. And don't think that Nationwide hasn't tried to
5 settle this case for the past ten years.
6 THE COURT: Off the record.
7 (Whereupon, an off-the-record discussion was held.)
8
9 MR. COHEN: So Katherine Van Gorder is going to
10 testify. Our motion is denied?
11 THE COURT: Yeah.
12 MR. COHEN: Okay. Jeff Gooderham. Jeff Gooderham is
13 a Nationwide lawyer. Jeff Gooderham testified in
14 Bonenberger. Jeff Gooderham, with regard to the
15 applicability of the Best Claims Practices Manual, he has
16 since redacted that testimony in several cases. He testified
17 that he was mistaken just like Kathy Holbin did.
18 THE COURT: Not so fast.
19 MR. COHEN: We believe that; number one, his
20 testimony should be precluded because he's an attorney and he
21 stands to violate attorney/client privilege if he takes the
22 stand because more so his testimony is completely irrelevant.
23 what he testified to in another case is completely
24 irrelevant. He has no knowledge of the Berg case at all. He
25 has no relevance to this trial at all.

1 MR. B. MAYERSON: If I may respond, Your Honor. I
2 read your comments very closely at the last trial with regard
3 to Kathy Holbin and how you instructed on cross-examination.

4 You agree you testified incorrectly with regard to
5 this, and you agree you testified incorrectly to that issue,
6 and that is the line of questioning I intend to take with
7 this witness.

8 MR. COHEN: In the face of trial after Ms. Holbin
9 testified we had a stipulation that Mr. Mayerson would call
10 no more witnesses with regard to the Bonenberger issue if we
11 stipulated that their testimony would be consistent with Ms.
12 Holbin and that is that they testified incorrectly in the
13 Bonenberger case. We have that stipulation and those
14 witnesses were never called in the first phase. It does not
15 make any sense to call them again.

16 I will stipulate that Mr. Gooderham's testimony will
17 be consistent with Ms. Holbin's and that is he was wrong. He
18 was just wrong.

19 MR. B. MAYERSON: Your Honor, if we are still in the
20 same trial that might be relevant, but I'm unclear that this
21 is part of the same record.

22 THE COURT: Of what?

23 MR. B. MAYERSON: Of the last trial.

24 THE COURT: That's the first thing I said when you
25 came in here. We divided it into two phases. We didn't

1 bifurcate and create a separate trial in this. That's the
2 reason why there is no appeal until my opinion. You're
3 waiting until the entire case is decided and take it all up
4 at one time. Whoever decided that, that's good.

5 MR. B. MAYERSON: In light of that decision and
6 reasoning, could we revisit the issue about reading in prior
7 testimony or saying when we would call that witness? Because
8 then if it's all part of the record we can argue it in
9 closing argument; right?

10 THE COURT: That's what I said.

11 MR. B. MAYERSON: So I don't need to do it in my case
12 in chief then; I can site to the prior testimony in trial?

13 THE COURT: No. You have to do it in your case in
14 chief, as well. You have to incorporate that testimony
15 simply because I've asked you to do so and let the Court know
16 to what extent that testimony is relevant to the issues that
17 you're trying to develop here in this bad faith punitive
18 damage claim, counsel fee claim.

19 MR. B. MAYERSON: Is what you're saying that what we
20 have to do is read it into the record again?

21 THE COURT: No, don't read it into the record.
22 Summarize it for me. Tell me what those issues are, and if
23 you're completely straight with it and honest with what
24 you're saying, I'm sure Mr. Cohen will have no objection. If
25 you're not -- if you're gilding the lily he will object to

1 that and take the position; no, that's not what was said and
2 you go back and forth and then we spend another half an hour
3 on that kind of thing, which again is okay.

4 MR. COHEN: I have no problem. If you want to read
5 in Kathy Holbin's testimony, that's fine. I'll stipulate it.

6 MR. B. MAYERSON: We would like to call
7 Mr. Gooderham. It will be brief testimony and I will take
8 your direction with how to cross him on the opinion
9 Nationwide -- Mr. Cohen -- doesn't want you to look at what
10 is controlling on this issue.

11 MR. COHEN: It has nothing to do with this issue.

12 MR. B. MAYERSON: It has to do with the
13 attorney/client privilege and what the scope of that
14 privilege is and Mr. Gooderham is not protected by the
15 attorney/client privilege; at least not in the scope of the
16 questions we intend to ask him and if so he waived it at the
17 Bonenberger trial.

18 MR. COHEN: Your Honor, we're going to move to
19 preclude Mr. Gooderham to testifying based on the reasons
20 that we stated. We have a stipulation. Ms. Holbin
21 testified. We will stipulate that his testimony would be
22 consistent with her testimony. It was good enough to
23 stipulate.

24 THE COURT: What's the connection between the two?

25 MR. COHEN: They both testified during the -- he was

1 involved in the Bonenberger claim. He was actually the
2 lawyer involved in the Bonenberger claim, so he was called to
3 testify at Bonenberger and he was presented with the Best
4 Claims Practices Manual. And they said, Have you ever seen
5 this?

6 Yes, Pennsylvania Best Claims Practices Manual,
7 remembering that Bonenberger was a casual case, an injury
8 case, not a collision case, and that was part of our big
9 explanation during the first phase; that this document does
10 not apply to these types of claims. This is a casual
11 document and he testified indirectly during Bonenberger that
12 this document was in effect at the time. Thereafter he was
13 made aware that that document was superseded by another
14 document. He didn't know. Best Claims Practices, there's a
15 thousand Best Claims Practices. Since then he has recanted
16 that testimony in three different cases.

17 THE COURT: Why not let that testimony come in?

18 MR. COHEN: In every case it's going to be the same
19 case. For the next ten years Jeff Gooderham and Katherine
20 Holbin, what they testified in Bonenberger three years ago,
21 and we have testimony from Kathy Holbin. Plaintiff agreed to
22 a stipulation that we didn't have to have other witnesses
23 come in and testify to the same thing. It has nothing to do
24 with this case and nothing to do with the Berg's claim. It's
25 another opportunity for Plaintiff's to mar Bonenberger. I

1 have it highlighted in the first phase of trial that you
 2 weren't getting into the merits. It's a casual case; it's
 3 not this case and I think point to Your Honor's words.
 4 THE COURT: I remember saying that.
 5 MR. COHEN: That's --
 6 THE COURT: I was convinced what you were pointing to
 7 the Court is what the distinction was; correct, at least at
 8 the time I thought that you were correct on that. And then I
 9 haven't heard anything different.
 10 MR. B. MAYERSON: Your Honor, the stipulation was
 11 entered to shorten that trial and we were trying to do
 12 everything we could to get everything packed in. This was
 13 never a stipulation to control the bad faith trial.
 14 Mr. Gooderham's testimony can be impeached and he's not
 15 infallible.
 16 THE COURT: I'm going to deny the motion. You may
 17 call him as a witness. You better figure out another time to
 18 continue this case eight, nine, ten months from now. That's
 19 how long it's going to be before I have three, four, five,
 20 six days. You're not going to get it done. I know you're
 21 not going to get it done.
 22 Go ahead. Next of the --
 23 MR. COHEN: Plaintiffs have identified an attorney in
 24 town by the name of Jim Schwartzman. Mr. Schwartzman was
 25 somebody who prepared a report a couple years ago in support

1 of Plaintiff's motion for sanctions against Nationwide having
 2 to do with some discovery issues. That motion was denied by
 3 Judge Lash. They are now bringing Mr. Schwartzman in, a
 4 lawyer, to testify with regard to the propriety of some of
 5 our discovery practices.
 6 The O'Donnell case under Pennsylvania law, discovery
 7 violations are something that is taken up with the discovery
 8 court. It's not evidence of bad faith if we're going to have
 9 a lawyer come in here and testify like Mr. Walter Cohen was
 10 going to do with regard to the propriety of certain discovery
 11 practices. That issue is behind us now and we are now --
 12 THE COURT: Is that in the form of a motion in
 13 limine? Do you have this in the form of a motion in limine?
 14 MR. COHEN: I believe we do.
 15 MR. B. MAYERSON: You do?
 16 THE COURT: What's your response to that?
 17 MR. B. MAYERSON: Our response is that you already
 18 ruled on whether Judge Lash ruled on this issue and you
 19 denied it and you found that Judge Lash's ruling was not
 20 controlling. And Judge Lash specifically said in his order
 21 that he is not reaching the merits of Plaintiff's motion. He
 22 found it untimely and denied it based on that alone.
 23 Mr. Schwartzman addresses -- first of all, let me say
 24 I agree with Mr. Cohen. Pure discovery violations are not
 25 admissible to prove bad faith. However, when those discovery

1 violations rise to a level where the Court finds that the
 2 insurer has intentionally concealed the conduct of its
 3 employees, it does rise to a level of insurer bad faith and
 4 that is what the Hollick versus Erie decision is. It is now
 5 the landmark decision in the area of insurance bad faith.
 6 It was cited to by Mr. Cohen. It was an older case cited
 7 that said we don't find O'Donnell controlling. All O'Donnell
 8 said was a pure discovery violation; that is, they didn't
 9 respond to -- the issue in O'Donnell was that the insurer
 10 wasn't responding to letters within ten days and wasn't
 11 responding to interrogatories.
 12 In this case, and what Hollick said, was that when
 13 you file all your motions with the Court and the discovery
 14 process doesn't give you relief because the Defendant has
 15 ignored court orders or conducted itself in such a way that
 16 the discovery process is useless to the party --
 17 THE COURT: Is that what Schwartzman is going to
 18 testify to?
 19 MR. B. MAYERSON: Schwartzman will not testify to
 20 Hollick. He's going to testify to Nationwide's conduct.
 21 THE COURT: Generally speaking or what?
 22 MR. B. MAYERSON: What Mr. Schwartzman is going to --
 23 THE COURT: Mr. Schwartzman is going to testify as to
 24 Nationwide's conduct in a particular case here in Berks
 25 County?

1 MR. B. MAYERSON: This case.
 2 THE COURT: This case?
 3 MR. B. MAYERSON: Just this case. what he's going to
 4 do is establish that when Nationwide inspected this vehicle
 5 before the lawsuit was filed it knew that Plaintiff's claim
 6 was meritorious and it concealed that knowledge pursuant to
 7 the attorney/client privilege and that knowledge was entered
 8 in its claim file from one claim manager to his supervisor
 9 and it was later redacted. After we filed motions Nationwide
 10 filed a motion for protective order.
 11 MR. COHEN: Your Honor, we unredacted the log note
 12 four years ago.
 13 MR. B. MAYERSON: Five years into the litigation, 5
 14 months after.
 15 MR. COHEN: They can make the argument regarding the
 16 improper redaction. They're going to make that argument that
 17 it was improperly redacted. We undid it. Mr. Schwartzman's
 18 report was January 2004. It was before the first phase of
 19 trial. It was a discovery motion. That motion was denied as
 20 untimely. Mr. Schwartzman's testimony is about how awful
 21 Nationwide acted with regard to improper redaction.
 22 MR. B. MAYERSON: All he's going to testify is based
 23 upon his review of the file Nationwide had no basis to
 24 withhold this critical evidence pursuant to the
 25 attorney/client privilege.

IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

33

1 MR. COHEN: This is for the Court to decide. Who is
2 James Schwartzman to offer expert testimony to offer
3 redactions?
4 MR. B. MAYERSON: I don't interrupt you when you're
5 speaking. I try not to. This case that came out last week
6 completely substantiates what Mr. Schwartzman said; that the
7 attorney/client privilege and work product doctrine are not
8 mixed together. They can't be blended and attorney/client
9 privilege protects only communications -- confidential
10 communications from a party to their client and nothing more,
11 and that you cannot use the attorney/client as a shield or as
12 a sword. It can only be used as shield and if a party like
13 Nationwide attempts to use it as a sword, well, they're using
14 it improperly and waived the entire privilege all together.
15 THE COURT: I don't think you needed that case. I
16 always thought that was the law.
17 MR. COHEN: And that is the law.
18 MR. B. MAYERSON: Apparently Nationwide doesn't
19 understand that.
20 THE COURT: In either event, your motion is denied.
21 Next one.
22 MR. COHEN: I don't have any other motions.
23 THE COURT: Okay. We'll start up again in ten
24 minutes.
25 (whereupon, the discussion in the retiring room was

34

1 concluded.)
2 THE COURT: Continuing now with our matters that were
3 involved in the conference room, the Court now wants to read
4 into the record the uncontested facts reached by the parties
5 pursuant to the Court's disposition order of November the
6 8th, 2006.
7 Number one is all pertinent -- I'm sorry. At all
8 pertinent times Plaintiffs, Bergs, were insured under
9 Nationwide Insurance policy number 5837-C-17421, which
10 provided coverage for both collision and comprehensive loss
11 subject to a deductible is that agreed to and stipulated to.
12 MR. COHEN: Yes, Your Honor.
13 MR. B. MAYERSON: Yes, Your Honor.
14 THE COURT: Then that is a finding of fact by this
15 Court and is a part of the record.
16 Number two, on September 4th, 1996 an insured loss
17 was triggered by a collision causing damage to Plaintiff's
18 insured vehicle, a 1996 Jeep Grand Cherokee. That's also
19 agreed to?
20 MR. B. MAYERSON: Yes, Your Honor.
21 MR. COHEN: Yes.
22 THE COURT: All right. And that also is incorporated
23 into the record as a finding of fact of this Court.
24 Number three, following Plaintiff's collision of
25 September the 4th, 1996 but prior to the loss being

35

1 appraised, Defendant, Nationwide, offered Plaintiffs the Blue
2 Ribbon Program. Nationwide promised a Blue Ribbon appraisal
3 from an approved Blue Ribbon repair facility that had a
4 Nationwide Blue Ribbon Guarantee. I'm not sure of this one
5 item.
6 Upon the Plaintiff's collision of September the 4th
7 of 1996, but prior to the loss being appraised, Defendant,
8 Nationwide, offered Plaintiff the Blue Ribbon Repair Program;
9 Nationwide promised a Blue Ribbon Appraisal from an approved
10 Blue Ribbon repair facility that offered a Nationwide Blue
11 Ribbon Guarantee. Is that agreed to?
12 MR. B. MAYERSON: Yes, Your Honor.
13 MR. COHEN: I believe it should read, "backed by a
14 Nationwide Blue Ribbon Guarantee," Your Honor.
15 THE COURT: Okay. That's the word that's missing.
16 Fine. Backed by. That's the last phrase, "backed by a
17 Nationwide Blue Ribbon Guarantee."
18 That also is a finding of fact with this Court.
19 Number four is the Plaintiffs agreed to participate
20 in Nationwide's Blue Ribbon repair program. Is that agreed
21 to, stipulated to?
22 MR. B. MAYERSON: Yes, Your Honor.
23 MR. COHEN: Yes.
24 THE COURT: That will be a finding of fact for this
25 Court, as well. Following Plaintiffs September 4, 1996

36

1 collision, Nationwide offered Plaintiffs the choice of having
2 their insured loss appraised and repaired by a Blue Ribbon
3 facility, former Defendant, Lindgren; this was the second
4 time Nationwide recommended its Blue Ribbon repair facility
5 to the Plaintiffs, Bergs. Is that stipulated to?
6 MR. B. MAYERSON: Yes, Your Honor.
7 MR. COHEN: Yes.
8 THE COURT: That's also a finding of fact for this
9 Court. The repairs to the Berg vehicle took approximately
10 four months to complete. Agreed to?
11 MR. COHEN: Yes.
12 MR. B. MAYERSON: Yes.
13 THE COURT: All right. That's another finding of
14 fact by this Court by stipulation and agreement of counsel.
15 The title of the Nationwide personnel performing
16 random inspections of Nationwide's Blue Ribbon facilities was
17 Property Damage Supervisor and, slash, or Property Damage
18 Specialist. And then in brackets, capital "P," capital "D,"
19 capital "S," close brackets; agreed?
20 MR. COHEN: Yes.
21 MR. B. MAYERSON: Yes.
22 THE COURT: All right. That's a finding of fact of
23 this Court.
24 On November the 3rd, 1997 Plaintiff's counsel faxed
25 Doug Witmer of Nationwide the following: Please be advised

IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

37

1 that this office represents Daniel Berg in regard to a claim
 2 being presented against Lindgren Chrysler-Plymouth arising
 3 out of faulty repair work done at their facility. It is my
 4 understanding that you are Mr. Berg's first-party property
 5 damage adjuster for the claim arising out of this automobile
 6 accident. Please direct all future communications regarding
 7 this claim to my offices. Please do not contact Lindgren
 8 Chrysler-Plymouth as your communications may have an impact
 9 on Mr. Berg's pending litigation against Lindgren.

10 If Lindgren contacts you, please direct them to my
 11 office and, slash, or forward their correspondence to my
 12 office for further handling. Please forward me a copy of
 13 your file including all maintenance records, bills, receipts,
 14 estimates and notes or correspondence between you and
 15 Lindgren Chrysler-Plymouth as it relates to this claim. I am
 16 preparing a complaint to be filed against Lindgren and the
 17 Chrysler Corporation.

18 I have retained an expert to examine the vehicle. If
 19 Nationwide requires an opportunity to examine the vehicle,
 20 please advise. Please call me so that we might discuss this
 21 matter further.

22 That's the stipulation?

23 MR. B. MAYERSON: Yes, Your Honor.

24 THE COURT: Agreed to?

25 MR. COHEN: Yes.

38

1 THE COURT: All right. That is a finding of fact of
 2 this Court. On April the 28th, '98 Steve Potosnak,
 3 P-O-T-O-S-N-A-K, of Nationwide inspected Plaintiff's vehicle
 4 at A.W. Golden's. The findings were documented in the claim
 5 log on April 30th, 1998 as follows: 0100 advisory comments:
 6 Technical MGR, dash, Berg, Daniel G. and Sharon E. and then
 7 R-E-I-N-S-P, space, P-L, space, truck, 4, slash, 28 at A.W.
 8 Golden's. As per request from Bev Carlson and Bruce Bashore.
 9 This was arranged through P-L, apostrophe, S, attorneys. I
 10 did not discuss truck or findings with P-L. Had truck on
 11 lift. R-T space F-N-D-R, space, hanging out from rear end,
 12 R-F, space, M-L-D-G, hanging loose. Hood gaps, uneven on
 13 both sides. Upon looking at front tires, slash, wheels, L-F,
 14 space, I-N, substantially in comparison to R-F, which is even
 15 with edge of F-N-D-R, bracket, makes rear appear shifted to
 16 right, close bracket. R-F rail apron and rail not replaced,
 17 R-T apron still split in several areas. R-T rail still has
 18 damage near sway bar mount. Fan blade closer to L-F side of
 19 shroud, S-H-R-O-U-D. ThEn R-F, appears to have contacted
 20 shroud at some point and broke shroud near upper mounting
 21 point on R-A-D, space, S-U-P-T. As viewed from rear, appears
 22 front shift -- I'm sorry -- appears front sheet metal shifted
 23 to L-T. Conclusion, appears upper body sway was not pulled
 24 completely back before replacement of parts began. Reviewed
 25 with Dennis at shop same day, 4/28, and requested revised

39

1 copy to see if R-T rail, and apron replacement was removed.
 2 Recollect R-E-C, call from Doug at shop. 4/29, A-T-T-Y has
 3 all paperwork. He will have to get revisions back from him.
 4 Explain findings to Doug, suggested course of action to shop.
 5 Doug asked me to call general M-G-R, Greg Miller as well. I
 6 called and explained to him as well. Greg stated he has call
 7 into A-T-T-Y, will advise A-S-A-P. {SOBG/} ski spelled S O P
 8 K E with Bruce Bashore and reviewed. Waiting for call back
 9 from shop with decision.

10 Is that correct?

11 MR. COHEN: Yes, Your Honor.

12 MR. B. MAYERSON: Yes, Your Honor.

13 THE COURT: Agreed to as a stipulation of fact in the
 14 record of this proceeding.

15 The next stipulation is the April 28th, 1998
 16 inspection entered into the claim file on April the 30th,
 17 1998 was performed by Steven Potosnak, P-O-T-O-S-N-A-K, one
 18 of Nationwide's Property Damage Specialists. In brackets,
 19 P-D-S, close bracket. Mr. Potosnak was also a licensed
 20 appraiser. The inspection was performed at the direction of
 21 Bruce Bashore, the Claim Manager responsible for Blue Ribbon
 22 operations across the State of Pennsylvania.

23 Agreed to?

24 MR. COHEN: Yes.

25 MR. B. MAYERSON: Yes, Your Honor.

40

1 THE COURT: That's a stipulation then as a finding of
 2 fact in this case. On April 30th, 1998 at 8:02 a.m.
 3 Mr. Potosnak alerted Mr. Bashore to his report entered into
 4 the claim log one minute earlier. Mr. Potosnak further
 5 advised Mr. Bashore that Lindgren had not yet responded to
 6 the issue raised at the inspection of April the 28th, 1998.

7 Is that agreed to?

8 MR. COHEN: Yes.

9 MR. B. MAYERSON: Yes.

10 THE COURT: All right. That also is a finding of
 11 fact in this case. And then lastly, Plaintiff's claim court
 12 costs in the amount of \$82,941.06 through December 7th, 2006.
 13 See declaration of itemization of Plaintiff's litigation
 14 expenses attached to Plaintiff's proposed findings of fact as
 15 Exhibit 4.

16 Is that agreed to?

17 MR. COHEN: We agree that that's what Plaintiffs
 18 claim, Your Honor, not to the propriety of it.

19 THE COURT: That's what it says.

20 MR. B. MAYERSON: Yes.

21 THE COURT: Agreed to?

22 MR. B. MAYERSON: Yes, yes.

23 THE COURT: That's a finding of fact then and it will
 24 be incorporated into the record as a finding of fact of this
 25 Court.

IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

41

1 Okay. First witness.

2 MR. B. MAYERSON: Your Honor, would you like to hear
3 opening remarks?

4 THE COURT: Do you think after I spent an hour with
5 you guys over there I want to hear any more remarks from
6 either one of you? I don't think so. I don't think I need
7 any, but if you have opening remarks, go ahead. Opening
8 remarks.

9 MR. B. MAYERSON: Thank you. With or without music?

10 THE COURT: If you have some music. I thought you
11 brought some yourself. Okay. Go ahead opening remarks by
12 Mr. Mayerson.

13 MR. B. MAYERSON: Your Honor, there are essentially
14 two issues before the Court. One is whether Nationwide knew
15 the Plaintiff's claim was meritorious before this lawsuit was
16 filed and; two, whether Nationwide's defense of the claim was
17 meritorious. I have 14 points that I'd like to make.

18 Point number one: Following a September 4th, 1996
19 collision, the Berg's insured vehicle was appraised as a
20 structural total loss due to a twisted unibody. Nationwide
21 recorded this fact in its claim file on September 5th, 1996.

22 THE COURT: Isn't that what your testimony is going
23 to develop or are you giving me all of this now? Are you
24 testifying to all of this now and then you're going to put
25 witnesses on the stand to say the very same thing later on?

42

1 If that's true, I don't want to hear about it.

2 MR. B. MAYERSON: No, Your Honor. The witnesses
3 we're putting on are limited to other issues.

4 THE COURT: But what you're doing it sounds to me
5 like you're testifying.

6 MR. B. MAYERSON: I'm trying to convey to the Court
7 what the evidence has shown and will show.

8 THE COURT: Go ahead.

9 MR. B. MAYERSON: Your Honor, I will try and
10 highlight the points that I would like the Court to
11 understand going into the evidence. It's very short, if I
12 may go through it, Your Honor, and if the Court will indulge
13 me, thank you.

14 The appraiser who made the determination that the
15 vehicle was a structural total loss was Doug Joffred, the
16 Body Shop Manager, with 25 years experience in collision
17 repairs. Nationwide selected Mr. Joffred to appraise the
18 loss.

19 Point 3: Nationwide quietly overrode its assigned
20 appraiser's opinion that the vehicle was a structural total
21 loss and directed the vehicle to be shipped to an undisclosed
22 repair facility without the Berg's knowledge or consent to
23 attempt to repair the vehicle's twisted unibody.

24 Point 4: Nationwide attempted to pull the twisted
25 unibody back into shape and failed.

43

1 Point 5: Nationwide had early knowledge of the
2 structural repair failures.

3 MR. COHEN: Your Honor, I don't want to interrupt Mr.
4 Mayerson during his opening, but if he wants to link up who's
5 going to testify to this rather than just offering it as his
6 own evidence, I think that would be more appropriate.

7 THE COURT: I think what he's saying is I'm not
8 offering this as evidence. This is what I represent to the
9 Court that my evidence -- my witnesses are going to testify
10 to.

11 MR. COHEN: Okay.

12 THE COURT: And that's the basis upon which I'm
13 accepting what he has to say.

14 MR. B. MAYERSON: Including the prior record from the
15 previous hearing, which we'll read into evidence pursuant to
16 our meeting --

17 THE COURT: Pursuant to the order of the Court that
18 you will make specific reference to the prior testimony?

19 MR. B. MAYERSON: Yes, Your Honor.

20 THE COURT: As it relates to this Phase 2 of the
21 bifurcated case?

22 MR. B. MAYERSON: Correct.

23 Point 6: Evidence of Nationwide's early knowledge of
24 the repair failures is proven through eyewitness testimony of
25 David Wert who testified that Nationwide was aware of the

44

1 failed structural repairs as they were occurring and prior to
2 the vehicle being returned to the Bergs. And this point
3 perhaps warrants a direct citation to the record.

4 THE COURT: No, no, no. This is not testimony at
5 this point.

6 MR. B. MAYERSON: All right.

7 THE COURT: When you get to the testimony you will
8 have to incorporate what may have been presented previously.

9 MR. B. MAYERSON: Point 6: Evidence of Nationwide's
10 early knowledge of the repair failures is also proven by
11 circumstantial evidence. Specifically it was established --

12 THE COURT: Mr. Mayerson, now you're getting into
13 your closing argument. Now, listen, I don't intend to be on
14 top of you every phase of this case, and I want you to have
15 the opportunity to develop your case, but I think you're
16 going far afield. Why don't you just present your witnesses
17 and your evidence, and then perhaps much of what you have
18 there in your prepared statement you spent a lot of time
19 putting together will be your closing.

20 MR. B. MAYERSON: Very good, Your Honor.

21 THE COURT: Good. I'll ask again, first witness.

22 MR. B. MAYERSON: Plaintiff's first witness will be
23 Terry Shaw called as if on cross.

24 THE CLERK: Raise your right hand. Place your left
25 hand on the Bible.

IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

45

1 TERRY SPENCER SHAW, Sworn.
 2 THE CLERK: Please state your full name.
 3 THE WITNESS: Terry Spencer Shaw, S-H-A-W.
 4 THE CLERK: You may be seated.
 5 CROSS-EXAMINATION
 6 BY MR. B. MAYERSON:
 7 Q Mr. Shaw --
 8 A Yes.
 9 Q Can you tell me what your employment, your
 10 current employment situation is today?
 11 A I own Automotive Legal Services, self-employed
 12 for I guess the last 20-some years.
 13 Q What is the nature of your business?
 14 A We provide appraisals, accident investigation,
 15 Lemon law reports, litigation services for both the insurance
 16 repair industry, the legal profession and individuals.
 17 Q And what is the name of your company?
 18 A Automotive Legal Services.
 19 Q And were you retained by Nationwide Mutual
 20 Insurance Company to investigate a claim?
 21 A You mean the Berg claim?
 22 Q Yes.
 23 A Yes, I was.
 24 Q Okay. Do you know when or can you tell us
 25 when you were retained on Nationwide's behalf?

46

1 A I can't tell you exactly, but it's eight,
 2 nine, maybe ten years ago.
 3 Q What kind of instruction did Nationwide give
 4 you to convey the assignment?
 5 A They wanted me to go over the vehicle as far
 6 as visual repair and improprieties, the quality of the
 7 repair.
 8 Q Did you have an opportunity to do that?
 9 A Partially.
 10 THE COURT: The quality of what repair?
 11 THE WITNESS: The repairs from the collision.
 12 THE COURT: From what collision?
 13 THE WITNESS: There was a collision that the vehicle
 14 had been involved in and there was a dispute over it.
 15 THE COURT: Okay.
 16 BY MR. B. MAYERSON:
 17 Q Did you inspect the vehicle after the
 18 collision or after the repairs were attempted?
 19 A After the repairs were completed.
 20 THE COURT: So you didn't investigate the Berg claim.
 21 What you did is you looked at the repairs to the Berg
 22 vehicle?
 23 THE WITNESS: That's what I was supposed to do; yes,
 24 sir.
 25 THE COURT: Not investigate the claim.

47

1 BY MR. B. MAYERSON:
 2 Q You said that you looked at the vehicle
 3 partially. Can you elaborate?
 4 A I made an appointment to go out and look at
 5 the vehicle, and when I arrived the Bergs weren't there or
 6 weren't showing their faces, so to speak. So I could only do
 7 a partial investigation, as much as I could do without being
 8 able to get into the vehicle or drive the vehicle.
 9 Q Where was the vehicle parked?
 10 A It was parked in the bottom of their driveway.
 11 They have a downhill driveway with several buildings on their
 12 property. It was in front of the lower building.
 13 Q There were other vehicles there?
 14 A I believe there was a Jetta, Volkswagon Jetta,
 15 black, I believe.
 16 Q What measures did you take to contact the
 17 Bergs? Did you knock on the door?
 18 A Yes. That was very peculiar because the
 19 vehicle or the building right in front of the vehicle was
 20 open. I could look inside. The door wasn't attached and I
 21 believe it was like some kind of shop or some type, maybe
 22 woodworking or something like that. It was wide open. Then
 23 I went up the hill to what I believe to be their residence
 24 where once again the front door was open, the TV was on. The
 25 dog was barking and I knocked on the door. Nobody responded.

48

1 I then went out to my car, dialed their number. I could hear
 2 the phone ring inside the house. Nobody responded. At that
 3 point I went back down and did what I could do as far as
 4 examining the vehicle without anybody being there.
 5 Q Did you go into the repair shop to see if
 6 anybody was in there? You mentioned the door was open?
 7 A No, I would never enter somebody's property
 8 without the authorization.
 9 Q Did you give a yell?
 10 A Yes.
 11 MR. B. MAYERSON: Your Honor, I would like to mark
 12 three photographs as an exhibit. May we mark it in
 13 continuation with the other exhibits?
 14 THE COURT: Were these marked before as exhibits --
 15 MR. B. MAYERSON: No.
 16 THE COURT: -- in the case? All right. Does defense
 17 counsel have -- what are they, on three sheets of paper?
 18 MR. B. MAYERSON: Three sheets of paper, each sheet
 19 containing two photographs.
 20 THE COURT: Do you want to give me a copy?
 21 I believe that the last exhibit was Exhibit 32 was
 22 it.
 23 MR. B. MAYERSON: The last exhibit in Phase 1 of the
 24 trial was 32.
 25 THE COURT: Is that correct? We'll mark this as

49

1 Exhibit 33.
2 (Whereupon, Exhibit No. 33 was marked for
3 identification purposes.)
4 MR. COHEN: Your Honor, these photographs were marked
5 as Exhibit 12 during the first phase. They were not
6 admitted, so if we wanted to give them a designation it would
7 make more sense to refer to them as Exhibit 12 as they were
8 previously designated Exhibit 12 during the first phase.
9 MR. B. MAYERSON: My apologies.
10 THE COURT: But they were not admitted into evidence.
11 MR. COHEN: They were not admitted but marked Exhibit
12 MR. H. MAYERSON:.
13 THE COURT: We'll mark them again as 33.
14 BY MR. B. MAYERSON:
15 Q When you're ready, sir?
16 A Okay.
17 Q Have you had an opportunity to review those
18 photographs?
19 A Yes, sir.
20 Q And can you identify them?
21 A They're ones that I took when I was at the
22 Bergs'.
23 Q Is this all the photographs you took if you
24 can remember?
25 A I honestly can't remember.

50

1 Q All right. There's a date on these
2 photographs. Does that refresh your recollection as to when
3 you were out there?
4 A Yeah, that's my camera. It puts a date on
5 everything.
6 Q All right. What's the date?
7 A Sixteen, May, '98.
8 Q Okay. May 16th, 1998?
9 A I'm sorry. That's military showing up.
10 Q May 16th, 1998?
11 A Yes.
12 Q And on the third page of Exhibit 33 there is
13 some handwriting. Can you identify that handwriting?
14 A Yes, that is me.
15 Q That's your handwriting?
16 A Yes, sir.
17 Q And the bottom photograph, could you read that
18 into the record what it says?
19 A Subject vehicle fresh mud and dirt in tires.
20 Q And then on the other photograph that you have
21 to flip around to read?
22 A That shows the building that I called the work
23 building, the bottom building. It identifies that's the
24 Jeep, subject vehicle, the red Mustang was the car I came
25 there in and the Jetta was the black Volkswagon that I

51

1 identified.
2 Q All right. What did you write above the
3 Jetta?
4 A "Hood engine warm."
5 Q Sir, I'm just noticing in this photograph that
6 the door is actually shut. You said earlier it was open.
7 Was there another door?
8 A No, I mean, I know it was at least ajar
9 because I could see a table or something like that inside of
10 it.
11 Q Could it be that you looked through the window
12 to see the table?
13 A It's a possibility, but it does look like the
14 door is open to an extent maybe.
15 Q And, sir, can you explain to us what, if any,
16 significance there is to your note; it says, "Subject vehicle
17 fresh mud and dirt in tires"?
18 A That the vehicle was probably used.
19 Q Was being used?
20 A Yeah.
21 Q Recently?
22 A That's the way I saw it, yes.
23 Q So was the purpose of your photographs to
24 establish that the Bergs were operating the vehicle?
25 A Not my direct purpose, but you look at more

52

1 than what you just see because that's why you're out there.
2 And three different people look at the same thing and they'll
3 see three different things.
4 THE COURT: Excuse me. Why were you out there?
5 THE WITNESS: I was out there to look at the vehicle
6 and the --
7 THE COURT: The one that was involved in the
8 accident?
9 THE WITNESS: Yes, sir.
10 THE COURT: And do what?
11 THE WITNESS: And he was asking me, you know, what
12 was I specifically there for. When you look at a vehicle you
13 haven't seen before you do the outside first to familiarize
14 yourself with it.
15 THE COURT: Yeah, but Nationwide asked you to go out
16 and see the vehicle.
17 THE WITNESS: Yeah.
18 THE COURT: To determine what?
19 THE WITNESS: To determine the condition and the
20 quality of the repairs.
21 THE COURT: Okay.
22 BY MR. B. MAYERSON:
23 Q And the middle photograph, the middle page,
24 can you tell us what's on those two photographs?
25 A That's the mail that was sitting on the front

IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

53

1 seat.

2 Q In the top picture are you attempting to focus
3 on the postage date there?

4 A Yes.

5 Q And for what purpose?

6 A Just I thought it could have been current
7 mail. What I was trying to show was that somebody was there
8 very recently and that's why I took the pictures of the
9 things that the --

10 Q Basically you were trying to establish that
11 the Bergs were driving this vehicle during this period of
12 time; is that correct?

13 A No, not really. I was just trying to
14 establish that they could have been there. I thought through
15 looking through the glass I thought it was, like, the current
16 date.

17 Q Do you think -- are you suggesting that it's
18 your opinion or your thoughts that the Bergs were hiding from
19 you when you came to inspect the vehicle?

20 MR. COHEN: Objection.

21 THE COURT: Overruled. This is cross-examination.

22 THE WITNESS: I don't know if they were hiding. They
23 certainly weren't making their presence known. I had done
24 everything that you would normally do to contact somebody,
25 you know, by phone, visually knocking on the door saying

54

1 hello, hello. There was a guy next door cutting the lawn on
2 the lawn mower. I know I asked him. He didn't know where
3 they were.

4 Q Do you have any idea why the Bergs would not
5 want to have you inspect their vehicle?

6 A I don't know their personal feelings. My
7 professional experience, I've run into this sometimes where
8 people just don't want you to look at their stuff, there's
9 animosity involved between the way the claim is handled and
10 they don't think you should be there.

11 MR. B. MAYERSON: Thank you, sir. No further
12 questions.

13 REDIRECT EXAMINATION

14 BY MR. COHEN:

15 Q Mr. Shaw, did you arrange this inspection with
16 the Bergs in advance of you going out to their home?

17 A Yes, I had on the phone. I talked to Mr. Berg
18 I believe.

19 Q Oid you express to him what you would be doing
20 when you went out to his home?

21 A Yes.

22 Q Oid you tell him that you were going to be
23 taking a look at the vehicle on behalf of Nationwide?

24 A Yes.

25 Q And can you tell him that the purpose of this

55

1 was to do an inspection to determine the extent of the
2 repairs that Lindgren did on the vehicle?

3 A Yeah, and I also said I'm an independent, you
4 know, I'm not a part of Nationwide. I'm just an independent
5 person that they chose to look at it.

6 Q Oid Mr. Berg seem to have any concern about
7 you coming out and looking at his vehicle?

8 A No, we didn't say many words and we set a date
9 and a time. I believe it was 10:00 or 10:30, something like
10 that just seems to strike a bell, and then I drove out there
11 and --

12 Q And the inspection was scheduled for May 16th,
13 1998; is that correct?

14 A Yes.

15 Q All right. And when you went out there
16 Mr. Berg didn't answer the door?

17 A Nobody answered. The dog answered the door.
18 That was the only one.

19 Q And in your opinion -- based on your
20 observations, did it appear that somebody was at home at the
21 time?

22 A Absolutely.

23 Q And what were those observations?

24 A The open doors. As I remember, it's been a
25 long time, I know for absolute sure that the top -- the

56

1 residence, the door was open because I remember it was a
2 screen door. The top was the screen. The bottom was like a
3 solid. I remember their home had like a wood, like, face to
4 it and some of the furniture inside, the TV on and the dog
5 barking. And like I said, I did try and stood right there
6 with my cell phone and dialed their number to make sure there
7 wasn't any malfunction as far as trying to contact them and
8 the phone just rang and rang and rang.

9 Q Had the Bergs been home what would you have
10 done to inspect the vehicle, what was your game plan?

11 A Well, I would have certainly driven it. I
12 would have probably raised it up to check -- see more than I
13 could see. I did get under the vehicle as much as I could.
14 I didn't have the girth then that I have now so I could get
15 under the vehicle and, you know, look at the frame rails and
16 the suspension and things like that, wear patterns, wear
17 characteristics and the unibody.

18 Q And because the Bergs did not answer the door
19 or were not home you were unable to perform that inspection?

20 A Yeah, I was denied access to the vehicle is
21 the way I look at it.

22 Q Okay. Nationwide never told you specifically
23 to take photographs of mail in Mr. Berg's vehicle, did they?

24 A No, I just I do that sometimes just to
25 document when I'm at a place. Sometimes I'll put a newspaper

IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

1 on top of what I'm looking at just to document the date
2 you're there because you can set any date you want on a
3 camera.

4 Q So it was really to evidence the fact that you
5 were there at that time?

6 A Oh, yeah. It wasn't in a harmful way or
7 meaning to cast doubt.

8 Q And Nationwide never told you to specifically
9 take picture of mud in the Berg's tires, did they?

10 A Nope.

11 Q And Nationwide never told you to make any of
12 these notes on the vehicle like you did?

13 A No, I just put them there so I would remember
14 them.

15 Q Okay. In fact, the only purpose that
16 Nationwide was paying you for was to go out and inspect the
17 vehicle to the extent of the repairs Lindgren did; correct?

18 MR. B. MAYERSON: Your Honor, objection as leading.

19 THE COURT: Overruled. Go ahead.

20 MR. COHEN: Thank you. I have nothing further, Your
21 Honor.

22 MR. B. MAYERSON: One area of follow up.

23 RECROSS-EXAMINATION

24 BY MR. B. MAYERSON:

25 Q Sir, when you went out to conduct this

1 investigation, did you take any notes?

2 A I have a -- I put my notes on my file folder.

3 Q So you took some notes?

4 A Yes, I did.

5 Q Did you make a written report back to
6 Nationwide?

7 A I don't honestly remember whether it was
8 verbal or written because it went to the extent that I would
9 consider. I like my work to be --

10 Q Well, did you see any repair discrepancies
11 when you visualized the vehicle?

12 A I did see the frame rail on the one side there
13 was a mark where it had been twisted and moved, and I noticed
14 that it hadn't been properly protected after that. It was
15 like a rusty color.

16 Q Did you see the way that the front hood was
17 misaligned. You were here for the earlier undisputed facts
18 of record?

19 A Today, yes.

20 Q Okay. And you heard the report of
21 Mr. Potosnak?

22 MR. COHEN: Objection. This is beyond the scope of
23 cross.

24 THE COURT: Overruled.

25 THE WITNESS: I'm sorry. Could you repeat that?

1 BY MR. B. MAYERSON:

2 Q Yes. You heard the Court read into the record
3 the inspection report of Stephen Potosnak dated April 30th,
4 1998?

5 A Yes.

6 Q And that was before your inspection; right?

7 A Yes.

8 Q Did Nationwide provide you with any repair
9 documents prior to you going out and inspecting the vehicle?

10 A I might have gotten -- I usually get a copy of
11 the estimate that the shop worked off of.

12 Q I'd like to show you the Potosnak Inspection
13 Report read into the record. It's trial Exhibit Page 1174 to
14 1175. I'd like you to take a look at it and tell me --

15 MR. COHEN: Objection. Number one, this is beyond
16 the scope of cross-examination and; number two, this
17 individual is not being called as an expert. He's a fact
18 witness.

19 THE COURT: I don't know what the question is at this
20 particular point. Let's hear the question and keep in mind
21 this is a non-jury trial, just like I overruled his, okay,
22 that you asked a leading question. If it would have been a
23 jury trial I would have said sustained, but since it's a
24 non-jury trial, I overruled it and asked you to lead the
25 question. Is he going beyond the scope of his direct

1 testimony? I'd rule one way in a non-jury trial. I think I
2 can handle it. Go ahead, sir.

3 BY MR. B. MAYERSON:

4 Q I'm showing you the Potosnak Inspection Report
5 dated April 30th, 1998 which was before your inspection and
6 I'd just like to know if you can tell me whether Nationwide
7 supplied you with that prior to your inspection?

8 A No.

9 MR. B. MAYERSON: Thank you.

10 MR. COHEN: Nothing further.

11 THE COURT: Thank you very much, Mr. Shaw. Watch
12 your step.

13 THE COURT: Next witness.

14 MR. B. MAYERSON: Michael Burke.

15 THE COURT: How do you spell the last name?

16 MR. B. MAYERSON: B-U-R -- George Moore had been the
17 more appropriate witness. We will not call Michael Burke.
18 We'll call George Moore, M-O-O-R-E.

19 THE CLERK: Raise your right hand. Place your left
20 hand on the Bible.

21 GEORGE MOORE, Sworn.

22 THE CLERK: Please state your full name.

23 THE WITNESS: George Anthony Moore.

24 THE CLERK: You may be seated.

25 THE COURT: By the way, after each witness testifies,

61

1 they're excused unless the Court is asked to ask them to
2 remain, okay?

3 MR. B. MAYERSON: Yes, Your Honor. So they can leave
4 the courtroom and leave the courthouse.

5 DIRECT EXAMINATION

6 BY MR. B. MAYERSON:

7 Q Mr. Moore, could you please tell the Court
8 what your occupation is?

9 A Auto collision repair business.

10 Q And what is the name of your business and the
11 location of your business?

12 A Penn-Del Auto Body.

13 THE COURT: what did you say?

14 THE WITNESS: Penn-Del Auto Body.

15 THE COURT: Penn-Del.

16 THE WITNESS: 1360 Market Street in Linwood,
17 Pennsylvania, 19061.

18 BY MR. B. MAYERSON:

19 Q And was your auto body repair shop a member of
20 Nationwide's Blue Ribbon Repair Program?

21 A Yes, we were.

22 Q Can you approximate for me the first time
23 period you were a member of the Blue Ribbon Repair Program?

24 A We were approached about coming into the
25 program in '92 and from what I remember we were in the

62

1 program I'd say probably until '98, '97 possibly. It's been
2 a while.

3 MR. B. MAYERSON: Your Honor, I'd like to have the
4 witness authenticate a document that will be marked as
5 Exhibit 34. It is a nine-page document.

6 (Whereupon, Exhibit No. 34 was marked for
7 identification purposes.)

8 BY MR. B. MAYERSON:

9 Q Once you've had a moment to look at that
10 document, can you identify it for us?

11 A This is basically a Blue Ribbon Repair Service
12 procedure booklet.

13 THE COURT: Hold on just a second here. You said
14 that you were a member of the Blue Ribbon Repair Program.

15 THE WITNESS: Right.

16 THE COURT: Is that right?

17 THE WITNESS: As a business we were in the Blue
18 Ribbon Repair Program.

19 THE COURT: This document, is this the Blue Ribbon
20 Repair Program even though it says Blue Ribbon Repair
21 Service. Is this the program?

22 THE WITNESS: Yes, it is.

23 THE COURT: Okay. All right.

24 BY MR. B. MAYERSON:

25 Q Sir, was this the document that Nationwide

63

1 supplied to you in 1992 when you came on board as a member of
2 the program?

3 A Yes, it is.

4 Q I'm sorry?

5 A Yes.

6 Q And is the last page, can you identify the
7 last page of that Exhibit 34?

8 A The last page?

9 Q Yes.

10 THE COURT: Hold on. Hold on. Hold on. The last
11 page of the exhibit?

12 MR. B. MAYERSON: Exhibit 34, last page.

13 THE COURT: You mean the letter that's at the end of
14 the Exhibit 34?

15 MR. B. MAYERSON: Yes.

16 THE COURT: Okay.

17 THE WITNESS: They were just letting us know we've
18 been selected to participate in their program.

19 BY MR. B. MAYERSON:

20 Q What's the date of that letter?

21 A September 28th, 1992.

22 Q And is it from Nationwide Insurance Company?

23 A Yes, it is.

24 Q All right. Sir, on the fourth page of this
25 exhibit under the procedures, about the fourth paragraph down

64

1 it begins with a control log.

2 THE COURT: The control log?

3 MR. B. MAYERSON: Yes, Your Honor.

4 THE COURT: Keep your voice up. Go ahead.

5 THE WITNESS: Okay. "Control log will be maintained
6 by the shop for all vehicles referred under this program."

7 BY MR. B. MAYERSON:

8 Q Read the sentence too.

9 A "Control log will be finished by Nationwide."

10 Q The last one.

11 A "The log must be available for examination by
12 Nationwide representative at all times."

13 Q Sir, while you were a member of the program in
14 the various years was a shop log kept at the shop?

15 A Yes, it was.

16 Q What was the purpose of the shop log?

17 A It's to basically record who's coming in under
18 the Blue Ribbon Program. Nationwide's insureds are claimants
19 and it's also part of the agreement to have on hand when a
20 reinspector would come in and go over your file.

21 Q And reinspector, a Property Damage Specialist.

22 THE COURT: Anything that you were involved in
23 regarding the Blue Ribbon Repair Program with regard to a
24 particular client or customer or a member of the program --

25 THE WITNESS: Yes, Your Honor

1 THE COURT: -- you would log?
 2 THE WITNESS: Yes.
 3 THE COURT: Right.
 4 BY MR. B. MAYERSON:
 5 Q And, sir, two pages into the booklet, is that
 6 a copy can you identify what that document is?
 7 A Which page?
 8 Q It's numbered 549 at the bottom right-hand
 9 corner.
 10 A Okay. This is the customer log, basically, we
 11 kept. This is a blank sheet, but it's a record of repairs.
 12 Q Would this record -- whenever a Property
 13 Damage Specialist came in and inspected a vehicle or
 14 reinspected a vehicle?
 15 A Yes.
 16 Q And were these inspections done during the
 17 course of repairs?
 18 A Yes.
 19 Q Were they done at the conclusion of repairs?
 20 A Sometimes.
 21 Q Lets take a look at document -- it has the 551
 22 in the bottom right-hand corner.
 23 A Okay.
 24 Q Can you tell us what that document is?
 25 A Basically this is how we were graded on a

1 repair, whether they were adhering to the program. It deals
 2 with the used parts, after-market rechrome. Basically it
 3 gives you an adequate or inadequate mark as to what your
 4 repair procedures were and how you followed the program.
 5 Q And did this evaluation form pertain to a
 6 single vehicle?
 7 A Yes.
 8 MR. COHEN: Your Honor, so far this witness has
 9 testified with regard to his own body shop and documents that
 10 were provided to his own body shop dating back to 1992, not
 11 what Lindgren had, not what Lindgren was doing in 1996. This
 12 is completely irrelevant and objectionable.
 13 THE COURT: He's testifying because he was a member
 14 of the Blue Ribbon Repair Program, which I understand
 15 Lindgren was a member of as well and in a similar capacity in
 16 another area of Pennsylvania; is that correct?
 17 THE WITNESS: That's correct.
 18 THE COURT: Yeah, I understand that. Now I don't
 19 know how material it is, but at this point it certainly
 20 sounds like it's relevant.
 21 BY MR. B. MAYERSON:
 22 Q Sir, so those are two blank forms --
 23 THE COURT: What was the date of the -- I know I have
 24 it here somewhere.
 25 THE WITNESS: September, 1996.

1 MR. B. MAYERSON: Yes.
 2 THE COURT: Is that your date?
 3 MR. B. MAYERSON: Yes.
 4 BY MR. B. MAYERSON:
 5 Q Sir, during the course of your membership --
 6 when did your membership in the Blue Ribbon Repair Program
 7 end approximately?
 8 A We would -- I'd have to preface this statement
 9 with a remark that when we got to the point where we were too
 10 busy to handle referrals, in fact, we would suspend ourselves
 11 from the program and you were allowed to do this because they
 12 didn't want cars sitting unrepaired and rental time to
 13 accrue. So in a sense the shop could suspend itself from the
 14 program. As I remember we were still on the program, but we
 15 have been on suspension with basically no reply from
 16 Nationwide in over, I don't know, eight, nine years.
 17 Q Were you a member in September of 1996?
 18 A Yes.
 19 Q And for some time thereafter?
 20 A Some time.
 21 Q How about -- let's establish through May of
 22 1997.
 23 A Yes.
 24 Q All right. During that entire time period was
 25 Nationwide maintaining the shop log for the Property Damage

1 Specialists to document their reinspections?
 2 A Were they maintaining it?
 3 Q In other words, were you required to keep this
 4 throughout this time period?
 5 A Absolutely.
 6 Q From 1992?
 7 A It was part of the agreement to keep that log.
 8 Q And what would happen to these logs, is that
 9 something Nationwide would pick up?
 10 A Yes, they would. We would have copies and
 11 they would be entered into the records of all the Blue Ribbon
 12 Repair Shops.
 13 Q These reinspection reports that have the
 14 number 551 at the bottom, that is the repair evaluation --
 15 A Uh-huh.
 16 Q -- for a specific vehicle?
 17 A Right.
 18 Q Were you provided copies of that throughout
 19 your period or did that stop at some point?
 20 A No, we were providing copies with it and some
 21 of their -- part of the program changed. I mean, depending
 22 on who the reinspector was they had different statements or
 23 different ways to handle the business. But for the most part
 24 we were provided with these. There were spot inspections and
 25 basically it was how we were graded on adhering to the

69

1 program.

2 Q All right.

3 MR. B. MAYERSON: Your Honor, I'd like to show the

4 witness another document which we won't mark another exhibit

5 so as to not to clog the docket.

6 BY MR. B. MAYERSON:

7 Q Sir, look at that document and tell me if you

8 can identify it.

9 A It's an agreement between Nationwide and Blue

10 Ribbon Repair.

11 Q What was the date that that document was

12 signed?

13 A May 28th or I'm sorry, May 29th, '99 or '96.

14 THE COURT: Who was the agreement between?

15 THE WITNESS: Between Penn-De'l Auto Body and

16 Nationwide.

17 THE COURT: So in '96 you signed another agreement?

18 THE WITNESS: Yes.

19 BY MR. B. MAYERSON:

20 Q Is this the first agreement that you signed?

21 Do you recall if you signed a previous agreement or you were

22 given written guidelines in the past?

23 A We were given written guidelines. This was

24 the first one we signed.

25 Q When that was supplied to you, how long did it

70

1 take you before you signed it?

2 A Upon seeing this how long did it take to sign

3 it?

4 Q Yes.

5 A Usually my partner and myself would go over it

6 and weigh the pros and cons on it, and then, you know, if the

7 pros were better than the cons, we would sign the agreement

8 and maintain the program.

9 Q My question is: Was Nationwide interested in

10 getting those back promptly?

11 MR. COHEN: Objection.

12 THE WITNESS: Pardon me?

13 THE COURT: Overruled.

14 BY MR. B. MAYERSON:

15 Q Was Nationwide interested in getting those

16 contracts back promptly?

17 A Reasonably so, yes.

18 Q Do you know can you estimate for us how long

19 from the time you received it until the time you signed it,

20 if you remember?

21 THE COURT: well, that's objectionable.

22 MR. COHEN: Objection.

23 THE COURT: Sustained. Now you're getting into his

24 specific program. Keep going. You lost one out of four. Go

25 to the next question. Don't cry. Lets go. Lets move.

71

1 MR. B. MAYERSON: This is an eight-page document

2 we're going to mark as Exhibit 35.

3 (Whereupon, Exhibit No. 35 was marked for

4 identification purposes.)

5 BY MR. B. MAYERSON:

6 Q Sir, is this one of the later documents you

7 received -- first of all, I'm sorry. Can you identify the

8 document? Do you recognize it?

9 A Yes, I do.

10 Q What is it?

11 A It's basically -- it's contact information,

12 who your desk reviewer is, the toll number you call, your

13 Property Damage Supervisor. It gives you your managers --

14 the numbers to reach them, customer complaint. It's

15 basically -- it caps off all the names of people you have to

16 deal with.

17 Q By looking at the names on there are you able

18 to tell me what time period this was?

19 A Probably '97 or later.

20 Q All right. So it's after -- it's around 1997?

21 A Yeah.

22 Q I want to look at the document that has a

23 number 651 at the bottom.

24 A Okay.

25 Q And there is a specific standard. Can you

72

1 tell us what that is first of all?

2 A Well, in the course of doing Blue Ribbon

3 claims we would upload images of the damaged vehicle. They

4 would request a minimum of two. Obviously if it was a more

5 severely damaged car, there would be more photographs and

6 these photographs we had uploaded with the estimate and sent

7 electronically to Harrisburg to where the claim center was.

8 They would be reviewed and they would either be accepted or

9 call us back and question things or --

10 Q All right. Is this direct -- is this

11 procedure that's described on here accurate to how the

12 program was before you received this in '97 or did it change

13 when you received this in 1997?

14 A It changed. Yes, it did change.

15 Q All right. So before this period were you

16 still taking photographs and supplying them to Nationwide?

17 A Yes.

18 Q What was the purpose of the photographs?

19 A Document the damage.

20 Q So if there was more damage there'd be more

21 photographs?

22 A Absolutely.

23 Q The next page I want to look at is numbered

24 653 at the bottom.

25 A Okay.

IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

73

1 Q Can you tell us what that is?

2 A If you get a vehicle and it's a total loss it

3 tells you how to go about contacting your desk reviewer

4 telling them it's a possible total. They would still require

5 an appraisal on a total vehicle even though sometimes you

6 would tow one in and it would be so badly wrecked. I used to

7 put obvious total loss, but now you have to document

8 everything and write a repair estimate and write a line by

9 line to make it a total and they send out a staff person to

10 say, in fact, that; yes, it was a total.

11 MR. B. MAYERSON: Thank you, sir. No further

12 questions.

13 THE COURT: Before cross-examination explain to me

14 the difference between Exhibit 34 and Exhibit 35. Is the

15 difference that Exhibit Number 35 is the Pennsylvania Blue

16 Ribbon Program where 34 is the Nationwide Program not

17 specifically for Pennsylvania.

18 THE WITNESS: I wouldn't know that. I would only be

19 concerned with what it was in Pennsylvania.

20 THE COURT: That's why I'm asking you. I didn't know

21 that either. You don't know that.

22 THE WITNESS: Okay.

23 THE COURT: But in either event, the claim center for

24 Pennsylvania I assume is in Harrisburg?

25 THE WITNESS: Yes.

74

1 THE COURT: All right. But as far as you're

2 concerned, these are one in the same documents but one was

3 issued later?

4 THE WITNESS: Yes.

5 THE COURT: Thank you. Go ahead.

6 CROSS-EXAMINATION

7 BY MR. COHEN:

8 Q Mr. Moore, these are documents that are sent

9 to Blue Ribbon shops; correct?

10 A If you're participating I would imagine they

11 would, yeah.

12 Q These are not claims practices for Nationwide

13 adjusters. These are guidelines for how Blue Ribbon shops

14 are supposed to perform in the program; correct?

15 A That's what I'm led to believe.

16 Q And it's possible that the reason why we have

17 two different documents here is one is from 1992 and one is

18 from 1996. would that be a fair statement?

19 A Uh-huh.

20 Q Yes?

21 A Yes.

22 Q And you were a member of Nationwide's -- we'll

23 call it it's a Direct Repair Program; is that right?

24 A That's right.

25 Q Is Penn-Del now or have they ever been a

75

1 participant in any other insurance company's direct repair

2 programs?

3 A Yes, we have.

4 Q And which companies are those?

5 A America Independent would be one. State Farm,

6 although it wasn't a real Direct Repair Program, but it was a

7 program. We were a member of State Farm. GMAC, we

8 participated in that; Travelers, to name a few.

9 Q So there's others?

10 A Yes.

11 Q And am I correct in assuming that there's a

12 benefit of your body shop to be a member of a Direct Repair

13 Program?

14 A There are some benefits.

15 Q Okay. And one of those benefits is that you

16 get the opportunity to get business from the insurance

17 companies, and I assume that the benefit for the insurance

18 company is they get a quality body shop looking at their

19 vehicles?

20 A That would be the tradeoff.

21 Q And your body shop, I assume you would

22 classify as a quality body shop?

23 A Absolutely.

24 Q And the fact that your body shop and other

25 body shops who are participants in Direct Repair Programs

76

1 have to abide by certain guidelines. It's also a testament

2 to the fact that insurance companies want to make sure

3 repairs are being done properly?

4 A That would be the intention.

5 Q Okay. And the fact that there are people who

6 come out from the insurance companies to do reinspections,

7 make sure that repairs are being done timely and that they're

8 being done adequately, that would also be testament to the

9 fact that there was quality concern here for insurance

10 companies?

11 A It was mostly a time concern more than quality

12 I would say.

13 Q Okay. But from your perspective as a Blue

14 Ribbon shop, you were concerned with quality?

15 A At the outset of the program that's what your

16 concern was.

17 Q All right. And you testified that you would,

18 on occasion, suspend yourself from the program because you

19 didn't want vehicles getting backed up because you couldn't

20 handle all the business; is that correct?

21 A That's correct.

22 Q So at any given time you would just stop

23 taking -- you would stop taking jobs from your insurance

24 company partners that you were working with?

25 A Reluctantly.

77

1 Q It was reluctant on your part?

2 A On our part.

3 Q You didn't want to stop taking them but you

4 had so much business you had to slow down?

5 A Well, we had so much business that we don't

6 want to delay the repairs, okay, and delayed repairs mean

7 rental cost.

8 Q And to this day you're still not a Nationwide

9 --

10 A No.

11 Q -- Blue Ribbon shop?

12 A We were on suspension.

13 Q You were on suspension because you suspended

14 yourself or because Nationwide suspended you?

15 A We were on suspension of our own volition when

16 we were on suspension, but we have never been removed from

17 that or told by anyone at Nationwide we were on or off the

18 program in writing.

19 Q I'm confused. You say you suspend yourself.

20 A That was a temporary thing. That was an

21 option that was given to us by the Blue Ribbon coordinator

22 when we got too busy.

23 THE COURT: The legal profession calls it voluntary

24 suspension. We can voluntary be suspended from the practice

25 of law until we're ready.

78

1 BY MR. COHEN:

2 Q You're not familiar with the Berg's claim, I

3 assume; correct?

4 A I'm kind of familiar with it just from --

5 Q From speaking to Mr. Mayerson about it?

6 A Just an overview of what's been going on.

7 I've never seen the vehicle.

8 Q I'm sorry?

9 A I've never seen the vehicle.

10 Q Well, I mean, how is it that you know about

11 the Berg's claim?

12 A How is it that I know? By listening to the

13 testimony. I attended a couple sessions in court a couple

14 years ago and I listened to things and I was hearing the

15 testimony today about the condition of the vehicle and the

16 things that were done to it. So that's how I would know

17 about it.

18 THE COURT: Just a second. Are you saying you were

19 here in December of 2004 when this Court handled the first

20 phase of this Berg case?

21 THE WITNESS: Yes, I was.

22 BY MR. COHEN:

23 Q Have you had meetings with Mr. Mayerson or his

24 father with regard to this case?

25 A No.

79

1 Q You've never spoken to Mr. Mayerson before

2 today?

3 A Yes, I have, but no meetings with him.

4 Q Have you spoken on the phone with him?

5 A Yes.

6 Q You've discussed the case?

7 A Yes.

8 Q And you've discussed Nationwide?

9 A I've discussed the case.

10 Q You've discussed the program?

11 A I've discussed the case.

12 Q You've discussed your testimony?

13 A No.

14 Q The document that Mr. Mayerson marked as the

15 Blue Ribbon Program Procedural Manual at Page 650 has a Blue

16 Ribbon Repair Program shop fax notice --

17 THE COURT: Just a second. What is the procedural

18 matter? We have a Blue Ribbon Repair Service Program and we

19 have the Blue Ribbon Program.

20 MR. COHEN: Your Honor, it's Exhibit 35.

21 THE COURT: Don't give it a different title.

22 MR. COHEN: It's entitled the "Procedural Manual."

23 THE COURT: I don't see anything that says

24 Pennsylvania Blue Ribbon Program up at the top and down at

25 the bottom it says Procedural Manual.

80

1 BY MR. COHEN:

2 Q If you turn to Page 650 at the bottom --

3 A Uh-huh.

4 Q That's a shop fax notice. Do you see that?

5 A I see it.

6 Q All right. This is a document that I presume

7 would be faxed by the shop to Nationwide if there was a total

8 loss?

9 A That's correct.

10 Q Okay. So you would expect that if the shop

11 made a clear determination that this was a total loss that

12 they would fax one of these notices to the insurance company?

13 A That's what we were supposed to do.

14 Q Okay. And if you didn't send one of these it

15 was either because the vehicle wasn't a total loss or because

16 you weren't complying with the guidelines?

17 A Or there wasn't a teardown done.

18 Q Or there wasn't a teardown done. There may

19 not have been a clear determination that the vehicle was a

20 total loss?

21 A That's correct.

22 Q So in either event you don't know that the

23 vehicle is a total loss or you're not complying with the

24 guidelines?

25 A No, that's not true.

81

1 Q All right. What other scenario would you
2 have?

3 A There's vehicles that come into the shop all
4 the time where you have to check ACV, the year of the
5 vehicle. You have to run reports on the value of the vehicle
6 and then actually write a physical damage report on the
7 vehicle to determine that.

8 Q Before you do that you would know that the
9 vehicle is really a total loss?

10 A Not all the time.

11 Q Okay. But under that circumstance that you
12 just gave there would have to be some investigation before
13 you'd determine the cash value. You'd have to look at the
14 vehicle, determine the value and then you determine whether
15 there's a total loss or not?

16 A That's correct.

17 Q And the teardown is something you do to
18 determine a total loss?

19 A That's correct.

20 MR. B. MAYERSON: We are on a timeline and way beyond
21 the scope of direct and trying to keep --

22 THE COURT: Overruled.

23 BY MR. COHEN:

24 Q If we look at that same document, Page 653, it
25 says: Total loss handling procedure?

82

1 A Okay.

2 Q It says, the second line down: If the vehicle
3 is an obvious total loss, fax the Blue Ribbon Repair Program
4 Shop Fax Notice to the Blue Ribbon Unit. That's referring to
5 that fax notice we were just talking about?

6 A Okay.

7 Q You would expect to see one of those faxes if
8 this was a clear total loss. And then it says a couple lines
9 down: An appraisal of the damage is required on all but
10 obvious total losses, okay?

11 A Uh-huh.

12 Q Now, that says to me, and correct me if I'm
13 wrong, that if the car is an obvious total loss you don't
14 need to do an estimate?

15 A For certain situations where if you get a fire
16 or you get a car so severely damaged and it's an older
17 vehicle it's an obvious total loss.

18 Q But if it's an obvious total loss you don't
19 have to do an appraisal?

20 A Not a line-by-line appraisal, no.

21 Q But if you have a line-by-line appraisal that
22 suggests that the vehicle is not a total loss?

23 A It does not suggest it's a total loss.

24 Q If it was an obvious total loss you wouldn't
25 have to do an appraisal; correct?

83

1 A I do appraisals all day long. Sometimes
2 during the course of -- there's a threshold thing. In most
3 estimating systems it's set to the vehicles and it will give
4 a warning to override the threshold. So in the program when
5 you're writing a claim or vehicle and that notice is coming
6 up, you know you're total or close to a total. At that point
7 you notify a desk reviewer.

8 Q And that's what we call a total loss warning
9 system; correct?

10 A I believe you can call it that, yeah.

11 Q And there's a benefit to a total loss warning
12 system, and that is so you don't spend a lot of time working
13 on a vehicle that's going to be a total loss; is that
14 correct?

15 A That's correct.

16 Q Now there's been some suggestion in this case
17 that the total loss warning system is some kind of bad,
18 unscrupulous thing that sets off lights and buzzers to send
19 people out and make sure of the total loss vehicles. That's
20 not a total loss warning system, is it?

21 A I don't think so.

22 Q And it's a good thing?

23 A It's business.

24 Q Right.

25 A It's not good or bad. It's the numbers. It's

84

1 a business of numbers. That's what it is.

2 Q All right. Couple more things. Under total
3 loss, all decisions relating to salvage value, actual cash
4 value and total losses will be handled by Nationwide. That's
5 pretty typical; right, those are decisions made by the
6 insurance company?

7 A That's correct.

8 Q Okay. And salvage value, what's salvage
9 value?

10 A Salvage value is the remaining value of a car
11 after the settlement has been done where they then salvage
12 amount to the various salvage yards. They dismantle the cars
13 and they sell parts on them to regain their investment.

14 Q And in order to determine if a vehicle is a
15 financial total loss, you necessarily have to consider the
16 salvage value; correct?

17 A Yes.

18 Q It's part and parcel of the total loss
19 evaluation; correct?

20 A Yes.

21 Q All right. So if an insurance adjuster is
22 taking into consideration salvage value they're not doing
23 something improper, they're doing what they should be doing
24 and that's determining what the salvage of the vehicle is and
25 to determine if it's a financial total loss?

IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

85

1 A It depends upon what percentage they're
2 totaling vehicles out at.

3 Q The general concept of taking into
4 consideration salvage?

5 A Yes.

6 Q There's nothing wrong with that?

7 A No, nothing wrong with it.

8 Q So if somebody suggested that an adjuster
9 considering the total loss of a vehicle was taking into
10 consideration the salvage or was of the opinion they couldn't
11 get their salvage out of this vehicle, there's nothing wrong
12 with that, that's what adjusters do all the time; making
13 salvage determinations?

14 A If a vehicle comes into any shop, any Direct
15 Repair Program, Nationwide or whoever; number one, if you're
16 in a system like this, you're in a program like this, you're
17 in it to fix cars.

18 Q Right.

19 A You're not into it to total cars. The shop
20 doesn't make any money. The shop makes its profit when you
21 repair a car, so it's in the best interest of a shop
22 obviously financially not to total loss cars. Although there
23 are checks and balances in this that if it's a total, it's a
24 total. There's numbers. Numbers don't lie.

25 Q But at the end of the day it's what's in the

86

1 best interest of the customer?

2 A That's what it should be in.

3 Q Not the body shop or the insurance company?

4 A It's whether or not a proper determination is
5 made and what is in the best interest. It should always be
6 for the consumer.

7 Q You would agree with me that's the ultimate
8 concern?

9 A It should be.

10 Q And you as the body shop will not be repairing
11 a vehicle that can't be repaired or totaling a car that
12 shouldn't be totaled?

13 A Not all times. It does happen.

14 MR. B. MAYERSON: I have some follow-up questions,
15 Your Honor.

16 REDIRECT EXAMINATION

17 BY MR. B. MAYERSON:

18 Q When you are looking to determine whether a
19 vehicle is a total loss and you're trying to establish the
20 salvage value, how do you do that?

21 A Repeat that again please.

22 Q How do you establish salvage value for
23 purposes of determining whether a vehicle is a total loss?

24 A Myself, I call a couple salvage yards and
25 discuss with the owner of the salvage yard what the vehicle

87

1 is, the mileage, the condition, where it's hit and the amount
2 of damage.

3 Q Is that something that you record in your
4 appraisal papers and such?

5 A Usually not because we never get that far with
6 a claim.

7 Q Who does that?

8 A The carrier does. Ninety-nine percent of the
9 time it's something the carrier will do unless we get a car
10 in. We had a car come in yesterday. The woman did not have
11 collision on her car. It's a 2000 Neon and it gets towed in.
12 And I say to her, it's an obvious total loss. The car
13 shouldn't be repaired because the monetary of the value of
14 the repairs exceeds the value of the car.

15 So I made a call yesterday to a salver we deal with
16 and got a salvage bid for a car. That's a rarity. That's
17 not the norm.

18 Q Are you a licensed appraiser?

19 A Yes, I am.

20 Q You're familiar with the Appraiser's Act?

21 MR. COHEN: Objection.

22 THE COURT: What's the objection?

23 MR. COHEN: Objection to any question having to do
24 with the Appraiser's Act.

25 THE COURT: You don't know what the question is.

88

1 MR. COHEN: I know it's going to be improper.

2 THE COURT: It probably is but lets hear the question
3 first.

4 BY MR. B. MAYERSON:

5 Q What's your -- first of all, do you know that
6 the Appraiser's Act and the regulations control how vehicle
7 -- insured vehicles should be appraised and repaired?

8 MR. COHEN: Objection.

9 THE COURT: Sustained. Next question.

10 BY MR. B. MAYERSON:

11 Q Sir, if a vehicle comes in and you think it's
12 a total loss, maybe because the frame is badly twisted, the
13 unibody is twisted and if a Nationwide adjuster were to come
14 in and tell you to repair it, what would you do?

15 MR. COHEN: Objection.

16 THE COURT: Sustained.

17 BY MR. B. MAYERSON:

18 Q Who makes the decision as to whether a vehicle
19 is a total loss, you or the insurance company?

20 A Most of the times the insurance company. Can
21 I give you an example?

22 Q Yes.

23 A Last month we towed in a 2005 Cadillac
24 Escalade. It has a retail value of \$37,000. A huge oak tree
25 fell on it in one of the storms we had and this car looked

1 like Godzilla stepped on it, okay, and it was looked at in a
 2 tow yard and there was an estimate.
 3 MR. COHEN: Objection. Objection. The witness is
 4 just giving a narrative of something that has nothing to do
 5 with this case.
 6 THE COURT: Sustained. Next question.
 7 BY MR. B. MAYERSON:
 8 Q Sir, the documents that you authenticated
 9 today, were they supplied to you by Nationwide Insurance
 10 Company?
 11 A Yes, they were.
 12 MR. B. MAYERSON: Thank you, Your Honor.
 13 THE COURT: Anything further? Okay. Thank you very
 14 much, Mr. Moore.
 15 THE WITNESS: You're welcome, Your Honor. Thank you.
 16 MR. B. MAYERSON: Next witness we would like to call
 17 is Jeffrey Gooderham.
 18 JEFFREY GOODERHAM, Sworn.
 19 THE CLERK: Please state your name.
 20 THE WITNESS: Jeffrey Gooderham.
 21 THE CLERK: You may be seated.
 22 THE COURT: Spell that last name, please.
 23 THE WITNESS: G-O-O-D-E-R-H-A-M.
 24 MR. B. MAYERSON: Your Honor, Plaintiffs request the
 25 right to treat the witness as an adverse witness in

1 cross-examination.
 2 THE COURT: Any objection?
 3 MR. COHEN: No.
 4 THE COURT: Okay.
 5 CROSS-EXAMINATION
 6 BY MR. B. MAYERSON:
 7 Q Thank you for coming, sir.
 8 A You're welcome.
 9 Q Can you please tell the Court what your
 10 employment is?
 11 A I work for Nationwide Insurance.
 12 Q In what capacity?
 13 A Lead Claims Counsel.
 14 Q Can you briefly tell us what your employment
 15 background is with Nationwide beginning when you first became
 16 employed with the company?
 17 A I was hired December 31st, 1990 as a Claims
 18 Attorney, had various legal positions in the mid-'90s. I had
 19 some Claims management positions and then I returned probably
 20 around '96, '97 to the Legal Department.
 21 THE COURT: And what's your position now?
 22 THE WITNESS: Lead Claims Counsel.
 23 BY MR. B. MAYERSON:
 24 Q Beginning in 1990 up to 2000 you were a Claims
 25 Attorney, a District Claims Manager, a Claims Technical

1 Consultant and then a Claims Legal Counsel for the company?
 2 A That is correct.
 3 Q All right. And you consult on coverage and
 4 you maintain your own case files?
 5 A Not at the present time, no. At times I did
 6 those things but at the present time I do not.
 7 THE COURT: And you're Lead Claims Counsel for a
 8 certain area?
 9 THE WITNESS: Western Pennsylvania.
 10 BY MR. B. MAYERSON:
 11 Q And are you one of the Nationwide employees
 12 who drafted the Pennsylvania Best Claims Practices Manual?
 13 A I was a member of the committee that met in
 14 discussing the development of the Pennsylvania Best Claims
 15 Practices.
 16 Q So you were part of a committee which put the
 17 manual together?
 18 A Yes.
 19 Q And you also trained claim staff during your
 20 career?
 21 A Yes.
 22 Q Why don't you tell us a little bit about your
 23 training experience?
 24 A Education that I have received or education --
 25 Q Education you give to the claims staff at

1 Nationwide.
 2 A (No response.)
 3 Q Did you train?
 4 A In what year; in what capacity?
 5 Q Let me ask you a more simple question. Did
 6 you use the Best Claims Practices Manual to train claims
 7 staff people?
 8 A I would have to know what manual you're
 9 referring to.
 10 Q All right.
 11 THE COURT: Is this called the Best Claims Policy
 12 Manual or --
 13 MR. B. MAYERSON: Best Claims Practices. And it's --
 14 you agree it's a manual?
 15 THE WITNESS: There's a number of Best Claims
 16 Practices Manuals. You're talking about an extended period.
 17 BY MR. B. MAYERSON:
 18 Q All right. You are the Jeffrey Gooderham that
 19 testified in the matter of Bonenberger versus Nationwide
 20 Insurance Company?
 21 A That's correct.
 22 Q And you testified along with Kathleen Holbin?
 23 A That is correct.
 24 Q And I think there was another gentleman named
 25 Tim Gaul?

93

1 A Tim Gaul.
2 (Whereupon, Exhibit No. 36 was marked for
3 identification purposes.)
4 BY MR. B. MAYERSON:
5 Q Sir, I'm handing you a four-page document
6 that's been identified as Exhibit 36. I'd like you to take a
7 look and tell me if you can identify that document.
8 A The title of the document is Pennro Litigation
9 Strategy-1993.
10 Q Are you familiar with that document?
11 A I've seen the document, yes.
12 Q Was that document attached to the Best Claims
13 Practices Manual that was circulated to all the claim
14 departments in Pennsylvania in 1996 or 1993?
15 A I'm not certain as to circulation. I have
16 seen the document you're referring to and I have seen this
17 attached to it.
18 Q And that's Appendix A-6 to what you would call
19 that version of Best Claims Practices?
20 A Again, I would have to see what document
21 you're referring to.
22 Q I mean, you were not present for the prior
23 trial in this matter in December of 2004, were you?
24 A That is correct.
25 Q We identified -- marked and identified the

94

1 document that Ms. Holbin testified upon which we called
2 Exhibit 2, and I'd just like you to take a look at that and
3 tell me if you can identify that document.
4 A This is the document that came from that group
5 that you referred to earlier that developed a Pennsylvania
6 Best Claims Practices.
7 Q Okay. And the document that I've just handed
8 you that we've marked as Exhibit 36, the Pennro Litigation
9 Strategy, is that attached to that Best Claims Practices
10 Manual?
11 A It's right here.
12 Q Thank you. And that is the same document that
13 you testified to in the Bonenberger versus Nationwide matter?
14 A We referred to that document in the
15 Bonenberger trial, that is correct.
16 Q It's -- do you agree that your testimony in
17 the Bonenberger -- let me just ask you this question: Was
18 that manual being used across the State of Pennsylvania in
19 the year 2000?
20 A No.
21 Q All right. And you acknowledge that when you
22 -- can you explain to us what you mean by no?
23 THE COURT: No, he did explain it to you. No. You
24 think just because I'm taking notes I'm not thinking and
25 listening at the same time. Lets go. Think of the next

95

1 question. Just come on.
2 BY MR. B. MAYERSON:
3 Q Sir, isn't it true that that Pennro Litigation
4 Strategy and the Best Claims Practices Manual it's attached
5 to was never superseded until the year 2002 was never
6 superseded until at least the year of 2000 when you gave
7 testimony in Bonenberger.
8 THE COURT: Well, superseded in 2002. what's the
9 question?
10 MR. B. MAYERSON: The question is: Do you agree that
11 the Best Claims Practices -- let me just ask you this
12 question: Did you testify incorrectly in Bonenberger?
13 A As far as what?
14 Q As far as your testimony where you said that
15 the Best Claims Practices Manual that I just handed you, it's
16 been marked in this matter as Exhibit 2, was never
17 superseded?
18 A (No response.)
19 THE COURT: First of all ask him if that's what he
20 said in the Bonenberger case and then if he says yes or no
21 then you can ask him whether or not that statement was
22 correct. Those are two different questions.
23 BY MR. B. MAYERSON:
24 Q Did you testify in the Bonenberger matter?
25 A Yes, I did.

96

1 Q And did you testify that the document was not
2 superseded at any time up until your testimony in 2000?
3 A I testified that this was the only
4 Pennsylvania Best Claims Practices, that's correct.
5 Q And it hadn't been superseded; correct, to
6 your knowledge?
7 A There was no other Pennsylvania Best Claims
8 Practices that was specific to Pennsylvania.
9 Q Okay. So that answer is no?
10 THE COURT: And it was being used at that time?
11 THE WITNESS: Sorry, Your Honor, yes.
12 THE COURT: And that this Exhibit Number 2 was used
13 at that time as a Pennsylvania Best Claims Practice Manual at
14 the time of your testimony in the Bonenberger case; is that
15 what you testified to at that time?
16 THE WITNESS: Yes, yes, in those terms; yes, I did.
17 THE COURT: Yeah. All right.
18 BY MR. B. MAYERSON:
19 Q And at that time you also agree that you
20 testified that there's no other philosophy set forth?
21 THE COURT: Now, wait. Now you're going onto
22 something else. Now was that a correct statement when you
23 made it in the Bonenberger case or was it incorrect?
24 BY MR. B. MAYERSON:
25 Q Was the testimony -- the statement you gave in

97

1 Bonenberger we just discovered, was that correct?
2 A No, it was not correct.
3 Q All right. And how is that not correct?
4 A There were subsequent corporate documents that
5 came out. In fact, a number of them that came out post-1993.
6 Q All right. And are you sure that those
7 documents didn't simply enhance the document that's in your
8 hand?
9 A No, they were totally separate documents.
10 Q But your testimony -- your testimony in 2000
11 was these other documents enhanced the document didn't
12 supersede it. May I show you your testimony?
13 A Yes.
14 MR. B. MAYERSON: I'm showing the witness Page 2300
15 --
16 THE COURT: Of what?
17 MR. B. MAYERSON: I'll have him identify it if that's
18 all right.
19 THE COURT: You can tell me what it is.
20 MR. B. MAYERSON: This is the trial transcript in the
21 Bonenberger versus Nationwide trial dates February 4th, 2000
22 through March 29th, 2000, Page 2300.
23 THE COURT: Twenty-two hundred.
24 MR. B. MAYERSON: No, 2300 to 2301.
25 BY MR. B. MAYERSON:

98

1 Q And specifically, beginning at Line 20, the
2 question, sir: Is your testimony incorrect there?
3 THE COURT: Just a second. Are you asking him to
4 read from Page 2300 to 2301?
5 MR. B. MAYERSON: And specifically Page 2300, Line 20
6 through 24, just Page 2300 right now.
7 THE COURT: We're now going to take a recess for ten
8 minutes at which time you can review that, read a few lines
9 before, a few lines after and then we'll continue on with the
10 questioning. We're in recess for ten minutes.
11 (Whereupon, a brief recess was taken.)
12 BY MR. B. MAYERSON: --
13 Q Sir, was your testimony incorrect or correct
14 in 2000?
15 A As far as Line 20 and 21? Are we going back
16 to this section here?
17 Q Yes, sir.
18 THE COURT: Now if this is important testimony in
19 this case, you better have your question very darn clear as
20 to what you're trying to establish because if it's mottled
21 when I read the transcript, it's not going to help you any.
22 Right now I don't even understand what the question is.
23 BY MR. B. MAYERSON:
24 Q Sir, in the Bonenberger matter when you
25 testified --

99

1 THE COURT: No, not in the Bonenberger matter. We're
2 talking about the transcript and what does the transcript say
3 somewhere on Page 2300 to 2301 between certain lines relative
4 to what and whether or not what you said at that time --
5 second question -- is it correct or was it incorrect, and if
6 it was incorrect tell you in what respects, question three.
7 That's how you approach this kind of thing in a lawyer-like
8 fashion.
9 BY MR. B. MAYERSON:
10 Q Sir, after reading your testimony at Line 20
11 can you tell me, Question: Was there ever any written
12 document --
13 THE COURT: No. You're not going to read the
14 testimony of the Bonenberger case into this case. You can
15 use his testimony to cross-examine him with regard to what he
16 said.
17 MR. B. MAYERSON: Your Honor, may I mark his
18 testimony as an expert?
19 THE COURT: No, you may not. It's very simple. I
20 thought I taught you this the Phase 1 of the case, didn't I,
21 Pop?
22 Well, lets do it.
23 BY MR. B. MAYERSON:
24 Q Sir, did you testify incorrectly with regard
25 to whether the manual superseded --

100

1 THE COURT: Ask him, did you testify a certain way
2 after reviewing your testimony did you say a certain thing?
3 Just ask him that question. Did you say or do you know what
4 you want to ask?
5 BY MR. B. MAYERSON:
6 Q Sir, did you testify that the manual was never
7 superseded and only enhanced with other documents?
8 THE COURT: Yes or no?
9 THE WITNESS: That's the inference from Line 20 to
10 Line 24.
11 THE COURT: That's what you said, correct?
12 THE WITNESS: Yes, that's what I said. He correctly
13 read the passage.
14 BY MR. B. MAYERSON:
15 Q And is that testimony correct?
16 THE COURT: When you gave it at that particular time,
17 yes or no?
18 THE WITNESS: No, it's not correct.
19 THE COURT: And in what respect was it not correct
20 when you gave it?
21 THE WITNESS: I could have been a little more
22 specific. The Pennsylvania Best Claims Practice was never
23 redone. That was the only one that was done at a later point
24 in time around 1995. It was a separate Best Practices. At
25 some point we quit using the Pennsylvania Best Claims

IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

101

1 Practices.

2 BY MR. B. MAYERSON:

3 Q How did you tell the staff at Nationwide that

4 you were no longer using that version of Best Claims

5 Practices Manual?

6 THE COURT: When?

7 MR. B. MAYERSON: When Nationwide -- first of all,

8 did you make the decision that you were no longer going to

9 use that manual in '95, you said late '95?

10 THE WITNESS: No.

11 BY MR. B. MAYERSON:

12 Q How did you receive the notice that you were

13 no longer going to use that manual?

14 THE COURT: Did he receive the notice?

15 BY MR. B. MAYERSON:

16 Q Did you -- did you receive the notice?

17 A Yes, in early '95, the big kick off for the

18 Corporate Best Claims Practices. We had meetings with the

19 claims representatives and we used the corporate document.

20 THE COURT: Was that a national document as opposed

21 to a Pennsylvania document?

22 THE WITNESS: That's correct, Your Honor.

23 BY MR. B. MAYERSON:

24 Q Do you have that document with you today?

25 A I have the transcript and the Pennsylvania one

102

1 that you handed me.

2 Q Okay. Do you have the document that you're

3 saying applied to that one?

4 A No.

5 Q First of all are you testifying that the

6 corporate version replaced that manual?

7 A Yes.

8 Q All right. And how --

9 THE COURT: In 1995?

10 BY MR. B. MAYERSON:

11 Q In late 1995?

12 A I think I believe it was early 1995 that we

13 began to use the corporate one. At some point the

14 Pennsylvania one was no longer used. I believe that was also

15 in 1995.

16 THE COURT: Because it was replaced by the national

17 policy on the same subject?

18 THE WITNESS: Yes, we had a kick off. They

19 contributed documents. I believe we had training sessions

20 for the --

21 BY MR. B. MAYERSON:

22 Q Did you circulate a memo to the staff at

23 Nationwide that the older version that's identified in the

24 Bonenberger matter is replaced?

25 A I did not circulate a memo.

103

1 Q Do you remember seeing a memo circulated to

2 anybody?

3 A I don't remember one way or the other.

4 Q You were responsible for using these manuals

5 for training staff; correct?

6 A In Pennsylvania.

7 Q During what time period?

8 THE COURT: 1995.

9 THE WITNESS: '95, yes, I was a Claims Manager. I

10 believe at that point, and I would have trained using the

11 corporate manual in 1995.

12 THE COURT: Were you, at that time, the lead

13 attorney?

14 THE WITNESS: No, I took a Claims Management Position

15 in the mid-'90s, Your Honor.

16 THE COURT: For what area?

17 THE WITNESS: Western Pennsylvania.

18 BY MR. B. MAYERSON:

19 Q Sir, you never told any claim staff in any of

20 your training seminars in 1995 not to apply the Pennro

21 Litigation Strategy as Appendix A-6 attached to the other

22 Best Claims Practices Manual?

23 A I wouldn't have told them to use it. In 1995

24 I would have been using the separate manual so I wouldn't

25 have told them not to use something that I wasn't using.

104

1 Q So the answer to my question is, you agree you

2 were never using the Pennro Litigation Strategy?

3 A There was no reason to. I was using the

4 corporate manual at that time.

5 Q Did you tell them to stop using the other

6 manual?

7 A I never sent out a memo telling them not to

8 use the Pennsylvania manual.

9 Q And you were -- were you present for Kathleen

10 Holbin's testimony? In other words, not only did you testify

11 incorrectly with regard to the manual in 2000 but the people

12 that worked under you, Kathleen Holbin and Mr. Tim Gaul, he

13 also testified incorrectly with regard to the existence of

14 the Best Business Practices?

15 A I was not present for either testimony and

16 neither of them work for me or have either worked for me.

17 Q Since giving your testimony in Bonenberger

18 have you had an opportunity to review their testimony?

19 MR. COHEN: Objection.

20 THE COURT: Sustained.

21 BY MR. B. MAYERSON:

22 Q Sir, you agreed that that litigation, the

23 Pennro Litigation Strategy that we marked as an exhibit was a

24 strategy for Nationwide to --

25 THE COURT: Are you talking about Exhibit 36?

1 MR. B. MAYERSON: Yes, sir.

2 THE COURT: Then say 36.

3 MR. B. MAYERSON: And that's been marked as Exhibit

4 36, that the intent was to send a message to Plaintiff's

5 attorneys?

6 THE COURT: First of all, I don't even know what it

7 says and now you're going to tell me what the intent was

8 behind what I don't even know what it says. Who are you

9 trying this case in front of? Are you trying it in front of

10 me?

11 MR. B. MAYERSON: Yes, sir.

12 THE COURT: Well, you're not being very convincing.

13 MR. B. MAYERSON: All right.

14 THE COURT: First of all, what are you referring to,

15 the only thing I know is that we have an Exhibit 36.

16 BY MR. B. MAYERSON:

17 Q Sir, take a look at Exhibit 36.

18 A I have it in front of me.

19 Q All right. Does that set forth a claim

20 handling philosophy and strategy for 1993 and beyond?

21 A That is what the first line says.

22 Q Under the philosophy, number two, could you

23 read what that philosophy is stated in there?

24 A "Continued reinforcement of Nationwide being

25 a, quote, defense-minded, closed quote, carrier in the minds

1 of plaintiff legal community."

2 Q And this was a strategy under "B" and number

3 one, litigation avoidance. Would you agree with that?

4 A That's what I'm reading.

5 Q Yes, okay. And so under "E" can you tell us

6 what one of those litigation avoidance strategies was?

7 A "Implement more aggressive posture in handling

8 cases of lesser probable exposure; i.e. cases not exceeding

9 \$25,000. Create and reinforce a defense-minded perception,"

10 period.

11 Q And isn't it true that you understood that

12 that defense-minded perception was developed through repeated

13 exposure with plaintiff's attorneys?

14 MR. COHEN: Objection.

15 THE COURT: What's the other question? Repeat that

16 question. No, no. Just a second. I mean to re-read the

17 question.

18 (Whereupon, the court reporter read last question as

19 follows: Question: And isn't it true that you understood

20 that that defense-minded perception was developed through

21 repeated exposure with plaintiff's attorneys?)

22 THE WITNESS: I didn't write that. I've never said

23 that statement.

24 MR. B. MAYERSON: Okay.

25 THE COURT: By the way, I checked down the hall, we

1 will be in this courtroom tomorrow. So if you want to keep

2 your things here, you certainly may. The courtroom will be

3 locked, and I will be here tomorrow provided that you turn

4 the cold air off coming on my shoulder. I'm not going to sit

5 through this for three or four days, but they're going to

6 give it a shot at which time you'll probably be warm so we

7 can exchange seats.

8 BY MR. B. MAYERSON:

9 Q Sir, do you still have the Bonenberger

10 transcript?

11 A Yes.

12 Q Turn to Page 2397.

13 THE COURT: For what purpose?

14 MR. B. MAYERSON: To see if it refreshes his

15 recollection.

16 THE COURT: As to what, his testimony?

17 MR. B. MAYERSON: Yes.

18 THE COURT: All right. Go ahead. What page?

19 MR. B. MAYERSON: Two thousand three hundred

20 ninety-seven.

21 THE COURT: Did you ask him a question first?

22 MR. B. MAYERSON: Yes.

23 BY MR. B. MAYERSON:

24 Q The question is --

25 THE COURT: No, no, no. Ask him a question. Ask him

1 a question that pertains to this case. Then again, like I

2 told you back in December of 2004, if he says something

3 contrary to what he says today on the stand, then you can use

4 the testimony to cross-examine him; otherwise, you'd never

5 get into any other testimony, prior testimony. Ask him a

6 question.

7 BY MR. B. MAYERSON:

8 Q Sir, isn't it correct as of 2000 you

9 understood --

10 THE COURT: Objection sustained. Do what I tell you

11 to do or we'll get out of this area completely and this

12 witness can go home to wherever he lives in western

13 Pennsylvania. Ask him a question as it pertains to this

14 case.

15 MR. B. MAYERSON:

16 Q Does defense mindedness get developed to your

17 understanding through repeat exposure or contact with

18 plaintiff's attorneys.

19 THE COURT: Good question. Yes or no?

20 THE WITNESS: It could be, yes.

21 BY MR. B. MAYERSON:

22 Q How so?

23 A If you're going to take a position the only

24 way you're going to convey that position is if you've dealt

25 with a person in the past.

109

1 Q So through continued reinforcement?

2 A I don't know if continued reinforcement is the

3 only way, but I guess that could be one way.

4 Q Sir, I'd like to ask you --

5 THE COURT: What does a more aggressive posture mean

6 on behalf of Nationwide Insurance Company?

7 THE WITNESS: I didn't write this document, Your

8 Honor, so I don't know what that person meant.

9 THE COURT: Well, I'm going to assume that if you

10 were lead counsel in western Pennsylvania and this was a part

11 of the policy that you carried out, you certainly knew what

12 it meant because you would be in a position to have to

13 explain that to other people as well.

14 THE WITNESS: Number one, I wasn't lead counsel. I

15 want to correct that too.

16 THE COURT: Whether or not you were a big shot in the

17 company --

18 THE WITNESS: I wish, Your Honor.

19 THE COURT: All right. All right. What is meant by

20 "aggressive posture"? I don't know what that means. I think

21 I know what it means, but that's not important at this point?

22 I think I want to read that in connection with the heading

23 that talks strategy and then says litigation avoidance. I

24 think it has to do with avoiding litigation.

25 THE WITNESS: That's correct.

110

1 THE COURT: Not necessarily settling claims.

2 THE WITNESS: That's correct. I mean, the benefit to

3 an insurance company --

4 THE COURT: And you don't want to go to court.

5 THE WITNESS: That's correct.

6 THE COURT: And enforce that thought with plaintiff's

7 counsel and that you're taking that position with regard to

8 claims that are even under \$25,000 or not exceeding \$25,000.

9 THE WITNESS: Your object should be able to avoid

10 court because of the costs and so forth, so more aggressive,

11 more contact negotiating settlement with plaintiff's counsel.

12 THE COURT: It could be that.

13 THE WITNESS: Yes.

14 THE COURT: Okay.

15 BY MR. B. MAYERSON:

16 Q Sir, under "B," "E," the section that you're

17 talking about, "implement a more aggressive posture in case

18 of lesser probably exposure." That's in first and

19 third-party claims?

20 A It doesn't refer to first or third party.

21 Q You understood it to be applied to both first

22 and third-party claims?

23 A The best claims, my understanding, handled

24 first and third-party bodily injury claims, Pennsylvania

25 document, first-party claims, as well as third party and not

111

1 even all first party. I'm not even sure we got into the

2 medical benefits portion of the first-party claims. My

3 understanding from the document we were discussing bodily

4 injury and possibly UM/UI, underinsured motorist or uninsured

5 motorist.

6 Q But you agree, don't you, that this philosophy

7 and strategy applies to litigation files; correct?

8 A Yes, it says litigation strategy.

9 Q So litigation management files?

10 A I assume so.

11 Q All right. And there's no other philosophy

12 set forth in that manual other than the one we're talking

13 about now, is there?

14 A I would have to look. I mean, are you asking

15 me if there's any other portion in the manual where it says

16 philosophy?

17 Q Are you aware of any other section that

18 describes Nationwide's philosophy on handling claims where

19 people retain attorneys?

20 A Well, I mean, all throughout the document I

21 believe there's reference to negotiating with attorneys to

22 evaluating claims. I mean, those would all involve attorney

23 contact.

24 Q Sir, just answer the question. Are you aware

25 of any other section in that manual that talks about a

112

1 litigation strategy and philosophy other than the section at

2 A-6?

3 A I'm not aware of anything that says litigation

4 philosophy aside from what you're referring to.

5 Q And, sir, lastly, to your knowledge, was this

6 litigation strategy -- it was attached as an exhibit or as an

7 Appendix A-6 to Best Claims Practices; is that correct?

8 A That is correct.

9 Q And it existed before that version of Best

10 Claims Practices was created; correct?

11 A Yes.

12 Q Do you know how -- first of all, let me ask

13 you a question: Are you familiar with a company called

14 Mackenzie and Company?

15 A Yes.

16 Q What is Mackenzie and Company?

17 A They're some vendor that I think they do

18 training.

19 Q Did Nationwide receive training from Mackenzie

20 and Company with regard to this Pennro Litigation Strategy?

21 A I don't recall that. I don't recall Mackenzie

22 dealing anything with this.

23 Q But you do recall Nationwide dealing with

24 Mackenzie?

25 A At some point I remember getting training on

IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

113

1 coaching or something in the mid-'90s or something but I
2 don't recall anything involving Best Claims in Mackenzie.
3 Q Could it have been early '90s before this
4 Pennro litigation strategy came out?
5 A I don't recall. I'd be guessing.
6 Q And the last question, sir, when we talked
7 about the more aggressive posture and the reinforcement to
8 plaintiff's counsel wasn't that reinforcement that Nationwide
9 was defense-minded?
10 A That's what the document says.
11 Q And isn't that what your understanding of how
12 the document was to be applied?
13 A It's what the document says
14 THE COURT: Defense-minded in dealing with whom?
15 THE WITNESS: I assume the person you're negotiating
16 the claim with.
17 THE COURT: That's close. Who is that?
18 THE WITNESS: Plaintiff's counsel.
19 THE COURT: Plaintiff's counsel. And plaintiffs
20 being who, what type of people?
21 THE WITNESS: Attorneys.
22 THE COURT: No, plaintiffs. Who were the people that
23 were defending the claim against?
24 THE WITNESS: well, we're defending our insured, but
25 the plaintiff will be the person representing the Claimant.

114

1 THE COURT: And the Claimant is your insured person?
2 THE WITNESS: It could be our insured person, but at
3 this point I believe most of our claims are third-party
4 claims, so the Claimant would typically or the plaintiff
5 would typically be the Claimant.
6 THE COURT: And there was no distinction here meaning
7 first or third party?
8 THE WITNESS: No, there's not.
9 THE COURT: So it would apply in this situation
10 obviously to the Bergs as plaintiffs.
11 THE WITNESS: I believe the Bergs have a material
12 damage case and this didn't apply. My understanding, the
13 material damage cases --
14 THE COURT: That this policy only applied to bodily
15 injury cases?
16 THE WITNESS: But, well, back in '93 --
17 THE COURT: Your understanding.
18 THE WITNESS: My understanding was back in 1993 when
19 this developed all the members of the committee were from the
20 casualty end. Those supervising casualty claims and casualty
21 litigation, all the members of the committee were based from
22 that discipline. So my understanding, and I believe the only
23 training that went out, if any training at all went out, or
24 any distribution to the manual would have gone to bodily
25 injury claim representatives.

115

1 THE COURT: I heard that said by others but this is
2 the first time I'm hearing it said by a big shot with
3 Nationwide. Somebody who works for Nationwide, okay. Go
4 ahead. If I can't keep my sense of humor here I won't last.
5 THE WITNESS: I hope you keep telling people I'm a
6 big shot.
7 THE COURT: Don't worry, I will. Go ahead. Anything
8 else?
9 MR. B. MAYERSON: Yes, a little bit.
10 BY MR. B. MAYERSON:
11 Q I understand that you're testifying that it
12 applied primarily to --
13 THE COURT: No, he didn't say primarily. He said it
14 only applied to bodily injury casualty claims and not
15 property damage claims. That was his understanding.
16 MR. B. MAYERSON: Right.
17 BY MR. B. MAYERSON:
18 Q Isn't it also your understanding that it
19 applied first and foremost to litigation management?
20 THE COURT: I don't know what that question means,
21 litigation management applied to certain types of claims. I
22 may be wrong on that, but that's his testimony.
23 BY MR. B. MAYERSON:
24 Q Does it apply primarily to claims where the
25 Claimant retains counsel?

116

1 A No, it could apply to any claim.
2 Q whether they have counsel or not?
3 A Best Claims Practices, we try to settle claims
4 with Claimants and insureds prior to them retaining counsel,
5 so any claims practices would involve both unrepresented and
6 represented claimants.
7 Q Does this litigation management -- on the next
8 page where it talks about litigation management, Page 1142 of
9 the trial transcript -- I'm sorry -- of --
10 MR. COHEN: What trial transcript?
11 MR. B. MAYERSON: The second page of Exhibit 36.
12 BY MR. B. MAYERSON:
13 Q That section on litigation management, does it
14 talk about applying this only to casualty claims?
15 A I don't see a specific reference to casualty
16 claims.
17 Q Sir, do you know who David Cole is?
18 A Yes.
19 Q Is he your boss?
20 A Presently or --
21 Q How about in and around 1990 to 1996?
22 A I don't believe during that period he was.
23 Q At some period of time he was your boss?
24 A I think it might have been '97 or '98,
25 somewhere around there.

IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

117

1 Q Was one of -- was Mr. Cole obviously aware of
2 this Pennro Litigation Strategy?
3 MR. COHEN: Objection.
4 MR. B. MAYERSON: Well, did he ever instruct you on
5 --
6 THE COURT: Sustained. Go ahead.
7 BY MR. B. MAYERSON:
8 Q Did Mr. Cole ever offer you instruction on how
9 to apply this Pennro Litigation Strategy?
10 A I never discussed this with anyone after '99
11 or never saw this after '93. It was part of the Best Claims
12 Practice, so I never saw it past '93, '94, so I never
13 discussed it with anyone until the Bonenberger trial.
14 Q So what this was just attached to the document
15 and this after it became useless?
16 MR. COHEN: Objection.
17 THE COURT: Overruled. Answer the question.
18 THE WITNESS: I never saw it past 1993, '94 until the
19 time of the Bonenberger trial.
20 BY MR. B. MAYERSON:
21 Q But you agree it was first circulated in 1993?
22 A It was attached to a document that was put out
23 in 1993. I don't know about a circulation on it. I didn't
24 circulate the document.
25 Q And it says right at the top, "Claim handling

118

1 strategy and philosophy for 1993 and beyond;" right?
2 A Yes, that's what the second line says.
3 MR. B. MAYERSON: Thank you, sir.
4 THE COURT: Is this the entire Pennro Litigation
5 Strategy, what's contained on these three pages or four
6 approximate pages?
7 THE WITNESS: Yes, this was the attachment that was
8 to the Best Claims Practices.
9 THE COURT: And this is all these four pages?
10 THE WITNESS: That was attached, yes.
11 THE COURT: Okay. Cross-examine. what is this?
12 MR. COHEN: This is -- Mr. Gooderham has this
13 document in front of him. I believe this was what was marked
14 but not admitted during the first phase of trial, Exhibit 2.
15 This is the Pennsylvania Best Claims Practices document.
16 REDIRECT EXAMINATION
17 BY MR. COHEN:
18 Q So, Mr. Gooderham, you have this document in
19 front of you?
20 A Yes, I do.
21 Q You're familiar with this document obviously?
22 A Yes.
23 Q All right. I just want to --
24 MR. H. MAYERSON: Excuse me. Give us a chance to get
25 it, please.

119

1 MR. B. MAYERSON: He has it.
2 MR. COHEN: It's the document you were just
3 questioning him with.
4 MR. B. MAYERSON: May I approach the witness and get
5 my copy back here, Your Honor?
6 THE COURT: Yes.
7 BY MR. COHEN:
8 Q I want to clear up or I want to try and clear
9 up nomenclature if we could. I think there's confusion
10 somewhere along the line, and I want to make sure we lay a
11 proper foundation before we go forward.
12 THE COURT: This, what I now have in my hand, the
13 1993 Pennsylvania Best Claims Manual --
14 MR. COHEN: No, Your Honor. This is the Pennsylvania
15 --
16 THE COURT: So it's not Exhibit 2 that was not
17 admitted into evidence?
18 MR. COHEN: It is. Attached to this document is the
19 1993 Pennsylvania Pennro Litigation Strategy. The Pennro
20 Litigation Strategy is an attachment to the overall
21 Pennsylvania Best Claims Practices document. The
22 Pennsylvania Best Claims Practices document --
23 THE COURT: So this hasn't been marked as an exhibit
24 or admitted into evidence before?
25 MR. COHEN: That's correct. It was marked at the

120

1 first phase but not admitted into evidence.
2 THE COURT: Do you want to mark this then as an
3 exhibit now?
4 MR. COHEN: Yes, Your Honor.
5 THE COURT: Because those exhibits that were
6 submitted during the first phase of the case which were not
7 admitted into evidence I threw away. I'm not big enough to
8 carry all this stuff. So it's not a part of the record.
9 It's not admitted into evidence. So this then is Exhibit
10 Number 37.
11 MR. COHEN: Yes, Your Honor.
12 (Whereupon, Exhibit No. 37 was marked for
13 identification purposes.)
14 THE COURT: So it's Pennsylvania Best Claims --
15 MR. H. MAYERSON: Can we have a copy of Exhibit 37?
16 MR. COHEN: It's the same document you have. You
17 have it in your hand. Your Honor, I don't have another copy.
18 I gave the Court one and the witness one.
19 THE COURT: It's the Pennsylvania Best Claims
20 Practices. That's what it says here. Attached for review
21 are the Best Claims Practices.
22 MR. B. MAYERSON: It's still marked as Exhibit 2 so
23 I'm assuming it's the same document.
24 THE COURT: I don't care what it's marked as, Exhibit
25 2. Like I say, if it was not admitted into evidence, then we

IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

1 agree it's not admitted into evidence. It's not a part of
2 the record and I don't have it. So if I don't have it and if
3 it's to be considered in this part of the case and admitted
4 into evidence, then we have to mark it as an exhibit.

5 NOW, is it the Pennsylvania Best Claims Policy or is
6 it the Pennsylvania Best Claims Practices? It seems to me it
7 says Best Claims Practices.

8 MR. COHEN: Best Claims Practices, Your Honor.

9 THE COURT: All right, not policy.

10 MR. COHEN: May I continue, Your Honor?

11 THE COURT: Just a second. Now, do you have a copy
12 of this?

13 MR. B. MAYERSON: We have the previous one that's
14 been marked as Exhibit 2.

15 THE COURT: I don't care what it is. Do you have a
16 copy of what is marked here?

17 MR. B. MAYERSON: If Exhibit 2 is the same --

18 THE COURT: I don't know whether it is or not.
19 That's the problem we are raising.

20 MR. COHEN: Here, just take that one. Now they have
21 it.

22 THE COURT: No, they don't have to have it. Did you
23 bring your exhibits?

24 MR. H. MAYERSON: Yes.

25 THE COURT: Well, see if you have it.

1 MR. H. MAYERSON: We have an Exhibit 2.

2 THE COURT: Look at it and compare it and see if it
3 is the same.

4 MR. H. MAYERSON: Gotcha.

5 THE COURT: All right. Give him back what he gave
6 you. Did he give it back to you?

7 MR. COHEN: Yes.

8 BY MR. COHEN:

9 Q Mr. Gooderham, the Court asked whether or not
10 this was the Best Claims Practices or the Best Claims Policy.
11 This is a practices document?

12 A Yes, it says Best Claims Practices of the
13 State of Pennsylvania.

14 Q And that differs from insurance policies that
15 are issued to policyholders?

16 A That is correct, yes.

17 Q So these are guidelines for how adjusters are
18 to handle certain types of files and claims?

19 A Yes, they are some suggestions.

20 Q Now, we've spoken about -- we've heard the
21 term casualty and bodily injury and we've heard the term
22 material damage. What is casualty and bodily injury in the
23 terms of insurance?

24 A How we refer -- Nationwide refers to it,
25 bodily injury claims, your third-party bodily injury claims;

1 car accident, person gets hurt. That would be a bodily
2 injury claim. And then you also have your underinsured
3 motorist. If the underlying bodily injury limits aren't
4 sufficient, then you have the UI claims and then you have
5 uninsured motorists claims.

6 Q Okay. So this would collectively be called
7 casualty type of claims?

8 A That's correct.

9 Q And that's synonymous with bodily injury-type
10 claims?

11 A That's correct.

12 Q And we talked a little bit and you talked a
13 little bit during Mr. Mayereson's examination of first party
14 and third party. What's the difference between first party
15 and third party?

16 A A first-party claim is a claim that our
17 insured would have against Nationwide. A third-party claim
18 would be a person other than a Nationwide policy holder
19 having a claim.

20 Q So, for example, payment for medical bills
21 from a bodily-injury claim, that would be an example of a
22 first-party claim?

23 A That is correct.

24 Q That's what we call BIC (sic) benefits?

25 A Medical benefits.

1 Q Medical benefits. Okay. And if a
2 policyholder is involved in an accident with another person
3 and that other person is not insured, then that would be an
4 example of an uninsured motorist claim?

5 A That is correct.

6 Q And is that a first-party claim or third-party
7 claim?

8 A Yes, I consider that first-party claim.

9 Q But it's a bodily-injury claim?

10 A That's correct.

11 Q And it's a casualty claim?

12 A Yes.

13 Q And so how does that differ from material
14 damage-type claims? What are material damage claims?

15 A Material damage claims we have appraisers and
16 adjusters that go out and inspect the vehicle, inspect the
17 damages and work toward getting either the policyholders or
18 the third-party claims' cars repaired.

19 Q So material damage refers to damage to an
20 automobile?

21 A That is correct.

22 Q And casualty refers to damage to a person, a
23 body?

24 A Yes.

25 Q Okay. So are those two separate departments,

125

1 are they two separate types of claims Nationwide handles by
2 two types of adjusters?
3 A We have specialization at Nationwide and try
4 to give people as much knowledge as possible and give them
5 special knowledge in certain areas instead of having them
6 learn 50 different things. It's easier to have them learn
7 what their trade is. We have adjusters that handle material
8 damage claims and those that just handle bodily injury
9 claims.
10 THE COURT: And those claims with where they have two
11 claims; one for bodily injury and one for property damage,
12 then what?
13 THE WITNESS: We assign two, sometimes three
14 adjusters. We have a medical benefits adjuster that handles
15 their first-party medical benefits, a third-party adjuster
16 that has a B.I. on some claims. We have a number of
17 adjusters involved.
18 THE COURT: So you don't have the same adjuster
19 handling both parts of the claim where there's casualty and
20 material damage.
21 BY MR. COHEN:
22 Q And that's because for material damages you
23 want a car guy and for bodily injury you want a casualty guy.
24 THE COURT: I understand that. I wanted that in the
25 record.

126

1 THE WITNESS: I think it helps move the claim quicker
2 because someone is looking off at the car while someone is
3 handling the other portion of the claim.
4 MR. COHEN: Okay.
5 BY MR. COHEN:
6 Q In Bonenberger you were involved in the
7 Bonenberger claim; correct?
8 A Yes, in the underlying claim itself.
9 Q What kind of claim was that by the way?
10 A That was a UI claim.
11 THE COURT: Use the terminology.
12 THE WITNESS: I'm sorry. I apologize, Your Honor. I
13 try to teach my claim representatives to speak --
14 BY MR. COHEN:
15 Q In every day layman's terms.
16 A Underinsured motorist. He had received bodily
17 injury settlement with the third-party tortfeasor. It was
18 now presenting a claim to Nationwide.
19 Q So that was not a material damage-type claim?
20 A That is correct.
21 Q In that case, the Pennsylvania Best Practices
22 --
23 THE COURT: So the uninsured motorist claim was for
24 bodily injury?
25 THE WITNESS: For his pain and suffering.

127

1 THE COURT: Okay. Just a minute, okay. Go ahead.
2 Now this is the way most lawyers get their start is as
3 insurance adjusters, and here I am finishing up as an
4 insurance adjuster when I'm ready to get out. Wish I would
5 have known all these years ago. I probably would have stayed
6 in the practice of law.
7 BY MR. COHEN:
8 Q The document that you have in front of you
9 that's been marked as Exhibit 37, what we've referred to as
10 the Pennsylvania Best Claims Practices document, is this a
11 casualty related document? In other words, a bodily
12 injury-type claim document or is it a material damage-type
13 document?
14 A It would be a casualty document.
15 Q And how is it that you know that, I mean, in
16 looking at this document, how is it that you know it's that?
17 A If you look at all the names of the committee
18 members they were all people from the casualty end of the
19 business back in 1993. And also it would have only been
20 distributed if it was distributed to casualty personnel.
21 Q When you flip through the document -- and I've
22 assumed you've taken a look at this before -- is there
23 anything in this document that suggests to you that it's
24 anything other than a casualty-related document?
25 A No.

128

1 Q There's no discussion of how to go about
2 appraising a vehicle or anything of that nature. Okay.
3 Now, attached to this document is the Pennro
4 Litigation Strategy that was previously marked as Exhibit
5 Number 36 and you have that in front of you, as well.
6 A Yes.
7 Q Okay. And that document is an appendix or an
8 attachment to this Pennsylvania Best Claims Practices
9 document; is that right?
10 A Yes.
11 Q Lets take a look at that document. First of
12 all, let me ask you a question: In terms of -- in terms of
13 adjusters, what's the difference in terms of how a casualty
14 adjuster handles litigation versus how a material damage --
15 THE COURT: Counsel, what is the relevancy of this
16 line of questioning that you appear to be getting into? I
17 mean, we now have on the record that the Pennsylvania Best
18 Claims Policy -- Practices policy or manual or whatever you
19 call it, pertains to only bodily injury and not to a
20 non-casualty claim. Now that's not rebutted at this
21 particular point, so you don't have to go into a lot of proof
22 to establish that.
23 Now if on cross-examination or if he's going to
24 present some evidence that what you just got from your
25 witness is not accurate, then maybe a lot of this other

IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

129

1 information might be of some help.

2 MR. COHEN: I'll explain, Your Honor.

3 THE COURT: Yeah, do that.

4 MR. COHEN: I agree with everything you said. The

5 reason why I'm getting into this very brief line of

6 questioning is because there was an inference made by

7 Plaintiff's counsel that the litigation strategy may have

8 applied beyond casualty, and what I want to do is elicit

9 testimony from this witness that that doesn't make sense.

10 It's illogical in light of the fact that casualty adjusters

11 handle their claims versus how material adjusters handle

12 their claims.

13 THE COURT: Go ahead.

14 MR. B. MAYERSON: Your Honor, we're willing to

15 stipulate that the Best Claims Practices and litigation

16 strategy was not utilized by Doug Witmer in this case.

17 MR. COHEN: That stipulation is not good enough for

18 me. I'll agree to that it wasn't, but I'd like to at least

19 elicit this brief testimony.

20 BY MR. COHEN:

21 Q How do casualty adjusters handle their files

22 in terms of litigation?

23 A During what time period?

24 Q During this time period, during 1996, for

25 example?

130

1 A In '96 -- I believe in '96 they would get a

2 claim in. If it was unrepresented they would try and discuss

3 it with the Claimant. If they did retain counsel they would

4 try to discuss it and negotiate settlement. We settle most

5 of our claims and if it doesn't then we go into suit and the

6 claim representative will supervise that suit.

7 Q Okay. So the claim representative, with

8 regard to casualty claims, is intimately involved in the

9 litigation process?

10 A Yes, yes.

11 Q Okay. And that's not so with regard to

12 material damage adjusters?

13 A No.

14 Q Okay. Material damage adjusters don't have

15 anything to do with negotiating with Plaintiff's counsel?

16 A No, they go out and try to appraise vehicles

17 and work out an understanding with everyone to get a

18 settlement.

19 Q So not only is the Best Claims Practices

20 document -- the Pennsylvania Best Claims Practices document

21 that I have in my hand a casualty document meant for casualty

22 adjusters but the same can be said to the litigation strategy

23 that that was meant only for casualty adjusters?

24 A Material damage representatives would not have

25 handled litigation.

131

1 Q Okay. You testified earlier that this

2 document was superseded by a corporate document. Does

3 January of 1996 sound about right when this document would

4 have been superseded?

5 A Yes.

6 Q Okay. And to the best of your knowledge did

7 the corporate document -- the corporate Best Claims document,

8 that was a casualty document also; correct?

9 A Yes, yes.

10 Q To the best of your knowledge was there a

11 litigation strategy attached to that document?

12 A No.

13 Q Okay. Now, Mr. Mayerson asked you about your

14 testimony in Bonenberger and I believe you testified that

15 your testimony in Bonenberger as far as the supersession of

16 the Pennsylvania Best Claims Practices document was

17 incorrect?

18 A That's correct.

19 Q And since Bonenberger have you had occasion to

20 set the record straight, as it were, with regard to your

21 testimony?

22 A Yes.

23 MR. COHEN: Your Honor, I'd like to have this Exhibit

24 marked as 38.

25 (Whereupon, Exhibit No. 38 was marked for

132

1 identification purposes.)

2 MR. B. MAYERSON: We're going to object as a prior

3 statement. I don't understand the purpose of this statement

4 as a prior inconsistent statement I guess.

5 THE COURT: We'll find out.

6 MR. COHEN: Mr. Mayerson has made an issue out of

7 Mr. Gooderham's prior inconsistent statement so I'm seeking

8 to rehabilitate his testimony.

9 THE COURT: Absolutely. Objection is overruled.

10 BY MR. COHEN:

11 Q Mr. Gooderham, I'm showing you what's been

12 marked as Exhibit Number 38. Can you tell me what that

13 document is?

14 A It's an affidavit I signed.

15 Q Okay. And was this prepared and signed and

16 submitted in a case called Anderson versus Nationwide?

17 A That is correct.

18 Q All right. And what was the purpose of this

19 affidavit?

20 A After the Bonenberger trial I had the

21 opportunity to review the Corporate Best Claims Practices and

22 I wanted to clear up my testimony from Bonenberger.

23 Q Okay. And it's a short affidavit but

24 essentially Paragraph 1 says you're currently employed by

25 Nationwide. Paragraph 2 says you testified in Bonenberger.

IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

1 Paragraph 3 says my testimony in part concerning a document
2 identified as Pennsylvania Best Claims Practices which was
3 also referred to sometimes as Best Claims Practices. And
4 then Paragraph 4, the version of the Best Claims Practices
5 Manual which I testified about in the Bonenberger case was
6 superseded several times such as by the time
7 Mr. Bonenberger's UM claim was no longer the accurate
8 version, and I was mistaken in my testimony when I said it
9 had not been superseded.

10 Was that correct when you took that affidavit?

11 A Yes.

12 Q Okay. And is that correct as we sit here
13 today, that you were incorrect in the Bonenberger testimony?

14 A Yes.

15 Q Now, you also had occasion to testify in a
16 case called Sinal versus Nationwide. Are you familiar with
17 that case?

18 A That's correct.

19 MR. B. MAYERSON: Objection, Your Honor. None of
20 this has been provided to us.

21 THE COURT: Overruled.

22 MR. B. MAYERSON: May I have an opportunity to see
23 it?

24 THE COURT: I would assume so. I haven't seen it
25 either. He hasn't submitted anything yet. I don't even know

1 what he's going to do.

2 BY MR. COHEN:

3 Q Do you recall testifying in that case?

4 A Yes.

5 Q Do you recall being asked about the
6 Bonenberger manual in that case?

7 A Yes.

8 Q Do you recall testifying in that case
9 consistent with how you're testifying today, that you were
10 mistaken in Bonenberger?

11 A That is correct.

12 Q Did you have an opportunity --

13 THE COURT: Just a minute here. I think we fouled up
14 on the exhibits. I thought Exhibit Number 37 is now this
15 Pennsylvania Best Claims Practices, 37, so this affidavit
16 then would be 38.

17 MR. COHEN: Thirty-eight, right.

18 BY MR. COHEN:

19 Q Mr. Gooderham, do you recall a case by the
20 name of Walmart versus Nationwide?

21 A Yes.

22 Q Okay. And was Walmart a casualty-type case?
23 Did it involve casualty-type issues?

24 A An underinsured case.

25 Q And Sinal, that was a casualty-type case also?

1 A Yes, Sinal was an underinsured case also.

2 Q And did you testify in the Walmart case?

3 A I testified at trial, yes.

4 Q And again you were asked about the Bonenberger
5 document?

6 A That is correct.

7 Q And in Walmart did you set the record
8 straight, you were wrong as to how you testified in
9 Bonenberger?

10 MR. COHEN: Yes.

11 THE COURT: Do you want this marked as an exhibit?

12 MR. COHEN: Yes, Your Honor.

13 (Whereupon, Exhibit No. 39 was marked for
14 identification purposes.)

15 BY MR. COHEN:

16 Q Did I hand you a copy of this affidavit?

17 A No, you didn't.

18 THE COURT: What are you going to do with this
19 witness?

20 MR. COHEN: I'm going to ask him if he's -- if it's
21 consistent with his testimony today.

22 THE COURT: What David Bano said?

23 MR. COHEN: Yes.

24 THE COURT: I think that's objectionable.

25 MR. COHEN: Okay. That's not relevant, not from him.

1 THE COURT: Okay. To David Bano it may be. All
2 right.

3 BY MR. COHEN:

4 Q Mr. Gooderham --

5 THE COURT: Are you going to produce Mr. Bano?

6 MR. COHEN: We are, Your Honor.

7 THE COURT: All right. We'll keep it marked as an
8 exhibit.

9 MR. COHEN: Okay.

10 BY MR. COHEN:

11 Q You were a -- were you here two years ago for
12 the first phase of trial?

13 A No.

14 Q Okay. But since then you've had an
15 opportunity to review the trial transcript?

16 A Yes.

17 Q Okay. And you understand that Kathleen Holbin
18 testified during the first phase of trial?

19 A Yes.

20 Q And did you have an opportunity to review Ms.
21 Holbin's testimony with regard to the Bonenberger -- with
22 regard to the Pennsylvania Best Claims Practices document
23 that was at issue in Bonenberger?

24 A Yes.

25 MR. COHEN: I don't want to keep referring to it as a

137

1 Bonenberger document, but I'll refer to it as the
2 Pennsylvania Best Claims document that was at issue in that
3 case.
4 Your Honor, at this time I'd like to read Ms.
5 Holbin's testimony into the record and ask Mr. Gooderham
6 whether or not he agrees with that testimony.
7 THE COURT: I don't remember who she was. What did
8 she testify to?
9 MR. COHEN: She was a witness called by the
10 plaintiffs to testify that in Bonenberger she testified
11 incorrectly. And she testified --
12 THE COURT: That's not at issue in this case at this
13 point, not her testimony.
14 MR. COHEN: Okay. Maybe it will be if Plaintiff's
15 counsel produces her as a witness. Thank you, Mr. Gooderham.
16 I have no further questions
17 MR. B. MAYERSON: I have some follow-up questions.
18 RE-CROSS-EXAMINATION
19 BY MR. B. MAYERSON:
20 Q The Best Claims Practices Manual that you have
21 in front of you, does it look almost identical to the one
22 that replaced it?
23 MR. COHEN: Objection.
24 THE COURT: Does it look almost identical?
25 MR. B. MAYERSON: I think Mr. Cohen has a copy of it.

138

1 THE COURT: Overruled. Go ahead.
2 BY MR. B. MAYERSON:
3 Q Does it look almost identical --
4 THE COURT: You're comparing what with exhibit, what
5 to exhibit --
6 MR. B. MAYERSON: I'm comparing Exhibit 37 with the
7 replacement document that has not been produced in this
8 litigation, the one superseded in 1995.
9 THE COURT: How can he answer that if it's not been
10 produced? It doesn't make any sense. It's what I see, okay.
11 He's not the judge in this case. He's the big shot with
12 Nationwide. I'm the big shot with this court, this case
13 today.
14 The objection is sustained. Next question.
15 BY MR. B. MAYERSON:
16 Q Very simple question, why you mistook this
17 document, this document identified as Exhibit 37, with the
18 document that was superseded in 1995 when you were testifying
19 on the stand in the Bonenberger trial?
20 MR. COHEN: Objection, Your Honor.
21 THE COURT: Sustained.
22 MR. B. MAYERSON:
23 Q My follow-up question would be, did the
24 documents look the same on the cover page?
25 THE COURT: Objection sustained.

139

1 MR. B. MAYERSON:
2 Q Sir, you testified during the direct
3 examination with Nationwide's counsel that casualty adjusters
4 follow the case through the time of litigation; right?
5 A Yes.
6 Q And you said the collision adjusters do not;
7 correct?
8 A Yes.
9 THE COURT: Property damage adjusters try to use the
10 same terminology.
11 MR. B. MAYERSON: I will try.
12 BY MR. B. MAYERSON:
13 Q Property damage claim handlers -- I don't know
14 the term that they use --
15 THE COURT: That's pretty good.
16 BY MR. B. MAYERSON:
17 Q You also testified that the property damage
18 claim handlers would not follow a claim if it went into
19 litigation?
20 MR. COHEN: Objection. That misstates his testimony.
21 THE COURT: Basically that's what he said, yes.
22 BY MR. B. MAYERSON:
23 Q Do you disagree with that?
24 A Material damage adjusters do not handle
25 lawsuits.

140

1 Q Correct. So if it goes into litigation it
2 gets transferred to somebody else?
3 A Yes.
4 Q How many cases have you been involved with
5 where a collision claim went into litigation?
6 A Myself? In what capacity?
7 Q In your capacity as a Nationwide house
8 counsel.
9 A I haven't personally handled -- I've
10 supervised lawsuits probably since the early '90s, 1992, '93.
11 Q Would a collision claim that goes into
12 litigation --
13 THE COURT: Mr. Mayer, take a couple of hints from
14 the Court. Use the same terminology. Now you're throwing in
15 collision and you're doing something else. If you think that
16 any of this has an impression upon my thinking, you're wrong,
17 because I can't follow you most of the time. It's the same
18 way with your trial brief. I read the first three pages ten
19 times trying to figure out what you were saying in those
20 first three pages. Read it some time, Pop. See if you can
21 figure it out.
22 MR. H. MAYERSON: I read it many times, Your Honor.
23 THE COURT: And now you're doing the same thing and I
24 really don't care because I'm not counsel in this case for
25 the plaintiff or the defendant. But I'm just suggesting to

1 you that you follow some simple guidelines. We went to great
2 pains in this courtroom to identify, describe, et cetera, the
3 different -- two different types of claims. use that
4 terminology. If you don't like it, change it in the next
5 case that you try like this. But you can't be all over the
6 board. I'm not following you. It's good I only have 20 more
7 minutes to go. I don't think I could handle more today. Go
8 ahead.

9 BY MR. B. MAYERSON:

10 Q I think we established that the property
11 damage claims adjusters would have their files transferred if
12 it went into litigation; correct?

13 A Yes.

14 Q And those litigation files would be handled by
15 somebody else in the company?

16 A Yes.

17 Q Would a collision claim that goes into
18 litigation -- would a property damage claim that goes into
19 litigation be handled by somebody like David Cole?

20 THE COURT: I don't know who David Cole is either, so
21 that means nothing to me.

22 MR. B. MAYERSON: David Cole was your former boss;
23 right?

24 MR. COHEN: Objection.

25 THE COURT: Sustained.

1 BY MR. B. MAYERSON:

2 Q Was David Cole your boss?

3 MR. COHEN: Objection.

4 THE COURT: You already went through that.

5 Sustained.

6 BY MR. B. MAYERSON:

7 Q Who would handle property damage claims when
8 they go into litigation?

9 A During what time period?

10 Q In 1996.

11 THE COURT: Yeah. Good question. Took us a while to
12 get there, but we got there.

13 THE WITNESS: It would either be a casualty claim
14 representative

15 THE COURT: No. Who, by name, if you know?

16 THE WITNESS: I don't know a name of an individual
17 person.

18 BY MR. B. MAYERSON:

19 Q Would David Cole?

20 A In 1996 I'm not entirely certain. At one
21 period of time the claim's attorneys were handling them. In
22 a period of time they were going to casualty claim
23 representatives. I don't know during 1996. I don't know
24 what the extent of our break procedure would be.

25 Q You would agree at the point it goes into

1 litigation or perhaps when the vehicle owner retains an
2 attorney that the claim file gets transferred for handling by
3 somebody higher up in the company?

4 A Not higher up. If it went to another claim
5 representative it would be another level as a material damage
6 representative. They're all claim representatives.

7 Q But not a material damage claim
8 representative?

9 A No.

10 Q It would be handled by somebody outside the
11 material damage unit?

12 A Yes.

13 Q And that somebody would have had knowledge and
14 training on the litigation -- the document 37, Exhibit 37,
15 containing Appendix A-6, the Pennro Litigation?

16 A Not in 1996, no.

17 Q But prior to 1996 and when, if you accept that
18 this was still in place. Withdraw the question.

19 You gave some affidavits because you said you wanted
20 to set the record straight and your affidavit is identified
21 as Exhibit 38 and that was in the matter of Anderson versus
22 Nationwide.

23 A Yes.

24 Q What was the outcome of Anderson versus
25 Nationwide?

1 A I'm not aware.

2 Q Was it a verdict in favor of Nationwide?

3 MR. COHEN: Objection.

4 THE COURT: What's the relevancy of that?

5 MR. B. MAYERSON: well, his testimony was offered to
6 betrust his testimony today, and if it wasn't accepted by the
7 Court because the opinion or the verdict was against
8 Nationwide; well, then, that may impeach his credibility as
9 to this affidavit and its value.

10 MR. COHEN: That's not the purpose why we were
11 introducing the evidence.

12 THE COURT: The objection is sustained.

13 BY MR. B. MAYERSON:

14 Q Isn't it true that your affidavit was written
15 after a punitive damage award was entered?

16 MR. COHEN: Objection.

17 THE COURT: What's the relevancy of that?

18 MR. B. MAYERSON: A motive to change his testimony.

19 THE COURT: I'm not going to get into that other
20 case. The objection is sustained. I've given you great
21 latitude to develop your case and I'm not going into some
22 other case and try that one too.

23 BY MR. B. MAYERSON:

24 Q Sir, do you -- did you bring with you a copy
25 of the new Best Claims Practices that you testified to today?

145

1 A No.
2 Q But you knew this was going to be the subject
3 of your testimony?
4 MR. COHEN: Objection.
5 THE COURT: He's your witness, isn't he?
6 MR. B. MAYERSON: No, he's on cross.
7 THE COURT: Well, he's still your witness.
8 MR. B. MAYERSON: Well, he's employed by Nationwide.
9 THE COURT: He's your witness, my friend. He is
10 still your witness. You were the one who is representing and
11 holding this individual out on his credibility here. Yes,
12 you can examine him as of cross-examination, but he's your
13 witness. Next question.
14 MR. B. MAYERSON: No further questions, Your Honor.
15 THE COURT: Good.
16 MR. COHEN: No questions.
17 THE COURT: Good. Okay, sir.
18 THE WITNESS: Thank you, Your Honor.
19 THE COURT: Next witness.
20 THE COURT: Short witness; 15 minutes, 20 minutes?
21 MR. B. MAYERSON: Your Honor, we would like to call
22 and read into the record testimony of Doug Witmer relevant to
23 the issues we've just been discussing.
24 THE COURT: Didn't we cover that this morning?
25 MR. B. MAYERSON: I'm trying to do --

146

1 THE COURT: I'm not going to allow you to read
2 testimony again if it relates to this particular case. Do
3 you have the witness here?
4 MR. B. MAYERSON: No, because we were relying on the
5 transcript from the previous matter.
6 THE COURT: All right then. Just tell me what the
7 testimony says. who is this now again?
8 MR. B. MAYERSON: This is Doug Witmer. And --
9 THE COURT: Where is his testimony in the record?
10 MR. B. MAYERSON: The testimony I'm referring to or
11 where it begins? His testimony begins -- 293 is the
12 beginning of his testimony. I'm citing --
13 THE COURT: Pages what to what?
14 MR. B. MAYERSON: Three hundred twelve, Line 9 to 317
15 Line 23. And what it generally says --
16 THE COURT: And what is the purpose of that testimony
17 as it relates to this Phase 2 of the case?
18 MR. B. MAYERSON: To establish that when he received
19 my letter of representation he could no longer talk to me or
20 provide any documents but had to turn everything over to
21 management.
22 THE COURT: No, maybe that's stipulated to by counsel
23 or Nationwide.
24 Mr. Cohen.
25 MR. COHEN: I'm sorry.

147

1 THE COURT: I said maybe Mr. Cohen would stipulate to
2 that.
3 MR. COHEN: Oh, I'm sorry. What is it I'm being
4 asked to stipulate to?
5 THE COURT: That once Doug Witmer received the letter
6 advising of Mr. Mayerson's representation he could no longer
7 speak to him about the case but had to turn the letter and
8 everything over to management.
9 MR. COHEN: No, I don't believe that's accurate
10 testimony, Your Honor. That's not what he testified to at
11 all, as a matter of fact. Mr. Mayerson's letter of November
12 3rd asked Nationwide not to have any contact with Lindgren.
13 I don't think there's anything in here to suggest that
14 Mr. Witmer was prohibited from speaking to Mr. Mayerson, so I
15 can't stipulate to that.
16 THE COURT: Yeah, I don't remember that part of the
17 letter either.
18 MR. B. MAYERSON: Not in the letter of Mr. Witmer's
19 testimony.
20 THE COURT: Point out exactly what do you have to
21 read, all of Page 312, Line 9 or 317 Line 3 to establish that
22 point?
23 MR. B. MAYERSON: No, you do not have to read it all.
24 There's --
25 THE COURT: Tell me again. Try it again. Give me a

148

1 page and a line number.
2 MR. B. MAYERSON: Three hundred twelve, Line 9.
3 THE COURT: Three hundred twelve, Line 9.
4 MR. B. MAYERSON: And there I simply hand him the
5 letter of representation.
6 THE COURT: There's no dispute about that. Where did
7 he indicate in his testimony that as a result of the letter
8 he could no longer talk to you about the claim? where is
9 that in his testimony?
10 MR. B. MAYERSON: Beginning at Page 315, Line 21.
11 THE COURT: Where does it say that?
12 MR. B. MAYERSON: When you got the letter of
13 representation. I know I forwarded it to somebody else and
14 that's where it says he forwarded it to his supervisor on
15 3/16.
16 THE COURT: That doesn't say he was prohibited from
17 talking to you.
18 MR. B. MAYERSON: Your Honor, I can read exactly what
19 it says.
20 THE COURT: No, no, no. Just answer my question. I
21 will hear testimony provided it relates to Phase 2 of this
22 case. And if it means reading it again, I'll permit you to
23 read it again. But I'm not going to permit you to read into
24 the record again something that isn't relevant to Phase 2 of
25 the case. What line, what page?

6/6/07 Trial Transcript

1 MR. B. MAYERSON: I have it cited, Your Honor, but
2 it's dot, dot, dot, and then goes on. Your Honor, it really
3 begins on Page 312, Line 19.

4 THE COURT: Three hundred twelve, Line 19. What does
5 it say?

6 MR. B. MAYERSON: Isn't it true that I asked you for
7 all the repair documents, maintenance records, bills,
8 receipts, estimates, or correspondence between you and
9 Lindgren as it relates to this claim? Answer: Yes.

10 And at that time I told you we were preparing a
11 complaint to be filed against Lindgren Chrysler-Plymouth?
12 Answer: Yes.

13 And I also asked you to call so we might discuss this
14 matter; correct? Answer: Yes. And then you interjected and
15 said: Is that customary practice for lawyers to call and
16 discuss a claim? The witness: Absolutely not.

17 And I question: I'm sorry. Did you say it is not
18 customary for lawyers to ask you to call them to discuss
19 claims? Answer: Not in my capacity. The Court: But to
20 call adjusters, generally speaking, I realized what you were
21 saying, you were a claim adjuster. But you never speak to a
22 lawyer to discuss a claim to property damage as an adjuster?

23 I am sure that I have, he says. And then you
24 interjected: Just wondering how different the world is --

25 THE COURT: Counsel, this has nothing to do with the

1 proposition that you put forward here a few minutes ago that
2 Mr. Witmer was instructed not to deal any longer with you,
3 that he had to turn everything over to someone else. That's
4 what you said. I wrote it down exactly.

5 MR. B. MAYERSON: Your Honor, all I can tell you is
6 that the Defendant is read in a whole --

7 THE COURT: No. No testimony read is a whole. I'm
8 giving you an opportunity to develop this. I'm not rushing
9 you through it. Give it to me.

10 MR. B. MAYERSON: Thank you. Give us a minute, Your
11 Honor.

12 THE COURT: I've given you all the time that you
13 need. Will you withdraw that?

14 MR. B. MAYERSON: Give us a minute, Your Honor.
15 Your Honor, on Page 317, Line 15, question: Can you
16 tell me why if all I wanted was the repair estimates and
17 photographs, et cetera, why you needed to check with
18 management to supply those documents to me? Answer: Well,
19 because this would be dealing in a realm that I wasn't
20 familiar with. I generally don't have correspondence with
21 attorneys as far as, you know, what may or may not be
22 relevant.

23 And above that on 317, Line 8: And you indicated you
24 would have to check with management as to whether or not you
25 could turn over the repair documents to me? Answer:

1 Correct.

2 THE COURT: Okay.

3 MR. COHEN: Okay. I don't think that stands for the
4 proposition that he originally said, but I'll stipulate that
5 that was Mr. Witmer's testimony. I mean, nowhere in that
6 testimony did it suggest that Mr. Witmer was precluded from
7 speaking to Mr. Mayerson, but he said generally that's not
8 how he handles claims. He doesn't generally speak to
9 lawyers.

10 THE COURT: All right. See what you represented at
11 first is that he was instructed not to, quote, unquote, talk
12 to you. That's a lot different than what his testimony
13 indicates.

14 MR. B. MAYERSON: The last thing I want to do is
15 misrepresent --

16 THE COURT: I know that, Mr. Mayerson. It's not
17 intentional. It's not whatever, whatever, whatever,
18 certainly not in bad faith. If I can use this word, as we
19 recess until tomorrow at 1:30. I'll see you.

20 (Whereupon, court was adjourned until Wednesday, June
21 6, 2007 at 1:30 p.m.)

1 (Reading, Pennsylvania, Wednesday, June 6, 2007 at 1:30 p.m.)

2 THE COURT: Next witness.

3 MR. B. MAYERSON: I'd like to call Jim Chett.

4 THE CLERK: Raise your right hand and place your left
5 hand on the Bible.

6 JAMES CHETT, Sworn.

7 THE CLERK: Please be seated and state your full name
8 for the record.

9 THE WITNESS: James Nicholas Chett, C-H-E-T-T.

10 VOIR DIRE EXAMINATION

11 BY MR. B. MAYERSON:

12 Q Mr. Chett, could you please tell us what your
13 address is?

14 A Four Heidelberg Court, Bernville, Pennsylvania
15 19506.

16 Q And can you tell us what your area of
17 occupation is?

18 A Well, basically, I'm retired. I work part
19 time as an insurance claims and litigation consultant. I
20 also do a little bit of work for the former Alliance
21 Insurance Company that consists of representing them at
22 mediation and settlement conferences.

23 Q And can you tell the Court some of your
24 background education and work experience?

25 THE COURT: Are you presenting him as an expert

1 witness?

2 MR. B. MAYERSON: Yes, Your Honor.

3 THE COURT: Don't you think you ought to be telling
4 the Court that at this particular time?

5 MR. B. MAYERSON: Your Honor, we are calling
6 Mr. Chett as an expert in insurance claims handling.

7 THE COURT: Claims handling to express opinions?

8 MR. B. MAYERSON: To express opinions on Nationwide's
9 handling of the Berg claim.

10 THE COURT: Nationwide's handling of the Berg's
11 claim. What opinions is he going to be asked to express? I
12 have to know what those opinions are so that when you start
13 telling the Court what his qualifications are I will be able
14 to key into the questions and the opinions.

15 MR. B. MAYERSON: Yes, Your Honor.

16 THE COURT: Because he may have qualifications for a
17 lot of other things but not necessarily for the opinions that
18 you were calling him as a witness to express. And as I look
19 at this and I just see the handling of claims, that's a
20 pretty broad scope.

21 MR. B. MAYERSON: Mr. Chett will be offered to give
22 his opinions on how Nationwide handled the claim when the
23 vehicle was declared a total loss and when Nationwide had an
24 opportunity to inspect the vehicle and what they did after
25 that and whether their decision-making processes were within

1 the standard of the insurance industry or whether they fell
2 outside the standard of the insurance agency. He's also
3 being asked to give opinions about Nationwide's conduct after
4 the lawsuit was filed, basically gives an opinion that they
5 applied a scorched-Earth defense in its handling a defense of
6 the claim which was a meritorious claim and they had no
7 reasonable basis for doing so.

8 THE COURT: What's the defense's position on this or
9 don't you care to express an opinion?

10 MR. COHEN: I'm sorry, Your Honor?

11 THE COURT: Or maybe you just don't care to express a
12 position. Maybe you're tired from this morning's session.

13 MR. COHEN: No, we do have a position on Mr. Chett.

14 THE COURT: When are you going to tell me that?

15 MR. COHEN: I can tell you that right now.

16 THE COURT: Good.

17 MR. COHEN: First of all, our position is that many
18 of the things that we believe Mr. Chett is going to testify
19 to are going to be outside of his scope of expertise,
20 particularly with regard to Nationwide's litigation practices
21 and this quote, unquote, scorched-Earth tactic, so we do have
22 an objection to any testimony that would go to that.

23 we have a general objection to Mr. Chett's
24 qualifications, which I was going to elicit during my voir
25 dire of Mr. Chett. Mr. Chett has not worked in the

1 Pennsylvania area since, I believe, 1970. His experience
2 with regard to automobile claims and automobile-type claims
3 is extremely limited. Most of his experience is either
4 workers' compensation or health-type insurance. This case
5 involves, in particular, Pennsylvania Bad Faith Statute. I
6 mean, that's all this case is right now is Pennsylvania Bad
7 Faith. Mr. Chett has not practiced or engaged in any kind of
8 insurance work in Pennsylvania under the bad faith regime for
9 over 30 years, so we believe that he's not qualified to
10 testify with regard to the practices of an insurance company
11 operating in Pennsylvania particularly under the auspices of
12 the Bad Faith Statute.

13 That's our general objection to Mr. Chett's
14 qualifications. Obviously we have several anticipated
15 objections but they would be premature at this point because
16 Mr. Chett hasn't expressed his testimony yet, so I can't
17 object to it.

18 THE COURT: Well, you certainly know the opinions
19 that he is going to give; is that right?

20 MR. COHEN: I have his report.

21 THE COURT: You were given a copy of that in the
22 pretrial order?

23 MR. COHEN: I do have his report.

24 THE COURT: I'm not interested in his report. I'm
25 interested in whether or not in the pre-settlement

1 disposition order it's stated that the opinions of any expert
2 witness were to be itemized, set forth in some chronological
3 order and set forth in the pretrial brief. Do you have that
4 information and that format?

5 As I said before, I prefer when I'm trying the case
6 to hear the evidence and hear the case before I read all the
7 documents which generally is nothing more than an argument
8 relative to anticipated evidence.

9 THE COURT: Yeah, his trial brief that was filed
10 pursuant to the disposition order of November the 8th, 2006,
11 wasn't there a trial brief filed?

12 MR. COHEN: Yes, Your Honor. The Plaintiffs included
13 Mr. Chett's opinion in the trial brief.

14 THE COURT: Yeah, that's what I want to know.

15 MR. COHEN: We were looking at the pretrial brief.
16 I have it right here, Your Honor.

17 THE COURT: Just a second.

18 MR. COHEN: I have a difficult time finding anything
19 in this trial brief.

20 MR. B. MAYERSON: Appendix 7.

21 THE COURT: Do you have the trial brief, Carmen?

22 THE CLERK: Yes, Your Honor.

23 MR. B. MAYERSON: It's Page 13 of Appendix 7.

24 THE COURT: Where are the opinions that he is to
25 express as an expert witness? I've never seen a document

157

1 look like this before, so you're going to have to help me.
2 MR. B. MAYERSON: There are three opinions.
3 THE COURT: Which are they --
4 MR. B. MAYERSON: The first is --
5 THE COURT: What numbers are they on a particular
6 page, we'll highlight them?
7 MR. B. MAYERSON: They're not in this trial brief.
8 The way this trial brief was set up was the proposed findings
9 of fact and we drew out the pertinent portions of the
10 testimony, and I can see from our conference yesterday that
11 it will not simplify anything.
12 THE COURT: Where are his opinions? I have to know
13 what opinions he's going to express to know whether or not
14 the qualifications you're going to elicit from him have
15 anything to do with regard to that particular opinion and
16 area.
17 MR. B. MAYERSON: The opinions are in his report.
18 THE COURT: They're not in your pretrial brief?
19 MR. B. MAYERSON: Hold on.
20 THE COURT: Okay. where is the proposed finding of
21 fact which has to do with a particular opinion? The only
22 thing I see at the top of Page 13 it says, "Nationwide logged
23 entries of 9/10/96 indicate the Berg vehicle was a total
24 loss." Page 8. Now that has nothing to do with an opinion
25 of an expert. He's not giving an opinion with regard to

158

1 that. He's stating that as a fact, not an opinion, not an
2 expert opinion and he's not a fact witness.
3 MR. B. MAYERSON: Your Honor, may I have one moment?
4 THE COURT: Yes. All right. Get his qualifications
5 and I'm not -- whatever, you can cross-examine. I am not
6 going to take a position with regard to whether he's
7 qualified or not to give those opinions. I'm going to allow
8 you to elicit testimony and at each particular point you
9 think defense counsel that he's eliciting testimony and
10 giving an opinion with regard to something that he is not
11 qualified to give, you will make your objection at that
12 particular point and I'll rule on it question by question.
13 MR. COHEN: Thank you, Your Honor.
14 THE COURT: That's the only way I would know how to
15 do it at this point.
16 BY MR. B. MAYERSON:
17 Q Mr. Chett, do you have an insurance company
18 director letters of achievement?
19 A Well, I'm a charter property casualty
20 underwriter which is an insurance program. It's a
21 professional designation program. It entailed five years of
22 course work and upon successful completion of national
23 examinations. I also have an Associate's from the Insurance
24 Institute from America in Risk Management. I've undergone
25 many, many, many training sessions with my employers who were

159

1 Aetna Life and Casualty for 42 years followed by Alliance
2 Insurance Company for five years. So I've had a lot of
3 insurance education.
4 Q And the first one you talked about, is that
5 the CPCU?
6 A That is correct.
7 Q Is that the highest designation within the
8 insurance industry?
9 A Well, those of us in the casualty field
10 certainly believe that it is.
11 Q How many years in total did you work within
12 the insurance industry?
13 A I spent 42 years.
14 Q And what was your highest level when you
15 worked within an insurance company?
16 A I was an Assistant Vice-President with
17 Alliance Insurance Company and at Aetna I was a Claims
18 Manager and Assistant Secretary.
19 Q Can you tell us what your job duties were as
20 the Vice-President?
21 Q Well, at Alliance, which is where I worked for
22 the past five years, I retired from Alliance in 2000. I
23 spent five years there after my service and retirement at
24 Aetna. I had charge of the claims in the United States and
25 some claims in Canada. These were principally casualty

160

1 claims. We didn't write much auto. We did write auto
2 insurance but not a lot of it, but we had mostly product
3 liability claims and general liability claims for fortune
4 five hundred corporations both located here in the United
5 States and also companies that had what we call a
6 European-link, European parent.
7 Q And --
8 A At Aetna I had a number of jobs. I started
9 off as a Claim Adjuster for multiline casualty in those days
10 in Allentown and moved to Philadelphia as a Supervisor of
11 workers' compensation. From there I went to Hartford in home
12 office and I was an Analyst, that was the title, and what we
13 did was reviewed claims that occurred in different offices
14 throughout the United States. These were principally
15 casualty claims, bodily injury claims and claims in
16 litigation.
17 Then I had a couple other jobs in Hartford. One of
18 them was a position known as an Administration Representative
19 that was part of an audit team and reviewed the performance
20 of our field claims offices and their compliance with the
21 various unfair claims practice acts which at that time were
22 just being promulgated throughout the states following a
23 motto of the National Association of Insurance Commissioners.
24 We have that act here in Pennsylvania which is very similar
25 to the National Association of Insurance Commissioners Act.

IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

1 I did that for a few years, and I took charge of the division
2 that did the audits in that section.

3 I had a group of automobile appraisers who used to go
4 out on our field audits and they would do reinspections and
5 visit body shops and get involved in appraisal testimony, so
6 I was involved in that supervising of these people. Not that
7 I wasn't an appraiser at any time in my career, but I learned
8 a little bit from riding with them and having an interest in
9 what they did.

10 After that I went to New Orleans as a Claim Manager
11 for Aetna. That was a fairly large office. We had all kinds
12 of claims there.

13 Q Is this in 1991?

14 A No, I went down there in '78.

15 Q Okay. And we had about a hundred people in
16 the Claims Department. I had policy limits authority. We
17 had all types of claims. A lot of the claims there were
18 Maritime-related, Jones Act and Maritime tort claims, but a
19 lot of general liability and typical auto claims, under
20 insured motorists and uninsured motorists. I had collision
21 and a group of appraisers who went out and did appraisals
22 there. And I went to Los Angeles in charge of the Los
23 Angeles office, basically the same types of claims in Los
24 Angeles; just more of them and probably higher value claims.
25 And my --

1 Q Can you tell us what you mean by "higher value
2 claims"?

3 A Los Angeles claims, we wrote some large limits
4 and I might add we had workers' compensation too. That's
5 where the workers' comp addressed by Mr. Cohen came from.
6 But we had a lot of serious claims; construction claims, all
7 types of claims, a lot of litigation as you might imagine in
8 Los Angeles.

9 The last three years with Aetna I was the Manager of
10 Industry Affairs which was a position that has an office up
11 in Walnut Creek, California. My principal activities were to
12 try and influence positive legislation through the insurance
13 industry in general and for Aetna in particular. Following
14 that I retired at age 55, which I always intended to do, and
15 I was retired for about maybe six, eight months and Alliance
16 offered me a position which I took and which I enjoyed for
17 the last five years of my work -- my full-time work life.

18 Q And what was your position with Alliance?

19 A Assistant Vice-President of the Claims
20 Department.

21 Q What kind of company is Alliance?

22 A Alliance is one of the largest casualty
23 companies in the world. It's a German company.

24 Q With offices here in the United States, I
25 assume?

1 A In Burbank, California, yes.

2 Q Have you been qualified to testify as an
3 expert in an insurance bad faith case in the past?

4 A Yes, I have.

5 Q On how many occasions?

6 A I testified, I believe, on four other
7 occasions.

8 Q Have you been consulted in the past on
9 insurance bad faith cases?

10 A Yes, I have.

11 Q Can you approximate for me how often?

12 A I don't do that many cases; maybe six, seven a
13 year since 2000 would be about an average. Mostly UIM cases,
14 UM cases, some coverage cases.

15 Q Are most of the entities that ask you to
16 consult with you, are they insurance companies or insurance
17 policyholders?

18 A I do work for both insurers and plaintiffs.

19 Q Have you attended any seminars on insurance
20 bad faith recently?

21 A I have. In April I attended a seminar in
22 Philadelphia that was sponsored by the National Business
23 Institute. It was called Bad Faith Seminar. They have one
24 there about every year. They had one there the prior year
25 which I was unable to attend because we had some illness in

1 the family. And I purchased the tapes and the booklet that
2 they had. I try to keep as current as I can on the issues.

3 Q And the last question I'd like to ask you is:
4 Do you have any -- can you tell us about your experience in
5 reviewing claim files?

6 A Most of my claim department life, aside from
7 that as an adjuster, entailed the review of claims files. I
8 had a heavy audit experience, of course, at Aetna in their
9 home office. That's all I did for about, gosh, five years.

10 Q What time period?

11 A I went over to that job in '72 and then I left
12 it in -- now wait a minute -- '78. I spent three years, I
13 believe, as an AR and three years as the manager of that
14 unit.

15 Q What's the AR?

16 A Administration Rep. I'm sorry. I'll keep
17 that nomenclature specific if we get to that it again.

18 Q In the cases you were qualified to testify as
19 an expert in insurance bad faith litigation, were any of
20 those in Pennsylvania?

21 A I had a couple up in -- I had one in
22 Lackawanna County and one in, gosh, what's the neighboring
23 county; Luzerne, Luzerne. And I had two in -- two in the
24 state court in Philadelphia and one in the federal court in
25 Philadelphia.

165

1 MR. B. MAYERSON: Thank you. At this time we'd like
2 to offer Mr. Chett. But before I do that, may I approach the
3 witness with his C.V. and have it marked to see if you can
4 identify it?
5 THE COURT: No. I'm not interested in that.
6 MR. B. MAYERSON: Okay.
7 THE COURT: Whatever qualifications you feel he has,
8 get them on the record. I told you at the pretrial
9 conference I don't mark C.V.s because they don't get admitted
10 into evidence. They're a waste of time.
11 MR. B. MAYERSON: At this time we'd like to offer
12 Mr. Chett as an expert on insurance claims handling.
13 THE COURT: Go ahead.
14 BY MR. COHEN:
15 Q Mr. Chett, you testified that your focus has
16 primarily been in the realm of casualty; is that correct?
17 A That is correct. Although, if I may say this,
18 as a Claim Manager at Aetna I also had property people; both
19 property people who did what we call real property claims. I
20 think you know what I'm talking about, and we had auto claims
21 also.
22 Q Okay.
23 A Aetna we kind of referred to that as casualty.
24 we called casualty the surety division, surety being bonds.
25 Q But you're an insurance guy, that's not

166

1 casualty, that's property?
2 A It's casualty and property.
3 Q All right. So it's homeowners and --
4 A Homeowners, commercial property.
5 Q Okay.
6 A Commercial auto, personal auto.
7 Q All right. But primarily it's been casualty,
8 bodily injury, that's been your -- that's been your baliwick
9 during your career; is that correct?
10 A That would probably be a fair statement, yes.
11 Q There have been instances in the past where
12 you've had some involvement in automobile -- I'll call it
13 material damage because that's how Nationwide refers to it --
14 you might know it as collision or auto claims, but I'm not
15 referring to injury-type claims.
16 So is it fair to say that that aspect of your career
17 has been very minor?
18 A I wouldn't say it was minor because we had
19 more auto claims and they're the largest number of claims in
20 any claims department. That was certainly true at Aetna.
21 Did I look at all of those claims; of course not, because
22 they didn't get up to my authority level. But I had people
23 who handled them and a large number of the staff was involved
24 in handling the largest number of the claims.
25 Q When you're referring to auto claims are you

167

1 referring to damage?
2 A I'm referring to first and third-party auto
3 claims.
4 Q Damage to the victim?
5 A Correct.
6 Q You didn't look at these claims, you
7 supervised people?
8 A I supervised people who looked at them, but I
9 looked at them when we did our annual audits.
10 Q You were looking at these claims to see
11 whether they complied with company practices whether or not
12 they were maybe complying with regulations?
13 A That's correct.
14 Q What were you looking at these things for?
15 A To see you hit the nail on the head.
16 Compliance with company standards and practices and whether
17 or not there was compliance with the various unfair claims
18 practice regulations.
19 Q When was the last time you were in a job that
20 handled automobile collision or material damage-type claims?
21 A Well, we had them at Alliance.
22 THE COURT: Just answer the questions now.
23 THE WITNESS: The last time, 2000.
24 BY MR. COHEN:
25 Q And I thought you testified that at Alliance

168

1 you were the head of casualty claims and dealt with product
2 liability cases?
3 A Well, I did do that.
4 Q All right.
5 A But we also had a big auto account.
6 Q But to what extent did you work on that auto
7 account?
8 A Not a lot. I mean, probably less than 5
9 percent of my time.
10 Q All right. So is it fair to say that the last
11 time you really worked on auto claims was maybe back in the
12 '80s or was it the '70s?
13 A I said I didn't work on -- I did work on some
14 in 2000 that was the last time I worked on some --
15 THE COURT: When you say you worked on some, what do
16 you mean?
17 THE WITNESS: Reviewed some, talked to people about
18 them.
19 THE COURT: But not as far as investigating those
20 claims.
21 THE WITNESS: Not when I was in a management
22 position, Judge.
23 THE COURT: I understand that.
24 THE WITNESS: I didn't go out and investigate those
25 cases, no.

169

1 THE COURT: I understand you perfectly. I want to
2 make sure the record is clear that you were in the management
3 position, but as far as doing the hands-on operation you were
4 far removed from that?

5 THE WITNESS: You're correct.

6 THE COURT: You're what I called yesterday, a big
7 shot in the company; right, you even look like the big shot.
8 The other guy didn't. You do.

9 THE WITNESS: I'll buy you dinner, Judge.

10 THE COURT: That's what I was aiming for.

11 MR. COHEN: Make sure that's on the record.

12 THE COURT: I hope the other guy isn't sitting in
13 this courtroom. Just kidding.

14 BY MR. COHEN:

15 Q When was the last time -- strike that.
16 You would agree with me, would you not, that you
17 worked in New Orleans; correct?

18 A Yes.

19 Q And you worked in California; correct?

20 A That's correct.

21 Q And you worked in Pennsylvania; correct?

22 A Yes.

23 Q And you would agree with me, would you not,
24 that every state has its own regulatory scheme, its own set
25 of statutes and its own way of handling insurance claims;

170

1 correct?

2 A You know --

3 Q would you agree with that?

4 A To a degree.

5 Q Okay. When's the last time that you worked in
6 Pennsylvania in the insurance context?

7 A Probably about a year and a half ago.

8 Q What was that?

9 A Like I was testifying about my credentials, I
10 do handle cases from time to time for Alliance at mediations
11 and settlement conferences. What I basically try is to
12 negotiate cases to settle. I think I had one in Philadelphia
13 about a year and a half ago.

14 Q I don't mean as an arbitrator or negotiator.
15 I mean as an employee, as a claims handler?

16 A In Pennsylvania?

17 Q When was the last time you worked in
18 Pennsylvania on auto claims?

19 A Gosh, I left here in '69.

20 Q '69. So almost 38 years ago?

21 A You did the math.

22 Q Okay. When was the Bad Faith Statute passed
23 in Pennsylvania?

24 A I believe it was back in the late '70s.

25 Q It was 1990. So you haven't worked on --

171

1 you've never worked in Pennsylvania under the auspices of the
2 Bad Faith Statute; correct?

3 A Not as an adjuster. I have handled bad faith
4 cases as a consultant.

5 Q And you don't know when it was enacted, you
6 thought it was back in the '70s?

7 A Yes.

8 Q You're here to offer claims practices that in
9 your opinion are going to be in violation of the Bad Faith
10 Statute; is that correct?

11 A That's correct.

12 Q And you want this Court to believe that you're
13 an expert in those issues?

14 A I'm an expert on the claims handling
15 practices. I can talk about how claims should and shouldn't
16 be handled.

17 Q But under the auspices of the statutes and
18 regulations in Pennsylvania?

19 A As they are today, yes.

20 Q Are you intimately familiar with the Bad Faith
21 Statute?

22 A I wouldn't say I'm intimately familiar with
23 it.

24 Q Are you familiar enough to give an opinion to
25 a reasonable degree of insurance practice certainty?

172

1 A I feel that I am.

2 Q Okay. You say that with regard to your bad
3 faith training you've taken a seminar and you ordered tapes.
4 Is that the extent of your bad faith training?

5 A No, I've gone to a number of seminars over the
6 years both in California and in Pennsylvania and other states
7 for that matter.

8 Q Okay. With regard to the bad faith cases that
9 you have been qualified in to testify, they've all been
10 casualty or bodily injury-type cases, have they not?

11 A Yes, they have.

12 Q They haven't been material damage cases, have
13 they?

14 A No.

15 Q Have you ever heard of a bad faith case in
16 material damage context?

17 A Sure.

18 Q Okay. But you've never testified in any?

19 A No.

20 MR. COHEN: Your Honor, I believe at this time I
21 would move to preclude Mr. Chett as an expert in insurance
22 practice claims handling on the basis that he does not have
23 the requisite knowledge of Pennsylvania claims handling,
24 particularly under the Pennsylvania Bad Faith Statute and he
25 would not be qualified under Pennsylvania under the Frye Rule

1 or the Daubert Rule to give expert testimony.
 2 THE COURT: All right. I'm going to do what I said
 3 20 minutes ago I was going to do and that is to make a ruling
 4 on each and every opinion that he expresses or attempts to
 5 express, in light of the fact that I don't have the written
 6 opinions here to look at. I don't know what he's going to
 7 say.

8 DIRECT EXAMINATION

9 BY MR. B. MAYERSON:

10 Q Mr. Chett, I believe that we have narrowed
 11 down your opinions to three areas in an attempt to make this
 12 as brief as possible. Can you tell us what your first
 13 opinion is?

14 THE COURT: What?

15 MR. COHEN: Objection.

16 THE COURT: Tell what?

17 MR. B. MAYERSON: Tell us what your first opinion is.

18 THE COURT: About what?

19 MR. B. MAYERSON: About when the vehicle was a total
 20 loss.

21 THE WITNESS: Well, I felt from reading the material
 22 and the material I looked at --

23 MR. COHEN: I'm going to object to his opinion with
 24 regard to whether the vehicle was a total loss. He's
 25 testified he is not an expert in the handling of material

1 damage claims. He's not a material damage adjuster. He has
 2 no experience in fixing cars. That would be outside his
 3 realm of expertise.

4 MR. B. MAYERSON: Your Honor, may I lay a foundation
 5 for the questions if that would --

6 THE COURT: As I understand, he hasn't even seen the
 7 car or have you seen the car?

8 THE WITNESS: No, sir.

9 THE COURT: The objection is sustained.

10 MR. COHEN: Thank you, Your Honor.

11 BY MR. B. MAYERSON:

12 Q Mr. Chett, can you tell us a little bit about
 13 the documents you reviewed in preparation for your testimony
 14 today?

15 A Yes, I reviewed --

16 THE COURT: Just a second. What opinion does this
 17 have to do with asking this second opinion. You're going to
 18 take his opinions one by one?

19 MR. B. MAYERSON: Well, Your Honor, I'll ask him for
 20 the second --

21 THE COURT: So I know what you have in mind so that I
 22 can follow you. Do you mind if the Judge tries to follow you
 23 in this case and understand what you're trying to develop?
 24 That's my job.

25 So you ask him whether he has an opinion with regard

1 to what and what when you ask him whether he has an opinion
 2 and the vehicle was a total loss. He didn't object to that.
 3 That I thought was an appropriate question. Subject to
 4 objection then when I heard the objection then I ruled. Now
 5 lets go onto the second opinion which you apparently asked
 6 him to provide the Court. What is it, an opinion with regard
 7 to what, whether he likes the weather today or he likes
 8 Pennsylvania better than he likes Las Vegas. What, I don't
 9 know.

10 BY MR. B. MAYERSON:

11 Q Mr. Chett, there was a second area that I
 12 would ask you to give your opinions on dealing with the
 13 period of time after Nationwide inspected the vehicle. Do
 14 you have any opinions after viewing the file as to their
 15 conduct at that point in time?

16 A I do. What bothered me most when I looked at
 17 this claim file was the fact that in my opinion Nationwide
 18 allowed an unsafe vehicle --

19 MR. COHEN: Objection.

20 THE WITNESS: -- to be placed on the highway.

21 MR. COHEN: Objection. Objection. This witness is
 22 not --

23 THE COURT: Do you mind if I hear the opinion first
 24 and then I'll give you a chance to make an objection. Don't
 25 interrupt him. I'm telling you, this is the best way I know

1 to handle this matter. Okay. And I have no experience with
 2 this. In 22 years I've never been in this crazy situation.
 3 I always thought that my lawyers were very clear as to how an
 4 expert witness testifies, how he discloses what his opinions
 5 are in addition to his individual report and that was it.
 6 Apparently we did pretty well in the first half of trial with
 7 regard to this. But in any event, give us your answer again.

8 THE WITNESS: I felt that Nationwide's conduct was
 9 reckless in that it placed or allowed to be placed on the
 10 highway an unsafe vehicle. Now, let me tell you why.

11 THE COURT: No, all right. That's your opinion.

12 MR. COHEN: Objection.

13 THE COURT: And there is an objection and you're not
 14 qualified to give that particular opinion. And what is the
 15 objection?

16 MR. COHEN: The objection is this witness is not
 17 qualified to give that opinion; number one, he's not
 18 qualified to opine whether or not the vehicle was unsafe.
 19 Number two, his characterization that Nationwide's conduct
 20 was reckless is a legal opinion, not a professional insurance
 21 opinion.

22 THE COURT: I'm not too sure of that. I mean, if he
 23 was qualified to give that opinion I would accept that.

24 MR. COHEN: Well, our position is he's not qualified.

25 THE COURT: What is his experience and what is his

177

1 qualifications to give that particular opinion that
2 Nationwide's conduct was reckless. Do you want to answer
3 that?
4 THE WITNESS: (No response.)
5 THE COURT: What is there in your experience that
6 qualifies you to be something more than just an ordinary
7 person walking in off the street and giving an opinion with
8 regard to this subject? You have to have qualifications as
9 an expert, and it doesn't mean that just because you held
10 these top positions in very substantial insurance companies
11 --
12 THE WITNESS: As insurers -- as an insurer and a
13 representative of an insurer, we had an obligation -- as an
14 insurer -- we have an obligation to make certain that
15 vehicles are repaired and they're repaired safely. And some
16 background on this, Your Honor --
17 THE COURT: Go ahead.
18 THE WITNESS: The insurance industry is involved very
19 heavily in automotive safety. Industry spends millions of
20 dollars funding automobile crash tests. I know at Aetna we
21 were one of the pioneers in placing air bags in our company
22 cars to ascertain how effective they were and it's an --
23 insurance is always involved with safety, safety engineers.
24 So as a manager in my position, and I would expect
25 that every insurance manager's position, they want to ensure

178

1 that a car is safely repaired and placed on the highway. And
2 if I can say even further, I think a lay person can tell you
3 whether or not an unsafe car should or should not be on the
4 highway, and I believe that Nationwide knew that the Berg
5 vehicle was unsafe to operate and I will refer to the
6 stipulation.
7 THE COURT: Therefore their behavior in this regard
8 was reckless because it was unsafe.
9 THE WITNESS: Yes.
10 THE COURT: It has nothing to do with the interval of
11 time because that's another thought.
12 THE WITNESS: Okay.
13 THE COURT: Okay.
14 THE WITNESS: Yes.
15 MR. COHEN: Your Honor, there's been no foundation
16 laid that this vehicle is unsafe. There has been no direct
17 testimony in this case that this vehicle is unsafe. As a
18 matter of fact, the only evidence that's been in this case is
19 our expert.
20 THE COURT: Have I prevented you to cross-examine
21 him? Ask him on cross-examination what's unsafe about it.
22 I'm not the guy being paid the big bucks here. You are.
23 MR. COHEN: Okay. I was raising an objection to his
24 qualifications.
25 THE COURT: I know you are and you're a little ahead

179

1 of yourself here. He expressed an opinion with regard to why
2 he thinks that Nationwide's practice was reckless and that is
3 because they placed an unsafe vehicle back onto the road.
4 And I think that nothing more that would be an opinion that
5 the Court would accept based upon his qualifications. Now I
6 say nothing more. That's assuming that after your
7 cross-examination that he has some reasonable basis to
8 conclude that the Berg vehicle was unsafe.
9 Do you want to ask him those questions?
10 MR. COHEN: I was going to wait for my
11 cross-examination to --
12 THE COURT: No, I said we're doing this question by
13 question, opinion by opinion, and I'm ruling on each opinion
14 separately as to whether or not he is qualified to give that
15 opinion. And with regard to the first one I said he's not
16 qualified. Now we're down to the second one.
17 CROSS-EXAMINATION
18 BY MR. COHEN:
19 Q All right. You say the vehicle was unsafe.
20 What's your basis for saying that?
21 A Twofold. According to the file and the
22 documents that I reviewed, Mr. Wert testified that Nationwide
23 had appraisers, material damage people, in and out of the
24 shop while the vehicle was being repaired. And Mr. Wert, of
25 course, is the individual who informed the Bergs that he felt

180

1 their vehicle was unsafe. Secondly --
2 Q Did Mr. Wert specifically testify?
3 A No, he didn't. Well, I read his testimony.
4 Q Did he say the vehicle was unsafe?
5 A He told the Bergs the vehicle was unsafe.
6 Q Did he testify in court that the vehicle was
7 unsafe?
8 A I don't recall that precisely.
9 Q So that's not part of your testimony today?
10 A I don't recall exactly how it was said, but I
11 did read the testimony from the trial in '04.
12 Q Okay. So you don't recall today with at least
13 one element of your justification for saying the vehicle was
14 unsafe. You don't recall that Mr. Wert had testified to
15 that?
16 A I don't remember that but the record should
17 speak for itself.
18 Q But we're not referring to the record. We're
19 referring to your testimony. What's the second basis for
20 your opinion?
21 A The second basis is the Potosnak stipulation
22 that was read into the record yesterday which identified a
23 multitude of problems with that automobile that he found on
24 his inspection of April, 1998.
25 Q Okay. I've read it.

181

1 THE COURT: What are we referring to, what was read
2 into the record yesterday?
3 MR. COHEN: There was a part of the uncontested
4 findings of fact, Your Honor. There was a log note by an
5 adjuster by the name of Stephen Potosnak. It's a log note
6 that appears in Exhibit Number 8 of the first trial. It's
7 actually --
8 THE COURT: Well, the only thing that was read into
9 the record was the stipulation, as I recall.
10 MR. COHEN: There was a log note that was read into
11 the record, Your Honor. There's a log note.
12 THE COURT: That long one?
13 MR. COHEN: The one with all -- where you had to
14 spell out all the words. That's the log note that I have in
15 front of me.
16 THE COURT: And what does it say in regards --
17 MR. COHEN: It's more of what it doesn't say, Your
18 Honor. It doesn't say the vehicle was unsafe.
19 THE COURT: Give him the log note and ask him to read
20 to us what's in the log note that brought him to that
21 conclusion.
22 THE WITNESS: From reading this log note --
23 THE COURT: No, no, no, no, no, no. Tell us
24 specifically what words are in that log note from which you
25 concluded that his opinion was that the vehicle was unsafe

182

1 when it was returned to the Bergs.
2 THE WITNESS: "Upon looking at the front tires,
3 slash, wheels, L-F, in, I-N, substantially in comparison to
4 R-F, which is even with edge of fender. R-F apron and,
5 A-N-D, rail not replaced. R-T apron still split in several
6 areas. R-T rail still has damage near sway bar mount."
7 Your Honor, that's what caused me to conclude that
8 this vehicle was unsafe. When I saw problems with the sway
9 bar combined with testimony, again, I don't have it written
10 down, but there was testimony that the car was taken back to
11 the shop several times because the tires were wearing
12 unevenly down to the steel in the tire. And I mean, again,
13 even to a lay person, and I consider myself an expert when it
14 comes to making decisions about whether a car should be
15 replaced or properly repaired, even a lay person has got to
16 realize that that vehicle is unsafe.
17 THE COURT: Any further questions?
18 MR. COHEN: Yes, I have further questions.
19 BY MR. COHEN:
20 Q Where does it say in there that the vehicle
21 was unsafe?
22 THE COURT: Just a second. Don't argue. Don't argue
23 with the witness and don't keep interrupting because I'll
24 tell you one thing you're going to have to do. If you keep
25 going at the pace that you're going here you're going to have

183

1 to find me another court reporter because Laura Cintron is
2 not going to put up with this crap for another three or four
3 days. She can only take down what one individual says. She
4 cannot take down what two people say and the Judge butting
5 in. And every time you hear an answer to a question you
6 don't like, you interrupt. I told you that in the first
7 trial. I'm telling you it in this trial. He's trying to
8 tell you how he concluded that in his opinion this vehicle
9 was unsafe. He never indicated that the word unsafe was in
10 that note.
11 MR. COHEN: Okay.
12 THE COURT: And you know it.
13 MR. COHEN: And our position, Your Honor, for the
14 record is that this witness is not qualified to make that
15 determination that the vehicle was unsafe.
16 THE COURT: Do you have any other questions that you
17 want to ask him with regard to this second opinion?
18 MR. COHEN: I have several that I would like to ask
19 him.
20 THE COURT: Well then ask them.
21 BY MR. COHEN:
22 Q Were you here during -- you were not here
23 during the first phase of trial; is that correct?
24 A Correct.
25 Q You read the trial testimony?

184

1 A Yes.
2 Q Did you read the trial testimony of
3 Nationwide's William Anderton?
4 A I'm sure I did, but I certainly don't recall
5 specifics.
6 Q Okay. What I'd like to do is go through that
7 testimony with you because Mr. Anderton was of the opinion
8 that the vehicle was safe.
9 MR. COHEN: Your Honor, may I approach?
10 THE COURT: Yes.
11 BY MR. COHEN:
12 Q I'm handing you the trial transcript from the
13 first phase of trial.
14 Your Honor, I have a copy for the Court.
15 THE COURT: I don't want it. If I need it I'll ask
16 you. Ask him the question.
17 BY MR. COHEN:
18 Q All right. Mr. Chett, I'm going to ask you to
19 turn to Page 885.
20 A All right.
21 Q Beginning on Line 6 the question is, and this
22 is directed to Mr. Anderton, Nationwide's expert: And do you
23 have an opinion as to a reasonable degree of certainty as to
24 whether or not after this vehicle was repaired it was
25 nevertheless safe to drive? Answer: Yes, I do. Question:

IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

185

1 What's your opinion? Answer: My opinion is the vehicle was
2 basically safe to drive. Question: Is it crash worthy?
3 Answer: It is crash worthy.
4 Do you recall that testimony?
5 A No, but I certainly see it.
6 Q Okay. wouldn't that have been testimony that
7 you would have been interested in reading before giving your
8 opinion today that the vehicle was unsafe?
9 A well, it conflicts with my interpretation of
10 Mr. Potosnak's examination of the vehicle.
11 Q Are you aware of Mr. Anderton's qualifications
12 though?
13 A Yes, I recall seeing them, yes.
14 Q Okay. And Mr. Anderton has many years of
15 experience in the auto collision business; is that correct?
16 A Correct.
17 Q And he was qualified by this Court to give
18 opinions with regard to that area of expertise; is that not
19 correct?
20 A I would assume so.
21 Q But nevertheless you discount his opinion with
22 regard to the vehicle being safe or unsafe?
23 A That was my opinion.
24 THE COURT: He says he disagrees with his
25 interpretation of the evidence. His opinion is that it's

186

1 unsafe. Any other questions along this line?
2 BY MR. COHEN:
3 Q You testified that Nationwide's conduct was
4 reckless in allowing the vehicle back on the road because it
5 was unsafe; correct?
6 A Correct.
7 Q All right. Do you know based on your review
8 of the documents when Nationwide was first made aware that
9 there was problems with the Berg's vehicle?
10 A I believe it was not very long after the
11 vehicle was returned to them in the beginning of '97.
12 Q Well, Mr. Berg -- both Mr. Berg and Ms. Berg
13 testified in the first phase of trial that they did not
14 contact Nationwide to let them know that there were any
15 problems with the vehicle. Do you remember that testimony?
16 A Yes.
17 Q Okay. So in light of that, do you want to
18 revisit what you just said?
19 A No.
20 Q All right. who notified Nationwide that there
21 was problems with the vehicle after it was returned to the
22 Bergs?
23 A I don't recall.
24 Q All right. Isn't it, in fact, true that the
25 first time that Nationwide -- let me back up for a second.

187

1 The vehicle was returned to the Bergs some time in December
2 of 1996; correct?
3 A The last day of the year, I believe, yes.
4 Q And in January or February of 1997 the Bergs
5 returned the car to Lindgren complaining of some tire wear
6 and steering problems; is that correct?
7 A That's correct, and that's what you would
8 normally expect.
9 Q That's right. And there's also no evidence in
10 the record that anybody notified Nationwide that the Bergs
11 had returned the vehicle to Lindgren including testimony from
12 the Bergs testifying that they cannot contact Nationwide; is
13 that correct?
14 A I believe so.
15 Q And it's also true that the first time
16 Nationwide was ever made aware of the problems with the
17 Berg's vehicle is when Mr. Mayerson sent a letter to Doug
18 Witmer in November of '97?
19 A I believe so. That's correct.
20 Q And you've seen that letter?
21 A That's correct.
22 Q And that letter was offered as an exhibit in
23 this case?
24 A Yes.
25 Q And in that letter Mr. Mayerson's office

188

1 specifically said do not contact -- this is directed to
2 Nationwide -- do not contact Lindgren and do not speak to
3 Lindgren. Again, let me deal with this --
4 MR. B. MAYERSON: objection, Your Honor. That's not
5 what the letter states.
6 MR. COHEN: I'll pull the letter out. Your Honor,
7 this was marked as Exhibit Number 7 in the first phase.
8 Just tell me when you're ready.
9 THE WITNESS: Go ahead.
10 BY MR. COHEN:
11 Q Okay. Now you'll agree with me that this is
12 the letter from Mr. Mayerson's office dated November 3rd;
13 correct?
14 A Correct.
15 Q And this is nearly a year after the repairs
16 were completed to the Berg's vehicle; is that correct?
17 A Yes.
18 Q Lets just read through the letter. This is
19 addressed to Mr. Witmer. That would be Doug Witmer at
20 Nationwide Insurance Company and this is from Ben Mayerson.
21 "Dear Mr. Witmer, please be advised that this office
22 represents Daniel Berg in regard to a claim being presented
23 against Lindgren Chrysler-Plymouth arising out of his faulty
24 repair work done at their facility. It is my understanding
25 that you are Mr. Berg's first-party property adjuster for the

1 claim affairs. Please direct all future communications
2 regarding this claim through my office. Please do not
3 contact Lindgren Chrysler-Plymouth as your communications may
4 have an impact on Mr. Berg's pending litigation against
5 Lindgren.

6 If Lindgren contacts you, please direct them to my
7 office and/or forward their correspondence to my office for
8 further handling. Please forward me a copy of your file
9 including all maintenance records, bills, receipts, estimates
10 and notes or correspondence between you and Lindgren
11 Chrysler-Plymouth as it relates to this claim.

12 I am preparing a complaint to be filed against
13 Lindgren and the Chrysler Corporation. I have retained an
14 expert to examine the vehicle. If Nationwide requires an
15 opportunity to examine the vehicle, please advise."

16 Now, that's what the letter says; correct?

17 A Yes.

18 Q So in this letter Mr. Mayerson is specifically
19 advising Nationwide do not contact your Blue Ribbon shop to
20 ask them about this claim?

21 A That's what it says.

22 Q That's what it says. And it also says if
23 Lindgren should call you, don't talk to them. Direct them to
24 my office. So even if Nationwide --

25 THE COURT: Is that what it says?

1 Q And are you also aware that during that
2 conversation Mr. Stitzel expressed to Mr. Mayerson that
3 Nationwide would stand behind its obligations to the Bergs if
4 there was a problem with the repair. Do you recall that?

5 A I seem to recall a letter that mentioned that,
6 yes.

7 Q Okay. And do you also recall that during that
8 conversation there was an agreement between Mr. Stitzel with
9 Nationwide and Mr. Mayerson that it was not necessary for
10 Nationwide to have an independent inspection. Did you know
11 at that time that Mr. Mayerson was going to be working with
12 Lindgren to try and get this matter resolved through the
13 warranty through Lindgren? Do you remember that?

14 A I don't specifically recall that.

15 Q Does that sound familiar?

16 A I'd have to see the communication.

17 Q Okay. All right. Do you still have the
18 exhibits in front of you or, no, that's the transcript. If
19 you would and, Your Honor, we're again referring to -- again,
20 Your Honor, we're referring to Exhibit Number 8 of the trial,
21 the claim logs.

22 Mr. Chett, I'm going to refer you to 1181. If you
23 see at the bottom the pages are numbered. Have you had a
24 chance to take a look at that?

25 A Yes.

1 THE WITNESS: That's what it says, Your Honor.

2 THE COURT: Let him answer the question. Go ahead.

3 BY MR. COHEN:

4 Q So even if Nationwide wanted to contact
5 Lindgren or investigate the claim with Lindgren, they were
6 advised by Berg's attorney not to do so; correct?

7 A That's what the letter says.

8 Q That's what the direction to Nationwide was
9 from the Berg's attorney; correct?

10 A Yes.

11 Q Okay. And if they did so they would have been
12 acting in violation of Mr. Mayerson's requests; correct?

13 A I don't know if that's -- that's probably a
14 legal opinion. I don't know whether they could or could not.
15 I wouldn't see why they couldn't contact Lindgren.

16 Q All right. But Mr. Mayerson asked them not
17 to?

18 A I know.

19 Q Okay. So are you aware that about a month
20 later somebody from Nationwide had a conversation with Mr.
21 Mayerson with regard to this claim, Mr. Stitzel, Ron Stitzel
22 from Nationwide. Are you aware of him?

23 A Yes.

24 Q You are aware of that?

25 A Yes.

1 Q Okay. So this is a log note from Ron Stitzel
2 and this is dated December 3rd, 1997. That's the date that I
3 told you; correct?

4 A Yes.

5 Q Lets read through this. It says, "Spoke to
6 Attorney Mayerson today concerning representation letter. I
7 made him aware of Nationwide's commitment to help resolve
8 Mr. Berg's problem in a timely manner and the Blue Ribbon
9 procedures. I told him that Steve Potosnak would be the Blue
10 Ribbon Field Inspector and Bev Carlson would be the contact
11 person for all inquiries and request. We agree that it
12 wouldn't be necessary to have PDS Potosnak inspect
13 policyholder vehicle at this time. He will gather
14 information from policyholder," meaning assuming Mr.
15 Mayerson, "He will gather information from policyholder and
16 inspecting shop, presumably Lindgren, and forward to us if
17 necessary. He is attempting to resolve problem with Lindgren
18 direct under the repair warranty. I explained that I was the
19 acting Blue Ribbon Manager while Michael Leary is on vacation
20 and gave him Bev Carlson's phone number and address.
21 Attorney Mayerson will contact Bev for further inquiry and
22 keep her abreast. His phone is" -- and gives his phone
23 number.

24 That sounds to me that Mr. Stitzel is trying to work
25 through Mr. Mayerson through some of these issues. Doesn't

193

1 it sound like that to you?

2 A Yes, it does.

3 Q It doesn't say anywhere in here that

4 Nationwide isn't going to work with Mr. Mayerson and

5 Nationwide is trying to help the Bergs resolve this claim;

6 correct?

7 A Yes.

8 Q And this is a month after Nationwide was first

9 notified by Mr. Mayerson there was a problem; isn't that

10 true?

11 A Yes.

12 Q Okay. And he's documenting that it was not

13 necessary for Stephen Potosnak to go out and look at the car

14 because he was trying to work through Lindgren?

15 A That's what it says.

16 Q As we know today, the history of this case

17 developed such that Mr. Mayerson prepared a complaint against

18 Lindgren and ultimately sued Lindgren, you're aware of that?

19 A Yes.

20 Q Now, you're also aware you reviewed a lot of

21 documentation in this case, and again this is all going to

22 whether or not Nationwide acted recklessly in allowing this

23 quote, unquote, safe vehicle back on the road. You're aware

24 that there were various inspections done of this vehicle;

25 correct?

194

1 A Yes.

2 Q All right. And I believe before Nationwide --

3 before Mr. Stitzel and Mr. Mayerson had this conversation in

4 December of 1997 Donald Phillips, which was one of

5 Plaintiff's hired experts, looked at the vehicle; correct?

6 A Yeah.

7 Q And he documented that in a report that was

8 subsequently issued in this case. You reviewed that?

9 A Yes, I did.

10 Q Okay. And in that report he stated in his

11 opinion that the vehicle was unsafe; right?

12 A I seem to recall that.

13 Q Okay. But he never communicated that to the

14 Bergs. Are you aware of that?

15 A No, I'm not.

16 Q Are you aware that during the first phase of

17 trial Mr. Berg testified that he never knew that Donald

18 Phillips said that the vehicle was unsafe?

19 A No, I'm not.

20 Q So in November of 1997 Mr. Mayerson or the

21 Bergs were aware that the vehicle was unsafe or at least that

22 their experts said it was unsafe; not that it was unsafe, but

23 that their expert said it was unsafe; right?

24 A Yes.

25 Q And this is before anybody from Nationwide

195

1 ever looked at the vehicle; because they were told not to by

2 Mr. Mayerson; correct?

3 A I assume so.

4 Q Okay. And we also know that in December of

5 1997 Charlie Barone looked at the vehicle; correct?

6 A Yes.

7 Q Who's Charlie Barone?

8 A He's from Auto Claims Solution. He was hired

9 by the Mayerson firm to look at the vehicle.

10 Q Okay. And he inspected the vehicle; correct?

11 A Yes.

12 Q And you reviewed his inspection report?

13 A I did.

14 Q Okay. And after Mr. Barone looked at the

15 vehicle in January of '98, Gregory Miller from Lindgren

16 inspected the vehicle again; right?

17 A I believe so.

18 Q Okay. And then in February Dwight Varnes

19 (sic) of Crawford and Company on behalf of Lindgren inspected

20 the vehicle; correct?

21 A I'm not sure about that. I know there was

22 another inspection. There were a lot of inspections of this

23 vehicle.

24 Q All right. And so we have Mr. Phillips in

25 November. We have Mr. Barone in December. We have

196

1 Mr. Miller in January. And we have Mr. Varnes in February

2 all looking at the Berg's vehicle; correct?

3 A Yes.

4 Q And this is all before Mr. Mayerson gave

5 Nationwide the opportunity to even go out and look at the

6 car; correct?

7 A I'm not sure about that.

8 Q All right. But you said that Nationwide's

9 conduct was reckless. How come Mr. Phillips' conduct wasn't

10 reckless if he in November said that the vehicle was unsafe

11 but he never contacted the Bergs to tell them that?

12 A I wasn't asked to look at Mr. Phillips'

13 conduct. That was not within my purview.

14 Q But you did review his report?

15 A I did.

16 Q And you do recall him saying that the vehicle

17 was unsafe?

18 A There were several people who said it was

19 unsafe. We have differences of opinion. To some people it's

20 unsafe; others say it is safe.

21 Q But your testimony is that the vehicle was

22 unsafe?

23 A Yes, that's correct, from looking at the

24 evidence that was provided to me to review. I made that call

25 that the vehicle was unsafe. I think it's always safer to be

197

1 safe --

2 Q Well, I'll agree with that.

3 A -- when you're talking about vehicles on the

4 highway.

5 Q Okay. But your testimony goes a little bit

6 further than that. Your testimony is not that the vehicle in

7 your opinion was unsafe. Your opinion was Nationwide acted

8 reckless and --

9 A That's correct.

10 Q And reckless is a legal standard that we have

11 to be careful about talking about. Now what I'm trying to

12 get at is why was Nationwide's conduct reckless when

13 Plaintiffs knew that the vehicle was unsafe and yet they

14 allowed the Bergs to drive the vehicle anyway?

15 A As I said earlier, I wasn't asked to judge the

16 conduct of these other experts.

17 Q Okay. You're aware that from, I assume, based

18 on your review of the testimony and the documents in this

19 case, you're aware that from the time that Mr. Berg -- Mr.

20 and Mrs. Berg got their vehicle back from Lindgren to the

21 time that Charlie Barone did his first inspection in December

22 about a year later that the Bergs put 20,000 miles on their

23 car in a year, you're aware of that?

24 A I don't know the exact number, but I know they

25 drove the car.

198

1 Q It was a lot of miles?

2 A Yes.

3 Q And you're aware that after Mr. Phillips did

4 his inspection that said the vehicle was unsafe they

5 continued to put mileage on their car. Are you aware of

6 that?

7 A Sure.

8 Q Okay.

9 A I don't see that that's relevant.

10 Q Mr. Mayerson sent a letter to Nationwide on

11 April 22nd, 1998. Are you familiar with that letter?

12 A I recall that letter, yes, sir.

13 Q Let's take a look at that letter. That's Page

14 1244. It was marked as Exhibit 11 in the first phase of

15 trial. Have you got that letter?

16 A I do.

17 Q Do you want me to give you a minute to read

18 it?

19 A Please.

20 THE COURT: How much longer are you going to be with

21 this witness?

22 MR. COHEN: On this topic?

23 THE COURT: Yeah, on this topic. I think I have to

24 give the court reporter a recess.

25 MR. COHEN: That's fine.

199

1 THE COURT: Lets take a ten-minute recess and do

2 that. We'll be back at 3 o'clock.

3 (Whereupon, a brief recess was taken.)

4 BY MR. COHEN:

5 Q Mr. Chett, when we left --

6 THE COURT: What I was looking at here, just so I

7 don't forget to tell you, we'll start tomorrow morning at

8 9:30. This cycle race is to start downtown at 10 o'clock.

9 So we'll try to be in here at 9:00.

10 MR. COHEN: That's fine, Your Honor. Go ahead.

11 BY MR. COHEN:

12 Q Mr. Chett, when we left we were looking at

13 this letter dated April 22nd, 1998. You've had an

14 opportunity to take a look at that letter?

15 A I have.

16 Q And this is a letter from Mr. Mayerson to Ron

17 Stitzel again from Nationwide?

18 A It is.

19 Q And this would be subsequent to Mr. Mayerson

20 and Mr. Stitzel's conversation in December?

21 A Right.

22 Q And it would be subject to the variety of

23 inspections that Mr. Mayerson had did?

24 A Yes.

25 Q But still at this time Nationwide has not been

200

1 permitted to speak to Lindgren?

2 A That's your representation.

3 Q Based on the letter --

4 MR. B. MAYERSON: Excuse me. At this time, April

5 22nd, '98 --

6 MR. COHEN: Yes, at least based on the letter that

7 Mr. Mayerson sent.

8 THE WITNESS: Yes.

9 BY MR. COHEN:

10 Q And Nationwide has not been given an

11 opportunity to inspect the vehicle so Nationwide wouldn't

12 know the condition of the vehicle; correct?

13 A Correct.

14 Q Lets take a look at this letter.

15 "Dear Mr. Stitzel, as you are aware I represent the

16 Berg family for fraudulent and/or grossly negligent repair

17 work done to their Jeep Cherokee at Lindgren

18 Chrysler-Plymouth. As you know, the Berg family was directed

19 to Lindgren via Nationwide Blue Ribbon Repair Program. On

20 April, 1998 depositions of Lindgren Chrysler-Plymouth's body

21 shop manager and general manager were conducted due to a writ

22 of summons and court order. The purpose of the depositions

23 were to determine whether Nationwide is an appropriate

24 defendant in this action. Lindgren has issued a rule to have

25 file complaint which requires the Bergs to file a complaint

1 within 20 days of the depositions. This period expires on
2 May 4th, 1998."

3 So roughly ten days later Mr. Mayerson is advising
4 that they've got to file a complaint against Lindgren. Is
5 that your understanding of the letter?

6 A Yes.

7 Q Okay. We have retained an expert who has
8 indicated that the vehicle is no longer crash worthy. I
9 assume that that must be Donald Phillips. Would you agree
10 with that?

11 A Yes.

12 Q And again, Mr. Phillips did his inspection in
13 November the year before. Lindgren had the vehicle inspected
14 by an independent expert through Crawford and Company. That
15 would be Mr. Varnes; correct?

16 A Yes.

17 MR. B. MAYERSON: Excuse me. Is Mr. Varnes the
18 gentleman that was here yesterday? I'm sorry. Never mind.

19 BY MR. COHEN:

20 Q "I suggest Nationwide also have the vehicle
21 inspected as soon as possible by an independent expert for
22 purposes of litigation if we are otherwise unable to resolve
23 this matter."

24 And then it goes on and talks about the vehicle being
25 leased. "As a result, the Berg family is going to sell the

1 Cherokee. Please allow this letter to serve as formal notice
2 that this vehicle will be disposed of in the next six weeks.
3 If you need more time to retain appropriate expert, please
4 advise."

5 MR. H. MAYERSON: Excuse me. Please read the
6 paragraph you missed. You were reading a letter and left out
7 a paragraph.

8 MR. COHEN: Is he making an objection?

9 THE COURT: Overruled. You shouldn't be interrupting
10 at this point. This is cross-examination.

11 BY MR. COHEN:

12 Q And then the final paragraph that I want to
13 read, "Please also advise that Nationwide will purchase the
14 vehicle if the Berg family -- if Nationwide will not purchase
15 the vehicle, then please advise what Nationwide will do
16 pursuant to the terms, conditions and warranties of its Blue
17 Ribbon Program, its policy of insurance with the Berg
18 family."

19 Lets take one thing at a time. First of all, you as
20 an insurance expert know what an insurance policy is;
21 correct?

22 A Yes.

23 Q And you know what the Blue Ribbon Program is;
24 correct?

25 A Yes.

1 Q And you know that the policy -- the Berg's
2 insurance policy is not the same thing as the Blue Ribbon
3 Program?

4 A Yes.

5 Q You know that; right?

6 A Yes.

7 Q And if I told you Mr. Mayerson has been
8 arguing throughout this trial that the Blue Ribbon Program is
9 part of their policy, you wouldn't agree with that, would
10 you?

11 A It's an adjunct to the policy.

12 THE COURT: Aren't you going beyond his opinion with
13 regard to whether this is reckless?

14 BY MR. COHEN:

15 Q So this letter references a deposition that
16 was conducted on April 14th. Nationwide was never part of
17 that deposition, were they?

18 A I wouldn't know.

19 Q Okay. Well, I'll represent to you that
20 Nationwide was not part of this deposition. So the first
21 time that Nationwide was given an opportunity to inspect the
22 vehicle is on April 22nd, 1998; is that correct?

23 A Yes.

24 Q All right. Do you know what Nationwide did
25 thereafter?

1 A Mr. Potosnak inspected that vehicle on the
2 28th of April.

3 Q Okay. So Mr. Potosnak went out and looked at
4 the vehicle at A.W. Golden's; correct?

5 A Correct.

6 Q And that was the log note we read with regard
7 to Mr. Potosnak's inspection of that vehicle; correct?

8 A Correct.

9 Q All right. Now I'm going to ask you to take a
10 look. Do you still have the exhibit in front of you?

11 A Yes.

12 Q I'm going to ask you to take a look at Page
13 1174 of the log note. This again is Exhibit Number 8 from
14 the first phase of trial. Do you see that at the bottom of
15 the page?

16 A Yes.

17 Q Okay. And this is a log note from -- written
18 by Mr. Potosnak, okay, and this is the one that you read
19 earlier and this is dated 4/30?

20 A Correct.

21 Q All right. And the inspection was as it
22 indicates in this log note, 4/28; correct?

23 A Yes.

24 Q All right. So I will tell you I looked at a
25 calendar, 4/28 is a Tuesday -- 4/28 is a Thursday. Then if

1 you look up on the page, see where it says May, 4th, 1998?
 2 A Yes.
 3 Q Okay. This is a note from Bruce Bashore.
 4 Mr. Bashore is sitting back here. This is Mr. Bashore. And
 5 he writes: Received papers from policyholder's attorney.
 6 Policyholder filed a civil action, Berks County, against
 7 Lindgren Chrysler which is a Blue Ribbon shop and Nationwide.
 8 Gave all papers to legal at 10:00 a.m. today.
 9 I will tell you that is a Monday, okay. So the
 10 inspection was the week before on a Tuesday. The log note
 11 was entered on a Thursday and a lawsuit was filed on Monday.
 12 Now does that sound like Nationwide was given a reasonable
 13 opportunity to inspect this vehicle and make things right
 14 under the Blue Ribbon Program?
 15 A They had several days to do it.
 16 Q They had a week; right?
 17 A Well --
 18 Q I mean, we're now a few years into this whole
 19 thing. Mr. Mayerson has experts, Mr. Barone and Mr. Phillips
 20 and Mr. Varnes from Crawford and Mr. Miller. They're all
 21 looking at the vehicle. The first time -- let me finish my
 22 question.
 23 The first time Nationwide had somebody look at the
 24 vehicle was in April after Mr. Mayerson said they could look
 25 at the vehicle and then within a week a lawsuit is filed.

1 MR. H. MAYERSON: Objection, Your Honor.
 2 Misstatement of the evidence in this matter.
 3 THE COURT: Overruled.
 4 BY MR. COHEN:
 5 Q Now, what I ask you is: Does that sound like
 6 reckless conduct?
 7 A The reckless conduct is again placement of the
 8 vehicle on the highway. What I don't know is, I mean,
 9 Nationwide -- I didn't see any documents where Nationwide
 10 asked to have an opportunity to look at the vehicle between
 11 the time Mr. Mayerson came and represented the Bergs and 4/28
 12 or 5/4 when suit was filed. I mean, if I'm sitting there and
 13 I see this going on, the reasonable thing for me to do as an
 14 insurance company is say, I'd like to look at that vehicle,
 15 I'd at least ask.
 16 Q Isn't that exactly what Nationwide tried to
 17 do?
 18 A I don't see that here.
 19 Q We talked previously about the conversation
 20 with Mr. Stitzel and Mr. Mayerson?
 21 A Obviously he was satisfied with the results of
 22 that conversation.
 23 Q Or Mr. Mayerson --
 24 A I didn't see a letter.
 25 Q okay. Do you recall reading the testimony of

1 Mr. Joffred in the first phase of trial with regard to the
 2 condition of the vehicle when it came back from repair?
 3 A Yes.
 4 Q Okay. Let's take a look at Page 685 of the
 5 trial testimony. And I'm going to refer you to Line 11 of
 6 that page. Do you have it?
 7 A I see it.
 8 Q Okay. Mr. Joffred was the manager of
 9 Lindgren. He was the one who actually repaired the car;
 10 correct?
 11 A Correct.
 12 Q And Nationwide is not in the business of
 13 repairing cars; right, you know that from being in the
 14 insurance industry; correct?
 15 A Say again.
 16 Q Insurance companies don't repair cars; they
 17 pay to have cars repaired?
 18 A That's correct.
 19 Q And an insurance policy is a contract of
 20 indemnification. It's not a contract to repair; correct?
 21 A That's correct.
 22 Q The Nationwide policy, the policy we're here
 23 today for in a bad faith case, was to pay for the repair?
 24 A Correct.
 25 Q Lets look at the testimony of Mr. Joffred

1 beginning on Line 1. Question: And when the car came back
 2 from K.C. -- K.C. is the shop that Lindgren sent it out to
 3 have the frame pulled -- I believe you testified that it
 4 looked pretty good. I mean, it looked like you could repair
 5 the car at that point? Answer: Yes. Question: I believe
 6 that you at least told somebody that the vehicle was
 7 repairable or did you tell anybody that you were of the
 8 opinion at that point that the car was repairable? Answer:
 9 Yes. Did you communicate that to Nationwide? Answer: Yes.
 10 Question: As far as Nationwide was concerned, when that car
 11 came back from K.C. that car was repairable? Answer: Yes.
 12 Question: You were going to do the repair? Answer: Yes.
 13 Question: Going down to Line 7, so at that point you would
 14 have determined conclusively you were going to fix that car,
 15 it was not a total loss? Answer: Yes. And you obtained
 16 Mr. Berg's verbal permission to repair the vehicle at that
 17 point? Answer: As I recall.
 18 Now that testimony to me suggests that Mr. Joffred
 19 told Nationwide that this car was repairable; right?
 20 A That's what it says.
 21 Q And there's nothing to indicate after the
 22 vehicle was returned to the Bergs that Nationwide had any
 23 inkling that this vehicle was unsafe; correct?
 24 A At that point, yes.
 25 Q okay. In fact had Mr. Mayerson not sent a

1 letter to Nationwide in November of 1997 not to have any
2 communication with Lindgren, it's quite conceivable that
3 Nationwide would have called Lindgren, said what's going on
4 here and resolved the problem. But instead we're ten years
5 down the line. Does that make sense?

6 A It's speculation on your behalf.

7 Q Okay. Fair enough.

8 Lets turn to Exhibit Number 15 of the first phase of
9 trial. This is Page 1253. Do you have that letter in front
10 of you, Mr. Chett?

11 A Yes.

12 Q Okay. This letter is dated May 19, 1998.

13 This is a letter from Bruce Bashore to Mr. Mayerson. This
14 is, I guess, maybe two weeks after the law suit is -- and
15 this is, I guess, maybe two weeks after the law suit is
16 filed, okay.

17 A Yes.

18 Q Okay. "Dear Mr. Mayerson, as per our
19 telephone conversation of May 12th, 1998," so they spoke a
20 week before, "Nationwide Insurance would like the opportunity
21 to have an independent expert inspect the Berg's Jeep
22 Cherokee. I've contacted Automotive Legal Services and they
23 will be contacting the Bergs to set up an inspection in the
24 next two weeks."

25 You'll recall yesterday that was Mr. Shaw. He went

1 out to try and look at the Berg's vehicle. Do you remember
2 that?

3 A Yes.

4 Q "If the independent expert finds any problems
5 with the repairs that resulted from the above-listed
6 accident, Nationwide Insurance will have these problems
7 corrected in the shop of the Berg's choice. If the vehicle
8 cannot be repaired to pre-accident condition, Nationwide will
9 purchase the vehicle from the Bergs."

10 Sounds like Nationwide is trying to resolve the
11 problem, doesn't it?

12 A Yeah.

13 THE COURT: What's the date of that letter again?

14 MR. COHEN: May 19th.

15 MR. B. MAYERSON: 1998.

16 MR. COHEN: 1998.

17 THE WITNESS: I remember reading that letter and my
18 thought was, you know, why are we ten years down the road? I
19 don't know why that wasn't done at that period of time. It
20 seems to me that the reasonable thing for Nationwide to have
21 done was to implement the suggestion in the letter.

22 Q Implement what suggestion in what letter?

23 A Repair it or replace it.

24 Q And that's exactly what they did May 19th?

25 A It wasn't repaired.

1 Q But they were trying to investigate the issue?

2 A This is what jumped out at me, if I may.

3 Mr. Potosnak's reinspection did not determine a dollar figure
4 to replace the defects in the vehicle. It was just a listing
5 of the damaged parts.

6 Q Okay.

7 A It seems to me that the standard and the
8 proper thing to do when the appraiser goes out and looks at
9 it and he knows there's problems with it, they generally
10 write an appraisal and take the car in and get it fixed. I
11 don't know why that wasn't done. That's what puzzles me a
12 lot about this case.

13 Q Maybe it wasn't done because; number one, a
14 law suit was now filed and this vehicle was now subject to
15 evidence --

16 MR. B. MAYERSON: Objection, Your Honor. There was
17 no lawsuit filed on this date.

18 MR. COHEN: All right. That there was a threat of a
19 lawsuit that was going to be filed. Mr. Mayerson indicated
20 he was going to be filing a lawsuit. Could that be why?

21 THE WITNESS: Well, this letter that you have in
22 front of me, the May 19th letter, indicates that there is
23 conversation between Mr. Mayerson and Nationwide.

24 BY MR. COHEN:

25 Q That's right. Now there is.

1 A And now's the time to --

2 Q Now after a bad faith lawsuit is filed against
3 Nationwide now the conversations begin. And you know from
4 being in the insurance industry that those conversations
5 begin because there are allegations of bad faith; right?

6 A No, generally --

7 Q Okay. You're familiar with this book of
8 Claims Advisement?

9 A I am.

10 Q You cite to it extensively in your expert
11 report?

12 A Yes.

13 Q Right?

14 A Yes.

15 Q You would consider this to be an authoritative
16 publication, would you not?

17 A Yes, it is. It's been used in training.

18 Q And you have several quotations from this
19 document in your report?

20 A Yes.

21 Q All right. I'm going to hand you -- I have a
22 copy of this book.

23 MR. B. MAYERSON: Your Honor, may we make some kind
24 of objection on the record?

25 MR. COHEN: This is cross-examination of an expert

213

1 witness.

2 MR. B. MAYERSON: If I may make an objection on the

3 record.

4 THE COURT: No, not at this point. You may make an

5 objection at an appropriate time. This is cross-examination.

6 You don't interrupt.

7 MR. COHEN: Please turn to Page 233.

8 Q You see 233. You see the last page, the

9 answer, the simple?

10 A Yes.

11 Q Let me read a line. "The term 'bad faith' has

12 become a catch all for plaintiff attorney's objections to

13 ensure practices. Plaintiff attorneys casually include bad

14 faith charges in letters and negotiation sessions without

15 thought about the meaning of the term. They use the term for

16 enforcement. " You would agree with that?

17 A I would.

18 Q Now we have discussions, Mr. Mayerson and

19 Nationwide, because now we have a bad faith lawsuit. Before

20 when Nationwide wanted to inspect the vehicle they were told

21 by Mr. Mayerson back off; right?

22 A You might characterize it.

23 Q Well, would you characterize it that way?

24 A He said don't contact him.

25 Q That's the direction. Lets look at Page 222

214

1 of this book.

2 THE COURT: I assume all of this is still with regard

3 to his opinion that Nationwide acted recklessly.

4 MR. COHEN: That's right, Your Honor. I'm coming to

5 an end on this.

6 THE COURT: No, it's all right. As long as it's to

7 that subject and then Mr. Mayerson will have the opportunity

8 to ask his questions relevant to the same.

9 MR. COHEN: Thank you, Your Honor.

10 BY MR. COHEN:

11 Q Page 222. This is a section it's titled

12 "Negotiating with Attorneys." Do you see that?

13 A Yes.

14 Q Okay. Lets look at the last paragraph.

15 You're smiling, you think it's funny?

16 A No, I don't. I'm just --

17 Q "Claimants do not hire attorneys just for

18 their ability to negotiate. The defining characteristic of

19 an attorney is that he or she is someone who can institute a

20 law suit in the Courts. Law suits are extremely expensive

21 for insurance companies to defend. Claims managers, claim

22 supervisors and claim representatives are all under enormous

23 pressure to control legal expenses. Claimant attorneys are

24 aware of these pressures. In addition, court verdicts are

25 often less favorable for defendants and/or settlements.

215

1 After incurring the legal fees, it often fairs worse than if

2 it could have reached a settlement. Claimant attorneys know

3 this."

4 Now, based on the letters that we talked about and

5 based on the conversations between Mr. Stitzel and Mr.

6 Mayerson and the conversations between Mr. Bashore and Mr.

7 Mayerson, doesn't it seem like Nationwide was doing

8 everything they could to get to the bottom of this but were

9 being blocked at every turn by Mr. Mayerson?

10 A I don't see that they were being blocked.

11 Q Okay. Just one more thing. We talked a

12 little bit about the mileage that the Bergs put on the

13 vehicle. You know, I did a time line. I did a chart and I

14 actually have some board I'm not even probably going to use

15 because I know that I probably won't be able to, but I will

16 tell you, and I'm sure you know this from looking at the

17 documents, the Bergs put a tremendous amount of mileage on

18 this vehicle long after they were advised by their own expert

19 that this vehicle was unsafe. Why is that in your opinion,

20 why would they do that?

21 A Perhaps they had jobs that they needed to use

22 a car to transport them to.

23 Q But they bought a new car and they still

24 continued to drive the Jeep?

25 A You'd have to ask them. I can only speculate

216

1 and I can't come up with a reasonable explanation.

2 Q They also said they wanted to sell the

3 vehicle. You wouldn't recommend selling an unsafe vehicle to

4 somebody, would you?

5 A I wouldn't do it, but I don't know what their

6 financial circumstances were. You know, maybe they couldn't

7 afford to have a new car --

8 Q Selling a vehicle that you know to be unsafe

9 would be, in your own words, reckless, wouldn't it?

10 A I wouldn't do it.

11 MR. COHEN: Okay. I have no further questions.

12 Thank you.

13 THE COURT: Redirect on this one issue, his opinion

14 with regard to this being reckless. That's where we are.

15 MR. B. MAYERSON: I understand, Your Honor.

16 THE COURT: Okay. All right.

17 REDIRECT EXAMINATION

18 BY MR. B. MAYERSON:

19 Q The Bergs selling the vehicle, would that have

20 been for salvage?

21 A You know, I don't know enough about it, but I

22 believe that was a leased vehicle and I think that -- I don't

23 know what the terms of lease were. I don't think they could

24 sell a vehicle for salvage and discharge the lease

25 obligations.

IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

1 Q Mr. Chett, you were asked and you agreed that
2 Mr. -- well first you talked about Mr. Wert and what he told
3 the Bergs?

4 A Yes.

5 Q And then later you were asked whether
6 Mr. Potosnak's inspection of April 28th, 1998 was
7 Nationwide's first opportunity to see the vehicle?

8 A Yes.

9 Q In light of what Mr. Wert testified to, do you
10 still agree that that's accurate?

11 MR. COHEN: Objection. Foundation.

12 THE COURT: Overruled.

13 THE WITNESS: Nationwide, in my opinion, I mean, this
14 was a car that was hit hard and the body was twisted and
15 there was a question of whether or not this was a total loss
16 or not a total loss. And it was decided to take the car and
17 send it to K.C. Auto, which I believe was the shop that
18 pulled the frame out and straightened out the unibody. When
19 you have a car that's hit that badly, to me, it's reasonable
20 to reinspect the repairs when they're completed to make sure
21 the car is safe. You know, it's like this quality control on
22 most products that are made, and I would expect there would
23 have been some quality control with that car.

24 Now I do know from being at Aetna we had these -- we
25 called them approved shops, but our appraisers were in and

1 out of them all the time. They had desks there. They had
2 computer outlets there. They had telephones there and they
3 would constantly reinspect the repairs on a car. The last
4 thing they want to get called is for a supplement, which
5 means have to go back out and look at the car and the shop
6 has to repair the car. So to me it was reasonable with a car
7 hit that badly people from Nationwide being there. It was
8 reasonable to inspect the car and make sure the repairs were
9 properly done.

10 Q Are you saying that your opinion is consistent
11 with Mr. Wert's testimony and inspected the vehicle during
12 the repair period?

13 A Sure. I had two cars hit in accidents and I
14 took it to those types of shops and the appraisers were
15 there. I mean, they're in and out all the time, and I'm sure
16 they'd tell you that.

17 THE COURT: Are you finished on this subject? Excuse
18 me, are you finished on this subject with this opinion?

19 MR. B. MAYERSON: No, I have a couple more questions,
20 Your Honor.

21 THE COURT: Relevant to the second opinion?

22 MR. B. MAYERSON: Yes, I believe so.

23 THE COURT: All right.

24 MR. B. MAYERSON:

25 Q Mr. Chett, during Mr. Cohen's questioning he

1 got you to agree that somehow my office prevented Nationwide
2 from inspecting the vehicle. I'd like you to take a look at
3 my letter of representation dated November 3, 1997 marked as
4 Exhibit 7 and tell me what it says at the bottom paragraph.

5 A "I am preparing a complaint to be filed
6 against Lindgren and the Chrysler Corporation. I have
7 retained an expert to examine the vehicle. If Nationwide
8 requires an opportunity to examine the vehicle, please
9 advise." It's dated November 3rd, 1997.

10 Q Thank you. And, sir, with regard to the claim
11 log entry of Mr. Stitzel that documents what he says is a
12 conversation that he had with me, I'd like to show you a copy
13 of it again, and I'd just like to ask you whether or not what
14 Mr. Stitzel is documenting in that claim log down here at the
15 bottom dated December 3rd, 1997, well it says he -- I have a
16 question when you're done reading it.

17 A I'm finished.

18 Q In your experience as a claim manager, is that
19 something that you would have expected that a subject matter
20 of that significance would have been confirmed in a letter?

21 A Yes and no.

22 Q Have you ever seen a letter from Mr. Stitzel
23 to my office?

24 A No, I haven't. Wait a minute; no, I don't
25 recall.

1 Q There was no confirming letter so all that is
2 Mr. Stitzel's version of events?

3 THE COURT: I assume that's something personal
4 between you and Mr. Chett, the witness, because I have no
5 idea what you're talking about, not that that makes any
6 difference here. There are a lot of things I don't have any
7 idea what you're talking about.

8 Go ahead. What's next? Any other questions with
9 regard to his second opinion? I'd like to finish his
10 testimony today if possible.

11 BY MR. B. MAYERSON:

12 Q Mr. Cohen got you to agree that Mr. Wert, the
13 gentleman who worked at the Lindgren facility and saw
14 Nationwide inspecting the repair work, got you to agree that
15 Mr. Wert never warned the Bergs against operating the
16 vehicle. And I'd just like you to look at his actual
17 testimony when he's being questioned by Mr. Cohen during the
18 trial, and I've highlighted it there at Page 55, Line 20
19 through 22 or 23.

20 When Mr. Cohen questioned Mr. Wert during trial, did
21 Mr. Wert warn the Bergs about the vehicle being unsafe?

22 A I think the issue here is when, according to
23 this transcript, he did tell the Bergs that in his opinion
24 the vehicle was not crash worthy, but this wasn't told to
25 them until October of '97. I think I'm interpreting that

221

1 correctly. And I believe when -- I'm not going to ask the
2 question to be read back that Mr. Cohen had asked -- but I
3 was under the impression that at the time was when the
4 vehicle left the shop.
5 Q So in other words he warned him right before
6 the Bergs retained counsel?
7 A Yes.
8 Q So you were also asked about whether or not
9 Mr. Anderton, Nationwide's expert who had testified that the
10 vehicle was safe, and you were asked about the significance
11 of that. I'd like you to take a look at his testimony at 82,
12 Line 1 through 10.
13 MR. B. MAYERSON: Your Honor, can we have this
14 portion read into the record?
15 THE COURT: This is your witness. This is direct
16 testimony and you're asking me to read testimony of another
17 witness into the record. Is that what your question is?
18 MR. B. MAYERSON: I'm attempting to rehabilitate the
19 witness with --
20 THE COURT: You don't do it that way. You don't read
21 it into the record. You do it just the way you started. You
22 ask him to read it to himself and then you ask him a
23 question, okay.
24 BY MR. B. MAYERSON:
25 Q Does Mr. Phillips, Nationwide's expert,

222

1 support your opinion -- Mr. Anderton is Nationwide's expert
2 -- does his testimony at trial about the condition of the
3 vehicle support your opinion that it was unsafe and reckless
4 --
5 THE COURT: First of all, ask him whether or not this
6 or that is Mr. Anderton's opinion. I don't have any idea
7 what you're talking about. I'm trying to tell you, Mr.
8 Mayerson, I have no idea because you're not laying the proper
9 foundation for most of your questions. You leave me
10 completely in the dark. And if you think that it's my
11 responsibility as a trial judge to wait until I get this
12 transcript and then read this transcript and then go to
13 another document and try to figure out what your question is
14 all about and therefore what the essence of the answer is,
15 I've got news for you. That is not what this trial judge
16 does. You have to develop it here on this record today. Now
17 I know for me to say to you I'm not going to tell you again
18 is a laugh. I'm going to be telling it to you 20 times again
19 and trying not to get my blood pressure up.
20 Ask the question the right way.
21 BY MR. B. MAYERSON:
22 Q Did you rely upon Mr. Anderton's opinion when
23 you were testifying to --
24 THE COURT: His opinion as to what?
25 MR. B. MAYERSON: As to the condition of that

223

1 vehicle.
2 THE COURT: In that what, what is that opinion?
3 MR. B. MAYERSON: The primary structural components
4 on the vehicle were misaligned.
5 THE COURT: Great. Beautiful. Nicely done.
6 THE WITNESS: That is how he testified, yes.
7 BY MR. B. MAYERSON:
8 Q That there was significant misalignment as to
9 both the welded structural items and the non-welded
10 structural items?
11 A That is correct.
12 Q And did he give an opinion as to whether or
13 not the Bergs -- whether the vehicle should have been
14 returned to the Bergs in that condition?
15 A I'm sorry. I don't see it here. Wait a
16 minute. Let me look.
17 Q All right, sir. I'll ask you another
18 question. Could you please turn to Plaintiff's expert
19 testimony, Donald Phillips, at Page 892, Line 1 through 10.
20 Did you have an opportunity to read that?
21 A I'm not sure of the page reference.
22 Q Page 449, Line 25 through 450, Line 11 and
23 I'll ask you a question once you've had a chance to read it.
24 A (Witness complies with request.)
25 Q Mr. Chett, in your testimony today is it

224

1 significant that Mr. Donald Phillips, an engineer, testified
2 that the vehicle was not brought back to the manufacturer's
3 total requirements and would not sustain another impact to
4 the same area because of poor workmanship and, in addition,
5 other parts either not completed or poorly performed,
6 completed in unsafe condition, performance and safety of the
7 Jeep?
8 A Yes, that was the testimony of Mr. Phillips.
9 Q And does that support your opinion, is that
10 what you testified to today? Does that refresh your
11 recollection?
12 A Yes.
13 THE COURT: Is that rehabilitation testimony to
14 cross-examination?
15 MR. B. MAYERSON: Yes, I'm trying to rehabilitate the
16 witness.
17 THE COURT: By him repeating his direct testimony?
18 MR. B. MAYERSON: That wasn't his direct testimony.
19 That was Mr. Anderton's.
20 Your Honor, if I may make an objection on the record?
21 THE COURT: You may.
22 MR. B. MAYERSON: I am at a loss that my expert is on
23 the stand and I asked him one question and one line and
24 that's all he testified to and I was unable to lay any
25 foundation, and then opposing counsel Mr. Cohen spends an

IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

1 hour cross-examining on it and we are left with the
2 impression that his opinion is unfounded or unsupported. And
3 I'm trying to show what supports his opinion.

4 THE COURT: You don't know at this point whether I'm
5 going to allow his opinion to remain in the record, whether
6 he's qualified to give the opinion that he gave. That's what
7 this is all about at this particular point.

8 MR. B. MAYERSON: And that's why I'm trying to show
9 --

10 THE COURT: Maybe if you sit down and let the Court
11 rule at this point then you would know.

12 MR. B. MAYERSON: Certainly, Your Honor.

13 THE COURT: The Court is ruling that his opinion with
14 regard to whether or not the automobile was unsafe and
15 therefore whether or not Nationwide was reckless in allowing
16 the vehicle to be placed out on the road again is admissible
17 evidence and that this witness is qualified to give that
18 opinion.

19 Now, later on in weighing his opinion as to whether
20 or not this was reckless conduct in relation to the other
21 testimony that I've either already heard or will hear in this
22 case, that's quite another thing, okay.

23 MR. B. MAYERSON: Yes, Your Honor.

24 THE COURT: Now whatever part of this you don't like
25 or you think that you didn't have an opportunity to fully

1 develop, let's have it on this issue, if you think you need
2 it.

3 BY MR. B. MAYERSON:

4 Q Mr. Chett, did you have a third opinion in
5 this matter?

6 A I did.

7 MR. COHEN: I'm sorry, Your Honor. I have one
8 question on recross.

9 THE COURT: Go ahead.

10 RE-CROSS-EXAMINATION

11 BY MR. COHEN:

12 Q Under the insurance policy that the Bergs had
13 with Nationwide, you reviewed that?

14 A I did.

15 Q Okay. It's true, is it not, that there is no
16 contractual obligation under the policy for Nationwide to
17 reinspect the vehicle?

18 A That is true.

19 Q That is true?

20 A Yes.

21 MR. COHEN: Thank you.

22 THE COURT: All right. What is your third opinion?

23 THE WITNESS: My third opinion is that Nationwide
24 engaged in what I refer to as a scorched-Earth defense of
25 this case.

1 MR. B. MAYERSON: Your Honor, may I develop a
2 foundation or would you like the opposing counsel to
3 cross-examine him on the opinion first?

4 THE COURT: Are you objecting to him being qualified
5 to give that opinion?

6 MR. COHEN: I am objecting although I can't
7 cross-examine until he's given some testimony.

8 THE COURT: First of all, I have no idea what a
9 scorched-Earth defense is. I think it should come as no
10 surprise to you that I didn't start my practice of law as an
11 insurance adjuster as a lot of attorneys have. And I doubt
12 that we have any judge on the bench who is qualified in that
13 regard. I don't know whether this is something that you just
14 concocted in your mind. What is it, and what qualifies him
15 as an expert in that area to give that opinion?

16 MR. B. MAYERSON: A scorched-Earth defense, Your
17 Honor?

18 THE COURT: No, no. Ask the witness.

19 BY MR. B. MAYERSON:

20 Q Mr. Chett, what is a scorched-Earth defense?

21 A It's a type of defense that we have in the
22 insurance industry when we have a case that falls into
23 certain parameters. One type of case where it's a type of
24 case where you really say to your defense counsel, look, no
25 holds barred, you know, we have a free reign in defending

1 this case. We're not concerned about expense dollars in this
2 case. The types of cases in which I've been involved and
3 there have been many because I've been around a long period
4 of time and I've seen a lot and I worked in some places where
5 you had to employ this type of defense. Let me tell you the
6 types of cases I use them on. They're used in the industry.
7 The first is the fraud and arson cases.

8 MR. COHEN: Objection. No relevance to this case.

9 THE COURT: Overruled.

10 THE WITNESS: The second type of case is a case where
11 you're dealing with Plaintiff's mills, and I don't know, you
12 don't have --

13 THE COURT: Plaintiffs.

14 THE WITNESS: We call it Plaintiff's mills in the
15 industry. You don't have them in Berks County but we have
16 them in areas like Los Angeles and Houston, you know what I'm
17 talking about. And the third type of case is the case that
18 we consider a case that has no merit or an unmeritorious
19 case. The cases that we're referring to, they are the cases
20 that the judges usually throw out in summary judgment
21 motions. Those are the cases that -- that we consider
22 scorched-Earth defenses. People may call it different --

23 THE COURT: What category does this fall into as a
24 scorched-Earth defense?

25 THE WITNESS: This particular case?

1 THE COURT: Yeah, the Berg case.
 2 THE WITNESS: This is a case where --
 3 THE COURT: No. Well, the areas in which you said
 4 that you applied it, that's strategy.
 5 THE WITNESS: The strategy. This is a case wherein
 6 my opinion is in a scorched Earth case because it's a bad
 7 faith case. It's considered as an unmeritorious case by
 8 Nationwide because there's a lot of bad faith litigation in
 9 Pennsylvania. And bad faith litigation for a Plaintiff's
 10 firm and for a defense firm for that matter is very expensive
 11 and time consuming and document intensive litigation.
 12 And the way that you're going to discourage
 13 plaintiffs from becoming involved in bad faith litigation is
 14 to fight them on the cases that you feel you have a decent
 15 chance of winning.
 16 THE COURT: I always thought that that was every
 17 case.
 18 THE WITNESS: No, no, no. You know, Your Honor, in
 19 the industry --
 20 THE COURT: That's from what I see. I tried more
 21 than half of the civil trials in this courthouse and that's
 22 all I see is just like it was taught to me by my predecessor,
 23 Judge Eadenharter. The courtroom is nothing more than a war
 24 zone.
 25 THE WITNESS: It should not be that way.

1 THE COURT: But it is and especially in this field in
 2 the insurance field with every insurance company; whether
 3 it's Nationwide, regardless of what it is.
 4 THE WITNESS: About 96 percent --
 5 THE COURT: That's why all of them walk into the
 6 settlement office or our settlement room and I'm trying to
 7 get a settlement together, pretrial settlement conference,
 8 and I try at the beginning. What would you offer, give me an
 9 offer. They say, I have no authority to offer anything.
 10 THE WITNESS: Well, that shouldn't be.
 11 THE COURT: I mean, are those all scorched-Earth
 12 defense lawyers in cases? I'd love to know that because if I
 13 could do something to hit them over the back of the head I
 14 would do it. Because I say time and time again, I hope these
 15 insurance companies see where they're going because in
 16 another five or ten years you won't have any lawyers handling
 17 personal injury cases on a contingent fee cases and then your
 18 insurance companies will have all this on your own. They
 19 will all be seated in the back office and, Mr. Cohen, there
 20 wouldn't be any need for you either. That's on the record.
 21 Hope it goes up to Chief Justice Cappy and he'll say, that's
 22 Stallone again because that's exactly how I feel.
 23 Because I did a lot of personal injury work long
 24 before I came on the bench and the attitude was not as it is
 25 today. The attitude was when you got a case you called the

1 lawyer on the other side and say, do you have time for
 2 coffee? I had pretrial settlement conferences two or three
 3 days or two or three years after the claim was filed who
 4 never even saw each other. Many of them never even talked
 5 over the telephone. Where's the good faith in those cases?
 6 So you're saying any case that's a bad faith --
 7 THE WITNESS: Judge, if I may give you --
 8 THE COURT: You can now make a speech.
 9 THE WITNESS: It will be short.
 10 THE COURT: No, it doesn't have to be short.
 11 THE WITNESS: About 96 percent of insurance cases
 12 settle, believe it or not.
 13 THE COURT: I can respond to that too, but it's how
 14 they settle.
 15 BY MR. B. MAYERSON:
 16 Q Mr. Chett, was the Berg's underlying claim
 17 meritorious?
 18 A In my opinion it was.
 19 Q And would you --
 20 THE COURT: Isn't that a decision for a judge to make
 21 if it's meritorious or a jury to decide whether it's
 22 meritorious?
 23 MR. B. MAYERSON: Your Honor, the question is on the
 24 collision claim underlying, not the bad faith claim.
 25 THE COURT: Any claim, whether any claim is

1 meritorious is up to the court to decide. It doesn't make
 2 any difference whether it's in the bad faith part of the
 3 claim or under the liability part of the claim whether it's
 4 meritorious. I don't understand that at all.
 5 MR. B. MAYERSON: We accept that and withdraw the
 6 question.
 7 THE COURT: You mean his opinion, as well?
 8 MR. B. MAYERSON: No, Your Honor. I'd like to ask
 9 maybe a different question, slightly different.
 10 THE COURT: Give it a shot.
 11 BY MR. B. MAYERSON:
 12 Q When the Bergs -- when Nationwide inspected
 13 this vehicle on April 28th, 1998 and entered the claim log
 14 data that is now an undisputed fact, was it proper for
 15 Nationwide to apply this scorched-Earth defense?
 16 MR. COHEN: Objection.
 17 THE COURT: Sustained.
 18 BY MR. B. MAYERSON:
 19 Q Was it reasonable?
 20 MR. COHEN: Objection.
 21 THE COURT: Sustained. This is his definition of a
 22 scorched-Earth defense. Did you ever write a book or
 23 anything on this? Did you ever write an article on this?
 24 THE WITNESS: No, I haven't.
 25 THE COURT: Did you ever appear before a group of

IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

1 lawyers or whatever to speak simply on the scorched-Earth
2 defense?
3 THE WITNESS: I've talked about the defense on the
4 case that you have to win. I may not have referred to it as
5 a scorched-Earth defense, but it's the type of case that you
6 feel you have to win and there are no holds barred.
7 THE COURT: Now, if you were giving an opinion as to
8 whether or not that was the approach of Nationwide, that this
9 was a case that Nationwide had to win, and in your opinion
10 they should not have taken that position, at least as I
11 understand the issue?
12 THE WITNESS: That's what I'm trying to opine, Your
13 Honor.
14 THE COURT: All right.
15 BY MR. B. MAYERSON:
16 Q Mr. Chett, of the three --
17 THE COURT: Is he qualified to give that opinion as
18 to the fact that this is a case that Nationwide said that
19 they had to win when they shouldn't have?
20 BY MR. B. MAYERSON:
21 Q Do you feel that you're qualified to give that
22 opinion and, if so, what do you base it upon?
23 MR. COHEN: Your Honor, that is outside the scope of
24 his expert report and under the rules of Pennsylvania --
25 THE COURT: It may be, but I'm going to allow it.

1 MR. COHEN: Okay.
2 THE COURT: It's merely rephrased the way this Court
3 will allow it. Answer the question, sir.
4 THE WITNESS: During my many years in the insurance
5 industry I've been involved with much litigation. In fact,
6 at Alliance I wrote the guide for defense counsel which sets
7 forth the practices and procedures addressing defense counsel
8 activities and billing. I've been involved heavily in
9 evaluating some of these attorney bill review firms that I
10 know that defense counsel I'm sure have their bills reviewed
11 by these firms. I've been involved in doing attorney
12 evaluations, defense counsel evaluations and most cases
13 involving litigation are always referred to me to assign
14 counsel and to get it on track to resolve. We like to settle
15 the cases in the companies that I worked for. I've had,
16 gosh, thousands of lawsuits and I had a legal budget at Aetna
17 that was up in eight figures in Los Angeles to pay for legal
18 fees. So I've been heavily involved in the litigation
19 process.
20 Legal fees and litigation are, insofar as claim
21 adjustment expenses are concerned, we spend more on those
22 than we do on salaries, a lot more. Perhaps Nationwide
23 doesn't.
24 THE COURT: That's why you sell insurance, isn't it?
25 THE WITNESS: One of the reasons, Your Honor.

1 THE COURT: You have to pay salaries to pay claims.
2 THE WITNESS: Pay claims. That's what it's all
3 about. People wouldn't buy insurance.
4 THE COURT: I wouldn't buy insurance if I thought I
5 was paying people to work and not pay a claim.
6 THE WITNESS: So I've been around. I've been around
7 it a lot.
8 BY MR. B. MAYERSON:
9 Q The cases where you've seen the scorched-Earth
10 defense --
11 THE COURT: Don't use that. That's out the window.
12 The scorched-Earth defense is out the window as far as I'm
13 concerned. If you want to pursue it in that area I'm going
14 to say he's unqualified to testify with regard to
15 scorched-Earth defense. I don't know what that is. I don't
16 know where he would ever get the background to make an
17 opinion with regard to that, and I don't think he's qualified
18 for that. He has a lot of experience, but for him to make
19 that judgment, that's a judgment for this Court to decide.
20 Unfortunately, oh, how I'd love it to be some other judge
21 other than me, but it's not. I picked the short straw. It's
22 not the first time. If you want to pursue it along the lines
23 that I suggested, that is another thing and that's as fair as
24 I can be with regard to it.
25 MR. B. MAYERSON: Two more questions in this area.

1 BY MR. B. MAYERSON:
2 Q First, should nationwide have defended this
3 case the way it was defended?
4 MR. COHEN: Objection. Foundation.
5 THE COURT: No, I think your objection is overruled.
6 I think that he can give his opinion on that. He can say
7 what it was and then we get into his underlying reasons for
8 that opinion and we hear cross-examination with regard to
9 those underlying reasons as to why in his opinion the Bergs
10 had a meritorious case and therefore Nationwide should not
11 have felt that this is a case they felt they had to win at
12 any cost. I'm not too sure how it's going to bear on the
13 opinion that the Court is going to ultimately hand down, but
14 I think that that's admissible evidence.
15 THE WITNESS: What I observed in Nationwide's zealous
16 defense of this case --
17 MR. COHEN: Objection.
18 THE COURT: Overruled.
19 THE WITNESS: -- was in addition to what I would --
20 could only describe as exorbitant legal expenses --
21 MR. COHEN: Objection.
22 THE COURT: Overruled.
23 THE WITNESS: -- was the absence of what I felt was
24 any control over counsel's activities.
25 THE COURT: Defense counsel's activities?

1 THE WITNESS: Everything the lawyer does on a file
2 just about.

3 THE COURT: What accounts are you talk about?

4 THE WITNESS: Defense counsel as I had alluded to
5 earlier. Defense counsel -- most insurance companies have
6 guides for defense counsel. These guides typically address
7 discovery, interoffice communications between lawyers, legal
8 research is a large issue, expenses that may not always be
9 necessary, and, in fact, the carriers always go a step
10 further. They use professional firms. Some companies do it
11 in house, but most use professional firms that review legal
12 bills and the lawyers have to send their bills to these
13 firms. And these firms review the bills according to the
14 guidelines that the carriers publish. I didn't see any
15 evidence of this being done in the legal bills that I looked
16 at for defense counsel here in this case.

17 Now I will admit that I didn't look over every one of
18 these bills with a fine tooth comb because I had a stack of
19 bills that was about five inches thick and these legal bills
20 were replete with redactions, so it wasn't easy to see what
21 was being done. But I did note a number of things that I
22 felt would not have been permitted in reasonable defense
23 counsel guides promulgated by insurance companies now.

24 MR. COHEN: Your Honor --

25 THE WITNESS: Excuse me.

1 THE COURT: Let him finish.

2 MR. COHEN: I have to make a statement before this
3 witness continues. Judge Lash ordered Nationwide's attorney
4 billing records turned over to Plaintiff's counsel for one
5 reason and one reason only, so Mr. Mayerson can recreate his
6 time. Judge Lash was clear on the record he was not going to
7 permit Nationwide's attorney records as bad faith evidence in
8 this case. That's exactly what this witness is doing.

9 THE COURT: Let's get the order out where he said
10 that.

11 MR. COHEN: I don't know if I have that order with
12 me, Your Honor.

13 THE COURT: Bring it with you tomorrow. We'll start
14 off with that tomorrow morning. You know I can't take that
15 as a representation. I don't know if that's what Judge Lash
16 decided. And if he did --

17 MR. COHEN: I don't know whether or not I have the
18 transcript. I will represent to you as an officer of the
19 court that he said it to me and Mr. Mayerson.

20 MR. B. MAYERSON: Your Honor, that's not accurate.

21 MR. COHEN: Why don't we ask Judge Lash?

22 THE COURT: Because I'm not calling Judge Lash to
23 this courtroom to testify in this case.

24 MR. COHEN: Judge Lash made it very clear --

25 THE COURT: This is what you said yesterday morning

1 in the conference before we got started and Mr. Mayerson's
2 opinion with regard to what you said is the same today as
3 what he said it was yesterday. Your recollection is
4 inaccurate. So how do I know when it is or is not because
5 that would be controlling.

6 MR. COHEN: Because every time I've made a
7 representation --

8 THE COURT: Because that will be controlling on that
9 issue before this Court.

10 MR. COHEN: I will look to see if we have that.

11 THE COURT: All right. And I'm sure if I wanted to,
12 I could have asked him because guess what? Guess who I have
13 lunch with most of the time and had lunch with today was
14 Judge Lash. And guess what I have in my pocket is a check
15 from Judge Lash for two volumes of my book, The History and
16 Biographical Analogs of Italian Americans of Berks County,
17 \$170 bucks. That's his signature on that check, but I
18 wouldn't ask him. I wouldn't ask him at lunch and I wouldn't
19 ask him here in the courtroom. And the first time that I'm
20 called by a judge to testify in his case, I'm out of here.
21 Of course at this point it wouldn't be much of a loss, would
22 it?

23 Where do you want to go on this? Did you have any
24 more?

25 THE WITNESS: One --

1 THE COURT: Now wait a minute now. Do we want to
2 bring him back tomorrow morning or is there a way to resolve
3 it, otherwise he has to come back here tomorrow morning.

4 MR. B. MAYERSON: Your Honor, how much longer can we
5 have with him today and then be finished? I may have Judge
6 Lash's order if I might have a moment to look for it.

7 THE COURT: That's fine.

8 MR. COHEN: I want to tell you right now it's not in
9 the order. I believe it's something Judge Lash said from the
10 bench. Don't laugh. This is what Judge Lash said from the
11 bench. You were there.

12 THE COURT: Just a second. How would we know that
13 that's what Judge Lash says?

14 MR. COHEN: Ms. Nulty was there. Because there was a
15 specific purpose why Mr. Mayerson was seeking his legal
16 bills. It was clear from his motion the reason he was
17 seeking his bills was to recreate his own time. That's the
18 only reason. Mr. Mayerson never kept track of his time up
19 until 2003. He needed to see Nationwide's bills in order to
20 recreate his own. There's no secret. It's in the record and
21 Judge Lash was clear he didn't want to -- he allowed us to
22 redact them. That's why there was redactions. It was
23 completely improper to have defense counsel turn over his
24 bills because he got tired of hearing Mr. Mayerson's
25 arguments and said, fine, do it, but I'm not letting you take

1 these bills and utilize them in evidence against Nationwide.
2 THE COURT: Was there a transcript made of this
3 hearing?

4 MR. COHEN: I don't know.

5 THE COURT: Was there a court reporter there?

6 MR. COHEN: I didn't order one, so I don't know.

7 MR. B. MAYERSON: My recollection of it is different.
8 I have at least two points to make. The first is we were
9 ordered to produce all of our answers to discovery before we
10 even got the billing records. So that would be inconsistent.
11 We had no use of those billing records when we were
12 recreating our records to give them. That was by Judge
13 Lash's order the same date. It was inconsistent on that
14 point.

15 Secondly, attorney records are discoverable in bad
16 faith litigation. I have opinions in my three-ring binder to
17 pull out. And the standard is whether it's relevant and if
18 it is relevant to an issue then is defendant unfairly
19 prejudiced by it. That's the analysis that should be here.
20 Judge Lash turned the bills over to us and granted my motion.
21 And the argument in my motion, the last thing I said was,
22 Judge Stallone may want to rely upon those billing records if
23 Nationwide appeals a modest award in Plaintiff's favor, and
24 it was at that point I think it is some of the most relevant
25 evidence in this case.

1 THE COURT: Well, I'm not going to accept anything
2 except what may have been in a transcript or written order as
3 far as Judge Lash's position on this matter. I'm not going
4 to hear testimony of three people from your office,
5 Mr. Cohen, and make a decision on that basis because I'm sure
6 there will be three people testifying one way and with regard
7 to your position and as far as the plaintiff another two or
8 three people, if there's two or three people. I'm not going
9 to do it.

10 MR. H. MAYERSON: Your Honor, we have just a little
11 bit more with this witness and then we're done with him.

12 THE COURT: No, we're not done. You're in the middle
13 of this third opinion here and he is giving as a basis for
14 that opinion the legal fees that have been charged by counsel
15 for Nationwide in this proceeding and your son just got up
16 and said that that's the very important part of his case --
17 for your case.

18 MR. H. MAYERSON: I stand corrected.

19 THE COURT: So I'm not going to make a ruling just
20 off of the cuff. And if that's the position that you're
21 going to take, then this Court will have to deal with it, but
22 not in relation to what Judge Lash may have said in a
23 pretrial argument because that will have no bearing on this
24 Court's decision. Because, quite frankly, I don't know what
25 he said or what his feelings were. And I really don't know

1 that it makes all that much of a difference as to why he
2 granted your request for those documents, because quite
3 frankly I would think that regardless you would have been
4 entitled to in a bad faith claim. And as a result, if I had
5 to rule on it myself, it might be completely different than
6 what Judge Lash may have said in the other context. But if I
7 have to do that, I will.

8 MR. H. MAYERSON: Your Honor, may I make an offer of
9 proof as to why we contend they're relevant?

10 THE COURT: I think you already have, and I think
11 that they would be relevant. How relevant, I don't know.
12 How persuasive, I don't know. In weighing all the evidence
13 and, quite frankly, it may be the strongest part of your
14 case. And the only thing that we're at, at this particular
15 moment, is whether or not Mr. Chett is going to be permitted
16 to give an opinion based upon the billing records submitted
17 to Nationwide for legal fees.

18 Now, other than what Mr. Cohen and you recall Judge
19 Lash saying at that preliminary matter, do you have any other
20 objection to this opinion as far as whether it could be given
21 by this witness in the form of an expert opinion?

22 MR. COHEN: With regard to his third opinion?

23 THE COURT: Yes, with regard to his third opinion.

24 MR. COHEN: Yes, I'd like the opportunity to
25 cross-examine the witness on this opinion.

1 THE COURT: Well then, go ahead and cross-examine
2 him.

3 RE-CROSS-EXAMINATION

4 BY MR. COHEN:

5 Q You said that there were three instances in
6 which you believed it was a defend-at-all-costs-type of
7 defense; is that correct?

8 A Yes.

9 Q And that was arson, fraud, plaintiff's mills,
10 cases with no merit?

11 A Right.

12 Q And then I believe you said that this case
13 fell within a different category and that was defend at all
14 costs?

15 A That's correct.

16 Q Okay. So the basis of your testimony is that
17 Nationwide defended this case and therefore that was
18 improper?

19 A That's not quite correct. And I tried to
20 allude to that a little bit earlier, but defending this case
21 and I mentioned in my report, but defending this case and
22 spending a lot of money and a lot of time stretches a small
23 plaintiff's firm. The leverage is with the insurance carrier
24 who has unlimited financial assets and the time. And I've
25 done this. I mean, I'm telling you, when you use your

1 superior assets against another party, you generally are
2 going to prevail over the long haul if you're willing to go
3 --

4 THE COURT: Mr. Chett, this is what I was talking
5 about earlier. We all know this. We all live in this world.
6 And you know the plane is not evenly balanced, particularly
7 in this field. This is the one field of the law where I say
8 it is totally unbalanced. That's my opinion. But that's not
9 the issue that's before this Court.

10 The Court is -- has to find whether or not there was
11 bad faith under the statute.

12 THE WITNESS: well, Your Honor, I just didn't feel it
13 was reasonable for Nationwide to use all of these assets that
14 they had to delay this case. And if I might also comment,
15 when I looked at the bills, the legal bills, there were
16 certain dates that were of interest to me to see whether or
17 not Nationwide was going to attempt to move this case to
18 settlement or at least to alternative dispute resolution.
19 And the bench marks that I looked at, the first one was the
20 bench mark when Mr. Potosnak looked at that car because in my
21 opinion that car had damage. That wasn't properly fixed.
22 And it would seem reasonable that the insurance company would
23 try and settle the case at that time. Another bench mark was
24 after Mr. Anderton looked at the car and found some problems
25 with the car. If you want to resolve cases, you try to

1 resolve them as soon as you can, because you usually get a
2 less expensive settlement and you limit your legal expenses.
3 And I just didn't see any evidence --

4 THE COURT: Whether or not the Court agrees or
5 disagrees with you is not consequence. This is a great
6 consequence that we can talk about over the dinner. But this
7 decision has to be made within the confines of the law as it
8 now exists in Pennsylvania. And as I say every day and in no
9 matter what Court I'm in, that if I were on the Supreme Court
10 of Pennsylvania on the law in this area, when I selected my
11 homicide jury on Monday to start the case three weeks from
12 last Monday, one of the big issues was whether or not defense
13 counsel could make any reference at all as to what the
14 penalty was in this case. You see what I mean.

15 And under the law of Pennsylvania the law is clear
16 cases all over the place say no. Juries have to sit there
17 and speculate what is going to happen. They come back after
18 a verdict when they sentence a guy to first-degree murder
19 which means life, they don't know that. They only know it
20 when I tell them when it's all over. And I know from
21 experience that if they would have known that during the
22 trial and before they returned the verdict they probably
23 would have returned a verdict of third-degree murder. So the
24 only thing I can say in good conscience, because that's me, I
25 always say if I were on the Supreme Court that wouldn't be a

1 law in Pennsylvania. If I was in the legislature that
2 wouldn't be the law, but that is not so. The same way with
3 the death penalty. And that's the same thing we have to deal
4 with here.

5 I know my wife. After 23 years she still thinks that
6 I can come in here every day and do whatever I damn well
7 please, but that's not so. I've got to follow the law as it
8 is written. And I want to know how this fits regardless of
9 what you may have done in your company or whatever and what
10 gives you the power as an expert to come in and testify on
11 this subject. I can't see it. Sometimes people come in and
12 they say, well, I'm a Professor at the University of
13 Pennsylvania and I wrote 14 books on this subject and so
14 forth. And of course then I've got to look at the case and I
15 say, well, whether I think he's an expert or not, see, I
16 always like to call expert witnesses just opinion witnesses
17 because that's all that they really are. It's up to the jury
18 to decide how expert it is. It's up to me to decide how
19 expert you are on the subject, but I don't think that you are
20 or anyone else. I can't think of anyone who would have the
21 credentials to come in and give an opinion with regard to
22 this third opinion this this matter.

23 Are we getting closer to the answer? Are we getting
24 closer to the end of the day? Are you getting closer to
25 letting Mr. Chett be released as a witness in this case,

1 because unless you really give me some foundation for that
2 opinion, I'm having difficulty with it and then I'll sleep
3 over it tonight and I'll make a decision then tomorrow
4 morning. Because maybe the way to go is just to allow his
5 opinion to come in and then let the Court decide what weight
6 that the Court is going to place on his opinion. Those are
7 two separate issues. Do you think the legal fees are a lot
8 now? You ought to wait until you see what they are five or
9 six years from now, especially on things like this.

10 THE WITNESS: It's not just the legal fees. It's the
11 taxpayers expense, you know. It's insane.

12 THE COURT: This is nonsense. All right. Tell me
13 which way you want to go. Ask whatever remaining questions
14 you have because we're going to stay here and ask all the
15 questions that we need to ask of Mr. Chett so that he can be
16 released as a witness in this case and need not come back
17 tomorrow.

18 MR. COHEN: I'm in the middle of my
19 cross-examination.

20 THE COURT: Doesn't make any difference. whoever
21 wants to question, it's of no consequence. The structure in
22 this case is long gone.

23 BY MR. COHEN:

24 Q Mr. Chett, you seem to have a problem, an
25 issue with the amount of money that Nationwide spent to

249

1 defend this case; right?
2 A Yes.
3 Q Okay. But you would agree with me, would you
4 not, that an insurance company, like any other party, has a
5 right to defend themselves; correct?
6 A Yes.
7 Q Okay.
8 THE COURT: And at all costs if they have the means
9 to do so.
10 THE WITNESS: Yes.
11 BY MR. COHEN:
12 Q And you had made this statement that it's very
13 difficult for a small little firm to take on a big company
14 like Nationwide. I mean, come on, what, we've seen lawsuits
15 by little firms against big companies that have brought
16 companies to their knees. You're familiar with the Exxon
17 Valdez case. I worked on that case for Levin Finkbine. We
18 won a judgment of \$500 million dollars against Exxon.
19 How about the tobacco litigation, \$250 million
20 dollars. You don't think that hurt Phillip Morris? How
21 about the Campbell decision or Avery versus State Farm, \$1.2
22 billion dollars. State Farm really defended themselves.
23 Are you familiar with that case? That's the after
24 market parts case in Illinois, \$1.2 billion dollars. What
25 happened, the case was overturned, wasn't it?

250

1 There was a \$1.2 billion dollar verdict. Ultimately State
2 Farm won. What if they gave up and walked away?
3 The beginning of the case paid millions of dollars
4 for no reason at all. Sometimes companies have meritorious
5 positions, don't they?
6 A Certainly.
7 Q You worked in the insurance industry.
8 Sometimes companies have a defense and regardless of --
9 THE COURT: Are you speaking in the field of
10 insurance between an insurance company and their customer?
11 MR. COHEN: Yes.
12 THE COURT: In the context of bad faith, were these
13 other cases bad faith cases that you just asked him about?
14 MR. COHEN: Some of them were; some of them weren't.
15 My point is, insurance companies, like any other companies,
16 have a right to defend themselves.
17 THE COURT: He's talking within the context in the
18 laws of Pennsylvania with regard to bad faith which is a
19 relationship between an insurance company and the customer.
20 MR. COHEN: Okay.
21 THE COURT: The ones who pay the premiums, some 12
22 months a year, some once a year, whatever, whatever. The
23 only thing I know, they keep going up every year and I still
24 haven't been able to collect a dime on my money that I gave
25 an insurance company.

251

1 MR. COHEN: Believe me, insurance companies pay out a
2 lot of money.
3 THE COURT: Not to me they don't.
4 BY MR. COHEN:
5 Q Fair. Lets talk about in the context of bad
6 faith. Lets talk in the context of insurance bad faith.
7 Certainly you wouldn't suggest that every bad faith action
8 brought against an insurance company is meritorious, would
9 you?
10 A No.
11 Q Right. Insurance companies win these cases
12 every once in a while; right?
13 A They do.
14 Q Okay. In Pennsylvania you testified that --
15 you testified, you said in your testimony that you testified
16 in Lackawanna in a case and a case in Luzerne. I don't have
17 to tell you that Lackawanna County and Luzerne are hotbeds
18 for bad faith litigation against insurance companies; isn't
19 that right?
20 A Been said so.
21 Q There are some vicious plaintiff attorneys,
22 Joe Roda, R-O-D-A. He's a very good bad faith lawyer;
23 correct?
24 A Yes.
25 Q Sometimes he wins one; sometimes he loses one;

252

1 right?
2 A That's correct.
3 Q Okay. And if an insurance company looks at a
4 claim and determines that there should be coverage and they
5 don't pay it, then we've got a trial and we've got a lawsuit,
6 we have bad faith and then the insurance company might be
7 found to have committed bad faith; right?
8 A That's correct.
9 Q Or maybe not at all; right, and obviously in
10 this case Nationwide believes that they have a meritorious
11 defense.
12 Now you looked at our billing records; correct?
13 A I did.
14 Q Did you look at Plaintiff's billing records?
15 A No, I didn't.
16 Q Okay. So how do you have a gauge -- how can
17 you measure Nationwide's billing records if you haven't
18 looked at Plaintiff's billing records?
19 A I know about what Plaintiff spent because I
20 inquired about that.
21 Q How much?
22 A I think it was maybe five or six hundred
23 thousand.
24 Q How about \$850,000 as of last year?
25 A That may be current.

253

1 Q And that's a lot of money; right?

2 A Well, I'm not so sure. Let me put it like

3 this: The money may not be as important as the number of

4 hours that were invested in the case.

5 Q It's a lot of hours that they worked?

6 A Yes.

7 Q And Mr. Mayerson is a very zealous lawyer;

8 right, and every zealous lawyer deserves a zealous defense;

9 right? Do you know how many hours Mr. Mayerson spent on his

10 motion for summary judgment?

11 A No.

12 Q How about if I told you it was 290 hours?

13 A (No response.)

14 Q Do you know how many hours Mr. Mayerson spent

15 on miscellaneous motions that were denied? One hundred

16 eleven hours.

17 His trial brief was billed out at 237 hours, okay.

18 Now does Nationwide not have a right to defend themselves to

19 answer these motions? Do they?

20 A Sure.

21 Q Okay. His motion for summary judgment was

22 five hundred paragraphs. Have you ever seen a five-hundred

23 paragraph motion for summary judgment in any case?

24 A I'm sure I have.

25 Q It's a big one; right?

254

1 A (Witness nods.)

2 Q Do you know how many hours it takes to respond

3 to a five-hundred paragraph motion for summary judgment?

4 A (No response.)

5 Q It takes a lot of hours; right?

6 Now you worked in the insurance industry and say you

7 worked for defense lawyers defending a case and plaintiff

8 just filed a five-hundred paragraph motion for summary

9 judgment. It's time to settle. Don't respond to that. We

10 don't want to have any argument by plaintiff that you were

11 overbilling the case. You wouldn't say that either. You

12 would say respond to it; right?

13 A Economically.

14 Q You'd be committing malpractice as a lawyer if

15 you didn't?

16 A That's true.

17 Q Do you know how much effort Mr. Mayerson spent

18 on experts that were never called to testify in this case?

19 How about Mr. Barone, did Mr. Barone ever testify in this

20 case?

21 THE COURT: Not so fast.

22 BY MR. COHEN:

23 Q Now do you know how much effort went into that

24 witness; depositions, document productions, motions?

25 A No.

255

1 Q It's a lot. Do you know that there were --

2 MR. H. MAYERSON: Objection.

3 BY MR. COHEN:

4 Q Did you know that there were nine complaints;

5 eight of which were class action complaints filed in the case

6 in the very beginning?

7 A Yes.

8 Q Do you know there was absolutely no basis for

9 class action allegations in this case?

10 A I wouldn't know.

11 Q But you know that they were challenged, don't

12 you, you reviewed the materials in this case and I know that

13 Mr. Mayerson withdrew them.

14 A Correct.

15 Q Class actions?

16 A Yes.

17 Q Not just a bad faith case for the Bergs but

18 class actions. What does that suggest to you; does that

19 suggest to you that Mr. Mayerson was making a mountain out of

20 a mole hole?

21 A I wouldn't know.

22 Q You wouldn't know, okay. How about you looked

23 at all the records and you looked at our billing records.

24 How about all of the time that went into all of the

25 challenges and attempts to get Michael Nelson, my law partner

256

1 deposited and get him implicated in the case. Have you

2 reviewed that?

3 A No.

4 Q How about the 1963 consent decree that Mr.

5 Mayerson wanted to use that he never used? How about that?

6 Did you review that?

7 MR. B. MAYERSON: Your Honor, I have an objection to

8 state on the record.

9 THE COURT: Cross-examination. Overruled.

10 BY MR. COHEN:

11 Q Did you review that?

12 A No.

13 Q How about Mr. Walter Cohen, spent a lot of

14 time reviewing Mr. Cohen's reports or his documents, the

15 Principato matter, the consent decree, did you consider that

16 in our defense?

17 A No.

18 Q You've sat through this trial and I've sat

19 through this trial, and I sat through the first trial and a

20 lot of people in this room sat through the first trial and

21 we've been at this ten years now. You've seen their case. I

22 know you're their expert and I know you're not going to tell

23 me what I want to hear, but there's no meritorious case here

24 and we spent a lot of time defending it. Doesn't Nationwide

25 have a right to defend this case?

257

1 A Everybody has a right to defend their case.

2 Q Exactly.

3 A If I can interject here. When looking at the

4 bills I was looking for benchmarks for settling the case. I

5 felt -- I feel -- lets talk about the two different cases.

6 We're talking about the Bergs, the Berg's case, the

7 damage to their car. I didn't see that Nationwide ever

8 repaired that car or replaced that car. I would expect -- I

9 would have expected efforts would have been made to take care

10 of the car and take care of the damage to the car. What I

11 felt happened in this case with the defense is that the Bergs

12 got left behind and the issue became between Nationwide and

13 Plaintiff's law firm.

14 Q I agree with you.

15 A And we completely forgot about our insured and

16 that's the person to whom you owe to discharge the insuring

17 agreement.

18 Q I agree with you one hundred percent and we

19 talked about this before. We talked about the letter from

20 Mr. Mayerson directing Nationwide not to have any contact

21 with Lindgren, and then we talked about the conversation that

22 Mr. Stitzel had with Mr. Mayerson saying we want to live by

23 our obligation. Let us help and we know about the

24 conversation Mr. Bashore had with Mr. Mayerson where he said

25 we want to live by our commitment. We want to have the

258

1 vehicle inspected. We know that Nationwide was trying to do

2 right. We also know that within a week a lawsuit was filed.

3 Now we know that the lawsuit was filed because

4 Lindgren filed a rule to file the complaint; right?

5 A Correct.

6 Q And you know that Nationwide never had

7 anything to do with that; correct, it was Lindgren who forced

8 them to file a lawsuit; right?

9 A That's right.

10 Q Okay. Plaintiffs could have just sued

11 Lindgren, not sued Nationwide at that time and tried to work

12 it out with Nationwide; right?

13 A That's true.

14 Q But they didn't and they sued Nationwide and

15 soon thereafter it became a class action. Now, you talk

16 about the Bergs being left behind. I see a case where

17 Nationwide was trying to inspect the vehicle, was trying to

18 contact Lindgren, was told not to. Mr. Bashore said we'll

19 buy the car if it can't be fixed. That's what Nationwide was

20 doing. Mr. Mayerson was filing class action law suits. Now

21 who's leaving the Bergs behind? How come Mr. Mayerson --

22 THE COURT: Let him answer the question.

23 BY MR. COHEN:

24 Q Who's leaving the Bergs behind?

25 A Both parties are leaving the Bergs behind.

259

1 But the obligation to the Bergs was Nationwide's.

2 Q I understand that. I understand that

3 Nationwide had obligations to the Bergs and Nationwide

4 understands that. Nationwide was trying to live up to those

5 obligations but they were being blocked. They were trying.

6 Now Mr. Phillips inspected the car, said the vehicle

7 was unsafe in November. Mr. Mayerson never told Mr. Berg the

8 vehicle was unsafe. Who's leaving the Bergs behind?

9 Nationwide never knew about the inspection, by the way.

10 who's leaving the Bergs behind?

11 A Well, I wouldn't know whether Mr. Mayerson

12 informed the Bergs about the safety of the car. I don't

13 know.

14 Q You said -- there's a another statement in

15 your report and you talk about insured claimants are much

16 more eager than claim representatives to get these claims

17 resolved, and you were talking about the whole defense of

18 these things. I want to ask you to pick up the book again we

19 referred to earlier and turn to Page 193.

20 THE COURT: How much longer are we going to be?

21 MR. COHEN: Not much longer.

22 BY MR. COHEN:

23 Q One hundred ninety-four, I'm sorry, the bottom

24 of the page it says: On the surface it might appear that

25 claim representative or insurance company would be much more

260

1 powerful than an insured or claimant. The insurance company

2 is typically worth millions or hundreds of millions of

3 dollars. Furthermore, the claim representative has no

4 personal stake in the suit and usually does not have to

5 testify as the witness. Nevertheless, insurance companies

6 and claim personnel in particular are extremely sensitive

7 about litigation. Litigating cases are often regarded as

8 failures.

9 In addition, the expense of litigation is one of the

10 most closely scrutinized of all insured expenses. For the

11 claim representative involved, litigated cases are enormously

12 time consuming. Most claim representatives have case loads

13 based on the assumption that all cases will be quick and

14 routine matters. Naturally, not every case is quick and

15 routine. But an inordinate number of cases effect the claim

16 representative's inability to handle his or her entire case

17 load.

18 You would agree with that, wouldn't you?

19 A Yes.

20 MR. H. MAYERSON: What page was that again?

21 MR. COHEN: One hundred ninety-four.

22 BY MR. COHEN:

23 Q Isn't it possible that this is one such case

24 that Nationwide was simply defending the actions of an over

25 zealous plaintiff's attorney?

IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

1 A Well then they certainly went about it in a
2 way I would consider unreasonable.

3 Q You don't know how much Nationwide offered to
4 settle this case?

5 A You know, I don't know. What I did not see in
6 the billing was what I would consider a reasonable effort to
7 initiate negotiations or use an alternative dispute
8 resolution to bring this thing to a conclusion, and I'm
9 talking about the bad faith case in particular. I'm talking
10 about the Bergs.

11 Q Do you know --

12 THE COURT: Yeah, but this all wound up to be one
13 case.

14 THE WITNESS: It did, Your Honor.

15 THE COURT: But I don't think with regard to your
16 opinion, especially the way you expressed it, that one of the
17 things that you would have wanted to look into is what
18 efforts were being made by Berg's counsel to settle the case.
19 What kind of figure did they give to Nationwide, if any, to
20 settle this case at various stages? I would think that I
21 would want to know that if I were sitting in your position
22 and had to give the kind of opinion that you were asked to
23 give in this particular case.

24 THE WITNESS: Well, I did look into that, Your Honor.

25 THE COURT: Oh, you did.

1 THE WITNESS: Yes, I did.

2 THE COURT: Did you get the information?

3 THE WITNESS: Generally, I did, yes. I know that
4 there was an offer made.

5 THE COURT: An offer made by whom?

6 THE WITNESS: By Nationwide.

7 THE COURT: No, no, no, no, no, no. I'm not
8 interested in offers made at this particular point. What
9 about offers made by Bergs do you know that they would settle
10 this case for a certain sum of money. Did you ever get into
11 that?

12 THE WITNESS: I did. I don't recall the numbers
13 specifically, but they I think the first number was probably
14 in the hundred thousand dollar range.

15 THE COURT: At what point?

16 THE WITNESS: Gosh, I can't tell you. I don't recall
17 the exact point. I don't think it was very late in the case.
18 I think it was maybe like the two or three-year level, and I
19 don't think --

20 THE COURT: Well, a hundred thousand dollars was not
21 just for the car.

22 THE WITNESS: No, that would have been for the whole
23 global settlement.

24 THE COURT: Right, for bad faith, counsel fees and
25 everything else at that point.

1 THE WITNESS: What I didn't see, Your Honor, what I
2 would have looked for was a back and forth negotiation, you
3 know, when numbers were exchanged.

4 THE COURT: I understand that?

5 THE WITNESS: You do this all the time.

6 THE COURT: Right, and I would like to see that too,
7 but it's not what you would like and what I would
8 particularly like. That's why I made the big speech that I
9 made, you know what I mean? I can't decide the case strictly
10 on what I would like to see happen.

11 BY MR. COHEN:

12 Q Mr. Chett, you said a hundred thousand
13 dollars. How about if I told you that in February of --

14 MR. B. MAYERSON: Objection, Your Honor.

15 THE COURT: Overruled.

16 BY MR. COHEN:

17 Q How about if I told you in February of 1999
18 Plaintiff's demand was \$375,000?

19 A That's not unusual.

20 Q That's not a hundred thousand dollars though?

21 A I'm saying, I said I didn't remember the
22 number, but at least I was in three figures.

23 Q Within three figures. How about if I told you
24 at some point they were after the demand became an amount
25 equal to what Nationwide has paid their own attorneys, no sum

1 certain, just whatever Nationwide paid their attorneys?

2 A We all get those demands but what we do when
3 they get those demands --

4 Q How did you know Nationwide didn't try to sit
5 down and talk to the Mayersons?

6 A I didn't see it in your bills. That doesn't
7 mean it wasn't there.

8 Q It was possible we would have redacted
9 settlement negotiations.

10 MR. B. MAYERSON: If he wants to un-redact these
11 records I think he's just waived the privilege.

12 MR. COHEN: We haven't waived anything.

13 MR. B. MAYERSON: He is using the privilege as a
14 sword and it's clear --

15 THE COURT: All of this testimony is with regard to
16 an opinion of an individual who has been submitted as an
17 expert to give an opinion; not a fact witness, as an opinion,
18 and you're still pursuing that opinion to have the Court
19 accept that opinion as coming from someone who is qualified
20 to give an opinion. That's the context in which all of this
21 is coming out.

22 MR. B. MAYERSON: I still --

23 THE COURT: Plus the fact it's an answer to my
24 question, and that's one nice thing about being a judge. I
25 can ask any question I want.

1 BY MR. COHEN:

2 Q The plain facts of the matter, Mr. Chett, is
3 that you know that there were discussions about settlement
4 and we don't need to get into specific amounts, but --

5 MR. B. MAYERSON: Your Honor, I do object. He has
6 just relied on redactions to claim logs that weren't
7 produced. There were no settlement discussions from
8 Nationwide. Beyond one single offer there was never any
9 attempt to do anything and now he's representing based upon
10 redactions not produced that there were.

11 THE COURT: I'm only interested in what this witness
12 was aware of and what this witness was not aware of. Either
13 because he asked the question or he didn't ask the question,
14 you see what I mean, and what answer he got and whether or
15 not he took that into consideration in determining whether or
16 not this case should have been settled because that's what
17 he's been saying here for the last two hours. This case
18 should have been settled. This case should have been
19 settled.

20 If this was one of my companies or one of the
21 companies I ran, this case would have been settled. And you
22 know what? I believe him because I think that he's strong
23 enough that he would have told whoever there was to tell
24 including Mr. Cohen this is what we're going to do, and I'm
25 not suggesting that he wouldn't take that same directive from

1 whomever. But, yes, that's where the testimony is right now.
2 what he would have done he hasn't said what they do in other
3 companies. He hasn't said what is done throughout the State
4 of Pennsylvania, what is done in western Pennsylvania, what
5 is done in eastern Pennsylvania. He hasn't given any of
6 that. He has no basis for that opinion other than what he
7 would have done in this kind of case be it back in 1960,
8 1970, 1980, '90 or the last year, 2000 when he got his last
9 pay check or something like that.

10 Okay. Go ahead. Lets wrap it up here. If you have
11 something important to ask, ask it. I have a court reporter
12 here who has a small child and has to go.

13 MR. COHEN: I'm going to object to this witness
14 testifying on this issue.

15 THE COURT: Very good. Lets go. I want to get
16 finished with this phase of the case here today.

17 MR. B. MAYERSON: May I ask the witness some
18 questions, Your Honor?

19 MR. B. MAYERSON: Yes.

20 REDIRECT EXAMINATION

21 BY MR. B. MAYERSON:

22 Q I'm going to show you one of the billing
23 records that you reviewed for a date May 28th, 1998, which is
24 approximately three weeks after the lawsuit was filed.

25 MR. COHEN: I'd like to see a copy of that if I may.

1 MR. B. MAYERSON: Sure, here you go. Let me hand
2 this to you and I can take my copy back.

3 THE COURT: Whose billing records?

4 MR. B. MAYERSON: These are Nationwide's billing
5 records produced pursuant to court order.

6 MR. COHEN: Your Honor --

7 THE COURT: He's already said he was familiar with
8 Nationwide's billing records.

9 MR. B. MAYERSON: The billing records reflect my
10 efforts to settle the case, and I'm referring specifically to
11 an entry dated May 28th, 1998.

12 THE COURT: That's the reason why it's good to say,
13 I'm showing you something that purports to represent that on
14 such and such a date that we made an offer to settle this
15 case for such and such an amount. Is that what that entry
16 says? Then he says yes or no. Then you go on to the next
17 question.

18 MR. B. MAYERSON: I wish it said that much.

19 THE COURT: Go ahead, try it that way.

20 BY MR. B. MAYERSON:

21 Q Mr. Chett, in Nationwide's attorney billing
22 records on May 28, 1998 reflect that they received a call
23 from Plaintiff's attorney?

24 A Yes.

25 Q And that the purpose of the call was to make

1 arrangements for an inspection of the vehicle and a possible
2 buyout by Nationwide?

3 A Yes.

4 Q And then on --

5 MR. COHEN: Objection. what does that have to do
6 with settling the case?

7 THE COURT: Overruled. Go ahead.

8 BY MR. B. MAYERSON:

9 Q And then on June 15th, 1998, on the next page,
10 Mr. Chett -- wait -- does that not reflect Nationwide's
11 rejection of our request to have the vehicle inspected within
12 30 days?

13 A Yes.

14 Q And on June 24th, 1998 does Nationwide's
15 attorney billing records not reflect that they received a
16 call from Plaintiff's attorney regarding possible settlement?

17 A Yes, it does.

18 MR. B. MAYERSON: I'd like to mark exhibit --

19 THE COURT: What is it?

20 MR. B. MAYERSON: Our attempts to resolve the claim
21 and have the vehicle inspected.

22 THE COURT: This is your witness. This is redirect
23 testimony. This is way beyond the testimony that you offered
24 here, and the effort is not to by the end of the week that in
25 your 16 boxes, that both sides have out here filled with

1 documents, is going to be on the desk here of Mrs. Cintron.

2 MR. B. MAYERSON: May I ask the questions without
3 marking this as an exhibit?

4 THE COURT: Yes, you may.

5 BY MR. B. MAYERSON:

6 Q Sir, I've handed you several letters dated
7 June 1st, 1998 through January 13th, 1999.

8 MR. COHEN: Excuse me. May I have a copy of those
9 letters, please?

10 MR. H. MAYERSON: You did and threw it down on our
11 desk.

12 MR. COHEN: May I have a copy, please? Thank you.

13 BY MR. B. MAYERSON:

14 Q With regard to the first letter, Mr. Chett,
15 did Nationwide's counsel advise us on June 1st, 1998 that we
16 were not permitted to dispose of the vehicle and that we had
17 to maintain it in its present condition for them to complete
18 their inspection?

19 A Yes, it does.

20 Q And is this not after the Potosnak inspection

21 --

22 MR. COHEN: I'm going to object. This is outside the
23 scope of my cross-examination. It's outside the scope of his
24 direct examination.

25 MR. B. MAYERSON: Your Honor, there was

1 cross-examination for about half --

2 THE COURT: Sustained. Next question.

3 BY MR. B. MAYERSON:

4 Q On June 1st, 1999 --

5 MR. COHEN: Same objection. He's referring to just
6 more letters.

7 MR. B. MAYERSON: Your Honor, these are our attempts
8 to resolve the claim early. It has been established --

9 THE COURT: Then ask a question. There's such a
10 thing as asking a question.

11 BY MR. B. MAYERSON:

12 Q Sir, what does the letter from Plaintiff's --

13 THE COURT: No, not that. Ask the question.

14 BY MR. B. MAYERSON:

15 Q Doesn't the letter --

16 THE COURT: I'm about to recess until tomorrow
17 morning and tell the witness that you are excused and express
18 my appreciation for you putting up with all of this. Is that
19 what you want me to do?

20 MR. B. MAYERSON: No, Your Honor.

21 THE COURT: Then ask the question properly, and I'm
22 telling you it is now 10 minutes to 5:00 and Ms. Cintron has
23 to get out of here and I should get out of here as well.

24 Everybody ought to be out of here by now.

25 BY MR. B. MAYERSON:

1 Q Mr. Chett, after having reviewed --

2 MR. B. MAYERSON: Your Honor, I'm trying to get
3 evidence in --

4 THE COURT: I can't help it if you don't know how to
5 get it in. I was not your law school professor and your
6 evidence professor or whatever. By the way, as far as
7 defense is concerned, you said you had some witnesses for
8 tomorrow. I doubt we'll get to those witnesses.

9 MR. COHEN: Your Honor, I have one witness who is
10 flying in from out of state that I believe Mr. Mayerson has
11 called as a witness, Dave Bano, but I would ask that since
12 he's a Senior Vice-President who's flying from out of state,
13 I'd like to accommodate at least him tomorrow.

14 THE COURT: What time?

15 MR. COHEN: The earlier the better. Mr. Mayerson has
16 called him as a witness, so the sooner we can get him on, the
17 better.

18 THE COURT: All right. Go ahead.

19 BY MR. B. MAYERSON:

20 Q Mr. Chett, after reviewing the records and
21 letters that I just handed you, do they reflect efforts by
22 Plaintiff's to settle the case in '98 in your opinion?

23 A I haven't looked at all of them.

24 Q And by settle the case I mean have Nationwide
25 complete the inspection in it's either of May 19th, 1998 --

1 MR. COHEN: Objection.

2 THE COURT: Overruled.

3 THE WITNESS: They do.

4 BY MR. B. MAYERSON:

5 Q Mr. Chett, was the dollar figure that
6 Nationwide spent to defend this case material to your
7 opinions today?

8 THE COURT: He already said so, yes.

9 BY MR. B. MAYERSON:

10 Q May we have what that figure was?

11 MR. COHEN: Objection.

12 THE COURT: What figure was?

13 MR. B. MAYERSON: The amount Nationwide spent to
14 defend this case.

15 THE COURT: That's not material or relevant to his
16 opinion. You people all know what it is. I'm the only one
17 that doesn't know and I'm not interested at this particular
18 point. It may be material later on with regard to one of the
19 other claims that you have, but not with regard to this one.

20 Let's go. How many more minutes do you need?

21 MR. B. MAYERSON: Hardly any.

22 THE COURT: Good.

23 BY MR. B. MAYERSON:

24 Q Is the testimony you have given as to
25 Nationwide's over zealous defense based on industry

1 standards?

2 A Yes.

3 Q And have your opinions been given to within a
4 reasonable degree of certainty?

5 A They have.

6 Q Professional certainty?

7 A They have.

8 Q Mr. Chett, do you have an opinion as to what
9 should have happened on April 8th, 1998?

10 THE COURT: Mr. Cohen, we're in recess until tomorrow
11 morning at 9:30. Mr. Chett, you have to be back. I've done
12 everything I could and that's it. 9:30. Don't look at me
13 like that.

14 MR. B. MAYERSON: Your Honor, I'll withdraw the
15 question if we can let Mr. Chett leave.

16 THE COURT: I'm not too sure we can let him leave
17 anyway. I'm sure Mr. Cohen has some questions for him as a
18 result of some of the matters you forgot to ask on direct
19 examination and now you're asking at this particular point.

20 THE COURT: Mr. Cohen, do you need him tomorrow
21 morning?

22 MR. COHEN: No, I'm done. I maintain my objection to
23 his ability to testify on this issue. I'm willing to end my
24 questioning at that point.

25 THE COURT: All right. Is the questioning finished

1 with regard to Mr. Chett? Is it?

2 MR. B. MAYERSON: May I have the witness identify
3 these records?

4 MR. COHEN: Then I'm not done. Then I'm not done.
5 If he's going to testify to those documents then I'm going to
6 recross him.

7 MR. B. MAYERSON: Your Honor, I don't know how we
8 would get the bills in if we didn't authenticate them.

9 THE COURT: Mr. Mayerson, I'm going to tell you,
10 we're not going to complete this case during the time frame
11 set aside for this second phase and you're looking at the
12 earliest possible date to come back probably in November, so
13 if you want to keep extending this case at how long it's
14 going to take and whatever, that's up to you.

15 MR. B. MAYERSON: I will agree to withdraw our expert
16 tomorrow.

17 THE COURT: Withdraw your expert tomorrow.

18 MR. B. MAYERSON: Mr. Schwartzman who was going to
19 come in tomorrow if I'm permitted to testify to the facts
20 that Mr. Cohen cross-examined Mr. Chett on being whether we
21 made any effort to resolve the claim before we filed suit,
22 what happened before we filed suit, and if I can take the
23 stand he can cross-examine me. We won't call Mr. Schwartzman
24 as an expert.

25 THE COURT: Mr. Mayerson, I don't care what you do.

1 This is between you two to decide what you're going to put on
2 and at what particular point. The only thing I'm interested
3 in at this point is that are there any more questions for
4 Mr. Chett or can he be released as a witness in this case not
5 to be recalled, yes or no?

6 MR. B. MAYERSON: May I talk to Mr. Cohen one second?

7 THE COURT: Yes.

8 MR. B. MAYERSON: Your Honor our witness cannot come
9 back tomorrow, so we'll just --

10 THE COURT: Are there any further questions for your
11 witness, yes or no?

12 MR. B. MAYERSON: No, Your Honor.

13 Yes. Wait. We would like the witness to
14 authenticate this document.

15 MR. COHEN: How can a witness authenticate our
16 billing records? How can he do that?

17 MR. B. MAYERSON: Will you stipulate to them?

18 MR. COHEN: No.

19 MR. B. MAYERSON: No further questions, Your Honor.

20 THE COURT: All right. For the fifth time, Mr. James
21 Chett, you are --

22 THE WITNESS: I'm out of the box.

23 THE COURT: You're out of the box and we won't be
24 seeing you again. I wouldn't blame you. All right. We're
25 in recess until tomorrow morning at 9:30

1 (Whereupon, court was adjourned at 5:00 p.m.)

6/7/07 Trial Transcript

1 (Reading, Pennsylvania, Thursday, June 7, 2007 at 9:30 a.m.)
 2 THE COURT: Next witness.
 3 MR. B. MAYERSON: Your Honor, we have a little
 4 problem in the witness line up. David Cole was subpoenaed to
 5 appear two days ago and isn't here yet. He's a former
 6 Nationwide claims attorney. We have scheduled
 7 Mr. Schwartzman, another expert of ours, to come in this
 8 morning and we have elected not to call him because we want
 9 the trial over and we don't want it to spill over past
 10 Monday. We simply cannot afford that.
 11 THE COURT: Monday, noon, at the latest.
 12 MR. B. MAYERSON: We're not calling him because we
 13 can't afford Mr. Cole to cross-examine him all day --
 14 THE COURT: Am I supposed to be concerned about all
 15 these things you're talking about? Do you have another
 16 witness?
 17 MR. B. MAYERSON: All I want to do is --
 18 THE COURT: Are you ready to rest?
 19 MR. B. MAYERSON: No, we're not ready to rest, Your
 20 Honor.
 21 THE COURT: Well then call your next witness.
 22 MR. B. MAYERSON: I have to protect the record and
 23 all I want to do is preserve an objection.
 24 THE COURT: An objection to what?
 25 MR. B. MAYERSON: To the redactions taken from the

1 claim file pursuant to the attorney/client privilege that
 2 were improper. We have filed repeated motions for in camera
 3 review and Judge Lash has ruled that they were untimely and
 4 all I want to do is make sure --
 5 THE COURT: What were they untimely for?
 6 MR. B. MAYERSON: The motion.
 7 THE COURT: Why did Judge Lash say they were
 8 untimely?
 9 MR. B. MAYERSON: Because discovery was closed.
 10 THE COURT: All right. He's ruled on it. I'm not
 11 going to get into that area.
 12 MR. B. MAYERSON: I understand. I want to preserve
 13 the objection.
 14 THE COURT: We both handle the same schedule. He
 15 handles all preliminary matters. I handle the trials.
 16 MR. B. MAYERSON: I just want to draw to the Court's
 17 attention --
 18 THE COURT: It's of no concern of mine.
 19 MR. B. MAYERSON: Thank you, Your Honor.
 20 MR. COHEN: Your Honor, if I may, Mr. Mayerson
 21 noticed --
 22 THE COURT: Wait a minute. I want to know who is
 23 your next witness.
 24 MR. B. MAYERSON: We have Katherine Van Gorder here
 25 to testify, but we're on the doorstep of a stipulation to

1 admit Nationwide's annual report in lieu of her testifying.
 2 Mr. Cohen has come so far to agree that it's acceptable --
 3 THE COURT: I don't care what you've done up to this
 4 point. You either have a stipulation or you have a witness
 5 and you have testimony and my purpose is to move this matter
 6 along, and I'm not going to recess for an hour while you
 7 continue to negotiate while you go out and have coffee while
 8 you go out and watch the cycle race or whatever you want to
 9 do. I want a witness, otherwise your case is closed, you
 10 rest.
 11 MR. B. MAYERSON: Mr. Cohen, do we have a stipulation
 12 to the annual report?
 13 MR. COHEN: Your Honor, we would be willing to
 14 stipulate that Nationwide --
 15 THE COURT: I can't care what you're willing to
 16 stipulate. Do you have a stipulation?
 17 MR. COHEN: No, we do not.
 18 THE COURT: If so --
 19 MR. COHEN: We do not.
 20 THE COURT: The answer is no.
 21 MR. B. MAYERSON: Okay.
 22 THE COURT: Why waste the time to tell me what you
 23 would like and everything else and it's --
 24 MR. B. MAYERSON: Plaintiffs call Katherine Van
 25 Gorder --

1 MR. COHEN: Your Honor, just one thing. Mr. Mayerson
 2 noticed to attend Dave Bano. He is a Senior Vice-President
 3 of Claims for Nationwide. He's in the courtroom today. He
 4 flew out from Columbus. Mr. Mayerson now tells us that he
 5 does not intend on calling Mr. Bano. This is the second time
 6 we've had to fly Mr. Bano out for trial.
 7 THE COURT: I thought you said Monday that you needed
 8 him for the trial.
 9 MR. B. MAYERSON: I will call him, but I don't want
 10 this to go past Monday. I'm trying to cut the case down.
 11 THE COURT: You're either going to call him or not
 12 call him. If you're going to call him, call him as your
 13 first witness so he can get on the plane and go back to
 14 wherever he wants to go back to.
 15 MR. B. MAYERSON: I would rather -- I don't want to
 16 call him.
 17 MR. COHEN: Then we'd --
 18 THE COURT: Therefore he's excused as a witness.
 19 MR. COHEN: Thank you, Your Honor.
 20 THE COURT: Go back and give him a hug and say thank
 21 you very much on behalf of everybody. You may want to stick
 22 around and watch our bicycle race in town.
 23 MR. BANO: I would love to, but I have a lacrosse
 24 game for my son tonight.
 25 THE COURT: Very good. And I assume that was the

1 witness you were going to call out of order if he came or is
2 there another witness?

3 MR. COHEN: Yes.

4 THE COURT: Okay. All right. Plaintiff's next
5 witness.

6 MR. B. MAYERSON: Plaintiffs call Katherine Van
7 Gorder as an expert on finances and bookkeeping. Your Honor,
8 at the risk of irritating you further we did request an
9 opportunity to move into evidence the portions of testimony
10 from the first trial that I spent last night and early this
11 morning --

12 THE COURT: Of Katherine Van Gorder?

13 MR. B. MAYERSON: Well, my co-counsel here has
14 impressed upon me that this should be done first.

15 THE COURT: Well, tell your co-counsel to stay out of
16 it. I can only handle one of you guys at a time. I
17 certainly can't resolve arguments between the two of you as
18 well.

19 Is Katherine Van Gorder spelled with either a "C" or
20 a "K"?

21 MS. VAN GORDER: "K."

22 THE CLERK: Raise your right hand and place your left
23 hand on the Bible.

24 KATHERINE VAN GORDER, Sworn.

25 THE CLERK: Please be seated and state your full name

1 is a question that the Court will determine at the
2 appropriate time. And whether or not it has weight, the
3 Court will determine that at a later time as well and what
4 weight in relation to other testimony on the same subject the
5 Court will determine that at an appropriate time but not now,
6 merely that he is qualified to give the opinion that he did.

7 Okay. Now go ahead, I'm sorry.

8 MR. COHEN: It is Nationwide's position that Ms. Van
9 Gorder is not qualified to render the opinions that we
10 anticipate she's going to render based on her report that was
11 submitted and that all she did was go on to the internet,
12 pull up Nationwide's annual report and make some speculative
13 conclusions about what kind of award Nationwide could bear.
14 We believe that she's offered nothing more than what Your
15 Honor could do and that's go on and look at Nationwide's
16 financial statement yourself. We don't believe that Ms. Van
17 Gorder is qualified to testify as an expert in this regard.

18 MR. B. MAYERSON: Your Honor, in chambers at the
19 start of this matter we had addressed this issue and you said
20 you would let her testify, weighing her opinions based on her
21 background and you may give it no weight at all or some
22 weight as appropriate. And we also discussed the fact that
23 under Pennsylvania law --

24 THE COURT: Did I say also at that particular point
25 that I found her qualified to establish Nationwide's net

1 for the record.

2 THE WITNESS: Katherine A. Van Gorder, V-A-N, capital
3 G-O-R-D-E-R.

4 THE COURT: Okay.

5 VOIR DIRE EXAMINATION

6 BY MR. B. MAYERSON:

7 Q Ms. Van Gorder --

8 THE COURT: Now you're calling her as an expert on
9 bookkeeping?

10 MR. B. MAYERSON: And finances.

11 THE COURT: And finances.

12 MR. B. MAYERSON: For the purposes of establishing
13 Nationwide's net worth and ability to sustain an award
14 against them in this bad faith action.

15 THE COURT: What's your position?

16 MR. COHEN: Your Honor, this was one of our motions
17 in limine on qualifications. It's Nationwide's position that
18 Ms. Van Gorder is not qualified to testify.

19 THE COURT: By the way, I'm sorry. I want to start
20 this morning by giving you my ruling with regard to the last
21 witness yesterday. I forgot to do that.

22 with regard to the third opinion given by James
23 Chett, C-H-E-T-T, the Court finds that he is qualified to
24 give the opinion that he did in this regard, however as
25 stated previously, whether or not that testimony is relevant

1 worth and ability to absorb whatever kind of verdict there
2 may be in this case? I don't think so. I'm going to handle
3 this the same as I did the testimony of James Chett. We will
4 listen one by one to what her opinions are. They must be
5 clearly elicited and enunciated so we know exactly what the
6 opinion is, and then we will hear your testimony in support
7 of that opinion and we will hear the cross-examination and
8 then the Court will decide whether or not she's even
9 qualified or if she is qualified as I did hear Mr. Chett
10 whether or not the testimony is relevant. And if it's
11 relevant what weight, if any, does it have. That's the only
12 way I know how to do this.

13 MR. B. MAYERSON: Your Honor, we have six opinions
14 set forth the way you like them to be set forth.

15 THE COURT: All right. Lets take the first one.

16 MR. B. MAYERSON: Defendant, Nationwide Mutual
17 Insurance Company, maintains an A-plus rating, which is
18 defined by A.M. --

19 THE COURT: Is that written somewhere in your trial
20 brief?

21 MR. B. MAYERSON: Yes.

22 THE COURT: Where?

23 MR. B. MAYERSON: Appendix 7, Page 21 and 22.

24 THE COURT: You have an appendix?

25 MR. B. MAYERSON: Yes.

285

1 THE COURT: All right. Mr. Cohen, do you have a copy
2 of that?

3 MR. COHEN: Yes, Your Honor.

4 THE COURT: All right. You may ask her whether that
5 is her opinion.

6 MR. B. MAYERSON: May I hand the witness a copy of
7 the opinions?

8 THE COURT: Yes. All right. That number one
9 represents your first opinion allegedly, and it's on Page 21
10 which the Court is now going to incorporate into its notes.
11 Is that your opinion that Nationwide Mutual Insurance Company
12 maintains an A-plus rating which is defined by A.M. Best
13 Company as having a quote, superior ability to meet their
14 ongoing obligations to the policyholders, end quote?

15 THE WITNESS: Yes, it is my opinion.

16 THE COURT: Go ahead.

17 MR. B. MAYERSON: Your Honor, should I proceed with
18 the next opinion?

19 THE COURT: No. We're going to have to give
20 supporting evidence of that and I just don't take her opinion
21 because she has an opinion. I have to know what is the basis
22 for that opinion.

23 DIRECT EXAMINATION

24 BY MR. B. MAYERSON:

25 Q Ms. Van Gorder, tell the Court what the basis

286

1 is for your opinion in that regard?

2 A I investigated the A.M. Best reports on the
3 internet and found that they regard Nationwide Mutual
4 Insurance Company as highly lucrative and profitable.

5 Q Just to the first one maybe -- that is to the
6 first one -- I'm sorry, go ahead. I'm sorry to interrupt
7 you.

8 THE COURT: Limit your testimony to your first
9 opinion, opinion one, okay?

10 BY MR. B. MAYERSON:

11 Q Do you have anything further?

12 A No.

13 Q Are you familiar with the text A.M. Best and
14 what it represents?

15 A Yes, they're a highly regarded company that
16 does rating procedures on various companies, particularly the
17 insurance field, but also with publicly traded companies.

18 Q To your knowledge is it an industry standard
19 text?

20 A Yes.

21 MR. B. MAYERSON: Thank you.

22 THE COURT: Cross-examine.

23 CROSS-EXAMINATION

24 BY MR. COHEN:

25 Q Ms. Van Gorder, is Nationwide's rating of

287

1 A-plus something that is determined by A.M. Best Company or
2 by you?

3 A By A.M. Best.

4 Q Okay. If I looked at A.M. Best Company's
5 report would I see that Nationwide has an A-plus rating?

6 A Yes, you would.

7 Q And if the judge looked at it, the same thing?

8 A Yes.

9 Q Really you're not offering an expert opinion
10 as to anything; you're reading what the A.M. Best reported
11 and testifying that's what it says?

12 A I'm offering that that's what I discovered,
13 yes.

14 MR. COHEN: Okay. Nothing further. Wait, one more
15 question.

16 BY MR. COHEN:

17 Q When you did this, what year was that that you
18 did that?

19 A It was 2002 fiscal year that I was looking at,
20 but I have looked at the succeeding years through 2006 and
21 they still maintain the A-plus rating with A.M. Best.

22 MR. COHEN: Thank you.

23 THE COURT: Now does this is A-plus rating indicate a
24 superior ability to meet ongoing obligations?

25 THE WITNESS: That's right, sir.

288

1 THE COURT: An ongoing obligation to policyholders?

2 THE WITNESS: Right.

3 THE COURT: Do you know what that means? what does
4 that mean? what kind of obligations to policyholders?

5 THE WITNESS: That if a policyholder files a claim
6 for benefits, then Nationwide will have the funds available
7 to honor that claim.

8 THE COURT: Does it also cover ongoing ability to pay
9 punitive damages, and I assume you know what punitive damages
10 are?

11 THE WITNESS: Yes, I do. I don't know that any
12 company would have --

13 THE COURT: That ongoing obligation?

14 THE WITNESS: I don't know that any company would
15 have the knowledge or the inclination to set aside funds for
16 that, but they do have a sizable -- according to their
17 reports -- they have a sizable unassigned surplus which could
18 be used --

19 THE COURT: But this designation, I assume and I've
20 never seen the A.M. Best Company document that you're talking
21 about and I really don't care to see it because you quoted
22 from it as to what it represents, it represents a superior
23 ability to meet ongoing obligations to policyholders and I'm
24 asking you whether or not in your opinion if one of these
25 ongoing obligations includes punitive damages?

IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

1 THE WITNESS: well, punitive damages would not be a
 2 benefit of a policyholder as a rule.
 3 THE COURT: So therefore it did not include that?
 4 THE WITNESS: Right.
 5 THE COURT: Okay. Anything further on this?
 6 MR. COHEN: No, Your Honor.
 7 THE COURT: Well, in either event, her opinion that
 8 she just gave at this point is totally irrelevant. There's
 9 no question in this case as to whether or not Nationwide has
 10 a superior ability to pay its ongoing claims of policyholders
 11 whether it's for personal loss or whether it's for property
 12 damage loss, and I think that that's what this statement
 13 represents and that's not relevant in either event. All
 14 right. Lets go onto opinion two.
 15 REDIRECT EXAMINATION
 16 BY MR. B. MAYERSON:
 17 Q Ms. Van Gorder, do you have -- first of all,
 18 is opinion number 2, your opinion, do you agree with that?
 19 THE COURT: No, no, no, not whether she agrees with
 20 it. This is not in substitution of testimony, okay. Ask a
 21 question.
 22 BY MR. B. MAYERSON:
 23 Q Ms. Van Gorder, may I have the document. Is
 24 it your opinion, Ms. Van Gorder, that as of fiscal year
 25 ending 2002, Nationwide Mutual Insurance Company --

1 THE COURT: Do you know the total assets of
 2 Nationwide as of the fiscal year ending 2002?
 3 THE WITNESS: I found the total assets to be in
 4 excess of \$19 million in 2002 based on the reports filed for
 5 the SEC, the reports to the stockholders and the compilation
 6 done by A.M. Best.
 7 THE COURT: Okay. Any more questioning with regard
 8 to that?
 9 MR. B. MAYERSON: May I follow up with one question?
 10 THE COURT: Go ahead.
 11 BY MR. B. MAYERSON:
 12 Q Ms. Van Gorder, would you like to take a look
 13 at your report and see if that refreshes your recollection as
 14 to the number?
 15 A Nineteen billion, I'm sorry. I dropped a
 16 decimal.
 17 RECROSS-EXAMINATION
 18 BY MR. COHEN:
 19 Q Ms. Van Gorder, as of what year is that?
 20 A 2002.
 21 Q As we sit here today what is Nationwide's
 22 reported total assets?
 23 A As memory serves me I believe it was 116
 24 billion.
 25 THE COURT: How much?

1 THE WITNESS: One hundred sixteen billion.
 2 THE COURT: Okay.
 3 MR. COHEN: One hundred sixty billion?
 4 THE COURT: One hundred sixteen billion.
 5 BY MR. COHEN:
 6 Q One hundred sixteen billion. In four years it
 7 went from \$19 billion to \$116 billion?
 8 A Is that what that report says that I've given?
 9 Q I'm just asking you if you know.
 10 MR. B. MAYERSON: Can she look at her report she's
 11 testified to?
 12 THE COURT: The annual report?
 13 MR. B. MAYERSON: The document from which she did her
 14 research to answer his question.
 15 THE COURT: All right.
 16 THE WITNESS: \$119 billion.
 17 THE COURT: So it went up from 19 to \$119 billion?
 18 THE WITNESS: In total assets, right. This is from
 19 their 2006 annual report from Nationwide to the stockholders.
 20 MR. COHEN: May I see that document, ma'am?
 21 BY MR. COHEN:
 22 Q It says here, total assets, 2002, \$96 billion
 23 and then for 2006, \$119 billion. You said the assets were
 24 \$19 billion which one, is it 19 or is it 96? Here you can
 25 look at this again.

1 THE WITNESS: In 2006 -- the number for 2002 could
 2 very well be different from what was reported in 2002 because
 3 of changes in accounting procedures, changes in fastdb
 4 rulings for reporting changes in eliminating assets or adding
 5 assets that may not have otherwise been there.
 6 MR. COHEN: May I see that one more time please?
 7 MR. B. MAYERSON: I think the witness is confused
 8 about the year her report was written. It was written prior
 9 to the 2004 trial. It was for purposes of 2004 trial.
 10 THE COURT: She doesn't seem to me to be confused.
 11 MR. B. MAYERSON: okay.
 12 MR. COHEN: okay. I --
 13 THE COURT: Finish explaining what is probably or
 14 possibly the reason for the difference the year 2002 and what
 15 the assets are today.
 16 BY MR. COHEN:
 17 Q But that report says in 2002 it was \$96
 18 billion; correct?
 19 A Right.
 20 THE COURT: And not 19; is that right?
 21 THE WITNESS: Pardon me?
 22 THE COURT: And not the \$19 billion which you
 23 testified to earlier?
 24 THE WITNESS: \$119 billion.
 25 THE COURT: In other words are you now saying that

IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

1 the total assets for 2002 were \$119 billion?
 2 THE WITNESS: No, for 2006 it's \$119.
 3 THE COURT: Answer my question.
 4 THE WITNESS: For 2002, no, I did not say 19 or 119.
 5 I said 96.
 6 BY MR. COHEN:
 7 Q Your report says 19 and your record says 19.
 8 THE WITNESS: From this report it was \$19 billion
 9 based on the 2002 records available when I did this report.
 10 THE COURT: Has that changed, the 2002 assets, since
 11 you filed your report? I wouldn't think so.
 12 THE WITNESS: Apparently it has according to their
 13 annual report.
 14 THE COURT: How could it change?
 15 THE WITNESS: I explained that if they acquired new
 16 --
 17
 18 THE COURT: No, it could change from year to year but
 19 it wouldn't change for the year. We're talking about the
 20 year ending 2002. At the end of the year there's a number.
 21 THE WITNESS: Right.
 22 THE COURT: And the number you said was \$19 billion,
 23 673 thousand -- and so on -- million or whatever. What is
 24 it? I don't think it makes any difference.
 25 MR. COHEN: I don't think it does either. I have no

1 more questions.
 2 THE COURT: Her testimony is totally irrelevant. Go
 3 on to the third opinion, if you have an opinion, and ask her
 4 a question.
 5 REDIRECT EXAMINATION
 6 BY MR. B. MAYERSON:
 7 Q Ms. Van Gorder, are you familiar with the term
 8 unassigned -- do you have an opinion as of Nationwide Mutual
 9 Insurance Company regarding their total assets increased in
 10 the fiscal year ending 2003 over 2002?
 11 A Yes, I do.
 12 Q And what is that opinion?
 13 A The total assets in 2003, according to their
 14 2006 annual report to the stockholders, the annual increase
 15 in 2003 over 2002 was \$111 billion in total assets compared
 16 to their reported \$96 billion.
 17 MR. COHEN: I'm sorry. I don't see any of that in
 18 what I'm looking at.
 19 BY MR. B. MAYERSON:
 20 Q Ms. Van Gorder, what are you reading from?
 21 A The copy of the 2006 annual report to the
 22 stockholders from Nationwide.
 23 Q where did you get it?
 24 A From the internet.
 25 Q what web page?

1 A In Nationwide's home page.
 2 Q From Nationwide's home page. And what is the
 3 annual report, who was that published to?
 4 A The stockholders.
 5 MR. B. MAYERSON: Your Honor, we would be satisfied
 6 if we could mark that as an exhibit and be done with this
 7 witness.
 8 THE COURT: Absolutely not. So far she hasn't given
 9 an opinion about anything. The only thing she's been so far
 10 is a fact witness and what she's doing is broadening -- the
 11 Court figures she accumulated from different places and she's
 12 testifying to that. And I'm saying for the most part I
 13 haven't seen anything that's relevant to this particular
 14 case. Now maybe you're going to tie it all together at a
 15 particular point from which she will give an opinion and then
 16 I will decide whether or not she's qualified to that give
 17 that opinion and whether or not that opinion is relevant and
 18 if so what weight it has, if any.
 19 MR. B. MAYERSON: Okay. Your Honor, should I move on
 20 to the next one or let Mr. Cohen cross-examine her?
 21 BY MR. B. MAYERSON:
 22 Q Mrs. Van Gorder, do you have an opinion --
 23 MR. COHEN: I'd like to cross-examine the witness on
 24 that opinion number 3.
 25 RE-CROSS-EXAMINATION

1 BY MR. COHEN:
 2 Q Ms. Van Gorder, you said that this is
 3 something that is issued to Nationwide's stockholders. Does
 4 Nationwide have stockholders?
 5 A Certainly.
 6 Q Yeah. Do you know what a mutual company is?
 7 A Broad definition, no.
 8 Q How about a specific definition?
 9 A (No response.)
 10 Q Do you know that a mutual company is a company
 11 that doesn't have stockholders, it's not a publicly traded
 12 company?
 13 A They have equity that they pay dividends to
 14 owners of the company.
 15 Q You're here to give testimony with regard to
 16 whether or not Nationwide can bear a punitive damages award
 17 and you're being proffered to the Court as an expert and you
 18 don't even know what type of company Nationwide is?
 19 A I'm not trying to say that Nationwide can or
 20 cannot afford punitive damage. All I'm reporting on is what
 21 I found in the annual reports over the years from Nationwide.
 22 Q I'm sorry. I didn't mean to interrupt you,
 23 ma'am.
 24 THE COURT: Now hold on. That means I don't want to
 25 hear anything at this point. I want to make a note if I may,

1 all right. Go ahead.

2 BY MR. COHEN:

3 Q You said that you're not here to give an
4 opinion with regard to Nationwide's ability to pay a punitive
5 damage award?

6 THE COURT: No, she didn't say that. She said she's
7 not here to testify whether Nationwide can or cannot afford
8 -- isn't that what you stated?

9 THE WITNESS: Yes. Yes, Your Honor.

10 THE COURT: -- to pay a punitive damage award.
11 Cannot afford, that's why I had to write it down. That might
12 be relevant to this case or at least to this witness. Quite
13 frankly --

14 BY MR. COHEN:

15 Q Well, that's exactly what she does say in her
16 last opinion. So, Ms. Van Gorder, if that's not the opinion
17 --

18 THE COURT: I'm not down there yet, but that's what
19 she said here. Stay with opinion number 3.

20 MR. COHEN: okay.

21 THE COURT: You might want to use that later on, but
22 --

23 MR. COHEN: I have no further questions on this
24 opinion.

25 MR. B. MAYERSON: Mrs. Van Gorder --

1 THE COURT: Are you still on number 3?

2 MR. B. MAYERSON: No, I was going to move on.

3 THE COURT: Her testimony in this regard is not
4 relevant as well. It's, without a doubt, very ambiguous at
5 best.

6 REDIRECT EXAMINATION

7 MR. B. MAYERSON:

8 Q Ms. Van Gorder, do you have an opinion as of
9 fiscal year ending 2003 --

10 THE COURT: Are you onto opinion 4?

11 MR. B. MAYERSON: Yes, Your Honor.

12 THE COURT: How about helping me out a little bit?
13 I'm helping you so damn much. You can help me out once in a
14 while. Go ahead.

15 BY MR. B. MAYERSON:

16 Q Opinion number 4. As of fiscal year -- do you
17 have an opinion as of fiscal year ending 2003 whether
18 National Wide Mutual Company reported an unassigned surplus
19 in their annual report?

20 A From what I was able to discover that's what
21 they reported, an unassigned surplus.

22 Q And what was the amount or first tell us what
23 is unassigned surplus?

24 A Unassigned surplus is another term for profits
25 that are not put in reserve for a specific need or restricted

1 because of the specific aim to spend in a certain area such
2 as for assets for debt settlement.

3 Q And does Nationwide's yearly annual report
4 give an unassigned surplus figure for each year?

5 A I did not see it in future years. I saw it in
6 that one year and at this point I honestly have to say I
7 don't recall if I saw that in the Nationwide annual report or
8 if I saw it in the A.M. Best compilation report.

9 Q Did your earlier opinions for the 2004 trial
10 come from A.M. Best rather than Nationwide's reports?

11 A From both.

12 Q Can you tell us what you relied upon
13 primarily?

14 A Primarily I relied on A.M. Best because I used
15 to work for a company as a controller, and I -- year after
16 year had to work with the C.E.O. and the president in coming
17 up with the explanations to the stockholders regarding the
18 operations and the profits and losses and the fiscal
19 management of the company. And so I know -- I have
20 experience with how the numbers are spun through the
21 explanations to the equity holders and the stake holders.

22 Q And based upon your research in 2000 -- in the
23 year that you initially wrote your report, did you find out
24 what Nationwide's reported unassigned surplus was in fiscal
25 year ending 2003?

1 A In numbers?

2 Q Yes, dollar figures.

3 A Five billion, 971 million, 572 thousand. Did
4 I say that right?

5 THE COURT: Five billion, 971 million, 572 thousand.

6 MR. COHEN: No questions.

7 THE COURT: All right. Next opinion.

8 MR. B. MAYERSON: Your Honor, I believe that the
9 witness has addressed opinion number 5 in her previous --

10 THE COURT: She hasn't addressed any opinion. She
11 hasn't given any opinion yet. She has just given
12 information, factual information. Up until this point she's
13 a fact witness. Do you want to go with what you had marked
14 as number five and go with five? Is that what you're
15 suggesting?

16 MR. B. MAYERSON: I think we can move onto number 6.
17 I think factually she addressed number 5.

18 THE COURT: All right. Go ahead.

19 BY MR. B. MAYERSON:

20 Q Ms. Van Gorder, do you have an opinion after
21 reviewing the documents that you reviewed whether or not
22 Nationwide could sustain a certain amount of loss to its
23 unassigned surplus if this Court were to decide that a
24 punitive remedy was necessary?

25 A In my opinion it could, yes. The growth of

1 Nationwide over the past five years has been --
 2 THE COURT: Just a minute. Is your question the one
 3 that she's supposed to answer or is it number six as it is
 4 written here or is this supposed to be her answer? They're
 5 not exactly the same.
 6 MR. B. MAYERSON: No, I didn't incorporate the entire
 7 number 6 into the question.
 8 THE COURT: Ask her a specific question. Should I
 9 cross out number 6 in your pretrial so there's no confusion?
 10 MR. B. MAYERSON: Yes, Your Honor.
 11 THE COURT: Okay. Go ahead. Ask the question.
 12 MR. B. MAYERSON: Your Honor, the only other thing we
 13 would like the witness to do factually is to authenticate a
 14 copy of Nationwide's annual report from this year. I'm
 15 sorry, a single page from their annual report, two pages with
 16 relevant information that the Court may find of assistance.
 17 THE COURT: It very well could be. Did you show it
 18 to defense counsel?
 19 MR. B. MAYERSON: Yes, and I'll show it to him again.
 20 THE COURT: Mark it as an exhibit, next exhibit
 21 number.
 22 MR. COHEN: I'm going to object to these.
 23 THE COURT: Let's see what it is.
 24 MR. COHEN: I'm going to object to this as well.
 25 THE COURT: I don't know what you're objecting to. I

1 don't have a copy to even look at it. Do you mind?
 2 obviously she's going to testify that this is a page out of
 3 some annual report and obviously it's out of Nationwide
 4 financial report for whatever value it is, and then you can
 5 cross-examine her on it.
 6 Which one did you give the court reporter? Did you
 7 give one to the court reporter?
 8 (Whereupon, Exhibit No. 40 was marked for
 9 identification purposes.)
 10 MR. B. MAYERSON: Your Honor, I didn't expect to call
 11 Van Gorder now and I don't have a copy right here with me.
 12 We expected Dave Cole to be here.
 13 THE COURT: Well, what will you call this; financial
 14 highlights of what, financial highlights of Nationwide?
 15 THE WITNESS: It's the annual report for 2006.
 16 THE COURT: No, no. This says financial highlights
 17 -- financial highlights and stock data of Nationwide, but
 18 does it have a year in here, 2006?
 19 THE WITNESS: At the bottom.
 20 THE COURT: It says 2006.
 21 MR. B. MAYERSON: It's at the very bottom right-hand
 22 corner, Your Honor.
 23 THE COURT: 2006, 2005, 2004, 2003 and 2002. Does it
 24 not say that?
 25 THE WITNESS: It's a comparative report.

1 THE COURT: For those years?
 2 THE WITNESS: Yes.
 3 THE COURT: 2002 through 2006, one page.
 4 THE WITNESS: It's a composite summary of their
 5 annual reports.
 6 THE COURT: That's not what it says. It says
 7 financial highlights. Now if you want to have this even
 8 admitted, I mean, marked as an exhibit, you can't change the
 9 caption here. You're calling it a summary. I don't see
 10 anything that says that it's a summary.
 11 THE WITNESS: I beg your pardon, Your Honor. I'm
 12 using summary and highlights interchangeably.
 13 THE COURT: No, no. We're talking about this one
 14 sheet of paper here. It's called financial highlights.
 15 THE WITNESS: Correct.
 16 THE COURT: Go ahead. Are you finished, sir?
 17 MR. B. MAYERSON: I'd like to ask the witness one
 18 opinion question if I may.
 19 THE COURT: One opinion.
 20 MR. B. MAYERSON: First, did we mark this?
 21 THE COURT: I have already marked it. We made copies
 22 of it.
 23 MR. B. MAYERSON: Thank you, Your Honor.
 24 THE COURT: Again in an effort to help you.
 25 BY MR. B. MAYERSON:

1 Q Mrs. Van Gorder, do you have an opinion to
 2 within a reasonable degree of accounting certainty --
 3 THE COURT: Is this one of the opinions that is in
 4 your pretrial brief?
 5 MR. B. MAYERSON: Yes, but it's toned down a great
 6 deal.
 7 THE COURT: Toned down to a great deal? Well, I
 8 suggest to you that you give me a copy of Page 22 and cross
 9 out what you want to cross out and we'll make a copy of that,
 10 and then we'll give Mr. Cohen a copy of that, give the Court
 11 a copy of it, and I assume that this is in lieu of number six
 12 as is in the trial brief.
 13 MR. B. MAYERSON: Yes, Your Honor. Your Honor, the
 14 financial highlights was marked what number?
 15 THE COURT REPORTER: Exhibit 40.
 16 MR. COHEN: I don't even know what that means. I
 17 mean, I can't even comment on it.
 18 THE COURT: He's not representing you would have any
 19 idea what it means.
 20 MR. COHEN: It's not clear. There are things
 21 underlined and crossed out. I can't comment on it. I don't
 22 even understand it. I mean, he's offering this as an opinion
 23 of his expert and I don't even understand it.
 24 THE COURT: See what it is.
 25 MR. B. MAYERSON: Your Honor, it's too hard to cross

305

1 that out.

2 THE COURT: Well, you're going to have to. We just

3 got finished. It's number six except you deleted things from

4 it. If you want my copy to cross it out, that's fine too.

5 Tell me what words you want to cross out in number six.

6 MR. B. MAYERSON: We want to change the amount.

7 THE COURT: Start with the beginning. What do you

8 want to change on that first line, anything?

9 MR. B. MAYERSON: No.

10 THE COURT: And the second line?

11 MR. B. MAYERSON: No.

12 THE COURT: And the third line?

13 MR. B. MAYERSON: No.

14 THE COURT: On the fourth line?

15 MR. B. MAYERSON: All we would like to add, we would

16 like to delete the next two lines.

17 THE COURT: Delete entirely the next two lines?

18 MR. B. MAYERSON: Right.

19 THE COURT: So just a second. I should cross out the

20 fourth line completely and therefore put a period after the

21 words "in the preceding"?

22 MR. B. MAYERSON: Your Honor --

23 THE COURT: Answer my question.

24 MR. B. MAYERSON: We would like to cross out the

25 entire bottom line.

306

1 THE COURT: Can't you do it the way the Court

2 suggested? Take it line by line. Tell me what you want to

3 cross out, if anything, on the fourth line.

4 MR. B. MAYERSON: One-tenth of one percent.

5 THE COURT: That's not the whole line. And then the

6 rest of that line remains in tact as it is?

7 MR. B. MAYERSON: Yes.

8 THE COURT: Okay. Now, let's go to the fifth line

9 starts off for fiscal year ending 2003. What do you want to

10 take out of that line, if anything?

11 MR. B. MAYERSON: The entire line.

12 THE COURT: The entire line. All right. Carmen, go

13 get four copies.

14 MR. B. MAYERSON: Your Honor, we wanted to substitute

15 on the third line where it says "support a loss --"

16 THE COURT: How can you substitute something? I'm

17 not interested in your testimony. I'm interested in this

18 witness's testimony.

19 MR. B. MAYERSON: Okay. We'll leave it the way it

20 is.

21 THE COURT: The way it is, do you mean as --

22 MR. B. MAYERSON: Your Honor, our goal was --

23 THE COURT: I'm not interested in your goal. Is this

24 what you want and don't change a word on that. Don't turn a

25 period upside down or I'll hold you in contempt.

307

1 MR. H. MAYERSON: May we have a moment to conference

2 this, Your Honor?

3 THE COURT: What's that?

4 MR. H. MAYERSON: May we have a moment to conference

5 this?

6 THE COURT: Let's get going here. There's nothing to

7 conference. I've allowed you to mark Exhibit number 40

8 because I was led to believe this was going to be in lieu of

9 opinion 6 and now I find out it is not in lieu of opinion 6.

10 It just precedes opinion 6.

11 MR. B. MAYERSON: Your Honor, we would like to simply

12 add to this that Nationwide could afford a punitive remedy of

13 less than \$2 million dollars.

14 THE COURT: Give it back. What do you want further

15 deleted from this opinion 6 that you haven't deleted already

16 and I will cross it out?

17 MR. B. MAYERSON: We were suggesting --

18 THE COURT: No. What do you want to delete? Do you

19 want to delete anything further? Do you want to delete

20 anything further?

21 MR. B. MAYERSON: No. No.

22 THE COURT: Now, do you want to add anything to it?

23 MR. B. MAYERSON: Yes.

24 THE COURT: Where do you want me to add and what is

25 it, on the fourth line or on the fifth line, where?

308

1 MR. B. MAYERSON: On the third line.

2 THE COURT: On the third line, which we didn't touch

3 at all; is that right, "stability and diversity would enable

4 it to realize and support a loss"?

5 MR. B. MAYERSON: A loss.

6 THE COURT: To its unassigned surplus?

7 MR. B. MAYERSON: Yes.

8 THE COURT: Correct, that stays in tact?

9 MR. B. MAYERSON: Of \$2 million dollars.

10 THE COURT: So you want me to add those words, \$2

11 million dollars to that line; correct?

12 MR. B. MAYERSON: Correct.

13 THE COURT: And that's the question you want to then

14 ask this witness?

15 MR. B. MAYERSON: Yes.

16 THE COURT: All right. Make a couple copies of that.

17 All right. Now give us a chance to read this. All right.

18 Do you want to ask that question now?

19 MR. B. MAYERSON: Yes, Your Honor.

20 THE COURT: And read it exactly the way it is here so

21 we don't change it again.

22 BY MR. B. MAYERSON:

23 Q Ms. Van Gorder --

24 THE COURT: Do we have an extra copy of that?

25 THE CLERK: Yes, Your Honor.

1 THE COURT: Give it to Mrs. Van Gorder. Let her read
 2 it. This is the question that's going to be asked of you.
 3 That specific question. I'm handing it to you because I'm
 4 assuming you've never seen it in this fashion before.
 5 THE WITNESS: Right.
 6 THE COURT: Have you read it?
 7 THE WITNESS: Uh-huh. Yes, Your Honor.
 8 THE COURT: Mr. Mayerson.
 9 BY MR. B. MAYERSON:
 10 Q Ms. Van Gorder, if a court of law determined a
 11 punitive remedy was appropriate, is it your opinion to within
 12 a reasonable degree of certainty --
 13 THE COURT: Of accounting certainty. Don't delete
 14 anything. Start all over again and read it word for word the
 15 way it is.
 16 BY MR. B. MAYERSON:
 17 Q If a court of law determined a punitive remedy
 18 was appropriate, is it your opinion to within a reasonable
 19 degree of accounting certainty that the company's exceptional
 20 financial stability and diversity would enable it to realize
 21 and support a loss to its unassigned surplus of \$2 million
 22 dollars?
 23 A Based on my research --
 24 THE COURT: What happened to the rest of the
 25 sentence?

1 MR. B. MAYERSON: Without risking its ability to
 2 ongoing policyholders; is that the end of the question?
 3 Without risking its ability to meet ongoing
 4 obligations to policyholders?
 5 THE WITNESS: Based on my research of their financial
 6 statements, I would assume that they could easily support a
 7 \$2 million dollar penalty or punitive damage being that it is
 8 one-third of the one-tenth number that was developed prior.
 9 BY MR. B. MAYERSON:
 10 Q Are you saying it was one-third of one percent
 11 of one percent of its unassigned surplus?
 12 A One-third of one percent -- one-tenth of one
 13 percent. It's rather like taking a cup of water out of a
 14 swimming pool.
 15 MR. COHEN: Objection. Move to strike.
 16 THE COURT: Overruled. Cross-examine.
 17 RE-CROSS-EXAMINATION
 18 BY MR. COHEN:
 19 Q Ms. Van Gorder, we just spent 20 minutes
 20 coming up with this -- this wasn't your opinion. This was
 21 Mr. Mayerson's doing; correct?
 22 A The two million number, yes.
 23 Q This wasn't the opinion you gave in your
 24 report?
 25 A Not in my report. It was just changed.

1 Q So it was just changed today?
 2 A And I still agree with that number.
 3 Q Okay. The numbers that you gave in your
 4 earlier testimony, the billions, are reflected in this
 5 financial highlights document that the Court has now marked?
 6 A The numbers I gave were developed from this
 7 report prior that was used prior and in, I presume, other
 8 trials which I have not attended.
 9 Q Who gave you that document?
 10 A This is from the A.M. Best compilation
 11 reports.
 12 Q All right. But what's the relevance of this
 13 financial highlights document that now the Court has?
 14 A It's more recent and it's published by
 15 Nationwide.
 16 Q Okay. It says Nationwide Financial at the
 17 bottom.
 18 A Yes.
 19 Q Do you see that Nationwide Financial is a
 20 company; correct?
 21 A Uh-huh.
 22 Q Right. And it's not Nationwide Mutual
 23 Insurance Company. It's a different division of the
 24 Nationwide grouping of companies; correct?
 25 A It's the conglomerate. Nationwide is a

1 conglomerate of a whole bunch of different insurance
 2 companies.
 3 Q But there are separate entities. For example,
 4 there's a financial company which is a stock company;
 5 correct?
 6 A Uh-huh.
 7 Q Remember when we spoke earlier about how
 8 Nationwide Mutual Insurance Company was not a stock company,
 9 it was a mutual insurance company?
 10 A Uh-huh.
 11 Q I don't want to suggest that Nationwide
 12 Financial is not a stock company; right, but the data in the
 13 sheet is for Nationwide Financial, not for Nationwide Mutual;
 14 right?
 15 A Right.
 16 Q Nationwide Financial is not a defendant in
 17 this case are they?
 18 A I have no idea who the defendants really are.
 19 Q You don't know who the defendants in this case
 20 are?
 21 A I know that it's Nationwide.
 22 Q But you just said earlier that Nationwide is a
 23 compilation of different insurance companies. For example,
 24 Nationwide Mutual Fire Insurance Company, Nationwide Mutual
 25 Company, Scottsdale, they're all Nationwide companies. You

313

1 did your research in your report. You identified various
2 subsidiary companies?
3 A Right.
4 Q But Nationwide Financial is not an insurance
5 company; right, or is it?
6 A I really don't know.
7 Q No. How can you give an opinion with regard
8 to whether or not Nationwide Mutual Insurance Company can
9 muster or withstand a punitive damages award in this case if
10 you don't even know the financial picture of Nationwide
11 Mutual Insurance Company?
12 A I was looking at the overall picture of the
13 entire organization.
14 Q Ms. Van Gorder, you rendered your opinion to a
15 reasonable degree of accounting certainty. When did you
16 receive your CPA?
17 A I never said I had a CPA.
18 Q You don't have a CPA?
19 A No.
20 Q When did you receive your M.B.A.?
21 A In 2003, and not the M.B.A., the BBA.
22 Q You have a Master's in business
23 administration?
24 A No, a BBA.
25 Q What's a BBA?

314

1 A Bachelor's of Business Administration of
2 Accounting.
3 Q Not accounting. So you were an accounting
4 major?
5 A Yes.
6 Q But you took a CPA review course online; is
7 that correct?
8 A Yes.
9 Q Okay.
10 A I sat for the exam in 2003.
11 MR. COHEN: Nothing further, Your Honor. I'm going
12 to renew my objection to Ms. Van Gorder.
13 THE COURT: Mrs. Van Gorder, now that you know that
14 the defendant in this case is Nationwide Mutual Insurance
15 Company, does that change your thought process or your
16 opinions as you tried to express them?
17 THE WITNESS: Not having isolated Nationwide Mutual
18 from Nationwide Financial I would propose that it would be a
19 change of my opinion to some degree.
20 THE COURT: Because you don't know the information --
21 THE WITNESS: Exactly.
22 THE COURT: -- relative to Nationwide Mutual
23 Insurance Company?
24 THE WITNESS: Right.
25 THE COURT: And really neither do I at this point.

315

1 That's a nice smile, but it doesn't give me the answer.
2 THE WITNESS: I thought I did answer you. I'm sorry.
3 THE COURT: I think you're saying I agree with you.
4 THE WITNESS: Right.
5 MR. B. MAYERSON: Your Honor, may the witness take a
6 look at her report because I believe that her report -- and
7 she may not recall this at this point -- she wrote her
8 report, and as I put it into the trial brief were Nationwide
9 Mutual and those were the figures given in her report.
10 THE COURT: She just said they're not the figures
11 that she intended to use because she didn't have access to
12 the figures of Nationwide Mutual Insurance Company alone.
13 The other question I have before I turn you over to
14 Mr. Mayerson, I thought you very clearly said a little
15 earlier here that I am not here to testify whether Nationwide
16 can or cannot afford to pay a punitive damage award.
17 THE WITNESS: I do have --
18 THE COURT: How does that jive with the opinion that
19 you just gave with regard to the \$2 million dollars?
20 THE WITNESS: I do have a report of Nationwide Mutual
21 Insurance Company from 2004 when I initially did this recert
22 --
23 THE COURT: well, are those the figures then that you
24 used --
25 THE WITNESS: Yes.

316

1 THE COURT: -- from the mutual report so that the
2 only thing that's out of whack then with regard to the
3 numbers that you gave is the exhibit that we just marked as
4 Exhibit 40 because obviously this is not from Nationwide
5 Mutual. This is from Nationwide Financial.
6 THE WITNESS: Right.
7 MR. B. MAYERSON: So perhaps I should just throw away
8 Exhibit 40. Ignore that. Is that what you're saying?
9 THE COURT: There has to be some consistency here.
10 THE WITNESS: The consistency is that this report
11 here which is --
12 THE COURT: What is this report here?
13 THE WITNESS: Eighteen pages from A.M. Best rating of
14 Nationwide Mutual Insurance Company.
15 THE COURT: I'm not interested in that now. You can
16 talk about that later, but you were talking about the report,
17 the expert report that you submitted. Did you say that that
18 was based upon figures that you got with regard to Nationwide
19 Mutual Insurance Company's and no other Nationwide company?
20 THE WITNESS: Right.
21 THE COURT: Right. Well, then talk about that.
22 THE WITNESS: My original numbers?
23 THE COURT: Your original numbers, all right.
24 MR. B. MAYERSON: Your Honor, we will withdraw that
25 exhibit to avoid any confusion on the record.

IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

317

1 (Whereupon, Exhibit No. 40 was withdrawn from the
 2 record.)

3 THE COURT: I am already discarding it and everything
 4 but put it in the shredder. Any further questions?

5 MR. B. MAYERSON: No, Your Honor.

6 MR. COHEN: One final question, Ms. Van Gorder.
 7 BY MR. COHEN:

8 Q In your report you state: It is difficult to
 9 pin down a meaningful net value for one segment of such a
 10 conglomerate without access to the total financial package.
 11 How can you give an opinion to a reasonable degree of
 12 accounting certainty and at the same time say it's difficult
 13 to pin down a meaningful net value. Isn't it true that
 14 really your testimony is not to reasonable degree of
 15 accounting certainty?

16 A To a reasonable degree of accounting certainty
 17 based on the numbers that were presented for net worth and
 18 unassigned surplus.

19 MR. COHEN: I have no further questions.

20 THE COURT: All right. As far as the opinion is
 21 concerned, the Court will accept the opinion as coming from
 22 someone who's qualified to give that, again, the extent to
 23 which it is relevant the Court may decide at a later time.
 24 And assuming that it is relevant, the Court will also have to
 25 decide at a later time what weight to place on it. Okay.

318

1 Thank you very much for coming. We're in recess for ten
 2 minutes.

3 (Whereupon, a brief recess was taken.)

4 MR. B. MAYERSON: Your Honor, at this time we would
 5 like to read into the record or come to a summary of what we
 6 feel is material evidence from the first trial.

7 THE COURT: How long is that going to take?

8 MR. B. MAYERSON: I don't know, but I think, I mean,
 9 it was important evidence. I would hope it will take ten
 10 minutes or less.

11 THE COURT: I've got ten minutes. I'll just cut that
 12 out of your scolding time, go ahead. Ten minutes. It's now
 13 11 o'clock, summary of evidence, go ahead.

14 MR. B. MAYERSON: Oavid wert, a former employee of
 15 the Blue Ribbon Repair Facility Lindgren testified that he
 16 witnessed Nationwide representatives visiting the repair
 17 facility throughout the four-month repair period and that
 18 they inspected the Berg vehicle in particular on at least one
 19 occasion which was thorough inspection.

20 MR. COHEN: Your Honor, I'm sorry to interrupt, but
 21 if Mr. Mayerson wants to reference testimony, I'm going to
 22 ask him to reference testimony and not to give testimony and
 23 that's what he's doing right now.

24 THE COURT: That is correct. Don't give testimony.
 25 You said you wanted to give a review of it.

319

1 MR. B. MAYERSON: I was trying to summarize.

2 THE COURT: Then summarize it. Don't add anything to
 3 it and don't delete anything from it. Summarize it.

4 MR. B. MAYERSON: I was trying to. I will cite to
 5 the pages.

6 THE COURT: Oon't cite any pages, just make your
 7 speech and lets get on with it.

8 MR. B. MAYERSON: Mr. Wert testified that Nationwide
 9 visited the vehicle on numerous occasions during the repair
 10 process; some at the beginning, some at the end and that
 11 there was one major inspection where they had repair
 12 documents out and that the inspector was visibly angry, or
 13 not happy I think was the exact testimony. Could I read in
 14 just the citations to each section that supports that?

15 THE COURT: Go ahead. You've got ten minutes. I
 16 gave you ten minutes. The alarm is going off.

17 MR. B. MAYERSON: Page 547, Line 7 through 15. Page
 18 548, Line 24 to 549, Line 10, Page 552, Line 21 to 554, Line
 19 4.

20 We would also like to summarize the testimony of Oean
 21 Jones who was Nationwide's Managing Claim Consultant
 22 responsible for material damage claims at the state level
 23 including the technical performance of the Blue Ribbon Repair
 24 Program for the State of Pennsylvania. Mr. Jones confirmed
 25 that a regular random inspections were taking place

320

1 throughout the Berg repairs, that these random inspections --

2 MR. COHEN: Your Honor, Mr. Mayerson is completely
 3 misstating the testimony. He wants to read the testimony
 4 from the first phase but all he is doing is giving testimony
 5 that's incorrect.

6 MR. B. MAYERSON: I would prefer to read testimony.
 7 I'm trying to comply with the Court's request

8 THE COURT: I don't care what you do, just do it in
 9 ten minutes. I'm not even too sure the Court needs that.
 10 Don't you think I took notes during the first trial?

11 MR. B. MAYERSON: Good.

12 THE COURT: Oo you want me to read to you my notes?
 13 Because I have plenty of notes from the first trial. Quite
 14 frankly that's what I'm going to rely on, certainly not what
 15 you're saying right now. But just in an effort to be
 16 agreeable to the extent that I possibly can, it means
 17 nothing. Really, it means nothing. Your dad may tell you it
 18 means a heck of a lot, but I don't know where he went to law
 19 school either. I took notes. I'm a note-taker, especially
 20 in a case like this. You know why? It keeps me awake. This
 21 is such an exciting case I have to keep awake so I keep
 22 taking notes.

23 MR. B. MAYERSON: If the Court is telling me they
 24 don't need me to point to -- I feel as if I narrowed down
 25 that big thick trial brief down to --

IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

1 THE COURT: Mr. Mayerson, I don't care what you do in
2 the ten minutes. Four of those minutes are already gone.

3 MR. B. MAYERSON: Page 236, Line 19.

4 THE COURT: What I told you before, so there's no
5 confusion, is that if you put a witness on the stand or you
6 want to incorporate a particular witnesses testimony that was
7 a different story. But you're not talking about or you're
8 not giving the information about matters which relate to
9 Phase 2 of this case and only Phase 2 of this case.

10 MR. B. MAYERSON: Your Honor, the evidence that I was
11 trying to bring out was the evidence that would support a
12 degree of reprehensibility, and that is Nationwide knew the
13 condition of the vehicle before it was repaired and then
14 again before we filed our lawsuit and that they didn't do
15 anything about it, in fact, withheld that knowledge and
16 pretended they knew nothing through five years of litigation
17 and this is the evidence that supports that. And if Your
18 Honor says he has notes --

19 THE COURT: Was I supposed to guess that's what you
20 were alluding to? That's what I would have started off with.
21 What are you trying to establish, whatever you're doing. Go
22 ahead. Just keep going. Don't stop. Go ahead.

23 MR. B. MAYERSON: Mr. Jones, again, he was the guy
24 that managed the Blue Ribbon operation for the State of
25 Pennsylvania. He testified on Page 236 to 237 that

1 Nationwide was doing random inspections and at 237 he
2 testified that the shop was required to keep a log for every
3 time a Property Damage Specialist came in and that at Page
4 238 he testified that the log was used to make entries to
5 adjustments to claims that were done on those random
6 inspections by the Property Damage Specialist and that those
7 Property Damage Specialists would note on the log what they
8 reviewed. And this was from August of 1996 back to when he
9 began on the program. He left the program right at August of
10 '96. Our accident was September of '96.

11 And Doug Joffred also agreed at Page 643 that
12 Nationwide was performing random inspections on a regular
13 basis during the entire course of the Berg repairs. Next
14 witness was David Wert who was the gentleman who witnessed
15 Nationwide Property Damage Specialist coming, and I'd like to
16 give the page numbers. I think maybe I did, but that begins
17 on Page 547 but I would like to read one particular section
18 of Page 548, Line 24 to 549, Line 10 when the Court is
19 questioning the witness.

20 "The Court: Wait just a second. Did you say you
21 only remember Nationwide employees being there one time?"

22 The Witness: They were in and out all the time. I'd
23 say the one major time, yes.

24 The Court: One major time?

25 The Witness: Yes.

1 The Court: In and out on other occasions as well?

2 The Witness: Yes.

3 The Court: With regard to the Berg vehicle?

4 The Witness: Yes.

5 The Court: All right."

6 Mr. Cohen's cross-examination was at Page 552 to 554
7 where the witness was not obliged in his recollection of the
8 events. The next area of testimony that was at the past
9 trial that I'd like to reference is in regards to whether
10 Nationwide knew of the structural repair failures that was
11 documented in the claim file by Stephen Potosnak and whether
12 Nationwide notified the Bergs of that or whether Nationwide
13 took an inconsistent position by sending a letter from
14 Mr. Bashore dated May 19 where Mr. Bashore said they would
15 like an independent expert to examine the vehicle and if the
16 independent expert found any problems with the repairs, end
17 quote, Nationwide would honor the claim.

18 Mr. Bashore wrote that letter after Mr. Potosnak
19 inspected the vehicle and did a report at Mr. Bashore's
20 request, and Mr. Bashore had that Potosnak inspection report
21 at that time. And during the first phase of this trial
22 Mr. Bashore testified at 494 he identified the Potosnak
23 report and he admitted that he requested him to do the
24 inspection. And Mr. Bashore testified at 495 that that log
25 entry containing the Potosnak inspection report was an

1 ordinary claim log entry and not a communication to counsel
2 as Nationwide had claimed throughout the five years of
3 litigation before they produced it. He admitted that it
4 documented several pieces of damage to the vehicle including
5 the apron and rail, which he admitted was structural items
6 and he admitted that the repair documents in Nationwide's
7 possession at the time the Bergs retained counsel -- well, I
8 don't want to over state that he admitted that the original
9 repair documents called for the replacement of the apron and
10 rail but that those parts remained on the vehicle at the time
11 of Mr. Potosnak's inspection.

12 When I asked Mr. Bashore at Page 496 to 497 why he
13 sent that letter of May 19th, 1998 telling us that Nationwide
14 would honor the claim if any problems with the repairs were
15 found, and I'm sorry, this is at Page 504 to 505, he said
16 that Mr. Potosnak wasn't their expert and they wanted to send
17 out an expert to determine what exactly was wrong with the
18 vehicle to make a determination to exactly what had to be
19 done.

20 And I asked him: "Is that why you said any problems
21 because it was unclear to you?" And he said, "Yes." And I
22 asked him, "were you the one that made that decision?" And
23 he said to both that he was the one that made the decision to
24 send the letter and ask an for inspection. And I asked him
25 if he had the authority to pay the claim then and there if he

1 wanted to following the Potosnak inspection and he admitted
2 he did have the authority then and there to settle the claim.

3 And when I asked him why Mr. Potosnak's inspection
4 wasn't good enough at Page 496 to 497 he said, "I don't think
5 Steve Potosnak would have been an expert that we felt an
6 expert should possibly inspect it." And I asked him, "Isn't
7 he the Property Damage Specialist?" He said, "yes, he is."

8 "Is he a licensed appraiser?" He said yes. And I
9 asked him, "You understood that while you were trying to
10 clarify this issue that you felt it was necessary that Mr.
11 and Mrs. Berg were perhaps driving this vehicle?" He said,
12 "I don't know that." And I said, "well, didn't you guys
13 track the mileage of the vehicle to prove that they were
14 driving the vehicle?" And he answered, "Obviously the
15 mileage was tracked, yes."

16 I'd also like to refer to Mr. Berg's testimony in
17 response to the witness that testified the first day of
18 trial, Terry Shaw, who took these photographs marked as
19 Exhibit 33 on May 16th, 1998.

20 That Mr. -- at transcript Page 731 Mr. Berg was asked
21 whether Nationwide was claiming nobody was home. Do you
22 recall what I'm talking about? He said, yes, I recall it,
23 yes.

24 And can you tell the jury what the situation was?
25 Answer: There was an appointment made to come out and look

1 at the vehicle. I don't believe my wife was home. I have a
2 2400 square foot shop. I'm typically in the display booth
3 when I'm there and no one came to the shop door and knocked
4 on it. It is very possible this gentleman came, went and
5 knocked and thought no one was home and left. I was
6 definitely there.

7 MR. COHEN: I'm sorry, but I don't see that testimony
8 in the record.

9 MR. B. MAYERSON: Page 731, Line 18 through Page 732,
10 Line 3.

11 MR. COHEN: Your Honor, I have the transcript right
12 here. It doesn't appear on those pages. I don't know how
13 much other testimony Mr. Mayerson read into the record that's
14 not in the transcript, but it's not in the copy that I have.
15 That's not Page 731. That's page 721. That's what he said.

16 MR. B. MAYERSON: No, it's not on Page 721.

17 MR. COHEN: Your Honor, I want to follow the
18 testimony but I can't if he's giving wrong page numbers.

19 MR. H. MAYERSON: Read what's on Page 732, will you?

20 MR. B. MAYERSON: It's Page 732, Line 17 through 733,
21 Line 3. And I was reading it verbatim. This was an advanced
22 sheet and the page number is off, an advance sheet of the
23 transcript. The other pages were from the actual transcript.
24 That was the only one taken from the advanced sheet.

25 THE COURT: All right. Are you finished, 16 minutes?

1 MR. B. MAYERSON: Okay. Your Honor, I would also
2 like to refer to the testimony of Nationwide's expert,
3 William Anderton, at Page 892, Lines 1 through 10, where he
4 confirmed that the primary structural components on the
5 vehicle were significantly misaligned, that they were beyond
6 the tolerances normally allowed, considered acceptable. When
7 asked if they were significantly so his answer was
8 significantly so. And that the misalignment involves the
9 repaired welded structure, replace welded structure.

10 And finally Mr. Anderton also agreed that the
11 ultimate goal of the sublet repair factory facility was
12 incomplete and significantly misaligned with no identifiable
13 benefit from the sublet repair. This is the sublet repair
14 Nationwide ordered. When asked that the car should have been
15 returned to the Bergs he said, no, it should have been
16 repaired properly.

17 Mrs. Berg testified -- Mr. Joffred testified Page 714
18 that Mrs. Berg returned the vehicle about a month or two
19 after repairs in March or April of '97 and the tires were
20 wearing down to the belt in the front, the front two tires.
21 And Sharon Berg testified at 387 to 388 when she brought the
22 vehicle back she said when you would even turn the wheel a
23 little to the left and right it sounded like everything was
24 falling apart, a loud knocking noise down the road. I knew
25 the steering wheel was straight but it felt the car was going

1 down the road like this.

2 Question: At some point?

3 Answer: Yes, after 30 days we noticed the tires were
4 literally worn down to the metal.

5 The Court: Excuse me. Were these new tires when the
6 car was repaired?

7 The Witness: I'm not sure if they were new tires at
8 that point, but they had passed inspection and --

9 The Court: Right before your accident they were new
10 tires?

11 The Witness: Yes.

12 And then the last testimony is Mr. Phillips,
13 Plaintiff's expert. He said he inspected the vehicle
14 November 25th, 1997 and found that there were issues on
15 repair regarding the unibody, the left stub rail. I'll skip
16 down to -- the tires showed feathering and coupling which
17 means that the front end steering geometry was not correct so
18 it was not wearing evenly and we asked whether these would
19 impact safety features of the vehicle. He said, yes, sir,
20 because the structural changes that have now taken place in
21 the vehicle that the air bag system and its other related
22 safety features such as the front crumple zone would not
23 respond or behave as designed from the factory.

24 The car was -- that's all, your Honor. Thank you for your
25 indulgence.

329

1 THE COURT: Okay. Next witness.
2 Just for the record, that's 20 minutes, two times
3 ten.
4 MR. B. MAYERSON: Your Honor, in the absence of Mr.
5 Cole I'd like to move for the admission of his deposition
6 testimony based upon the duly served subpoena noticing him to
7 appear on June 5th, 2007 at 12:00 p.m. Counsel and I agree
8 not to bring this up to the Court because counsel promised
9 that he'd be here today. And we have deposition testimony
10 and, Your Honor, I have all the citations to the law that
11 says that we can, with your discretion, we can submit his
12 testimony in lieu of his --
13 THE COURT: who is Mr. Cole?
14 MR. B. MAYERSON: David Cole was an attorney who
15 worked at Nationwide for a number of years. He was in charge
16 of all of the attorneys for the State of Pennsylvania. At
17 the time of this claim he was in charge of regulatory issues
18 and complex litigation, and when we filed our lawsuit the
19 claim was assigned to him for further handling. He
20 interfaced with Nationwide retaining counsel once Post and
21 Schell, now at Nelson Levine. He is the one that made the
22 decisions following -- one month following the Potosnak
23 report after Mr. Potosnak inspected the vehicle. He is
24 probably the person that decided they weren't going to tell
25 us and redacted it.

330

1 MR. COHEN: Your Honor, that is completely
2 objectionable. It's almost sanctionable that Mr. Mayerson
3 would have said that in open court. Now for what it's worth
4 --
5 MR. B. MAYERSON: Your Honor, his name is --
6 THE COURT: Just a second. You say you have his
7 deposition testimony.
8 MR. B. MAYERSON: Not from this case. I've done the
9 research, Your Honor, and with your discretion it's perfectly
10 appropriate as long as the interests were the same, the
11 parties were the same, it's the same defendant. There was a
12 similar type of case Mr. Mayerson took the deposition in the
13 matter of Hensley versus Nationwide.
14 THE COURT: what did you do to get David Cole here
15 in this case?
16 MR. B. MAYERSON: I subpoenaed him. It took some
17 effort, Your Honor, and he signed the certification and I
18 spoke to him on the phone and he promised me he'd be here.
19 MR. COHEN: He will be here. Mr. Cole is on his way.
20 He's driving four hours to be here. It was an improper
21 subpoena.
22 THE COURT: Why am I wasting my time with this? He's
23 going to be here. He's going to be here.
24 MR. B. MAYERSON: Your Honor, then at this point I
25 would like to take the witness stand if we don't have any

331

1 other witness to present.
2 THE COURT: I don't know if we have any other
3 witnesses to present.
4 THE CLERK: Please raise your right hand. Place your
5 left hand on the Bible.
6 BENJAMIN J. MAYERSON, Sworn.
7 THE CLERK: Please be seated and state your name for
8 the record.
9 THE WITNESS: Benjamin J. Mayerson.
10 DIRECT EXAMINATION
11 BY MR. H. MAYERSON:
12 Q Mr. Mayerson, you are an attorney in
13 Pennsylvania?
14 A Yes, sir.
15 Q And how long have you been practicing?
16 A Thirteen years, since 1994.
17 Q And during the course of your practice did you
18 have occasion to handle the Berg versus Lindgren file?
19 A Initially it was the Berg versus Lindgren
20 file, yes.
21 Q And did you handle it as it became Berg versus
22 Nationwide?
23 A Yes, sir.
24 Q And have you handled it at the present time?
25 A Almost nine years, yes, with some exceptions.

332

1 There was an attorney in our office, Don Hitman, who had
2 taken over the file for a period of time. He's no longer
3 with us.
4 MR. COHEN: I'm going to object.
5 BY MR. H. MAYERSON:
6 Q Mr. Mayerson, can you identify this set of
7 documents that's marked November 25th, 1997 at the top?
8 A Yeah, these are --
9 MR. COHEN: Perhaps Mr. Mayerson would like to give
10 the Court a copy so the Court can see --
11 THE COURT: I have no idea. Do you intend to have
12 that admitted into evidence anywhere along the line?
13 MR. H. MAYERSON: Yes.
14 THE COURT: I suggest you do it like any piece of
15 evidence. You hand it to the court reporter and ask to give
16 it an exhibit number.
17 (Whereupon, Exhibit No. 41 was marked for
18 identification purposes.)
19 THE WITNESS: Would you like me to identify the
20 document?
21 MR. H. MAYERSON: Please.
22 MR. COHEN: Your Honor, Mr. Mayerson was called to
23 testify with regard to his fees and his billings in this
24 case, not as a fact witness. What he's about to do is he's
25 about to get into communications he was having with

IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

333

1 Nationwide with regard to seeking documentation. That is not
2 what Mr. Mayerson was called to testify to.

3 Now, I mean, I don't know, is it Mr. Mayerson's plan
4 to layout his whole theory of the case on the witness stand
5 as a fact witness or is he testifying with regard to his
6 fees?

7 THE WITNESS: It's our intention to lay a foundation
8 that we tried to resolve the case, we weren't fast to file a
9 lawsuit, we investigated it first, and we were met with
10 resistance from day one from the date of our letter of
11 representation which was November 3rd of '97. And that goes
12 to attorney fees because we were met with such resistance and
13 it also goes to --

14 THE COURT: Are you going to commingle that part of
15 your case together with your claim for attorney's fees? I
16 would prefer that you keep them separate so I can follow you.
17 You're just difficult to follow. I don't want to hurt your
18 feelings, but that's the fact of the matter.

19 THE WITNESS: I hope to be more clear on the witness
20 stand.

21 THE COURT: Are you making a claim at this point
22 still for counsel fees?

23 THE WITNESS: Yes.

24 THE COURT: Get that on the record first, your
25 counsel fee claim.

334

1 THE WITNESS: Okay.

2 THE COURT: We'll hold this exhibit 41 in abeyance.

3 MR. COHEN: Your Honor, just again so we're clear,
4 Mr. Mayerson's claim for counsel fees as it pertains to the
5 unfair trade practices verdict in the first phase was waived,
6 it has been voluntarily waived by Plaintiffs. The only thing
7 he is seeking at this point is attorneys fees if he obtains a
8 verdict on bad faith.

9 THE COURT: I think you made that very clear the
10 other day. I understand now.

11 (Whereupon, Exhibit No. 42 was marked for
12 identification purposes.)

13 MR. COHEN: Your Honor, I'm going to object to this
14 as impermissible hearsay. It's not evidence of anything.

15 THE WITNESS: Your Honor, it's fairly common to
16 submit a fee petition in a bad faith case setting forth the
17 basis of the fee. This was supplied -- this identical piece
18 of information was supplied in response to Nationwide's
19 interrogatories to us.

20 THE COURT: Well, what is in this Exhibit 42 that you
21 can't give to the Court by way of testimony?

22 THE WITNESS: If I can use this to refresh my
23 recollection.

24 MR. COHEN: There hasn't been any showing that his
25 recollection needs to be refreshed.

335

1 THE COURT: That's okay. I'd rather have it
2 accurate.

3 BY MR. H. MAYERSON:

4 Q Mr. Mayerson, did you have prepared an
5 itemization of Plaintiff's attorneys fees for a total bill
6 through June 5th, 2007?

7 A Yes, sir, that's the third page that we've
8 identified as Exhibit 42.

9 Q And did you break that down into years?

10 A Yes, we did.

11 Q And did you break each year down into months?

12 A Yes, we did.

13 Q And would you tell the Court the manner that
14 you broke it down?

15 A Yes. Unfortunately, Your Honor, we did not
16 keep track of our billing records early on in the case. This
17 was nine years ago. Without any experience in doing bad
18 faith cases or limited experience I did have one prior case
19 and our firm was primarily a personal injury firm. We work
20 on a contingency fee basis and therefore we did not have any
21 system set up to track our hours and I was a young attorney
22 three years out of law school and we failed to do that. So
23 in light of that what we did was we spent a considerable
24 amount of time and effort going through the file and taking
25 each pleading and document and giving it a time estimation

336

1 that was exceedingly conservative so if there was a pleading
2 that was filed, we may have billed .5 hours for it when in
3 reality it probably took one to two hours.

4 We then, with the help of my staff I should say, we
5 added up all those hours and that formed the basis for the
6 first -- I think it was through some time in 2003 objections
7 --

8 MR. COHEN: Objection. The witness is giving a
9 narrative. I'm not sure what question he's answering.

10 THE COURT: That's all right. Keep going.

11 THE WITNESS: In 2003 is when I began keeping careful
12 logging journals in my time to the point where if I worked at
13 home up in the middle of the night I would e-mail to the
14 office basically saying I'm checking in.

15 My time intervals were conservative in that if it was
16 a three-minute job initially, I didn't bill anything. And
17 initially they were kept at 15 minute intervals which is why
18 I wouldn't bill anything for something very minor. Then
19 during the course of the litigation Mr. Cohen or his
20 predecessor objected to that .25 interval and said it was
21 inappropriate, so I took his cue and went down to a .01 time
22 interval, which I think is 6 minutes, 6-and-a-half minutes
23 maybe, and from that point forward I kept track of my time to
24 the second.

25 If I took a phone call from Mr. Stanziola about

IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

1 scheduling, I put a .01 in. If Mr. Cohen called me, I put a
2 .01 in it, and I understand that that is the industry
3 practice. It is also our understanding that the industry
4 practice is for any letters that are generated by the firm
5 that many of the upscale firms charge a .03 or, I'm sorry, .3
6 time period for that letter that was generated.

7 And I have to correct some of my prior testimony. A
8 second ago I said .01. It's actually .1, so from that point
9 forward in my computer I documented all my hours and then
10 that was then printed and my staff went through it and added
11 it up and she triple checked it and I made sure she triple
12 checked it. And then we had Mike Georgio, who is a software
13 analyst at our office who will testify later, as to the
14 larger duty. He put it into a program to add it all up and
15 that's it.

16 Q What was your hourly rate?

17 A My hourly rate for the first five years out of
18 practice I suggested I think it was \$125 an hour. After five
19 years of practice for my sixth and seven I thought it
20 reasonable to slide that up to \$150 an hour and then after I
21 think after eight years of practice I thought it reasonable
22 at \$175 and this is based upon my conversations with
23 colleagues in the industry and what the billing rates were.
24 And I'm not sure after it's ten years of practice I have in
25 there --

1 THE COURT: Ten years?

2 THE WITNESS: Yes.

3 THE COURT: You only had this case nine years.

4 THE WITNESS: Let me clarify. After ten years of
5 practicing law. To clarify, when I was a practicing attorney
6 of less than five years experience I thought it reasonable at
7 \$125. After five years of experience it slid up and I had it
8 in another note the exact dates and amounts.

9 THE COURT: Next question.

10 THE WITNESS: I'd also like to let the Court know
11 that this was on a contingency fee. Our clients were not
12 responsible to pay us back the amount of our work or any
13 costs we expended. The risk was born entirely by us.

14 BY MR. H. MAYERSON:

15 Q Mr. Mayerson, there was a -- were the Bergs
16 responsible for the damage to the car when the lease was up?

17 A As --

18 MR. COHEN: Objection.

19 THE COURT: What's the objection?

20 MR. COHEN: It has nothing to do with fees.

21 MR. H. MAYERSON: It does, Your Honor.

22 THE COURT: How?

23 MR. H. MAYERSON: Because we obtained for the Bergs
24 \$18,000 that they didn't have to pay for the damaged car and
25 we didn't charge a fee on that.

1 MR. COHEN: That again is a misrepresentation to the
2 Court. The lease was up and Nationwide purchased the vehicle
3 from the bank. The Bergs -- Mr. Berg testified during trial
4 that he had no out-of-pocket expenses.

5 MR. H. MAYERSON: Correct.

6 MR. COHEN: I don't know what this has to do with
7 fees, but it's a misstatement of the records.

8 MR. H. MAYERSON: We did not charge them for freeing
9 them of the obligation they would have had, had it not been
10 for this lawsuit Nationwide would never have wanted to buy
11 the car. Nationwide was not coming up to them. Nationwide
12 was not reporting to them during the inspections and the
13 reinspections that there's a problem with the car.
14 Nationwide did not tell them that the car had to be pulled.
15 Nationwide did not tell them --

16 MR. COHEN: This is closing argument.

17 THE COURT: Stay on one subject here.

18 MR. H. MAYERSON: My point is --

19 THE COURT: Are you suggesting that there should be a
20 figure that the Court should consider as to the amount of
21 money that the Bergs actually saved by retaining Mr.
22 Mayerson, is that what you're suggesting?

23 MR. H. MAYERSON: Your Honor, what I'm suggesting --

24 THE COURT: Answer my question, yes or no?

25 MR. H. MAYERSON: No, Your Honor.

1 THE COURT: No. What the hell are you suggesting?

2 MR. H. MAYERSON: What I'm suggesting, Your Honor, is
3 that the Bergs got great value from our services and that our
4 compensation --

5 THE COURT: All right. Quiet.

6 MR. H. MAYERSON: Yes, sir.

7 THE COURT: Give me the value of your services to the
8 Bergs as a result of hiring you. What is that figure? Give
9 me a figure.

10 MR. H. MAYERSON: A third of the \$18,000 -- \$6,000.

11 THE COURT: \$6,000, is that your testimony, Mr.
12 Mayerson?

13 THE WITNESS: No, Your Honor. It's not. I don't
14 agree with that. I'm sorry, I can't testify to that because
15 I don't agree with it.

16 THE COURT: Well, as far as I'm concerned you didn't
17 save the Bergs anything or get anything for the Bergs of any
18 value, even your own expert.

19 THE WITNESS: Yesterday he said the Bergs got lost in
20 this whole process.

21 MR. H. MAYERSON: Although he said it, I don't think
22 he understood or wasn't thinking of it.

23 THE COURT: Don't play games with me.

24 MR. H. MAYERSON: I'm trying not to. I'm trying to
25 state my position.

1 THE COURT: Your position and your son's position and
2 your witnesses positions are not the same. You say one
3 thing, he says something else and that's the way it's been
4 throughout this entire proceeding. I'll tell you, I hope the
5 Supreme Court reads this record and they ought to hand down a
6 crown for me to wear on my last day on Earth, one that I can
7 put into the coffin and hold because that's what I deserve
8 for just sitting and listening to this stuff. And if they
9 could do any better, let them do better. If you disagree
10 with \$6,000, then you answer the question. What money --
11 what value did the Bergs get as of this point in your
12 services?

13 THE WITNESS: The value the Bergs got is being
14 relieved of the potential risk that the bank that leased them
15 the vehicle would come back to them when they discovered the
16 condition of the vehicle and say, wait a minute, what's this
17 about? And I suppose the Bergs, you know, left a debt of
18 about \$400. I don't know if that would have satisfied the
19 situation, so at least we provided them with the service --

20 THE COURT: Give me a figure. I want to know a
21 dollar figure if there is one, because up to this point I
22 have nothing upon which to base a dollar figure as to the
23 value of your services to the Bergs, either as a result of
24 the leased vehicle trade-in value or anything else. Give me
25 a figure.

1 THE WITNESS: All right.

2 THE COURT: I'm not saying I'm going to accept it.
3 Pop, sit down. I can't handle both of you at one time.

4 THE WITNESS: Your Honor --

5 THE COURT: Give me a figure.

6 THE WITNESS: \$13,115.25.

7 THE COURT: \$13,115.25?

8 THE WITNESS: Yes.

9 THE COURT: What's the breakdown, how did you arrive
10 at that figure?

11 THE WITNESS: I looked at my billing summary.

12 THE COURT: Your billing summary has nothing to do
13 with the value of your services. As a matter of fact in most
14 practicing law, what was the value of my services to the
15 client? They were never the same.

16 MR. B. MAYERSON: Your Honor, Your Honor, Your Honor,
17 I would be maybe a little bold in saying that that great
18 value is understated. That was the time I was
19 underestimating my time.

20 THE COURT: Don't play games with me. I want to know
21 a dollar value that benefited the Bergs in this particular
22 case.

23 THE WITNESS: At that particular time?

24 THE COURT: At that particular time.

25 THE WITNESS: The only dollar figure that I can give

1 you is at the date that the vehicle was purchased and that
2 doesn't include our litigation costs either, but that was the
3 amount that we had estimated our services would have been
4 billed at that time was on a contingency fee.

5 THE COURT: That is not the question, what your
6 contingency fee would have been. How much money or how much
7 of a dollar benefit did the Bergs get as a result of your
8 services at that time?

9 THE WITNESS: They didn't get anything. I mean, I
10 can't give you a dollar figure for that.

11 THE COURT: That's the answer. Zippo. Nothing.
12 They never got anything. They never benefited at all dollars
13 and cents wise, did they?

14 THE WITNESS: That's right.

15 THE COURT: And that's what your witness even said
16 yesterday.

17 THE WITNESS: And that's precisely why we're still
18 here.

19 THE COURT: All right. So I'll cross out the \$6,000
20 and cross out the \$13,115.25 and put zero. Next question.

21 BY MR. H. MAYERSON:

22 Q Mr. Mayerson, how were my hours handled?

23 A Your hours were handled similar to mine but
24 they were billed at a much higher rate because you have many
25 more years experience and the billing rates were estimates of

1 what we believe the market value for years of experience
2 would hold. But they were also after probably in 2003
3 recorded in the computer and given over to the staff to be
4 added up also. There were times when my father, Mr.
5 Mayerson, did not keep track of his bills and I think that
6 was probably most of the time and I was constantly riding
7 him, Did you keep track of your bills?

8 And so in my log I would sometimes bold an entry when
9 I was conferencing something with him so that at least I
10 would have that record of time he spent. But he was less
11 concerned with documenting his time than I was.

12 MR. H. MAYERSON: Your Honor, we submit document 42
13 and especially the itemization as a document establishing a
14 rate of attorneys fees on the system described.

15 THE COURT: Is that the end of the questioning of
16 this witness?

17 MR. H. MAYERSON: No, Your Honor.

18 THE COURT: Well, finish the questioning first.

19 MR. H. MAYERSON: May I go back to -- I'd like to go
20 --

21 THE COURT: You don't admit your exhibits until the
22 end of your case.

23 BY MR. H. MAYERSON:

24 Q Returning to 41, could you identify that, Mr.
25 Mayerson?

345

1 A Yes, this is a fax I sent to Nationwide
2 adjuster, Doug Witmer, requesting a response to my first
3 letter of representation dated November 3rd, 1997.
4 MR. COHEN: Same objection.
5 THE WITNESS: And I --
6 THE COURT: What's the same objection?
7 MR. COHEN: It's the same objection I made when he
8 first identified the document. This has nothing to do with
9 his fees. This is something to do with his handling of the
10 case.
11 THE COURT: That's what he said in addition to the
12 fees itself he also wants to testify with regard to some of
13 the allegations that have been made relative to the case
14 which he says he, as the attorney, knows are not correct and
15 he's giving his own version now of that -- those proposals
16 that there was correspondence, that this was an effort to get
17 the case settled and so forth, and I think that that's
18 relevant testimony. Maybe I want to hear it. Maybe you
19 don't find it interesting but I do. How relevant it might
20 be, I don't know. One thing I don't want to do when this
21 case is closed to call any of you and ask you to do anything,
22 patch up some of the things that are in the record. Let's
23 hear it now and get it over with.
24 BY MR. H. MAYERSON:
25 Q Thank you, Mr. Mayerson. Tell us what

346

1 document 41 is.
2 A It's a fax to Doug Witmer asking him to get
3 back to me and his letter of representation November 3rd,
4 wherein I asked him for all the repair documents and
5 photographs of the vehicle and at this time Nationwide wasn't
6 our target. We were really looking at Lindgren and we had an
7 expert look at the vehicle and he told us we had to get all
8 the repair documents. He couldn't give us an opinion as to
9 what had happened without all the repair documents. I wrote
10 to him on November 3rd trying to get the repair documents and
11 photographs, so it's approximately three weeks later and I'm
12 writing to him again and saying you haven't gotten me the
13 repair documents I asked for.
14 Q And that November 3rd letter is already marked
15 as an exhibit in the past trial in this 16-page fax exhibit?
16 A No, the November 3rd letter is marked as an
17 exhibit in the prior trial, but it's not part of the 16-page
18 fax, but the November 3rd letter is marked and admitted into
19 evidence.
20 THE COURT: what exhibit?
21 THE WITNESS: Your Honor, may I go get the exhibit
22 book?
23 THE COURT: Yes.
24 MR. H. MAYERSON: Page 1170 of the record, Your
25 Honor, Exhibit 7.

347

1 THE COURT: Go ahead. Lets go.
2 BY MR. H. MAYERSON:
3 Q Can you identify that letter, that's the
4 November 3rd letter you're referring to?
5 A Yes.
6 Q November 2nd. I'm going to show you a letter
7 of March 3rd to Mr. Witmer signed by yourself, Exhibit 43.
8 Can you identify that letter?
9 A Yes, this is a fax sent to Doug Witmer of
10 Nationwide on March 3rd, 1998. By this time Mr. Witmer had
11 supplied me a damage appraisal dated September 20th, 1996.
12 He supplied that on December 2nd. That's also marked as a
13 trial exhibit, but at this point we've given that damage
14 appraisal that was dated September 20th to our expert and our
15 expert had indicated that we've got to find out if there's
16 any supplements. If there's not, there's probable fraud
17 because there's parts listed as being replaced that were not
18 replaced and were still on the vehicle in a damaged
19 condition.
20 So at this point it's now March 3rd, 1998. I
21 apparently still don't have the claim file and I'm writing to
22 Nationwide again asking if there's any other records before
23 we go off with an expert giving an opinion of fraud. We want
24 to make sure we have all the documents, and so this is my
25 attempt now to still try and get these documents.

348

1 MR. H. MAYERSON: I'm going to show you a document
2 that's been previously marked at a deposition of Mr. Bashore,
3 being Bashore 8.
4 THE COURT: At a deposition?
5 MR. H. MAYERSON: Yes, but not for the purposes --
6 just that it's stamped. It's an explanation of it. The
7 document -- it's not important for the fact that it was at
8 the deposition. But what the document stood for --
9 THE COURT: Why can't he just testify to these
10 things? Why do I need all these documents? I don't even
11 know what they are anyway. I mean, you're just throwing in a
12 lot of stuff now. Is this going to continue for the next
13 three hours?
14 THE WITNESS: we'll walk through it. we won't mark
15 it.
16 THE COURT: Yes, correct. Just testify to them.
17 THE WITNESS: This is one of my file memos dated --
18 BY MR. H. MAYERSON:
19 Q What happened on March 3rd, '98?
20 A I received a call from a Nationwide
21 representative named Bev Carlson. This was approximately a
22 week after my fax of March 3rd, 1998. She told me that
23 Mr. Witmer was no longer handling the matter and I should
24 contact her for any further questions. She had gotten my
25 letter where I requested all the file documents and she

1 confirmed that this was the only document in the entire file,
2 was that original estimate of September 20th, 1996 which
3 incidentally is also an exhibit already admitted into this
4 case. She said the only other document she had was a rental
5 bill.

6 MR. COHEN: I'm going to object to all of this as
7 hearsay.

8 MR. H. MAYERSON: The witness that heard it is in
9 court to testify what he heard said. He's not testifying as
10 to the truth of what he said, but the truth of what she had
11 to say but only as to what he heard.

12 MR. COHEN: That makes it precisely hearsay. He's
13 testifying to the truth of an out-of-court statement. It
14 doesn't matter. He's here to testify.

15 MR. H. MAYERSON: You didn't hear what I said. He's
16 not testifying.

17 MR. COHEN: I withdraw the objection.

18 THE COURT: Let him testify.

19 THE WITNESS: This was to show our course of conduct
20 and what we did and why we did it, specifically why we filed
21 this lawsuit. And not necessarily for the truth of what Bev
22 Carlson may or may not have said, but only as to why we did
23 what we did and filed this lawsuit.

24 BY MR. H. MAYERSON:

25 Q What happened on March 12th?

1 A On March 12th I received a call from Ron
2 Stitzel of Nationwide. He wanted to confirm that the woman,
3 Bev Carlson, the woman who had called me the day before and
4 he indicated to me that again that estimate of September 20th
5 was that was made by Lindgren that that was the only one in
6 the file and there was nothing else. Then he told me a
7 little bit about how the Blue Ribbon Repair Program operates
8 and Mr. Cohen had introduced a claim log entry of Mr. Stitzel
9 where Mr. Stitzel made certain representations about his
10 efforts to help us and that claim log entry is not anywhere
11 near my recollection of the events. And what I recall is not
12 receiving anything from Nationwide in terms of letters or
13 correspondence about what was going on, and I was just trying
14 to get information from them. I had specifically asked that
15 maybe in this memo or maybe in another one, but I asked them
16 for a letter as to confirming there are no other repair
17 documents and I never did receive that.

18 But in any event, Mr. Stitzel did tell me a little
19 bit about the Blue Ribbon Repair Program. He said that --

20 MR. COHEN: Objection. Hearsay.

21 THE WITNESS: I don't need the hearsay. It's not
22 relevant to what we did after that.

23 BY MR. H. MAYERSON:

24 Q Mr. Mayerson, in any event, did you tell
25 Mr. Bashore that there was no need for an inspection?

1 A Well, it was Mr. Stitzel.

2 Q Mr. Stitzel?

3 A I'm sorry. And if my recollection is correct
4 on my letter of November 3rd, '99 I did tell him that they
5 could get the vehicle inspected and I never retracted that at
6 all. And, in fact, we would have liked to have them get an
7 inspection, but I think what he did was impressed upon me it
8 wasn't necessary that they get an inspection because Lindgren
9 was going to honor the Blue Ribbon Guarantee and wait and see
10 what Lindgren does, and I thought that sounded reasonable at
11 the time so I agreed with it. I didn't know when we got into
12 a trial nine years later that counsel for Nationwide was
13 going to paint that as me refusing to allow them to inspect
14 the vehicle because that was absolutely never, ever the case.

15 Q Mr. Mayerson, what is the significance of the
16 deposition taken of Mr. Joffred?

17 A All right. Your Honor, at this point I've
18 tried to get all the repair documents and the only thing
19 Nationwide has in their file is the original estimate that
20 called for the replacement of frame rail and apron panel. By
21 this time we filed a writ of summons and taken a
22 pre-complaint deposition of the Body Shop Manager, Douglas
23 Joffred.

24 At the deposition for the first time Lindgren brought
25 a supplement which now called for the replacement and repair

1 of the frame rail and apron panel. So the case got a little
2 muddier because now Lindgren is saying, no, this wasn't
3 repair fraud. We had a supplement, but on the other hand
4 Nationwide didn't have a supplement and the Bergs didn't have
5 a supplement. So we have this supplement that suddenly
6 appears a year after the repairs are complete, and it muddies
7 the water.

8 But more importantly, this deposition where I took of
9 Mr. Joffred is when Mr. Joffred testified that he thought the
10 vehicle was a total loss. And he told that to Nationwide and
11 he told the Nationwide adjuster and he told me that he told
12 him that, and he said due to the extensive damage he
13 considered it a structural total loss.

14 MR. COHEN: Objection.

15 MR. H. MAYERSON: Page 28.

16 THE WITNESS: And this is only to show our course of
17 conduct.

18 MR. COHEN: He's essentially reading the testimony of
19 a witness into the record.

20 THE COURT: Overruled. Next question.

21 BY MR. H. MAYERSON:

22 Q Did you ask him whose decision it was to
23 continue with the repair work despite the extensive damage?

24 A Well, essentially what we got from him was
25 that Nationwide was in control of the matter and that

1 Nationwide directed the vehicle be shipped to another
2 facility to attempt the frame repairs.

3 Q And did he also tell you that the estimates
4 are sent via computer to Nationwide?

5 A Yes.

6 Q I'm going to show you -- can you discuss this
7 supplement, what the date is?

8 A Yeah, this is just the supplement of February
9 5th, 1997 that surfaced for the first time in the middle of
10 Mr. Joffred's deposition that Nationwide didn't possess or
11 wouldn't give to me a year after repairs were completed. I
12 don't know if they had it or not, but I certainly wasn't
13 getting it despite my repeated requests. And I'd like to
14 point out that no photographs were produced on this heavily
15 damaged vehicle at this point in time.

16 Q Were photographs later produced?

17 A Nationwide produced two poor quality polaroids
18 after the law suit was filed and after I filed a motion for
19 sanctions to their first answer to discovery when the Court
20 ordered them to produce the photographs was that none
21 existed. And then once we had some depositions and people
22 testified that they took photographs and I read the Blue
23 Ribbon documents that talked about how important photographs
24 were to the entire program, that essentially Nationwide
25 relies upon the photographs when reviewing the appraisals

1 when they match up so Nationwide doesn't have to appraise
2 every vehicle, I filed my motion for sanctions and for
3 photographs. And at that point, now the year 2000,
4 Nationwide produced two very poor photographs.

5 Q Was the roof damaged?

6 A The original appraisal for September 20th does
7 not contain any roof damage, but Mr. Joffred testified that
8 there was roof damage to the vehicle. You really couldn't
9 see in the photographs whether it was because they were so
10 bad in quality.

11 Q What happened on April 15th?

12 A This is the date --

13 THE COURT: I assume you're talking about 1998?

14 MR. H. MAYERSON: Yes, Your Honor. I'm sorry, thank
15 you.

16 THE WITNESS: This is the day after Mr. Joffred's
17 deposition where he told us about Nationwide overriding the
18 total loss appraisal and having the vehicle shipped out and
19 we just received the supplement for the first time.

20 And at that point I did an analysis of whether or not
21 we should name Nationwide in this case. And I named -- I
22 listed five reasons for naming Nationwide and five reasons
23 for not naming Nationwide and number three was naming
24 Nationwide may over-complicate the case. And number four was
25 I considered filing a motion in limine to prevent any mention

1 of insurance since it's really irrelevant to the fraud
2 committed on the Bergs. And that was my opinion at the time
3 because I didn't really understand what the program was. So
4 I thought I can file a motion in limine and keep out the
5 mention of insurance in my case against Nationwide, and it
6 will just be a very -- what I would have hoped to be a
7 straightforward case against Nationwide for not putting
8 structural items on a vehicle that they had billed for.

9 BY MR. H. MAYERSON:

10 Q Now, did you take the deposition of
11 Mr. Bashore?

12 A Yes, I did.

13 Q And did you ask Mr. Bashore about the
14 inspection I ordered?

15 A Yes. The inspection that Mr. Bashore ordered
16 was performed by Mr. Stephen Potosnak on April 28th, 1998
17 which was about ten days before we filed our lawsuit. It was
18 also about a week after I sent a letter to Nationwide dated
19 April 22nd, 1998 where I explained to Nationwide that we had
20 the deposition that it was pointed out that Nationwide had a
21 Blue Ribbon Guarantee. And essentially we wanted to know
22 what Nationwide was going to do to honor the Blue Ribbon
23 Claim or the claim under the insurance policy, and I didn't
24 hear back from them until May 19th when I got a letter from
25 Bruce Bashore that said Nationwide would like an opportunity

1 to inspect the vehicle and if there's any problems with the
2 repairs Nationwide is going to honor the claim.

3 That letter from Mr. Bashore incidentally references
4 the same claim number from the original collision loss.

5 Q And you point that out because?

6 A It's in the reference number. I point it out
7 because the Blue Ribbon Claim is something separate and
8 distinct from the underlying collision claim, but I want to
9 point out they handled the claim files the same way. The
10 claim file from start to finish from the date of loss is all
11 in the same file. It all has the same claim number and date
12 of loss.

13 But the point you were getting at was Mr. Bashore's
14 deposition. At the time I took his deposition, which was
15 right before Nationwide produced the Potosnak inspection
16 report in May of 2003, I think his deposition was April of
17 2003. And when I asked Mr. Bashore if Nationwide had ever
18 requested an inspection other than the one in his letter, he
19 said no. And the reason I asked him that was because that
20 letter was after we filed our lawsuit, and so I was pointing
21 out the fact that the first time Nationwide thought it was
22 appropriate to inspect the vehicle was not until after we
23 filed a lawsuit. And somehow in our records we missed the
24 fact that Nationwide requested Potosnak to inspect the
25 vehicle. There was not a single document in our file,

1 telephone call or anything, so we had completely forgotten
2 about that. And Nationwide understood that and their
3 attorneys understood that and then the correspondence that
4 followed was Nationwide requesting an initial inspection and
5 then Nationwide said after they do an initial inspection
6 they'll want a second inspection. And then when I deposed
7 Mr. Potosnak --

8 Q Wait, wait. Excuse me. When Mr. Bashore
9 denied knowledge of any inspection, what was the status in
10 the logs provided to you that revealed the April 28th, 1998
11 inspection?

12 A They were redacted. First invisible
13 white-on-white redactions. That was after the Court ordered
14 them to produce everything that was not subject to the
15 attorney/client privilege. This claim log entry was redacted
16 for essentially five years from the date of the inspection in
17 '98. They produced it in April of 2003.

18 The court order on my motion for sanctions was 2000,
19 so maybe it was three years after the motion for sanctions.
20 But during that time period I had conducted every deposition
21 and both Mr. Potosnak and Mr. Bashore relied upon the absence
22 of that claim log entry to claim ignorance about the
23 existence of the inspection so that throughout the entire
24 litigation right up until the time I filed a trial precipe,
25 Nationwide was essentially denying that there were structural

1 defects to these repairs.

2 And I say that because when we tried to get the case
3 preciped for trial, Nationwide produced its expert report by
4 Mr. Anderton and that was the first time it was ever
5 produced. It was the first time there was any acknowledgment
6 by Nationwide that there were structural repair problems with
7 this vehicle. Prior to that it was sheet metal, significant
8 sheet metal, perhaps Mr. Potosnak eventually admitted when I
9 cross referenced him with another claim log entry that there
10 was sheet metal problems.

11 But Mr. Potosnak, or rather, Mr. Bashore admitted at
12 trial that there were structural problems and he knew it. He
13 ordered the report. And Mr. Bashore, his deposition
14 testimony, if the Court thinks it's relevant and significant,
15 I have copies that I think probably should be marked as
16 exhibits. They're in that expandable folder in that box.

17 MR. H. MAYERSON: The deposition of Bruce Bashore,
18 March 28th, 2002.

19 MR. COHEN: Your Honor, I have got to object on the
20 record. I believe this is completely improper. Mr. Mayerson
21 is going on and on and on as a narrative. He's essentially
22 just arguing his case on the witness stand.

23 THE COURT: I understand that. But I'm not going to
24 let him incorporate anything -- his own testimony, his own
25 opinions. What he did is fine, but he's not going to be

1 incorporating testimony of other witnesses or whatever at
2 this particular point. Just take it back and I'll save the
3 number for next time. Ask him a question.

4 HOW MUCH longer are you going to be with this
5 witness?

6 MR. H. MAYERSON: Fifteen minutes.

7 THE COURT: All right. This time 15 minutes is not
8 going to be 20. Do you understand?

9 MR. H. MAYERSON: Not even.

10 THE COURT: No more than 15 minutes. Lets go.

11 BY MR. H. MAYERSON:

12 Q What happened on April 22nd, 1998?

13 A This is a letter that corresponds with another
14 letter dated April 22nd, 1998. It's already been marked as a
15 trial exhibit. This was my attempt to settle this case
16 before this lawsuit was filed. I sent a letter to both
17 defendants; that is, Lindgren and Nationwide.

18 Q How did you try and settle the case in your
19 letter?

20 A Well, the letter I sent -- the one that I'm
21 holding in my hand -- that is addressed to Ken Myers, simply
22 encloses a copy of my letter that I sent to Nationwide.
23 That's dated the same date that's already been admitted as a
24 trial exhibit, and I simply said, "Based upon the contents of
25 this letter, please advise if Lindgren would be agreeable to

1 granting a reasonable extension to a 20-day period to which a
2 complaint must be filed."

3 So at this point we're facing a rule to file
4 complaint, which the Court had said if they were going to
5 file any complaint, had to be 20 days after the deposition.
6 So it's now April 22nd, approximately one week after the
7 deposition, and I'm writing to Lindgren and saying can we get
8 a little bit more time. We want Nationwide to do what
9 Nationwide should do and that's buy the vehicle. And the
10 letter I sent to Nationwide has already been marked and
11 admitted as an exhibit. I told Nationwide the situation that
12 I had to file a complaint. I told Nationwide that time was
13 of the essence and I also gave Nationwide a copy of the
14 letter to Lindgren asking for a 20-day extension.

15 Q When you told --

16 A If I may just finish my answer. It would be
17 hard for me to accept during this time period that Nationwide
18 would be able to contact Lindgren and say, hold on a second.
19 Why don't you give this guy a little extension, give us time
20 to think about this and maybe we can get this thing resolved.

21 Now I'm not going to tell Your Honor that I would
22 have walked away if Nationwide bought the vehicle because I
23 think at that point I still thought what Lindgren had done
24 was reprehensible and I would have continued with the lawsuit
25 with Lindgren but Nationwide would not have been part of it.

1 We didn't want Nationwide in the case. But I never got a
2 response to either of these two letters and I had to file the
3 complaint pursuant to the rule. And after the complaint was
4 filed I continued to contact now counsel for Nationwide at
5 Post and Schell and you'll recall that Jim Chett, our expert,
6 looked at the billing record of Nationwide and they confirmed
7 that I'm calling them saying, can we resolve this with you,
8 can you buy the vehicle back?

9 Q Mr. Mayerson, step back in time. Can you
10 summarize the results of your investigations prior to filing
11 suit?

12 A Yeah. before we filed the suit we did certain
13 things and the law --

14 Q What did you do?

15 A What did we do? We hired an engineer to look
16 at the vehicle.

17 Q How many?

18 A Well, one engineer, his name was Donald
19 Phillips. That was the first person we contacted. And then
20 we got in a touch with a gentleman by the name of Charlie
21 Barone, who is not an engineer, but he has a company called
22 Wreck Check and he's the one that told us to get all the
23 repair documents, and his initial report was admitted as an
24 exhibit in this case already.

25 Q Before you got --

1 A Let me finish answering the question. We
2 consulted with two experts. We tried to get all the repair
3 documents from Nationwide repeatedly. We did a pre-complaint
4 deposition and after the pre-complaint deposition we wrote to
5 both defendants and asked if we could settle the case.

6 Q Before you got to Mr. Phillips and to
7 Mr. Barone, did you speak to Mr. Wert?

8 A Oh, yes. Actually Mr. Wert was the first
9 person we talked to. When Mr. Berg had first contacted us
10 about representing him he had just received a call from
11 Mr. Wert who warned him that the vehicle was unsafe. He told
12 him exactly what had happened, basically the way I
13 understood, and the reason we agreed to take the case was
14 because Mr. Wert said that he said if you open up the hood
15 and look at the fan shroud he said that --

16 MR. COHEN: Objection. Hearsay.

17 THE WITNESS: This is just to show the course of our
18 conduct and why we accepted the case.

19 Mr. Wert told me that the vehicle was never properly
20 measured, that it went out to K.C. Auto Body. It came back
21 --

22 BY MR. H. MAYERSON:

23 Q How was it not properly measured?

24 THE COURT: You're going to have -- now don't stretch
25 it.

1 MR. H. MAYERSON: I'm sorry. I apologize. I
2 withdraw the question.

3 THE COURT: Don't apologize. Get going. Your 15
4 minutes is just about up.

5 THE WITNESS: Mr. Wert basically told us what was the
6 problem with the repairs and when we had somebody look at the
7 vehicle, it confirmed it.

8 Now, when they tried to get the engine back into the
9 engine cavity and they had to shimmy it in there --

10 MR. COHEN: Objection.

11 THE WITNESS: -- it took them all day to start it.

12 And there was a terrible sound when they started it. And
13 what Lindgren did was they cut the fan shroud to silence the
14 noise.

15 THE COURT: Next. We know.

16 BY MR. H. MAYERSON:

17 Q What efforts did you do to mitigate the
18 damages by seeking trial certification, if any?

19 A Your Honor, as you may or may not know, since
20 September of 2003 I've been trying to get this case certified
21 for trial. It got bifurcated and after it was bifurcated I
22 tried to get it certified. And post-trial motions, they took
23 my deposition, his deposition and Margaret's deposition --

24 THE COURT: She's supposed to take all this down. Do
25 you understand that?

1 THE WITNESS: I'm sorry. So since about 2003,
2 shortly after Nationwide produced the Potosnak inspection
3 report, I wanted to do nothing but get this case resolved and
4 it has been a tremendous financial strain on our firm. And
5 not just financial but emotionally, our interrelations. It
6 has just been -- it has been terribly difficult. The other
7 attorneys in the firm, they see we're in it up to our ears,
8 but there's no way to get out of it. There's no end in sight
9 and, you know, I want the Court to understand that we tried
10 to mitigate these damages. We've been trying since September
11 of '03.

12 Nationwide filed two motions for summary judgment.

13 Well, I talked about the post-trial discovery, my deposition,
14 et cetera.

15 BY MR. H. MAYERSON:

16 Q What happened on June 1st, '98?

17 A These letters that are here from June 1st of
18 '98 through January 1st of '90 is my correspondence and Post
19 and Schell or the attorneys correspondence where I'm writing,
20 trying to get the vehicle inspected because all I had was
21 Bashore's letter of May 19th saying once we get the vehicle
22 inspected we're going to honor this claim. So I'm writing to
23 them, when are you going to inspect the vehicle. They
24 scheduled it, then they canceled it. Then they scheduled it,
25 and it was in August they did an initial inspection by

1 William Anderton who they knew out from Chicago and there has
2 been some implication in this case that we prevented from
3 Mr. Anderton from doing a full inspection on that date and
4 that is absolutely false. We never --

5 Q What happened?

6 A Well, Mr. Anderton was known out here and he
7 did a preliminary inspection and they decided they needed to
8 do a more comprehensive inspection which took place in April
9 of '99. It was a year after the Potosnak inspection and I
10 think you get the flavor of it, Your Honor.

11 But the last thing that happened that I would like
12 the Court to know, and this would be when Nationwide
13 purchased this vehicle. It was not done with good faith to
14 the Bergs.

15 MR. COHEN: Objection.

16 THE WITNESS: When the purchase --

17 THE COURT: Go ahead. Okay.

18 THE WITNESS: When the purchase took place,
19 Nationwide had not secured this inspection by William
20 Anderton, and we didn't want them taking possession of the
21 vehicle until that inspection was complete because we had
22 fears that something might happen to the evidence. And
23 suddenly all these defects were going to disappear and they
24 were going to come out with a report that said there was
25 nothing wrong with the vehicle because they hadn't provided

1 the Potosnak inspection. So as far as we knew, Nationwide
2 was contending that the repairs were correct. So we weren't
3 going to let them take possession of the vehicle.

4 And so what Nationwide did was they went ahead and
5 purchased the vehicle through Summit Bank and they said they
6 wanted to take control of it, and I said no that vehicle is
7 going into a secure storage facility so no one can get access
8 to it. Nationwide refused that and sent a letter to Summit
9 Bank on January 1st, 1999 that says that they have a contract
10 with Summit Bank, and I quote, "We insist that this contract
11 be honored and title to the vehicle be forwarded to this
12 office immediately. Please understand that if the bank does
13 not perform pursuant to its agreement with Nationwide, we
14 will initiate the proper legal action to enforce the
15 companies rights under the contract with Summit Bank."

16 So Nationwide is threatening to sue Summit Bank
17 because the Bergs are going to purchase the vehicle instead
18 of them.

19 MR. H. MAYERSON: And by the Bergs you mean our
20 office?

21 THE WITNESS: Yes. And all we wanted to do was put
22 it into a secure storage facility for the inspection that we
23 had been waiting months to get. That was delayed for -- it
24 was just delayed. One of the times Lindgren canceled it.

25 THE COURT: You've run way out of time.

1 MR. H. MAYERSON: Thank you, Your Honor.

2 BY MR. H. MAYERSON:

3 Q Mr. Mayererson, do you have a cost estimate?

4 A Oh, yes, Your Honor. We have we have about
5 \$88,000 in costs.

6 Q What are they made up of?

7 A Largely expert witness fees, and as Mr. Cohen
8 has pointed out, many of those experts were not called to
9 trial. This latest expert isn't called to trial because we
10 can't afford to have this case go past Monday. So it's not
11 because we don't want to call the expert, it's just we can't
12 afford to have this thing delayed any more.

13 But I would like to point out that I contacted
14 Nationwide's counsel before we retained experts and I
15 suggested to them in an effort to contain costs since by that
16 point it was clear a judge decides issues of bad faith and
17 not a jury, I suggested we didn't need experts and save each
18 party some money. And Nationwide's counsel refused that
19 suggestion and went out and hired Connie Foster who's a
20 former insurance commissioner who they pay \$425 an hour to
21 review not just the claim file but the litigation file
22 including depositions, et cetera.

23 MR. COHEN: Objection. What does this have to do
24 with anything?

25 THE WITNESS: It has to do with our efforts to

1 mitigate damages.

2 MR. H. MAYERSON: And our costs.

3 THE COURT: Next question.

4 MR. H. MAYERSON: Thank you, Your Honor. Should I
5 move some documents in or --

6 THE WITNESS: Do you want the bill summary?

7 MR. H. MAYERSON: Yes.

8 THE COURT: Billing summary.

9 THE WITNESS: Of all of our costs of actual
10 expenditures?

11 THE COURT: I would think so, yes.

12 THE WITNESS: Mr. Georgio will submit that.

13 THE COURT: We're going to finish the direct
14 testimony before lunch so when we get back we're not going to
15 reopen any of this. We're going to hear cross-examination
16 and go on.

17 THE WITNESS: We have another witness who will be in
18 to authenticate those billing records. The only other thing
19 the Court might want to see is my computer records.

20 THE COURT: I'm not going to tell you what I want to
21 see and what I don't want to see. I'm letting you put
22 everything into the record of this case so that we don't get
23 into any situation where you could claim that I precluded you
24 from developing your case. Do you understand that?

25 THE WITNESS: I do.

369

1 THE COURT: All right.
2 BY MR. H. MAYERSON:
3 Q Mr. Mayerson, would you put into the record
4 the total amount of fees as they've been computed?
5 THE COURT: He already has, hasn't he?
6 MR. H. MAYERSON: I thought so, but --
7 THE COURT: Isn't that the exhibit with \$821,143
8 through June the 5th, 2007?
9 MR. H. MAYERSON: Thank you, Your Honor. Withdraw
10 the question.
11 THE COURT: Now I have to hear all these questions a
12 second time. All right. Are you turning him over to defense
13 for cross-examination?
14 MR. H. MAYERSON: Yes, Your Honor.
15 THE COURT: We'll do that as soon as we get back at
16 1:30.
17 (Whereupon, a luncheon recess was taken at 12:25
18 p.m.)
19 THE COURT: Cross-examine.
20 MR. COHEN: Thank you, Your Honor.
21 (Whereupon, Exhibit No. 44 was marked for
22 identification purposes.)
23 CROSS-EXAMINATION
24 BY MR. COHEN:
25 Q Exhibit 44, billing records from Mr.

370

1 Mayerson's firm.
2 Mr. Mayerson, I'll get into this document in a little
3 bit, but is this a copy of your billing records that you
4 provided to us?
5 A I believe it is, yes.
6 Q Okay. And I think you stated earlier that you
7 were going to have somebody come in and authenticate those
8 records?
9 A Yes.
10 Q Before we get into those, lets talk about some
11 of your testimony. You're seeking attorney's fees in this
12 case if you are successful in the bad faith; is that correct?
13 A Yes.
14 Q All right. And you're aware of Pennsylvania
15 Rule 1716 with regard to attorney's fees?
16 A You'd have to refresh my recollection.
17 Q Pennsylvania Rule of Civil Procedure, Rule
18 1716 provides that in all cases where the Court is authorized
19 under applicable law to fix the amount of counsel fees, it
20 shall consider the following factors: One, the time and
21 effort reasonably expended by the attorney in the litigation;
22 two, the quality of services rendered; three, the results.
23 THE COURT: Not so fast. Two is what, quality of
24 services?
25 MR. COHEN: The quality of services rendered.

371

1 THE COURT: Go ahead.
2 MR. COHEN: Three, the results achieved and benefits
3 conferred upon the class or upon the public.
4 THE COURT: Is that three, what you just read?
5 MR. COHEN: That's three.
6 THE COURT: And four.
7 MR. COHEN: There's just three.
8 THE COURT: The results achieved and benefits --
9 MR. COHEN: Conferred upon the class --
10 THE COURT: Okay.
11 MR. COHEN: -- or the public.
12 THE COURT: Okay.
13 MR. COHEN: And four, the magnitude, complexity and
14 uniqueness of the litigation. I'm sorry, and there's
15 actually a fifth, and whether the receipt of a fee was
16 contingent on success.
17 THE WITNESS: Yes, I am familiar with the rule.
18 MR. COHEN: Okay.
19 THE WITNESS: Could you tell me the first two again?
20 THE COURT: Time and effort expended. Number two,
21 the quality of services realized, is that what it says?
22 MR. COHEN: Rendered.
23 BY MR. COHEN:
24 Q So you would agree with me that these are
25 factors that the Court should take into consideration when

372

1 determining whether or not and to what extent you should be
2 entitled to fees in this case?
3 A Yes.
4 Q All right. And my questioning today is going
5 to all be sort of based on this rule and these factors, so
6 you have a context of why I'm asking these questions.
7 A Thank you.
8 Q You testified that back in the beginning of
9 this case you didn't have a system set up to track hours;
10 correct?
11 A Correct.
12 Q All right. When I keep track of my hours on a
13 daily basis I have a time sheet, and when I have a telephone
14 call, I write it down. And what it is, so my client,
15 Nationwide, knows what they're paying me for. There's no
16 computerized system I enter my time into.
17 Why is it that you couldn't have simply just kept
18 track of your hours that way?
19 THE COURT: I think he explained that on direct
20 examination. You obviously do that because your client,
21 Nationwide, requires you to do that.
22 MR. COHEN: Right.
23 THE COURT: To be paid on time records.
24 BY MR. COHEN:
25 Q But you recognize that this is a bad faith

373

1 matter; correct?
2 A Yes.
3 Q And --
4 THE COURT: It was not a bad faith matter though when
5 he started the case and that's what he explained this
6 morning.
7 MR. COHEN: It was a bad faith matter when he started
8 the case.
9 THE COURT: well, not in the beginning of the
10 services. There were a lot of services in the beginning that
11 had nothing to do with bad faith. As a matter of fact, he
12 didn't give it any consideration for a period of time.
13 MR. COHEN: As of the filing of the complaint in May
14 of 1998?
15 THE COURT: Oh, yes. That's different. Lets start
16 with May of 1998. You filed a complaint in this case and
17 that is -- that was marked as an exhibit in the first phase
18 of trial, Exhibit Number 25?
19 A Without a class action.
20 Q Without a class action. This was the first
21 complaint you filed in this case?
22 THE COURT: 1998?
23 MR. COHEN: 1998.
24 THE COURT: Right. And what was the date again?
25 MR. COHEN: May 4th, 1998. Oh, I'm sorry. The

374

1 complaint that I have is the eighth, amended complaint, but
2 the original complaint is Exhibit 22.
3 THE COURT: Just give me the date.
4 MR. COHEN: I'm sorry, Your Honor.
5 THE COURT: Just give me the date so I can tie it
6 into what he submitted as a part of Exhibit Number 42.
7 MR. COHEN: Okay. May 4th, 1998.
8 THE COURT: All right.
9 BY MR. COHEN:
10 Q So that document, Exhibit Number 22, was the
11 first complaint you filed in this case; correct?
12 A Correct, there was a writ of summons filed
13 previously, but that was the first complaint that mentioned
14 Nationwide.
15 Q Oh, okay. And that's a 202-paragraph
16 complaint containing several allegations against Nationwide
17 including bad faith; right?
18 A Right.
19 Q All right. So --
20 THE COURT: Was that a separate count?
21 MR. COHEN: Yes.
22 THE COURT: Is that a separate count, what count was
23 it in that complaint?
24 MR. COHEN: Count 10.
25 THE COURT: Count 10. And that complaint was dated

375

1 again what date?
2 MR. COHEN: May 4th, 1998.
3 BY MR. COHEN:
4 Q And I think when I deposed you with regard to
5 your fees I asked you had you had any experience in bad faith
6 litigation before, and I believe your testimony was, yeah,
7 you had handled some bad faith matters before; correct?
8 A Well, yes, correct.
9 Q All right.
10 A But I don't know if it was plural or not. I
11 know I think my testimony may have been exactly as it is now.
12 I'm not really sure. I know there was a case against All
13 State that resolved with a mediation.
14 Q Okay.
15 A Or by a binding high/low, but I don't know if
16 there's anything else besides that when this case came about.
17 Q But there was at least one case that you
18 filed?
19 A There was at least one, yes.
20 Q So you were involved in another bad faith
21 matter as an attorney?
22 A Yes, I was involved with another insurance
23 company, yes.
24 Q And obviously you were aware of bad faith law
25 because you drafted a very extensive and very eloquently

376

1 worded complaint against Nationwide?
2 A I wish I could take the credit for that,
3 Mr. Cohen. That is not my work. I worked on it. I reviewed
4 it, but it was a collaborative effort with my father, my
5 father and myself.
6 Q But it's your complaint?
7 A Yes, we filed it, yes.
8 Q You filed it, right. So in order to file this
9 you must have been aware of the law -- by the way, your name
10 is on the verification of the complaint so you must have been
11 aware of the law with regard to bad faith; right?
12 A Yes.
13 Q You wouldn't have filed a complaint if you
14 didn't know the law regarding bad faith; right?
15 A Yes.
16 Q And you must have known that there was going
17 to be a claim for attorney's fees in this case; right?
18 A Correct.
19 Q And when you're making a claim for attorney's
20 fees you realize that you are asking the Court to do
21 something fairly extreme and that is to have another side pay
22 for your fees; correct?
23 A Correct.
24 Q So as of May 4th, 1998 wouldn't it have been
25 reasonable to assume that you would have known enough to

IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

377

1 track your time with regard to what you were doing in this
2 case?

3 A All I can say in response to that is, yes, I
4 wish I would have, and it was a mistake that I didn't. But
5 there are some opinions out there, I'm not the first --

6 THE COURT: Mr. Mayerson, I'm not interested. You
7 can argue those later on. You're on cross-examination.
8 Answer the question. First of all, yes or no, then if it
9 requires an explanation, I'll give you time to explain, but
10 don't bring something else in that might change the subject.
11 It's cross-examination. All right. Okay. Go ahead. Ask
12 the question again.

13 MR. COHEN: Can you repeat the last question?

14 THE COURT: You asked him whether or not as of May
15 4th of 1998 whether he knew the law with regard to bad faith
16 and he intended to file a claim for attorney's fees he knew
17 the value of tracking his time.

18 MR. COHEN: There you go.

19 THE COURT: That's not bad for somebody that's been
20 sleeping through most of this.

21 MR. COHEN: I'm very impressed.

22 THE COURT: I'm impressed too. Thank God I had an
23 hour off and walked around. Simple question.

24 THE WITNESS: And I answered yes.

25 MR. COHEN: Okay.

378

1 BY MR. COHEN:

2 Q And before when you first got involved in the
3 case, all right, before the complaint was filed, most of this
4 was with regard to your interaction with Lindgren; right?

5 A Yes. Well, actually --

6 THE COURT: Yes or no.

7 THE WITNESS: No, I'd have to say no.

8 THE COURT: That's your answer. Next question.

9 BY MR. COHEN:

10 Q Okay. So it's correct, is it not, that you
11 did not begin actually keeping track of your time until March
12 of 2003?

13 A I believe that's correct, but if you have a
14 record there then you can easily show it to me without
15 wasting any time. I'd like to see it.

16 Q I'm referring to your testimony --

17 THE COURT: March, so now we're up to March 2003?

18 MR. COHEN: March of 2003.

19 THE COURT: I'm trying to track my records based upon
20 his one page.
21 (Whereupon, Exhibit No. 43 was marked for
22 identification purposes.)

23 BY MR. COHEN:

24 Q So --

25 A And also as I testified to, well, there was an

379

1 interim period of time where my records, I was tracking
2 records for depositions and tracking time for letters and
3 tracking time for phone calls in different areas and that
4 became too cumbersome, so I realized it was confusing and
5 then I went to one single format where everything was in one
6 place.

7 THE COURT: Next question.

8 BY MR. COHEN:

9 Q So just so we're clear, as of March of 2003
10 you began keeping track of your time and I think you
11 testified that you were -- that as of that date you were much
12 more specific about keeping your time that you started
13 keeping copious time records; is that right?

14 A Yes, I was more diligent.

15 Q You were more diligent. And I think you also
16 testified that your father, Mr. Mayerson, was -- and I wrote
17 this down -- quote, less concerned with documenting his time
18 than I was; right?

19 A I believe that's accurate.

20 Q Okay. Now your father is billing out at \$350
21 an hour, okay. And would you not agree with me that somebody
22 billing out \$350 an hour with as many years as your father
23 has -- let me back up for a second.
24 You testified that you weren't really that
25 experienced in bad faith law and you made a mistake you

380

1 didn't really know, your father has been around for a long
2 time. I assume your father has been doing bad faith law for
3 a long time, has it not been?

4 A It was something I grabbed hold of and it was
5 a new statute and I was a little enamored with it and talking
6 to him and saying, look, this is an interesting area of the
7 law. And the case that I was handling it was an underinsured
8 motorist case, and I saw what All State was doing on that
9 case to me and I saw how much time was taking and then
10 somewhere along the line I came to understand there was a
11 statute to protect customers and attorneys from that kind of
12 conduct. So it wasn't my father with the experience before.
13 It was actually me who drew us into that area of the law.

14 Q Okay. So prior to that time your father had
15 never billed hourly for any cases?

16 A Well, I don't know that.

17 THE COURT: Counsel, are you using the right
18 terminology? He didn't bill out anything. You're the one
19 who bills out. In other words, probably every month or
20 whatever you send a bill to Nationwide and you expect the
21 next month you'll get a check for that amount. That's
22 billing out. These people were not billing out. They placed
23 a value on their services that they thought that their
24 services were worth. They didn't bill out to anyone.
25 I don't know. Is that Mr. and Mrs. Berg back there?

1 I thought so. Did you ever get a bill from -- they never got
2 a bill.

3 MR. COHEN: Your Honor, I'm reading from Plaintiff's
4 own trial.

5 THE COURT: Lets use the right terminology.

6 MR. COHEN: They call it bills, not me. I mean,
7 Exhibit 9 to the trial brief --

8 THE COURT: Well then change it. Change it. Isn't
9 that what they -- aren't these figures the value that they
10 place their services at for doing certain things and for
11 spending periods of time to do this and to do that? That's
12 all that this is.

13 MR. COHEN: Well, there must be some standard by
14 which we govern the accuracy of their fees, otherwise they
15 can just request the Court award anything.

16 THE COURT: Well maybe that's my point, but I think
17 that you are heading down the right road when you talked
18 about it, and I'm sure you're going to get back to it; time
19 and effort, quality of services, rendered results, magnitude
20 and complexity of unique litigation. All of those things are
21 important. But that is their own estimate of what their
22 services are for that if they file a bad faith claim this is
23 what they would try to recover. Isn't that what it is or am
24 I missing something?

25 MR. COHEN: Well, I think, Your Honor, with all due

1 respect, it's a little bit more than that. I think that
2 people whose attorneys bring bad faith matters should know
3 that if they are going to be making an award for attorney's
4 fees, just like if we were going to be making a request for
5 malicious attorney's fees, which is an option, then we would
6 be expected to present our time records to the Court. It
7 would have to meet all the standards of specificity,
8 contemporaneousness --

9 THE COURT: I don't disagree with anything you're
10 saying. I totally agree with you. You made that point a
11 long time ago. I don't know what else you expect to get out
12 of that, but it's not billing it out. They didn't bill it
13 out to anyone. To me this is their placing a value on their
14 services.

15 MR. COHEN: I will --

16 THE COURT: And that is just like under the old days
17 when I was practicing law. That's one of the reasons I got
18 out. I was tired of keeping all of these crazy time records
19 and charging so much for a photocopy, so much for a phone
20 call and everything else. In the old days, this is probably
21 when you were in grade school, you'd handle a case and send a
22 bill to the client for what you thought your services were
23 worth and then you'd agonize a little over it and you'd say
24 is it really worth it to the client and whatever. But we
25 weren't billing it out. You're billing it out. He's not. I

1 want to emphasize that. That's what I'm thinking about at
2 this particular point. What was the value of Mayerson's
3 services, the firm?

4 MR. COHEN: Lets call it itemization of your fees.

5 THE COURT: Yeah. That's good.

6 BY MR. COHEN:

7 Q So with regard to your itemization of fees and
8 your father's itemization of fees, you must have known --
9 both you and your father must have known that in a bad faith
10 matter you would have been called at some point to justify
11 the amount of time that you spent on this case and that you
12 were seeking the Court to have compensated to you; correct?

13 THE COURT: The amount of time and the amount of
14 effort and the quality of your services and magnitude,
15 complexity and uniqueness of your services. You have to take
16 all those opinions into consideration in proving your claim
17 --

18 MR. COHEN: Right.

19 THE COURT: -- for counsel fees under this bad faith
20 section; right?

21 THE WITNESS: Yes, Your Honor.

22 THE COURT: Yeah.

23 MR. COHEN: Okay.

24 BY MR. COHEN:

25 Q You mentioned during your testimony some

1 letters that you had sent to Nationwide, and I believe the
2 first one was November 3rd; correct?

3 A Correct.

4 Q All right. And that's the one that's marked
5 as Exhibit Number 7?

6 A It's November 3rd, 1997.

7 Q November 3rd, 1997. And this, in fact, was
8 the first time that you ever communicated with Nationwide
9 with regard to the Berg's claim; correct?

10 A Correct.

11 Q All right. And this is that letter. We've
12 gone through this a number of times. In that letter you
13 directed Nationwide not to have any communication with
14 Lindgren and obviously the Bergs because you represent them?

15 A That's correct.

16 Q Okay. And you said that you were preparing
17 the complaint to be filed against Lindgren and that you've
18 retained an expert and, you know, if Nationwide wants the
19 opportunity to examine the vehicle please advise; correct?

20 A Yes, I would like to clarify though.

21 THE COURT: No, just answer the question.

22 THE WITNESS: The letter states what it states. I
23 think that sounds right.

24 THE COURT: Next question.

25 BY MR. COHEN:

1 Q And it's true, is it not, that you didn't
2 follow this letter up with a telephone call to anybody at
3 Nationwide with regard to your findings, you know, what Mr.
4 Wert said to you, or any of that?

5 A That is absolutely incorrect.

6 Q Okay. Lets -- well, let me suggest this: Is
7 that something that you would have remembered or it's
8 obviously a very important part of your theory of the case so
9 I imagine that would have been something you remembered and
10 taken notes on; correct?

11 A Yes, I think we have a file memo on it.

12 Q Okay. But as I look at your billing summary
13 it's called "billing summary," your itemization of time, I
14 don't see anything in here subsequent -- I mean at some point
15 there's a telephone call, but certainly for several months I
16 don't see any telephone conversations or telephone calls to
17 Nationwide?

18 A As I testified to, it was a conservative
19 estimate that we went and looked at the pleadings book and
20 the correspondence so if there was no -- and this was a rush
21 job, not a rush job, but we were under a court order to
22 produce these records to you. So we only had a certain
23 amount of time to work it all out.

24 I apologize. We created this before the other trial
25 so it would have been before that. But in any event, the

1 reason there is no contemporaneous record with that. If
2 there wasn't a letter for me to look at, I wouldn't have had
3 time to estimate or thought of it.

4 Q November 3rd of 1997, telephone call to C and
5 J Tire. You remember that. That's in there. I mean, that
6 couldn't have been as important as a telephone call to
7 Nationwide to talk about settling this case, could it? Why
8 is it you remember to put an entry to C and J Tire but not to
9 Nationwide?

10 A What date are you talking, oh, down on 11/3.

11 Q 11/3/97.

12 A Mr. Cohen, I can tell you there was a
13 telephone call. It's in your claim log or Nationwide claim
14 log that I called to follow up on that.

15 Q Why does it not appear in your records?

16 A Where I failed to document some of our time.
17 I didn't -- I wasn't -- it's in your claim log. I mean, that
18 I followed up.

19 Q You've got lots of entries in here with regard
20 to telephone conversations with experts and memos to files,
21 but there's nothing in here suggesting that you had any
22 conversations with Nationwide. Now if it was so important to
23 try and resolve this matter with Nationwide, why wouldn't
24 that be documented in your itemization of expenses?

25 A Well, first of all, the time period that

1 you're looking at, I didn't think we had a dispute with
2 Nationwide. As a matter of fact, I didn't really understand
3 that there was a Blue Ribbon Program and a Blue Ribbon
4 Guarantee and we were really looking either to Nationwide
5 just to get the repair documents and photographs to give to
6 our expert and maybe to submit a comprehensive claim. But I
7 didn't understand that there was a Blue Ribbon Program. I
8 didn't understand that there was a repair guarantee.

9 Q Then why would you stop Nationwide from having
10 any contact with Lindgren?

11 A Because I was concerned that Lindgren was
12 going to monkey with the documents. I wanted to get the
13 documents from Nationwide. I didn't want to alert them. And
14 sitting here now, I'm not sure exactly why, but it wasn't to
15 set you guys up.

16 Q I'm not suggesting you were trying to set us
17 up.

18 A I think you have suggested that in the past.

19 Q I'm not suggesting you were trying to set us
20 up. What I'm trying to get to, you testified at length
21 before lunch that Nationwide was doing nothing to try and
22 resolve this case. And what I'm asking you is that -- let me
23 finish my question -- what I'm asking you is that the first
24 time Nationwide was put on notice that there was any problem
25 with the Berg's case or claim or vehicle was November 3rd,

1 1997, and in that letter you specifically told Nationwide, do
2 not contact Lindgren.

3 Now, isn't it fair to say that if Nationwide had an
4 opportunity to discuss this with Lindgren, this case would
5 have been over ten years ago?

6 A First of all --

7 THE COURT: Yes or no?

8 THE WITNESS: No, I don't think that's true.

9 BY MR. COHEN:

10 Q All right. You followed this --

11 THE WITNESS: May I follow up?

12 THE COURT: There will be an opportunity on redirect.

13 BY MR. COHEN:

14 Q You followed this up, that letter, with
15 another letter in April, April 22nd, 1998?

16 A There were some letters in between.

17 Q I understand that. But you followed this up,
18 I mean, there was some letters and we've seen those. They
19 were requests for the estimates and things like that. We've
20 heard about that. But with regard to sort of the substance
21 of your claim, you followed that up on April 22nd and that's
22 the letter that's marked as Exhibit Number 11. Do you recall
23 that letter?

24 A Yes.

25 Q All right. Do you have that letter in front

389

1 of you?

2 A No. Can you give me a page number?

3 Q Yeah, it's Page 1244. Got it?

4 A Yes.

5 Q Okay. And in that letter you say. "As you
6 are aware, I represent the Berg family for fraudulent and/or
7 grossly negligent repair work done to their Jeep Cherokee at
8 Lindgren Chrysler-Plymouth."

9 And then you go on in the second paragraph and you
10 say, "On April 14th, 1998, depositions of Lindgren
11 Chrysler-Plymouth's Body Shop Manager and General Manager
12 were conducted pursuant to a writ of summons and court order.
13 The purpose of the depositions were to determine whether
14 Nationwide is an appropriate defendant in this action;"
15 right? So on April 14th, 1998 there was depositions
16 conducted; right?

17 A Right.

18 Q Nationwide was never invited to those
19 depositions or given an opportunity to attend to see what
20 allegations were being made against them, were they?

21 A I don't believe they were.

22 Q Okay. And again, if Nationwide knew that you
23 were pursuing an action against Lindgren and there was going
24 to be depositions, don't you think that maybe it would have
25 helped the process of settling the Berg's claim if they were

390

1 given the opportunity to attend that deposition?

2 A Well, I certainly didn't preclude them.

3 Q You never told them?

4 A I don't know that we didn't and I don't know
5 at this point in time. And I know that you believe that I
6 did something on purpose to try and set them up.

7 Q I'm not saying that.

8 A And I will add that it was when Charlie
9 Barone, when we consulted with Charlie Barone, and he's the
10 one that keyed us into the Appraiser's Act and there's this
11 regulation out there that controls the relationship between
12 an insurance company and a repair shop, so by the time that
13 we got to the deposition I believe that I understood about
14 the Blue Ribbon Repair Program and the potential that
15 Nationwide may be a defendant, but I don't think when we
16 noticed the deposition or tried to get it with filing a
17 pre-suit motion for pre-suit deposition, I don't think at
18 that point I understood it.

19 So my understanding developed around I think it was
20 the month of December or January. If you have Charlie
21 Barone's report and a date on that, that would be helpful. I
22 believe it's a trial exhibit. That's when I realized what
23 Nationwide's involvement is.

24 Q Look, lets call it what it is. You knew that
25 Nationwide was the Berg's insurance carrier and you made that

391

1 very clear in your correspondence and you knew that you were
2 seeking something from Nationwide because in your letters you
3 specifically say, "what is Nationwide going to do;" right?

4 A In my later letter.

5 Q Lets not pretend that you didn't know.

6 MR. H. MAYERSON: Objection to pretending.

7 THE COURT: Overruled.

8 BY MR. COHEN:

9 Q You knew that Nationwide was the Berg's
10 insurance carrier. Now Nationwide could have attempted to
11 even make right by the Bergs, but you weren't giving them the
12 opportunity to do that?

13 A I was giving them the opportunity to do that.
14 I specifically said in my letter of representation if you'd
15 like to see the vehicle. I never stopped Nationwide from
16 doing anything.

17 Q Okay. You say, a complaint in your letter to
18 Nationwide on April 22nd, 1998, you say, "A complaint must be
19 filed by May 4th, 1998. The Bergs must sell the Cherokee due
20 to financial constraints. Time is of the essence."

21 And that May 4th, 1998 date, that's not a date that
22 was imposed upon you by Nationwide; right?

23 A It was imposed by the Court.

24 Q It was imposed by the Court because Lindgren
25 filed a rule -- a rule to file complaint against you;

392

1 correct?

2 A Correct.

3 Q Not Nationwide; right?

4 A Right.

5 Q Okay. So you could have, if you wanted to,
6 you could have sued Lindgren. You obviously thought you had
7 a claim against them, not sued Nationwide at that time, tried
8 to work it out with Nationwide, but you chose not to do that?

9 A We did have a conversation about it. I kind
10 of have a vague memory of it, I think. Margaret Connors is
11 one of the other attorneys in the office. I believe she was
12 involved and we had a discussion do we name Nationwide or
13 not.

14 Q And you name them?

15 A Yes, we did but we did give it consideration.

16 Q I'm sure you did. I'm not suggesting that you
17 didn't think about it. That's my whole point. You thought
18 about it and you discussed it?

19 A And I regret it.

20 Q well, so do I. But you made a decision to sue
21 Nationwide on May 4th despite the fact that Nationwide never
22 forced to you file a complaint, it was Lindgren; correct?

23 A Lindgren filed a rule to file complaint, yes.

24 Q So again, as of May 4th, Nationwide was really
25 not in much of a position to make something on the Berg's

IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

1 claim because they were now in litigation. It was a -- the
2 world had changed as of May 4th. Now we have a bad faith
3 lawsuit?

4 A I don't agree with that Mr. Cohen, and nothing
5 had changed.

6 Q Okay. There was an inspection and we've heard
7 a lot about this Stephen Potosnak. Bruce Bashore asked
8 Stephen Potosnak to go out and look at the vehicle; correct,
9 okay and this was done at Lindgren; correct?

10 A No, incorrect. The Potosnak inspection?

11 Q Yeah.

12 A No.

13 Q Okay. Why don't you tell me what is correct?

14 A It was at a place called A.W. Golden's.

15 Q You're right. My mistake. It was at A.W.
16 Golden's. And we talked about how Mr. Potosnak set this
17 inspection up with Mr. Berg and yourself; right?

18 A Incorrect.

19 Q Okay.

20 A Is what the note says --

21 Q He just went and stole the car and brought it
22 to A.W. Golden's?

23 A What the note says with an attorney from the
24 plaintiff's firm, it didn't say me, and as I testified to
25 before we're unclear how that happened. And I think we were

1 a little loose with allowing Nationwide to inspect the
2 vehicle and we basically said just call the Bergs directly
3 and set up an appointment. I wasn't present. Nobody from
4 our office went. We didn't make a memo in our file. You
5 sent no confirming letter and when I went back and reviewed
6 the file years later I was convinced it was a secret
7 inspection that we knew nothing about it because I didn't
8 have the report yet. And when I got the report and it said
9 A.W. Golden's. I talked to my client and my client said,
10 yes, I took the vehicle to A.W. Golden's, and I said we must
11 have arranged it.

12 Q Now for years during this litigation you have
13 made the allegation that this was a covert inspection done by
14 Nationwide without your knowledge; correct?

15 A I had believed that up until the time I got
16 the report in 2003 because I knew there was an inspection.

17 Q All right.

18 A I discovered that eventually.

19 Q But you were wrong; right?

20 A No, I was not wrong because it was a secret
21 inspection because you guys concealed it and when you
22 realized it --

23 Q How can it be a secret inspection if your
24 client set it up?

25 A When you guys realized we didn't know about it

1 you took advantage of the situation.

2 Q All right. That inspection by Mr. Potosnak
3 was April 28th?

4 A Correct.

5 Q Right. April 28th was a Tuesday. The six
6 days after your letter of April 22nd. Now, because April
7 28th is a Tuesday there was a weekend before that, so not
8 many days had passed, and I assume you faxed a letter so
9 within a few days somebody from Nationwide makes contact with
10 you or Mr. Berg or whoever it was, Don Hitman of your office,
11 I don't know, arranges to have the vehicle looked at, at A.W.
12 Golden's, has the vehicle taken to A.W. Golden's, looks at
13 the vehicle, enters his findings in a log note. This is all
14 done within a few days of your letter; right?

15 THE COURT: Yes or no. Lets go here. Move on.

16 THE WITNESS: Yes.

17 THE COURT: Next question.

18 BY MR. COHEN:

19 Q Okay. That seems like Nationwide is moving
20 pretty quickly to try and at least resolve this matter?

21 A Absolutely not.

22 Q Okay. Nevertheless, within a few days on a
23 Monday you filed your lawsuit May 4th; right?

24 THE COURT: The full date.

25 MR. COHEN: May 4th, 1998.

1 THE COURT: You guys have been doing this every day.
2 You probably go to bed at night thinking about this case.
3 Give us some dates here.

4 MR. COHEN: May 4th, 1998 you filed your lawsuit?

5 THE WITNESS: That's correct.

6 MR. COHEN: Okay.

7 THE COURT: Quite frankly, I'm going to bed thinking
8 about this case too.

9 MR. COHEN: Just so long as it's not right now.

10 THE COURT: No, I'm trying to figure out when it's
11 going to be over.

12 MR. COHEN: Yeah, me too.

13 THE COURT: That's my only question right now. You
14 were supposed to have your witnesses on today. Why aren't we
15 doing that?

16 MR. COHEN: Because I'm still in their case in chief
17 just like the first phase in trial. Once again we're being
18 pushed to the very end.

19 THE COURT: I'm trying not to have it that way.

20 BY MR. COHEN:

21 Q You, in your billing itemization, you have a
22 time entry for May 4th, 1998 for the complaint; correct?

23 A Right.

24 Q And it's ten hours?

25 A Right.

1 Q For yourself, your dad and Lori Scholar?
 2 A Lori Scholar.
 3 Q Okay. You didn't draft this complaint on the
 4 same date that you filed it?
 5 A Of course not.
 6 Q Okay. I mean, this is a 200-paragraph
 7 complaint. You must have had this complaint prepared in
 8 advance of May 4th, 1998; right?
 9 A Yes and the only other alternative was to make
 10 up dates and times and say we spent two hours on the 9th and
 11 two hours on the 12th.
 12 Q I'm not asking you to do that. I want you to
 13 agree with me that this complaint was prepared before May
 14 4th, 1998.
 15 A That's correct.
 16 Q And your letter to Nationwide was April 22, so
 17 at the time why didn't you tell them that you had a
 18 200-paragraph complaint you were about to file against them?
 19 A I don't know if I said a number, but I told
 20 them in my letter of representation.
 21 Q Against Lindgren, not against Nationwide?
 22 A No.
 23 Q And you don't want to file a suit?
 24 A No.
 25 Q It was Nationwide you wanted to settle with?

1 A Right.
 2 Q Mr. Myers is here, but Lindgren is not a
 3 member of this case any more. So what is Nationwide --
 4 wouldn't you want to settle with Nationwide?
 5 A I see your point that we began drafting the
 6 complaint maybe contemporaneous with our letter of April
 7 22nd.
 8 Q So you had the complaint prepared against
 9 Nationwide and you were going to file a bad faith action
 10 against Nationwide come hell or high water; isn't that right?
 11 A That is incorrect, Mr. Cohen. We did not want
 12 Nationwide in this litigation. If they would have bought the
 13 vehicle we would have proceeded with Lindgren.
 14 Q You never gave them the opportunity to.
 15 A I don't agree with that at all.
 16 Q All right. November 25th, 1997, Donald
 17 Phillips, your engineer expert, the guy that you hired,
 18 presumably after David Wert contacted you, he inspected the
 19 vehicle; right?
 20 A Right.
 21 Q Okay. And his opinion is that the vehicle was
 22 unsafe; right?
 23 A I believe that's what he testified to, yes.
 24 Q Okay. But you never let Nationwide know back
 25 then back in November of 1997 that Mr. Phillips looked at the

1 vehicle and said it was unsafe. why not?
 2 A In our letter of representation we told him --
 3 I don't know what the specific -- I mean -- the language
 4 that's in there, grossly -- is that the November 3rd letter?
 5 Q I don't know, you tell me.
 6 A Grossly negligent. Well, Exhibit 7.
 7 Q Well, I see it in Exhibit 11. April 22nd it
 8 says, "we have retained an expert who has indicated that the
 9 vehicle is no longer crash worthy."
 10 But Mr. Phillips looked at the vehicle November 25th,
 11 1997?
 12 A So that was after our letter of
 13 representation.
 14 Q Yeah. But you didn't mention that
 15 Mr. Phillips looked at the vehicle until April. Isn't that
 16 something that you think Nationwide would have wanted to know
 17 in order to help settle this case? Do you think that
 18 Nationwide would have wanted their policyholders driving
 19 around in an unsafe vehicle?
 20 A Mr. Cohen, I don't agree with you. We didn't
 21 tell Nationwide that. It may or may not be in a
 22 correspondence. I don't remember keeping it a secret from
 23 them.
 24 Q You don't have a record in your billing
 25 records because you don't recall the telephone conversations.

1 You said it was important enough it would have been in a
 2 letter. We've got the letters. How come you don't have a
 3 letter to Nationwide?
 4 A I do have a letter to Nationwide.
 5 Q Right. Five months after your expert said the
 6 vehicle was unsafe. Now who was being disserved, your
 7 clients, I believe. Mr. Berg testified that he never even
 8 knew that Mr. Phillips looked at the vehicle and thought it
 9 was unsafe.
 10 A I don't know if that's accurate.
 11 Q Your expert said it yesterday.
 12 A I don't know if that's accurate. You got him
 13 to agree with that.
 14 Q That's my job.
 15 A I don't know how you got him to agree with
 16 stuff. That I don't think was accurate.
 17 Q Did you ever tell Mr. Berg that Donald
 18 Phillips looked at the vehicle and said it was unsafe?
 19 Mr. Berg said no.
 20 A Well, we did, and if you want to pull out
 21 Mr. Berg's testimony, I'll take a look at it. But Mr. Berg
 22 was not a great historian and certainly we told him it cost
 23 us a lot of money. And, in fact, my recollection serves me
 24 correctly, Mr. Berg was pretty worried about driving the
 25 vehicle and there was a lot of pressure on us to get the

1 claim resolved.

2 Q If Mr. Berg was so concerned about driving the
3 vehicle why did he put 20,000 miles on it in one year?

4 A I do know that they bought a vehicle I think
5 in February of '98 before the depositions that took place.
6 They bought a replacement vehicle, a Volkswagon Jetta and the
7 Jeep largely sat parked.

8 Q Well, I talked to your expert yesterday about
9 this. I went to great efforts to do a mileage time line so
10 we would have all of this laid out, and I know based on the
11 records that you provided to us and based on the mileage that
12 was reported in the various expert reports that you had
13 generated that from the date the vehicle was returned to the
14 Berg's to November 25th, 1997 when Mr. Phillips looked at the
15 vehicle, they put 19,688 miles on the vehicle?

16 A And that is all before Mr. Wert called them
17 and told them how unsafe the vehicle may be.

18 Q Well, Mr. Wert called them in October but they
19 continued to drive the vehicle; correct?

20 A They continued to drive the vehicle and even
21 after they purchased a new vehicle they may have driven it a
22 little bit.

23 Q And even after Mr. Phillip's inspection in
24 November 25th, 1997 to the time that Charlie Barone looked at
25 the vehicle a month later on December 5th, 1997 they put

1 close to 1200 miles on the vehicle?

2 A I don't agree with your representations. I
3 know you got a lot of witnesses to agree to your
4 representations, but I will not agree to it.

5 MR. COHEN: I have the expert reports.

6 MR. H. MAYERSON: Let him finish please. Objection.

7 MR. COHEN: I apologize, go ahead.

8 THE WITNESS: If you want to show me some
9 documentation for it, that's fine. But I've seen what you
10 can do, Mr. Cohen, in getting people to agree with your
11 representations and I'm not going to do it.

12 MR. COHEN: Okay.

13 THE WITNESS: I will agree with you that the vehicle
14 was operable.

15 MR. COHEN: No, lets do it your way.

16 BY MR. COHEN:

17 Q This is Mr. Phillips's report.

18 A Is the mileage on here? Is that what you're
19 saying?

20 Q Third paragraph down it says there were 32,727
21 miles on the odometer.

22 A I would believe that's accurate.

23 Q Okay. And the date of his inspection was
24 November 25th, 1997; correct?

25 A Yes.

1 Q Okay. Now, this is Charlie Barone's accident
2 check report. I'm not sure what that means, but take a look
3 at that.

4 A (Witness complies with request.)

5 About the 800 miles on it, is that what you're
6 saying?

7 Q What does it say for mileage?

8 A On Charlie Barone's report, which was December
9 23rd, 1997, the mileage was 33,898.

10 Q Okay. I will represent to you that I did the
11 math and that's 1,171 miles. Now, this is --

12 A Well, wait. That doesn't look right to me.

13 Oh, okay.

14 Q Okay. This is after Mr. Phillips looked at
15 the vehicle, said it was unsafe and you apparently advised
16 your client of that, yet he's still driving the vehicle. Now
17 why is that?

18 A Mr. Cohen, I don't even know what difference
19 it makes.

20 Q It makes a big difference.

21 A That we're lying. They're saying it's unsafe.

22 Q I'll tell you the difference it makes.

23 A Are you finished?

24 Q I'll tell you the difference it makes. The
25 difference is it makes that a very large part of your case.

1 You're saying that Nationwide was knowingly allowing the
2 Bergs to drive around in an unsafe vehicle. That's the
3 difference it makes. Because your expert looked at the
4 vehicle in November, never told your -- never told Mr. Berg,
5 you never told Mr. Berg and yet Mr. Berg is continuing to
6 drive with a child, with his wife in a vehicle that your
7 expert said was unsafe. Nationwide never knew about it.

8 A May I rely on -- our allegations revert back
9 to when Mr. Wert testified that Nationwide was aware of the
10 condition of the vehicle when it left Lindgren in December of
11 1996 and that Nationwide let the vehicle go out at that time
12 and knowingly allowed the Bergs to operate this vehicle. Not
13 from between the time that we had our engineers look at it --

14 Q Okay.

15 A -- and the time that they bought a new
16 vehicle.

17 Q Okay. Lets talk about Mr. Wert, okay. Mr.
18 Wert -- first of all, Mr. Wert didn't know for certain that
19 Nationwide knew that the vehicle was unsafe?

20 A Incorrect, you're right.

21 Q Unsafe; right?

22 A Well, I don't know. He was definitely of the
23 opinion that it was not safe based on what he saw.

24 Q I don't know he was of the opinion. Mr. Wert
25 was unhappy with Lindgren. He was an ex-employee who had

1 litigation against Lindgren. We heard about that in the
2 first phase of trial; right?

3 THE WITNESS: Repeat the question.

4 THE COURT: The answer is right, that's correct.

5 BY MR. COHEN:

6 Q Mr. Wert contacted the Bergs in, I believe it
7 was October or November his testimony was, but the Bergs got
8 their vehicle back from Lindgren in December. Why did Mr.
9 Wert wait 11 months to contact the Bergs if it was such an
10 unsafe vehicle?

11 A Because he was part of the organization at
12 that point. It wasn't like Doug Joffred was calling up to
13 tell anybody either. Sure after he got fired he let him
14 know, but he was right, wasn't he?

15 Q It was okay to let the Bergs drive around in
16 an unsafe vehicle for 11 months because he was still working
17 at the job?

18 A Well, I don't see how Mr. Wert's conduct can
19 get Nationwide off the hook here.

20 Q Okay. Lets move on because suffice it to say
21 there are other reports that Mr. Barone did where he tracked
22 the mileage and the Bergs continued to put mileage on their
23 vehicle?

24 A Again, Mr. Cohen, if you really want to go
25 down the road of mileage, I'm not going to agree with you. I

1 know the Bergs were operating the vehicle, but I'm not going
2 to agree with you that they were out driving it around
3 pretending that they were lying about the vehicle being
4 unsafe.

5 Q By the way, Mr. Phillip's report as well as
6 the variety of reports that Mr. Barone authored never say,
7 and I'm sure you're familiar with these reports, never say
8 that the vehicle shouldn't have been a total loss; correct?

9 A I don't believe that they do.

10 Q They don't say that?

11 A No, and mostly because we didn't have the
12 repair documents.

13 Q And they don't say that the vehicle was not
14 repairable. They just say it wasn't repaired correctly;
15 correct?

16 A Right.

17 Q And Nationwide, you recall at the first phase
18 of trial, Nationwide didn't dispute that Bill Anderton took
19 the stand and said this vehicle wasn't repaired properly?

20 A We weren't told his opinions until very late
21 in this litigation.

22 Q Okay. You got his report; right?

23 A After I tried to file a trial precipe I did
24 get his report.

25 Q All right. So you're aware that Nationwide

1 never contended and to this day doesn't contend that that
2 vehicle was repaired properly?

3 A No, I don't agree with that. Nationwide
4 pretended that the vehicle was properly repaired through many
5 years of litigation.

6 Q Okay.

7 A And in fact when they answered the complainant
8 they refused to acknowledge any repair defect and that answer
9 I think was in 2002.

10 Q Well maybe that's because they didn't really
11 have an opportunity to inspect the vehicle until then?

12 A They had an opportunity in '98.

13 Q All right. We had various inspections that
14 were arranged after subsequent to the filing of the
15 complaint; right, and you testified before lunch that
16 Nationwide was cancelling all these inspections; right?

17 A I said that I was repeatedly trying to get the
18 vehicle inspected. I said at one point 30 days, please do
19 it, and your own billing records show that you refused to do
20 it within 30 days.

21 Q There was an inspection set up at Lindgren and
22 you said you didn't want the vehicle inspected at Lindgren.
23 You wanted it at a neutral location?

24 A Yeah, we did want that.

25 Q So there was one instance where you halted the

1 inspection?

2 A Incorrect. We did not halt the inspection.
3 When the inspection got canceled we said next time it's
4 scheduled we wanted it at a neutral location.

5 Thank you. Your co-counsel said that's right.

6 MR. COHEN: That's not what she said. Were you
7 finished?

8 THE WITNESS: Yes. To answer your question, no, we
9 never canceled.

10 BY MR. COHEN:

11 Q Lets get back. You filed your complaint May
12 4th, 1998 and then you had a conversation with Bruce Bashore
13 and you spoke a lot about your conversation with Bruce
14 Bashore; right?

15 A No, I spoke about a claim log entry -- no,
16 there's -- I spoke about a letter that he sent me that he
17 says we had a conversation.

18 Q You never had a conversation with him?

19 A Frankly I don't recall the conversation. I
20 don't have any memory of the conversation with him.

21 Q Okay. But he sent you a letter and that
22 letter -- we've all seen that letter -- it's the letter of
23 May 19th, 1998. And he says --

24 MR. H. MAYERSON: What's the trial page, please?

25 MR. COHEN: Exhibit 15, 1253.

409

1 MR. H. MAYERSON: Thank you.
2 BY MR. COHEN:
3 Q And he says, "As per our telephone
4 conversation on May 12th, 1998, Nationwide Insurance would
5 like the opportunity to have an independent expert inspect
6 the Berg's Jeep Cherokee."
7 An independent expert. Actually, you suggested we
8 have an independent expert, that was in your letter; right?
9 A Right.
10 Q Okay. So Mr. Bashore is just confirming that
11 Nationwide wanted to have an opportunity to do what you were
12 inviting them to do anyway. Things are moving along now.
13 There's communication. Now that Nationwide knows what's
14 going on, things are moving along?
15 A That is absolutely incorrect. What
16 Mr. Bashore said was if the expert finds any problems that
17 match that up with Mr. Potosnak's inspection report, it looks
18 a little ridiculous.
19 Q There is a difference -- there's a difference
20 between -- you suggested that Nationwide have an independent
21 expert, independent; right?
22 A Right.
23 Q Well, I assume -- let me finish my question,
24 please. I surmise that you're saying independent because we
25 are now in litigation and you believe that Nationwide should

410

1 have a non-bias party look at the vehicle?
2 A Incorrect. It was my letter of April 22, 1998
3 and I said Nationwide should have an independent expert
4 examine the vehicle if we're otherwise unable to examine the
5 Berg's vehicle.
6 Q You never suggested a resolution to Nationwide
7 April 22nd?
8 A Yes, I did.
9 Q Other than if they want to buy the car?
10 A What I said exactly was please advise if
11 Nationwide will purchase the vehicle, and if Nationwide will
12 not purchase the vehicle please advise what they will do
13 pursuant to the terms of the Blue Ribbon Program and/or terms
14 of policy of insurance.
15 Q You believe that Nationwide is going to
16 purchase the vehicle because you're asking them to without
17 giving them any adjustments or reason. This is the second
18 letter Nationwide got from you. There's been no opportunity
19 to inspect the vehicle. You wouldn't let them speak to the
20 body shop. You took depositions of Lindgren without allowing
21 Nationwide to be there.
22 Now why would you expect that Nationwide would buy
23 the car?
24 A That's a big question.
25 Q It is a big question.

411

1 A And my answer to it is that Nationwide had
2 plenty of opportunity to do what was right here. First of
3 all, you had the history of the vehicle being a structural
4 total loss because the frame was twisted. You have
5 Nationwide overriding the decision --
6 THE COURT: Where did you get the total loss? I
7 thought there wasn't anything that said it was a total loss.
8 THE WITNESS: No, Your Honor. Mr. Joffred testified
9 at trial it was appraised a structural total loss because the
10 frame was so badly twisted that in his opinion it was one of
11 those situations that repairs should not have been attempted.
12 Then Nationwide stepped in and looked at the vehicle and
13 said, no, we'll never recover the difference in salvage.
14 Lets send it out to this other facility and try and
15 straighten the frame, and it came back from that unidentified
16 facility, unidentified to the Bergs, and then Mr. Joffred
17 said he thought we'll try and repair it.
18 MR. H. MAYERSON: And, Your Honor, there are two
19 claim log entries specifically saying the vehicle is a total
20 loss. It should be declared a total loss because it's
21 structurally unsound, two claims logs.
22 MR. COHEN: How does this answer my question?
23 MR. H. MAYERSON: It answers the Judge's question.
24 MR. COHEN: We'll get into Mr. Joffred's testimony if
25 that's where we're going to go.

412

1 THE COURT: Lets take a ten minute recess.
2 (Whereupon, a brief recess was taken.)
3 BY MR. COHEN:
4 Q Lets move on. Lets talk about your --
5 attached to your trial brief is a declaration and itemization
6 of Plaintiff's litigation expenses. That's \$85,441.06.
7 THE COURT: \$44,000? I thought it was \$85,000.
8 MR. COHEN: I'm assuming they updated their records.
9 I'm looking at the trial brief.
10 THE COURT: We have no exhibit. Do we have something
11 to put in as an exhibit? Now's the time to do it.
12 THE WITNESS: I didn't prepare it, so if we can wait
13 for --
14 THE COURT: Don't worry about it. It's not admitted
15 into evidence. It's just marked as an exhibit. You may not
16 get it into evidence if you want it, but that has nothing to
17 do with it.
18 THE COURT: Do these represent the total through July
19 the 29th, '05 and expenses through '06, through September of
20 '06 and expenses in December the 7th of, '06, is that it?
21 THE WITNESS: To be honest, Your Honor, I haven't
22 looked at the expenses at all. I'm strictly relying upon our
23 staff, and I know we'll get a bill from Mr. Chett.
24 MR. COHEN: Your Honor, the document you have is the
25 total at the end, \$85,441. That's the document I have.

IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

413

1 THE COURT: What does it represent, expenses through
2 when?
3 THE WITNESS: What was the date we answered your
4 discovery?
5 MR. H. MAYERSON: December 26th, '06, Your Honor.
6 THE COURT: December 26th, '06. Okay. We'll mark
7 this as Exhibit 45.
8 (Whereupon, Exhibit No. 45 was marked for
9 identification purposes.)
10 THE COURT: Okay. Go ahead.
11 BY MR. COHEN:
12 Q Lets talk about this a little bit. You've got
13 several entries in here for Charlie Barone. Charlie Barone
14 was somebody you were going to use as an expert; correct?
15 A He is somebody we did use as an expert, a
16 consultant.
17 Q And he is somebody who was going to testify at
18 the first phase of trial but you decided not to use him?
19 A That's true.
20 Q Okay. And isn't it also true that the reason
21 why you decided not to use him was because right before trial
22 he had an automobile accident and took his vehicle to K.C.
23 Auto, one of the defendants in the case?
24 A Absolutely not, Mr. Cohen. I didn't know that
25 was a fact. The reason we didn't call him is because your

414

1 firm deposed him in another case and cross-examined him on
2 this case and I didn't get a copy of the transcript and he
3 didn't have a copy of the transcript. Plus we wanted to call
4 him at trial and stipulate to his report.
5 Q And you've got entries in here for James
6 Schwartzman for \$15,980; right, and you said, I think your
7 words were, "we're not calling Mr. Schwartzman because I
8 don't want to subject him to a lot of cross-examination from
9 Mr. Cohen;" right, and you wanted to shorten the trial; is
10 that right?
11 A Well, yes.
12 Q Okay. Ten years of litigation, one of your
13 experts is about to testify in trial and you decide not to
14 call him because you don't want him subjected to
15 cross-examination?
16 A First of all, I don't want another ten years
17 of litigation. Secondly, Judge Stallone clearly understands
18 the case and about whether it's right for a law firm to
19 litigate to the history or not, and obviously we don't know
20 what his opinion is on that, but it was clear to me he
21 understood the bigger issues of what this case was about.
22 And I didn't think that Mr. Schwartzman was worth the risk
23 that we would be back here in November.
24 Q Okay.
25 THE COURT: I see only \$320 here for James

415

1 Schwartzman; is that correct?
2 MR. COHEN: No, Your Honor.
3 THE COURT: On the last page I see James Schwartzman.
4 Where else is it?
5 MR. COHEN: On the second page, third from the top.
6 THE COURT: Third from the top.
7 THE WITNESS: He charged the same thing.
8 THE COURT: Oh, \$15,980.
9 THE WITNESS: He charged the same thing Connie Foster
10 charged, which was \$425 an hour.
11 BY MR. COHEN:
12 Q I'm sure he's expensive. That's not my
13 question. But here is my question: Mr. Schwartzman prepared
14 a report for you back when you filed a motion for sanctions
15 against Nationwide; right?
16 A Well, I'm not sure if I understand that
17 question.
18 Q Mr. Schwartzman prepared a report for you?
19 A That's true, yes.
20 Q Isn't it true that Mr. Schwartzman works for
21 Stevens and Lee now?
22 A That's absolutely true.
23 Q It's also true that Mr. Schwartzman was the
24 author of the appellate brief in the Erie versus Hollow (sic)
25 case?

416

1 A That's not correct.
2 Q That's not correct?
3 A That's not correct.
4 Q I have a copy of the brief.
5 A No, I talked to him about it. He did some
6 editing on it.
7 Q His name appears on it.
8 A Okay. You asked me if he was the author of
9 it.
10 Q He's not? His name is on it; right?
11 A One of many names, yes.
12 Q And in this brief -- let me ask my question:
13 And in this brief Mr. Schwartzman, or whoever wrote it, but
14 certainly Mr. Schwartzman's name is on it, goes through great
15 lengths to explain why Erie Insurance Company should have
16 been found not to be held for bad faith because of discovery
17 violations. And isn't it true that you knew I was going to
18 question him on this document?
19 MR. H. MAYERSON: Objection. Objection. Objection.
20 Please.
21 THE COURT: What's the objection?
22 MR. H. MAYERSON: It's never been shown that he's
23 read this document.
24 MR. COHEN: That who's read it?
25 MR. H. MAYERSON: Mr. Mayerson.

IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

417

1 THE WITNESS: I can answer his question.

2 THE COURT: What difference did it make whether or
3 not --

4 MR. H. MAYERSON: He's asking what it says.

5 THE COURT: Well, he can say then or you have to tell
6 him he can say, I didn't read the document.

7 THE WITNESS: I did read it.

8 THE COURT: That's what I'm trying to tell you. Sit
9 down. Sit down.

10 THE WITNESS: Are you talking about the Campbell
11 decision or the appellate brief?

12 MR. COHEN: I'm talking about the appellate brief.

13 MR. H. MAYERSON: He's not talking about Campbell
14 either.

15 MR. COHEN: I said Hollick case. The case that you
16 have been screaming from the mountain tops is the paradigm
17 case that should govern this case. Your expert wrote the
18 appellate brief on behalf of Erie and that's why you didn't
19 call him. And now you're asking the Court to award \$16,000
20 to pay for that period of time?

21 MR. H. MAYERSON: Objection, Your Honor. Counsel
22 does this regularly. He puts facts in the beginning of his
23 questions and then he adds more facts and then the end of his
24 question, and if we can have it read back, goes someplace
25 else and it's really hard to answer it. And then later he

418

1 says, you said this, didn't you?

2 THE COURT: Would it surprise you if I told you that
3 I really understand the question?

4 MR. H. MAYERSON: I understand the question too, Your
5 Honor.

6 THE COURT: Well, if I understand it certainly Mr.
7 Mayerson ought to be able to understand it and answer the
8 darn thing.

9 Don't make me say sit down again. This doesn't look
10 good. When I go like this, sit down.

11 Ask the question again, please. Lets get through
12 this thing.

13 BY MR. COHEN:

14 Q Isn't it true that based on this brief that
15 bears Mr. Schwartzman's name that you did not want me
16 cross-examining him on this?

17 A Are you done?

18 Q Yes.

19 A It had nothing to do with it. In fact, I was
20 anxious to call Mr. Schwartzman because he works for Stevens
21 and Lee, and I thought that would be impressive with the
22 Court. It's a local -- prestigious, local firm, and I
23 thought the fact that my expert was associated with that firm
24 would be excellent. We had a discussion with him working on
25 the Hollick brief and he said, you know, I did that and I

419

1 didn't know it at the time.

2 And I said, oh, does that impact your opinions? He
3 said, no, absolutely not. My involvement in that was so
4 little it was editing only. And I specifically asked him,
5 does it impact your opinions as to whether or not Nationwide
6 wrongfully redacted a claim log pursuant to the attorney -- a
7 false assertion of the attorney/client privilege? And he
8 said, no, the law is clear on what the attorney/client
9 privilege is and they abused it.

10 Q How would he have -- well, strike that.

11 All right. Lets move to your itemization of time.

12 Oh, by the way, who's Gary Fye?

13 THE COURT: Who?

14 MR. COHEN: F-Y-E.

15 THE WITNESS: Gary Fye, is the major big wig in
16 insurance bad faith litigation. He was the expert that got
17 the \$132 million dollar verdict in Campbell versus State Farm
18 based upon programs like Blue Ribbon.

19 Q Just tell me who he was, not everything that
20 he ever testified to. Who was he?

21 A I'm telling you who he is.

22 Q I didn't ask you about Campbell. I just asked
23 you who he was.

24 MR. H. MAYERSON: objection. Please don't argue with
25 the witness.

420

1 BY MR. COHEN:

2 Q He's a bad faith guy?

3 A He is the bad faith guy.

4 Q Is he somebody you were going to call as an
5 expert?

6 A I was hoping he would consult on this case.

7 Q And you never called him as an expert?

8 A No, because he can no longer testify in cases
9 because as long as he's identified as a witness his whole
10 family gets subpoenaed to come to depositions and other parts
11 of the country, so now he strictly consults.

12 Q Okay. You have --

13 A I went to a seminar of his when he came to
14 Philadelphia for a seminar a couple weeks ago.

15 Q Okay. You have in front of you the
16 itemization summary; right?

17 A Exhibit 44.

18 Q Okay.

19 MR. COHEN: I'm not sure which number it was given.

20 THE COURT REPORTER: Forty-four.

21 THE COURT: Forty-four.

22 THE WITNESS: Again, just so you know, I didn't
23 prepare this document. This is what we're having Mr. Georgio
24 coming in for.

25 BY MR. COHEN:

IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

1 Q I know you didn't prepare it but you attest to
2 the accuracy?

3 A I attached it to our discovery. I think it
4 was. I'm not sure.

5 Q Excuse me. I'm certainly not going to go
6 through every entry in here, but there are a couple questions
7 that I have and maybe, I'm hoping, you can answer for me.

8 A Sure.

9 Q All right. One of the standards that we
10 talked about under Rule 1716 was the time and effort
11 reasonably expended by the attorney in the litigation. In
12 order to determine that we would really need to look at your
13 time records; correct, I mean, they would have to match up?

14 A Well, yeah, especially it would be even better
15 if we had the time to cross the time records with the work
16 product.

17 Q All right. Throughout your summary here, I'll
18 call it a summary, but it looks like it's actually
19 everything. You've got many, many entries that just say
20 "memo to file" without any explanation as to what it is. I
21 mean, how are we to determine whether or not that's
22 reasonable or reasonably expended if there's no explanation
23 as to what it is?

24 A Mr. Cohen, I did the best I could documenting
25 my time. I think at certain places I was pretty specific.

1 At other places I may have been vague, more than you liked.
2 I did the best I could. I thought I was doing a good job.

3 Q You're seeking close to, I guess at this
4 point, over \$800,000?

5 THE COURT: Let me ask a question here. What is the
6 difference now between Exhibit 44 and what I'm considering to
7 be Exhibit 42, because as far as I'm concerned the first two
8 pages of Exhibit 42 is not going to be admitted into evidence
9 so I'm ignoring that and concentrating on Page 3, so that's
10 what I call Exhibit 42. Do you understand my question?

11 THE WITNESS: Yes, I think I do. I understand where
12 you're going. I don't know if I understand the question.

13 THE COURT: Well, where I'm going is what's the
14 difference between 42 and 44? One is two pages long or one
15 page long and the other is 110 pages or so.

16 THE WITNESS: I believe --

17 THE COURT: They're both billing time records, aren't
18 they?

19 THE WITNESS: Yes.

20 THE COURT: Go ahead.

21 THE WITNESS: I believe that the two-page document is
22 a breakdown per month --

23 THE COURT: Two-page document?

24 THE WITNESS: -- to cross reference --

25 THE COURT: No, no. It's only one page. It's only

1 one page.

2 THE WITNESS: Yes, because I'm used to seeing it as
3 two pages because Nationwide's is with it and then we would
4 cross reference our two bills per month and we found that
5 helpful in looking at what Nationwide was up to.

6 THE COURT: Tell me what is the difference between
7 this one page which is Exhibit 42 and the 110 pages which is
8 Exhibit 44 other than the totals may not coincide with the
9 last entry? Although they may, to be honest, I'm not sure
10 sitting here right now, but I think that the one page is a
11 summary of what's in this 110 pages.

12 THE WITNESS: That's certainly what I believe it to
13 be.

14 THE COURT: That's what you believe it to be?

15 THE WITNESS: Yes.

16 THE COURT: All right. That's fine.

17 THE WITNESS: Your Honor, I could clarify a little
18 bit if you like. We went through two systems of doing the
19 bills. The first time I have my computer records I submit
20 them to my staff. She spent time on a yellow pad adding them
21 up using a calculator. Then that was summarized in one
22 document, and it became a little bit confusing, so we went
23 back and double checked it and we had it entered into a
24 spread sheet. And I didn't do the spread sheet, but the data
25 is taken from my computer records which are available here in

1 court.

2 THE COURT: I didn't have a bad faith claim but I had
3 a claim for counsel fees. I didn't tell you people this
4 before because there was no reason to. It was for counsel
5 fees in a case which my family was the plaintiff, and I had
6 such itemization it could kill you. The judge wouldn't even
7 hold a hearing. I won the case. That's the case I always
8 talk about of always winning the battle. I won every battle
9 in my life but lost most of the wars. Won the case, got the
10 verdict, but by the time I paid my own counsel fees I wound
11 up with nothing, and that was a heck of a lot more helpful
12 than what this is because everything that was on there the
13 judge was well aware of what took place. I don't know what I
14 can really get out of this, of this 42 and Exhibit 44 except
15 that this is your estimate of what you think your time and
16 effort and so forth has been worth in this case. And I don't
17 hear any underlying reasons stating that. And I don't want
18 to prolong this thing, but I'm telling you the difficulty I'm
19 having at this particular point, just like we tell juries day
20 in and day out, you cannot speculate. Your decision has to
21 be based upon the evidence in this case.

22 THE WITNESS: Your Honor --

23 THE COURT: And I don't know what I would do other
24 than to speculate as to whether or not there's any
25 credibility to these figures or not.

425

1 THE WITNESS: May I -- I used as a guide --

2 THE COURT: I know what you did. That's why I

3 constantly ignored Mr. Cohen when he was making his

4 objections this morning. I was just looking at him and

5 giving him a wave; sit down, sit down. I didn't rule on

6 those objections because I really wanted to give you an

7 opportunity to develop your position on the fees. And maybe

8 because I'm still hurting deep down about my case when I got

9 nothing except a one line order not coming to Reading and

10 spending more time on your matter, Judge. Go ahead.

11 THE WITNESS: We were guided by some of the appellate

12 reasoning that says that the attorney fee issue should not

13 turn into a second trial.

14 THE COURT: That's correct.

15 THE WITNESS: I felt --

16 THE COURT: And that's what my judge apparently

17 thought. He didn't want to spend any more time on a second

18 trial. He thought he was complimentary enough by giving us a

19 verdict.

20 THE WITNESS: I guess when I was entering it I'm

21 trying to put it in one line, a date and time, and I go over

22 here and fit in enough information so I know what it was.

23 And I guess we could go through these and clarify what they

24 were, and that's what we should do.

25 MR. COHEN: Your Honor, now is not the time to

426

1 clarify. I took Mr. Mayerson's deposition to get this --

2 THE COURT: Quite frankly I thought you were going to

3 be, Judge, Exhibit Number 42 is a one-page summary because we

4 thought that that was all you could understand. Nice and

5 simple.

6 THE WITNESS: That's pretty much it.

7 THE COURT: That's pretty much it. And then I

8 thought you were going to say, however, Exhibit Number 44

9 gives an explanation of all of these services and that can't

10 be done on one page. It takes 110 pages. And as I look at

11 these things, two memos to file, memo to file, a letter to

12 Berg, letter to Berg, depositions, so forth and so on, and

13 that might be good, you know, for you if you were actually

14 billing somebody, but when you're trying to substantiate this

15 reasonableness of what you did in relation to the case and

16 these five factors that Mr. Cohen pointed out in the

17 beginning of the cross-examination this morning pursuant to

18 Rule 1716, I don't get any help from this document. I really

19 don't.

20 Telephone call with consultant. Telephone call with

21 May Levy. Review Penn-Del documents. You know, when you're

22 asking for almost a million dollars in counsel fees, I think

23 it's got to be -- you've got to have, what's the old

24 expression, where's the beef?

25 THE WITNESS: We put a tremendous amount of effort --

427

1 THE COURT: You probably did. You should have put

2 more effort in this than you did in the things you did.

3 THE WITNESS: I'm talking about this in their answers

4 to discovery.

5 THE COURT: This is the best you can do, okay.

6 THE WITNESS: I'm sure the Court knows how big the

7 file is unfortunately, and going through it for the first

8 part, I mean, there was, you know, it was a tremendous

9 undertaking and it was done with great care. And if some of

10 the entries should've had more meat in them, I regret that

11 they don't now. But there are some that have -- I think if

12 it was something material other than something very simple, I

13 did go to some trouble to document it better. I'm looking at

14 one on 12/8/04.

15 THE COURT: I asked you a simple question and you

16 gave me the answer and I'm satisfied with that. Go ahead,

17 sir.

18 BY MR. COHEN:

19 Q You filed eight amended complaints in this

20 case; right, all seeking class action status?

21 A Incorrect.

22 Q All right. How many did you file?

23 A Well, there's an eighth amended complaint.

24 Q Yes.

25 A So we filed one without class action status.

428

1 The second one, I'm not sure if that was class action but

2 after that certainly there was at least five class actions.

3 Q Five class action cases and you withdrew all

4 of them?

5 A Well, you filed preliminary objections.

6 Q And we won those; right?

7 A The orders at the end were close. I think we

8 were almost --

9 Q You don't have a class action now?

10 A It was never -- the Court never denied it.

11 What we did was we decided we were ill-equipped to pursue a

12 class action. We were in over our head. We weren't that

13 type of firm, and we said, lets get out of this and cut it

14 short. We thought by withdrawing the class action we'd get

15 out of this more quickly.

16 THE COURT: Then you filed a second, third and fourth

17 and fifth one before Judge Lash.

18 BY MR. COHEN:

19 Q And all of those required Nationwide to take

20 up a defense. What did you expect Nationwide to do?

21 A Frankly, I think that it had merit based on

22 what the program runs like and what the Appraiser's Act

23 states we couldn't pursue it.

24 Q If it had merit we'd be here defending a class

25 action. Just like if your expert was going to testify he'd

IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

1 be here testifying, not because you're concerned about my
 2 cross-examination.
 3 Now, you had five amended complaints, class actions.
 4 There were eight amended complaints. I thought most of them
 5 were class actions, but if you say five, I'll agree with
 6 five.
 7 A I don't know.
 8 Q My point is that there was a lot of time and
 9 effort that Nationwide had to expend in responding to them
 10 and at the end of the day -- let me finish my question -- and
 11 at the end of the day, the Court ruled it was improper. You
 12 withdrew the complaints and today we are not here on the
 13 class action; correct?
 14 A I disagree with that. The Court did not rule
 15 it was improper.
 16 Q The Court sustained our preliminary
 17 objections.
 18 A Secondly --
 19 THE COURT: Just a second. Did Judge Lash rule on
 20 the preliminary objections?
 21 THE WITNESS: It was actually you, Your Honor.
 22 MR. COHEN: They were sustained.
 23 THE COURT: Me. Why did I?
 24 THE WITNESS: That was back in 1998 or 1999 when you
 25 were still --

1 MR. COHEN: The only evidence I have is my boards.
 2 THE COURT: That's before I was President Judge and
 3 had to do all the work myself. That's correct.
 4 MR. COHEN: I didn't think I was going to get an
 5 opportunity to use these.
 6 MS. NULTY: He's very excited, Your Honor.
 7 MR. COHEN: Hold on. Let me take a look at these.
 8 BY MR. COHEN:
 9 Q Okay. So we have plaintiff's original class
 10 action?
 11 A No, that's wrong though.
 12 Q All right, all right, all right. July order
 13 sustaining Nationwide's objections to class action complaint.
 14 Oh, this is the original class action complaint, not
 15 the original complaint?
 16 A Have you authenticated any of that? The
 17 orders weren't sustaining in part, granting in part directing
 18 to file amended --
 19 Q Well, you know, I've got four instances here
 20 where there are orders sustaining objections on.
 21 A In part.
 22 Q On the class action, but that's fine. But you
 23 withdrew the complaint; right?
 24 A Yes.
 25 Q Okay.

1 THE COURT: All of them -- you withdrew all the
 2 complaints with the exception of the last one that we're in
 3 court on now?
 4 THE WITNESS: Right.
 5 THE COURT: Correct. And that was after preliminary
 6 objections were filed by Nationwide; is that correct?
 7 THE WITNESS: That's correct. And my answer, I think
 8 I was interrupted, was that we didn't force Nationwide to do
 9 that because right after we filed the first complaint I was
 10 calling them and trying to settle the case. And all they had
 11 to do was buy the vehicle at that point and we would have
 12 just been with Lindgren.
 13 MR. COHEN: All right.
 14 BY MR. COHEN:
 15 Q Lets turn to page --
 16 THE COURT: Is that why you filed the subsequent
 17 complaints to get Nationwide to buy an automobile that is
 18 worth how much money?
 19 THE WITNESS: The class actions were filed because
 20 there was Attorney Don Hitman in my office and I lost control
 21 of the file. He took it. I don't understand class actions
 22 and we partly withdrew it for those reasons.
 23 MR. COHEN: You didn't keep accurate records in this
 24 case in the very beginning because you didn't really know bad
 25 faith law and you didn't really know class action law so you

1 filed five amended class action complaints -- let me ask the
 2 question -- that you didn't really understand bad faith so
 3 you didn't keep accurate time records for the first five
 4 years of litigation and you didn't understand class action
 5 law and filed five amended class action cases against
 6 Nationwide and you're seeking reimbursement for your
 7 attorney's fees for all this stuff that Nationwide had to
 8 respond to; right?
 9 A Wrong to at least some of it. It was a
 10 compound question, but --
 11 Q Well, you have an attorney who can object to
 12 that.
 13 A I never testified that I didn't understand bad
 14 faith law. I felt as if I had a good understanding of when
 15 bad faith arises what it takes to prove bad faith. What I
 16 miserably failed on was looking at the expense of attorney's
 17 fees thinking, gee, how am I getting a judge to award
 18 attorney's fees and thought it would settle.
 19 THE COURT: In either event, your efforts resulted in
 20 nothing of any value in filing all of those documents, have
 21 they? I mean, certainly there was no benefit conferred upon
 22 the Bergs --
 23 THE WITNESS: well, the benefit --
 24 THE COURT: -- your client.
 25 THE WITNESS: If I may respond. The benefit is hope.

433

1 THE COURT: Just answer my question.
2 THE WITNESS: I am I'm trying to.
3 THE COURT: You got good results of filing all those
4 class actions?
5 THE WITNESS: No.
6 THE COURT: You got no results. One big fat zip.
7 THE WITNESS: And the amount of attorney fees --
8 THE COURT: And no benefit, again, to the Bergs,
9 where we go all the way back to what I asked you before.
10 What was the dollar benefit for the Bergs for your services?
11 And we concluded it's not \$12,525, it's not \$18,000;
12 it's not \$6,000; it's zero.
13 THE WITNESS: I didn't testify that it was zero. I
14 think that there is a great benefit --
15 THE COURT: You couldn't give me any other figure and
16 we're not going back on that now. I'm not rehashing that
17 issue.
18 THE WITNESS: What the law says about insurance bad
19 faith claims is that that figure is a red herring anyway.
20 It's designed to force insurance companies --
21 THE COURT: Is that something like the scorched Earth
22 theory? Am I going back to that theory now?
23 THE WITNESS: Red herring.
24 MR. COHEN: This is cross-examination.
25 THE COURT: Go ahead. Lets go.

434

1 MR. COHEN: All right.
2 BY MR. COHEN:
3 Q Speaking of spending a lot of time on
4 something, I had the liberty of having my paralegal add up
5 all your time on certain endeavors, and I think, oh, with
6 regard to motion of summary judgment. And I asked your
7 witness, your expert yesterday, 290 hours for your motion for
8 summary judgment, five hundred paragraph --
9 THE COURT: What were the three motions for summary
10 judgment?
11 MR. COHEN: Well, I'm sure that --
12 THE COURT: One motion for summary judgment.
13 MR. COHEN: I'm sure that most of it was --
14 THE COURT: Was it one motion?
15 MR. H. MAYERSON: Two from Nationwide, one for us.
16 THE COURT: This is for preparation for their motions
17 of summary judgment. Just for the preparation?
18 MR. COHEN: Of his motions, yeah.
19 THE COURT: Okay. That's fine. Just so I
20 understand, for the preparation of his two motions for
21 summary judgment.
22 BY MR. COHEN:
23 Q And one of your motions for summary judgment
24 was five hundred paragraphs; correct, big document?
25 A The first one was not just a motion for

435

1 summary judgment. It was a motion for summary judgment and
2 to compel the production of documents, I think.
3 Q All right. It was captioned a motion of
4 summary judgment.
5 A No, it was not captioned a motion for summary
6 judgment.
7 MR. COHEN: What was the caption? Motion for partial
8 summary judgment.
9 THE WITNESS: On insured bad faith and --
10 MR. COHEN: All right.
11 THE WITNESS: And to compel.
12 BY MR. COHEN:
13 Q Did you spend 290 hours on it?
14 A If that's what the time records reflect.
15 Q And I think you testified during your
16 deposition that you had been working on that thing for
17 months; right?
18 A Yes, I was, yes.
19 Q And it was denied by Judge Lash out of hand?
20 A Yes, it was certainly denied by Judge Lash.
21 Q Okay.
22 A Yes.
23 Q You've got on Page 30 of this document 44, I
24 believe it is, do you see that, Page 30?
25 A Are you talking about Exhibit 44?

436

1 Q Yeah.
2 A Page 30?
3 Q Yeah.
4 A Yes.
5 Q January 1st, 2003, the entry says,
6 "Preparation of numerous transmittal letters, notices of
7 intent to serve subpoenas, supporting documents for filing,
8 copying, filing, et cetera, 60 hours."
9 I guess \$25 an hour, this was your paralegal who was
10 billing for this?
11 A Right.
12 Q Okay. But, you know, 60 hours in one day,
13 that's a lot of hours, I mean --
14 A But the rate is really low and your staff
15 charges --
16 Q That's not the point. The rate is really low
17 and you're asking Nationwide to pay it. Why is there an
18 entry -- and this is not the first time this occurs in here.
19 If you look right below it there's an entry for 80 hours.
20 MR. H. MAYERSON: What's it say beside it?
21 MR. COHEN: For the same --
22 MR. H. MAYERSON: What does it say beside it?
23 MR. COHEN: Is there an objection?
24 MR. H. MAYERSON: Objection, what does it say beside
25 it?

437

1 THE COURT: Overruled. You can question later.
2 Go ahead. Ask the question.
3 BY MR. COHEN:
4 Q Right below it, January 1st, 2003, copying
5 through the course of litigation, 2003 to 2004, 80 hours?
6 A That's for a whole year.
7 Q So you just surmised that there must have been
8 around this amount of time?
9 A No and correct. At that time we had a copy
10 person named Eric witty who copied and prepared documents and
11 as you know everything we gave you was neatly tabulated and
12 indexed and as professional looking as we could make it.
13 Q Okay.
14 THE COURT: And here Page 35 up top, May 17th, 2003,
15 and I'm just picking some examples, review emails at home,
16 six hours, \$1,050. How are we supposed to determine the
17 reasonableness of that time and its link to what you did for
18 the Bergs based on review emails at home. I don't even know
19 what emails you were looking at.
20 A I don't know. That looks odd to me.
21 Q well, there's a lot of those in here.
22 A I don't know if there's a lot of them in
23 there.
24 Q Lets look at Page 36, and I want to try to
25 move quicker because I know we still have our case to put on.

438

1 The bottom of the Page 36, the entry here is: See e-mail
2 documentation, 11 hours at \$175 an hour, \$1,925. See e-mail
3 documentation. What does that mean? Does that mean that I'm
4 supposed to subpoena your emails?
5 MR. H. MAYERSON: Let him answer your questions. You
6 said what does that mean, then you're going onto another
7 question.
8 BY MR. COHEN:
9 Q what does that mean?
10 A We sent -- we gave you the emails.
11 Q So it's our responsibility to go through all
12 your emails to figure out what you were doing?
13 A I never --
14 Q I'm sorry. Go ahead.
15 A Any time I entered anything on my billing
16 records, I did not over bill. I did not over state anything.
17 Q I'm not suggesting that you over billed. Just
18 like I didn't suggest before --
19 A I tried to be as honest as I possibly could on
20 this. And I'm looking at this entry too and I agree with you
21 that that's insufficient in looking at it here and now and I
22 imagine there must have been something else. What's on the
23 next page?
24 Q Mr. Mayerson, I have never questioned your
25 integrity or your truthfulness, all right. Let me finish my

439

1 questions.
2 Unlike you have done to my client, I have never
3 suggested you were acting underhanded or surreptitiously. I
4 am questioning you with regard to your fees. You are asking
5 my client to pay. And the standard in Pennsylvania requires
6 that there be a reasonable nexus. Now, how can we determine
7 and how can the judge determine whether these fees are
8 reasonable when on Page 37 it says, "See e-mail
9 documentation, 4.25 hours. See e-mail documentation, 1.75
10 hours. See e-mail documentation, 2.75 hours"?
11 A By getting the e-mail. Can we get the e-mail?
12 Q This is not the time to go through your
13 e-mail.
14 A But I'm saying, see the e-mail for June 3rd --
15 it was too big to put in here. I documented it thoroughly.
16 Q It's not attached. Why isn't it attached?
17 A We have it and we provided it to you. And if
18 --
19 Q Does the Court have it?
20 A Well, if you pull it out and give it to us we
21 will.
22 Q I'm not going to.
23 A What I'm saying is this was an entry that was
24 thoroughly documented and it was probably very long and it's
25 not attached here.

440

1 Q All right.
2 A I didn't go to training for how to properly
3 bill I guess.
4 Q Okay. I really want to -- I know that I'm
5 dragging this out -- but I want to hit a couple more of these
6 points. Page 61, about half way down the page starting at
7 9/30/04 there are, oh, I don't know, maybe about a dozen
8 entries, all letters to Stephen Potosnak regarding trial
9 date. Letter to Matthew Stool regarding trial date. Letter
10 to Lisa Wensel regarding trial date.
11 They're all letters to somebody saying trial date. I
12 assume that they're all the same letter; you, not your
13 paralegal and not your secretary charged 15 minutes for each
14 letter. It's a lot of time. That's about oh, I don't know
15 \$800 for sending the same letter out. And I'm sure --
16 THE COURT: How many hours?
17 MR. COHEN: well --
18 THE COURT: Did you say 800 hours?
19 MR. COHEN: No, \$800 worth of time.
20 THE COURT: Oh, \$800, \$800 I understand that. It's
21 about 3-and-a-half hours at \$200 an hour, a little less than
22 \$800.
23 BY MR. COHEN:
24 Q Do you think that's appropriate?
25 A Yes, and in talking to other people in the

IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

1 industry and what they do, they don't bill out for their
2 staff. You write a letter. Your staff has to put it in an
3 envelope, file it, make a copy and many firms charge .3 for
4 any letter that goes out. And your records reflect the same
5 type of billing, Mr. Cohen.

6 Q We're not here for my fees.

7 A Well --

8 Q And I can tell you personally I have never
9 billed Nationwide that kind of money for the same letter
10 going to a dozen different people.

11 A Your Honor, I think --

12 THE COURT: Just answer the question. Lets go.

13 THE WITNESS: I think your fees speak for themselves,
14 Mr. Cohen.

15 BY MR. COHEN:

16 Q Is it appropriate to charge and bill for
17 preparing your billing summaries because on Page 63 there are
18 a lot of entries for your paralegal to actually do what she
19 should have been doing anyway, and that is keeping track of
20 your time?

21 A It is absolutely appropriate pursuant to
22 appellate opinion in Bonenberger.

23 Q Is that based upon your discussion with
24 colleagues?

25 A No, that's based on the appellate decision.

1 Q All right. There's Page 72. About half way
2 down the page, 12/11/04 it says, "prepare sticker labels for
3 chronology exhibit, 3.5 hours."

4 MR. H. MAYERSON: What page are you on, I'm sorry?

5 MR. COHEN: Page 72.

6 BY MR. COHEN:

7 Q Prepare sticker labels for chronology exhibit,
8 3-and-a-half hours at \$200 an hour, \$700. I mean, this is
9 like this is, like the \$700 toilet seat that the government
10 pays for.

11 A No, it's not.

12 Q How do you sit there with a straight face and
13 ask the Court --

14 MR. H. MAYERSON: Objection, Your Honor. He asked a
15 question. He didn't give him a chance to answer and he went
16 into a series of argument.

17 THE COURT: How do you justify \$700 for preparing
18 sticker labels?

19 THE WITNESS: when you're preparing for trial against
20 Nationwide Insurance Company who comes into a courtroom with
21 a mountain of boxes and documents, I mean, I'm in a dog fight
22 here. I'm in it up to my nose and I am trying my best to
23 keep up with you guys -- you don't want to hear my answer.

24 Q I'd like to hear an answer.

25 A We haven't been paid a penny and I spent all

1 this time, and the reason I spent all this time because I
2 felt it was what was necessary. I knew by this --

3 Q You have a paralegal. Why didn't your
4 paralegal do the stickers?

5 A Because I wouldn't recognize them at all. I
6 wanted them to say a specific thing. I'm getting ready and
7 doing it myself. Frankly, we don't have the kind of support
8 staff you may have.

9 Q I wouldn't bet on that. Believe me.

10 THE COURT: He's a hands-on lawyer. Maybe you
11 aren't. Maybe you had all those little assistants do the
12 work better than you can do.

13 MR. COHEN: He doesn't have a staff like that.

14 THE COURT: He probably even dials his own telephone
15 and you probably don't do that either. He probably makes his
16 own appointments and you probably don't do that either and
17 you have a secretary or a third secretary.

18 MR. COHEN: I do it all. I do all of it, and I don't
19 bill my client for it.

20 THE COURT: Maybe that's why you're as good as you
21 are. That's why Mr. Mayerson is good or better at what he's
22 going to be because he does it all and the only reason I say
23 that, I'm a hands-on guy myself.

24 MR. COHEN: That's fine.

25 THE COURT: And I make my own labels, by the way. I

1 can't type them.

2 MR. COHEN: And that's fine. I think it's
3 appropriate for Mr. Mayerson to prepare his own labels.

4 THE COURT: But that's a silly question to ask him
5 why he bills out labels.

6 MR. COHEN: Seven hundred dollars?

7 THE COURT: How do I know? I can't evaluate that
8 \$700 for making labels any more than what I can evaluate the
9 figures of \$25,000 for some other things.

10 MR. COHEN: Fair enough.

11 THE COURT: I'm more interested in those things than
12 I am in how much time he spent on labels. I still think
13 we're far afield on this thing because the issue really is,
14 is what are his services worth, assuming that he spent all
15 the time on something that was reasonably necessary in this
16 case?

17 But if you don't give it to me I will have to dream
18 it up some way or other, maybe once I reread the record.

19 MR. COHEN: I don't know what it is either, Your
20 Honor.

21 THE COURT: Lets go on to the next thing so you have
22 time for your case.

23 MR. COHEN: Okay.

24 THE COURT: You are going to be finished tomorrow, I
25 hope.

1 MR. COHEN: I'm done with Mr. Mayerson.
 2 THE COURT: Lets go. We have one more witness here.
 3 MR. H. MAYERSON: Excuse me, Your Honor. May I ask
 4 one or two questions.
 5 THE COURT: Surely you may.
 6 REDIRECT EXAMINATION
 7 BY MR. H. MAYERSON:
 8 Q Mr. Mayerson, after you gave Mr. Cohen the
 9 emails and the other documents that you gave him and after
 10 you gave him this 110 page list, did Mr. Cohen have a
 11 deposition -- take a deposition of you?
 12 A Yes.
 13 Q And how long did the deposition in which he
 14 asked about all this last?
 15 A I'd say six hours. I don't know, four hours.
 16 It was a long time.
 17 Q The book will have the time it began and the
 18 time it ended?
 19 A Yes.
 20 Q And, Mr. Mayerson, when you say finalize
 21 findings of facts and conclusions of law at 4.75 hours, is
 22 your support for that the actual findings of fact and
 23 conclusions of law that you drafted?
 24 A I believe so.
 25 MR. H. MAYERSON: Thank you.

1 THE WITNESS: The motion for summary judgment that we
 2 filed, may I see it? I think it's right here. The purple
 3 folder on the top. Is it that purple folder right on top?
 4 MR. COHEN: No.
 5 THE COURT: Is it the other one by Margaret?
 6 THE WITNESS: Your Honor, I would just like you to
 7 know that this motion for summary judgment was filed in July
 8 of 2003, which was approximately two months after Nationwide
 9 produced the Potosnak inspection report. Before filing it I
 10 sent Nationwide a letter which is attached to this motion at
 11 Exhibit A asking them to settle the case to mediate it, do
 12 something, that these fees are getting too high, this is
 13 insane.
 14 MR. COHEN: Objection. What does this have to do
 15 with my cross-examination?
 16 THE WITNESS: I'm trying to rehabilitate myself.
 17 MR. COHEN: Your Honor --
 18 MR. H. MAYERSON: We're explaining what the work
 19 involved and what speaks to the hours and what it's about.
 20 MR. COHEN: He's just giving a speech again.
 21 THE COURT: He made a lot of speeches and he's making
 22 a lot of speeches.
 23 MR. COHEN: I'm an attorney. He's a witness now.
 24 THE COURT: Well -- there's a point. I understand.
 25 I understand what you're saying.

1 BY MR. H. MAYERSON:
 2 Q And, Mr. Mayerson, did the preparation of that
 3 detailed motion for summary judgment, did that help you at
 4 trial?
 5 A Oh, yes. That was -- thank you. The way I
 6 look at that, that was organizing this file. It was years of
 7 work and going through all these depositions, reviewing every
 8 deposition trying to pull out the evidence and funnel it into
 9 something that was manageable. It was an attempt to try and
 10 get Nationwide to settle this case and say, look, this is
 11 what I know. I'm not stupid. I see what's going on here.
 12 This is the evidence that I think I have. A lot of that
 13 evidence perhaps you might find irrelevant and in hindsight
 14 now --
 15 THE COURT: Who might find irrelevant?
 16 THE WITNESS: You might. At the time I thought it
 17 was very relevant and after going to trial with you I see how
 18 narrow the relevance is.
 19 THE COURT: Did I rule on that motion for summary
 20 judgment?
 21 THE WITNESS: No.
 22 THE COURT: Judge Lash did.
 23 THE WITNESS: Yes.
 24 THE COURT: Judge Lash thought some of it was
 25 irrelevant or there was a genuine dispute with regard to some

1 of the material facts in this case that you alleged in your
 2 motion for partial summary judgment.
 3 THE WITNESS: Yes.
 4 THE COURT: Right.
 5 THE WITNESS: There were other efforts to resolve
 6 this case.
 7 THE COURT: I haven't heard anything about that. I
 8 just heard that there were efforts. I don't know anything.
 9 You know, again what I'm searching for is what efforts were
 10 really made by either side to get this case settled. And by
 11 that I mean did someone come up with a figure and the other
 12 party deny it or what along those lines, as I said. I have
 13 pretrial settlement conferences at least 35 or 40 a year.
 14 That's where you talk about settling other than lawyers
 15 discussing settlement by letters or in their office or
 16 whatever. I don't know of any offers that have been made to
 17 settle. I don't know whether Nationwide ever agreed to take
 18 the car back at a certain price or what. And maybe there is
 19 none of that, and that's what our good witness said
 20 yesterday. He didn't think there was any of that either.
 21 In every good faith case I ever handled that was the
 22 crux of the testimony; what were the offers, what were the
 23 counter offers, and what were the basis to turn down the
 24 offers and whatever, whatever. But that's what James Chett
 25 talked about yesterday afternoon.

449

1 BY MR. H. MAYERSON:
2 Q Mr. Mayerson, was an attempt to settle this --
3 what occurred in March --
4 THE COURT: No, I'm not going to allow any
5 questioning. You want to ask him a specific question that
6 has a dollar figure with it I will hear that at this late
7 hour on Thursday afternoon.
8 MR. COHEN: Your Honor, with regard to settlement
9 discussions, I'm going to object. I think that's improper.
10 If there was settlement discussions with regard to paying
11 Mr. Berg's underlying claims before litigation that that's
12 relevant in bad faith, but discussions with regard to
13 discussions about this case is improper. I will represent to
14 the Court that there have been discussions. There have been
15 serious discussions, but to disclose the amounts I believe
16 would be grounds for a mistrial immediately.
17 THE COURT: Don't you think that much of what is
18 being requested here in the form of good faith compensation
19 or an award has to do with the behavior of Nationwide
20 subsequent to the filing of the complaint.
21 MR. COHEN: No.
22 THE COURT: Maybe 80 percent of it.
23 MR. COHEN: No, I don't agree with that.
24 THE COURT: You don't agree with it?
25 MR. COHEN: No, I don't.

450

1 THE COURT: Don't give me a dollar figure, but how
2 much of the workload of either you or Mr. Mayerson took place
3 after the filing of the complaint, what percentage of the
4 total, either take your own expenses or take Mr. Mayerson's
5 expenses and his court costs and his fees and tell me what
6 percentage.
7 MR. COHEN: Probably the vast majority of it.
8 THE COURT: That's what I'm trying to say.
9 MR. COHEN: But that's not the standard for
10 determining bad faith. The standard for determining bad
11 faith under Pennsylvania law is whether or not there was an
12 unfounded or frivolous refusal to pay benefits under the
13 policy, not how Nationwide defended this case and that's, you
14 know, that's what they're trying to make out.
15 Our point is that this case -- these ten years -- we
16 have both been here in this trial.
17 THE COURT: Lets go back. Are you willing to give me
18 the figures up until the time that the complaint was filed
19 against Nationwide?
20 MR. COHEN: There were no figures. The complaint was
21 filed immediately. The complaint was filed five days after
22 --
23 THE COURT: That's what I'm trying to say. There is
24 no effort made to settle this case by either one, by
25 Nationwide or by the Bergs.

451

1 MR. COHEN: Within that week, no, we couldn't. We
2 didn't know.
3 THE COURT: Well, at any time prior to the filing of
4 the complaint --
5 MR. COHEN: There was an effort by Nationwide to have
6 the vehicle inspected so they could determine the extent of
7 the Berg's damages.
8 THE COURT: I understand. But nothing of value was
9 offered in an effort to settle this matter short of
10 litigation?
11 MR. COHEN: Mr. Mayerson filed his complaint. We
12 couldn't -- we didn't have an opportunity, that's correct.
13 THE COURT: Okay.
14 MR. COHEN: That's our entire defense.
15 THE COURT: All right. Mr. Mayerson didn't give you
16 a figure and Nationwide didn't give Mr. Mayerson a figure.
17 MR. COHEN: Prior to the filing of the complaint.
18 THE COURT: Prior to the filing of the complaint.
19 MR. COHEN: That is correct.
20 THE WITNESS: Your Honor, if I may, in our letter of
21 April 22nd, 1998 --
22 THE COURT: Just answer my question.
23 THE WITNESS: We didn't want any money from
24 Nationwide. We wanted them to buy the vehicle prior to
25 filing the complaint.

452

1 THE COURT: Is there a letter to that effect?
2 THE WITNESS: Yes, it's already marked as an exhibit.
3 It's a letter of April 22nd, 1998.
4 THE COURT: And what exhibit is it, April 22nd, what?
5 THE WITNESS: 1998.
6 THE COURT: 1998. And this was prior to the filing
7 of the complaint?
8 THE WITNESS: Yes.
9 THE COURT: In this matter what's the exhibit number?
10 THE WITNESS: Eleven.
11 THE COURT: Let me see if I left the exhibits in the
12 retiring room.
13 MR. H. MAYERSON: Here it is, Your Honor. It says
14 trial Page 1244 and 1245.
15 THE COURT: Just give it to me.
16 THE WITNESS: Your Honor, may I leave the witness
17 stand for a moment?
18 THE COURT: Yes. And this is the letter you were
19 making reference to that there was little time between the
20 time that this letter of April 22nd, 1998 was mailed and
21 faxed or whatever to give Nationwide an opportunity to
22 evaluate --
23 MR. COHEN: That's correct.
24 THE COURT: -- the merits of the claim.
25 MR. COHEN: That's correct. I mean, Nationwide

1 wanted to inspect the vehicle and --

2 THE COURT: No, I understand. I just wanted to read
3 the letter again. I see what you're making reference to.

4 THE WITNESS: And we filed -- we sent the other
5 party, Lindgren, a simultaneous letter. I asked them for an
6 extension on the rule to file complaint.

7 THE COURT: I understood this too. I didn't have the
8 letter in front of me and I wanted to see the specific
9 language. Of course you don't mention a number or anything
10 else in this. You just say, "Please also advise if
11 Nationwide will purchase the vehicle from the Berg family."
12 It doesn't say for the sum or whatever, whatever, whatever.
13 It doesn't say in full settlement whatever claims we may have
14 against Nationwide Insurance and/or Lindgren. It doesn't say
15 that.

16 And it goes on to say if Nationwide will not purchase
17 the vehicle, please advise what Nationwide will do pursuant
18 to the terms, conditions and warranties of the Blue Ribbon
19 Repair Program and its policy with the Berg family which puts
20 them on a search to make an investigation and see what they
21 will do. This is what you're asking them.

22 THE WITNESS: I never would have thought to ask them
23 for a penny. They didn't owe us anything other than
24 purchasing the vehicle. There was no bad faith at that
25 point.

1 THE COURT: But you filed a suit against them days
2 thereafter?

3 THE WITNESS: We filed a rule to file complaint. Did
4 I ignore your rule to file a complaint?

5 THE COURT: Who did I ask you to file a complaint
6 against? Did I tell you to file it against Lindgren or
7 Nationwide or who did I say?

8 THE WITNESS: I'm sure you just said Lindgren.

9 THE COURT: Absolutely. It's who you filed the
10 precipe.

11 THE WITNESS: Again, the information we had at that
12 time period was that the vehicle had been appraised as a
13 structural total loss.

14 THE COURT: Lets go. I don't want to hear any more.
15 I don't want to hear any more. Do you have any questions
16 here for this witness?

17 THE WITNESS: Yes.

18 MR. COHEN: No, I'm done.

19 THE WITNESS: Your Honor, Mr. Cohen has made
20 representations that there were lots of settlement
21 discussions.

22 MR. COHEN: I'm sorry. Is this a question? I'm done
23 with my cross-examination.

24 THE WITNESS: I'm under oath and I take that
25 seriously. I mean, there was no effort to resolve --

1 MR. COHEN: Your Honor, this is completely improper
2 for Mr. Mayerson to spout out discussions regarding
3 settlement with no discussions. He is done as a witness.

4 THE WITNESS: Mr. Cohen represented to the Court --

5 THE COURT: He's also said that the Court that
6 settlement discussions subsequent to the filing of the
7 complaint would not be relevant in this good faith
8 proceeding, and I am inclined to believe that he is correct
9 on that. I would have to look and do a little research. I'm
10 sure he has it somewhere among those six three-ring binders.
11 It looks like my table when I used to try cases. That's how
12 I got this rotator cuff injury as you see me walking out here
13 limping. It wasn't from swinging a golf club, so be careful.
14 Make sure these ladies carry these three-ring binders.

15 THE WITNESS: I'm fairly -- I'm fairly certain the
16 opinion is --

17 THE COURT: You can submit it to me tomorrow morning
18 and that's the case law. Then I will revisit this issue. If
19 it is not it's the end of it.

20 MR. H. MAYERSON: Your Honor, may I submit one
21 sentence please?

22 THE COURT: No, no. All right, one sentence.

23 MR. H. MAYERSON: Your Honor, Mr. Mayerson said time
24 is of the essence. This is no more difficulty than any
25 property damage appraiser going out and appraising the

1 vehicle for a \$12,000 loss in ten minutes and walking away.
2 That's all it took and that's all he was asking for. This
3 was not a complicated thing. This did not require --

4 THE COURT: To do all this within three days or
5 whatever that period was.

6 MR. H. MAYERSON: They had the appraisal done already
7 in their records. They had it done on April 30th.

8 THE COURT: Does your office respond that quick to
9 matters when someone writes to you and tells you to respond
10 to this matter or that matter? Do you get it out within one
11 week?

12 MR. H. MAYERSON: The background --

13 THE COURT: Mr. Mayerson, I don't want to hear any
14 more. I've heard more than enough again.

15 THE WITNESS: I'll get the opinion for you.

16 THE COURT: You bring in the cases and bring in
17 copies of the cases. Try to get that information to
18 Mr. Cohen before we begin tomorrow morning.

19 THE WITNESS: Maybe, Mr. Cohen, since he's familiar
20 with the law, he can agree with me that that's what the law
21 says.

22 THE COURT: He's already said what he thinks the law
23 is.

24 THE WITNESS: He knows what the law is.

25 MR. COHEN: I will read the Birth Center case because

457

1 maybe I'm wrong.

2 THE COURT: And you could be wrong.

3 MR. COHEN: It wouldn't be the first time.

4 THE COURT: That's why I'm giving everyone an

5 opportunity to read the case and tell me tomorrow morning.

6 Now there's no further questions for you. You are released

7 as a witness.

8 THE WITNESS: Subject that we can come back and

9 revisit this if the Birth Center case --

10 THE COURT: That's a legal argument, and the Court

11 agrees with your position. Then obviously then you would be

12 called back as a witness to get into this area. Okay. In

13 either event you may step down at this time. All right. Do

14 you have any more witnesses?

15 MR. B. MAYERSON: Yes, I believe David Cole is here

16 now.

17 THE COURT: All right. David Cole.

18 MR. B. MAYERSON: Your Honor, may we have two minutes

19 to organize our desk?

20 THE COURT: Yeah, all right. Here's this exhibit to

21 return it to you. It's a part of the transcript. Birth

22 center, B-I-R-T-H-C-E-N-T-E-R.

23 THE COURT: Is that Birth Center versus Saint Paul

24 Insurance Company. If I find out later that Mr. Cohen has a

25 copy of this case right in his lap and didn't give it to me

458

1 --

2 What's the citation please?

3 MR. B. MAYERSON: Your Honor, I'm not certain it's

4 Birth Center, but there's a case that says --

5 THE COURT: In other words I'm not supposed to read

6 this either?

7 MR. B. MAYERSON: I'm going to get it.

8 MR. COHEN: That's how I feel right now.

9 THE COURT: You'd be a lousy judge just like me. You

10 have no judicial temper either. These women have judicial

11 temperaments. That's why they're all judges today.

12 MR. B. MAYERSON: Your Honor, may I have an

13 opportunity to look through this case because then maybe I

14 can use it in my cross-examination of Mr. Cole.

15 MR. COHEN: Of what case?

16 MR. B. MAYERSON: The case that says settlement

17 negotiations are admissible.

18 THE COURT: Read that now or give me a copy of the

19 case so I can read it and you can read this tonight when you

20 want to read it.

21 Is that a case, Birth center versus Saint Paul --

22 MR. B. MAYERSON: I have a brief I wrote that cites

23 to a bunch of cases and it --

24 THE COURT: Lets get the case. Lets read it. Make a

25 decision. Okay. Next witness.

459

1 MR. B. MAYERSON: Plaintiffs call Mr. Cole, Mr. David

2 Cole as if on cross.

3 MR. COHEN: Your Honor, Mr. Cole is not an employee

4 of Nationwide any more. It's not proper for Mr. Mayerson to,

5 just because he wants to, cross-examine somebody and lead

6 them to just say as if on cross. There's been no showing

7 that Mr. Cole is an adverse witness to Mr. Mayerson's

8 position. I'm going to object to him questioning him as on

9 cross.

10 MR. B. MAYERSON: Maybe we can develop a foundation

11 for that.

12 THE COURT: All right. Swear him in.

13 THE CLERK: Please raise your right hand, please.

14 Place your right hand on the Bible.

15 DAVID COLE, Sworn.

16 THE CLERK: Please be seated and state your full name

17 for the record.

18 THE WITNESS: My name is David Elliott,

19 E-L-L-I-O-T-T, Cole, C-O-L-E.

20 VOIR DIRE EXAMINATION

21 BY MR. B. MAYERSON:

22 Q Mr. Cole, thank you for coming.

23 A Uh-huh.

24 Q Can you tell me what your current occupation

25 is?

460

1 A Yes, I'm an attorney -- pardon me -- currently

2 employed as Executive Director for the Pennsylvania Defense

3 Institute and the Philadelphia Association of Defense

4 Counsel.

5 Q And between 1988 and --

6 THE COURT: Say that again. You're attorney for --

7 THE WITNESS: Pennsylvania Defense Institute in

8 Philadelphia Association of Defense Counsel.

9 BY MR. B. MAYERSON:

10 Q Are you being represented today by Mr. Cohen?

11 A I am not.

12 Q Did you have conversations with Mr. Cohen

13 about preparing for today's deposition?

14 A I did.

15 Q Could you tell us --

16 THE COURT: Today's deposition?

17 MR. B. MAYERSON: I'm falling into my old ways.

18 THE COURT: Go ahead.

19 BY MR. B. MAYERSON:

20 Q About your testimony today, did you have

21 conversations with Mr. Cohen?

22 A I did.

23 THE COURT: When?

24 THE WITNESS: Approximately a month ago.

25 BY MR. B. MAYERSON:

IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

461

1 Q Did you have conversations with Mr. Cohen
2 about whether or not to comply with a subpoena that was
3 served upon you in Harleysville?
4 A At Harleysville? I don't know what you mean
5 by Harleysville.
6 Q Harleysville Insurance Company where there is
7 an office for the defense institute?
8 A There is not an office for Pennsylvania
9 Defense Institute in Harleysville.
10 Q Doesn't the defense institute list that as an
11 address registered pillars of service?
12 A We did not.
13 Q Did you previously?
14 A Not to my knowledge, no.
15 Q Did you have a conversation with Mr. Cohen
16 about whether or not to comply with our subpoena?
17 A I did not.
18 Q All right. Between 1988 and 1990 you were
19 employed as a claims attorney for Nationwide Insurance
20 company?
21 A That's correct.
22 Q And between 1990 to 1996 you were employed as
23 state legal counsel?
24 A I think at the time it was called Regional
25 Claims Attorney, but it's essentially the same position, yes.

462

1 THE COURT: From 1990 to when?
2 THE WITNESS: 1996, Your Honor.
3 THE COURT: Thank you.
4 BY MR. B. MAYERSON:
5 Q And from 1996 to December of 1999 you were
6 employed as Claims Legal Counsel?
7 A That's correct.
8 THE COURT: I assume you're talking about Nationwide
9 Mutual.
10 BY MR. B. MAYERSON:
11 Q Yes, at Nationwide Mutual Insurance Company.
12 A That's correct.
13 Q And between 1990 and 1996 the position that
14 you held, state legal counsel, was a management capacity
15 position?
16 MR. COHEN: Objection. Mr. Mayerson is leading the
17 witness and he has not laid the proper foundation that this
18 is an adverse or hostile witness.
19 THE COURT: He's trying to lay a foundation in that
20 he is an adverse witness and these leading questions are
21 permissible to that extent.
22 THE WITNESS: Repeat the question please.
23 BY MR. B. MAYERSON:
24 Q Yes. Were you between 1990 and 1996 managing
25 all the attorneys employed by Nationwide within the State of

463

1 Pennsylvania?
2 A Not strictly, no. There were two separate
3 groups of lawyers that Nationwide had. Pardon me, and I
4 apologize to the Court, I've had a cold for the last couple
5 days. The group that I managed were in-house counsel. There
6 was a separate trial division that was not managed by me.
7 Q I'm sorry. I'm confused.
8 A Sure. There were two separate staffs of
9 attorneys that Nationwide employed in Pennsylvania at the
10 time. One group of attorneys worked under my direction but
11 did not litigate, per se, cases. Then we had a separate
12 group of lawyers called trial division who did litigate
13 cases. They were not managed by me.
14 Q All right. What did your division do?
15 A We served as counsel to Nationwide, the
16 various functions at Nationwide, claims operation,
17 underwriting the agency for us, kept everyone apprised of
18 legal updates, all that sort of thing.
19 Q All right. I'd just like to show you and see
20 if you can tell me if you recognize this. It's an excerpt
21 from the handler document.
22 MR. COHEN: What is it?
23 THE WITNESS: It looks like a transcript.
24 MR. COHEN: Hold on, Mr. Cole. Excuse me. Your
25 Honor, this is the deposition of Mr. Cole in the Hensley

464

1 matter that Mr. Mayerson tried to get in yesterday from a
2 different case.
3 MR. B. MAYERSON: I'm not submitting it to be
4 admitted without his testimony on cross-examining him now on
5 his testimony.
6 THE COURT: What are you submitting it now for?
7 MR. B. MAYERSON: I'm not submitting it.
8 THE COURT: Why are you handing it to him?
9 MR. B. MAYERSON: Because his testimony is
10 inconsistent.
11 MR. COHEN: He hasn't testified yet.
12 THE COURT: Well, then ask him, isn't your testimony
13 inconsistent with what you said on such and such a date or
14 what are --
15 BY MR. B. MAYERSON:
16 Q Isn't your testimony inconsistent with your
17 testimony on December 21st, 1999 with regard to whether or
18 not you managed all the attorneys for the State of
19 Pennsylvania?
20 A I have no recollection of what I testified to
21 back in 1999 since that was eight years ago.
22 Q Could you take a look at your testimony to see
23 if that refreshes your recollection?
24 THE COURT: No, that's what he said. He has no
25 recollection of what he may have said. I don't know whether

465

1 that document is credible or not. There's no foundation for
2 whatever that document is. And at this point the only thing
3 you're trying to do is to establish that he is a hostile
4 witness, in which event you should be able to treat him as on
5 cross-examination. That's the only issue right now.
6 BY MR. B. MAYERSON:
7 Q Sir, can you tell me what your position was
8 beginning in 1996 through 1999?
9 A Yes. I think at that time they called it
10 claims attorney, although they may have called it claims
11 counsel. The names changed but, again, basically the same
12 position.
13 Q And is that -- was that position created
14 specifically for legislative, regulatory and complex
15 litigation work?
16 A It wasn't created specifically for that.
17 Those kind of assignments were specifically given to me
18 however in that capacity.
19 Q All right. So the assignments you received
20 was for complex litigation work and work involving
21 legislative and regulatory issues?
22 A That's correct.
23 Q And that was from 1996 until the time you left
24 Nationwide?
25 A 2002, that's right, sir, that's correct.

466

1 Q All right. And you left Nationwide in June of
2 2002?
3 A I think it was September of 2002.
4 Q In September of 2002 what were the conditions
5 of your discharge?
6 A I was not discharged. It was a voluntary
7 separation. I was offered a position which I couldn't say no
8 to.
9 Q And that position is with the defense
10 institute?
11 A That is correct.
12 Q How is the defense institute funded?
13 MR. COHEN: Objection.
14 THE COURT: Sustained.
15 BY MR. B. MAYERSON:
16 Q Is the defense institute funded by Nationwide
17 Insurance Company?
18 MR. COHEN: Objection.
19 THE COURT: Overruled.
20 THE WITNESS: Nationwide does not fund the
21 organization. Individual members of Nationwide who are
22 members of PDI pay dues on a yearly basis. We have no
23 corporate dues.
24 THE COURT: Is that the sole source of the funding of
25 the company you work with?

467

1 THE WITNESS: That along with CLE programs and
2 publications and that sort of thing, Your Honor.
3 BY MR. B. MAYERSON:
4 Q Are you listed as a reference on lead counsel
5 Mike Nelson's web page?
6 MR. COHEN: Objection.
7 MR. B. MAYERSON: Personal reference.
8 THE COURT: Who is he?
9 MR. B. MAYERSON: Mike Nelson is the original
10 attorney, Mr. Cohen's boss.
11 THE COURT: Objection overruled. Answer the
12 question.
13 THE WITNESS: I have no idea.
14 MR. B. MAYERSON: Your Honor, may we move to treat
15 Mr. Cole as an adverse witness?
16 THE COURT: Do you have any questions for him in that
17 regard?
18 MR. COHEN: No, I don't believe Mr. Mayerson has laid
19 a proper foundation. I'm going to maintain my objection.
20 MR. B. MAYERSON: May I ask one more question, Your
21 Honor?
22 THE COURT: Go ahead.
23 BY MR. B. MAYERSON:
24 Q Did you work on the Berg file, were you
25 assigned the Berg file?

468

1 A Yes.
2 Q Were you the primary person managing that file
3 from 1996 until the time you left the company in 2002?
4 A I don't think the Berg file -- the case was
5 filed until 1998 if I'm not mistaken.
6 Q You're right.
7 A And I don't recall whether I had it initially
8 or not. There was a period between 1998 and 2002 when I did
9 supervise the Berg file, yes.
10 THE COURT: All right. You may treat him as an
11 adverse witness and cross-examine him.
12 MR. B. MAYERSON: Thank you, Your Honor.
13 CROSS-EXAMINATION
14 BY MR. B. MAYERSON:
15 Q Mr. Cole, I'm handing you copy of the Berg
16 claim log, the electronic claim file. Do you recognize that
17 document?
18 A I recognize it simply as a claims log. I've
19 not looked at this, no.
20 Q Why don't you take a look at it?
21 THE COURT: By the way, how long is this witness
22 expected to be?
23 MR. B. MAYERSON: I hope not long at all, Your Honor.
24 THE COURT: That's not an answer.
25 MR. B. MAYERSON: Fifteen, 20 minutes on my part.

1 THE COURT: well, then he's going to have to come
2 back tomorrow. You know I have union employees that I have
3 to deal with. Do you have union employees you have to deal
4 with? I have her here every day way beyond her hours.

5 MR. COHEN: I didn't call the witness and haven't
6 been dragging this out.

7 THE COURT: But you're getting up and fighting
8 because I'm saying we don't have time to listen to this
9 witness today and call him back tomorrow.

10 MR. COHEN: Mr. Cole drove four hours to be here and
11 if we've got an hour, if Mr. Mayererson would ask a relevant
12 question, if we can get him off the stand and get him out of
13 here. We're three days into this trial. This is the same
14 thing that happened to me in the first phase. I have people
15 who would like to testify and everything.

16 THE COURT: Miss Cintron, are you going to lose your
17 child by staying here until 5 o'clock?

18 THE COURT REPORTER: No.

19 THE COURT: All right.

20 MR. COHEN: Thank you, Your Honor.

21 BY MR. B. MAYERSON:

22 Q Mr. Cole, to cut to the chase, on Page 1 of
23 that document, does it not have your name, David Cole?

24 A Yes, it does.

25 Q All right. And that's dated July 22nd, 1998?

1 A That's correct.

2 Q Can you identify that document after looking
3 at it and tell me what it is?

4 A It appears to be an electronic claims log from
5 the Berg file.

6 Q All right. Above your name it says legal LEAP
7 Clerk, L-E-A-P. What's that, L-E-A-P, capital letters?

8 A My recollection is that was a researching
9 system that Nationwide used at the time, but I don't know
10 what it stands for any more. It's been too long.

11 Q All right. Did you have access to this claim
12 file when you were handling this claim?

13 A You mean to these log notes?

14 Q Yes.

15 A I would have, yes.

16 Q All right. And would you have access to the
17 unredacted claim log because if you look at this there's a
18 lot of stuff that's blackened out. So what I'd like to know,
19 when you had access to it, was it blackened out or not?

20 A It wouldn't have been redacted.

21 Q So when you got the file some time in July of
22 '98 you had access to the inspection report by Stephen
23 Potosnak; correct?

24 A I presume I would have. I don't recall the
25 particular document, but I presume if it was part of the file

1 that I would have had access to it, yes.

2 MR. B. MAYERSON: Your Honor, we'd like to have this
3 marked as an exhibit.

4 (Whereupon, Exhibit No. 46 was marked for
5 identification purposes.)

6 MR. COHEN: May I have a copy, please?

7 MR. B. MAYERSON: Yes.

8 BY MR. B. MAYERSON:

9 Q Could you please turn, sir, to Page 4?

10 A Of the log notes?

11 Q Yes, of the log notes. The numbers are
12 written at the top right-hand corner.

13 A Okay.

14 Q Do you see that big black space at the bottom
15 of the page and at the top of the next page?

16 A Yes.

17 Q That is a redaction of the Potosnak inspection
18 report. I'll show you a copy unredacted. Tell me if you can
19 read that and tell me if that refreshes your recollection,
20 because what I'd like to know is did you redact that or did
21 your attorney redact it?

22 A I did not redact that.

23 Q All right. Do you know who did?

24 A I do not.

25 Q Did you authorize somebody else to redact it?

1 A I did not.

2 Q But you were aware that this inspection took
3 place prior to this lawsuit being filed?

4 A I don't have any specific recollection of
5 that, but it makes sense that it did.

6 Q All right.

7 THE COURT: That what?

8 THE WITNESS: It makes sense that it did, Your Honor.

9 THE WITNESS: I don't have any recollection of it,
10 Your Honor.

11 THE COURT: That it was redacted when?

12 THE WITNESS: When the inspection took place. I
13 think he asked if the inspection took place before the filing
14 of the suit. Is that what you asked?

15 MR. B. MAYERSON: Yes.

16 BY MR. B. MAYERSON:

17 Q Mr. Cole, do you have some understanding what
18 this case is about?

19 A Yes.

20 Q It's about a collision claim that went wrong.

21 A I will agree that it's about a collision
22 claim, yes.

23 Q All right. You agree you're pretty high up in
24 the company over at Nationwide?

25 MR. COHEN: Objection.

473

1 THE COURT: Overruled. You mean he was at that
2 particular time?
3 MR. B. MAYERSON: Yes.
4 THE WITNESS: I was in a management position managing
5 a legal staff for Nationwide in Pennsylvania at the time.
6 BY MR. B. MAYERSON:
7 Q Well, actually up until '96 you were heading
8 all the attorneys in Pennsylvania?
9 A That's correct, you're right. After '96 I was
10 not in that capacity, you are correct.
11 Q So when this suit came you were involved in
12 complex litigation and regulatory issues?
13 A That's correct.
14 Q Do you know why this case got assigned to you?
15 A I do not.
16 Q Did you make that decision?
17 A I did not.
18 Q When you got the file you obviously reviewed
19 it, I assume?
20 A I'm sure that I did.
21 Q What -- when you saw the Potosnak report why
22 didn't you say, geez, maybe we should resolve this claim?
23 A Your Honor, I have a concern about answering
24 this question. I think it involves attorney/client privilege
25 and I'm not sure Nationwide has waived that privilege at this

474

1 point so I would be remiss as an attorney if I answered that
2 question.
3 MR. B. MAYERSON: Your Honor, he is making the
4 correct objection, but unfortunately the law is rather clear
5 that although he needs to assert it, it's a very limited
6 privilege in this context and his role is not even as an
7 attorney and it's Nationwide's burden to establish that the
8 question I'm asking has to do with attorney/client privilege.
9 And once Nationwide establishes that burden, and this is
10 written by Judge Wettick, then it's our burden to show it
11 doesn't apply and he was not operating as an attorney. So
12 the first thing that has to be established --
13 THE COURT: What do you mean "operating as an
14 attorney"?
15 MR. B. MAYERSON: He was operating as a claims
16 attorney.
17 MR. COHEN: Mr. Mayerson asked a dozen questions
18 establishing he was an attorney and now he wants to ask him
19 questions --
20 THE COURT: I think what he's saying at this
21 particular point is that Mr. Cole was operating as a
22 management employee of the Defendant, Nationwide Mutual
23 Insurance Company at the time. He was not acting as counsel
24 for Nationwide Mutual Insurance Company and the lawyer/client
25 relationship pertains to whether he was working as counsel

475

1 for the company, not whether he was in a management position.
2 Because the witness, he's in the management position, that
3 takes you out of that whole category. Isn't that your
4 understanding of the law?
5 THE WITNESS: I understand that's what he's trying to
6 argue. I disagree in that capacity. I was also acting as
7 counsel to Nationwide.
8 THE COURT: Were you appearing in court?
9 THE WITNESS: I was not, but I advised and supervised
10 the file, advised counsel on what particular discovery
11 motions we wanted filed, what legal issues to address, et
12 cetera, based on my consultation with Nationwide Insurance.
13 THE COURT: Has this issue been brought up before?
14 MR. COHEN: Yes, Your Honor. We filed a motion in
15 limine. This was one of the motions I argued to you in
16 chambers. We sought to preclude Mr. Cole on testifying on
17 the basis of privilege.
18 MR. B. MAYERSON: Your Honor, the law is rather
19 clear. The privilege is very limited. It runs from a party
20 --
21 THE COURT: Tell me what it is in the very limited
22 time that I have available, all right, otherwise this case
23 will be continued until November which is when I have some
24 time available to handle these things. I'm not going to sit
25 here until the late hours of the evening just for the

476

1 convenience of counsel. I have other matters besides matters
2 that I have in my office, and I don't have any assistant
3 lawyers back there handling them or four law clerks back
4 there handling it.
5 MR. B. MAYERSON: I believe the most simple case is
6 the one we discussed in chambers is the Nationwide versus
7 Fleming case.
8 MR. COHEN: Objection, Your Honor. Mr. Mayerson is
9 doing it again. This is the case that he tried to put in
10 front of Your Honor that I said was improper that he faxed to
11 me on June 3rd and now he's trying to argue this case, Your
12 Honor.
13 THE COURT: We're arguing a legal point and I'm
14 asking him what the law is on that subject.
15 MR. COHEN: Okay.
16 THE COURT: And if he has an opinion with him which I
17 think he said he had that goes right to this issue, I will
18 hear it.
19 MR. COHEN: This is a case against Nationwide where
20 there was a particular ruling on a discovery issue. That is
21 why Mr. Mayerson is going to put this in front of Your Honor.
22 THE COURT: I want to know the single issue of
23 whether or not this gentleman, Mr. Cole, was in a
24 lawyer/client relationship with Nationwide and whether or not
25 the privilege exists.

IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

477

1 MR. COHEN: Mr. Cole testified that he was in a
 2 capacity --

3 THE COURT: Well, he's not here as lead counsel.

4 THE WITNESS: I'm sorry, Your Honor.

5 THE COURT: You're not here as my legal counsel. I
 6 have to make that decision.

7 THE WITNESS: Certainly, Your Honor, I felt as if I
 8 was acting in that capacity and advising Nationwide.

9 THE COURT: You may have felt that way. Lets find
 10 out what Judge Wettick said if he ruled on that specific
 11 issue.

12 MR. B. MAYERSON: This is actually a superior court
 13 opinion, Your Honor.

14 THE COURT: Tell me what the -- what's the holding of
 15 that case on this issue of lawyer/client privilege? Did it
 16 involve someone who worked for a large company who also was
 17 in the capacity of a manager for the company, because that's
 18 the fact specific question that's before the Court?

19 MR. B. MAYERSON: I've highlighted a couple relevant
 20 portions.

21 THE COURT: I don't care what you highlighted or if
 22 you drew pictures on there. I'm asking you a question and I
 23 want an answer.

24 MR. B. MAYERSON: The attorney/client privilege
 25 regarding disclosure only emphasizes only those

478

1 communications made by a client to his or her attorney which
 2 are confidential and made in connection with providing legal
 3 services or advice.

4 MR. COHEN: Wait, wait. And it goes on. Read the
 5 rest of it.

6 THE COURT: There's nothing controversial about that.
 7 That is the general rule with regard to -- that's the
 8 standard.

9 MR. B. MAYERSON: what he wants to read says, "The
 10 privilege extends to communications from an attorney to his
 11 or her client if and only if the communications fall within
 12 the general statutory definition," and they go on to say how
 13 limited that exception is.

14 THE COURT: Well, tell me what it says there that
 15 does not apply in the situation involving Mr. Cole and
 16 Nationwide Mutual Insurance Company.

17 MR. B. MAYERSON: Citing Mishoe, M-I-S-H-O-E, versus
 18 Erie Insurance Company concluding that two letters prepared
 19 by parties counsel concerning the potential --

20 THE COURT: Whose parties? Parties counsel? Who are
 21 the parties? Who are they referring to?

22 MR. B. MAYERSON: I assume Mishoe.

23 THE COURT: Don't assume anything. Tell me.

24 MR. B. MAYERSON: It's just in the opinion. It
 25 doesn't indicate in the Superior Court's opinion. They're

479

1 citing to it to support their decision that the claims at
 2 Nationwide were made and attorney/client privilege were
 3 founded and two letters prepared by a party's counsel
 4 concerning a potential for a bad faith claim were not
 5 protected under attorney/client privilege because the letters
 6 contained no protected communications from the party to its
 7 counsel.

8 Protection under attorney/client privilege is subject
 9 to limitations, exceptions and waivers. Subject matter
 10 waiver -- a litigant attempting to use attorney/client
 11 privilege is an offensive weapon by elective disclosure,
 12 favorable privileged communications, misuse the privilege.
 13 Waiver of the privilege for all communications on the same
 14 subject has been deemed an appropriate response to such a
 15 misuse. And they go on to talk about it can't be used as a
 16 shield.

17 THE COURT: First of all, Mr. Cohen, what do you want
 18 to tell me?

19 MR. COHEN: I want to tell you that Mr. Mayerson has
 20 done nothing but advise the Court that he's advised the Court
 21 of what the attorney/client privilege is.

22 MR. B. MAYERSON: The burden was improperly shifted
 23 to me. This says whether the parties seeking the disclosure
 24 has overcome the privilege by establishing a prima facie
 25 case.

480

1 MR. COHEN: That the crime-fraud exception applied.

2 MR. B. MAYERSON: It says it.

3 MR. COHEN: Your Honor, I'd like to get Mr. Cole on
 4 with his testimony or out of here so he doesn't have to come
 5 back for four hours.

6 MR. B. MAYERSON: You've read the opinion and you
 7 know what it says. If the party asserting the privilege does
 8 not produce sufficient facts to show that the privilege was
 9 properly invoked, then the burden never shifts to the other
 10 party and the communication is not protected under
 11 attorney/client privilege.

12 THE COURT: All right. You established that the
 13 privilege exists in this situation. That's your
 14 responsibility.

15 MR. COHEN: Yes.

16 THE COURT: And I believe that that's so --

17 MR. COHEN: Thank you, Your Honor.

18 THE COURT: -- in every situation. So lets do it.

19 MR. COHEN: Lets do --

20 THE COURT: That the client privilege --
 21 lawyer/client privilege exists in this situation between Mr.
 22 Cole and Nationwide.

23 MR. COHEN: Oh, yes.

24 THE COURT: And Nationwide Insurance Company. Are
 25 you getting tired or something?

IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

1 MR. COHEN: Yes. That's the position we're taking.
 2 THE COURT: Oh, I know that. But you haven't given
 3 me any basis to prove that the relationship and that the
 4 privilege exists. That's what the case Mr. Mayerson has is
 5 indicating that the burden is upon you to show that there is
 6 a lawyer/client privilege existing in this case --

7 MR. COHEN: Okay.

8 THE COURT: -- with this witness.

9 MR. COHEN: If I may, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. COHEN:

12 Q Mr. Cole, at the time that you were handling
 13 the Berg matter or that you were assigned to the Berg matter,
 14 was your role at Nationwide that of an attorney?

15 A Yes, it was.

16 Q Okay. And were you acting in the capacity as
 17 Nationwide's attorney, at least internally, Nationwide's
 18 attorney with regard to the Berg matter?

19 A Yes, I was.

20 Q Okay. And did you have an opportunity as
 21 Nationwide's attorney to have conversations and
 22 communications with employees of Nationwide with regard to
 23 the Berg claim?

24 A On an ongoing basis, yes.

25 THE COURT: Did you also have on an ongoing basis a

1 relationship with the management of the company Nationwide
 2 Mutual Insurance Company?

3 THE WITNESS: Yes, Your Honor.

4 THE COURT: And in that relationship were you acting
 5 as counsel for them as legal counsel for the company?

6 THE WITNESS: Yes, Your Honor, I was.

7 THE COURT: And not simply with regard to individual
 8 claims?

9 THE WITNESS: I was doing both. I was advising on
 10 legal issues. I was recommending courses of action. I was
 11 keeping them updated on developments. I was recommending
 12 actions to take, all of the normal things an attorney does in
 13 advising a client.

14 THE COURT: And were there times when you in that
 15 capacity were asked to appear before committees of Nationwide
 16 Mutual Insurance Company or the board or something along
 17 those lines?

18 THE WITNESS: I appeared on several occasions in
 19 front of the Nationwide Board of Directors.

20 THE COURT: Give legal advice to them?

21 THE WITNESS: Yes.

22 BY MR. COHEN:

23 Q To the best of your knowledge has Nationwide
 24 ever waived the attorney/client privilege?

25 A To my knowledge they have not.

1 MR. COHEN: Your Honor, I raise the attorney/client
 2 privilege again.

3 THE COURT: All right. Now the burden shifts to you,
 4 Mr. Mayerson --

5 MR. B. MAYERSON: All right.

6 THE COURT: -- because the Court is under the opinion
 7 that the lawyer/client relationship definitely exists in this
 8 case.

9 MR. B. MAYERSON: Your Honor, may I have a moment to
 10 look for the case law, the other case that has the wettick
 11 opinion on it? I mean, this is -- there is no
 12 attorney/client privilege and the law with this witness and
 13 if I can --

14 THE COURT: I have ruled on that. I'm not going to
 15 revisit it, and you had the last nine years to prepare for
 16 this issue. I'll give you two minutes to look for whatever
 17 other case you want to look for.

18 MR. B. MAYERSON: Your Honor, all I can say is that I
 19 can't find the lower court opinion but the Superior Court
 20 opinion that I just cited to --

21 THE COURT: I made a ruling, sir. Lets go on.

22 MR. B. MAYERSON: All right.

23 THE COURT: Quite frankly I can't think of a more
 24 classic case of lawyer/client relationship as far as
 25 corporation is concerned and in-house counsel than in this

1 situation. And, incidentally, it's the same law as it was 25
 2 years ago when I was corporate counsel for several
 3 corporations. And also at that point you can remember the
 4 Board of Directors you went to Board of Directors meetings,
 5 whatever, whatever, whatever. That's a classic situation of
 6 your client relationship in the corporate setting.

7 THE COURT: I have never seen anything that's changed
 8 that law at all over the years.

9 MR. B. MAYERSON: All right.

10 THE COURT: I assume you don't have any further
 11 questions for him or do you want to ask him some questions
 12 and for him to claim the lawyer/client privilege.

13 MR. B. MAYERSON: Your Honor, certainly the
 14 attorney/client privilege does not extend to everything. It
 15 is limited to things that were confidential in nature.

16 THE COURT: Well, we'll find out.

17 RECROSS-EXAMINATION

18 BY MR. B. MAYERSON:

19 Q Sir, are you familiar with the Best Claims
 20 Practices, the 1996 version?

21 A There were a number of Best Claims Practice
 22 documents. You have to be more specific.

23 Q How about the Pennro Litigation Strategy?

24 A The Pennro Litigation Strategy is a document
 25 that was attached to a 1993 Best Claims Practices document

1 that Nationwide had, not a 1996 document.
 2 Q But you're familiar with that strategy;
 3 correct?
 4 A I recall it. I have not looked at it in some
 5 time.
 6 Q Weren't you in charge of all the attorneys in
 7 the State of Pennsylvania from 1990 to 1996?
 8 A All the attorneys that worked in house, yes.
 9 Q Wouldn't it be your position to make sure that
 10 the in-house attorneys are applying the Pennro Litigation
 11 Strategy properly?
 12 A The document was not created for use by
 13 attorneys. It was created for use by claims adjusters.
 14 Q But you knew what the strategy was; right?
 15 A I did not participate in the drafting of the
 16 strategy.
 17 Q I didn't ask you if you participated in the
 18 draft of the strategy. I'm asking you if in your capacity as
 19 the managing claims attorney for all the attorneys in the
 20 State of Pennsylvania when you were familiar with this
 21 litigation management strategy.
 22 A At the time that it was in existence I would
 23 have been aware of it, yes.
 24 Q All right. And you would know how to apply
 25 that strategy?

1 A I would not be applying the strategy. It was
 2 a document prepared for claims adjusters. I managed the
 3 legal division.
 4 THE COURT: In house.
 5 BY MR. B. MAYERSON:
 6 Q Was it your job in the Berg matter to oversee
 7 the litigation with your law firm first at Post and Schell
 8 and then with Mr. Cohen's firm?
 9 A Yes.
 10 Q And so you would interface with them and you
 11 would receive the bills and you would pay the bills; correct?
 12 MR. COHEN: Objection.
 13 THE COURT: What's the objection?
 14 MR. COHEN: The objection is it goes to
 15 attorney/client privilege. What he does with outside counsel
 16 --
 17 MR. B. MAYERSON: That is not privilege, Your Honor.
 18 THE COURT: Overruled. Answer the question.
 19 THE WITNESS: Yes, I would receive bills.
 20 BY MR. B. MAYERSON:
 21 Q And, in fact, all the billing records up until
 22 2002 when you left Nationwide, all the billing records that I
 23 have received, those document your input and your
 24 communications. I'm not asking you what the communications
 25 were, but you were having daily communications particularly

1 in the early part of this case with counsel over Post and
 2 Schell and later Nelson Levine?
 3 MR. COHEN: Objection. Foundation.
 4 MR. B. MAYERSON: We've established --
 5 THE COURT: Overruled. Go ahead.
 6 THE WITNESS: What is the question? Repeat the
 7 question.
 8 BY MR. B. MAYERSON:
 9 Q Weren't you the person who --
 10 THE COURT: And incidentally, Mr. Cole, you are the
 11 one who is in the relationship with lawyer/client
 12 relationship.
 13 THE WITNESS: Yes, sir.
 14 THE COURT: If you feel that the question or the
 15 answer to any of the questions violates that lawyer/client
 16 privilege, you assert it.
 17 THE WITNESS: I will.
 18 THE COURT: The same if you were in Washington D.C.
 19 you could claim your fifth amendment.
 20 THE WITNESS: I will, Your Honor.
 21 THE COURT: It's not up to counsel. It's up to a
 22 witness to do that. Generally I have a piece of paper in one
 23 hand and read it. Go ahead.
 24 BY MR. B. MAYERSON:
 25 Q Sir, you were receiving the bills and

1 authorizing the payment of the bills for Nationwide in the
 2 lawsuit or defense of this litigation; is that correct?
 3 A That's correct.
 4 Q All right. And isn't it true that when you
 5 first got the suit file that you were required to develop a
 6 strategy?
 7 A I wasn't required to develop a strategy, no.
 8 Q Well, what you required as defense counsel the
 9 retaining counsel that entered their appearance on the record
 10 to develop a strategy and then you approved it; right?
 11 A I would handle this case like any other case.
 12 We would develop a plan in response to the complaint that was
 13 filed. I would make recommendations to my client. My client
 14 would give me authority to do certain things. I would retain
 15 outside counsel and we would proceed to litigate the case.
 16 Q You mean client -- you mean your employer,
 17 Nationwide Insurance Company?
 18 A That's correct.
 19 Q And one of those strategies and one of your
 20 jobs was to make sure and hopefully avoid allowing defense
 21 counsel, quote, free reign in handling cases; isn't it true?
 22 A All counsel that I worked with was under my
 23 supervision and was my responsibility.
 24 THE COURT: And therefore did not have free reign?
 25 THE WITNESS: That's correct.

IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

489

1 BY MR. B. MAYERSON:
2 Q So you were intimately involved in the
3 litigation on a daily basis; correct?
4 A As needed sometimes daily, sometimes not, but
5 certainly responsible for the overall supervision of the
6 case, yes.
7 Q Sir, I'd like to refer back to the first page
8 of that claim log that we marked as Exhibit 46.
9 A Yes.
10 Q And right above your name it says, "Legal
11 LEAP; " right, do you see that?
12 A Yes.
13 THE COURT: It says what where?
14 THE WITNESS: "Legal LEAP."
15 THE COURT: "Legal LEAP."
16 THE WITNESS: Right in the middle, Your Honor.
17 MR. B. MAYERSON: All capital letters, L-E-A-P.
18 THE COURT: Is that in the second entry there?
19 THE WITNESS: Yes.
20 THE COURT: Legal L-E-A-P.
21 MR. B. MAYERSON: Right under the blackness, all the
22 way, colon, "Legal one," and then you go over to the center
23 of the page and it says, "Legal LEAP, " all capitals,
24 "CLARK."
25 THE WITNESS: It says "Clerk."

490

1 MR. B. MAYERSON: Clerk, okay.
2 THE COURT: So what's the question.
3 BY MR. B. MAYERSON:
4 Q Well, the question is: This term LEAP, is it
5 not referenced in the litigation strategy Pennro document?
6 A I have no recollection.
7 Q I'm talking about the one that we're talking
8 about, Exhibit 36.
9 A I don't even remember what LEAP stands for.
10 Q Lets take a look and maybe reading it --
11 THE COURT: No, it's his testimony he doesn't have
12 any recollection of what it stands for and I'm not going to
13 allow you to give him documents that he may have seen back in
14 1998 or right before he left in 2002. You refresh his memory
15 or whatever, whatever, whatever. It's his testimony. You
16 subpoenaed him. You brought him in as your witness, and just
17 because you have the opportunity to treat him as an adverse
18 witness as far as how you pose the questions to him, it
19 doesn't mean that you handle him any differently than you do
20 any other witness. Next question please.
21 I think you asked him the question you wanted to ask
22 him and he said I don't know what it is.
23 MR. B. MAYERSON: well, perhaps if he looked at the
24 document it might help.
25 MR. COHEN: He would know what the document said it

491

1 is, but it wouldn't be his testimony, Mr. Mayerson, unless
2 it's some document that he prepared and that he wrote. I
3 assume that that's not the situation here.
4 MR. B. MAYERSON: All right.
5 BY MR. B. MAYERSON:
6 Q Sir, does LEAP, that acronym LEAP, is that an
7 acronym to your knowledge?
8 A I presume it is. I think it was, but I do not
9 have a recollection of what it stands for as we speak here
10 today.
11 Q Is it for data that can be used as a reference
12 for a system that must mature?
13 A I'm not even sure what you mean by that.
14 Q Sir, in this it says that --
15 THE COURT: No, no. You're not going to read
16 anything to him.
17 MR. B. MAYERSON: Your Honor, it says all claim --
18 THE COURT: I don't care. You've got to go to read
19 stuff to him that he was not a part of. It's not his
20 deposition. He did not write it. He doesn't know what the
21 acronym means. That is enough. Next question.
22 BY MR. B. MAYERSON: Was this LEAP system --
23 THE COURT: Next question.
24 BY MR. B. MAYERSON:
25 Q Was it provided to all claim divisions?

492

1 THE COURT: Was LEAP provided to all claims
2 divisions?
3 MR. B. MAYERSON: That's what it says on the page.
4 THE COURT: I'm not interested in what's said on the
5 page. I don't know what the page is. For all I know maybe
6 your brother created that page.
7 Counsel, Mr. Mayerson, go on to the next question.
8 It is now 4:35.
9 BY MR. B. MAYERSON:
10 Q Mr. Cole, you're aware, aren't you, that the
11 vehicle was initially appraised as a structural total loss
12 because the unibody was twisted?
13 A I don't have any recollection of that, no.
14 Q All right. Would you like to turn to the
15 claim log --
16 MR. COHEN: That's my copy.
17 THE COURT: What page?
18 BY MR. B. MAYERSON:
19 Q Page 65. Lets go back first to Page 64.
20 Wait. I'm sorry, no, it is 65.
21 A Okay.
22 Q An entry dated 9/11/96.
23 THE COURT: 9/11/96?
24 MR. B. MAYERSON: 9/11/96.
25 THE WITNESS: There are several of them.

IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

493

1 BY MR. B. MAYERSON:
2 Q The one 3:46 p.m. by Witmer, Doug Witmer.
3 A Okay.
4 THE COURT: Does it have Doug Witmer's name there?
5 MR. B. MAYERSON: It says Witmer, D.
6 THE COURT: W-I-T-M-E-R. Is that his name?
7 MR. B. MAYERSON: His last name is Witmer. His first
8 name is Doug.
9 THE COURT: What's the question again?
10 BY MR. B. MAYERSON:
11 Q I'm just wondering if when you reviewed the
12 claim information if this was information that was available
13 to you?
14 A If it was in the claims file and claims log it
15 would have been available to me, yes.
16 Q So when you reviewed the claim file when you
17 first got it you knew that the vehicle had been appraised as
18 a total loss because the unibody was twisted?
19 A I think what this says is that he is
20 suggesting that it might be but will do further inspection.
21 I don't think there had been a determination yet, at least
22 from the looks of this that, in fact, it was a total loss.
23 Q It does say since the unibody is twisted?
24 A It does say that, yes.
25 Q Lets go back to an earlier one on Page 67.

494

1 THE COURT: Where did he get the word he's
2 suggesting? It says: The vehicle should be a total loss.
3 THE WITNESS: Will inspect, Your Honor.
4 THE COURT: What's that?
5 THE WITNESS: It says "will inspect." That implies
6 to suggest to me --
7 THE COURT: "Will inspect." Where does it say, "will
8 inspect?"
9 THE WITNESS: Right after the words, "is twisted,
10 will inspect."
11 THE COURT: Is twisted, will inspect.
12 THE WITNESS: Right.
13 THE COURT: And does that mean that will inspect to
14 confirm his opinion that it's a total loss?
15 THE WITNESS: Correct, that's what I assume, Your
16 Honor.
17 THE COURT: All right.
18 BY MR. B. MAYERSON:
19 Q And whose opinion is it that it was a total
20 loss, the assigned appraisers?
21 A It appears that way, yes.
22 Q All right.
23 MR. COHEN: Your Honor --
24 THE COURT: Is that what that means? This 3:46 note
25 here, something which means determined by one of your

495

1 inspectors.
2 THE WITNESS: Your Honor, my recollection or my --
3 and this is a bit of a speculation on my part, but I think
4 the inspection, the initial inspection, was not done by a
5 Nationwide employee. It might have been done by an outside
6 vendor. And Mr. Witmer then is suggesting he will inspect to
7 confirm, in fact, whether the vehicle was a total loss or
8 not. That's what I surmise is going on, but I don't have any
9 independent recollection of this at all.
10 THE COURT: All right.
11 BY MR. B. MAYERSON:
12 Q By inspection you mean appraisal?
13 A He would not have to do a formal appraisal. I
14 think it would be sufficient for him to do an inspection and
15 based on his experience and knowledge would be able to
16 determine whether it was a total loss or not.
17 Q Who are you talking about?
18 A Mr. Witmer.
19 Q Mr. Joffred who declared it a total loss
20 because the unibody was twisted?
21 A I would assume that would be part of the
22 appraisal process, yes.
23 MR. COHEN: Excuse me, Your Honor. Mr. Mayerson in
24 his trial brief laid out what David Cole was supposed to
25 testify to and this doesn't even come close to it.

496

1 THE COURT: Lets try to get it over with, okay. Go
2 ahead. You're referring to Mr. Joffred. Is there a note
3 here he's supposed to be aware of Mr. Joffred or the Court is
4 supposed to be aware or is he just to assume what you say to
5 him in questioning is correct?
6 MR. B. MAYERSON: For the Court it was part of what I
7 was going to read into evidence, but it was one thing I
8 thought you knew. I found out during my testimony you didn't
9 know about that, about the vehicle originally having been
10 appraised as a total loss by Mr. Joffred.
11 THE COURT: Does that have anything to do with the
12 question you asked? Is there anything about Joffred in any
13 of these notes?
14 MR. B. MAYERSON: Well, if we go back to Page 67 --
15 THE COURT: Sixty-seven.
16 MR. B. MAYERSON: It doesn't specifically reference
17 Joffred, but can you tell us whether --
18 THE COURT: In other words there's no note in here
19 with regard to Joffred?
20 MR. B. MAYERSON: Well it references Lindgren and Mr.
21 Cole.
22 THE COURT: Which note?
23 MR. B. MAYERSON: The one of September 10th, 1996 at
24 1:49 p.m. on Page 67.
25 THE COURT: Yes, I'm there. Loss reassign, et

1 cetera. It talks about Daniel and talks about Sharon E. I
2 don't see anything that says Joffred there.

3 MR. B. MAYERSON: No, it says Lindgren. Under the
4 58HARRBR26LIND. It's been established in the case --

5 THE COURT: Now you're talking about Mr. Joffred?

6 MR. B. MAYERSON: Mr. Joffred is the only appraiser
7 appraising losses for Lindgren. It's their Blue Ribbon
8 facility.

9 THE COURT: Ask your question. Go ahead.

10 BY MR. B. MAYERSON:

11 Q Mr. Cole, I just want to establish that when
12 you reviewed the claim file you saw that that vehicle upon
13 which this lawsuit was filed had originally been declared a
14 total loss and Nationwide went out and looked at it and
15 decided, no, we're going to repair this one; isn't that
16 correct?

17 A I don't have any recollection of that
18 specifically. If there are log notes to that effect I would
19 have had access to those log notes and I would have been
20 aware of that at the time I looked at the file. But ten
21 years on I have no independent recollection of that
22 whatsoever.

23 THE COURT: In any event, it's not in these log notes
24 marked Exhibit 46.

25 MR. B. MAYERSON: It is, Your Honor. Can we take a

1 look at the log note on Page 64.

2 THE COURT: That's what I'm asking for. Which one?

3 MR. B. MAYERSON: The one dated 9/24/96 from Doug
4 Witmer, subject.

5 THE WITNESS: The vehicle is not a total loss. Is
6 that what you're looking at?

7 MR. B. MAYERSON: Yes.

8 THE COURT: 9/24.

9 MR. B. MAYERSON: Yeah, 9/24/96 at 3:24 p.m.

10 THE COURT: What about it?

11 THE WITNESS: What's your question?

12 BY MR. B. MAYERSON:

13 Q I'm asking you when you reviewed this file
14 would this log note have been available to you that the
15 vehicle was originally appraised as a total loss because the
16 unibody was twisted and Nationwide went out and overrode
17 that decision and said that the vehicle is to be repaired?

18 A If this log note was in the record at the time
19 I would have had access to it. As far as overriding I would
20 disagree. Appraisers are professionals. They can agree or
21 they can disagree on the appraisal of any particular vehicle.
22 That doesn't mean that Nationwide overrode it. It means that
23 perhaps Mr. Witmer had a different opinion. That's all.

24 Q Did you know 40 percent of Lindgren's business
25 came from Nationwide referrals?

1 A I would have no knowledge of that.

2 Q Did you know when you looked at the claim file
3 did you realize that the repairs took four months?

4 A I have no recollection of that.

5 Q But if it's in the claim file --

6 A If it's in the file, yes.

7 Q And would you agree with me that during the
8 four-month-repair period Nationwide was visiting the Lindgren
9 shop to conduct their random inspections that were done as
10 standard Blue Ribbon Program procedures?

11 A I can't comment on that. I'm not familiar
12 with the standard Blue Ribbon inspection procedure that shops
13 had. That was not within my area of responsibility.

14 Q Well, when you decided to defend this case
15 instead of resolve it did you consider that factor and look
16 into it and find out, hey, did Nationwide know about the
17 condition of the vehicle by these random inspections they do?
18 Did you talk to anybody to find out about that?

19 A I'm going to have to assert my attorney/client
20 privilege at this point. That involves a question whether I
21 consulted with other Nationwide officials.

22 Q Do you know what a Blue Ribbon claim --

23 MR. B. MAYERSON: Do you want to rule on that, Your
24 Honor?

25 THE COURT: I agree.

1 BY MR. B. MAYERSON:

2 Q Do you know what a Blue Ribbon Claim Manager
3 is?

4 A Yes.

5 Q What is a Blue Ribbon Claim Manager?

6 A It would have been a Nationwide employee who
7 was responsible for handling collision loss adjustments
8 working with Blue Ribbon approved repair shops.

9 Q All right.

10 THE COURT: Mr. MayerSON, are you just about finished
11 so that maybe defense counsel can have 15 minutes of this
12 last hour?

13 MR. B. MAYERSON: I'm working on it, Your Honor. I
14 am.

15 THE COURT: Well, you better do much better at it,
16 because you're going to have five more minutes at the most,
17 and this time I mean it.

18 BY MR. B. MAYERSON:

19 Q Did you establish a budget for this case when
20 you got it in?

21 A I don't have any independent recollection of
22 doing that. It would have been routine for me to do that in
23 any case however.

24 Q All right. Do you know what a budget on a
25 case like this would have been?

501

1 A No recollection.

2 Q would the budget that you established be over
3 \$500,000 for this case?

4 MR. COHEN: Objection.

5 THE COURT: On what basis?

6 MR. COHEN: Attorney/client. whatever he set up as a
7 budget for reserve was between him --

8 THE COURT: Attorney/client. I told him before if he
9 wants to exercise the attorney/client privilege he may if he
10 thinks that violates that relationship. That's up to this
11 witness to do that.

12 Do you want to answer it or are you exercising the
13 attorney/client privilege?

14 THE WITNESS: I want to answer the question. I have
15 no recollection whether this case would involve that kind of
16 reserve or that kind of budget or not.

17 THE COURT: Next question.

18 BY MR. B. MAYERSON:

19 Q what was your limit of authority to budget a
20 case for?

21 A Are you talking settlement authority or
22 expense authority?

23 Q I'm talking about budgeting a litigation case
24 like this including expenses?

25 A I don't recollect that I had any limit on my

502

1 authority.

2 Q So it was unlimited?

3 A That's my recollection.

4 Q All right. Were you generally referred the
5 big cases?

6 A I was one of the people who was referred large
7 cases, yes.

8 Q So when Nationwide received this case right
9 after their inspection by Mr. Potosnak that had already
10 concluded this was going to be a knock out, drag out case by
11 sending it to you?

12 MR. COHEN: Objection to the characterization.

13 THE WITNESS: I will refuse to answer that on the
14 ground of attorney/client privilege.

15 THE COURT: Next question.

16 BY MR. B. MAYERSON:

17 Q Are you aware of any measures that Nationwide
18 took following the Bonenberger versus Nationwide matter to
19 correct what that Court called aggressive defense and
20 addressing the Pennro litigation management strategy?

21 A Well, your question is misleading and I would
22 suggest irrelevant. The Bonenberger case did not involve
23 Best Claims Practices applicable to the handling of property
24 damage claims. The Best Claims Practice manual involved in
25 Bonenberger was one applicable to UI and UM claims. It was

503

1 totally inapplicable to collision loss claims.

2 Q But it was applicable to situations where
3 Nationwide defends a case, a meritorious case, in a fashion
4 designed to send a message to the insured's attorney?

5 A It was only applicable to UI, UM claims
6 liability. It was not handling of collision loss claims.

7 Q The Bonenberger?

8 A The manual involved in Bonenberger was a UI,
9 UM claims manual, not the collision loss. And the claim in
10 Bonenberger was a UI claim, not a collision claim.

11 Q Does that mean you didn't instruct your staff
12 to stop applying those strategies?

13 A By the time the Berg case was filed -- the
14 Berg matter was filed, the Best Claims Practices Manual
15 considered in Bonenberger had long been discontinued.

16 Q Did you know that the Bonenberger --

17 THE COURT: He's answered that in your case.

18 MR. B. MAYERSON: What's that?

19 THE COURT: These are answers that are in your case.

20 BY MR. B. MAYERSON:

21 Q Did you know that the Bonenberger date of loss
22 was one month after the Berg date of loss?

23 A I have no recollection of that.

24 Q Isn't it true that these cases ran neck and
25 neck with each other?

504

1 A I don't have any recollection of that.

2 THE COURT: Two more minutes.

3 BY MR. B. MAYERSON:

4 Q Sir, isn't it true that you left Nationwide
5 about six months after the Bonenberger opinion was published?

6 A I don't have a recollection of when the
7 Bonenberger opinion was published.

8 Q It was published in 2002.

9 A Okay.

10 Q Specifically January of 2002.

11 A And I left Nationwide in September of 2002.
12 That would be nine months later.

13 Q So when you got this case, Bonenberger wasn't
14 yet decided, was it?

15 A (No response.)

16 Q The trial court opinion was in 2000?

17 A Okay.

18 Q Right. So when you were handling this case
19 Bonenberger hadn't even come out yet, had it?

20 A I don't recall when. Educate me again when
21 the Bonenberger trial was concluded and when the opinion was
22 decided. I don't recall or understand the relevance.

23 THE COURT: Mr. Mayerson, about one minute.

24 BY MR. B. MAYERSON:

25 Q Mr. Cole, did you ever make any attempt to

1 resolve this case after it was assigned to you up until the
2 time you left in 2002. Did you send or authorize a written
3 settlement offer?

4 A I'm going to refuse to answer that on the
5 basis of attorney/client privilege.

6 MR. B. MAYERSON: All right. No further questions.

7 MR. COHEN: No questions, Your Honor.

8 THE COURT: Anything? Okay. All right. Just a
9 second, sir. Just a second. Okay. Mr. Mayerson, since he
10 has no other questions, if you have one or two other
11 questions I will permit them. I knew I wanted to get out of
12 here by 5 o'clock, but if you're finished that's fine.

13 MR. B. MAYERSON: I would like to ask him a couple
14 more questions.

15 MR. COHEN: Then I may have questions.

16 THE COURT: Yes, you may.

17 MR. COHEN: Your Honor --

18 THE COURT: Mr. Cohen, don't be in such pain. Relax,
19 won't you?

20 MR. COHEN: I am in pain. It's a lot of pain.

21 THE WITNESS: I'm the one who's sick here.

22 BY MR. B. MAYERSON:

23 Q The claim log there --

24 MR. COHEN: I'm afraid Mr. Mayerson may actually ask
25 a good question.

1 THE COURT: I think he's asking good questions. He
2 got the wrong answers.

3 BY MR. B. MAYERSON:

4 Q Sir, that claim log that you have in front of
5 you, what was the last date of entry?

6 A If the document was given to me in
7 chronological order, which I have not had an opportunity to
8 look at, I would presume that the last entry is July 22nd,
9 1998.

10 Q So it's safe --

11 THE COURT: July the 22nd, 1998?

12 THE WITNESS: Yes, Your Honor.

13 MR. B. MAYERSON: That's not the copy I got. The
14 copy that I have says September the 4th, 1996. Maybe mine is
15 not in the right order.

16 THE WITNESS: Normally, Your Honor, the log notes go
17 from the bottom to the top chronologically, so the top page
18 would be the most recent.

19 THE COURT: So this is the top page. All right what
20 did you say then?

21 THE WITNESS: Looking at what I have in front of me,
22 it looks like the last log note was July 22nd, 1998.

23 THE COURT: All right. Go ahead. Thank you.

24 BY MR. B. MAYERSON:

25 Q And so when the Bergs submitted a claim under

1 the Blue Ribbon Guarantee, Nationwide handled that same claim
2 log that they handled from the date of the loss; right?

3 A Yes.

4 Q So it's all been in one claim file?

5 A The logs would be available to all adjusters.
6 There would be separate claim files once litigation was
7 filed.

8 Q Were you aware that Nationwide had the vehicle
9 inspected in 1999 by an expert from Chicago. You must have
10 authorized the payment to fly that guy out here; right?

11 A I have no recollection of that and I have no
12 idea what that cost.

13 Q Do you know who William Anderton is?

14 A I have no recollection of that name at all.

15 Q Sir, I just want to clarify, you said you
16 agree with me that the Pennro Litigation Strategy was found
17 by the Superior Court to be in use through the time of that
18 trial in 2000; right?

19 MR. COHEN: Objection. That misstates his testimony.
20 That's not what he testified to.

21 BY MR. B. MAYERSON:

22 Q But that's what the opinion said, the
23 Bonenberger opinion?

24 THE COURT: How does he know that?

25 MR. B. MAYERSON: Well, he's an attorney.

1 BY MR. B. MAYERSON:

2 Q Have you read the Bonenberger opinion?

3 A I have.

4 Q All right. Are you intimately familiar with
5 that opinion?

6 A Haven't read it in some months, so I wouldn't
7 say I'm intimately familiar with it, but I certainly have
8 read it on a number of occasions.

9 Q All right. And that opinion came out in 2002;
10 right?

11 A I don't have any recollection of that. I'll
12 have to rely on what you tell me.

13 THE COURT: You're the one who gave him the date,
14 nine months before he left the company. Why ask him the
15 question? Did you have anything important you've got to
16 ask at this point otherwise we'll send Mr. Cole on his way.

17 BY MR. B. MAYERSON:

18 Q Mr. Cole, do you understand that in this
19 matter that I sent Nationwide a letter of representation on
20 November 3rd, 1997?

21 A I have no recollection of that.

22 Q Why don't you turn to Page 38 of the claim
23 log?

24 A All right.

25 Q You see the entry on 11/3/1997?

509

1 A I do.

2 Q All right. See where it says "received a
3 letter of representation"?

4 A "Received call from Ben Mayerson. Preparing a
5 complaint against Lindgren Chrysler." I don't see where it
6 talks about a letter of representation.

7 Q "For work not done properly." It's the next
8 sentence the line down. "Received a letter of representation
9 from attorney via fax."

10 A I'm sorry, Mr. Mayerson. Here it is. All
11 right. Okay, yes, I see it now, okay.

12 Q And it says, "wants a copy of the file sent to
13 him"?

14 A Okay.

15 Q You see that?

16 A Yes.

17 Q All right. Can you explain to me why the
18 claim log from Page 38 to 14 repeats that entry over and over
19 and over again, that specifically, the November 3rd, 1997
20 entry?

21 A Well, now you're asking a question which
22 involves computers and IT people. I have no idea why that
23 log note would repeat over and over. It has something to do
24 with the mechanics of the computerized system. That's all,
25 as far as I know.

510

1 THE COURT: Okay. Mr. Cohen, do you have any further
2 questions?

3 MR. COHEN: No, Your Honor.

4 THE COURT: All right. Thank you very much, Mr.
5 Cole.

6 THE WITNESS: Thank you, Your Honor.

7 THE COURT: Thank you for coming. All right.
8 Plaintiff rests?

9 MR. B. MAYERSON: I'm sorry?

10 THE COURT: Plaintiff rests except for the exhibits
11 being admitted into evidence?

12 MR. B. MAYERSON: We have Michael Georgio who is
13 going to testify to the billing records, but if you're
14 satisfied with what's in --

15 THE COURT: What is there to add to it? You say
16 these are your billing records. I would think that would be
17 the best evidence you could have.

18 MR. B. MAYERSON: All right, Your Honor. May we rest
19 subject to a review of the prior testimony to see if there's
20 anything else?

21 THE COURT: No, you may not. I assume that at this
22 point the Plaintiff rests subject to asking the Court to
23 admit some of the exhibits into evidence, which we will do at
24 the conclusion of all the testimony since all of the exhibits
25 are being marked consecutively and not Plaintiff's exhibits

511

1 numbered and defense exhibits numbered separately.

2 Come on. I'm giving you a lot of leeway, but you're
3 going much too far and I'm just about ready to throw
4 something at you. You probably don't give a damn or whether
5 I don't.

6 MR. B. MAYERSON: It depends how good your aim is,
7 Your Honor. Plaintiffs rest, Your Honor.

8 THE COURT: Plaintiff rests. So we're getting back
9 here then tomorrow morning at 9:30. And how many witnesses
10 do you have, Mr. Cohen, for tomorrow?

11 MR. COHEN: Two.

12 THE COURT: Two witnesses. And then you're ready to
13 rest as well?

14 MR. COHEN: Yes.

15 THE COURT: All right. Okay.

16 MR. COHEN: Your Honor, at this point we would make a
17 motion for directed verdict. It is our position that
18 Plaintiff has not proved any bad faith, let alone a prima
19 facie case for bad faith. The evidence that they have
20 presented does not establish at all the standards for bad
21 faith under the case law in Pennsylvania. They have not
22 satisfied the standard --

23 THE COURT: All right, Mr. Cohen. We're going to
24 argue this question at length following the receipt of all of
25 the evidence in this case. And if we've got to take two or

512

1 three hours to argue it, we will. And I want to see some law
2 and some documentation, because that obviously is the basic
3 issue in this case, and how the big Bad Faith Act relates to
4 this type of factual situation is completely different than
5 any bad faith case I have ever had. And I expect to be
6 totally educated on that issue by the two of you, especially
7 Mr. Mayerson since he spent nine years educating himself as
8 to what the Bad Faith Act means and found it so fascinating,
9 or whatever word you used.

10 But right now that motion is denied. We'll revisit
11 the whole subject at the conclusion of the testimony
12 tomorrow.

13 MR. COHEN: Thank you, Your Honor.

14 THE COURT: Okay. So be prepared for that.

15 MR. B. MAYERSON: Your Honor, did you say the
16 conclusion of the testimony or the conclusion of the
17 introduction of documents? In other words, are you going to
18 hear the defense testimony and then --

19 THE COURT: I'm going to hear the defense testimony,
20 then we're going to listen to requests for the admission of
21 exhibits that have been marked to the extent that they are to
22 be admitted into evidence. And at that point once we have
23 all of the evidence in, then I'm sure that this will be a
24 motion for a directed verdict by the Defendant, and it will
25 be on the same basis that he's asking for a compulsory

OFFICE OF THE JUDGE IN CHIEF OF BERKS COUNTY, READING, PENNSYLVANIA

6/8/07 Trial Transcript

513

1 non-suit at this particular point and then we'll hear all the
2 law that there is to hear with regard to the Bad Faith
3 Statute.
4 MR. B. MAYERSON: Thank you, Your Honor.
5 THE COURT: I can't make myself any clearer than
6 that, okay?
7 MR. COHEN: Thank you, Your Honor.
8 THE COURT: Tomorrow morning at 9:30.
9 (Whereupon, the proceedings were concluded at 5:05
10 p.m.)
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

514

1
2 (Reading, Pennsylvania, Friday, June 8, 2007, 9:30 a.m.)
3 THE COURT: First witness for the defense.
4 MR. COHEN: Your Honor, before we call Bruce Bashore
5 our first witness I'd like to make reference to testimony in
6 the first phase of trial and advise the Court as to the
7 relevance in this phase of trial what that testimony is and
8 why we're offering it.
9 THE COURT: Okay.
10 MR. COHEN: We'd like to draw the Court's attention
11 to the testimony of Doug Joffred with regard to the issue of
12 the repair of the vehicle, whether it was a total loss in
13 Mr. Joffred's mind, whether or not the vehicle could be
14 repaired. That has obviously been one of the Plaintiff's
15 themes and issues in this case.
16 I direct the Court's attention --
17 MR. B. MAYERSON: Your Honor, if I may be heard on
18 the issue relative to the testimony?
19 THE COURT: No. Go ahead. He didn't interrupt you
20 when you did the very same thing. Now let him finish.
21 MR. COHEN: I direct the Court's attention --
22 THE COURT: You referred to the testimony of eight
23 individuals. If you don't recall, I'll remind you. Go
24 ahead.
25 MR. COHEN: I direct the Court's attention to the

515

1 trial testimony, Page 663 beginning on Line 12 continuing to
2 Line 25 where Mr. Joffred indicates that when he inspected
3 the Berg's vehicle he had not made a final determination that
4 the vehicle was a total loss and that it was just a first
5 impression.
6 And then continuing on Page 664 beginning on Line 1
7 and continuing to Line 19 I asked Mr. Joffred is it unusual
8 in what you do to have a situation where maybe you at first
9 you think it might be a total loss then you decide it is not
10 a total loss. Answer: No. And I said: It happens?
11 Answer: Yes. Question: Sometimes it happens because you
12 teardown a vehicle -- you teardown --excuse me -- you do a
13 teardown of the vehicle and you determine that what you
14 thought really looked bad wasn't so bad? Answer: Yes. And
15 that you thought -- and what you thought couldn't be repaired
16 could be repaired? Answer: Correct. Question: If you
17 thought a part had to be replaced originally and later came
18 out it didn't need to be replaced, that happens also?
19 Answer: Yes, it's a judgment call.
20 Then I direct the Court's attention to Page 682 of
21 the trial transcript again continuing with Mr. Joffred
22 beginning on Line 9, excuse me, where Mr. Joffred recounts
23 his meeting with Mr. Witmer from Nationwide and the
24 discussions that the two of them had with regard to the game
25 plan for having the vehicle repaired. This is Page 682 of

516

1 the trial. Question: Do you remember discussing essentially
2 what you were going to do to get this car repaired? Answer:
3 Yes. Question: Mr. Witmer never told you at that time that
4 this vehicle had to be repaired, did he? Answer: No.
5 Question: He never twisted your arm and said there's no way
6 that this is a total loss? Answer: No. Question: You both
7 agreed, didn't you, that at least initially you could send
8 the car out to have the frame pulled at K.C.? Answer:
9 Correct.
10 Continuing on Page 682 from Line 1 down to Line 25,
11 essentially Mr. Joffred testified that he was not of the
12 opinion that it was a total loss, that Nationwide did not
13 force him to have the vehicle repaired and that nothing
14 having to do with the fact that he was a participant in the
15 Blue Ribbon Program had anything to do with his decision to
16 have the vehicle repaired.
17 And then I then direct the Court's attention to trial
18 testimony continuing of Mr. Joffred on Page 685 beginning on
19 Line 11 and continuing to the end of the page, Line 25, where
20 Mr. Joffred continued with his testimony regarding how the
21 vehicle came back from K.C. Question: And when the car came
22 back from K.C. I believe you testified that it looked pretty
23 good, I mean, it looked like you could repair the car at that
24 point? Answer: Yes. Question: I believe that you at least
25 told somebody that the vehicle was repairable or did you tell

1 anybody -- strike that. Strike that.
 2 Were you of the opinion at that point that the car
 3 was repairable? Answer: Yes. Did you communicate that to
 4 Nationwide? Answer: I did. Yes, I did. So as far as
 5 Nationwide was concerned when that car came back from K.C.
 6 that car was repairable? Answer: Yes. You were going to do
 7 the repair? Answer: Yes.

8 And then continuing on Page 686, Line 7, so at that
 9 point you had determined conclusively you were going to fix
 10 that car, it was not a total loss? Answer: Yes. And you
 11 obtained Mr. Berg's verbal permission to repair the vehicle
 12 at that point? Answer: Yes, as I recall.

13 And I'd like to direct the Court's attention to some
 14 brief testimony by Mr. Witmer, Doug Witmer of Nationwide.
 15 Mr. Witmer, as the Court will recall, is the adjuster who
 16 went out to Lindgren who went to talk to Mr. Joffred about
 17 the Berg's vehicle. Directing the Court to Page 340, Line 6:
 18 So does Mr. Joffred agree that the vehicle should be sent out
 19 sublet to K.C. to have the frame pulled? Answer: Yes. Did
 20 he at any time say, no, I'm not going to do this, this car is
 21 a total loss? Answer: No. And at any time during your
 22 conversation with Mr. Joffred did he demand that this car was
 23 a total loss? Answer: No.

24 Continuing on page -- continuing down to Line 22 on
 25 that same page, did you technically override Mr. Joffred's

1 decision to total loss this car? Answer: No. Were you both
 2 in agreement that the vehicle should be sent to K.C. to have
 3 the frame repaired? Answer: Yes. And what was your
 4 understanding with Mr. Joffred if the vehicle came back from
 5 K.C. and the frame looked okay, what was your -- what was the
 6 game plan? Well, then when the vehicle came back from its
 7 necessary repairs then they would complete the job as far as
 8 putting the parts on, painting the vehicle and refinishing
 9 it. Question: Do you know whether or not the vehicle did go
 10 out to K.C.? No, I actually don't. Question: You didn't
 11 really hear much about this after you left the shop then?
 12 Answer: No. Did Mr. Joffred ever call to you tell you that
 13 there was a problem with the repairs? Answer: I don't
 14 remember that, no. Did the Berg's ever call you to tell you
 15 there was a problem with the repairs? Answer: I don't
 16 remember that. Question: Did the Bergs send you a letter?
 17 I don't remember.

18 There was testimony by Mr. Berg that I'd like the
 19 Court to take notice of. Beginning on Page 753 and the
 20 relevance of this testimony has to do with Mr. Berg's efforts
 21 to contact Nationwide and let him know of any problems he was
 22 having. Beginning on Line 2: You never called Nationwide to
 23 tell them that you were taking the car back to Lindgren, did
 24 you? Answer: Lindgren did the work, so I contacted
 25 Lindgren. Right, you contacted your body shop? Answer:

1 That's correct. You didn't contact Nationwide? No. And
 2 despite knowing about the Blue Ribbon Guarantee and the Blue
 3 Ribbon Program and Nationwide would guarantee and stand by
 4 these repairs, you didn't contact Nationwide, didn't consider
 5 it? Lindgren was an agent of Nationwide. Question: That's
 6 your opinion. But that's a legal opinion but you didn't
 7 contact Nationwide, did you? Answer: Didn't think I would
 8 have to. I would have complained through this whole process.
 9 I didn't really think at all of going to Nationwide. It was
 10 all Lindgren because that's where I took the vehicle.

11 And then one with regard to Mr. Berg, one final
 12 passage having to do with the issue of damages appearing on
 13 Page 807, Line 8. When Nationwide ultimately purchased the
 14 vehicle from Summit, they bought the car outright. You
 15 didn't have to pay one penny out of your own pocket, did you?
 16 Mr. Mayerson raises an objection. I think this has been
 17 asked and answered. I don't think it has. The Court
 18 overrules. Mr. Berg asked to repeat the question.

19 When Nationwide purchased the vehicle from Summit you
 20 weren't left with any additional expenses to pay, were you?
 21 Answer: It was negotiated that you were to purchase the
 22 vehicle through my attorney. Question: That's not my
 23 question, sir. My question is: You didn't have to pay any
 24 additional expenses with regard to that lease to pay? Your
 25 Honor asked: Do you understand the question? The witness:

1 I do. The Court: Then answer it. The witness: There were
 2 no expenses out of pocket from myself, yes.

3 And finally I'd like to direct the Court's attention
 4 to some testimony by Nationwide's expert, William Anderton.
 5 Mr. Anderton was our engineering auto body collision guy
 6 expert who testified, number one, that he believed that the
 7 vehicle was repairable, although it was not ultimately
 8 repaired correctly. He also testified that he did not
 9 believe that the vehicle was a total loss, and thirdly,
 10 Mr. Anderton testified that in his opinion the vehicle was
 11 safe to drive, it was not unsafe.

12 Beginning at Page 881, Mr. Anderton -- beginning on
 13 Page 881 at the last page of Line 25 and then continuing
 14 through 882, Mr. Anderton, and I won't read the entire
 15 testimony into the record, but Mr. Anderton basically
 16 testifies that he did not believe that this vehicle was a
 17 total loss but should have been considered a total loss based
 18 on his multiple inspections of the vehicle.

19 Continuing on Page 884 at Line 9 I asked Mr. Anderton
 20 whether or not he had an opinion as to whether or not there
 21 was anything improper about what Nationwide did and whether
 22 or not Nationwide in anyway restricted Lindgren in repairing
 23 the vehicle and he indicated there was not.

24 Going back to Page 882 and continuing on Page 883
 25 beginning on 882 and Line 23 I asked Mr. Anderton whether or

521

1 not the estimate from Lindgren and the estimate for which
2 Nationwide paid would have been sufficient to repair the
3 vehicle properly. Mr. Anderton's answer was yes, that would
4 have been sufficient to repair the vehicle properly. And
5 finally, on Page 885 beginning on Line 6 and continuing to
6 Line 14 I asked Mr. Anderton does he have an opinion as to
7 whether or not the vehicle was crash worthy. And
8 Mr. Anderton's opinion was, yes, the vehicle was crash worthy
9 and safe to drive.

10 I believe that's the testimony that I'd like to draw
11 to Your Honor's attention from the first phase. And at this
12 time with the Court's permission we can call our first
13 witness.

14 THE COURT: All right.

15 MR. COHEN: Nationwide calls Bruce Bashore.

16 BRUCE BASHORE, Sworn.

17 THE CLERK: Please be seated and state your full name
18 for the record.

19 THE WITNESS: Bruce A. Bashore, B-A-S-H-O-R-E.

20 DIRECT EXAMINATION

21 BY MR. COHEN:

22 Q Mr. Bashore, I'm going to ask you to keep your
23 voice up so everybody can hear you. What is your current
24 title at Nationwide?

25 A I am currently the Property Damage Subrogation

522

1 Manager at Nationwide.

2 Q All right. And is that a different position
3 than you held when we were in trial the first time in this
4 case?

5 A Yes, it is.

6 Q And what was the position that you held at
7 that time?

8 A I was the Blue Ribbon Claims Manager.

9 Q Okay. And you attended the first phase of
10 trial?

11 A Yes, I did.

12 Q And you heard all of the testimony during that
13 phase?

14 A Yes, I did.

15 Q Okay. And if I asked you a question about
16 some of the people who testified, you have a recollection
17 about that testimony?

18 A For the most part.

19 Q Okay. Now, at the time of the Berg lawsuit in
20 May of 1998, what was your title there then?

21 A In 1998 I was the Blue Ribbon Office Claims
22 Manager.

23 Q And if you could explain to the Court what
24 that is?

25 A I ran the inside --

523

1 THE COURT: You were a Blue Ribbon Claims Manager, is
2 that what you said?

3 THE WITNESS: I was an Office Claims Manager at the
4 time.

5 THE COURT: Office Claims Manager, all right.

6 THE WITNESS: And why there was a difference was
7 there was actually two different managers that ran the
8 program. It was a manager that --

9 THE COURT: You've got to speak up.

10 THE WITNESS: There was two different managers that
11 managed the program. There was an Office Manager who was
12 myself and a Field Manager who handled the PDSs as we're
13 calling them in this trial, the Property Damage Supervisors.

14 BY MR. COHEN:

15 Q Okay. And what were some of your
16 responsibilities as the Blue Ribbon Office Manager?

17 A We reviewed the claims and paid the claims
18 basically, very simply.

19 Q Through the Blue Ribbon Program?

20 A Through the Blue Ribbon Program.

21 Q Now, there's been a lot of discussion during
22 this trial as to the Blue Ribbon Program and the guarantee.
23 And not to rehash what we've gone over a million times
24 already, but very briefly, what is the Blue Ribbon Program?

25 A The Blue Ribbon Program is Nationwide's direct

524

1 repair program. And simply --

2 THE COURT: Is what?

3 THE WITNESS: The direct repair program. And a
4 direct repair program is something that numerous insurance
5 companies have. In its simplest terms is you send the
6 policyholder or Claimant directly to a direct repair shop and
7 they appraise the vehicle and do the repairs. It eliminates
8 the need for a Nationwide appraiser to go out and look at the
9 vehicle. It actually speeds up the process.

10 BY MR. COHEN:

11 Q Would you -- is this something that other
12 insurance companies have?

13 A Yes.

14 Q It's not exclusive to Nationwide?

15 A No.

16 Q And this is -- is this something that's
17 offered to not only Nationwide policyholders but to
18 third-party claimants as well?

19 A Yes, it is offered to first and third-party
20 claims.

21 Q Okay. Is the Blue Ribbon Program contained in
22 the policy of insurance for any insureds?

23 A Not Nationwide's policy.

24 Q Okay. So it's a separate program completely?

25 A Yes, it's separate from the policy.

1 Q All right.

2 THE COURT: That it's different than the policy?

3 MR. COHEN: Because plaintiffs have continually made

4 the argument that the Blue Ribbon --

5 THE COURT: Regardless of what the argument is, it's

6 a part of the Nationwide Mutual Insurance Company policy and

7 that's all that's important here.

8 MR. COHEN: It's not part of the policy. That's

9 what's important. That's our argument. The program, the

10 guarantee, is not part of the policy. This is the policy

11 that I'm about to question the witness on and that's

12 essential to our argument that there can be no bad faith.

13 THE COURT: How does the policy come about then as

14 far as the relationship with someone who purchases the

15 insurance from Nationwide Insurance Company? How does it

16 come about?

17 MR. COHEN: Nationwide has a contract. It is -- it's

18 a contract that is approved by the Department of Insurance.

19 It's governed by the insurance regulations. That is the sum

20 and substance of the contractual obligation as it concerns

21 coverage between Nationwide and the policyholder. The Blue

22 Ribbon Program is a customer service program that's offered

23 not only to policyholders but to third-party claimants as

24 well. It's no different --

25 THE COURT: As you pointed out before, the insurance

1 is nothing more than an indemnification.

2 MR. COHEN: That's correct.

3 THE COURT: So this bypasses the indemnification;

4 that it is not an indemnification. It's a policy whereby if

5 someone has Nationwide Insurance it's a direct repair program

6 with Nationwide?

7 MR. COHEN: No, it's an optional program that

8 somebody did elect to --

9 THE COURT: That's my point. When do they elect to

10 do that? Is that why they get the policy?

11 MR. COHEN: No, they elect to participate in the

12 policy after there is a claim. Somebody gets in an accident,

13 they call Nationwide.

14 THE COURT: Isn't it nice that you explained it to me

15 ten days after being in court in this case?

16 MR. COHEN: Thank you.

17 BY MR. COHEN:

18 Q Mr. Bashore --

19 THE COURT: Is this marked as an exhibit?

20 MR. COHEN: We're going to mark this as an exhibit,

21 Your Honor.

22 (Whereupon, Exhibit No. 47 was marked for

23 identification purposes.)

24 BY MR. COHEN:

25 Q Mr. Bashore, can you identify what I've just

1 handed you as Exhibit Number 47?

2 A Yes, this is a Century 2 auto policy.

3 THE COURT: A what?

4 THE WITNESS: A Century 2 Nationwide auto policy.

5 BY MR. COHEN:

6 Q And if you turn to Page 2, is this what they

7 call in the insurance industry the dec sheet or the

8 declaration sheet?

9 A It's a declaration page, yes.

10 Q Can you tell looking at that whether or not

11 this is the policy that was issued to the Bergs?

12 A Yes, Daniel and Sharon Berg.

13 Q Okay. Now, this is -- is this the contract of

14 insurance that was entered into between Nationwide and the

15 Bergs?

16 A Yes. Yes, it is.

17 Q Okay. And this is not and has nothing to do

18 with the Blue Ribbon Program or the Blue Ribbon guarantee?

19 A No, it does not.

20 Q Okay. The judge asked when would somebody

21 elect to participate in the Blue Ribbon Program. When would

22 somebody make that election?

23 A When the customer reports the claim to

24 Nationwide they are given the option of using the direct

25 repair program, having a claim rep come out and look at their

1 vehicle. Or if it's drivable, they can take it to a drive-in

2 claims location that is staffed by a Nationwide appraiser.

3 Q Okay. Would the decision to participate in

4 the Blue Ribbon Program occur at the time when they're buying

5 the policy?

6 A No, it's each time you have a claim.

7 Q So it wouldn't make sense to elect to

8 participate in the Blue Ribbon Program at the time they buy

9 the policy because they haven't had a claim yet?

10 A That's correct.

11 Q Okay.

12 THE COURT: What's the purpose of this exhibit, just

13 more paper for me to carry around and put in my file cabinet?

14 MR. COHEN: Your Honor, at the first phase of trial

15 only the first page was --

16 THE COURT: In there?

17 MR. COHEN: In here. This is a bad faith trial under

18 the bad faith of insurance. We believe the policy should be

19 offered as an exhibit in trial.

20 THE COURT: What is there that is relevant for the

21 Court to take into consideration to make that determination?

22 MR. COHEN: Nationwide's obligations under the policy

23 that our expert is going to testify to and to testify that

24 Nationwide did not violate --

25 THE COURT: Are those obligations that are set forth

529

1 in this policy?
2 MR. COHEN: Yes.
3 THE COURT: That's the question. Now I got the
4 answer after four additional questions.
5 BY MR. COHEN:
6 Q Mr. Bashore, I'm going to ask you to turn to
7 -- at the bottom of the exhibit do you see --
8 THE COURT: What exhibit?
9 MR. COHEN: Exhibit 47.
10 THE COURT: Forty-seven. The bottom of what page?
11 MR. COHEN: Page 6.
12 THE WITNESS: I don't believe mine is numbered.
13 MR. COHEN: I'm sorry.
14 THE WITNESS: Of the auto policy itself?
15 MR. COHEN: Yes.
16 THE WITNESS: I wasn't back far enough.
17 MR. COHEN: On the right-hand corner there's a 5,
18 dash, 12 but the actual page number is 6. Do you see that?
19 THE COURT: Auto liability coverage agreement?
20 MR. COHEN: That's it, Your Honor.
21 THE WITNESS: That's where I'm at. Yes, I see that.
22 BY MR. COHEN:
23 Q At the top of that page it says "Physical
24 Damage." What does that refer to?
25 A Physical damage to the vehicle.

530

1 Q Okay. So this would be -- this would be what
2 Nationwide refers to as material damage?
3 A Yes, that's the material damage part of the
4 claim.
5 Q Okay. And it says "limits of payment" and
6 then "actual cash value." What are the limits of payment,
7 what does that mean, "limits of payment"? Is that
8 Nationwide's obligation to the policyholder with regard to
9 the limits of its payment for material damage claim?
10 A Yes, that's exactly what it is.
11 Q All right. And it says we may -- and then it
12 lists three different options: Paying directly for a loss;
13 repair or replace your auto or its damaged parts; three,
14 return stolen property at our expense and pay for any damage.
15 Do you see that?
16 A Yes.
17 Q Okay. Is that Nationwide's obligations with
18 regard to the payment of a material damage claim to a
19 policyholder?
20 A Yes, it is.
21 Q Okay. And that would be Nationwide's
22 contractual -- that would be the limits of their contractual
23 obligations under this policy?
24 A Yes, sir.
25 Q Mr. Bashore, I want to, if I may approach the

531

1 witness, Your Honor?
2 What I've handed you is the exhibits that were
3 offered at the first phase of trial, and I'd like to direct
4 your attention to -- I'd like to direct your attention to
5 Exhibit Number 8, Page 1240 of that binder.
6 A Are you talking about the claim log entry of
7 9/4 of 1996 at --
8 Q I want to draw your attention to the entire
9 log and that's the first page of the log; correct?
10 A Yes.
11 Q It's actually the last page, but it works
12 backwards; right?
13 A Right.
14 Q Okay. So if we could flip to Page 1239. I'd
15 like to direct your attention to the log entry dated
16 9/10/1996 at 1:49.
17 A Okay.
18 Q What is that log entry?
19 A That is a log entry by Coffman, J.
20 Q Who is Jennifer Coffman?
21 A Do you want me to read it?
22 Q Yep.
23 A "Loss reassigned for collision on Daniel Berg
24 and Sharon Berg from Lindgren. Total loss. Car is at
25 Lindgren. They have estimate."

532

1 Q Okay. So this log entry was put in by
2 Jennifer Coffman?
3 A Yes.
4 Q And who's Jennifer Coffman, who is she?
5 A Jennifer Coffman was an inside adjuster in the
6 Blue Ribbon Program in 1996.
7 Q Would she have had an opportunity to look at
8 the vehicle before making this log entry?
9 A No, she just received a phone call or
10 communication to that effect.
11 Q Okay. And if we go up to -- we go up two log
12 entries, again, September 10th, 1996, there's a log entry
13 1:50 p.m. That's one minute later. What does that log entry
14 say?
15 A "Shop asked for teardown time. Talk to Ron.
16 Gave okay if total. Shop will forward estimate and photos."
17 Q Okay. Viewing those two log entries together,
18 what does that suggest to you in your capacity as the Blue
19 Ribbon Manager, what does that suggest to you in terms of
20 whether or not this vehicle was clearly a total loss at that
21 time?
22 A My opinion on that would be that the car had
23 significant damage, however, it needed a teardown to make a
24 determination of whether it was a total loss or not.
25 Q What's a teardown?

IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

533

1 A A teardown is just simply getting the outer
2 sheet metal off the car to see the engine of the vehicle, the
3 transmission, anything that's underneath. Because when a
4 vehicle is hit severely, it pushes everything back. It's
5 very difficult to see.

6 Q Okay. Now, I want to ask you to turn to Page
7 1236. This is a log entry dated September 24th, 1996 by Doug
8 Witmer.

9 A I'm sorry. What was the date again?

10 Q September 24th, 1996.

11 A What page?

12 Q One thousand two hundred thirty-six.

13 A Okay. I'm with you. That log entry says,
14 "Vehicle is not a total loss. I inspected vehicle and told
15 body shop that I would advise to have vehicle taken to a shop
16 to have frame repaired since they obviously cannot do the job
17 with the equipment they have. The repairs are approximately
18 50 percent of A.C.V. Nationwide will never recover the
19 difference in salvage value. Thanks, Doug."

20 what does this log suggest to you that Mr. Witmer is
21 doing?

22 A He was suggesting that the vehicle be sent out
23 to have the unibody and frame pulled to make a determination
24 if the car was repairable or not.

25 Q Okay. And is there anything in this log entry

534

1 or based on your review of the total claim's log and
2 documents in this case to suggest that if the vehicle came
3 back from K.C. and was not repairable that Nationwide
4 wouldn't total the car?

5 A Correct. I mean, if it would have not pulled
6 correctly, then we could have made that decision.

7 Q Okay. And are you aware of whether or not the
8 vehicle did go to K.C.?

9 A Yes, the vehicle did go to K.C.

10 Q And based on your review of the log notes and
11 the documents in this case, are you aware as to whether or
12 not Lindgren was of the opinion that the vehicle could be
13 repaired?

14 A Yes, after the vehicle came back from K.C.
15 Doug Joffred, the body shop manager at Lindgren, had agreed
16 that the vehicle would be repairable.

17 Q Did he communicate that to Nationwide?

18 A Yes, I believe he did tell Mr. Witmer that.

19 Q Okay. And to the best of your knowledge was
20 the -- was the vehicle repaired or at least did Lindgren
21 attempt to repair the vehicle?

22 A Yes, Lindgren repaired the vehicle.

23 Q The second was returned to the Bergs I believe
24 in December of 1996. Does that sound familiar to you?

25 A That's correct.

535

1 Q All right. There is -- all right. On Page
2 1236. Are you still at that page?

3 A Yes.

4 Q Okay. The -- that log entry that we just
5 talked about was 9/24/96. From that date, well, and then we
6 have one above that, September 25th, okay?

7 A Yes.

8 Q From that date until then I'm going to ask you
9 to turn to Page 1210.

10 A Okay. I'm not -- 1210.

11 Q All right. So we've worked -- I'm holding
12 both 1210 and 1236 because I want to ask you a question about
13 the intervening time between those two periods. Do you see
14 the log note on Page 1210 dated November 3rd, 1997?

15 A On 1210?

16 Q Yeah, it's right in the middle of the page.
17 It says November 3rd, 1997.

18 A Yes, I see it now.

19 Q Okay. So that is more than a year, I guess,
20 later. Do you see anything in between those two log entries
21 indicating that there was a problem with the Berg's vehicle
22 -- there was a problem with the repair of the Berg's vehicle
23 that Lindgren was notifying Nationwide to?

24 A No.

25 Q Based on your review of the claim's log and

536

1 documents in this case, are you aware of any letters or
2 telephone calls from the Bergs prior to the letter that
3 Nationwide received in November of 1997 from Mr. Mayerson
4 alerting Nationwide to any issues regarding the repair of the
5 vehicle?

6 A No.

7 Q Nobody ever -- obviously, I guess it goes
8 without saying nobody ever contacted you?

9 A No.

10 Q So we've been talking a lot during this case
11 regarding Exhibit Number 7. That's the November 3rd letter
12 from Mr. Mayerson?

13 A Yes.

14 Q Okay. And to the best of your understanding
15 is that the first contact that plaintiffs ever had with
16 Nationwide subsequent to the repair of their vehicle?

17 A Yes, it is.

18 Q Okay. Now, that letter wasn't sent to you;
19 correct?

20 A No, it was not.

21 Q All right. The first time that -- when was it
22 that you became the Blue Ribbon claims -- the Blue Ribbon
23 Office Manager?

24 A That was January of 1998.

25 Q Okay. So that would have been a few months

IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

537

1 prior to the Bergs filing their lawsuit?

2 A That's correct.

3 Q There was an Exhibit Number 11. This is the

4 letter dated April 22nd, 1998. Do you have that in front of

5 you, it's in that booklet?

6 A What page?

7 Q It's Page 1244.

8 A Okay. This was a letter from Mayerson's

9 office to Ron Stitzel.

10 Q All right. This is Exhibit 11 in the first

11 phase. It may have been given another exhibit number in this

12 proceeding, but suffice it to say it's the previously marked

13 Exhibit 11 from the first trial. Do you recall seeing this

14 letter back around 1998?

15 A Yes, I would have to say, yes, I did at that

16 point.

17 Q Okay. And at this time you were in the

18 position of Blue Ribbon Office Manager?

19 A Yes, I was.

20 Q Okay.

21 THE COURT: Office Claims Manager, is that what you

22 told me it was? You were the Office Claims Manager?

23 THE WITNESS: The Blue Ribbon Office Claims Manager.

24 BY MR. COHEN:

25 Q Blue Ribbon Office Claims Manager. okay, so

538

1 --

2 THE COURT: And therefore, all of this was within

3 your jurisdiction and oversight?

4 THE WITNESS: Correct.

5 THE COURT: Including this long document with all

6 these log notes?

7 THE WITNESS: Correct.

8 BY MR. COHEN:

9 Q This letter of April 22nd, 1998, to the best

10 of your knowledge, was this the first communication that Mr.

11 Mayerson had in writing with Nationwide after the November

12 3rd, 1997 letter?

13 A Yes.

14 Q When you received this letter what did you do?

15 A I had asked Steve Potosnak to go to Lindgren

16 and inspect the car or to get a hold of the Bergs and make

17 arrangements to inspect the car.

18 Q who was Steve Potosnak?

19 A Steve Potosnak was the Property Damage

20 Supervisor for Lindgren.

21 Q He was an adjuster; right?

22 A Yes.

23 Q The --

24 THE COURT: And this was his territory, Lindgren was

25 a part of his territory?

539

1 THE WITNESS: Yes.

2 THE COURT: His territory was what at that time, the

3 Potosnak case?

4 THE WITNESS: He would have had the Berks County

5 area. Whether he had all of it I'm not sure because they

6 split counties at times.

7 THE COURT: But it wasn't just one shop?

8 THE WITNESS: They had 20, 25 shops apiece.

9 THE COURT: Perhaps within a 30-mile radius?

10 THE WITNESS: Yes, yes.

11 THE COURT: Or thereabouts.

12 BY MR. COHEN:

13 Q So the letter from Mr. Mayerson at the bottom

14 says, "I suggest Nationwide also have the vehicle inspected

15 as soon as possible by an independent expert for purposes of

16 litigation if we are unable to otherwise resolve this

17 matter."

18 Was Mr. Potosnak an independent expert in your view?

19 A No.

20 Q Was he going out to look at the vehicle in the

21 role of any kind of independent expert for litigation

22 purposes?

23 A No, he was not.

24 Q Why were you sending him out there, what was

25 the purpose?

540

1 A I was sending him out to find out if the

2 repairs were done properly.

3 Q Okay. And how soon after you got this letter

4 did you call Mr. Potosnak and ask him to go out and look at

5 the car?

6 A Immediately.

7 Q And do you know that -- do you know whether or

8 not Mr. Potosnak did go out and look at the vehicle?

9 A Yes, he did.

10 Q And if we turn to Page 1174 of the claims log

11 there is a -- there is an entry at the bottom of the page,

12 April 30th indicating that there was an inspection of the

13 vehicle two days earlier on the 28th. Do you see that?

14 A Yes.

15 Q All right. And that was done at A.W.

16 Golden's?

17 A Yes, it was.

18 Q Okay. And it indicates that this inspection

19 was arranged through the policyholder's attorney. That would

20 be Mr. Mayerson; correct?

21 A Yes, that's correct.

22 Q All right. And Mr. Potosnak indicated in his

23 log notes that there was a variety of issues that he was

24 seeing with the repair?

25 A Yes.

541

1 Q Okay. That April 30th is a Thursday. I know
 2 it's a long time ago, but do you have any recollection now
 3 when you first saw that log note or it was first made known
 4 to him?
 5 A You mean the April 30th?
 6 Q Yeah.
 7 A Probably the next day.
 8 Q So maybe a Friday?
 9 A Correct.
 10 Q If we look up on the page there's an entry for
 11 May 4th, 1998 and that's an entry that you made.
 12 A Yes.
 13 Q And that's on May 4th is the Monday, that's
 14 the Monday after the Friday you were just talking about.
 15 A Right.
 16 Q It said, "Received papers from policyholder's
 17 attorney. Policyholder filed a civil action in Berks County
 18 against Lindgren Chrysler which is a Blue Ribbon Shop and
 19 Nationwide gave all paperwork to Leah in legal at 10:00 a.m.
 20 today."
 21 A That's correct.
 22 Q So you recall that Nationwide was served with
 23 a lawsuit that Monday after you reviewed that log note from
 24 Mr. Potosnak?
 25 A That's correct.

542

1 Q Okay. As the Blue Ribbon Office Claims
 2 Manager --
 3 A Yes.
 4 Q -- once a lawsuit is filed, how does that
 5 change things in terms of your role and responsibility?
 6 A Well, obviously at that point I cannot contact
 7 the policyholder because they're represented. And the way
 8 the process is at Nationwide is I then turned the claim over
 9 to our Legal Department and that's what I did on May the 4th.
 10 I gave the file to Leah who was the Admin for the Legal
 11 Department.
 12 THE COURT: To who?
 13 THE WITNESS: Leah, L-E-A-H.
 14 THE COURT: Is that a last name?
 15 THE WITNESS: That's the first name of the Admin
 16 Assistant in the Legal Department at the time.
 17 THE COURT: Administrative assistant?
 18 THE WITNESS: Yes, sir.
 19 THE COURT: Is that in the same building with you?
 20 THE WITNESS: Yes, it was.
 21 THE COURT: Down the hall or whatever?
 22 THE WITNESS: Down a floor.
 23 BY MR. COHEN:
 24 Q But we know from looking at things in the
 25 claim log and some of the testimony that you had some

543

1 communication with Mr. Mayerson subsequent to the filing of
 2 the complaint?
 3 A Oh, yes, I sent him a letter.
 4 Q So the file was sent to legal. But is it
 5 correct that you also were playing some role in trying to
 6 resolve this?
 7 A Yes, for a few more weeks I was, yes. I had
 8 sent a letter.
 9 Q okay. Do you have any recollection of
 10 speaking to Mr. Mayerson regarding this?
 11 A I believe there's reference to it in my
 12 letter, yes.
 13 Q Okay. And that's the letter dated May 19th,
 14 1998?
 15 A Yes. what page is that on?
 16 Q That's Page 1253.
 17 A Okay. Yeah, that was the May 19th letter of
 18 1998 and it simply states, "As per our telephone conversation
 19 on May the 12th," so I spoke to Mr. Berg or Mr. Mayerson on
 20 May the 1st.
 21 Q Okay. And in this letter you indicated that
 22 Nationwide Insurance would like the opportunity to have an
 23 independent expert inspect the Berg's Jeep Cherokee. I note
 24 that you used the words "independent expert" just like Mr.
 25 Mayerson did.

544

1 was there a reason that you were specifically
 2 referring to an independent expert?
 3 A Yes, because I would figure at that point it
 4 wouldn't have done much good to have somebody from Nationwide
 5 look at the vehicle. It would be a biased opinion and we
 6 wanted to get somebody that would give us an honest opinion
 7 of the repairs.
 8 Q Okay. You say, "I've contacted Automotive
 9 Legal Services and they will be contacting the Bergs to set
 10 up an inspection within the next two weeks." Is that Terry
 11 Shaw, the individual who testified the first day of trial
 12 here?
 13 A Yes, he owns Automotive Legal Services.
 14 Q And he was Nationwide's independent expert who
 15 was going to look at this vehicle?
 16 A Yes, he was.
 17 Q And Mr. Shaw testified that he made
 18 arrangements to go out to the Berg's home to inspect the
 19 vehicle, but when he got out there, apparently nobody was
 20 home. But he didn't have an opportunity to inspect the
 21 vehicle?
 22 A No, he did not.
 23 MR. B. MAYERSON: Your Honor, I'd like to make an
 24 objection to leading questions. I know there's more leeway
 25 --

IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

545

1 THE COURT: Do you want to have some time for
2 cross-examination?
3 MR. B. MAYERSON: I sure do.
4 THE COURT: I wouldn't object to leading questions.
5 That's fine. After all, you should take into consideration
6 that you were given four days in this trial and this defense
7 is left with one day just like at phase one.
8 MR. B. MAYERSON: Your Honor, if I may respond?
9 THE COURT: That's why he's trying to move it along.
10 Do you want to make a speech at this time?
11 MR. B. MAYERSON: No, I don't.
12 THE COURT: Sit down then, please. If you want to
13 keep making objections because the questions are leading, I
14 don't think that any of them are damaging to you or any of
15 the answers would be any different.
16 BY MR. COHEN:
17 Q Referring to the second paragraph of your
18 letter, it says, "If the independent expert finds any
19 problems with the repairs that resulted from the above-listed
20 accident, Nationwide Insurance will have these problems
21 corrected at a shop of the Berg's choice. If the vehicle
22 cannot be repaired to pre-accident condition, Nationwide will
23 purchase the vehicle from the Bergs."
24 Why did you say that to Mr. Mayerson?
25 A Because we would have made the repairs -- we

546

1 would have corrected the repairs if there were any. And if
2 we wouldn't correct the repair, we would have bought the
3 vehicle back.
4 THE COURT: What was the date of that note again?
5 THE WITNESS: May 19th of '98.
6 BY MR. COHEN:
7 Q At some point I think you testified that the
8 file essentially was handed over to legal counsel?
9 A Yes.
10 Q And your involvement with the claim at that
11 point terminated?
12 A Pretty much until phase one or actually it
13 would have been at my deposition was the next time I really
14 was involved in the claim.
15 Q Okay. There has been -- I'd like to have this
16 marked as 48.
17 (Whereupon, Exhibit No. 48 was marked for
18 identification purposes.)
19 MR. COHEN: And I'd like to mark this --
20 (Whereupon, Exhibit No. 49 was marked for
21 identification purposes.)
22 BY MR. COHEN:
23 Q Now, Mr. Bashore, there's been a lot of
24 testimony and reference by Plaintiff's counsel to the
25 Pennsylvania Best Claims Practices Manual. You've been here

547

1 at trial. You're familiar with that testimony?
2 A Yes, I am.
3 Q Okay. And we've had several witnesses come in
4 testifying in Plaintiff's case-in-chief that the Pennsylvania
5 Best Claims Practices Manual that Mr. Mayerson has been
6 referring to, the one specifically at issue in the
7 Bonenberger case, is a casualty-related document used for
8 bodily injury adjusters in bodily injury claims. Do you
9 recall that testimony?
10 A Yes, I recall that.
11 Q Okay. Do you agree with that characterization
12 of the Pennsylvania Best Claims Practices Manual?
13 A Yes, it is a casualty document.
14 Q Okay. And we've heard testimony that that
15 document was -- not only was it a casualty-related document
16 but it was superseded in January of 1996 by a corporate Best
17 Claims Practices?
18 A That's correct.
19 Q Okay. What I've handed you -- well, you tell
20 me. What are these two documents marked as 48 and 49?
21 A They are the Material Damage Best Claims
22 Practices, and if I look at the date on the bottom of the
23 thicker sheet, Exhibit 48, it's dated January of 1996, Office
24 of Claims Best Practices.
25 Q Okay. So would these have been the best

548

1 practices -- the Material Damage Best Practices during the
2 period of time for the Berg's claim?
3 A Yes, they would have.
4 Q Okay. And is there -- do these Best Claims
5 Practices deal only with material damage?
6 A Yes, specifically to material damage claims.
7 Q And material damage being the type of claim
8 that the Bergs had?
9 A Yes.
10 Q Is there any reference in the material damage
11 practices to any kind of litigation strategy or Pennro
12 Litigation Strategy?
13 A No, there is not.
14 Q And why -- why would that be?
15 A There would be no need. Material damage
16 claims, just by nature, are claims that sometimes are written
17 on cars and cars are repaired, and it's so infrequently that
18 a claim would get to litigation that there would have to be a
19 strategy.
20 Q How does that differ from casualty-type
21 claims?
22 A Casualty claims have litigation issues all the
23 time.
24 Q Is that just the nature of that type of claim?
25 A It's the nature of a bodily injury-type claim.

... THIS COURT REPORT COLLECTION BY PASCAL OF BERKS COUNTY, READING, PENNSYLVANIA

549

1 Q Okay. Did you -- do you know whether or not
2 -- well, strike that.
3 The second document, Exhibit 49, what is this?
4 A That is the same as Exhibit 48, just a brief
5 condensed version.
6 Q Is it like a pamphlet that's folded up?
7 A What it was exactly is it was a pamphlet that
8 you fold up and carry with you and reference it when you were
9 handling a material damage claim.
10 THE COURT: You mean the fact that Exhibit Number 49
11 incorporates the word "claims" and 48 does not, does not
12 indicate that there's a difference between the two; is that
13 correct?
14 THE WITNESS: No, it's one in the same if you read
15 both documents.
16 THE COURT: That's all of the -- they are one in the
17 same. They both have to do with claims?
18 THE WITNESS: Yes.
19 THE COURT: Even though one says it and the other
20 does not?
21 THE WITNESS: Exactly.
22 MR. COHEN: Thank you, Mr. Bashore. I have no
23 further questions.
24 THE COURT: Cross-examine. Actually, Mr. Bashore,
25 maybe this is a good time to take a break and get your

550

1 thoughts organized. We'll take a ten-minute break at this
2 point.
3 MR. COHEN: Thank you, Your Honor.
4 (Whereupon, a brief recess was taken.)
5 THE COURT: Mr. Mayerson.
6 MR. B. MAYERSON: Thank you, Your Honor.
7 CROSS-EXAMINATION
8 BY MR. B. MAYERSON:
9 Q Mr. Bashore, you're the Blue Ribbon Claim
10 Manager; is that right?
11 A Yes.
12 Q And when you got that position --
13 A Was the Blue Ribbon Claims Manager.
14 Q You've been with the company for 27 years I
15 think; is that right?
16 A It's 30 now.
17 Q Almost 30 now, okay. You'll agree, won't you,
18 that that claim log, the document that Mr. Cohen was asking
19 you about, contains the material events claim?
20 A That's correct.
21 Q From start to finish?
22 A Yes.
23 Q And if there were two separate claims, there
24 would be two separate claim logs; correct?
25 A Yes.

551

1 Q All right. And two separate claim numbers?
2 A Yes.
3 Q Okay. And you agree with me that you used the
4 same claim log, the same claim number for the Blue Ribbon
5 portion of the claim as you did for the original appraisal
6 and repair of the vehicle; correct?
7 A That was all one claim.
8 Q Good. Thank you. So as one claim it would
9 obviously fall under the policy of coverage; correct?
10 MR. COHEN: Objection.
11 MR. B. MAYERSON: I'll withdraw the question, Your
12 Honor.
13 THE COURT: Next question.
14 BY MR. B. MAYERSON:
15 Q You testified that it was separate, I believe,
16 during your direct exam when you were being questioned by
17 your counsel and you said that the switch was made at the
18 time a claim was presented?
19 MR. COHEN: Switch? Objection.
20 THE WITNESS: I don't understand the question.
21 BY MR. B. MAYERSON:
22 Q Okay. Are you changing the coverage at that
23 point in time?
24 THE COURT: Mr. Mayerson, I don't understand your
25 questions. One of the problems is, is that you're not

552

1 speaking up. You're not making yourself clear. So start
2 over that whole line of questioning because I've been trying
3 to get your point, but I still don't have it.
4 BY MR. B. MAYERSON:
5 Q Mr. Bashore, there's a claim by Nationwide
6 that the conduct --
7 THE COURT: Claim by Nationwide?
8 BY MR. B. MAYERSON:
9 Q There is an argument being presented by
10 Nationwide Insurance Company in defense of that lawsuit that
11 any conduct after the repairs to the vehicle were complete
12 and the claim payment made to Lindgren doesn't fall under the
13 Bad Faith Statute because it didn't arise out of the
14 insurance policy. Is that Nationwide's position?
15 MR. COHEN: Objection.
16 THE COURT: Sustained. I think that's a question you
17 should ask Mr. Cohen. Mr. Cohen is counsel in this case, not
18 Mr. Bashore. I don't know whether he's a lawyer, not that it
19 would make any difference. You're not?
20 THE WITNESS: I'm not.
21 MR. B. MAYERSON: You could really be making money.
22 Okay. Just kidding.
23 BY MR. B. MAYERSON:
24 Q Mr. Bashore, do you have Exhibit 47 in front
25 of you?

IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

553

1 A Yes.

2 Q Okay. What is the front page of 47, is that a

3 certification of the policy?

4 A Yes, it is.

5 Q And down at the bottom left-hand corner, does

6 it say Pennro?

7 A Yes, Pennro 7/7 of '93.

8 Q Seven of '93?

9 A Correct.

10 Q So July of 1993?

11 A Yes.

12 Q What does Pennro stand for?

13 A Pennsylvania Regional office.

14 Q In the claim log, which I'd like to refer to

15 as the claim log marked during this phase of the trial which

16 is Exhibit 47, on the front page of this it says: When it

17 was assigned to David Cole, there's a term LEAP?

18 A Yes.

19 Q Do you know what that means?

20 A I have no idea.

21 Q In Exhibit 47, which is the policy --

22 THE COURT: Hold on a second. Okay. Go ahead.

23 BY MR. B. MAYERSON:

24 Q Sir, are there other terms in your claim log

25 that you don't understand?

554

1 A I would have to look at every term in the

2 claim log, but I do not know what a LEAP is. I've never seen

3 that or heard of that.

4 Q Are you familiar with -- do you know whether

5 or not you're familiar with most of the terms in the claim

6 log?

7 THE COURT: Ask him specific questions if you have

8 questions about a particular term because you're not going to

9 have all day here.

10 MR. B. MAYERSON: All right.

11 THE COURT: I don't want to rush you through your

12 cross-examination but you're not taking up all day and

13 creating a problem for defense counsel and creating a problem

14 for the Court.

15 MR. B. MAYERSON: And myself, Your Honor.

16 THE COURT: And yourself. Very good.

17 BY MR. B. MAYERSON:

18 Q Referring again to Exhibit 47 which is a

19 policy --

20 THE COURT: Forty-seven, okay.

21 BY MR. B. MAYERSON:

22 Q The policy promises that it's protection you

23 can count on a policy you can understand; correct?

24 A Correct.

25 Q And underneath that it says --

555

1 A What page are you on, sir?

2 Q The front page of the policy. It's not

3 numbered. It has the big letters Nationwide Century 2 Auto

4 Policy.

5 A I'm there.

6 Q It promises that the policy is going to be

7 readable, understandable and straightforward?

8 A Correct.

9 Q All right. And I want to compare that to your

10 testimony earlier that the Blue Ribbon claim is a separate

11 part from the policy?

12 MR. COHEN: That misstates his testimony. Objection.

13 He said that the Blue Ribbon Program is separate and apart

14 from the policy of insurance. Blue Ribbon Claim is separate

15 also but that's not what he testified to.

16 MR. B. MAYERSON: Okay.

17 THE COURT: As he explained it this morning and as I

18 now understand it for the first time, so if you need some

19 time to think about it, I'll give it to you.

20 BY MR. B. MAYERSON:

21 Q But, Mr. Bashore, you agree that the claim

22 from start to finish including the Blue Ribbon portion of the

23 claim is all contained in the same claim log?

24 A Yes.

25 Q And it all has the same claim number?

556

1 A Yes.

2 Q And it all refers to the same date of loss?

3 A Yes.

4 Q Okay. And Nationwide would not -- if there

5 were two separate claims, Nationwide would use two separate

6 claim logs; correct?

7 A Yes.

8 Q And I think you testified earlier that this

9 was all one claim?

10 A Yes, this was one claim.

11 Q Thank you. And you agree that the vehicle was

12 initially appraised as a structural total loss because the

13 unibody was twisted according to the appraiser?

14 A That it was appraised as a total loss or his

15 opinion was that it was a total loss?

16 Q Yes, that the assigned appraiser's opinion was

17 that the vehicle was a structural total loss because the

18 unibody was twisted?

19 A Initially, yes, I would agree with that.

20 Q And Nationwide inspected the damage and

21 decided that it might be repairable?

22 A After discussion with an appraiser at the shop

23 they have decided to send it out and have it pulled and make

24 a determination at that time, yes.

25 Q And the repairs took four months?

557

1 A The loss was in early September and they got
2 it back right before the first of the year so, yes, that is
3 correct.
4 Q And during the four-month repair period
5 Nationwide inspected the repairs several times by its Blue
6 Ribbon Property Damage Specialists who visited the shop on a
7 regular basis to inspect vehicles referred under the Blue
8 Ribbon program; correct?
9 A I don't think that's correct.
10 Q What do you base that upon?
11 A I saw no log notes about an inspection in the
12 log. I just don't feel like it was done. I mean, that was
13 testimony from someone outside of Nationwide that it was
14 inspected several times.
15 Q All right. I'd like to address that. Could
16 you look at Exhibit 46 which is the claim log?
17 A Yes, sir.
18 Q Is that where you said there's no reference to
19 anything?
20 A Yes.
21 Q All right. And I think during your direct
22 examination Mr. Cohen, he did get you to agree that there was
23 nothing about anything, any complaints or problems with the
24 repairs documenting the claim log from the date that the
25 vehicle came back from being pulled until 11/3/97 when

558

1 Nationwide received a letter of representation; correct?
2 A Yes.
3 Q And is that the absence in the claim log to
4 which you're referring to?
5 A That was just there was no log notes in the
6 claim log about any inspections on the vehicle.
7 Q All right.
8 A Until Steve Potosnak's case log note.
9 Q Sir, you mentioned that you turned this file
10 over to legal counsel when we filed our complaint; correct?
11 A Yes.
12 Q And you testified that you turned it over on
13 May 4th; correct?
14 A That's correct.
15 Q But you didn't turn it over on May 4th, 1998.
16 That's only the date we filed our complaint. It had to be
17 sometime after that because you didn't receive it the day we
18 filed it, did you?
19 A When did you file it?
20 Q May the 4th.
21 A Well, then it must have been faxed to me
22 because I have a log note in here on May the 4th.
23 Q Can you show it to us?
24 MR. COHEN: It's Page 1174
25 THE WITNESS: I'm going by Exhibit 46. You said

559

1 1174?
2 MR. COHEN: Yeah.
3 THE WITNESS: Yes, I have a log note on May the 4th,
4 1998 at 11:04 a.m.
5 THE COURT: Which says what, sir?
6 THE WITNESS: "Received papers from P-L-F-S attorney.
7 P-L filed a civil action in Lindgren Chrysler, a Blue Ribbon
8 shop and Nationwide. Gave all papers to Leah in legal."
9 And as I said earlier, Leah is the admin assistant in
10 the Legal Department.
11 BY MR. B. MAYERSON:
12 Q At this point in time did you have any
13 conversations with Mr. Cole?
14 MR. COHEN: Objection.
15 BY MR. B. MAYERSON:
16 Q At what point did you retain Mr. Cole?
17 A I would have probably talked to Mr. Cole that
18 day.
19 Q That day?
20 A I guess.
21 Q How about before that?
22 A No.
23 Q No?
24 A No.
25 Q Are you sure?

560

1 MR. COHEN: Objection. This is outside the scope of
2 my direct examination and it's also getting very close to
3 attorney/client privilege.
4 MR. B. MAYERSON: It may be getting close but it's
5 not.
6 THE COURT: Overruled. Answer the question.
7 THE WITNESS: what was the question again, before the
8 4th did I talk to David Cole?
9 MR. B. MAYERSON: Yes. All right.
10 THE WITNESS: Not that I recall.
11 BY MR. B. MAYERSON:
12 Q The point I want to get at is the fact that
13 Mr. Cohen got you to agree there's no reference in this claim
14 log about any reports or problems with the repairs from the
15 date the vehicle was pulled or when Nationwide instructed it
16 to be pulled until Nationwide received my letter and
17 representation. And what I'd like you to do is turn to Page
18 60 of Exhibit 46 and the page numbers at the top right-hand
19 corner.
20 A Yeah, I see that. Okay. Page 60. Which log
21 note?
22 Q I'm referring to the one that's blacked out.
23 MR. COHEN: Objection.
24 THE COURT: what's the objection?
25 MR. COHEN: How can he testify to a log note he can't

561

1 read?

2 THE COURT: Let's find out, okay.

3 BY MR. B. MAYERSON:

4 Q Sir, were you communicating with your attorney

5 during this time period?

6 A This was in September. The log note before

7 this is September 30th of 1996.

8 Q All right.

9 A I wasn't even in the Blue Ribbon Department

10 until '98 so there's no way that I could have been

11 communicating with David Cole.

12 Q You'll agree with me this is an ordinary claim

13 log entry and not a confidential communication with counsel;

14 right?

15 MR. COHEN: Objection.

16 THE COURT: Sustained.

17 BY MR. B. MAYERSON:

18 Q You'll agree with me, sir, won't you, you have

19 no idea whether or not any complaints about the problems that

20 were going on with the repairs are in the Nationwide claim

21 log because you can't read this entry; right?

22 MR. COHEN: Objection.

23 THE COURT: Sustained. He was not in the department

24 at that time. I think the question is asking him about the

25 claim log when he wasn't even in that department or in that

562

1 position, and that's the reason why I asked him is that once

2 he assumed that position he had the responsibility to the

3 claim log. It was done under his -- kept under his direction

4 or we would ordinarily say the ordinary course of business.

5 BY MR. B. MAYERSON:

6 Q Mr. Bashore, is this a claim log that is kept

7 in the ordinary course of business?

8 A Yes, on a claim, yes.

9 Q All right.

10 THE COURT: And it speaks for itself, doesn't it?

11 MR. B. MAYERSON: Well --

12 THE COURT: Are you going to move for the admission

13 of this document?

14 MR. B. MAYERSON: Yes, Your Honor.

15 THE COURT: Don't you think it speaks for itself?

16 MR. B. MAYERSON: Yes, Your Honor.

17 THE COURT: Okay. I think it does too. It's better

18 than him speculating and guessing what it might indicate.

19 He's not your witness. He's the defense witness.

20 BY MR. B. MAYERSON:

21 Q Sir, when you got assigned this file and you

22 were evaluating whether or not to honor this claim, did you

23 look at these log notes, were they redacted then?

24 A No.

25 THE COURT: You did not look at the file?

563

1 THE WITNESS: I would have looked at the file at that

2 point. Once I was in the department I could look back on

3 these log notes.

4 BY MR. B. MAYERSON:

5 Q And the second part of the question is when

6 you looked back, did you see any of the redactions that you

7 now see in this Exhibit Number 46?

8 A No, they wouldn't have been redacted.

9 Q They wouldn't have been redacted?

10 A No.

11 Q Whoever redacted them it was done in legal?

12 A Right.

13 Q Sir, then I'd like to refer then to your log

14 entry on page -- in your log entry -- I'm sorry -- but after

15 you were on the case?

16 A Okay. What page?

17 Q Let's see. On Page 4 -- I'm sorry. Lets go

18 onto Page 3.

19 A And which log note on page --

20 Q The top one.

21 A Okay. The 5/6/1998 at 8:05 a.m.?

22 Q Right.

23 A Yes, okay.

24 Q The portion that's blacked out, do you have

25 any idea why that was blacked out?

564

1 A I do not.

2 Q All right. Were you talking -- there's a

3 Steve Potosnak entering it. Did Steve Potosnak have access

4 to Nationwide's counsel?

5 MR. COHEN: Objection.

6 THE COURT: I was making a note. What was the

7 question?

8 MR. B. MAYERSON: We're looking at a claim log entry

9 on Page 3 dated May 6th, 1998 entered by Mr. Potosnak

10 directly after his inspection about two days after we filed

11 our lawsuit. And the question is: Does the witness -- do

12 you know whether or not Mr. Potosnak had access to Mr. Cole

13 to have discussions with him?

14 THE COURT: What's the objection?

15 MR. COHEN: I'll withdraw the objection.

16 THE COURT: Okay.

17 THE WITNESS: On 5/6 of '98?

18 MR. B. MAYERSON: Yes.

19 THE WITNESS: No, Steve Potosnak wouldn't have been

20 dealing with Mr. Cole.

21 BY MR. B. MAYERSON:

22 Q Okay. So is it safe to say then that the

23 blacked-out portion is not a communication to counsel?

24 MR. COHEN: Objection.

25 THE COURT: Sustained.

565

1 BY MR. B. MAYERSON:
2 Q Mr. Bashore, based on your recollection, do
3 you have any idea whether or not this entry by Mr. Potosnak
4 suggested that Nationwide should purchase the vehicle from
5 the Bergs because Lindgren was unwilling to do so?
6 A I have no recollection of what that says under
7 there.
8 Q Would it be helpful -- on Page 9.
9 A Okay.
10 Q I assume that your answer would be the same,
11 that you have no recollection of what is entered there,
12 that's blacked out also?
13 A I have no idea what that is.
14 Q You agree you sent me a letter on -- that's
15 been marked as an exhibit, I believe it's 15 in the prior
16 phase.
17 A May the 19th letter?
18 Q Yes, your May 19th letter.
19 A Yes.
20 Q And in that letter you said at the very
21 beginning that you and I had a conversation on May 12th.
22 A That's correct.
23 Q And our phone conversation would have been
24 entered in the claim log on May 12th; correct?
25 A I don't know, was it?

566

1 Q Well, I'm asking you. You have to document
2 your claim log; correct?
3 A Yes.
4 Q All right. And that includes all material
5 events, phone conversations, et cetera?
6 A Yes.
7 Q And you agree that the conversation we had
8 that date was a material event; right?
9 A Yes.
10 Q All right. So I'd like you to look at Page 2
11 of the claim log.
12 A Okay.
13 Q You see the entry dated May 12th, 1998 by you;
14 is that right?
15 A Which one?
16 Q The one -- the second one dated -- let's start
17 with the top one dated May 12th.
18 A Okay.
19 Q This was the day that you and I had a
20 conversation?
21 A Correct.
22 Q All right. So it looks like the first thing
23 you did was write out a check for \$250 out to Automotive
24 Legal Services?
25 A No, remember it's going backwards.

567

1 Q Okay. So the first entry is -- well, there's
2 three entries there; two definitely dated May MR. H.
3 MAYERSON: Th, 1998 and there's one that's blacked out?
4 A That's correct.
5 Q Why don't we have an entry of my phone
6 conversation with you that day and my assumption is it's the
7 one that's blacked out?
8 MR. COHEN: Objection to his assumption.
9 THE WITNESS: I don't know.
10 THE COURT: Cross-examination. It's appropriate.
11 THE WITNESS: I don't recall.
12 BY MR. B. MAYERSON:
13 Q You don't recall but you certainly would have
14 documented our phone conversation in here?
15 A Most likely.
16 Q That would not be a communication to counsel,
17 correct, it would be with me; right? Or who do you report
18 this to, who does this go to, this claim log?
19 A This claim log goes to the file.
20 Q You were the top guy, so you weren't really
21 reporting to anybody other than yourself?
22 A I wasn't the top guy, but I was a claims
23 manager, yes.
24 Q On this claim, I mean, you were the top guy?
25 A Yes.

568

1 Q And the one right above that dated May 12th,
2 1998 talks about sending a check for \$250 to Automotive Legal
3 Service; correct?
4 A The one at 5/20?
5 Q Yeah.
6 A Yes, yes.
7 Q And the one at 5/16 talks about the same
8 thing?
9 A Yeah, that's where I actually called
10 Automotive Legal Services and asked them to do an inspection
11 of the vehicle.
12 Q Okay. Why did you need to get the vehicle
13 inspected -- I think you testified that Mr. Potosnak was an
14 in-house guy and, therefore, he was inadequate to do the
15 inspection?
16 MR. COHEN: Objection. That misstates his testimony.
17 THE COURT: Ask him if that's what he said.
18 BY MR. B. MAYERSON:
19 Q Okay. Why did you say --
20 THE COURT: Didn't you say --
21 BY MR. B. MAYERSON:
22 Q Didn't you say that Mr. Potosnak wouldn't be
23 appropriate to do the inspection because you wanted an
24 independent expert, and I think the term you used was
25 somebody that was honest?

569

1 MR. COHEN: Objection.
2 THE COURT: Sustained. Ask him a question. Don't
3 add anything and don't testify. You had your opportunity
4 yesterday.
5 MR. B. MAYERSON: All right.
6 BY MR. B. MAYERSON:
7 Q Isn't it true that you said that Mr. Potosnak
8 wouldn't be an independent expert?
9 A Yes, he is not an independent.
10 Q He was a Nationwide guy?
11 A Yes.
12 Q And his report though, all the same, was
13 pretty thorough, wasn't it?
14 A It was a pretty good inspection.
15 Q It was. And he put the vehicle up on a lift?
16 A I wasn't at the inspection. I think his log
17 note did say that.
18 Q His log note did say that, yes. And after
19 inspecting the vehicle he was able to make the correct
20 conclusion that the vehicle wasn't pulled properly back
21 before the parts went back on; isn't that correct?
22 A Yes.
23 Q And that's the same opinion Mr. Anderton came
24 to, correct, Nationwide's expert, Mr. Anderton, there was no
25 identifiable benefit from the sublet repair? Do you recall

570

1 that testimony?
2 A I don't recall that.
3 Q No? On Mr. Anderton's testimony, do you have
4 a copy of the transcript?
5 A I don't.
6 Q Page 895, Line 24.
7 MR. COHEN: He doesn't have a copy of the transcript.
8 MR. B. MAYERSON: I'm giving it to him.
9 THE COURT: What page? What is your question?
10 MR. B. MAYERSON: I want to establish that
11 Mr. Potosnak --
12 THE COURT: I know there's a lot of things that you
13 want to establish. You've got to do it in an appropriate
14 way. You ask him questions. That's what we do in a
15 courtroom. We ask questions and when we don't get answers,
16 we don't shove something onto somebody and say, read this,
17 read that, and then I'm going to ask you to summarize it and
18 give me some answers. That's not the way it's done. If
19 that's the way it's done, I missed the boat in the last 50
20 years. Okay.
21 MR. B. MAYERSON: Okay.
22 THE COURT: Start over again. Take that away from
23 him and ask him a question.
24 BY MR. B. MAYERSON:
25 Q Mr. Bashore, isn't it true that Mr. Anderton

571

1 and Mr. Potosnak reached the exact same conclusions?
2 A (No response.)
3 Q And that is that the pull was not successful
4 when parts began to go on?
5 THE COURT: That is what?
6 MR. B. MAYERSON: The sublet work by K.C. Autobody;
7 that is, the attempt to pull the frame back was unsuccessful?
8 THE WITNESS: I would agree with the fact that the
9 front was misaligned, yes.
10 BY MR. B. MAYERSON:
11 Q I'm not saying that the front was misaligned.
12 I'm saying that Mr. Potosnak in April of 1998 after putting
13 the vehicle on a lift and doing a comprehensive inspection
14 came to the conclusion that the vehicle was not properly
15 pulled?
16 A Yeah, that's what misalignment means, yes.
17 Q So yes?
18 A Yes.
19 Q All right. And that's the same conclusion
20 that Mr. Anderton reached a year later?
21 A I don't recall that, but -- I'm assuming
22 you're correct.
23 Q And that's the point of his testimony,
24 Mr. Anderton testified, and you were here for the trial;
25 right, the first one?

572

1 A Yes.
2 Q All right. And do you remember when he
3 testified that a --
4 MR. COHEN: Excuse me. Could we have a citation to
5 the record so I can verify that Mr. Mayerson is accurate?
6 MR. B. MAYERSON: Eight hundred ninety-five, Line 24
7 to 896, Line 9.
8 BY MR. B. MAYERSON:
9 Q Mr. Anderton testified that the question was
10 did you not also opine that dot, dot, dot, the ultimate goal
11 of the sublet repairs --
12 MR. COHEN: I'm sorry. Where does it say dot, dot,
13 dot?
14 MR. B. MAYERSON: You're at the wrong page.
15 MR. COHEN: You're at the wrong page. You're reading
16 from 895 and it says 894. This is exactly what you did
17 yesterday. I don't know where you're reading from.
18 MR. B. MAYERSON: I had the one. It is 895. Wait a
19 minute. Your Honor, I think there's a problem with the
20 transcript. I mean, I'm right just so the Court knows, here,
21 895, Line 24.
22 MR. COHEN: Right. That's what I have.
23 MR. B. MAYERSON: That's what it said. It doesn't
24 say dot, dot, dot in the transcript.
25 MR. COHEN: Your Honor, if he's reading from the

573

1 transcript, I'm going to ask him to read accurately so the
2 witness can read accurately.

3 THE COURT: Don't substitute dot, dot for skipping
4 over stuff. That's his point. How long did that take, five
5 minutes. Go ahead.

6 BY MR. B. MAYERSON:

7 Q The question is: Did you not also opine to
8 Nationwide in the case of the subject vehicle Lindgren did
9 not properly contribute it -- I'm sorry -- it's four pages on
10 one. Question --

11 THE COURT: Sit down and review what that document
12 says and then frame your question properly. Let's get a
13 question.

14 BY MR. B. MAYERSON:

15 Q Mr. Bashore, do you recall that maybe Mr.
16 Anderton testified as follows: Question: Did you not also
17 opine to Nationwide in the case of the subject vehicle
18 Lindgren did not properly identify the need for the sublet
19 repair or the ultimate goal of the sublet repair factory
20 facility and the subsequent chassey repair was incomplete and
21 significantly misaligned with no identifiable benefit from
22 the sublet repair? And his answer is that was part of my
23 report.

24 Do you recall that testimony?

25 A Now that you read it.

574

1 Q And do you also agree with me then that
2 Mr. Potosnak and Mr. Anderton reached the exact same
3 conclusion?

4 THE COURT: That what, the same conclusion that --

5 MR. B. MAYERSON: That the pull that Nationwide
6 ordered to be done failed.

7 THE WITNESS: I would agree that the pull was not
8 done correctly.

9 BY MR. B. MAYERSON:

10 Q And you agree that Nationwide ordered the
11 pull?

12 A I would agree that Nationwide discussed with
13 Lindgren to have the pull sent out to K.C. Autobody.

14 Q And that was pursuant to the direction of
15 Nationwide's Doug Witmer?

16 A That was an agreement with Doug and Doug
17 Joffred, Doug Witmer and Doug Joffred.

18 Q Nationwide's direction and not a joint
19 decision until after discussion taking place per the log note
20 of Mr. Witmer. If you look at Exhibit 46.

21 A Page 64.

22 Q On September 24th, 1996 --

23 A What was the date again, sir?

24 Q September 24th.

25 A Okay.

575

1 Q Mr. Witmer says, well, it's V-E-H that stands
2 for "vehicle;" right?

3 A "Vehicle is not a total loss. I inspected
4 vehicle and told body shop that I would advise you to have
5 the vehicle taken to a shop to have the frame repaired since
6 they obviously cannot do the job with the equipment they
7 have. The repairs are approximately 50 percent of A.C.V.
8 Nationwide will never recover the difference in salvage
9 value. Thanks, Doug."

10 Q So Nationwide did direct the vehicle be taken
11 out?

12 A I believe Nationwide and Doug Joffred agreed
13 to have the frame subletted out.

14 Q I agreed. Doug Joffred eventually agreed to
15 that, but the log note says Mr. Joffred inspected the vehicle
16 and Mr. Witmer inspected the vehicle and told body shop --

17 THE COURT: You know, if I'm supposed to read that in
18 the transcript somewhere along the line how do I know what
19 anybody said? You misread things and then you just correct
20 them and whatever. Ask the question again.

21 Did you ever hear a lawyer say strike that and then
22 ask the question again? That's the way you do it. You
23 strike that and you start it over again. Start it over
24 again.

25 MR. B. MAYERSON: Strike that.

576

1 THE COURT: Strike out. Go ahead.

2 BY MR. B. MAYERSON:

3 Q Isn't it true that Nationwide's Doug Witmer
4 stated in the claim log, quote, "I inspected the vehicle,"
5 V-E-H, "and told body shop --"

6 A Yeah, but if you read the rest of the sentence
7 it says I inspected the vehicle and told body shop that I
8 would advise.

9 Q To you?

10 A Who's you? This log note was written to Jen
11 Coffman.

12 Q Okay. So it wasn't advised to Doug Joffred?

13 A It was advised to somebody else at Nationwide,
14 correct.

15 Q So the instructional part which is told which
16 was directed to Doug Joffred and the advisory part was
17 directed to Nationwide; correct?

18 A I would assume from all the testimony when you
19 look at it as a whole that Doug Witmer and Doug Joffred
20 agreed to sublet the frame out.

21 Q But the original log note, the original
22 evidence from which all the testimony derived on that issue
23 states otherwise; right? States what we just talked about?

24 A That's not the way I read it.

25 Q Now, we talked about in the policy of

... THE COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

577

1 insurance, which is Exhibit 47, you were asking about the
2 type of physical damage coverage and I want to direct your
3 attention to what it says on Page 6 of the policy.
4 A Okay. I'm at page 6.
5 Q In this section, almost in the middle of the
6 page --
7 THE COURT: Mr. Mayerson, ask a question. Ask a
8 question.
9 BY MR. B. MAYERSON:
10 Q Mr. Bashore, isn't it true that the policy
11 says we may pay you directly for a loss, number one; or
12 number two, repair or replace your auto or its damaged part?
13 A That's what it says, yes.
14 Q And does that give Nationwide the decision on
15 how the claim is going to be resolved?
16 MR. COHEN: Objection.
17 MR. B. MAYERSON: Or is that the policyholder's
18 decision?
19 THE COURT: Overruled.
20 BY MR. B. MAYERSON:
21 Q Is it the policyholder's decision or
22 Nationwide's decision as to how the claim is going to be
23 paid?
24 A Nationwide.
25 Q So Nationwide makes that decision?

578

1 A Correct.
2 Q And then in the limits of coverage?
3 A In the same exhibit?
4 Q Yes.
5 A Okay. Are you talking about the declaration
6 page now?
7 Q The same page.
8 A Oh, same page.
9 Q When Mr. Cohen was asking you about limits of
10 coverage, isn't it true that the policy says the limit of
11 coverage is the cash value of your auto or its damaged parts
12 at the time of the loss?
13 A Yes.
14 Q And so the limits of coverage is the value of
15 the vehicle; correct?
16 A Yes.
17 Q And all I want to establish is isn't it true
18 that if Nationwide had accepted the original total loss
19 appraisal written by its assigned appraiser, Doug Joffred,
20 the loss would have been paid to the Bergs pursuant to the
21 terms written in the policy and we wouldn't be here today;
22 correct?
23 THE COURT: I'm not too sure he knows that. I've
24 heard all the testimony and I don't know that. I don't even
25 know if your office is. How do we know -- I bet your clients

579

1 don't know that either. You were on the right track but you
2 messed it up at the end. Strike that. Go ahead.
3 BY MR. B. MAYERSON:
4 Q Mr. Bashore, isn't it true that if Nationwide
5 would have accepted the original total loss appraisal and
6 purchased the vehicle outright from the Bergs there would
7 have been no need for the Bergs to hire a lawyer?
8 MR. COHEN: Objection.
9 THE COURT: Sustained. If you want to say that
10 would it resolve Nationwide's responsibilities under the
11 policy, I think that's the question and that he can answer.
12 BY MR. B. MAYERSON:
13 Q Mr. Bashore, if Nationwide would have accepted
14 the original appraisal for a total loss that was reached
15 initially by the appraiser, Doug Joffred, and paid the Bergs
16 the value of the vehicle, would that have resolved this
17 claim?
18 A But the vehicle wasn't a total loss.
19 THE COURT: No, just answer the question now.
20 THE WITNESS: Would it have resolved the claim?
21 THE COURT: This is a hypothetical question; if, if,
22 if. Do you want to read the question back?
23 THE WITNESS: If it would have paid what the
24 vehicle's claim was at the time of the loss, what was the end
25 of the question?

580

1 BY MR. B. MAYERSON:
2 Q Would it have resolved the claim?
3 A Yes.
4 THE COURT: And fulfilled your responsibility under
5 the policy?
6 THE WITNESS: Yes.
7 BY MR. B. MAYERSON:
8 Q The claim log entry that we were reading
9 talked about Nationwide will never recover the difference in
10 value, salvage value?
11 A Doug Witmer's log note, yes.
12 Q Is there any reference in the log that salvage
13 values were actually ever secured?
14 A No.
15 Q So Nationwide never bothered to even determine
16 what the salvage value on this one-year-old Grand Cherokee
17 was?
18 A Did he actually get quotes on the salvage?
19 Q Yes.
20 A No, I don't believe it says that in the log,
21 no.
22 Q It would if he did; right?
23 A It would what?
24 Q If he did secure salvage bids, that would be
25 reflected in the claim log?

IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

1 A Yes.

2 Q And you agree that the value of salvage on a

3 newer vehicle, especially one that's not even a year old, is

4 going to be a little higher than the same damage on an older

5 vehicle?

6 A That's obvious, yes.

7 Q Okay. The gentleman, Mr. Steven Potosnak, who

8 did this inspection on April 28th, 1998 --

9 A Yes.

10 Q -- his title was Property Damage Specialist;

11 right?

12 A Yes, he was a PDS.

13 Q And he was also a state-licensed appraiser?

14 A Yes.

15 Q Okay. Now, we were talking about this new

16 Best Claims Practices Manual.

17 MR. COHEN: Objection to the characterization, new.

18 BY MR. B. MAYERSON:

19 Q Exhibit 48, sir.

20 A Yes.

21 Q What time period was this document circulated?

22 A The bottom of the page it says January of

23 1996.

24 Q January of 1996. Do you have it in front of

25 you?

1 A Yes.

2 Q All right. Can you tell me does this document

3 talk about leakage?

4 A I don't have this document memorized. Do you

5 have something that you want to show me?

6 Q No, there's nothing in here about leakage that

7 I could find, and I want to know if there's anything that you

8 can point to that talks about leakage.

9 MR. COHEN: Your Honor, Mr. Mayerson just said

10 there's nothing in here with regard to leakage, but asks a

11 question when there's nothing in here with regard to leakage.

12 I have a half a day to put on my defense and we're asking

13 insane questions here.

14 THE COURT: No, you're not going to have half a day.

15 You're going to have as much time as you need. Go ahead. It

16 may not be this week or next week, but I will get the time

17 you need. That's for the record.

18 MR. COHEN: Thank you, Your Honor.

19 BY MR. B. MAYERSON:

20 Q Sir, does that document address leakage?

21 MR. COHEN: Objection. Outside the scope of direct

22 examination.

23 THE COURT: Overruled.

24 THE WITNESS: I would have to read the entire

25 document. I don't believe it does.

1 BY MR. B. MAYERSON:

2 Q You don't believe it does?

3 A No.

4 Q Okay. I'd like to hand you a document that's

5 been supplied to me by your attorney dated April 15th, 1999.

6 On Page 4 of that document, can you please turn there?

7 MR. COHEN: I'm not sure I know what this document

8 is. I've never seen this document before.

9 MR. B. MAYERSON: Let's see if the witness does.

10 MR. COHEN: Okay. I'm going to object again.

11 Outside the scope of direct examination.

12 THE COURT: Since I have no idea what it says, I

13 can't rule.

14 MR. B. MAYERSON: Let's mark it as an exhibit then.

15 THE COURT: No, let's not mark it as an exhibit. We

16 have enough exhibits. You had your case-in-chief. You can

17 ask him questions. This is cross-examination basically to

18 discredit whatever testimony he gave under direct

19 examination, not to develop your case through

20 cross-examination.

21 MR. B. MAYERSON: I'm cross-examining him on the

22 credibility of that document.

23 THE COURT: Mr. Mayerson, let's go.

24 BY MR. B. MAYERSON:

25 Q Sir, isn't it true that that document

1 references Nationwide's Best Claim Practices and it says

2 summary of discussion between facility and claims manager

3 regarding the leakage category. Leakage results were found

4 in areas covered in the, quote, Best Claims Practices Guide,

5 a copy of which is provided to the facility with this review?

6 A I see that.

7 Q That's what it says; correct?

8 A That's what it says.

9 Q But the document your attorney has handed you

10 as the version that was supplied to the shops doesn't talk

11 about leakage, does it?

12 A No.

13 MR. COHEN: Your Honor, this document is dated 1999

14 and the Best Claims Practices is dated 1996. He's trying to

15 mislead the witness. This is why it's objectionable. It's

16 outside the scope of my direct examination.

17 THE COURT: Do you think that's correct?

18 MR. B. MAYERSON: Your Honor, I think that that's not

19 the version of the Best Claims Practices Manual that was

20 given. It was the original version or some other version,

21 but it may not be that one.

22 THE COURT: The objection to the document is

23 sustained.

24 MR. COHEN: Thank you. Next question.

25 BY MR. B. MAYERSON:

585

1 Q Sir, I'd like to refer to exhibit --
2 THE COURT: If you're going to take the rest of the
3 day, I know what to do.
4 MR. B. MAYERSON: I'm not going to take the rest of
5 the day, Your Honor.
6 THE COURT: That's the way it looks to me. You're
7 trying to cover with this witness every thought you ever had
8 with regard to this case. And that's going to take more than
9 the rest of the day. Answer my question.
10 MR. B. MAYERSON: Your Honor, may we have a
11 conference? I'd like to cut it short.
12 THE COURT: Who, conference with who?
13 MR. B. MAYERSON: Co-counsel.
14 THE COURT: Of course.
15 MR. B. MAYERSON: Your Honor, we have 20 minutes left
16 in the examination.
17 THE COURT: All right. Go ahead.
18 MR. B. MAYERSON: Thank you.
19 BY MR. B. MAYERSON:
20 Q Mr. Bashore, on Exhibit 49 --
21 A Okay.
22 Q Doesn't it say in the center column --
23 A Okay.
24 Q -- in the middle --
25 A Okay.

586

1 Q Right above where it says, "total loss vehicle
2 Evaluation"
3 A Okay.
4 Q It says, doesn't it not say, "The evaluation
5 of repairable vehicle damaged conforms to statutory and
6 regulatory requirements?"
7 A That's what it says, yes.
8 Q And that's the Pennsylvania Appraiser's Act?
9 A In the State of Pennsylvania, yes.
10 Q And the regulations thereto?
11 A Correct.
12 Q And on the next column, the second one under
13 Best Practices?
14 A On the second column again?
15 Q Third column.
16 A Third column, okay. The second one under
17 "Best Practices."
18 Q The second one under Best Practices,
19 "documentation is sufficient to support the settlement
20 value."
21 A Correct.
22 Q When Mr. -- on April 28th, 1996 when
23 Mr. Potosnak conducted his inspection --
24 A Uh-huh.
25 Q -- was the vehicle a total loss?

587

1 A On April the 28th?
2 Q Yes, when Mr. Potosnak looked at it.
3 A April 28th of 1998?
4 Q Ninety-eight?
5 A No, it wasn't a total loss.
6 Q How do you know that?
7 A All the testimony we've heard said that the
8 vehicle was repairable.
9 Q Well, why didn't Mr. Potosnak do a formal
10 appraisal with salvage values to determine what it would cost
11 to repair that vehicle?
12 A On April the 28th Steve looked at the vehicle,
13 correct.
14 Q Correct.
15 A On May the 4th I got a letter of
16 representation from you. Is that correct?
17 Q I'm sorry.
18 A On April the 28th.
19 Q That's incorrect. It was a complaint I think
20 that you got; right?
21 A I'd have to go look at the letter, but from
22 April the 28th, which I believe we said is a Thursday, until
23 May the 4th, which was a Monday, how much time did he have to
24 make the repairs correct by writing an appraisal and taking
25 it to a third-party shop to have the repairs done.

588

1 Q So Mr. Bashore, is what you're telling me is
2 because I filed a lawsuit against Nationwide you weren't
3 going to honor the claim?
4 A No, but at that point I had to work through
5 your office.
6 Q You were working through my office since
7 November of '97; correct?
8 A No.
9 Q No. You received my letter of representation
10 of November in '97?
11 A I didn't come to the unit until January of
12 '98.
13 Q But the people who were handling this matter
14 had been dealing with my office since November of '98, so
15 this was nothing new about the claim; correct?
16 A Right.
17 Q I want to go back to the question I think what
18 you're saying is because I filed a complaint that's why you
19 didn't honor the claim?
20 MR. COHEN: Objection. That misstates his testimony.
21 THE COURT: That's not what he said. That's what you
22 would like him to say, but that's not what he said.
23 BY MR. B. MAYERSON:
24 Q Why didn't you honor the claim on that date?
25 THE COURT: He started to tell you.

1 THE WITNESS: Because at that point you were involved
 2 in the claim. We had to work through your office.
 3 BY MR. B. MAYERSON:
 4 Q Sir, I thought -- didn't we establish I was
 5 involved in the claim for months earlier than that?
 6 A Yes.
 7 Q So the reason that you didn't honor the claim
 8 on April 28th is because you had to work through my office?
 9 On May the 4th, Mr. Bashore, why did you withhold the
 10 results of the Potosnak Inspection Report from my office if
 11 you wanted to work with my office?
 12 A I withheld them?
 13 THE COURT: What's that?
 14 THE WITNESS: I'm asking him how I withheld it.
 15 BY MR. B. MAYERSON:
 16 Q Did you tell me what the results were?
 17 A The report was done on a Thursday and we got
 18 your letter of representation on Monday. There was one
 19 business day in there between Steve's report and you sending
 20 me the letter. One business day.
 21 Q Sir, didn't we have a conversation on May 12th
 22 which was a week after I filed the lawsuit?
 23 A Yes.
 24 Q Why didn't you tell me about the Potosnak
 25 inspection results on that date?

1 A We were sending out an independent inspection.
 2 Q But you know you didn't tell me; right?
 3 A I don't recall if I did or not.
 4 Q Well, do you remember when your deposition was
 5 taken in this matter?
 6 A Yes.
 7 Q When I asked you questions about an inspection
 8 you didn't tell me you inspected the vehicle at that time
 9 either, did you?
 10 A I don't recall.
 11 MR. B. MAYERSON: May I hand the witness a portion of
 12 his deposition testimony?
 13 THE COURT: No, just ask him a question. I'm going
 14 to read to you the following testimony from your deposition,
 15 which is page so-and-so line so-and-so to so-and-so and then
 16 I'll ask you again. Does this refresh your recollection and
 17 then he will say yes or no.
 18 BY MR. B. MAYERSON:
 19 Q Sir, I'm going to read to you your testimony
 20 from your deposition taken on March 28th, 2002.
 21 MR. COHEN: May I have a copy please?
 22 BY MR. B. MAYERSON:
 23 Q At Page 37, Line 17 through 19.
 24 A All right.
 25 Q Question --

1 THE COURT: And ask you whether or not this refreshes
 2 your recollection of what you said.
 3 BY MR. B. MAYERSON:
 4 Q Do you know when Nationwide first inspected
 5 the Berg vehicle? Answer: Do I know when? No, I really
 6 don't know. Does that refresh your recollection?
 7 THE WITNESS: Yeah, I didn't remember when it was.
 8 BY MR. B. MAYERSON:
 9 Q And I'd like to read to you from Page 57, Line
 10 5 through 11.
 11 THE COURT: For the purpose of refreshing his
 12 recollection?
 13 MR. B. MAYERSON: Yes.
 14 THE COURT: Because he answered the question contrary
 15 than what's in the deposition transcript because I'm not
 16 interested in what happened during the deposition unless he
 17 said something contrary to what he says here today.
 18 MR. B. MAYERSON: Yes, Your Honor. I think this is
 19 more to the point of the letter.
 20 THE COURT: Ask him the question so at least I know
 21 what the subject is that you're cross-examining him on.
 22 BY MR. B. MAYERSON:
 23 Q Sir, I am going to read to you from your --
 24 THE COURT: No, you're not. You're going to ask him
 25 a question.

1 BY MR. B. MAYERSON:
 2 Q Does it refresh your recollection --
 3 Sir, isn't it true that you told me at your
 4 deposition that Nationwide did not previously request an
 5 opportunity to inspect the vehicle until your letter of May
 6 19th, 1998?
 7 A Yes, I said that in the trial testimony in
 8 Phase 1. I also testified that I was talking about an
 9 independent expert.
 10 Q Sir, the question at your deposition didn't
 11 have independent in it. The question was -- isn't it true
 12 the question was: To your knowledge, Nationwide did not
 13 previously request an opportunity to inspect the vehicle
 14 until after the complaint was filed?
 15 MR. COHEN: I'm sorry. What page was that?
 16 MR. B. MAYERSON: Sixty-two, Lines 9 through 11.
 17 THE WITNESS: My interpretation of the question was
 18 an independent expert.
 19 BY MR. B. MAYERSON:
 20 Q Sir, isn't it true that you were withholding
 21 the claim log entry from us at that time?
 22 A No.
 23 MR. COHEN: Objection.
 24 THE COURT: He answered it, no.
 25 BY MR. B. MAYERSON:

593

1 Q Sir, could you turn to Exhibit 46?
2 A Yes.
3 Q Page 4?
4 A Yes.
5 Q And you see that big black space at the bottom
6 of the page and the top of Page 5?
7 A Yes.
8 Q Isn't that where the Potosnak inspection
9 report is set forth?
10 A I can't read it.
11 Q Well, look at the dates. You see the date
12 right above it?
13 A It coincides with those dates, yes.
14 Q Right. So you agree with me that the report
15 was withheld; correct, on the date you testified?
16 A The date I testified, I testified we did not
17 --
18 THE COURT: I'm sorry. I can't hear you.
19 THE WITNESS: On the date I testified, I testified we
20 did not have an independent expert out.
21 BY MR. B. MAYERSON:
22 Q On the date that you testified in 2002, this
23 claim log was still redacted; correct?
24 A I don't recall that. I don't know who
25 redacted it. I don't know when it was redacted.

594

1 BY MR. B. MAYERSON:
2 Q Mr. Bashore, were you aware that on May 5th,
3 2003 which was approximately three months after your
4 deposition that Nationwide produced the Potosnak Inspection
5 Report for the first time?
6 A I didn't know that.
7 MR. B. MAYERSON: No further questions.
8 THE COURT: What was the answer to that question?
9 THE WITNESS: I didn't know that, sir.
10 BY MR. B. MAYERSON:
11 Q Sir, I'd like to show you Exhibit 34. Before
12 I get into the document, do you agree with me that Nationwide
13 was performing random inspections throughout the four-month
14 repair period on the Berg vehicle?
15 A No, I don't agree with that.
16 Q You don't agree with that?
17 A I would have no way of knowing that.
18 Q Do you agree that a shop log was maintained at
19 a Blue Ribbon facility?
20 A I would agree that some shops kept logs.
21 THE COURT: You're now going to show him Exhibit 34,
22 which has been identified to be what?
23 BY MR. B. MAYERSON:
24 Q I'm going to show you Exhibit 34, which is
25 identified as Nationwide's Material Damage Standards.

595

1 THE COURT: Do you recognize it?
2 THE WITNESS: No, I do not. There's no date on here
3 either.
4 THE COURT: He doesn't recognize it and there's no
5 date on it. Next question.
6 BY MR. B. MAYERSON:
7 Q Sir, you didn't come on the Blue Ribbon Repair
8 Program until 2007?
9 A January of 1998.
10 Q January of 1998. And so you don't know how
11 the program ran before that?
12 A I knew basically how it ran, but I didn't know
13 how all the internal workings of the program were.
14 Q Sir, were you here when Mr. Cole testified
15 that --
16 THE COURT: No, no, no. Absolutely not.
17 BY MR. B. MAYERSON:
18 Q Sir, I'm handing you Exhibit 36, the Pennro
19 Litigation Strategy.
20 A Yes.
21 Q I'd like you to turn to Page 1143.
22 A Okay.
23 Q Do you know what the Section B means that
24 states: "Under outside claims expense management"?
25 A Correct.

596

1 Q "Forecast new suit activity by category along
2 with suit enclosure activity based upon past trends and
3 changes in our operational procedures and the state claims
4 environment LEAP data can be used as a reference, but the
5 system must mature further to provide truly credible
6 statistics as the region gains a better understanding of the
7 capabilities of LEAP. All claim divisions will be trained
8 and have access to the system."
9 A I see that.
10 Q Do you know what that means?
11 A I have no idea. Never seen this document
12 before.
13 MR. B. MAYERSON: Nothing further, Mr. Bashore.
14 Thank you.
15 THE COURT: Redirect.
16 MR. COHEN: Mr. Bashore, a couple things.
17 REDIRECT EXAMINATION
18 BY MR. COHEN:
19 Q Mr. Mayerson was referencing the policy at
20 Page 6 and he was going through some questions with you
21 regarding, "we can replace your auto or damaged parts." Do
22 you recall that questioning?
23 A Yes, I do.
24 Q And Mr. Mayerson asked you whose decision is
25 it, is it Nationwide's or is it the policyholders?

... THE COURT OF COMMONS OF PAS OF BERKS COUNTY, READING, PENNSYLVANIA

597

1 A Uh-huh.
2 Q And your answer was it's Nationwide's?
3 A Yeah. It says we may and Nationwide is "we."
4 Q Would it make any sense in insurance to have
5 policyholders make their own determinations as to what their
6 claims are?
7 A No.
8 Q I mean, insurance wouldn't be very profitable
9 if that's the way it was?
10 A Or affordable.
11 Q We wouldn't have any insurance companies?
12 A Exactly.
13 Q Not what their claims were, but how to resolve
14 their claims?
15 THE COURT: Yeah. To let policyholders make the
16 decision as to how their claim should be resolved. That
17 doesn't make any sense, does it?
18 THE WITNESS: No, the policyholder wouldn't.
19 THE COURT: That would be interesting. Then maybe
20 I'd keep my policy after all.
21 BY MR. COHEN:
22 Q Mr. Mayerson also asked you a series of
23 questions about why you didn't or why Nationwide didn't work
24 to resolve the Berg's claim after his November 3rd
25 correspondence. Do you remember that?

598

1 A Yes.
2 Q You said something like, well, you guys knew
3 as of November 3rd that I was involved; correct?
4 A Right.
5 Q Do you remember that November 3rd letter?
6 A I would have to refresh my memory, but I
7 believe that's the letter that states they're going to work
8 through Lindgren.
9 Q Right. And this is Page 1170?
10 A Yes, I have it here.
11 Q Do you recall the third paragraph down that
12 says, "Please do not contact Lindgren Chrysler-Plymouth as
13 your communications may have an impact upon the Berg's
14 pending litigation against Lindgren"?
15 A That's correct.
16 Q So how would Nationwide be able to work with
17 Lindgren if they were instructed by the Berg's attorney not
18 to work with Lindgren?
19 A We couldn't.
20 MR. COHEN: Thank you. Nothing further.
21 THE COURT: Okay. Thank you very much. You may step
22 down. All right. I assume you're ready with your next
23 witness this afternoon when you come back?
24 MR. COHEN: Yes.
25 THE COURT: Okay. Let me ask a question here: Is

599

1 there going to be any testimony as to who or why the
2 redactions were made to Exhibit 46 or is that going to
3 continue to be something that's unknown to the Court?
4 MR. COHEN: There's not going to be any testimony
5 with regard to that, Your Honor.
6 THE COURT: Is there going to be any explanation?
7 MR. COHEN: I don't believe so at this point. We --
8 THE COURT: What do you mean at this point? We're at
9 the end of this case. Don't you think the Court ought to
10 know who made the redactions or why the redactions were made?
11 MR. COHEN: This matter was raised by Mr. Mayerson --
12 THE COURT: I don't care. Don't tell me it was
13 raised by Mr. Mayerson with Judge Lash. I think that's what
14 you were about to say because that's all I've heard with
15 regard to redactions so far. I'm not interested in that
16 unless there has been a Court order by Judge Lash relative to
17 the redactions of what now is Exhibit 46. And if there's no
18 explanation, then I guess I will just have to make some
19 assumptions.
20 MR. COHEN: Counsel made the redactions, Your Honor.
21 THE COURT: Whose counsel?
22 MR. COHEN: My firm made those redactions.
23 THE COURT: And why?
24 MR. COHEN: I don't recall. I wasn't working on the
25 file at the time the redactions were made. They were made

600

1 back when the file was at Post and Schell, the predecessor
2 firm.
3 THE COURT: I assume you know why they were made.
4 They were made by someone else who had the file before you
5 took it over.
6 MR. COHEN: They were made based on work product and
7 attorney/client privilege issues.
8 THE COURT: That's the answer that I thought. Now I
9 have it. Now it's a part of the record.
10 MR. COHEN: Thank you, Your Honor. Now, I think that
11 you were also then going to say that there was some kind of
12 proceeding before Judge Lash relative to the Plaintiff's
13 request to disclose to the Plaintiff what these redactions
14 were. Is that what you were about to say?
15 MR. COHEN: That's correct, Your Honor. And Judge
16 Lash did not --
17 THE COURT: In what form was that raised with Judge
18 Lash?
19 MR. COHEN: In a motion to compel and a motion for
20 sanctions.
21 THE COURT: And can you tell me what the date was or
22 where the file number is or where I can find that in the
23 record because this record now is about 3 feet high. I don't
24 have three law clerks to climb through all this.
25 MR. COHEN: That was on September 8th, 2004, Your

601

1 Honor.

2 THE COURT: September 8th, 2004. Do you have an

3 extra copy there?

4 MR. COHEN: I do, Your Honor.

5 THE COURT: And what is -- Judge Lash entered an

6 order?

7 MR. COHEN: That's the order you have, Your Honor.

8 THE COURT: Oh, this is the order. Okay. That's

9 what I am looking for. Okay. We'll be back here at 1:30.

10 MR. B. MAYERSON: Your Honor, if I may just have a

11 moment to clarify a point on this issue.

12 THE COURT: On what issue?

13 MR. B. MAYERSON: On the issue of Mr. Cohen claiming

14 that the material was redacted pursuant to the

15 attorney/client privilege and work product doctrine.

16 THE COURT: I'm not interested. I assume that that

17 decision by Judge Lash, which is seven or eight pages, will

18 tell me everything that I want to know. And the order says:

19 And now, this 8th day of September, upon consideration of the

20 motion of the Plaintiffs, Daniel Berg and Sharon Berg,

21 husband and wife, for sanctions and in camera review and

22 review of the file, the motion is hereby denied.

23 MR. B. MAYERSON: It never reached the merits of the

24 motion. He did it on timeliness.

25 THE COURT: He what?

602

1 MR. B. MAYERSON: He made his order on timeliness.

2 He says, I don't want to say a page number.

3 THE COURT: Do you mind if I read what Judge Lash

4 said? Quite frankly, I'm more interested in what he said

5 than what you said.

6 Okay. We're in recess until 1:30.

7 MR. COHEN: Thank you, Your Honor.

8 (Whereupon, a luncheon recess was taken.)

9 THE COURT: All right. I've read my order of March

10 the 15th of 1999 where I addressed the issue of lawyer/client

11 privileged relationships and it appears to me from what Judge

12 Lash did on September the 8th, 2004 he passed judgment on the

13 same underlying issue, made reference to my order and as far

14 as I'm concerned that is now closed. Okay. Constance

15 Foster.

16 MR. COHEN: Your Honor, may I hand Ms. Foster a cup

17 of water?

18 THE COURT: She didn't even start and she needs a cup

19 of water?

20 THE WITNESS: It was hot out.

21 THE COURT: Do you want to swear her in, Carmen?

22 CONSTANCE FOSTER, Sworn.

23 THE CLERK: Please be seated. State your full name

24 for the record.

25 THE WITNESS: Constance Foster, F-0-5-T-E-R.

603

1 MR. COHEN: Your Honor, as I stated earlier, we are

2 offering Ms. Foster as an expert with regard to insurance

3 claims practices and insurance regulatory matters.

4 THE COURT: And to express the four opinions.

5 MR. COHEN: Actually, we are --

6 THE COURT: That are set forth in the trial brief

7 Pages 79 and 78.

8 MR. COHEN: Actually, we're going to cut out the

9 fourth one based on the evidence that's been presented.

10 THE COURT: That's what I want to know. We can trim

11 down the issues. She will express opinions with regard to

12 the first three.

13 MR. COHEN: Yes, Your Honor.

14 VOIR DIRE EXAMINATION

15 BY MR. COHEN:

16 Q Ms. Foster, could you tell the Court where you

17 live currently?

18 A I live in Lower Paxton Township in

19 Pennsylvania.

20 Q Okay. And where are you currently employed?

21 A I am a partner of the Law Firm of Saul Ewing

22 in the Harrisburg office.

23 Q And what role do you play at Saul Ewing?

24 A I actually have a couple roles. I am co-chair

25 of the firm's insurance practice group. In addition, I am

604

1 currently the Chairman of the firm's Business Department.

2 Q Okay. Let's step back in time. Are you an

3 attorney?

4 A I am.

5 Q Okay. And where did you go to law school?

6 A I graduated from Rutgers Camden Law School in

7 1975.

8 Q And before that where did you go to college?

9 A U.C.L.A.

10 Q How long have you been at Saul Ewing?

11 A Except for a six-month period while I was at

12 FICO Insurance Company I've been at Saul Ewing ever since I

13 left the Insurance department in 1992.

14 Q Okay. And as part of your role as Chair of

15 the Business Practice Group and the Insurance Practice Group,

16 what are your responsibilities, what do you do in that role?

17 A In my management role?

18 Q Yes.

19 A Well, in my management role we have a very

20 substantial insurance practice that covers everything from

21 regulation to transactions to litigation, and I'm responsible

22 basically for managing the 30-some attorneys. In addition,

23 our business group is 90 lawyers and I also have that role as

24 to them.

25 Q Prior to working at Saul Ewing, where were

IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

605

1 you?

2 A I was the Insurance Commissioner for the
3 Commonwealth of Pennsylvania from 1987 through 1992.

4 Q Now, tell me what that means, that you were
5 the Insurance Commissioner for Pennsylvania?

6 A Well, the Insurance Commissioner is a member
7 of the Governor's cabinet. It is an appointed position but
8 you have to be confirmed by the Senate, which I was twice.
9 Because I actually was first in 1987 and then again in 1991.
10 It means that you are the chief regulator for the
11 Commonwealth of Pennsylvania and have responsibility for all
12 aspects of insurance regulations, rates, forms, customer
13 complaints, insurance solvency, just to name a few of those
14 responsibilities.

15 Q What is the -- what is the role of the
16 Insurance Department briefly? Is that a -- do they look out
17 for customers or insurance companies?

18 A Both. They do both. They have primary
19 responsibilities for insurance companies. That is their
20 solvency, which is one of the most primary responsibilities
21 that they have. But, in addition, to make sure that all
22 insurance that gets sold in the Commonwealth of Pennsylvania
23 is sold pursuant to the various statutes and regulations.

24 In addition though it has a very large customer
25 protection responsibility and it has customer protection

606

1 offices in Erie, Pittsburgh, Harrisburg and Philadelphia
2 where customer services reps do nothing but assist customers
3 in issues that they're having regarding their insurance
4 coverage.

5 Q So the insurance company, do they handle
6 customer complaints?

7 A They handle customer complaints. If they
8 can't be resolved at that level, they actually go through an
9 adjudicatory process and a full hearing and I actually sat as
10 adjudicator on customer complaints, everything from the
11 Unfair Insurance Practices Act to the Unfair Claim Settlement
12 Act, broker issues, et cetera.

13 Q Does the Insurance Department do something
14 called market conduct exams?

15 A Yes, that's part of their enforcement
16 capability. That's another responsibility of the Insurance
17 Department. And the focus -- there's two kind of
18 examinations that the Department does. There's financial
19 exams, which are exactly what they sound like they do and
20 test the solvency of insurance companies. Market conduct
21 exams are focused on compliance. Are the companies complying
22 with all of the various regulations concerning their
23 insurance products; form approval, sales materials, et
24 cetera, and if violations are found, they result either in a
25 consent order or in a full hearing and adjudication.

607

1 Q During your tenure at the Department of
2 Insurance did you have occasion to become familiar with
3 various insurance statutes and regulations in Pennsylvania
4 with regard to insurance companies?

5 A Yes, I did. In fact, if I could add, on the
6 market conduct, that was actually one of my initiatives.
7 Pennsylvania started market conduct exams while I was the
8 Commissioner.

9 THE COURT: On what exams?

10 THE WITNESS: The market conduct which are compliance
11 examinations.

12 BY MR. COHEN:

13 Q What types of statutes and regulations would
14 you be familiar with in your role as Commissioner of
15 insurance in Pennsylvania?

16 A Well, again, it would be a very wide range,
17 you know, starting with statutes such as the Insurance
18 Holding Companies Act which regulates sort of the business of
19 insurance, the various financial solvency statutes, the rates
20 and form regulation statutes, the Unfair Insurance Practices
21 Act, the Unfair Claim Settlement Regulation. Those are just
22 a few that I could name. There's two large volumes.

23 Q How about the Bad Faith Statute?

24 A Yes. Well, the Bad Faith Statute was actually
25 passed in 1990 and it was actually part of what I know as Act

608

1 6 which was the Insurance Reform Act of 1990 which was my
2 highest initiative during that time. It was when Governor
3 Casey came to office. Insurance premiums at that time were
4 going up 16 to 18 percent a year, and he made it my charge to
5 address and to come up with a reform proposal to bring
6 insurance premiums back into line and make them more
7 affordable.

8 The result of that is what's known as Act 6 and a
9 piece of Act 6 is what we now know as the Bad Faith Statute.
10 It's actually part of that act.

11 Q So you were instrumental in the passage of the
12 Bad Faith Statute?

13 A It was part of the -- it was part of the
14 overall statute that was passed. The Bad Faith Statute
15 itself was not part of the proposal that was put forth by the
16 Insurance Department. As you can imagine there are lots of
17 compromises and lots of people in the normal legislative
18 process. But, yes, it was a part of the overall reform, yes.

19 Q Would you say that you have a deep working
20 knowledge of the insurance statutes and regulations in
21 Pennsylvania? Would you consider yourself an expert in those
22 areas?

23 A I do. I mean, based both on the fact that
24 that's what I did for five years, but also it's really what
25 I've been doing since 1992. Since I left the Insurance

IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

609

1 Department, my practice is predominantly in insurance
2 regulatory practice; although, I also do some transactions
3 and other kind of things. But what I do every day is counsel
4 insurance companies, insurance brokerages as well as
5 policyholders regarding their own relationship with their
6 insurance companies.

7 Q There's been some testimony of various
8 Nationwide people that they're the top guy at Nationwide in
9 this area or that area. Would you say that the Insurance
10 Commissioner is the top insurance regulator position in
11 Pennsylvania?

12 A Oh, absolutely.

13 Q So you're as high as they get or at the time
14 you were there that was your role?

15 A That's correct.

16 Q Okay. Before joining --

17 THE COURT: But she wasn't the top guy.

18 MR. COHEN: Top woman. My apologies.

19 THE COURT: This is out of respect for the young lady
20 sitting next to you, who I don't think you ever introduced to
21 me. But that's all right. I know who she is.

22 MR. COHEN: I'm terribly sorry.

23 MS. NULTY: See what I have to put up with.

24 THE COURT: He'll grow up when he has two adult
25 professional daughters like I have. They will shake him up.

610

1 MS. NULTY: I hope so.

2 MR. COHEN: I lost my train of thought.

3 BY MR. COHEN:

4 Q Before joining the department did you have any
5 experience with an insurance company?

6 A Before joining the department, no.

7 Q Working for an insurance company?

8 A No.

9 Q Okay. What about after the department?

10 A Yes. As I mentioned earlier, I spent six
11 months as the CEO of FICO Insurance Company.

12 Q So you were the top woman at FICO Insurance
13 Company?

14 A That's correct.

15 Q Okay. And in that role you had experience
16 dealing with insurance matters obviously?

17 A Obviously that was our business.

18 Q Okay. Did you ever testify before in a court
19 of law as an expert?

20 A Yes, I have.

21 Q And I guess does it go without saying you've
22 been qualified as an expert in these cases?

23 A Yes, I have.

24 THE COURT: And is that to render opinions similar to
25 the three that you expect to render here today?

611

1 THE WITNESS: Not all of them. I believe three of
2 them are on exactly -- are very similar issues under the Bad
3 Faith Statute.

4 THE COURT: Right. The first three you're going to
5 testify to --

6 THE WITNESS: Yes.

7 THE COURT: Have you ever not been qualified or been
8 disqualified as an expert in a case?

9 THE WITNESS: No.

10 BY MR. COHEN:

11 Q Were you sent some materials by my firm to
12 review in preparation of your reports that you submitted to
13 us in this case?

14 A Boxes of materials.

15 Q Boxes?

16 A Yes.

17 Q Just give me a general idea of the types of
18 materials that it is that you looked at?

19 A Well, there were really two different phases.
20 Originally I was provided with --

21 MR. COHEN: I'm sorry. Is there an objection?

22 THE COURT: Are you stretching your legs or what?

23 MR. H. MAYERSON: I was wondering if I could cross on
24 voir dire.

25 THE COURT: At the proper time. Go ahead.

612

1 THE WITNESS: In the first phase I was provided with
2 depositions, exhibits, the claim's log, those kinds of
3 materials which I had reviewed prior to preparing my initial
4 report. Then subsequently after Phase 1 of this trial I was
5 also provided with the trial -- the complete trial testimony
6 as well as all the exhibits that were entered into evidence
7 in the first phase of the trial. And there may have been a
8 few additional materials, I don't remember.

9 BY MR. COHEN:

10 Q Okay. And during this phase -- you've been in
11 the courtroom the entire time?

12 A Yes, I have.

13 Q And you've heard all of the testimony from
14 this phase of the trial?

15 A I have.

16 Q So between the first phase and the second
17 phase have you heard all of the testimony that was offered in
18 this case?

19 A Well, I read all of the testimony from the
20 first phase of the trial, and I personally heard all the
21 testimony in the second phase.

22 Q Okay. And I'm going to ask you the questions
23 that we specifically asked you to answer. But, I guess my
24 question to you is: Based on all of the material that we've
25 provided to you, based on the review of the testimony, based

IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

1 on your sitting here in the courtroom, do you believe that
2 you are capable of rendering an opinion with regard to the
3 questions that we asked you to consider?

4 A Yes.

5 THE COURT: within a reasonable degree of what kind
6 of certainty?

7 MR. COHEN: within a reasonable degree of certainty
8 within the insurance industry, particularly with regard to
9 regulatory compliance and regulatory matters?

10 THE WITNESS: Yes.

11 MR. COHEN: I probably could have trimmed that down a
12 little bit.

13 THE COURT: Okay. Cross-examine.

14 MR. B. MAYERSON: Thank you. With regard to
15 qualifications?

16 THE COURT: Are you challenging her qualifications or
17 aren't you?

18 MR. H. MAYERSON: Slightly.

19 THE COURT: You want to have some discussion with
20 her?

21 MR. H. MAYERSON: I'd like to have a little
22 discussion.

23 THE COURT: In other words, you're not challenging
24 her qualifications to testify on these three opinions that
25 are in this pretrial brief of the Defendant, Page 1, 2 and 3

1 beginning on Page 79.

2 MR. H. MAYERSON: Not as to -- can I have my
3 examination, Your Honor, and then I'll determine.

4 THE COURT: Well, you see --

5 MR. H. MAYERSON: She is eminently qualified to
6 testify in insurance matters. I have no problem with that.

7 THE COURT: All right. Well then, that's all we need
8 to know at this particular point. Let's have the
9 examination.

10 MR. H. MAYERSON: I do have some questions.

11 THE COURT: Otherwise, you have to wait for your
12 cross-examination until you heard direct examination. This
13 is with regard to qualifications. You said she's eminently
14 qualified.

15 MR. H. MAYERSON: I want to know if she's ever
16 appraised a car loss.

17 THE COURT: Ask her that? Is there any opinion here
18 that has to do with a car loss?

19 MR. H. MAYERSON: Collision claim.

20 THE COURT: What does it say?

21 MR. H. MAYERSON: In the good faith handling payment
22 of Plaintiff's collision claim. I'd like to know what her
23 experience is in handling collision claims.

24 THE COURT: She's not going to give any opinion with
25 regard to her handling of insurance claims or what she knows

1 about handling insurance claims. She's giving the opinions
2 of what she understands of the regulations, I assume, and
3 what the law is and what are the compliance requirements, et
4 cetera.

5 MR. H. MAYERSON: Your Honor, the first --

6 THE COURT: I'm sorry. I don't think you're
7 addressing the issue of qualifications. She's qualified. Go
8 ahead.

9 MR. COHEN: Thank you, Your Honor.

10 THE COURT: I'm trying to save some time for
11 cross-examination if you need that time this afternoon.

12 MR. H. MAYERSON: Thank you, Your Honor.

13 DIRECT EXAMINATION

14 BY MR. COHEN:

15 Q Ms. Foster, do you have the questions in front
16 of you that you were asked to address?

17 A Yes, I do.

18 Q Okay. Why don't we just go through the three
19 questions and then we'll take each one in turn.

20 THE COURT: Take them one at a time.

21 MR. COHEN: Okay. One at a time.

22 THE COURT: First question is: Were you asked to
23 give an opinion as to whether or not Nationwide acted in good
24 faith in the handling of payment and collision claims arising
25 under this policy?

1 THE WITNESS: Yes.

2 THE COURT: And do you have an opinion?

3 THE WITNESS: Yes, I do.

4 THE COURT: What is your opinion?

5 THE WITNESS: My opinion is that Nationwide acted in
6 good faith in regard to the Berg's collision claim arising
7 under their Nationwide policy.

8 BY MR. COHEN:

9 Q Okay. And could you give the basis for that
10 opinion?

11 A Yes. In analyzing whether or not there's been
12 a violation of a Bad Faith Statute I believe that there are
13 four separate crucial elements or criteria that you have to
14 look at. First, under the Bad Faith Statute itself it says
15 that it has to be a claim arising under the insurance policy.

16 THE COURT: Talk to me. You already talked to him.
17 This is a hard room to hear. All right. Good. Yeah. Go
18 ahead.

19 THE WITNESS: The first question is: Is it a claim
20 under an insurance policy? That's what section -- that's
21 what the Bad Faith Statute only applies to, are claims under
22 insurance policies. And then secondly, whether or not the
23 file or the testimony reveals or supports the question of
24 whether or not Nationwide unreasonably denied the Bergs
25 proceeds under the policy. That's the second test that's

617

1 been well established.

2 THE COURT: Nationwide denied what?

3 THE WITNESS: Unreasonably denied the Bergs the

4 proceeds under the policy.

5 THE COURT: Hold on.

6 THE WITNESS: And then thirdly is whether Nationwide

7 --

8 THE COURT: Unreasonably denied proceeds of the

9 policy.

10 THE WITNESS: Right.

11 THE COURT: Okay.

12 THE WITNESS: And then the third test is whether

13 Nationwide recklessly ignored its lack of a reasonable basis.

14 BY MR. COHEN:

15 Q Ms. Foster --

16 THE COURT: Recklessly ignored --

17 THE WITNESS: Or disregarded --

18 THE COURT: What?

19 THE WITNESS: The lack of a reasonable basis for

20 denying benefits under the policy.

21 THE COURT: What's the fourth?

22 THE WITNESS: The fourth test, if all the three prior

23 tests have been proven and it has been done so with clear and

24 convincing or clear and compelling evidence --

25 MR. COHEN: Convincing.

618

1 THE WITNESS: Convincing evidence. So, if you're

2 ready, so what I did in this case -- so what I did in regard

3 to the Berg's matter is addressed those items one at a time

4 starting with the question of whether or not this was a claim

5 under the insurance policy.

6 Now, as to the collision claim or what we've been

7 calling here the physical damage claim, I -- I believe that

8 it is a claim under the policy; that the insurance policy

9 provided coverage to the Bergs in case -- in the happenstance

10 of damage to their automobile and that Nationwide had an

11 obligation to indemnify the Bergs in such a case. So it

12 passed test number one.

13 In moving on to test number two the question is: was

14 there a denial of proceeds under the policy? I do not

15 believe that there was a denial of proceeds under the policy

16 as Nationwide's obligation under the policy, as I said, was

17 to indemnify the Bergs for the damage to their automobile.

18 And as was testified to this morning is the policy lays out

19 the various ways that that can be done. It can be done by

20 paying the Bergs directly and just giving them a check and

21 they can do with the money whatever they want or it can be

22 done the way that it was done in their case, which is

23 actually to pay directly the auto body shop and/or the parts

24 store for the costs of repairing the automobile. That is

25 their obligation under the policy and that was done.

619

1 And, in fact, I don't believe that there's actually

2 any allegation that that was not done. Because in the first

3 phase of this case, Plaintiff withdrew his contract claim. I

4 have to tell you that I was actually surprised when I saw

5 that because how can there be a claim for bad faith when one

6 of the predicates for bad faith is denial of proceeds under

7 the policy and you haven't alleged or asserted or claimed

8 that, in fact, a contract breach occurred.

9 So as to that first -- as to that on the first

10 question I don't believe that there was not only not an

11 unreasonable failure to pay the proceeds under the policy, in

12 fact, there was no failure to pay the proceeds under the

13 policy. And given that, you don't get to steps three or

14 four.

15 BY MR. COHEN:

16 Q Very well. There was some testimony by

17 Plaintiff's expert yesterday, Mr. Chett. And Mr. Chett was

18 trying to establish that one of his opinions was that

19 Nationwide acted in bad faith based on a defend-at-all-costs

20 notice. I think in his report he said "scorched Earth" and

21 then he took that back and said "defend at all costs." Were

22 you here for that testimony?

23 A Yes.

24 Q And what's your opinion with regard to that

25 issue and bad faith?

620

1 A Well, the defend-at-all-costs issue I think

2 you have to look, as I did, you have to look at the

3 circumstances of each individual case. Here a litigation as

4 we've heard many, many times ensued some four days or ten

5 days after the initial making of the claim. Once that --

6 MR. H. MAYERSON: Excuse me. I didn't hear that

7 after the initial.

8 THE WITNESS: After the time the claim was made, the

9 Blue Ribbon claim --

10 MR. COHEN: Okay.

11 THE WITNESS: And what I did is I looked at the

12 docket entries in this case. Because, you know, it's clear

13 that sometimes litigation tactics can be an issue in court in

14 a bad faith case. So I took a look at the docket entries and

15 tried to evaluate and did evaluate what was causing -- who

16 was the moving party because a defend-at-all-costs scenario

17 can be where Defendant's notice 30 depositions in far away

18 places simply to try to make it very expensive and difficult

19 for the Plaintiff.

20 Here when I looked at what was filed starting with

21 the eight complaints and the five class action complaints;

22 eight amended complaints, when I looked at who noticed the

23 depositions and the depositions that were noticed, who was

24 making all of the motions, all of the various motions, it was

25 just absolutely overwhelmingly clear that it was plaintiffs

IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

1 and plaintiffs choice on how to conduct this case. That was
2 the driving factor that, you know, made this case cost what
3 it has to both parties.

4 BY MR. COHEN:

5 Q There has been a lot of testimony with regard
6 to the Pennsylvania Best Claims Practices Manual. You were
7 here for that?

8 A Yes.

9 Q Okay. And when I say the Pennsylvania Best
10 Claims Practices Manual, I'm referring to the document that
11 is the casualty-related document, not the Material Damage
12 Best Practices that was spoken today.

13 A I understand. You're referring to the one
14 that was the issue in the Bonenberger case.

15 Q In the Bonenberger case, that's correct.

16 A Yes.

17 Q Do you have an opinion with regard to whether
18 or not that document in any way has a role in this case?

19 A I've not heard any evidence or read any
20 evidence or testimony that indicated in any way that that
21 manual was used in regard to the handling of the Berg claim.
22 And it is very clear that bad faith cases are not meant to
23 try every single thing that an insurance company does. But
24 what they're meant to do is evaluate how a particular claim
25 was handled. And therefore, only evidence which is relevant

1 and tied to how a particular claim was handled is valuable in
2 making a bad faith determination.

3 Q Okay. Just going back to timing of when
4 Nationwide was advised of the Berg's claim, there was a
5 letter dated November 3rd, 1997. Have you seen that letter?

6 A Yes.

7 Q Okay. And what relevance is there to you that
8 Plaintiff's counsel was instructing Nationwide not to take
9 any action on the Berg's claim with Lindgren?

10 A Well, I actually don't believe that letter was
11 notice of a claim. It was quite the opposite. It was notice
12 that as the agent of the Bergs it was simply notifying
13 Nationwide that there was a potential claim against Lindgren,
14 the body shop, and, in fact, instructed Nationwide sort of to
15 stay out of it and not communicate. I don't believe that
16 there was notice of any claim until April of 1998.

17 Q Okay. And that would be about a week before
18 the complaint was filed or --

19 A Ten days, something like that.

20 Q Okay.

21 THE COURT: If anything, it was a notice that there
22 was no claim against Nationwide.

23 THE WITNESS: Exactly. Exactly. That's the way it
24 sounds to me.

25 BY MR. COHEN:

1 Q There was some discussion yesterday about
2 whether or not settlement offers -- and this again ties into
3 what Mr. Chett was saying -- that settlement offers are
4 relevant to an issue of bad faith. Are you familiar with
5 that at all?

6 A I'm familiar with the concept that settlement
7 offers can be relevant.

8 Q Okay. In what context would they be relevant?

9 A Settlement offers can be, I think, relevant in
10 two circumstances I'm familiar with. There's the question of
11 whether or not you've settled within policy limits. That's
12 actually the Birth Center case that there was some discussion
13 about yesterday where there was a very large suit that was
14 filed against the Birth Center and the insurer failed even
15 though it had the opportunity allegedly to settle within
16 policy limits and exposed its insured to additional
17 liability.

18 There, obviously, the question of settlement offers
19 was relevant. The other context I'm familiar with, it comes
20 up in UM, UIM and there again the question is did insurer
21 make reasonable attempts to resolve the claim? I think the
22 critical thing that's important is settlement offers are only
23 relevant to the settlement of the claim under the policy. It
24 has -- I've never seen where a settlement offer of the bad
25 faith claim itself can somehow be evidence of bad faith.

1 Q The complaint in this case had allegations of
2 bad faith and allegations of breach of contract at least
3 before Plaintiff brought them?

4 A It did originally, yes.

5 Q So would Nationwide have been able to discuss
6 settlement of one without talking about the other in that
7 context?

8 A I have no idea of what, you know, what
9 discussions there actually were. The only thing that I'm
10 aware of is that Nationwide did try to move forward despite
11 the fact that there was a bad faith claim pending against
12 them, still tried to move forward in terms of resolving the
13 underlying Blue Ribbon Claim and ultimately purchase the
14 automobile despite the pendency of litigation.

15 THE COURT: How did they move forward?

16 THE WITNESS: First by trying, even though litigation
17 was pending, by continuing to try to get the car inspected.
18 And we've heard lots of stories about detailed inspection
19 attempts for various reasons. It never happened. Then when
20 the lease was running out and in order to preserve the
21 automobile and to ensure that there would be no harm to the
22 policyholders, Nationwide I believe paid \$18,000 to purchase
23 the car and to ensure that their policyholders would suffer
24 no financial ramifications from the defective repairs.

25 MR. COHEN: All right.

625

1 THE COURT: And again, remind me, who was the \$18,000
 2 paid to?

3 THE WITNESS: It was paid, I believe, to Summit Bank,
 4 who was the owner of the lease.

5 THE COURT: So there would be no liability to the
 6 Bergs from the lease?

7 THE WITNESS: Exactly, for any reason including the
 8 defective repairs.

9 THE COURT: I recall. You refreshed my memory as far
 10 as this part of the transcript is concerned.

11 BY MR. COHEN:

12 Q You mentioned several class action complaints
 13 that were filed. Would Nationwide have been able to settle
 14 those class action complaints with Plaintiffs without court
 15 intervention?

16 A Well, once you've moved into class action
 17 there's a whole separate set of rules that apply regarding
 18 how the case may be disposed of and it's not a simple
 19 transaction when it's a litigation between two parties.

20 MR. COHEN: Your Honor, that's all I have for the
 21 first question.

22 THE COURT: Okay. Second question. I'll let you ask
 23 this one.

24 BY MR. COHEN:

25 Q Ms. Foster, second question that we asked you

626

1 was: Is Plaintiff's guaranteed claim under Nationwide's Blue
 2 Ribbon Repair Program cognizable under Pennsylvania's Bad
 3 Faith Statute, assuming -- first part of the question --
 4 second part of the question, assuming Plaintiff's Blue Ribbon
 5 Repair Guarantee Claim is recognizable under Pennsylvania Bad
 6 Faith Statute-wide act in good faith with respect aaaaaa? Did
 7 Nationwide act in good faith with respect to such claim? Did
 8 you render an opinion on that question?

9 A Yes, I did.

10 Q And is that opinion -- what is that opinion?

11 A It's got two sub-parts, Your Honor. The first
 12 part is Plaintiff's Blue Ribbon Guarantee Claim cognizable
 13 under Pennsylvania Bad Faith Statutes. There I go back to my
 14 four steps and look at step number one and the question is:
 15 Is a claim under the Blue Ribbon Guarantee a claim under an
 16 insurance policy even to put you under the Bad Faith Statute?
 17 And I think the answer is clearly not.

18 Your insurance policy, the policy that's been marked
 19 and I think stipulated to in this proceeding, is a regulated
 20 document. That insurance policy, not a word in that
 21 insurance policy can be changed without Nationwide seeking
 22 and getting approval for that claim. So that --

23 THE COURT: From the Insurance Commissioner of the
 24 Insurance Department.

25 THE WITNESS: And the concept is exactly what an

627

1 insurance policy is. That's what it is. Anything else there
 2 may be obligations that flow and there may be even
 3 liabilities that flow that are outside the insurance policy,
 4 and I think that's exactly what you have in this case.

5 Because through their Blue Ribbon Guarantee I believe
 6 Nationwide undertook additional contractual obligations
 7 because it said to its policyholders if you go to a Blue
 8 Ribbon shop, it will be good for you because you won't have
 9 to worry about checks, and it will be easier for you and in
 10 exchange for that we will guarantee that something that we
 11 don't guarantee under the policy we will now guarantee that
 12 those repairs will be done correctly. And so I believe that
 13 Nationwide undertook and indeed had a separate contractual
 14 obligation to the Bergs.

15 THE COURT: Under the Blue Ribbon policy?

16 THE WITNESS: Through the Blue Ribbon policy or the
 17 guarantee. The issue though for bad faith is that is not an
 18 insurance policy.

19 THE COURT: Okay. So when you say here under
 20 Nationwide B-R-R-S, you're talking about Blue Ribbon Repair
 21 Service policy?

22 THE WITNESS: Yes. That is not an insurance policy
 23 for purposes of the Bad Faith Statute and Plaintiffs have
 24 tried, you know, lots of decisions out there where courts
 25 have repeatedly found that things are not part of the

628

1 insurance policy.

2 For example, discussions trying to bring the issue of
 3 renewal, whether or not a policy has been renewed under the
 4 Bad Faith Statute. The answer has been no. Trying to bring
 5 the decision of how much premium should have been charged.
 6 The answer is no, that doesn't. Trying to bring issues
 7 regarding sales of representations that were made. The
 8 answer is no. What the statute says and what the appellate
 9 courts have said it has to be proceeds under the policy.

10 THE COURT: Has to be what?

11 THE WITNESS: Proceeds under the policy, under an
 12 insurance policy and that is a defined term. That means the
 13 obligations, the legal obligations of the insurer under the
 14 insurance policy. And when I look at the Blue Ribbon Claim
 15 --

16 THE COURT: The proceeds under the policy and the
 17 application of it.

18 THE WITNESS: Yes. I do not believe that the Blue
 19 Ribbon Claim on the Blue Ribbon obligations are part of an
 20 insurance policy. They're a separate obligation.

21 THE COURT: Do you know of any decision by any
 22 appellate court in Pennsylvania that has specifically
 23 addressed that issue?

24 THE WITNESS: No, I don't. I'm not aware of one that
 25 has addressed physical damage issues. Somebody mentioned --

IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

629

1 THE COURT: Anything analogous got Blue Ribbon --
2 THE WITNESS: Physical damage claims very seldom get
3 litigated. It's not surprising there's no particular
4 precedent on that point.
5 THE COURT: Do you want to answer the second half of
6 that question, I'm sorry?
7 MR. COHEN: I do have some questions, not many.
8 BY MR. COHEN:
9 Q If Nationwide breached its obligation under
10 the Blue Ribbon Guarantee or the program, I'm not going to
11 call it a policy because I don't want to confuse the terms,
12 if it breached its obligations under this guarantee, would
13 plaintiffs have a remedy?
14 A Yes, they would have a remedy for breach of
15 contract, I believe.
16 Q Would they have a remedy possibly in an
17 administrative proceeding before the Department of Insurance?
18 A That one is a little harder because unlike
19 renewal terms and premium rates these programs are not -- are
20 not directly regulated, but I would think they would
21 definitely have all of their civil remedies.
22 Q What about some of the claims that plaintiffs
23 brought in the first phase of trial, the unfair trade
24 practices of customer protection law and the -- those types
25 of --

630

1 A I think those all apply to policies and they
2 would only apply to the insurance policy, not to this type of
3 extra different kind of relationship.
4 Q Okay. Now --
5 A It would be the same thing. For example, I
6 think a good example is if an insurer volunteered to help a
7 policyholder with a tow truck and the tow truck somehow
8 messed up and there was additional damage done to the car.
9 There could be claims there, but they wouldn't be claims
10 under the insurance policy.
11 Q Okay. Now, the second part of your question
12 of the question that we asked you was --
13 THE COURT: Are you saying that under the
14 Pennsylvania Unfair Trade Practices and Customer Protection
15 Law that any claims under that Act have to arise out of a
16 policy?
17 THE WITNESS: Yes.
18 THE COURT: They do.
19 THE WITNESS: Yes, I do believe that, that they're
20 there to regulate the insurance relationship and the
21 insurance relationship is the relationship that is defined
22 within the insurance policy.
23 THE COURT: Okay. Go ahead.
24 BY MR. COHEN:
25 Q I want to make sure we're not confused. I

631

1 want to make sure you're not referring to the Unfair Insuring
2 Practice or the Unfair Trade Practices and Pennsylvania law.
3 A Those are two different things.
4 Q I know and there's the Appraiser's Act and I
5 want to make sure you're not confused.
6 A I was referring to the unfair Insuring
7 Practice. I was not referring there to the customer
8 protection law. I believe there would be a potential remedy.
9 THE COURT: That has nothing to do with an insurance
10 policy.
11 THE WITNESS: Right, for the Blue Ribbon coverage.
12 MR. COHEN: Okay. I wanted to clear that up.
13 THE COURT: I won't ask anymore questions if I
14 confuse you.
15 BY MR. COHEN:
16 Q The second part of the question is --
17 THE COURT: You had me confused. We'd have to start
18 from square one.
19 BY MR. COHEN:
20 Q The second part of the question is: Assuming
21 Plaintiff's Blue Ribbon Repair Service Guarantee claim is
22 recognizable under Pennsylvania's Bad Faith Statute, which I
23 believe you said it's not, did Nationwide act in good faith
24 with respect to such claim?
25 A I think the answer is yes. As we just

632

1 discussed, notice of that claim was only given in mid April
2 that within days of notice of that Blue Ribbon Claim that
3 Nationwide sent out an appraiser, you know, to take a look.
4 It was a year later. It seemed to me one of the preliminary
5 questions was, was this damage still related to the original
6 repairs. There's always a possibility that something else
7 has happened in the interim. They sent someone out and
8 confirmed it was subject that the -- that it was defects in
9 the original repairs and, you know, two days later the
10 litigation began.
11 And as I mentioned earlier, despite the fact that
12 they were now in litigation and that they had Bad Faith
13 Claims against them, Nationwide nevertheless moved forward to
14 try to resolve the Blue Ribbon Claim independent of the bad
15 faith claim and ultimately met its responsibility by
16 purchasing the car. That's without a release or anything
17 from the policyholders. It just did that reliably.
18 Q Let's move on to the third question, okay.
19 The third question is: Are Plaintiff's allegations relating
20 to Nationwide's Blue Ribbon Repair Service Program sufficient
21 to maintain a bad faith action against Nationwide with
22 respect to the handling of Plaintiff's specific claims?
23 A No.
24 Q Okay.
25 A I mean, I've heard a lot of testimony and read

JULY 2015 COUNTY READING, PENNSYLVANIA

1 a lot of testimony about the Blue Ribbon Program; about how
2 it works, random inspections, log books, et cetera. That --
3 none of that evidence was tied to the Berg's claim, their
4 Blue Ribbon. When I look at the Berg's claim it is -- there
5 were repairs done. They brought it back a couple times in
6 January and February of 1997. Nationwide pays for the claim
7 and hears nothing until almost a year later in November
8 saying that there was a claim against Lindgren but not
9 against you. And then finally the claim in April with
10 litigation a few days later.

11 THE COURT: And who did they pay the claim to, you
12 said they paid the claim -- Nationwide paid the claim?

13 THE WITNESS: Met its responsibility under the policy
14 by paying Summit Bank.

15 THE COURT: Summit Bank the \$18,000.

16 THE WITNESS: The \$18,000 and thereby avoiding any
17 liability that the Bergs may have relating to that
18 automobile. That's the evidence that's relevant to this
19 claim.

20 And when I look at that evidence it's, you know, they
21 met their responsibilities. You don't even get to bad faith
22 because again if bad faith applied to the Blue Ribbon, which
23 I believe it does not --

24 THE COURT: And the \$18,000, you say that that
25 payment absolved Nationwide. The \$18,000 was for what again?

1 THE WITNESS: The \$18,000 bought out the lease and
2 therefore any obligations regarding excess mileage or any
3 problem. This may have been because of the diminished value
4 of the automobile due to the defective repairs which could
5 have -- which the leasing company could have charged the
6 Bergs because the Bergs were relieved of because --

7 THE COURT: Wasn't there testimony in the first half
8 of the case specifically with regard to what the \$18,000
9 represented, was that the value of the car?

10 MR. COHEN: It was the residual value of the vehicle.

11 THE COURT: And who was joined in determining that
12 amount?

13 MR. COHEN: I'm sorry, Your Honor.

14 THE COURT: Who was involved in determining that
15 amount?

16 MR. COHEN: That was the stated amount that Summit
17 Bank informed us was the amount to purchase the vehicle. The
18 lease was over and it was time to either --

19 THE COURT: I understand that. Were the Bergs
20 involved in agreeing to that amount?

21 MR. COHEN: I don't believe the Bergs had anything to
22 do with it at that point.

23 THE COURT: That's not my question.

24 MR. COHEN: I don't know the answer to that question.
25 I don't believe that they were.

1 MR. H. MAYERSON: The answer is no, Your Honor.

2 THE WITNESS: There were various requests by the
3 Bergs for Nationwide to, in fact, purchase the automobile.
4 That started actually in April.

5 THE COURT: From the leasing company?

6 THE WITNESS: Yeah, I mean, that's who you would have
7 to purchase it from.

8 THE COURT: That's just it.

9 THE WITNESS: You couldn't buy it from the Bergs
10 because the Bergs' only ownership interest was in the lease.
11 So anything they would purchase from the Bergs would only be
12 the remainder of that lease and it wouldn't give them the
13 protection. The only way to protect them would be --

14 THE COURT: But the Bergs were the parties to the
15 insurance policy, were they not, that leasing company?

16 THE WITNESS: They're here. We're talking about the
17 Blue Ribbon Policy.

18 THE COURT: The Blue Ribbon Policy came about as a
19 result of the Bergs having a policy with Nationwide Insurance
20 Company.

21 THE COURT: So it's one in the same?

22 THE WITNESS: No, that's from you, to us. If I was,
23 I could be -- because it also applied to third-party
24 claimants. If Ms. Berg had someone and it had been an
25 at-fault accident and that person was insured by Allstate,

1 they were also eligible for the Blue Ribbon Program. Being
2 an insured of Nationwide is not a condition precedent to
3 eligibility for this additional service.

4 THE COURT: Okay.

5 BY MR. COHEN:

6 Q Nationwide also made payments to Lindgren of I
7 believe \$12,000 for the repair of the vehicle, as well?

8 A That was the payment under the policy, that's
9 correct.

10 Q That would have been Nationwide's obligation
11 under the policy; correct?

12 A That's correct.

13 Q All right. How did you render an opinion in
14 answer to his question as well regarding the jury's verdict
15 under the Unfair Trade Practices and Customer Protection Law.
16 How does that factor into your opinion?

17 A I believe that the jury verdict, which was
18 rendered under the Unfair Trade Act, is simply not a factor
19 in this case. If they had presented the jury with the
20 opportunity to render an opinion or make the decision
21 regarding a contract claim, whether or not there had been a
22 breach of their original contractual obligations under the
23 insurance policies, I could see the connection. However, the
24 unfair insurance -- the Unfair Trade Practices Act claim was,
25 in essence, a tort claim if you look at their complaint. It

1 talks about deception and misleading and confused. So
 2 obviously the jury found that Nationwide had done something
 3 in the nature of a tort that for which it gave the \$295
 4 verdict, but it clearly was not related to proceeds under the
 5 policy.
 6 Q The opinions that you have given today, again,
 7 they are all -- are they all to a reasonable degree of
 8 insurance regulatory certainty?
 9 A Yes.
 10 Q And insurance claims practices certainty?
 11 A Yes.
 12 MR. COHEN: Did I miss anything?
 13 THE WITNESS: No.
 14 MR. COHEN: Hold on. Let me think for a second.
 15 MR. H. MAYERSON: May I answer that?
 16 MR. COHEN: Thank you, Ms. Foster.
 17 THE COURT: All right. We'll take a recess for ten,
 18 fifteen minutes.
 19 (Whereupon, a brief recess was taken.)
 20 THE COURT: Cross-examine.
 21 CROSS-EXAMINATION
 22 BY MR. H. MAYERSON:
 23 Q Good afternoon. How may I make you most
 24 comfortable, Miss or Mrs.?
 25 A Doesn't matter.

1 THE COURT: What did you say?
 2 THE WITNESS: Doesn't matter. I'm still married no
 3 matter what.
 4 THE COURT: Can I tell you a little story at this
 5 point?
 6 THE WITNESS: Sure.
 7 THE COURT: This is off the record.
 8 (Whereupon, an off-the-record discussion was held.)
 9 THE COURT: All right. As he indicated, Mr.
 10 Mayerson, I grew up since then and never asked the question.
 11 MR. H. MAYERSON: I'm still waiting, Your Honor.
 12 THE COURT: What's that?
 13 MR. H. MAYERSON: I'm still waiting.
 14 THE COURT: For what?
 15 MR. H. MAYERSON: To grow up.
 16 THE COURT: Well, I had that problem too. Go ahead.
 17 BY MR. H. MAYERSON:
 18 Q Now, Mrs. Foster, you accepted at the time of
 19 Nationwide's referral of Bergs September 1996 appraisal of
 20 Lindgren, 40 percent of Lindgren's business was from
 21 Nationwide?
 22 A Do I accept that? I don't know there was
 23 testimony to that fact.
 24 Q You have no reason to dispute it, do you, so
 25 you accept it?

1 THE COURT: She's not here for that.
 2 BY MR. H. MAYERSON:
 3 Q Fine. I apologize. In return for obtaining
 4 that volume of business, one benefit that Lindgren gave
 5 Nationwide is a discount on parts and labor; is that correct?
 6 THE COURT: Does that have anything to do with her
 7 direct testimony? I don't think so. Here we are really
 8 restricted because this is an expert witness and she is
 9 addressing three opinions, and that's the reason why we do it
 10 this way. She's not to come in here and share everything she
 11 knows about everything with everybody. You didn't even pay
 12 her.
 13 MR. H. MAYERSON: Your Honor, if I may, I thought I
 14 was because we're talking about the payment of Plaintiff's
 15 collision claim arising under the policy.
 16 THE COURT: The objection is sustained.
 17 MR. H. MAYERSON: I want to know if there's a context
 18 --
 19 THE COURT: The objection is sustained.
 20 BY MR. H. MAYERSON:
 21 Q Nationwide people were in and out of Lindgren
 22 regularly. Do you accept that?
 23 MR. COHEN: Objection.
 24 BY MR. H. MAYERSON:
 25 Q During the time of the Berg repair --

1 THE COURT: If she knows. Overruled if she knows.
 2 THE WITNESS: All I know is that there was testimony
 3 by a disgruntled employee that that was the case.
 4 BY MR. H. MAYERSON:
 5 Q Wasn't there other testimony by Mr. Brumbine
 6 and Mr. Wert, well, Mr. Wert she's talking about --
 7 A Yeah, Mr. Wert is who I referred to.
 8 Q As a disgruntled employee?
 9 A Yes.
 10 Q Mr. Wert was also an eyewitness to the events,
 11 was he not?
 12 A Mr. Wert testified that he was in the Lindgren
 13 facility at the time that the Berg's vehicle was repaired.
 14 Q And, in fact, his employment record confirms
 15 that?
 16 A Yeah, I don't think that's in dispute.
 17 Q And Mr. Wert called the Bergs and gave them
 18 certain information; isn't that correct?
 19 A That's what I read in some of the testimony,
 20 that's correct.
 21 Q And by the way --
 22 THE COURT: Try to keep your voice up a little more.
 23 BY MR. H. MAYERSON:
 24 Q In your first opinion you gave a list of
 25 exhibits that you had reviewed; is that correct?

OFFICE OF THE PROthonARY DI EAST OF BERKS COUNTY, READING, PENNSYLVANIA

641

1 A Oh, you mean in my written report?

2 Q Yes.

3 A In my written report I attached a list of

4 documents that I had looked at, that's correct.

5 Q And the Wert deposition was not among those

6 documents, was it?

7 A I have to look. I don't remember. It's been

8 a long time. Name of deponent, Appendix A.

9 Q Yes.

10 A Well, that isn't that, that's the deposition,

11 name of deponent.

12 Q Is Mr. Wert on that list?

13 A Oh, David Wert, fired Lindgren employee.

14 Q Thank you. Now, he called the Bergs and told

15 them certain information such as the difficulties that he saw

16 with the car and that the fan shroud had been cut because the

17 engine couldn't fit back in; isn't that correct?

18 A Again, I'll say this was testimony to that

19 effect.

20 Q Well, isn't everything that Mr. Berg -- that

21 Mr. Wert said about the car proved true by Mr. Potosnak in

22 the April 10th investigation and Mr. Anderton's later

23 investigation?

24 A I think it's been even stipulated to that the

25 repairs were defective.

642

1 THE COURT: That what?

2 THE WITNESS: That the repairs were defective. The

3 original repairs were not done properly.

4 BY MR. H. MAYERSON:

5 Q I understand. But now we're trying to

6 determine the truth of what Mr. Wert testified about and

7 whether he testified merely as a disgruntled witness or

8 whether the facts that he testified to were true and correct.

9 MR. COHEN: Your Honor, I don't think this witness is

10 capable of testifying as to the truth or veracity of Mr.

11 Wert's testimony.

12 THE COURT: I assume he is trying to lay a foundation

13 for a question.

14 MR. H. MAYERSON: Correct.

15 THE COURT: Otherwise, this is of no consequence.

16 MR. H. MAYERSON: Exactly, Your Honor. That's what

17 I'm trying to do.

18 THE COURT: Ask the big question first and then get

19 an answer because she might totally agree with you and you

20 can skip all of this other stuff.

21 BY MR. H. MAYERSON:

22 Q Isn't it correct that if Mr. Wert's testimony

23 is accepted as correct by the trier of fact, that Nationwide

24 committed bad faith in not resolving it when they were in and

25 out when they saw the repairs, when they argued about it

643

1 where they were unhappy with what they were seeing --

2 THE COURT: Between what date and what date?

3 MR. H. MAYERSON: Between the date the repairs

4 started.

5 THE COURT: Between what date and what date?

6 MR. H. MAYERSON: October and November and December

7 of 1996.

8 THE COURT: That's the question. Do you understand

9 the question?

10 THE WITNESS: Absolutely not.

11 THE COURT: Absolutely not.

12 THE WITNESS: That claim, all of the facts that you

13 just talked about are only relevant to the Blue Ribbon Claim,

14 and the Blue Ribbon Claims I do not believe are part of the

15 policy and, therefore, not subject to the Bad Faith Statute.

16 MR. H. MAYERSON: That's your position

17 THE COURT: That's her opinion.

18 THE WITNESS: Sorry.

19 BY MR. H. MAYERSON:

20 Q Now, you said something that the Blue Ribbon

21 plan is offered to insureds and third parties, both?

22 A That's correct.

23 Q And aren't the obligations that Nationwide

24 owes under the Blue Ribbon Plan different to an insured than

25 it is to a third party?

644

1 A No, I don't believe so.

2 Q Doesn't it have a fiduciary obligation to its

3 insured?

4 A No.

5 Q To see that the car -- strike that. Doesn't

6 it have an obligation to live up to its insurance contract?

7 THE COURT: Wait a minute. Just a second. What is

8 your question because now --

9 MR. H. MAYERSON: Strike that.

10 THE COURT: You threw something else in there. She

11 testified on direct examination that they have a contractual

12 obligation, not a fiduciary obligation and then you threw

13 something else in there, another material -- I forget what it

14 was anymore, but I don't know what the question is. Ask the

15 question and strike that and ask another question.

16 MR. H. MAYERSON: Strike that.

17 BY MR. H. MAYERSON:

18 Q Isn't it correct that the insurance contract

19 survives the Blue Ribbon Program?

20 THE COURT: Survives the Blue Ribbon Program?

21 MR. H. MAYERSON: That it's still in existence while

22 the Blue Ribbon program is working.

23 THE COURT: I assume, if the premiums are paid. The

24 testimony has nothing to do with it. They're separate

25 obligations of Nationwide. One is not dependent upon the

IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

645

1 other. That's what the testimony was.
2 MR. H. MAYERSON: I understand what the testimony is.
3 I'm trying to test the testimony. I think just because she
4 says it, I hope that's not a fact.
5 THE COURT: Well, it's pretty darn persuasive. I
6 haven't heard anything to the contrary from the Plaintiff's
7 side. I heard allegations and argument with regard to it and
8 whatever.
9 BY MR. H. MAYERSON:
10 Q What information did Nationwide give the Bergs
11 about what rights the Bergs have under the Blue Ribbon Plan?
12 THE COURT: If she knows.
13 MR. H. MAYERSON: If you know.
14 THE WITNESS: In the testimony there was -- I
15 remember that there was testimony, I believe, from Mrs. Berg
16 about her telephone conversation with a Nationwide agent who
17 had told her about the Blue Ribbon Program.
18 THE COURT: You mean when they were originally --
19 THE WITNESS: Back in September.
20 THE COURT: After the accident?
21 THE WITNESS: Right, back in September immediately
22 following the accident.
23 BY MR. H. MAYERSON:
24 Q Is it your position that the Bergs waived
25 their insurance policy rights for bad faith by going under

646

1 the blue Ribbon Program?
2 A Absolutely not. I think I made it very clear
3 and, in fact, my first opinion traced the issue of whether or
4 not there was bad faith regarding the original collision
5 claim and Nationwide's obligations under the policy, under
6 the insurance policy that's been admitted here. It is a
7 completely separate question of their obligations under the
8 Blue Ribbon Program.
9 Q I want to ask about their obligations under
10 the insurance policy. Now, under the insurance policy they
11 had an obligation, did they not, to either pay the total loss
12 on the car or let me ask you this: What was their obligation
13 under the insurance policy once they were notified by the
14 Bergs of the loss?
15 THE COURT: She testified already. We had testimony
16 to that. Now, if you have a question that you disagree with
17 what the testimony has been thus far, we had that explained
18 to us in quite some detail here today. The policy says what
19 the obligation is.
20 BY MR. H. MAYERSON:
21 Q The policy -- Nationwide owed the Bergs the
22 obligation of repairing the car or totaling it; is that
23 correct?
24 A No, that is absolutely not correct.
25 Q What is incorrect about it?

647

1 A They had the obligation to indemnify or
2 reimburse the Bergs either for the costs of repair or the
3 actual cash value of the automobile. They did not have the
4 obligation to repair the car no more than they have the
5 obligation to get your arm fixed if you're in an automobile
6 accident and you break your arm. If you go to the hospital
7 and if it's infected and then the insurance company obviously
8 has the obligation to pay for that broken arm. If it's not
9 done properly, your claim is against the doctor, not against
10 Nationwide as an indemnification obligation.
11 Q Mrs. Foster, when was the claim payment made?
12 A Which claim are you talking about, the Blue
13 Ribbon Claim or the claim under the policy?
14 Q The \$12,000 payment under the policy.
15 A I think like in February of 1997 to the best
16 of my recollection.
17 Q Now, that was after Mr. Wert stated that
18 Nationwide was in and out and saw that the car was not
19 repaired; is that not correct?
20 A When Mr. Wert stated that to the Bergs, no,
21 that came much later.
22 Q Did the Bergs have to tell Nationwide that the
23 repairs are defective if Nationwide sees the repairs are
24 defective?
25 A Under the policy or under the blue Ribbon

648

1 Program?
2 Q Under the policy?
3 A No.
4 Q Nationwide is responsible for overseeing if
5 repairs are defective?
6 A No.
7 Q Would it have been bad faith for Nationwide to
8 make this payment of \$12,000 after knowing the repairs were
9 made defectively?
10 A I think if -- I don't believe that's an
11 obligation under the policy because the policy is an
12 indemnification obligation. If the Bergs or anyone else, you
13 know, they might have done that as good policyholder
14 relationships, but if you're talking about their technical
15 obligations under the policy, I think the answer is no.
16 It goes back to my broken arm example.
17 Q If we may --
18 THE COURT: Let her answer the question.
19 BY MR. H. MAYERSON:
20 Q I thought she was done and she wanted to
21 voluntarily testify.
22 A If you go back to my broken arm example, if
23 that arm was improperly set, well, you say it's bad faith
24 even though the physician performed the services, et cetera,
25 for Nationwide to pay that claim, I think the answer is no.

... COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

1 Q Well, your facts aren't all there. The
2 insurance agent -- we have no testimony in your broken arm
3 case that the insurance people sent him to the doctor, was in
4 the doctor's operating room when the doctor was playing jacks
5 and sewing her arm at the same time.

6 A And because of that --

7 Q Under that responsibility but --

8 A But that's a responsibility that Nationwide
9 assumed under the Blue Ribbon Program.

10 Q Of paying for the repairs even though they're
11 disgraceful?

12 A No, that Nationwide assumed the responsibility
13 and the liability if those repairs were not appropriate for
14 the life of that automobile or the lease life of that
15 automobile to insure that the repairs were made
16 appropriately. That is not an obligation that they have
17 under the policy. But I agree with you, that they had it
18 under the Blue Ribbon Program.

19 Q Would you mind reading into the record the
20 collision coverage?

21 THE COURT: No, no, no, no, no. We don't have time
22 for all of that. We're not going to do that. If you have a
23 specific question you want to ask her that's fine, but we're
24 not going to have time to have witnesses read more into this
25 transcript. I'm sure the appellate courts are going to agree

1 this is the longest trial over something insignificant that
2 we can imagine.

3 BY MR. H. MAYERSON:

4 Q Do you reject Mr. Wert's testimony?

5 MR. COHEN: Objection.

6 THE COURT: Sustained. Ask a specific question with
7 regard to Mr. Wert's testimony and probably she'll be able to
8 answer it and it will not be objected to.

9 I am waiting, waiting, waiting for the next question.

10 MR. H. MAYERSON: It's coming, Your Honor.

11 THE WITNESS: Your Honor, may I get a refill?

12 THE COURT: Sure.

13 Mr. Mayererson, look, I gave you an extra half a day
14 with regard to this case which is Monday until noontime, and
15 I'm telling you, we've got to finish this case because you
16 keep telling me you don't want to continue the case until
17 another time. I can give you another day or two or three.
18 But we're going to finish the case. I have to get rid of the
19 testimony here today, and at this pace we're not going to be
20 able to do it. Plus, I don't know what the response is going
21 to be once I say is there any rebuttal. Maybe I'm foolish to
22 ask that question. Come on. Let's go.

23 BY MR. H. MAYERSON:

24 Q Do you recall reading that Mr. Wert said that
25 after the -- it was pulled that Page 544, lines 12, et

1 cetera, that at one time Keith had Steve Cardo's boss over,
2 who was Doug Joffred's boss who told him he was having
3 trouble. They had Doug come over and show him it wouldn't
4 fit back in and they were having all kinds of trouble with
5 it?

6 MR. COHEN: Objection.

7 THE COURT: Overruled. Answer the question.

8 BY MR. H. MAYERSON:

9 Q Do you recall that?

10 A Yes, I recall reading that testimony.

11 Q And do you recall the question: Is Doug
12 Joffred the Body Shop Manager? Answer: Yes.

13 Did they eventually get the engine back in? Yes,
14 they got it in and then they came back over to the body shop
15 and it sat over at the body shop again.

16 THE COURT: Mr. Mayererson, I'm not reading. You read
17 into the record whatever you want to read into the record.
18 Ask a question.

19 BY MR. H. MAYERSON:

20 Q Fair enough. Do you recall the testimony that
21 it sat in the body shop for --

22 THE COURT: No, you're out of order. Now, if you
23 don't want me to cut off the examination of this witness,
24 follow the Court's instruction. Ask her a question and don't
25 ask your question being: Do you recall reading, do you

1 recall hearing or didn't you see this or didn't you see that.
2 No. That's not appropriate questioning. Ask her a question.
3 If she gives you an answer different than what you think that
4 the record indicates, then you may be in a position to get
5 out other testimony, et cetera, et cetera, and cross-examine
6 her with regard to that.

7 BY MR. H. MAYERSON:

8 Q Isn't it correct that Mr. Wert testified how
9 the vehicle came back to --

10 THE COURT: Mr. Mayererson, you ain't going to win.

11 BY MR. H. MAYERSON:

12 Q Isn't it correct that evidence --

13 THE COURT: You're not going to win. I'm not going
14 to permit it. You can ask the question ten more times.

15 BY MR. H. MAYERSON:

16 Q Ms. Foster, isn't it correct that on Exhibit
17 15, May 19th, 1998, the claim number for the Blue Ribbon
18 Program, the claim handling under the Blue Ribbon Program was
19 assigned the insurance claim number?

20 A I heard Mr. Bashore say that this morning,
21 yes.

22 Q And that they're one in the same claim?

23 A Yes, he said that they all arose out of the
24 same collision.

25 Q And he was the corporate designee?

1 A I don't know what capacity he was testifying.
 2 THE COURT: But he didn't say that both of those
 3 claims arose out of the policy or out of the Blue Ribbon
 4 Program. He didn't say that.
 5 THE WITNESS: He said they related to the accident.
 6 THE COURT: Right.
 7 BY MR. H. MAYERSON:
 8 Q You said that the standard for bad faith was
 9 recklessly ignored. If I may briefly --
 10 A On the third prong, that's correct.
 11 Q Yes, is not bad faith on the part of any
 12 insurer is any frivolous or unfounded refusal to pay proceeds
 13 of a policy?
 14 A Yes, that was my second standing.
 15 Q And it is not necessary that such a refusal be
 16 fraudulent for purposes of an action against an insurer for
 17 failure to pay a claim?
 18 A I would agree with that.
 19 Q Such conduct imparts a dishonest purpose of
 20 breach of unknown duty?
 21 A I believe you're reading out of -- from a case
 22 and, yes, I would agree that's what the case said.
 23 Q Poselielli, P-O-S-E-L-I-E-L-L-I, versus
 24 Nationwide.
 25 THE COURT: She's agreed with all of that.

1 BY MR. H. MAYERSON:
 2 Q And you also agree when you said breach of
 3 contract is not needed -- I'm sorry -- you said breach of
 4 contract was needed that 8371 allows do you not agree that
 5 section -- start all over again.
 6 THE COURT: You're fumbling all over place. Strike
 7 it and start again.
 8 BY MR. H. MAYERSON:
 9 Q Thank you. Strike that.
 10 Mrs. Foster, you said that a breach of contract was
 11 needed in a bad faith case?
 12 THE COURT: No, she didn't say that at all.
 13 THE WITNESS: I said that there has to be a refusal
 14 to pay proceeds under the policy.
 15 BY MR. B. MAYERSON:
 16 Q And doesn't Section 8371 allow punitive
 17 damages even in the absence of other successful claims
 18 brought by the Plaintiff and that if attorney fees were not
 19 part of the compensatory damages part of the equation, it
 20 would be impossible to formulate any punitive damage award?
 21 A I think you're mixing things up there. I
 22 think what you're doing is talking about cases where
 23 somewhere along the line the underlying policy has been
 24 resolved. But there's still, I mean, that the claim was paid
 25 but nevertheless the Court found because it is a predicate to

1 an 1871 claim that either by delay or in some other way.
 2 Nevertheless, if the insurer breached the policy of insurance
 3 and so in that context this was a breach and they say that
 4 even though the amounts that were due were paid,
 5 nevertheless, you pay attorney's fees and other things may be
 6 recoverable. But I don't think that it says that this does
 7 not have to be a breach of the underlying insurance contract.
 8 Q Okay. We're talking about March versus
 9 Parodies Mutual, 435 P.A. Super 957.
 10 A I don't know what case you're talking about.
 11 But that's -- I'm very familiar with the circumstances of
 12 when attorney's fees can be paid, but there is also always an
 13 underlying breach of contract.
 14 THE COURT: Under the terms of the policy?
 15 THE WITNESS: Under the terms of the policy, exactly.
 16 BY MR. H. MAYERSON:
 17 Q Did Nationwide attempt to buy the vehicle
 18 before all the Berg's lease payments were over?
 19 A I know that -- I believe that the -- it
 20 occurred at the very end of the lease.
 21 Q Okay.
 22 A That the purchase occurred at the very end of
 23 the lease.
 24 Q And did not Nationwide --
 25 THE COURT: which incidentally explain to me what

1 were the Bergs obligations under the lease after the last
 2 payment -- lease payment was made, were they required to
 3 purchase the automobile?
 4 MR. H. MAYERSON: Yes, Your Honor.
 5 THE COURT: They were required --
 6 MR. H. MAYERSON: Well, they had the choice.
 7 MR. B. MAYERSON: I think what the lease said --
 8 there was a \$400 deposit, so if the vehicle came back and it
 9 was destroyed and worthless --
 10 THE COURT: Tell me what was your obligation, the
 11 Berg's obligation.
 12 MR. B. MAYERSON: They had approximately a \$400
 13 security deposit.
 14 THE COURT: And that was it?
 15 MR. B. MAYERSON: As far as we know.
 16 MR. H. MAYERSON: If the car is returned --
 17 THE COURT: Just a second. In other words they were
 18 not required to purchase the automobile at its value?
 19 MR. B. MAYERSON: Your Honor, if the vehicle -- I
 20 think we would have to read the lease policy.
 21 THE COURT: So we don't know the answer to that
 22 question. All right. That's fine too. I don't know it
 23 either, I just thought maybe you did. Okay. Go ahead.
 24 BY MR. H. MAYERSON:
 25 Q Did not Nationwide insist on January 13th,

... THE COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

1 1998 that Summit Bank honor a contract with Nationwide to buy
2 the car and that the title of the vehicle be forwarded to
3 Summit Bank immediately and didn't Nationwide threaten the
4 bank with suit if it didn't perform pursuant to its agreement
5 with Nationwide?

6 A I'm not so sure about the second part of that.
7 I don't recall anything about a suit, but I do know after all
8 of the various requests that Nationwide purchased the vehicle
9 at the very end when Nationwide attempted and, in fact, had
10 purchased the vehicle that all of a sudden then there was an
11 objection raised to that acquisition.

12 Q Do you know why there was an objection?

13 A I think that there was some allegation that
14 somehow the vehicle would not be maintained in its --

15 Q Did Nationwide discuss their buying their
16 policyholder's leased vehicle; what their policyholder wanted
17 to do?

18 A Their policyholder or their --

19 Q Their policyholder, the Bergs.

20 A Under the Blue Ribbon Program, I don't recall.
21 I don't know.

22 Q Didn't the Bergs want to put the vehicle in a
23 secure storage facility and Nationwide refused before
24 Nationwide bought the car?

25 A I think there was some discussion along those

1 lines. It's also my understanding it's been in a secure
2 facility ever since it's been acquired.

3 Q As to -- I'd like to refresh your recollection
4 as to whether Nationwide threatened the bank with proper
5 legal action?

6 THE COURT: What does that have to do with her direct
7 examination and testimony?

8 MR. H. MAYERSON: That --

9 THE COURT: Otherwise, I'm going to just tell you to
10 sit down.

11 MR. H. MAYERSON: I'll withdraw the question, Your
12 Honor.

13 BY MR. H. MAYERSON:

14 Q Mrs. Foster, are you familiar with how long
15 the Nationwide redacted entry of April 30th, 1998 remained
16 redacted?

17 THE COURT: What is the relevance of that? We took
18 that matter up before the noon recess. The first thing I
19 said when I came in here is I read my order relative to the
20 redactions of 1999 and I read the subsequent long opinion of
21 Judge Lash where he incorporated my rulings and expanded.
22 That's the end of that issue. I don't want to hear anything
23 more about redactions and certainly not from a witness who
24 made no reference to redactions.

25 MR. H. MAYERSON: The relevance if I may, Your Honor

1 --

2 THE COURT: Well, forget it. I'm not going to hear
3 it. Mr. Mayerson, stop talking to your dad so we can get
4 moving here. See what time it is? It is almost 3:30.
5 That's the trouble with lawyers. The main trouble with
6 lawyers is they think this whole world revolves around their
7 convenience and that's it. That's lawyers. And to think
8 that I was one, oh, God. Let's go ahead.

9 You don't give a darn that we have long days. Our
10 court reporter here has long days. The judge sitting here
11 listening to all this whatever, you don't care about that
12 anymore than you cared about whether or not how long the jury
13 was here listening to a lot of things that were not relevant.
14 I'm not going to permit it. I've heard enough. I gave you a
15 lot of leeway, far more than I've ever given anybody in any
16 other case, I'll tell you that. I'm not as kind as I appear
17 from this case.

18 BY MR. H. MAYERSON:

19 Q Ms. Foster, are you familiar with the term
20 fiduciary?

21 THE COURT: Fi-what?

22 THE WITNESS: Fiduciary.

23 THE COURT: She's a lawyer, isn't she?

24 THE WITNESS: Yes.

25 THE COURT: Did you hear that term in law school?

1 THE WITNESS: I did, yes.

2 THE COURT: Surprise, surprise. Yes. The answer is
3 yes.

4 BY MR. H. MAYERSON:

5 Q would you agree it could be defined as a
6 person having a duty created by his undertaking to act
7 primarily for another's benefit in matters connected with
8 such undertaking?

9 A It sounds reasonable.

10 Q And did the Bergs have any right to decide
11 whether the car was totaled or repairs paid for?

12 A NO.

13 Q And did the Bergs have the right to decide to
14 send it out for towing?

15 A Send it for towing?

16 Q For pulling to K.C. Towing.

17 A I'm having a lot of trouble tying fiduciary --

18 THE COURT: It has nothing to do with it.

19 THE WITNESS: Oh, okay.

20 BY MR. H. MAYERSON:

21 Q Did Nationwide have the entire right to decide
22 how these repairs or did Nationwide exercise alone the right
23 of how the repairs to the Berg vehicle would proceed?

24 A I don't think that they did or didn't. Their
25 obligation under the policy -- and you have to remember that,

1 yes, Nationwide owes an obligation to the Bergs, but it also
2 owes an obligation to every other one of its single
3 policyholders. And if Nationwide did and totaled every
4 single car that any policyholder wanted totaled, you would
5 pay a thousand dollars a month for your insurance. It's
6 Nationwide's obligation to reasonably review and take the
7 most efficient and effective way to restore the Bergs back to
8 the status quo and when they go out and if they make the
9 evaluation that it is cheaper and less expensive to repair
10 the automobile rather than total it, I say they have an
11 absolute obligation to pursue that because every other
12 policyholder pays for that claim.

13 Q Mrs. Foster, did Nationwide breach its -- do
14 you agree that the insurers duty of good faith therefore is
15 contractual and arises because the insurance company assumes
16 a fiduciary status by virtue of the policy's provision which
17 gives the insurer a right to handle claims and control
18 settlement?

19 A Absolutely not. I do not agree with that. It
20 is -- the relationship between an insurance company and
21 insured is not that of a fiduciary and the law is absolutely
22 clear on that.

23 Q Is that Gray versus Nationwide, 422 PA --

24 A I don't know in what context you're reading
25 that but in an ordinary claim situation there is not a

1 fiduciary obligation.

2 Q You on direct said how you went through the
3 class action complaints and said this was five class action
4 complaints?

5 A No, I actually went through the docket.

6 Q The docket, okay. And you said this was five
7 class action complaints?

8 A That's to the best of my recollection.

9 Q And were they very limited class action
10 complaints, i.e. weren't they just by the Bergs as the member
11 of the class against Nationwide and Lindgren for
12 participation in the Blue Ribbon Program, wasn't that
13 basically the gist?

14 A Saying it's limited and saying it's a class
15 action are totally inconsistent. It could be an individual
16 claim as it was in complaint number one and I guess maybe by
17 the time it got back to eight it was. But once you've made
18 the class action allegations, as you well know, a whole
19 different set of procedural rules come into play and a whole
20 set of obligations changes the attorney's ability to settle a
21 case. Everything changes. I don't think anybody would
22 dispute that a class action is, per se, now a complex
23 litigation rather than a simple claims resolution.

24 Q I'm saying this is a very small class action
25 suit?

1 A I don't recall. To me the significant
2 difference is whether you sue in an individual capacity or
3 you've turned it into a class action. Because all those
4 things happen regardless of how you draw up the class action.

5 Q And yesterday -- strike that.

6 And didn't, in fact, Judge Stallone dismiss most of
7 Defendant's preliminary objections to one class action and
8 stay the matter and tell Nationwide to file an answer?

9 A Well, I can't recall what all the orders were
10 as I was looking at the docket for a different purpose. I
11 was looking at the docket because of the question of his
12 no-holds-barred defense, and what I was looking at is who was
13 the moving party, who was instituting, you know, the
14 pleadings or the round of pleadings or the depositions or the
15 document discovery or the subpoenas, because the person who's
16 initiating all those actions is the person or the party
17 that's driving the cost of the litigation.

18 BY MR. H. MAYERSON:

19 Q Ms. Foster, is it your position that when the
20 Bergs accepted -- what contract under the Blue Ribbon --

21 THE COURT: Strike everything. Let's start again.
22 All right.

23 BY MR. H. MAYERSON:

24 Q Strike that. What contract did the Bergs
25 knowingly enter into when they agreed to go under the Blue

1 Ribbon Program?

2 A I believe the contract or the guarantee or
3 whatever you want to -- what term you want to use is that
4 they were clearly informed that if they use one of the Blue
5 Ribbon facilities, that in exchange for that they would get
6 an easier claims process and a guarantee and that testimony
7 was unequivocal that they had done so voluntarily. They had
8 elected that option as opposed to the option which they
9 clearly had of going to any other repair shop of their
10 choosing.

11 Q So if their car is not repaired under their
12 insurance policy -- strike that.

13 THE COURT: Now we're getting better.

14 MR. H. MAYERSON: Pardon me?

15 THE COURT: I said we're getting better with the
16 questions. Strike that. Very good.

17 MR. H. MAYERSON: Thank you. No other questions.

18 BY MR. H. MAYERSON:

19 Q Ms. Foster, did you oppose efforts that the
20 Bad Faith Statute included in Act 6?

21 A I don't know what you mean by oppose. It was,
22 as I said on my direct, it was part of the ultimate
23 compromise among many different parties. There were many
24 different provisions that were put in proposed by other
25 parties that weren't part of our original. Our original

1 proposal and Bad Faith Statute is one. It wasn't one that I
2 advocated but it was ultimately one that we accepted.

3 THE COURT: How legislation is made?

4 THE WITNESS: Exactly.

5 THE COURT: Incidentally -- all right.

6 MR. H. MAYERSON: Nothing further.

7 THE COURT: Any redirect?

8 MR. COHEN: No, Your Honor.

9 THE COURT: Okay. Attorney Foster, thank you very
10 much. You were very helpful. Other than for the admission
11 of exhibits, does the defense rest?

12 MR. COHEN: The defense does rest subject to our
13 motion for directed verdict.

14 THE COURT: All right. Okay. Is there any rebuttal
15 testimony?

16 MR. B. MAYERSON: No, Your Honor.

17 THE COURT: All right. Then the testimony is closed.
18 Now, since this is a non-jury trial I think that I'm just
19 going to ask you the question as to what objections anyone
20 may have to Exhibits 33 through 49; otherwise, they will all
21 be admitted into evidence.

22 MR. COHEN: Your Honor, if I can take a quick peek at
23 them. Your Honor, we have an objection to several of these
24 that we would like --

25 THE COURT: Start with the lowest number.

1 MR. COHEN: which number?

2 THE COURT: Thirty-six, the Pennro Litigation
3 Strategy, 1992.

4 MR. COHEN: Yes.

5 THE COURT: what's your objection?

6 MR. COHEN: Our objection is that there's been clear
7 evidence that this has absolutely no relevance to this
8 lawsuit at all.

9 THE COURT: what's your response?

10 MR. B. MAYERSON: Our response is that there was
11 sufficient evidence to create at least an issue of fact.

12 THE COURT: An issue of fact as to what --

13 MR. B. MAYERSON: As to whether this litigation
14 strategy was applied against the Bergs upon Nationwide's
15 receipt of our letter of representation.

16 THE COURT: Are you moving for its admission?

17 MR. B. MAYERSON: Yes.

18 THE COURT: It's admitted into evidence.

19 MR. COHEN: Second objection is with regard to the
20 larger Pennsylvania Best Claims Practices.

21 THE COURT: What number, please?

22 MR. COHEN: Sorry, Your Honor, 37.

23 THE COURT: Pennsylvania Best Claims Practices. And
24 what's your objection there?

25 MR. COHEN: Same objection.

1 THE COURT: Same objection as what, because it
2 includes the Pennro Litigation Strategy?

3 MR. COHEN: That it's irrelevant and there's been
4 clear testimony that this document was superseded in 1996
5 prior to the Berg's claim. It was not related to material
6 damage claims and that nobody who had anything to do with the
7 Berg's claim ever utilized it or reviewed it.

8 THE COURT: Are you moving for it to be admitted into
9 evidence?

10 MR. B. MAYERSON: We are satisfied with the Pennro
11 Litigation.

12 THE COURT: So Exhibit 37 is not admitted into
13 evidence.

14 MR. COHEN: The next one, Your Honor. Exhibit 40.

15 MR. B. MAYERSON: Wait, I'm sorry, Your Honor. I
16 made a mistake. There's a preface on the front of this that
17 is relevant to the Pennro Litigation Strategy that comes
18 under it. If co-counsel wants to submit the cover page,
19 that's acceptable to us. But it references the strategy in
20 the cover page.

21 MR. COHEN: Your Honor, I'd rather not break up the
22 document. If it's going to be admitted I prefer it be
23 admitted as one whole.

24 THE COURT: Okay. Sir, what do you want to do?

25 MR. B. MAYERSON: We would like to submit it for

1 evidence.

2 THE COURT: All right. It's admitted. All right.
3 what's next?

4 MR. COHEN: Next exhibit, Your Honor, is number 40.
5 It's the financial highlights.

6 THE COURT: One page, financial highlights of
7 Nationwide 2002 through 2006.

8 MR. COHEN: Actually the court reporter has informed
9 us that this document was withdrawn so --

10 THE COURT: Just a second.

11 MR. B. MAYERSON: It's been withdrawn, Your Honor.

12 THE COURT: Has it been withdrawn?

13 MR. B. MAYERSON: Yes.

14 THE COURT: Has it been withdrawn?

15 MR. B. MAYERSON: Yes.

16 THE COURT: So that when I tear it up you're not
17 going to change your mind and say, yes, it is not withdrawn.
18 Is it withdrawn?

19 MR. B. MAYERSON: We do not believe it was adequately
20 supported, so it's withdrawn, yes.

21 THE COURT: Withdrawn. What's next?

22 MR. COHEN: The next, Your Honor, is Exhibit Number
23 42. It's the Plaintiff's declaration supporting fee
24 petition. I believe Your Honor stated --

25 THE COURT: Forty-two. Just a second. I said the

6/11/07 Trial Transcript

1 testimony related only to Page 3 and only Page 3, which is
2 the itemization of the Plaintiff's attorney's fees total bill
3 through '06, '05, '07 of \$821,143.01, is marked at this point
4 as an exhibit. Are you moving for admission?

5 MR. B. MAYERSON: Yes, sir.

6 THE COURT: Any objection?

7 MR. COHEN: No, not to Page 3. It's just the entire
8 document is marked.

9 THE COURT: No, that's been already shredded.

10 MR. B. MAYERSON: And lastly, Your Honor, is Exhibit
11 Number 46. It's the -- hold on, log notes.

12 MR. COHEN: Yeah, the only objection is that in the
13 first phase of trial the complete log was admitted as an
14 exhibit. It was with the white redactions, not with the
15 black redactions. But this would be duplicative to the same
16 log.

17 MR. B. MAYERSON: We object. We want to move for its
18 admission.

19 THE COURT: Admitted.

20 MR. COHEN: That's all, Your Honor. Everything else
21 is okay to be admitted.

22 THE COURT: Any objections of any other exhibits?

23 MR. B. MAYERSON: No, Your Honor.

24 THE COURT: Okay. All others are admitted into
25 evidence.

1 MR. B. MAYERSON: Your Honor, may we request that you
2 take judicial notice of Nationwide's Financial Annual Report?

3 THE COURT: Absolutely not. We had all kind of
4 testimony in that area. Judicial notice.

5 MR. H. MAYERSON: Thank you, Your Honor.

6 THE COURT: All right. So now that all the testimony
7 is closed, those exhibits that are going to be admitted have
8 been admitted into evidence, and now it is 20 minutes of
9 4:00. We're not going to hear the argument with regard to
10 the motions for directed verdict at this time. I will hear
11 those on Monday in this same courtroom. I understand, but
12 look at the calendar or whatever it is, the schedule that's
13 outside on the first floor when you come in on Monday. We're
14 going to do this at 10 o'clock. And, however, before 10
15 o'clock I expect that any motions that you have in this
16 regard and anything that you want to submit along with the
17 motion in the form of an order for the judge to sign that
18 they be deposited in my office, my chambers on the third
19 floor, which you know where it is, no later than 9:30.

20 MR. COHEN: Yes, sir.

21 THE COURT: Okay. And hopefully this will give you
22 some time to prepare that. We'll recess then until Monday
23 morning at 10 o'clock.

24 MR. COHEN: Thank you, Your Honor.

25 MR. H. MAYERSON: Your Honor, how may we exchange

1 them?

2 THE COURT: What's that?

3 MR. H. MAYERSON: How may we exchange them?

4 THE COURT: Outside in the hallway in front of my
5 office at 9:30. And when you give them to me, you give them
6 to each other, and there's nice benches there. You'll be
7 able to sit there and I will have a referee standing between
8 you so that no harm will come in my hallway. Do I have to
9 decide that too?

10 MR. H. MAYERSON: You did very well, Your Honor.

11 THE COURT: Thank you. Goodbye. If you want to, you
12 may leave your papers here again overnight or whatever you
13 might like to leave here. Yeah, there's no difference
14 whether you leave them here overnight or over the weekend.
15 (Whereupon, the proceedings were concluded at 3:40
16 p.m.)

1 (Reading, Pennsylvania, Monday, June 11, 2007 at 10:00 a.m.)

2 THE COURT: I am giving both sides a maximum of 30
3 minutes for their arguments. All right. The motions by the
4 Defendant, Nationwide Mutual Insurance Company, for directed
5 verdict on the statutory bad faith claim. Are you also
6 addressing the request for travel damages which is not, I
7 think, under the bad faith claim? ...

8 MR. COHEN: Plaintiffs have not raised that issue, so
9 we contend that they waived that issue.

10 THE COURT: I didn't hear anything on it myself. I
11 just want something for the record that that is --

12 MR. COHEN: That's our argument. That they've waived
13 it.

14 THE COURT: Okay. Well then we'll concentrate
15 strictly on the bad faith claim, and you can argue right from
16 there.

17 MR. COHEN: Thank you, Your Honor. Defendant,
18 Nationwide, moves for directed verdict under Rule 226(b) of
19 the Pennsylvania Rules of Civil Procedure.

20 Under the rule the trial court must consider the
21 facts in the light most favorable to the non-moving party and
22 must accept its true, all evidence, which supports that
23 party's contention and reject all adverse testimony. The
24 directed verdict may only be granted where the facts are
25 clear and there is no room for doubt. I have never seen a

1 case where there was less doubt about the propriety of the
 2 evidence and impropriety of the Plaintiff's case.

3 The evidence that Plaintiffs have submitted in this
 4 case or at least that they have tried to submit in this case
 5 in Nationwide's opinion proves nothing, and viewed in the
 6 light most favorable to anybody would prove nothing.

7 Plaintiffs have now had two opportunities to prove
 8 their case; one in a first phase UTCPL common law fraud and
 9 civil conspiracy and now under the statutory claim of bad
 10 faith. We've all been here through two trials and we've all
 11 seen what has gone on. Nationwide has had to defend this
 12 case for ten years or close to ten years and the
 13 pre-litigation activities demonstrate that what occurred
 14 during trial was just a small portion of what Nationwide had
 15 to endure during the past ten years. Positions have
 16 constantly shifted, witnesses have been identified and not
 17 identified, not called for trial. A tremendous amount of
 18 effort has gone into deposing dozens of people whose
 19 testimony has not linked up to anything. A tremendous amount
 20 of effort has gone into considering documentation, discovery
 21 motions with regard to documentation that has not linked up
 22 to anything, has never made any points whether in the first
 23 phase of trial or the second phase of trial.

24 The issue before the Court today is bad faith and
 25 only bad faith, and it's very clear what that means. We have

1 a statute and we have clear case law in Pennsylvania on bad
 2 faith and that's the Terletsky case and that's the case that
 3 Ms. Foster commented on when she testified on Friday. There
 4 have been various other cases that have come up through the
 5 ranks, such as Hollick versus Rowan and Plaintiffs have tried
 6 to persuasively argue that those cases apply from a very
 7 fundamental place, and Terletsky is the law of the land as it
 8 concerns bad faith.

9 THE COURT: That's spelled how again?

10 MR. COHEN: T-E-R-L-E-T-S-K-Y versus Prudential.

11 THE COURT: And that's the standard you say for this
 12 case?

13 MR. COHEN: That is the standard set forth by the
 14 Superior Court for bad faith in Pennsylvania.

15 THE COURT: Okay. Go ahead.

16 MR. COHEN: The citation, Your Honor, is 649 A.2d
 17 680, 1994. Bad faith, before we get into the standard for
 18 bad faith, bad faith must be proven by clear and convincing
 19 evidence. That's Haul versus Brown. The Pennsylvania
 20 Supreme Court in a case called Cowden versus Aetna, 134 A.2d
 21 223.

22 THE COURT: When you're giving names, spell them for
 23 the court reporter.

24 MR. COHEN: Cowden, C-O-W-D-E-N, versus Aetna,
 25 A-E-T-N-A, held that therefore in the absence of any proof to

1 the contrary there is a presumption that the actions of an
 2 insurance company representatives have been taken fairly,
 3 honestly, properly and in good faith and without fraud.

4 In a case by the Eastern District of Pennsylvania,
 5 Bostick versus Hartford, B-O-S-T-I-C-K, versus Hartford, 56 F
 6 sub second, 580, 1999, the Court held that this requires a
 7 showing by the Plaintiffs that the evidence is so clear,
 8 direct, weighty and convincing as to enable a clear
 9 conviction without hesitation about whether or not the
 10 defendants acted in bad faith.

11 And in a case called Collins, C-O-L-L-I-N-S, versus
 12 All State, another Eastern District of Pennsylvania case, the
 13 Court held that the clear and convincing standard is a
 14 stringent one surpassed in law only by proof beyond a
 15 reasonable doubt. So we know that the standard of proof is
 16 an extremely high one, and I submit to the Court that
 17 Plaintiffs have not even come close to satisfying that burden
 18 of proof.

19 Terletsky sets forth the rule on bad faith. And as
 20 Ms. Foster testified, Terletsky stands for the proposition
 21 that bad faith on the part of an insurer is any frivolous or
 22 unfounded refusal to pay proceeds of a policy, and that's
 23 important, proceeds of a policy. It is not necessary that
 24 such refusal be fraudulent. For purposes of an action
 25 against an insurer for failure to pay claim, such conduct

1 imports a dishonest purpose and mains a breach of a known
 2 duty, i.e., good faith and fair duty through some motive.
 3 Mere neglect or bad judgment is not bad faith. Again the
 4 Court stated in Terletsky finally to recover under a claim of
 5 bad faith the plaintiff must show that the defendant did not
 6 have a reasonable basis for denying benefits under the policy
 7 and that the defendant knew or recklessly disregarded its
 8 lack of reasonable basis and denied the claim. And this is
 9 what Ms. Foster testified to.

10 And then finally in a case called Bostick,
 11 B-O-S-T-I-C-K, versus ITT Hartford Group, Inc., 56 F sub
 12 second 580, 1999, the court held that bad faith cannot be
 13 found where the insurers conduct is in accordance with the
 14 reasonable but incorrect interpretation of the insurance
 15 policy and the law, which doesn't even exist in this case
 16 based on the facts as they have been presented.

17 So, Your Honor, that is the standard for both the
 18 clear and convincing standard and for bad faith, and --

19 THE COURT: All right. But explain to me here, I
 20 understand clear and convincing is a matter of fact. I think
 21 that in our first phase of the case when I instructed the
 22 jury, which I do all the time, when I try to explain to them
 23 what a fair preponderance of the evidence is and I go on to
 24 say the next courtroom I was trying a criminal case it
 25 wouldn't be fair preponderance of the evidence. It would be

677

1 beyond a reasonable doubt. And then I usually say after
2 that, and if I were in another courtroom, maybe the standard
3 would even be by clear and convincing evidence. These are
4 all -- and this is how, ladies and gentlemen of the jury,
5 that I judge every non-jury case. This is what I have to say
6 to myself in every non-jury case.

7 What is the standard of proof? What is the burden of
8 proof, because that is significant when I have a tough case
9 or I have to really think about the evidence and say, all
10 right, this is all the evidence here and this is all the
11 evidence on the other side, also some evidence here where --
12 what's the burden? Who has the burden because that's what
13 carries the day is the burden of proof.

14 However, in this situation, this is unlike any that
15 I've had before and I want you to explain to me the
16 difference here. You started off by saying of what that is,
17 clear and convincing evidence, and obviously the Plaintiff
18 did the same thing. That's in the first line of his brief
19 too, clear and convincing evidence, because this act is clear
20 on this. I'd like to have case law on it, but nevertheless
21 that is the standard, clear and convincing evidence.

22 However, you also say that in deciding a motion for a
23 directed verdict quote, the trial court must consider the
24 facts in the light most favorable to the non-moving party.
25 That's the Bergs, that's Mr. Mayerson's client, and must

678

1 accept as true all evidence which supports the Berg's
2 contention and reject all adverse testimony. That's a quote
3 in the very beginning on the first page of your brief. And
4 then you go on to say, in addition, a directed verdict may
5 only be granted where the facts are clear and there is no
6 room for doubt.

7 How do you reconcile those two principals; that
8 principal with regard to a directed verdict and a principal
9 with regard to clear and convincing evidence? Is the Court's
10 judgment in this regard, assuming that I would grant the
11 directed verdict, is that any different? Does that have any
12 different meaning under the law than if I do grant the
13 directed verdict? But somewhere along the line would then
14 consider all the evidence and deliver a verdict in favor of
15 the Defendant and against the Plaintiff the same as if I were
16 a jury because I'm the fact finder there. How do you
17 reconcile those two?

18 MR. COHEN: I understand your question, Your Honor.

19 THE COURT: Good. That's why I repeated it three
20 times so I understood the question first and gave you a
21 chance to think about the answer. And don't say that's
22 because Erin wrote this.

23 Thank you. Nice to know who she is finally, since
24 she wrote the brief just like it used to be.

25 MR. COHEN: Facially it would appear that we've got

679

1 two different standards here and we do have two different
2 standards, but they're not inconsistent.

3 We have one standard under the rules as to what it
4 requires for a court to enter a directed verdict, just like a
5 summary judgment. And then we have a burden of proof with
6 regard to bad faith. Now I will submit to the Court that
7 under the requirement for directed verdict, yes, the Court
8 has to view the evidence in the light most favorable to
9 Plaintiff. And I will submit to the Court that even if the
10 Court does that, then still the Court cannot find that clear
11 and convincing has been satisfied in this case. And the
12 reason --

13 THE COURT: See. That's the one line that's not in
14 the brief.

15 MR. COHEN: And that's what I'm arguing now.

16 THE COURT: Oh, all right.

17 MR. COHEN: The evidence in Nationwide's position --
18 most of it was non-credible and circumstantial.

19 THE COURT: Lets not talk about the credibility of
20 evidence. Lets talk in the nature of what we should be
21 talking about when we're considering a directed verdict,
22 assuming that it is credible.

23 MR. COHEN: Let's assume that it's true, okay.

24 THE COURT: Yes, assume that it's true and let's
25 assume it is credible. It still does not link up with the

680

1 burden of proof under bad faith.

2 THE COURT: It still is not clear and convincing?

3 MR. COHEN: It's not clear and convincing, number
4 one; and number two, it doesn't support their claim for bad
5 faith because as Ms. Foster testified you have to have a
6 claim under the policy. And Plaintiffs entire argument
7 during this phase of trial and, dare I say, ten years of
8 litigation has been that it has been their violation or
9 breach of the Blue Ribbon Guarantee or their obligations
10 under the Blue Ribbon Program that has risen to the level of
11 bad faith.

12 And we clearly heard testimony of Ms. Foster that
13 that doesn't make sense. You have to have a claim or denial
14 of proceeds under the policy. A policy is something that is
15 regulated and approved by the Department of Insurance.

16 THE COURT: No, but see, what you're skipping over is
17 what's important here. It's not what Ms. Foster says is
18 credible testimony, because that is a non-issue at this point
19 when you're talking about a directed verdict. But what is
20 significant, and I think you had argued to the Court or at
21 least I'm arguing to myself at this point and trying to weigh
22 this in my own mind is that even if there was a contradiction
23 to Ms. Foster's testimony, what was it? What was the
24 contradictory evidence to what Ms. Foster said and gave her
25 expert opinion with regard to it? There was a lot of

1 argument, a lot of briefs written, a lot of speculation, but
2 I didn't hear any evidence from which I could weigh Ms.
3 Foster's testimony against someone else's testimony.

4 MR. COHEN: And what I would say to Your Honor --

5 THE COURT: That's what I think is the difference
6 here. That's the difference between these two standards. I
7 don't think that they are irreconcilable, but I think that
8 there should be at least on the record something that states
9 what we're thinking about in this regard on this procedural
10 issue if there is a difference.

11 There is a difference that the Court could, if it
12 chose to do so, it chose to rule in favor of the Defendant,
13 could choose one way with regard to the directed verdict and
14 then turn around the next day and rule just the opposite way.
15 I mean, assuming that the directed verdict requests motions
16 to be denied and then the next day say, well, we denied the
17 directed verdict but we still rule in favor of the defendant.

18 MR. COHEN: I agree with Your Honor.

19 THE COURT: And there has to be an explanation why
20 could this judge do that; why would he do that? What's the
21 thinking in doing that?

22 MR. COHEN: Well, my guess is that this situation
23 would typically arise in the context of jury trial where a
24 motion is made for directed verdict so it does not have to go
25 to a jury --

1 THE COURT: But the difference is -- but the
2 difference is in that situation the jury made the decision
3 and may be overruling the judge's refusal to grant a directed
4 verdict.

5 MR. COHEN: That's right.

6 THE COURT: And that's the reason why most judges
7 hide behind that and say they'll let the jury decide. And if
8 they decide maybe I have an opportunity to change that
9 somewhere down the line by granting a new trial.

10 MR. COHEN: I think in this circumstance, Your Honor,
11 it's a finding by the Court that Plaintiffs have failed to
12 make a prima facie case under the Bad Faith Statute and that
13 the case law has developed to give the Plaintiffs, I offer,
14 reasonable benefit of the doubt in order to allow them to do
15 that. And if the Plaintiffs have failed to do that, then the
16 Court will direct a verdict because they have failed to make
17 a prima facie case and we need not have legal argument or
18 closing arguments because that would just be a waste of time,
19 essentially.

20 And as Your Honor pointed out, the Court can decide
21 that Plaintiffs have perhaps made a prima facie case but have
22 not risen to the level of the burden of proof that they are
23 demanded of --

24 THE COURT: If you have a motion for directed verdict
25 the court should ignore the burden of proof issue by clear

1 and convincing evidence and just determine what evidence
2 there was of any kind on the underlying issues to support a
3 claim of bad faith.

4 MR. COHEN: I believe I would disagree with Your
5 Honor and the reason why is burden of proof is an element of
6 the case that they have to make out. And if -- if the burden
7 of proof was a fair preponderance of the evidence, then the
8 prima facie case the Plaintiffs would have to establish is a
9 much easier one than a burden of proof of --

10 THE COURT: Oh, I agree. So in other words what
11 you're saying here is that even in a jury trial where there
12 is a motion for a directed verdict, the court is considering
13 the issue of burden of proof as well?

14 MR. COHEN: I believe they have to, yes. And that's
15 the role of the Court to make that -- just like how a Court
16 has the ability to enter a judgment, J-O-B, after a jury has
17 decided the issue. That is within the Court's discretion.

18 THE COURT: Okay. Go ahead.

19 MR. COHEN: So what we have here is a case after ten
20 years of litigation where plaintiffs have completely failed
21 to raise to the level of even a prima facie case and it's
22 testament to the fact that Nationwide has now had to endure
23 ten years of litigation only to be sitting here arguing for
24 something that should have been resolved long ago. We've
25 heard the testimony of --

1 THE COURT: Wait a minute. There's no counter claim
2 for counsel fees, is there?

3 MR. COHEN: No, no. There wouldn't be one under the
4 Bad Faith Statute, although there may be an action under the
5 Dragonetti Act. There is not an action for counsel fees at
6 this point. Plaintiffs had an opportunity -- this was the
7 plaintiffs opportunity to present all their testimony, bring
8 in whoever they wanted to testify, whatever facts they needed
9 to get in before the record and make out their claim for bad
10 faith.

11 So who did they call? The first witness was Terry
12 Shaw. Terry Shaw was the independent adjuster who went out
13 to view the Berg's vehicle at the Berg's residence.
14 Mr. Shaw's testimony proved nothing other than Nationwide was
15 attempting to try and inspect the vehicle to make good by
16 their obligation under the policy. We heard Mr. Shaw testify
17 that he made arrangements with the Berg's, went out, nobody
18 answered the door, he took some pictures, he took some notes
19 and he left. That was their first witness.

20 The second witness was George Moore with Penn-Del
21 Autobody who Nationwide objected to in limine as being
22 completely irrelevant to having anything to do with this case
23 and, number 2, being late. We never had an opportunity to
24 depose Mr. Moore. What did Mr. Moore say? Well, Mr. Moore,
25 during direct examination, authenticated some Blue Ribbon

1 documents that were given to his shop back in 1992. On
2 cross-examination when I asked Mr. Moore some questions he
3 admitted; number one, the total loss determinations and
4 salvage were generally made by insurers, not by
5 policyholders, that taking salvage into consideration was not
6 improper for total loss.

7 Now this would have been relevant had Plaintiffs
8 called or had Mr. Chett testify with regard to salvage. And
9 this is another situation where one of their experts goes
10 into long detail in their reports about a theory and gets up
11 on the stand and never testifies about it. Mr. Moore also
12 testified the direct repair programs are a good thing. That
13 he, in fact, was a member of direct repair programs and they
14 provide a service for policyholders.

15 Plaintiff's third witness was Jeff Gooderham.

16 THE COURT: He also testified as to the time in which
17 the records that he had, the documents that he had, applied
18 to his testimony, 1996 as opposed to 1992 as I recall.

19 MR. COHEN: That's correct, but the documents that he
20 was referring to indicated nothing and Plaintiffs made no
21 inference with regard to the documents that he had that they
22 had anything to do with the Berg claim.

23 THE COURT: That's correct.

24 MR. COHEN: There was no evidence to that effect.

25 THE COURT: There was no evidence and no argument to

1 that effect either.

2 MR. COHEN: That's correct. The third witness was
3 Jeff Gooderham who was a Nationwide attorney. Plaintiffs in
4 their continuing effort to try and link up the document used
5 in the Bonenberger case, the Pennsylvania Best Claims
6 Practices document and to have Mr. Gooderham testify that he
7 testified improperly or incorrectly in Bonenberger.

8 Nationwide never denied that. Plaintiffs tried this
9 in the first phase of trial where they called Kathleen Holbin
10 and again they tried to discredit her by suggesting she
11 testified improperly in the Bonenberger case. Mr. Ben
12 Mayerson said they testified improperly that they were
13 unaware of the supersession.

14 THE COURT: Don't say improperly, say incorrectly.

15 MR. COHEN: Incorrectly. But all that matters, not
16 because we have heard plenty of testimony from several
17 witnesses in both the first and second phase of trial that;
18 number one, that document was a casualty bodily-injury
19 related document that had nothing to do with the material
20 adjustment damage handling; number two, was superseded in
21 January of 1996 by Corporate Best Claims Practices document,
22 again, a casualty document, so it has nothing to do with this
23 claim anyway. Number three, we heard testimony in
24 Defendant's case in chief that there was a Material Damage
25 Best Claims Practices.

1 There was a Best Claims Practices that had to do with
2 the Berg's type of claim and; number four, there was clear
3 testimony that nobody, whoever had their hand on the Berg
4 claim, ever utilized the Pennsylvania Best Claims Practices,
5 the casualty document, and plaintiffs never offered any
6 evidence to that effect. So that evidence is lacking and
7 Mr. Gooderham offered nothing in support of Claimant's claim.

8 The fourth witness called by Plaintiff was Mr. Chett,
9 James Chett, their insurance practices expert. Mr. Chett
10 tried to offer three opinions. The first being that the car
11 was a total loss and the Court rejected his ability to
12 testify to that out of hand so we need not even discuss that.
13 Number two, whether or not Nationwide was reckless in
14 allowing an unsafe car on the road.

15 We spent a lot of time and I spent a lot of time
16 cross-examining Mr. Chett as to who was it that really left
17 the Bergs behind in this case. Was it Nationwide or was it
18 Plaintiff's counsel, was it Plaintiff's counsel's letter to
19 Nationwide dated November 3rd that really prohibited any kind
20 of resolution of getting this vehicle fixed?

21 Of course we heard lots of testimony in the first
22 phase of trial from Nationwide's expert that this vehicle was
23 perfectly safe to drive. We heard lots of testimony that the
24 Bergs had driven this vehicle upwards of 20,000 miles. We
25 heard testimony that Mr. Wert who was, quote, unquote, the

1 whistle blower from Lindgren waited 10 months before calling
2 them about the unsafe vehicle. We heard testimony from
3 Mr. Berg that Mr. Mayerson never told him his expert, Donald
4 Phillips, determined that the vehicle was unsafe and
5 therefore he was unaware of that through his attorney.

6 We heard during cross-examination from Mr. Chett that
7 the Blue Ribbon Program is not part of the insurance policy.
8 He admitted to that. Mr. Chett also admitted that Nationwide
9 did not have a contractual obligation to inspect the vehicle
10 once it had been repaired at Lindgren. Mr. Chett testified
11 on cross-examination that Nationwide's obligation under the
12 policy was to pay to have the car repaired and also that
13 Nationwide only had a few days to inspect the vehicle before
14 suit was filed on May 4th, 1998.

15 And Mr. -- if you recall, I presented Mr. Chett with
16 some quotations from the Claims Advisement, the book
17 Mr. Chett said was authoritative, and Mr. Chett agreed that
18 attorney -- Plaintiff's attorneys, in general, use bad faith
19 allegations for effect. We got into this whole discussion
20 about the effect of bad faith and what was Nationwide
21 supposed to do, with regard to the third opinion. And so I
22 submit to you that the Court that with regard to the second
23 opinion Mr. Chett proved nothing and offered nothing to
24 establish Plaintiff's case in chief on bad faith.

25 The third element of Mr. Chett's testimony was an

1 opinion as to whether or not Nationwide should have defended
2 the case the way it was defended, i.e., scorched-Earth
3 tactics, and we revised that to be defend at all costs. Over
4 Nationwide's objection the Court believed that Mr. Chett was
5 qualified to render such opinion, but is there a judgment as
6 to whether or not it was weight enough to merit any
7 consideration for materiality by the Court.

8 THE COURT: I don't think he gave any reasons for
9 that.

10 MR. COHEN: Mr. Chett.

11 THE COURT: Right.

12 MR. COHEN: I don't think so either.

13 THE COURT: This is a case Nationwide thought they
14 had to win and I'm sitting here waiting for the reason
15 Nationwide thought they had to win. Even from circumstantial
16 evidence I don't think that there was enough of that to
17 conclude anything on a prima facie basis.

18 MR. COHEN: My assumption, Your Honor --

19 THE COURT: Or did I miss it?

20 MR. COHEN: No, you didn't miss it. You didn't miss
21 it and the reason why, and Your Honor was very perceptive in
22 that regard, Mr. Chett was going to do two things to them
23 because he knew that my cross-examination would have revealed
24 that he could not do it. Number one, in his report he cites
25 to the claims environment where he says that insurance

1 companies use their size and their power and their wealth to
2 basically step down the small plaintiffs. Mr. Mayerson got
3 on the stand on Day 3 of the trial and basically said, and
4 this essentially was what the case amounted to, we're up to
5 our ears in work. Nationwide is big. Mr. Cohen is a good
6 attorney. We're a small little firm and that's why we should
7 deserve to win.

8 THE COURT: Mr. Mayerson, quite frankly, I agree with
9 all of that. This is my perception of what I see on a
10 day-to-day basis in pretrial settlement conferences, but
11 where is the evidence of it in this case? Where is the
12 evidence where a fact can be found if it --

13 MR. COHEN: There is absolutely no evidence and, in
14 fact, this is not a case Nationwide had to win. This is a
15 case Nationwide had to defend. And there's nothing wrong
16 with defending a case, especially when it is brought and
17 prosecuted with the Plaintiff's zealously and that is born
18 out by what everybody in this courtroom has seen in the first
19 phase and second phase of trial.

20 I asked Mr. Chett point blank, you know, what's the
21 basis for your testimony, for your opinion that we had to
22 defend this case at all costs. Well, I reviewed Nationwide's
23 bill records and on cross-examination, most of those billing
24 records were heavily redacted for good reason and he agreed
25 with me. And he also agreed he never reviewed Plaintiff's

1 billing records, so he could not have possibly rendered a
2 credible opinion, the justifiability from defending this case
3 with Nationwide's point without looking at their billing
4 records also.

5 And Ms. Foster got up, and I looked at Nationwide's
6 billing records and I looked at what Plaintiffs did in this
7 case, and in her opinion the driving force for all of this
8 litigation was Plaintiffs, not Defendants. Defendants simply
9 tried to defend themselves, which is what Defendants do.

10 I will recall to the Court you made a comment during
11 Mr. Chett's testimony where you made a point of remarking
12 that Mr. Chett does not -- that you did not know how Chett
13 could give an opinion on this matter without having reviewed
14 Plaintiffs bills. Again, during cross-examination Mr. Chett
15 also admitted that Plaintiffs sued Lindgren and continued
16 negotiations with Nationwide before bringing them into the
17 lawsuit, and I believe your Honor commented to that effect as
18 well. This was nothing requiring plaintiffs to sue
19 Nationwide. Nationwide wasn't the one who forced them to
20 file the complaint. They had a rule to file --

21 THE COURT: I don't remember making any comment along
22 those lines. I remember testimony and I certainly may have
23 said it, okay.

24 MR. COHEN: That was Plaintiff's fourth witness.
25 Plaintiff's fifth witness was Katherine Van Gorder. I'm not

1 going to spend a lot of time. We all know what we heard and,
2 quite frankly, you know, I think that Ms. Van Gorder
3 basically stumbled through her testimony. She was using
4 wrong data. She didn't know the difference between
5 Nationwide Mutual and Nationwide Financial and quite frankly
6 I think that her testimony at this stage is irrelevant
7 because I don't believe we ever got to that point because I
8 don't believe that any kind of prima facie case for bad faith
9 is established. But if that is the case I believe Ms. Van
10 Gorder offered nothing of value to Plaintiffs, nothing more
11 than the Court could have taken judicial notice of by going
12 on and looking at the data for themselves.

13 THE COURT: I think that the record had indicated, at
14 least my notes indicate one particular point, and I think
15 this is even on direct examination, or maybe it was not. She
16 said, I'm not here to testify whether Nationwide can or
17 cannot afford to pay a punitive damage award. That was one
18 of the primary reasons I thought she was even called as a
19 witness and I got that impression from the motion in limine
20 argument that we had on the first morning, whether or not we
21 had the court stenographer by then I don't remember, but
22 nevertheless that's what I thought that Van Gorder was going
23 to testify. And you objected to her testifying on that basis
24 and actually she had absolutely no information whatsoever.
25 If she did, I don't know what it was.

1 MR. COHEN: Your Honor's recollection is correct and
 2 I remember Ms. Van Gorder saying that and then when we got to
 3 Item Number 6 or Number 7 in Plaintiff's trial brief
 4 regarding her testimony on what her opinion was going to be.
 5 Then we got to that opinion. It wasn't clear that Ms. Van
 6 Gorder didn't know what she was supposed to be doing and who
 7 knows whether or not she wrote those opinions or whether or
 8 not she signed off and gave her --

9 THE COURT: As a result even now I have no idea what
 10 her evidence was about anything that or what it was supposed
 11 to convince me of. I remember what she said because I took
 12 some notes. But I don't think that it established anything.

13 MR. COHEN: And I agree with Your Honor.

14 Then Mr. Mayerson took the stand. Mr. Mayerson was
 15 supposed to take the stand with regard to justifying his
 16 attorney's fees and costs. But as we saw, Mr. Mayerson
 17 essentially gave a diatribe that went on and on and on about
 18 his view of the case and what he believed to be the driving
 19 motivation behind Nationwide's defense, all of which we
 20 objected to. Nevertheless --

21 THE COURT: He gave typical lawyer testimony.

22 MR. COHEN: Exactly.

23 THE COURT: Lawyers are the worst people to testify
 24 in any case, even in their own case because they want to go
 25 and prove the whole case to the judge, at least that was my

1 experience when I got on the stand. I wanted to correct
 2 everybody's mistakes at that point. But, go ahead, but he
 3 did testify as to what his counsel fees were, \$821,143 to
 4 June the 5th, 2007, and he testified as to how he came up
 5 with those figures. And I think that I understood what that
 6 in particular was, and I understand the circumstances in
 7 which he did it in that position. And even though it did not
 8 totally comply with certain statutory requirements with
 9 regard to counsel fees, but that's of --

10 MR. COHEN: I understand and I'm not going to spend
 11 any time talking about, you know, the propriety of
 12 Mr. Mayerson's fees and whether or not they were reasonable
 13 because, quite frankly, again, I don't believe we ever get
 14 there. I believe that --

15 THE COURT: If we don't get there and the Court does
 16 not agree that there was bad faith on the part of Nationwide
 17 Insurance Company --

18 MR. COHEN: That's correct. Now if the Court does
 19 decide on the part of Nationwide, I would ask the Court to
 20 consider Mr. Mayerson's testimony with regard to the fact
 21 that it took him five years to finally get to the point where
 22 he was keeping track of his time. I mean, there are five
 23 elements I laid out under the Pennsylvania rules for being
 24 awarded fees. This is not a case where --

25 THE COURT: He had a good issue, I thought, by the

1 redactions; no, I thought about the redactions in orders and
 2 the four motions that came before me and Judge Lash. He let
 3 my order slide for a year, a year and a half, and Judge
 4 Lash's order slide for another year, year and a half before
 5 he pursued it any further.

6 MR. COHEN: You're right.

7 THE COURT: And he's pursuing it almost like the day
 8 before trial. I mean, that's what I couldn't understand,
 9 wasting a lot of time which appeared to be wasted a lot of
 10 time on maybe interesting issues where he would come up with
 11 something and then it fizzled, which of course is in every
 12 lawyer's case. But here was an area which, you know, could
 13 have been productive. However, I have to assume that what he
 14 knew about what that redaction was wasn't productive anyway.
 15 And the only one who doesn't know to this day is the judge,
 16 which is fine with me. At least there's a reason to the
 17 Court's satisfaction as to why those redactions were made,
 18 attorney/client work product.

19 MR. COHEN: Mr. Mayerson, just a few more things
 20 about his attorney's fees and I'll move on to the other
 21 testimony. Mr. Mayerson testified that he discovered this
 22 Bad Faith Statute back in the mid-90s and he thought it would
 23 be an interesting thing to do and, you know, he was excited
 24 about it and his father was excited about it. He brought it
 25 to his father's attention. Yet ten years later after

1 thousands and thousands of hours worth of time on both sides,
 2 the inconvenience of dozens of witnesses, many of which of my
 3 client are high level executives who had to try to fly back
 4 and forth to trial only to never be called, to look at a set
 5 of bills that are so incomplete and so vague as to the
 6 reasonableness of what he is claiming and that is a standard
 7 under the Pennsylvania rules they have to be reasonable.

8 They have to evidence a benefit to the client and none of
 9 that exists in Mayerson's fees, despite the fact that he is
 10 bringing a claim under the Bad Faith Statute for hundreds of
 11 thousands, close to a million dollars in attorney's fees.

12 THE COURT: Which incidentally I can understand as I
 13 started to say here a few minutes ago when Mr. Mayerson did
 14 not detail his billings or his amounts that he was estimating
 15 his services could be worth a particular point. That was the
 16 problem from the beginning of the case, but then once he
 17 realized how important it was after looking into the statutes
 18 and having that drawn to his attention he still continued to
 19 put on the docket the same thing.

20 MR. COHEN: That's right, Your Honor.

21 THE COURT: Phone call without any explanation,
 22 letter without any explanation. If you ever get into a claim
 23 for fees, again fees are awfully difficult for a Court to
 24 award. I told you I had a judge who refused to even consider
 25 them on my behalf when I was in litigation, and I was far

1 more detailed with regard to each and every item than what
2 you were.

3 Now the only reason I mention that, that's because
4 that's the way judges look at attorney's fees. This is
5 something they don't like to do. This is something that's
6 new in the law and they're not too sure if it's good law or
7 bad but they scurry. I would have been interested in getting
8 into it if there would have been some evidence to support
9 those things, and you obviously didn't -- you didn't have
10 that. And so, and I, as a young lawyer, I'm going to tell
11 you right now, I'm not going to tell you to go on the circuit
12 and talk about bad faith. You'll be on that circuit of bad
13 faith as Ms. Foster, knows but no one will ever ask you a bad
14 faith again. But I guarantee you you'll be asking for
15 counsel fees many, many times in your professional life and
16 you'd better have some real meat attached to it.

17 There's one lawyer in town here who drives me nuts
18 who's also a good friend of mine, Dave Kozloff. He's a good
19 lawyer. He asks for counsel fees in everything. I asked him
20 two weeks ago, do you have a counter claim for counsel fees,
21 Mr. Kozloff? And he said, I always do, and he did. So I
22 threw that out a few weeks ago before in something else. But
23 just in counsel fees there is no evidence from which a judge
24 or a jury could ever award counsel fees in this case. Go
25 ahead, assuming even that there was even bad faith.

1 MR. COHEN: As Your Honor pointed out, as of March
2 2003 when Mr. Mayerson testified he did keep track of his
3 fees, they still continued to be inaccurate.

4 THE COURT: Absolutely. Go ahead.

5 MR. COHEN: I asked Mr. Mayerson several questions
6 with regard to the class action complaints that he filed and
7 how that all played into driving this litigation. Mr.
8 Mayerson, similar to how he testified --

9 THE COURT: I don't think you have to talk about
10 that. I don't think that's worth arguing.

11 MR. COHEN: All right. Finally, with regard to Mr.
12 Mayerson's testimony with regard to the value that he gave to
13 the Bergs, the Court recognized that basically there was
14 nothing of value. It was they got one big fence-in, I
15 believe was the term that Your Honor used.

16 Mr. Mayerson then called David Cole to the stand.
17 David Cole was an ex-employee of Nationwide. He was an
18 attorney. He had involvement in overseeing the Berg
19 litigation, at least in the very early stages. Mr. Berg,
20 excuse me, Mr. Cole testified credibly that the Best Claims
21 Practices Manual that Claimants were attempting to utilize a
22 casualty-related document. It would have made no sense for a
23 material adjuster to utilize that document, and Mr. Cole
24 offered nothing of substance in support of the Plaintiff's
25 claim.

1 Finally, Plaintiffs rested at that point having
2 offered no additional evidence despite years of reports and
3 allegations. Plaintiffs never called their expert Charlie
4 Barone. They never called their expert James Schwartzman.
5 They never called their expert Walter Cohen. They never
6 called their expert Gary Fye. I believe Mr. Mayerson's
7 explanation for not calling Schwartzman is that they didn't
8 want to subject him to my cross-examination. I've never
9 heard of that before. I take it as a compliment, but if you
10 have an expert, call him.

11 THE COURT: I think that's a good reason if you keep
12 it to yourself.

13 MR. COHEN: No, I submit to the Court that they
14 didn't call Mr. Schwartzman because he was an author on the
15 brief of Hollick --

16 THE COURT: I didn't know that until now. Go on to
17 the next point.

18 MR. COHEN: Plaintiffs rested their case at that
19 point. Nationwide presented two witnesses, Bruce Bashore,
20 again who testified in the first phase. Mr. Bashore, I
21 believe, testified credibly with regard to the fact that the
22 initial determination of this vehicle being a total loss was
23 something that was discussed between Mr. Witmer from
24 Nationwide and Mr. Joffred from Lindgren.

25 I read into the record testimony from Mr. Joffred and

1 Mr. Witmer whereas it appeared to be perhaps a total loss or
2 borderline total loss. After discussion with Nationwide they
3 decided to try to send the vehicle out to see if it could be
4 repaired. There was nothing wrong with that. It was an
5 attempt to have the Berg's vehicle repaired. Nobody ever
6 testified and Plaintiffs offered no evidence to suggest that
7 Nationwide forced Lindgren to send the vehicle out, that they
8 coerced them to send the vehicle out was anything less than
9 an attempt to just see if the car could be repaired. And
10 Mr. Joffred offered testimony that when the vehicle came back
11 from the frame pull from K.C. he notified Nationwide that it
12 appeared that it could be pulled and that was the last
13 Nationwide ever heard about it until they got a letter in
14 November of 1997.

15 THE COURT: It could be pulled but it could be what?

16 MR. COHEN: Repaired. And it could be repaired.

17 THE COURT: Go slow.

18 MR. COHEN: Pulled and repaired. I apologize.

19 Mr. Bashore testified a little bit about the Blue Ribbon
20 Program. We've all heard about that. It's a customer
21 service program. It's designed to make the process of repair
22 faster and more efficient. It's a customer service tool.
23 Mr. Bashore testified that as to the policy, the Berg's
24 policy, and that the policy of insurance was something
25 different than the Blue Ribbon Guarantee and then we heard --

1 and Mr. Bashore was cross-examined by Plaintiff's counsel.

2 I don't believe that Plaintiff's counsel made any
3 points with Mr. Bashore. I mean, Mr. Bashore testified
4 credibly that this was a situation where Nationwide and
5 Lindgren were trying to work a problem out and that as soon
6 as Nationwide was aware that there was a problem they acted
7 quickly to have this vehicle inspected and almost
8 instantaneously a lawsuit was filed preventing Nationwide
9 from taking any further action.

10 Finally, Nationwide called Constance Foster. Ms.
11 Foster, as the Court heard, was the Commissioner of Insurance
12 in Pennsylvania. She has extensive knowledge and
13 understanding of insurance practice, insurance regulatory
14 scheme. She was involved in actually the passage of the Bad
15 Faith Statute. And Ms. Foster testified very credibly that
16 with regard to bad faith in Pennsylvania --

17 THE COURT: Just for the record, she was not an
18 advocate of the Bad Faith Statute. She participated in --

19 MR. COHEN: That's correct.

20 THE COURT: Along with other agencies, which was her
21 responsibility to come up with something that could be passed
22 by the Pennsylvania State Legislature.

23 MR. COHEN: That's correct.

24 THE COURT: So she was not an advocate of the -- I
25 think that's very important. She may have been an advocate

1 but was acceptable to the Court as an expert witness.

2 MR. COHEN: If I said advocate, I apologize. I
3 misspoke. But she was instrumental in the passage and the
4 ultimate adoption of the Bad Faith Statute in her role as the
5 Commissioner of Insurance. In any event, Ms. Foster
6 testified with regard to the Bad Faith Statute and the
7 standard and right off the bat stated that it must be a claim
8 for an improper refusal to pay benefits under the policy and
9 that Ms. Foster testified that a policy has a very specific
10 meaning in Pennsylvania.

11 It is that contract which is approved by the
12 Department of Insurance and there's a reason why policies are
13 approved. It's so that there is some predictability by
14 insureds and insurers as to the rights and obligations under
15 this contract. And that, according to Ms. Foster, the
16 insurance policy at issue in this case is something much
17 different than the Blue Ribbon Repair Program and that the
18 claims that Plaintiffs were making in this case really arose
19 from the Blue Ribbon Program and Blue Ribbon Guarantee and
20 not from the policy.

21 And in Ms. Foster's opinion there may have been a
22 tort there on the part of Nationwide. In fact, she believes
23 that the \$295 verdict that the jury granted in the first
24 phase of trial may have been indicative of the jury's feeling
25 of that tort, but that is not bad faith. And that is not a

1 reckless refusal to pay policy proceeds or proceeds under the
2 policy.

3 Ms. Foster offered additional testimony with regard
4 to -- well, tangential to that Ms. Foster offered testimony
5 that the Blue Ribbon Program, the Blue Ribbon Guarantee was
6 not the policy and that a claim for bad faith pursuant to the
7 bad faith -- pardon me -- pursuant to the Blue Ribbon
8 Guarantee are not cognizable under Pennsylvania Rule and Bad
9 Faith Statute.

10 Ms. Foster also testified with regard to Mr. Chett's
11 third opinion, the defend-at-all-costs theory opinion, and
12 again Ms. Foster testified that she reviewed the bills and
13 she reviewed the docket. She reviewed all of the filings in
14 this case, and in her opinion this was a case being driven by
15 Plaintiffs, not by Defendant. And had Plaintiffs given
16 Defendant the opportunity to speak with Lindgren and try and
17 resolve this problem, we possibly could have avoided all of
18 the litigation that we are now here for.

19 At that point Ms. Foster was subjected to some
20 cross-examination from Mr. Mayerson, senior. I believe that
21 Mr. Mayerson made no relevant point with regard to Ms.
22 Foster. His questioning had to do primarily with Mr. Wert
23 and factual issues that had nothing to do with Ms. Foster's
24 testimony or opinion was completely outside the scope of
25 direct examination. And when he tried to read some case law

1 or blurbs from case law into the record to support his
2 position, Ms. Foster was very quick to point out that Mr.
3 Mayerson was just wrong and she did not hesitate. And I
4 believe that she testified credibly that Mr. Mayerson was
5 improperly trying to argue cases that did not apply in this
6 situation. And that was the end of Defendant's case in
7 chief.

8 We have the record now before the Court. We have the
9 exhibits, most of which, dare I say, all of the exhibits
10 presented by Plaintiffs are completely irrelevant to the
11 issue of whether or not Nationwide committed bad faith. They
12 don't link up to anything. They certainly do not establish
13 by clear and convincing evidence that Nationwide did anything
14 improper in this case.

15 I will suggest to the Court that Nationwide not only
16 did not commit bad faith or act in bad faith, Nationwide
17 acted in good faith. Nationwide tried to do right by the
18 Bergs. And in this situation the only ones who ultimately
19 did their clients a disservice were the Mayersons, as was
20 pointed out a few days ago. I believe that the Bergs
21 received nothing of value. I will just mention in closing
22 that despite the fact that the Bergs were here for the entire
23 trial, I found it interesting that they didn't even testify
24 during the bad faith phase. And I, again, think that is a
25 testament to the weakness of Plaintiff's case. I don't

1 believe the Plaintiff has made a prima facie case for bad
2 faith under the Pennsylvania Bad Faith Statute and the case
3 law is Terletsky. And for those reasons, Nationwide, at this
4 time would move for directed verdict and seek judgment in its
5 favor. Thank you, Your Honor.

6 THE COURT: Okay. Mr. Mayerson.

7 MR. B. MAYERSON: Thank you, Your Honor. Plaintiffs
8 agree that Terletsky is one of the early standards upon which
9 insurance bad faith is measured. But it is not the only
10 standard. It is the early standard and since then the law
11 has developed, as the law always does. But I want to address
12 the Terletsky standard because I believe that this is -- that
13 it supports our cause of action.

14 The first prong of the Terletsky standard is that the
15 insurer had no reasonable basis for denying benefits. Number
16 two, that it knew or recklessly --

17 THE COURT: Mr. Mayerson, I'm not going to suggest
18 the way you go about this, but if you gave me a brief this
19 morning, and just like everything else, it's very, very
20 lengthy. You remind me of myself. That's like my opinions.
21 They're always much, much too lengthy, 25 pages of law with
22 no argument. Give me some argument. I can read all of that
23 in the brief. I read all this time and time again. I want
24 to hear some argument at this point as to why the Defendant's
25 motion for a directed verdict should not be granted this

1 morning, okay?

2 MR. B. MAYERSON: Yes.

3 THE COURT: Do what you want, and I'm going to give
4 you the same amount of time, which was much longer than I
5 thought we needed for the Plaintiffs. But if you want to
6 take an hour, take an hour. But I want to hear argument,
7 okay?

8 MR. B. MAYERSON: Your Honor, as was discussed
9 earlier, during Mr. Cohen's examination, the burden of proof
10 is by clear and convincing evidence in a bad faith case.
11 We're here now on a different burden, which is that all the
12 facts are assumed to be true for purposes of this motion.
13 The facts that we think are most important that prove the
14 reprehensibility of Nationwide's state of mind is its
15 knowledge of the repair defects before the vehicle was
16 returned to the Bergs, and very importantly, before the claim
17 payment was made. That evidence is proven by direct
18 eyewitness testimony and circumstantial evidence and all of
19 that evidence corroborates what the eyewitness testimony was
20 of David Wert. And that was that Nationwide visited this
21 vehicle throughout the four-month-repair period, early on in
22 the middle and again at the end.

23 Nationwide had a duty under nothing else than its
24 Blue Ribbon Guarantee to step up to the plate and honor the
25 guarantee to step up to the plate and honor that which it

1 promised to do, and either that was to replace the vehicle or
2 repair the vehicle correctly. And it knew when it had had
3 that vehicle delivered back to the Bergs that neither one had
4 taken place. To stand by silently as that vehicle was
5 returned to the Plaintiff, Bergs, with known structural
6 repair failures, was a reckless disregard.

7 THE COURT: With no structural repair?

8 MR. B. MAYERSON: With known structural repair
9 failures as a reckless disregard to the Plaintiffs.
10 Nationwide has presented argument and perhaps some testimony
11 that it didn't know at certain points in time whether the
12 repair defects would impact the vehicle's safety. And I
13 submit to Your Honor that that makes no difference
14 whatsoever. The fact that it knew about the potential for
15 safety issues is a reckless disregard because Defendant knew
16 that it had a duty to do something and instead it just sat
17 back, sat silently as that vehicle was returned to the Bergs.

18 It claims to be ignorant about so many facts
19 throughout this claim and litigation, and I submit to Your
20 Honor that based on what the record reveals that Nationwide
21 is a master at faking ignorance and dissembling what the
22 actual facts are. That is our most important evidence and
23 it's set forth in the brief that I submit to you and it takes
24 up several pages, the testimony of David Wert.

25 Ms. Foster testified that he was a disgruntled

1 witness. Any allegation that he was disgruntled went only to
2 Lindgren, not to Nationwide. In fact, it was against
3 Mr. Wert's self-interest to testify against Nationwide
4 because he himself is a -- he now owns his own repair
5 facility. And so to say that Nationwide did these terrible
6 things obviously isn't very good for his business and yet he
7 came into this courtroom and testified as he did. He was
8 submitted to cross-examination and that cross-examination did
9 not diminish the points that he was making and what erected
10 from the events that took place in that repair shop over four
11 months, and those were that Nationwide visited that vehicle
12 and that they were displeased with what they saw when they
13 visited the vehicle.

14 Now the circumstantial evidence that we talked about
15 was evidence that I secured, not produced by Nationwide;
16 first from a Berks County former Blue Ribbon Repair Shop of
17 these guidelines dating back to 1992. And those guidelines
18 specifically identify this Blue Ribbon Shop Log that was kept
19 at the Blue Ribbon Shop used to document each random
20 inspection that was done by the Property Damage Specialists.
21 I also produced the testimony of George Moore from Penn-Del
22 Autobody who had identical records produced on the identical
23 time period, and he confirmed that this was the procedure
24 from the time he started on the program in '92 until the time
25 they terminated their relationship in '97 or '98. He also

... THE COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

1 had blank forms of these documents which are attached to the
 2 exhibits at Exhibit 34. And he has both a blank copy of the
 3 Blue Ribbon Shop Log which is identified Exhibit 34 at 549 in
 4 the lower right-hand corner and 551 is numbered at the bottom
 5 right-hand corner a repair evaluation sheets. He testified
 6 these were being used throughout the repairs. None of those
 7 documents were produced in this case. If they helped
 8 Nationwide. I'm sure Nationwide would have produced those
 9 documents. I think it's reasonable to conclude that those
 10 documents were unfavorable to Nationwide because they
 11 documented what Mr. Wert testified to and that was Nationwide
 12 was aware of the condition of the vehicle before the vehicle
 13 was returned to the Bergs and before they paid the claim.

14 Now Ms. Foster testified it was okay for Nationwide
 15 -- that even if the Court assumed they knew of the condition
 16 of the vehicle at the time Nationwide made the claim payment
 17 that that was fine because much like a health insurer or HMO,
 18 it's their duty to pay for the services rendered. First of
 19 all, an HMO doesn't have a duty of good faith to its insured.
 20 Our Courts determined an HMO is not an insurance company.
 21 But more importantly, the duty of good faith and fair dealing
 22 at the very least should have compelled Nationwide to warn
 23 the Bergs about the condition of the vehicle, even if
 24 Nationwide was going to go ahead and make that claim payment.
 25 The claim payment wasn't made jointly to the Bergs and the

1 repair shop. It was made directly to the repair shop alone
 2 without calling the Bergs or conferring with them at this
 3 point, and now it is late April and May of 1997. This is
 4 three months after the Bergs got the vehicle back originally
 5 and now have returned it on several occasions.

6 If Nationwide at this point would have called up the
 7 Bergs and said, hey, we're going to make this claim payment,
 8 it's been held up for a while. What do you think about that?
 9 The Bergs would have said, no way, do not pay them a penny.
 10 Because at that point the tires had worn down to the metal
 11 belt on the vehicle. We heard testimony from Mrs. Berg about
 12 the tires by Doug Joffred who is the Shop Manager. He
 13 confirmed this. He confirmed that the tread on the tires was
 14 worn down to the metal belt within a month or two after the
 15 repairs were complete. If this doesn't illustrate a reckless
 16 disregard, I don't know what does.

17 Nationwide can argue it didn't know about the tires
 18 in March of 1997, but it knew about the condition of the
 19 vehicle before it went out and it was reasonable to conclude
 20 that this was a likely result of that.

21 I would like to also address the inspection report of
 22 Stephen Potosnak. And although Ms. Foster gave an opinion
 23 that that conduct does not arise under the insurance policy,
 24 we contend that it does, Your Honor, and I would like to
 25 address her argument. She says that a new contract was

1 entered into when Nationwide offered the Bergs this Blue
 2 Ribbon Repair Program. What she fails to acknowledge is that
 3 there was no meeting of the minds as to this new contract.
 4 Nationwide never disclosed material information relevant to
 5 this proposed contract, specifically that Nationwide was
 6 receiving all these repair discounts if the vehicle was
 7 repaired rather than totaled or more importantly that they
 8 were waiving their rights to make a claim under
 9 Pennsylvania's Bad Faith Statute if they agreed to
 10 participate in this program.

11 Plaintiffs submit, Your Honor, that the more
 12 appropriate analysis, if one needs to be made at all as to
 13 whether these are two separate events, is that Nationwide
 14 altered the contract. And I cited in my trial brief to a
 15 standard jury instruction on contract modification. And that
 16 is what happened here, if it needs to be addressed at all.
 17 That is that when Nationwide offered the Bergs this Blue
 18 Ribbon Repair Program they modified the insurance contract.

19 And although Ms. Foster gave her opinion that it
 20 cannot be modified --

21 THE COURT: How did they modify it?

22 MR. B. MAYERSON: First of all, I'm saying you even
 23 need to go -- all the conduct raises under an insurance
 24 policy. The law is supposed to be interpreted broadly and
 25 the Courts have done so over the past years, and when it's

1 correctly interpreted, broadened in its scope, you don't need
 2 to go to contract modification but since she raised the issue
 3 that it's a new contract would be that it was modified --

4 THE COURT: Did she say it was a new contract or a
 5 separate contract?

6 MR. B. MAYERSON: I believe she said -- I think she
 7 said it was a separate contract.

8 THE COURT: I think so. Go ahead.

9 MR. B. MAYERSON: But I don't think there was ever a
 10 separate contract, and the law is quite clear on what can be
 11 bad faith.

12 THE COURT: There was no doubt about it that not
 13 every person who had a Nationwide Mutual Insurance Company
 14 policy also had the Blue Ribbon Service.

15 MR. B. MAYERSON: Yes, Your Honor. So the third
 16 party claim --

17 THE COURT: That that was an option to their insured,
 18 if their insured at the time of the collision or whatever or
 19 a need for repair would opt to exercise that option.

20 MR. B. MAYERSON: Yes.

21 THE COURT: Isn't that what the testimony was?

22 MR. B. MAYERSON: The testimony is that the Blue
 23 Ribbon Repair Program is offered to everybody.

24 THE COURT: Yeah, but not everybody has to accept it.

25 MR. B. MAYERSON: That's true, not everybody has to

713

1 accept it.

2 THE COURT: But if they do accept it this is an
3 additional contractual relationship between the individual
4 who now either owns or leases the vehicle or whatever and
5 Nationwide Insurance company. They get certain guarantees if
6 they opt for that program. But I think a very key issue in
7 this particular case had now an appellate court might see it
8 differently, but I don't know where the evidence is to
9 substantiate your position that it's one contract or one
10 relationship with the underlying policy where somebody
11 decides to follow through with the Blue Ribbon Service
12 Policy.

13 MR. B. MAYERSON: Your Honor, I would submit to you
14 that the opposite might also be true and that is that any
15 time Nationwide offers this program to a customer, whether it
16 be one of their policyholders or a third-party Claimant, that
17 they have created a duty of good faith and fair deal in that
18 contract because the duty of good faith and fair dealing is
19 not written into the insurance policy. It's not in the Blue
20 Ribbon or in the Century 2 policy that's been marked as an
21 exhibit in this case. It's imposed by statute and there's
22 good reason for it. And all those reasons that created that
23 impose that duty into the insurance policy that Ms. Foster
24 agrees controls here would also impose that in this
25 subsequent contract which is not indifferent from an

714

1 insurance policy.

2 THE COURT: See that's a big leap to make. That's a
3 big leap for me especially now that you abandon the argument
4 that it's not a modification of the underlying insurance
5 policy. You said I don't even have to get to that.

6 MR. B. MAYERSON: I'm not abandoning --

7 THE COURT: You're not abandoning anything. You're
8 throwing it at me and saying, weed it out and to rule in my
9 favor.

10 MR. B. MAYERSON: I don't think that's what I'm
11 doing. I think what I'm suggesting and arguing is that it
12 would be a terrible precedent for this Court or any appellate
13 court to say that the obligation of good faith and fair
14 dealing is extinguished upon any customer dealing with repair
15 programs.

16 THE COURT: This Court would be saying that based
17 upon the evidence that was submitted in the Berg case with
18 this term number that there is nothing in the record from
19 which the result that you're asking for, you know, could come
20 about.

21 MR. B. MAYERSON: I believe, Your Honor, there is
22 evidence for that and it's addressed in my brief which is the
23 fact that Nationwide treated it as one claim. Its own
24 conduct --

25 THE COURT: All right. Now you're saying it is one

715

1 claim.

2 MR. B. MAYERSON: I'm always saying it's one claim.
3 I steadfastly adhere --

4 THE COURT: I'm saying I cannot see that. I cannot
5 see how it is one contract. It's one claim, yes, one claim.
6 It could be one claim. I don't know what one claim means.
7 Does a claim mean it's all involved in the same lawsuit?
8 That could be one claim too, but there has to be some basis.
9 And I think what Ms. Foster testified to is that the
10 insurance policy -- Nationwide Insurance policy is a
11 contract. The Blue Ribbon Repair Service is another
12 contract. These are two separate contracts and defense
13 argument is, as I understand it again, is that good faith
14 applies to the underlying policy but certainly not to any and
15 all Nationwide agreements such as the service agreement and
16 that's a big leap to connect those two and you may be right
17 and maybe the appellate court might say somewhere along the
18 line that you're right, but I can't see it in this particular
19 case and not the evidence.

20 MR. B. MAYERSON: I would like to cite to the
21 evidence that supports that if I may.

22 THE COURT: Well, do what you want. The evidence is
23 quite clear they treated the entire matter as one claim.
24 They gave it one claim number. They referred to the same
25 date of loss and they submitted one claim.

716

1 THE COURT: I heard all that and I referred to all
2 that. That's in the hundreds and hundreds of pages of
3 documents that are filed in this case.

4 MR. B. MAYERSON: Your Honor, then the law --

5 THE COURT: We'll have to rent a truck to take
6 everything up to Harrisburg in this case somewhere along the
7 line.

8 MR. B. MAYERSON: The law also supports our position
9 that this was one matter and it all arose from the policy --

10 THE COURT: You were doing wonderful up until that
11 particular point. You were giving me good arguments. Put
12 your papers down and keep doing the argument. Don't read
13 from a brief.

14 MR. B. MAYERSON: The case law says that bad faith
15 can be proven by evasion of the spirit of the bargain willful
16 rendering of imperfect performance and abuse of power to
17 specific terms. By entering this separate contract with the
18 insured that would remove the duty of good faith and fair
19 dealing. Nationwide is evading the spirit of the bargain.
20 They are willfully rendering imperfect performance and they
21 are abusing their power to specific terms. They're not
22 telling the Bergs what this does to them. They're not
23 telling the Bergs, well, if we screw you down the road you're
24 not going to have any remedy under the Bad Faith Statute.
25 So even by the existing appellate authority that

OFFICE OF THE CLERK OF BERKS COUNTY, READING, PENNSYLVANIA

1 exists today, this is an easy case. I mean, it's just -- it
 2 would be absurd that this is not bad faith to say that
 3 Nationwide visited this repair shop, told the shop how to
 4 repair the vehicle, overrides a total loss appraisal, directs
 5 the vehicle to an undisclosed repair facility without the
 6 Berg's knowledge and consent, has the frame attempted to be
 7 straightened, those attempts done at Nationwide's direction
 8 failed. Then the repairs proceed anyway with the parts being
 9 put on improperly, welded in the wrong places totally
 10 misaligned. Nationwide is visiting in the repair shop and
 11 missing documents in this case. An eyewitness comes in and
 12 attempts --

13 THE COURT: And, again, as counsel said the other
 14 day, maybe there were other remedies that were available to
 15 the Bergs for all the harm that came about as a result of
 16 what you just discussed. But it is not under this statute.
 17 That's the point and that's what you have to find it squarely
 18 within --

19 MR. B. MAYERSON: Your Honor, the Bad Faith Statute
 20 as our case law says, it's a remedial statute. It's to be
 21 construed broadly. If you want to construe it narrowly --

22 THE COURT: I venture to say that the statute is to
 23 remedy some harm, some wrong that's done to somebody.

24 MR. B. MAYERSON: Your Honor, I've never seen a
 25 clearer case of insurance bad faith.

1 THE COURT: Obviously not otherwise you wouldn't have
 2 spent the last ten years on this case.

3 MR. B. MAYERSON: I would like to address our
 4 efforts. Ms. Foster did give some opinions. It's my
 5 understanding under the law you're free to reject those
 6 opinions if they do not fit in --

7 THE COURT: On what basis would I reject them? Who
 8 disagreed with anything she said on the stand? Who gave an
 9 opinion different than the opinion that she gave or the three
 10 opinions that she gave?

11 MR. B. MAYERSON: Mr. Chett did and Mr. Chett's
 12 opinion was that it was a reckless disregard for Nationwide
 13 to have this let this vehicle back on the road. And he
 14 testified that that was insurance bad faith under the
 15 statute.

16 THE COURT: That was one of her opinions and one of
 17 Chett's opinions. What about the other opinions that she
 18 gave?

19 MR. B. MAYERSON: Well, I think I've addressed the
 20 new contract versus contract modification.

21 THE COURT: All right. Go ahead.

22 MR. B. MAYERSON: One of the opinions she gave is
 23 that the jury's finding of deceptive or fraudulent conduct
 24 doesn't support a finding of bad faith. If that doesn't show
 25 an insurance company's failure to comply with its duty of

1 good faith and fair dealing, I don't think anything ever
 2 will. I mean, to me it sounds absolutely ludicrous to
 3 suggest that.

4 The jury was instructed to find the violation of the
 5 unfair trade practices that they had to find fraud and they
 6 had to find it by clear and convincing evidence. The statute
 7 actually permits fraud or deceptive conduct, so in the end
 8 there was no -- as was argued on post-trial motions after the
 9 first trial that the verdicts were inconsistent. The unfair
 10 practices, as a consumer protection law, the statute was
 11 amended and they added language to include deceptive conduct.

12 If an insurance company conducts itself deceptively
 13 during the appraisal and repair of a vehicle and if the Court
 14 finds this is not insurance bad faith, I think the appellate
 15 courts would have something to say about that because I
 16 cannot understand how that decision could be made.

17 Some of the evidence that we produced, and I want to
 18 address the photographs of Terry Shaw. Your Honor may recall
 19 that the date on those photographs was after the inspection
 20 report of Stephen Potosnak. The photographs read a lot like
 21 the surveillance style photograph. That is instead written
 22 on them, fresh mud and dirt in the tires. They took pictures
 23 of mail on the seat to show when the vehicle was being
 24 driven.

25 Your Honor, I submit to you that is evidence that

1 Nationwide never intended to honor this claim following the
 2 Potosnak inspection. My testimony is uncontroverted that
 3 that was concealed through five years of litigation and was
 4 not produced until May of 2003 pursuant to an -- when
 5 Nationwide then produced the report it was revealed that the
 6 attorney/client privilege never applied to that document.

7 MR. B. MAYERSON: And my point with the photographs,
 8 Your Honor, is that those photographs prove that Nationwide
 9 knew about the condition of this vehicle. It was documented
 10 right in their claim file and the first thing they did was
 11 they began building a case to discredit the Bergs by taking
 12 these photographs that show fresh mud and dirt in the tires
 13 and current mail on the seat. They also then began tracking
 14 the vehicles odometer. Why? Why would they bother tracking
 15 this vehicle's odometer? They know this vehicle is a wreck
 16 so what was the point?

17 The point was because they were going to discredit
 18 the Bergs. They were going to withhold the Potosnak
 19 inspection report right up through the trial. They were
 20 hoping to get an expert like William Anderton to say that the
 21 repairs weren't that bad and we would never have that
 22 Potosnak inspection. The only reason the Potosnak inspection
 23 report was produced because Mr. Cohen's predecessor in
 24 Nationwide's Answer to Request for Admissions, that was in
 25 May of 2003. When I got that document when I saw what was in

1 that document revelations basically began to occur. I'm
2 reading the Potosnak deposition taken years earlier wherein
3 he testifies, you know, that he can't give an opinion without
4 seeing the vehicle.

5 You heard testimony when Bruce Bashore was
6 cross-examined about his steps that took place before that
7 Potosnak inspection was produced, and he also testified
8 inaccurately with regard to his knowledge about that
9 inspection. He's the one that ordered that inspection. He
10 knew all about that inspection, and I submit to Your Honor he
11 knew it was redacted when he testified incorrectly about its
12 existence.

13 In my brief, Your Honor, I set forth my efforts to
14 address the redactions and they were not quite as simple as
15 was presented previously. And essentially it was a long,
16 drawn out battle with multiple motions and more than one
17 order that culminated in my motion for sanctions that was
18 filed after I realized that Nationwide was taking improper
19 redactions and I alleged improper redactions and you entered
20 an order compelling them to comply with the prior order. If
21 that doesn't satisfy my obligations under the Rules of Civil
22 Procedure, well, I think it does. And my subsequent efforts
23 to get the documents and Judge Lash's refusal to take an in
24 camera view of those documents in light of what the aaaaa
25 review of those documents in light of what the Potosnak

1 report stated, I believe may be an abuse of discretion.

2 Now I have protected the record in this regard when
3 Mr. Schwartzman did not testify, and I said that we're not
4 calling Schwartzman but I want to preserve my objection about
5 these redacted claim log entries and frankly I don't know how
6 the Court can rule in Nationwide's favor without looking at
7 these claim log redactions. And I also want to point out,
8 Your Honor, when Nationwide filed a motion with protected
9 order with regard to claim log entries they raised both the
10 attorney/client privilege and the work product doctrine and
11 after both parties briefed out the issues granting protection
12 as to only the attorney/client opinions. There's an opinion
13 called Nationwide versus Fleming that just came out on May
14 21st that discusses this very issue. Mr. Cohen has been
15 fighting furiously to keep that out of your hand.

16 Your Honor, I strongly urge you to take a look at the
17 opinion. It says when the work product privilege is not
18 raised it's not at issue and the Court won't look at it.
19 They are distinct privileges and protections and they cannot
20 be melded together and treated as one. Mr. Gooderham
21 testified that this Best Claims Practices Manual was the
22 incorrect manual when he testified in the Bonenberger matter
23 and he agreed that Kathleen Holbin and Tim Gaul also
24 testified incorrectly in identifying that as a current manual
25 in the year 2000. These are people who wrote that document.

1 How can they be mistaken? How could they be that mistaken
2 about this document? They wrote it and they didn't come in
3 here with the new document to show us how similar they
4 looked. Their testimony is not credible, Your Honor. And
5 more than that it's res judicata because the Superior Court
6 and the Trial Court in that matter found that that manual was
7 in existence and used in that trial in 2000. They can't come
8 in here now with some cockamamie story and say it was
9 replaced in 1996. They're arguing it was replaced -- it was,
10 at times, inconsistent but the affidavit that's attached as
11 an exhibit by Mr. Gooderham or Mr. Bano, I'm not sure which
12 one it was testified it was replaced on January 1st, 1996
13 conveniently before the Berg date of loss. Well, the
14 Bonenberger was a date of loss November of '96, a month after
15 the Berg date of loss.

16 Mr. Cole also testified that he didn't know what this
17 term LEAP meant. This is the guy that supervised the
18 attorneys for the State of Pennsylvania. How could he not
19 know what LEAP meant? More importantly -- and LEAP is
20 referenced in the Pennro Litigation Strategy. But more
21 importantly --

22 THE COURT: As meaning what? Just tell me. You're
23 running out of time.

24 MR. B. MAYERSON: It's really a lot of double-talk,
25 but it basically says that they want to track the

1 effectiveness. My interpretation of it is that Nationwide
2 wants to track the effectiveness of this Pennro Litigation
3 Strategy. And at the point this was written it was too early
4 to tell what the effectiveness was and it's exhibit -- at
5 Exhibit 36 and supplied to all claim departments. All claim
6 divisions that which uses property damage, all claim
7 divisions. More importantly, Your Honor, David Cole entered
8 that word in the Berg claim log. It's on the front page of
9 the claim log, and I'm showing you the redacted version
10 that's been marked as Exhibit 46 on Page 1, an entry by David
11 Cole, Legal LEAP Clerk. If this doesn't tie into the Pennro
12 Litigation Strategy where they both say LEAP, I don't know
13 what does. Of course he's not going to admit he applied
14 this. He's been found to be in bad faith.

15 But lets assume for a moment that this manual that
16 have had testified in 2000 that the Superior Court confirmed
17 was used through 2000, let's assume it really was superseded
18 in 1998 and that David Cole and rather that Gooderham, Tim
19 Gaul and Kathleen Holbin were mistaken about their testimony.
20 Assume that for a moment. It doesn't matter because David
21 Cole had that Pennro Litigation Strategy. It was his job as
22 the lead counsel as managing all attorneys in the State of
23 Pennsylvania to know about this litigation strategy and to
24 understand how to best apply it. He was in the position at
25 Nationwide to know exactly how to apply that strategy.

1 Your Honor said there was no evidence that that was
 2 applied against us. Mr. Chett called it a -- well, he called
 3 it a scorched-Earth defense and that was changed during trial
 4 to defend at all costs. But this is evidence that it was a
 5 clog. Much of it was Nationwide's billing record which was
 6 not admitted in this case, and the total amount had billed
 7 which greatly exceeded the amount of Plaintiff's claims for
 8 attorney's fees, but those have not been admitted into
 9 evidence. But Mr. Chett did testify that in the early part
 10 of those billing records, that is in the two or three months
 11 after this lawsuit was filed that I contacted them to try and
 12 settle this case, and that my efforts to settle the case were
 13 rebuked.

14 Now even under Ms. Foster's testimony that settlement
 15 overtures aren't admissible unless they go to the underlying
 16 claim, this evidence is relevant even under her opinion, her
 17 restricted opinion. And Mr. Chett looked at those entries
 18 while he was on the witness stand and we identified precisely
 19 the dates that I recalled them and that I attempted to settle
 20 the case and that I attempted to have the vehicle inspected,
 21 because at this point we didn't know about the Potosnak
 22 inspection and all we knew was that when Nationwide inspected
 23 the vehicle hopefully they would honor the claim. So you can
 24 be darn sure that I was busy trying to get that inspection
 25 done from May of '98 until April of 1999 when that inspection

1 finally took place.

2 Now Mr. Anderton who did the inspection in April,
 3 1999 did a preliminary inspection in August of 1999. I
 4 testified on the stand that there was no reason for them to
 5 do a preliminary inspection in August of '99. We weren't
 6 restricting them to that. That was their decision to do it
 7 that way, and I would suggest to you that they had no good
 8 reason for doing it other than the fact that they wanted to
 9 take control of that evidence before Mr. Anderton did his
 10 final inspection. And that argument is supported by what
 11 Nationwide did when it purchased the vehicle.

12 And what Nationwide did when it purchased the vehicle
 13 was it did so unilaterally, and when I suggested the vehicle
 14 be placed into a secure storage facility until Mr. Anderton
 15 conducted his inspection, Nationwide threatened to sue the
 16 bank if the vehicle was sold to the bank rather than the
 17 Plaintiffs. All the Plaintiffs wanted was to place the
 18 vehicle into a secure storage facility. Why would Nationwide
 19 go to these lengths threatening a law suit to take control of
 20 this evidence? And when you think about it, it's a
 21 withholding or redacting Mr. Potosnak's inspection report of
 22 April of '98.

23 We are in a dog fight. I believe in zealous
 24 representation. I've zealously represented my client on a
 25 contingency fee. When I did something, even if this Court

1 considers it to have been over the top, I did it because I
 2 thought it was necessary and I wasn't getting paid. It
 3 wasn't like I billed out. Our motion for summary judgment
 4 that Mr. Cohen made such a big deal about was filed
 5 approximately four months after the Potosnak inspection
 6 report was produced and it was not just a motion for summary
 7 judgment. It was a comprehensive motion for partial summary
 8 judgment and to compel the production of documents. And in
 9 it I alleged about these and I told the Court about
 10 Mr. Potosnak's report being produced. But when we got to
 11 argument, Judge Lash impressed upon me that the litigation
 12 had gotten out of control and that it needed to be stopped
 13 and I agreed with him so I agreed to have him rule on the
 14 motion for summary judgment and close discovery because we
 15 couldn't take it any more and that was in 2003, Your Honor.

16 I was saying that I agree with zealous
 17 representation, and I agree that it is honorable to work your
 18 guts out to really pound the mat and try and get good results
 19 for your client, and that's exactly what I've done in this
 20 case.

21 What I don't agree with is cheating, not playing by the rules
 22 and that's exactly what Nationwide did in this case. They
 23 didn't play by the rules, Your Honor. They withheld material
 24 evidence, willy nilly, whatever they didn't want in their
 25 claim log they pulled it out and called it attorney/client

1 privilege. None of it was attorney/client privilege and none
 2 of it was work product or protected under the work product
 3 doctrine. It was just damaging to their case.

4 We tried to introduce evidence of our settlement
 5 overtures and Nationwide claimed that that would be
 6 reversible error. Well, what the appellate law definitely
 7 says is that the duty of good faith survives the filing of a
 8 complaint, that the duty of good faith to evaluate a claim
 9 continues. And when I asked Mr. Bashore while he was on the
 10 stand; isn't it true, Mr. Bashore, that the reason you didn't
 11 honor the claim after the Potosnak inspection report was
 12 because we filed a lawsuit?

13 He struggled with that, and I think his answer was no
 14 because we had to go through your office, and I still don't
 15 understand that response. And I submit to you, Your Honor,
 16 the reason that they didn't honor the claim immediately
 17 following that Potosnak inspection is because we filed the
 18 lawsuit alleging insurer bad faith. Unfortunately for
 19 Nationwide the law is quite clear and that is that our
 20 appellate courts refuse to say that the duty of good faith
 21 and fair dealing is extinguished upon the plaintiff filing a
 22 complaint.

23 Our appellate courts have taken a very broad view of
 24 what conduct falls under the Bad Faith Statute. It could be
 25 conduct arising after a lawsuit is filed, before a lawsuit is

729

1 filed. Now the cases that Mr. Cohen cites to that says it's
2 more restrictive that it doesn't include this and include
3 that, primarily what the Court was talking about is an
4 insurer refusal to renew a policy. And there may have been a
5 case cited to in Mr. Cohen's brief saying once the verdict
6 was entered and the insurer refused to pay it, that that
7 didn't pay it either and there were remedial mechanisms such
8 as a motion for costs or interests. In any other appellate
9 decision as to what you need to prove bad faith, it is much,
10 much more broad than Nationwide or its expert, Connie Foster,
11 has testified to.

12 The Bonenberger decision says that it is a
13 responsibility of insurers to treat their insureds fairly and
14 provide just compensation for covered claims based on the
15 actual damages suffered, based on the actual damages
16 suffered. When that vehicle was appraised as a total loss,
17 the actual damages were identified but Nationwide wanted to
18 save money on the claim payment. They wanted to have that
19 vehicle repaired so they could get a ten percent discount on
20 parts and a labor rate discount and various other discounts
21 built into this Blue Ribbon Repair Program. They didn't want
22 to pay the actual damages sustained. They wanted to pay
23 something less, and that's why we're here today.

24 Regarding Ms. Van Gorder's testimony, I acknowledged
25 that it was not sufficient to establish what needed to be

730

1 established under the old guideline, the technical
2 requirement under Pennsylvania that the Court must examine
3 the wealth of a defendant in order to fashion an appropriate
4 punitive damage award.

5 THE COURT: So do you agree at this particular point
6 that the Court would have no basis to enter punitive damages?

7 MR. B. MAYERSON: I would submit that, Your Honor.

8 THE COURT: Where am I going to get the evidence to
9 support that?

10 MR. B. MAYERSON: That requirement has been greatly
11 marginalized from the recent Supreme Court decision of
12 Campbell versus State Farm, that's a 9 to 1 ratio test that
13 is between the compensatory award and punitive damage award.
14 I also submit that the Court can pretty much take judicial
15 notice that the award this Court is contemplating, is not
16 going to violate their due process and hamper this company's
17 ability --

18 THE COURT: Is that what this case says, that the
19 Court can take judicial notice?

20 MR. B. MAYERSON: No, I don't believe that the case
21 says the Court can take judicial notice. I'm merely saying I
22 doubt it would be reversible error for the Court to award a
23 punitive damage award in the amount that's being contemplated
24 given the Campbell guidelines.

25 THE COURT: How's this Court get over the counsel fee

731

1 issue?

2 MR. B. MAYERSON: Your Honor, we have tabulated the
3 amount of time we invested in this case. There is an opinion
4 --

5 THE COURT: I know what that is. I know what that
6 is. My position is that there's nothing in there that's
7 specific. Now I know obviously just by looking at the total
8 that you filed that you spent a substantial amount of time.
9 Can the Court just pick a figure out and say I think this is
10 reasonable?

11 MR. B. MAYERSON: Your Honor, in the matter of Willow
12 Inn, 399 Fed third 224 at 236 the Court stated: Section
13 8371, attorney's fees and costs provisions vindicate the
14 statutes policy by enabling plaintiffs such as Willow Inn to
15 bring in 8371 actions alleging bad faith to secure counsel
16 and contingency fee. And it goes on to say that the
17 structure of the statute enlists counsel to performing
18 filtering function akin to prosecutorial discretion because
19 rational attorneys will refuse to work on a contingent fee
20 arrangement when their investigation reveals that the bad
21 faith allegations of perspective clients to be meritless.

22 So built into our fee petition wills some
23 reliability. I testified that this was the amount of time I
24 spent on it. My documentation may be woefully inaccurate --

25 THE COURT: Counsel, I don't deny you spent one

732

1 moment of that kind of time. But how does this Court decide
2 what is reasonable and appropriate under these circumstances?
3 Now you gave sort of a measure or guideline to be applied to
4 punitive damages assuming the case law says that you say that
5 it says, but what about the counsel fees?

6 MR. B. MAYERSON: Well, Your Honor, the opinions
7 interpreting the Bad Faith Statute made clear that the
8 provision for counsel fees is to make the Plaintiff's
9 attorney whole.

10 THE COURT: I don't know what that is because I don't
11 know what is a fair amount for your services under these
12 circumstances, assuming that the Court would rule in your
13 favor.

14 MR. B. MAYERSON: This is evidence --

15 THE COURT: There are a lot of hurdles to get over
16 here.

17 MR. B. MAYERSON: There is evidence on the record
18 presented by Mr. Cohen that Plaintiffs offered to settle the
19 attorney fee issue for the exact amount that they paid to
20 defend their case. To me there's some justice in that.

21 THE COURT: I know there was a figure that was used
22 but I don't know if it was --

23 MR. B. MAYERSON: When Mr. Cohen was cross-examining
24 Mr. Chett in that --

25 THE COURT: As I recall, \$375,000.

1 MR. B. MAYERSON: Well, that was one of our offers of
2 settlement and a subsequent offer. There were earlier
3 offers.

4 THE COURT: However that was not represented to be
5 for counsel fees.

6 MR. B. MAYERSON: No.

7 THE COURT: I don't really know what that \$375,000
8 was because it was never developed.

9 MR. B. MAYERSON: We were not permitted to develop
10 it, Your Honor. Mr. Cohen got the piece he wanted in.

11 THE COURT: I'm going to give you one more chance.
12 Tell me how do I arrive at a figure for counsel fees,
13 assuming that the Court would rule in your favor. Tell me.

14 MR. B. MAYERSON: Your Honor, I think you can look at
15 what the rule proposes with the four factors that we talked
16 about. You can consider that it was a contingency fee, that
17 our clients were not responsible to reimburse us any costs.
18 Your Honor, it's a good opportunity for me to suggest also
19 that some good can come out of this case. These direct
20 repair programs are here to stay, and I think that it would
21 be appropriate at this point in time for this Court to enter
22 an award that will tell insurance companies and collision
23 repair facilities that there is going to be a price to pay if
24 they do what was done in this case. And under the
25 guidelines, under attorney fees the good to the public is one

1 of the things that you should consider in awarding attorney
2 fees. But again, I agree it should be the time expended and
3 we have documented our time at perhaps -- perhaps what was
4 done but that should have been done but the amount of effort
5 we've put in we can use as a guide.

6 Your Honor, in regards to the attorney fee petition,
7 I presented testimony about our efforts to avoid this lawsuit
8 in the early stages. Nationwide has placed a different spin
9 on that and they said we rushed to file a complaint. Well,
10 what we did was we conducted a pre-suit investigation and
11 that pre-suit investigation, I submit, was rather thorough.
12 We had -- we received a call from a former employee, David
13 Wert, warning of unsafe repairs. He described certain things
14 in that phone conversation basically that the fan shroud was
15 cut because the engine wouldn't fit in the car, so he told us
16 open up the hood and look at the fan shroud. That's where
17 your problems start and you can go back from there.

18 We then hired an automotive expert, in fact, two to
19 look at the vehicle and those experts confirmed exactly what
20 Mr. Wert had warned about and that is that the fan was cut
21 back and the engine didn't fit because the frame rails were
22 misaligned. With that information we were now directed by
23 our experts to get all the repair documents. So we contact
24 Nationwide and we request repair documents and photographs,
25 and we don't really get a response and we send them two

1 follow-up letters. And it wasn't until I cited to the Unfair
2 Insurance Practices Act that I finally get a response from
3 Nationwide and they produce a single appraisal September
4 20th, 1996 that called for the replacement of both frame
5 rails and apron panels.

6 When they gave that to our expert he said they were
7 on the vehicle in their damaged condition. That's what gave
8 rise to potential repair fraud, but we don't file suit just
9 yet. Instead we file a writ of summons and take a
10 pre-complaint deposition of Lindgren. And it's at this point
11 that Lindgren tells us that they appraised the vehicle as a
12 structural total loss because the frame was so badly twisted
13 that it couldn't be repaired but that Nationwide stepped in
14 and directed that the vehicle be shipped to another facility
15 to attempt these frame repairs, and the Bergs were never
16 notified of this shifting to another facility, a non-approved
17 Blue Ribbon Facility. They were never told that the vehicle
18 was appraised a structural total loss because the frame was
19 so badly twisted and they were never told that the Blue
20 Ribbon Shop was unable to repair these as directed. So we
21 now have that information in our hands.

22 THE COURT: Mr. Mayerson, you have five more minutes,
23 okay?

24 MR. B. MAYERSON: All right. So we send Nationwide a
25 letter on April 22nd, which is approximately a week after

1 those depositions and we say to them, what do you propose we
2 do? We think Nationwide should buy this vehicle immediately,
3 and if not, tell us what they're going to do with regard to
4 the Blue Ribbon Policy Guarantee or insurance and we don't
5 get a reply from Nationwide.

6 Now, you seemed to be accepting of their position
7 that we filed a suit only less than a week later. I got a
8 parking ticket when I left late the other night from the
9 parking lot down there. It said if I didn't pay the parking
10 fee in three days I got some kind of ticket. But be that as
11 it may, Nationwide could have picked up the telephone and
12 said, hey, we're going to call up Lindgren and get them to
13 give you that extension on the rule to file complaint that we
14 requested and we're going to take care of this thing and so
15 please sit tight and then I'm sure Lindgren would have
16 complied and would have said, okay, hold off on filing the
17 complaint. We'll give you another 20 days. But I didn't get
18 a return call from anybody; not from Lindgren or Nationwide.
19 And I don't believe for a second that neither one of those
20 parties were talking to each other and saying, no, don't give
21 him an extension. Force him to file the complaint because
22 once he files that complaint then we can begin acting in bad
23 faith.

24 I've already told you how I contacted them. There's
25 a redacted claim log entry of May 12th. It documents a phone

1 conversation between Bruce Bashore and myself, specifically
 2 it is at Page 2 of Exhibit 46. When Mr. Bashore was on the
 3 stand, Your Honor, I got him to confirm that his phone call
 4 with me would have been documented in the claim log and it's
 5 not there. And the conclusion to be left is that it's this
 6 entry on Page 2 that's been redacted. That's not a
 7 communication to counsel and it's not even protected by work
 8 product. It's produced, the letter, he says, his version of
 9 events, what's the real version of events. The version of
 10 those events are -- and this is after we filed our lawsuit --
 11 this version is that Mayerson wanted to settle with
 12 Nationwide and that Mayerson doesn't know about the Potosnak
 13 inspection. Because what Nationwide did after this date was
 14 its law firm started sending letters saying we need an
 15 initial inspection to determine if the vehicle was improperly
 16 repaired and then that turned into a second inspection.

17 THE COURT: Okay. Your time is up.

18 MR. B. MAYERSON: Your Honor, given the burden of
 19 what can occur to Plaintiffs at this time, I would
 20 respectfully request that I may be given ten minutes.

21 THE COURT: Denied. Anything further? Any rebuttal,
 22 very short?

23 MR. COHEN: Very short. Mr. Mayerson spent a lot of
 24 time arguing about disregard that Nationwide committed a
 25 disregard of its obligation to the Bergs but he didn't -- he

1 Mr. Berg took the stand and tried to quantify what his
 2 damages were. There's 12 or \$15,000 they put on the board
 3 for damages. For whatever reason the jurors decide to give
 4 the Bergs \$295. I don't know why. It could have been for a
 5 variety of reasons, but that was, in my estimation, the
 6 jury's attempt to compensate the Bergs for whatever they
 7 believe their loss to be, but not under bad faith, not under
 8 the Bad Faith Statute.

9 Mr. Mayerson spoke about Nationwide modified the
 10 contract. Nationwide never modified any contract. It was a
 11 separate agreement between Nationwide and the Bergs. There's
 12 been no evidence whatsoever that Nationwide modified any
 13 contract.

14 Just a couple more things. Mr. Mayerson argues that
 15 this is the Court's opportunity to send a message to the
 16 insurance industry with regard to the direct repair program.
 17 This was the same argument that Mr. Mayerson made during the
 18 first phase of trial. This is for, whatever Mr. Mayerson has
 19 in his own mind, this has been a mission. This has been a
 20 cause celeb for him, but there is no merit to this
 21 whatsoever. There has been no evidence, there has been
 22 absolutely no justification for an award under the Bad Faith
 23 Statute. The suggestion that Nationwide could have convinced
 24 Lindgren to give them an extension to file a complaint is a
 25 non-sequitur. It means nothing. Nationwide had no

1 confuses the obligation to the Bergs under the policy and the
 2 obligation to the Bergs under the Blue Ribbon Guarantee and
 3 obviously the Court understands that that's a vital
 4 distinction.

5 There's lots of things that went wrong in this repair
 6 and with this whole situation, but again it's the Blue Ribbon
 7 service, not the policy that we're talking about. Under
 8 Terletsky, and despite Mr. Mayerson's protestations that
 9 there has been developing law with regard to bad faith,
 10 Terletsky is the standard in Pennsylvania. Anybody who
 11 practices bad faith knows that. In insurance context the
 12 term "bad faith" means on the part of insurer is any
 13 frivolous or unfounded refusal to pay proceeds of a policy.
 14 And the policy has a very specific meaning. That's what Ms.
 15 Foster testified to. It's not the refusal to pay proceeds or
 16 to act in some way with regard to any contract.

17 Bad faith has a very specific meaning and there are
 18 significant consequences that come with a violation of the
 19 Bad Faith Statute and that is why there's such a high
 20 standard of proof. That is why it's clear and convincing.
 21 There are many things that Mr. Mayerson could have argued
 22 Nationwide did wrong. And, in fact, he did argue those
 23 things in the first phase of trial and the jurors awarded the
 24 Plaintiffs \$295. They awarded against Lindgren \$2,300 or
 25 \$2,500. They could have awarded many thousands of dollars.

1 obligation to do that, nor did Nationwide have any duty to do
 2 that.

3 Plaintiffs filed their lawsuit when they filed it and
 4 Nationwide defended the lawsuit. AS Your Honor suggested
 5 earlier, there has been absolutely no evidence linking
 6 Plaintiff's claims to Nationwide's activities in this case.
 7 They certainly do not even come close though meeting a prima
 8 facie case for bad faith, and it's the opportunity the Court
 9 has now to end this once and for all and direct verdict in
 10 Nationwide's favor. Thank you, Your Honor.

11 THE COURT: Mr. Mayerson, do you want to respond?

12 MR. H. MAYERSON: Yes, Your Honor.

13 THE COURT: No, not you. He started the argument.
 14 Mr. Mayerson, respond to what he said, no new matters.

15 MR. B. MAYERSON: With regard to the amount of the
 16 jury's verdict, the jury found Nationwide liable for \$295
 17 for its fraudulent or deceptive conduct. This is on top of
 18 the \$18,000 that Nationwide paid to purchase that vehicle.
 19 But it's a red herring anyway and that's already been decided
 20 by our appellate courts and it's cited in my brief.

21 THE COURT: That's not the argument that Mr. Cohen is
 22 making. You're making a different argument entirely. I
 23 asked you to respond to what Mr. Cohen said. Please stay in
 24 that area, all right. There's no mention about \$18,000 and
 25 that other issue and that other issue. Now I'm trying to

1 bring this to a conclusion. It's now well into the lunch
2 hour, and we have a court reporter here that's been here for
3 two hours without a break. Lets finish it.

4 MR. B. MAYERSON: Mr. Cohen testified or argued that
5 the Terletsky standard is the benchmark, and it is certainly
6 one of the controlling decisions but there are other
7 decisions. And those decisions --

8 THE COURT: But the provision that he read this Court
9 believes is still the test. It has to be, quote, unquote,
10 proceeds under the policy. Bad faith in relation to the
11 payment of proceeds payable under the policy and against is
12 making a key distinction here. You know what it is. We've
13 been over this, I mean, time and time again, and if the
14 Superior Court wants to say that it's something else, that's
15 up to them. That's not -- that's not my role.

16 MR. B. MAYERSON: And in response though that we
17 contend; one, that the proceeds were misappropriated when the
18 total loss was vacated that was the value of the claim and;
19 two, when Nationwide --

20 THE COURT: You have to be more specific. What
21 proceeds were misappropriated?

22 MR. B. MAYERSON: Well, the argument, Your Honor, is
23 that when this vehicle was --

24 THE COURT: Just answer my question.

25 MR. B. MAYERSON: The proceeds are the value of the

1 claim.

2 THE COURT: You've got to be more specific. What are
3 you talking about that was misappropriated?

4 MR. B. MAYERSON: The value of the claim was the
5 \$22,000 of the fair market value of the vehicle on the date
6 of the accident. That was the value of the claim.
7 Nationwide denied that and instead --

8 THE COURT: How is it misappropriated, the \$22,000?

9 MR. B. MAYERSON: It was paid to Lindgren when
10 Nationwide knew that the --

11 THE COURT: The full \$22,000?

12 MR. B. MAYERSON: No, they only paid \$12,000
13 approximately.

14 THE COURT: So that was misappropriated, the 10 or
15 the 12 or the 22?

16 MR. B. MAYERSON: The 12 was misappropriated. Our
17 position is --

18 THE COURT: It shouldn't have been paid to Lindgren
19 because they did not do the job effectively. Isn't that what
20 you're saying?

21 MR. B. MAYERSON: I'm saying two things: One is that
22 the vehicle was a total loss and the value of the claim
23 should have been paid to the Bergs.

24 THE COURT: Mr. Mayerson, you continue to go back and
25 confuse the issue; not intentionally, that's just the way you

1 answer questions and they're not helpful. They're not
2 helpful to me. They're not helpful for the record and they
3 will not be helpful to the Superior Court if this case gets
4 that far. Now answer the question. If you can't answer the
5 question, we'll move on and this trial is over.

6 MR. B. MAYERSON: The funds were misappropriated.

7 THE COURT: Not the funds. What was misappropriated,
8 what was the amount of the fund that was misappropriated, and
9 in what way do you say it was misappropriated, by paying it
10 to who then?

11 MR. B. MAYERSON: The \$12,000 claim payment that was
12 made payable to Lindgren Chrysler-Plymouth in May or April
13 and May of 1997 should not have been made payable to Lindgren
14 Chrysler-Plymouth under these facts and Nationwide knew it.

15 THE COURT: It should have been paid to who?

16 MR. B. MAYERSON: It shouldn't have been paid until
17 the vehicle is properly repaired, and if it was going to be
18 paid it should have been paid jointly so the Bergs had a say.

19 THE COURT: So it wasn't misappropriation of any
20 money that belonged to Mr. and Mrs. Berg, was it?

21 MR. B. MAYERSON: The claim value was theirs.

22 THE COURT: The proceeds belong to the insurance
23 company at that point, who the insurance company settles
24 claims with and they don't necessarily -- and they don't go
25 to the consent of the insured. Sometimes you find out they

1 paid them and sometimes you don't. I don't understand this
2 argument at all.

3 All right. In either event, we're finished. All
4 right. Court is adjourned. The Court will take this under
5 advisement and there will be a ruling shortly.

6 MR. COHEN: Thank you, Your Honor.

7 MR. B. MAYERSON: Thank you.

8 (Whereupon, the trial was concluded at 12:40 p.m.)

C E R T I F I C A T E

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the trial of the above cause, and that this copy is a correct transcript of the same.

Laura M. Cintron
LAURA M. CINTRON
Official Court Reporter

The foregoing record of the proceedings upon the trial of the above cause is hereby approved and directed to be filed.

ALBERT A. STALLONE, Senior Judge

IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

Trial Exhibit 34

NATIONWIDE'S MATERIAL DAMAGE STANDARDS



544

COPY OF EXHIBIT NO. 34 (Page 1 of 9)

BLUE RIBBON REPAIR SERVICE

The Report Unit will direct policyholders and claimants to the shops on our Blue Ribbon Repair list in much the same way they now direct them to drive-in claims. For the pilot, we will use the same criteria that we use for setting up drive-in appointments. That criteria is as follows:

1. Collision - Driveable (contract coverage regardless of fault)
2. Collision - Non-driveable (contract coverage regardless of fault)
3. Comprehensive - (other than glass): ie: Deer claims, vandalism, etc.
4. PD - Driveable - clear liability:
 - a. Legally parked cars - CSR authority
 - b. All other - Coordinator approval
5. All other non-driveable - coordinator approval.

Once the CSR has completed the Notice of Loss she will then determine where the policyholder/claimant lives in Cuyahoga County (N, S, E, or W). She will then attempt to direct the individual to the shop using the following:

"Mr. PH/Clmt the *quickest* way to have your vehicle repaired would be to take it to one of our Blue Ribbon Repair Shops. These shops are full service shops equipped to handle all types of repair and this eliminates the need for you to get estimates or for us to send an adjuster to inspect your vehicle.

These shops offer a full guarantee on their work and in addition **Nationwide** will guarantee any work done by one of these shops. Now which of these shops are closest to you?"

At this point, if the individual is receptive, the CSR will give the directions and information on the shop (address, phone number, person to contact, etc). If the individual has questions or objections the CSR will make an attempt to answer the question or objections. If there still is resistance, the CSR will then explain that we will have to inspect the damages and will then try to set a drive-in appointment. Finally, if there is still resistance, a field assignment will be made.

We will have a complete menu screen with information on the *Blue Ribbon Shop* including location, directions, who to contact and phone number.

545

Blue Ribbon Repair Service Program (Page 2)

A copy of the repair estimate is to be mailed to a Nationwide representative along with a minimum of two (2) photos showing the damaged and undamaged portions of the vehicle. The repairs may begin immediately after the vehicle owner authorizes repairs, and Nationwide has advised the shop that there is no coverage question.

A copy of the estimate of repairs will be provided for the vehicle owner. Nationwide will issue a joint check payable to the vehicle owner and the shop, less any applicable deductible and/or depreciation. The check will be mailed to the shop.

Prior damage will not be included as an item for repair on the estimate. However, notation of prior damage will be made on the estimate.

Damage to exhaust systems, vinyl roofs, convertible tops, batteries, mechanical parts, and tires will be reported to the Nationwide representative immediately for the purpose of depreciation charges, if any. Tires will be billed out at dealers's cost.

Cosmetic damage is not to be included on the estimate. The shop will contact the Nationwide representative with the information to make an adjustment with the vehicle owner.

Hidden damage will be handled in the same manner as the original estimate. Additional photos will be required. Vehicles with extensive damage must have the engine and transmission checked to determine if these items are damaged or not prior to proceeding with repairs.

In the event that a rental vehicle is required, arrangements will be made to have the rental delivered to the shop. An approved rental agency should be used. Rental costs should be controlled.

A Nationwide representative will be allowed during normal working hours to periodically spot-check estimates and vehicles that are under repair or completed. All invoices pertinent to the vehicle being repaired must be made available. The loss may be readjusted and credits issued to Nationwide and/or the shop. These credits will be recorded on the shop log sheet.

The shop shall maintain and use the equipment described in the Nationwide Survey. New or updated equipment will be reported to a Nationwide representative.

Shop personnel will be I-CAR trained, ASE certified and/or participate in an ongoing training program. Nationwide is to be advised of any and all programs shop personnel participate in. Any changes in body shop management shall be reported to Nationwide immediately.

Upon completion of repairs, all vehicles will be cleaned and available for inspection and/or road test (as warranted), prior to requesting endorsement of check or any payment.

546

Blue Ribbon Direct Repair Service Program

This document is a record made solely for the internal use of Nationwide Insurance Company. It is not for distribution outside of the company, except that a copy may be given to a shop that has completed a survey form and is participating in the program.

PROCEDURES

The following procedures are to be adhered to:

Nationwide Claims Personnel will be authorized to make direct referrals to selected repair shops in accordance with claimshandling guidelines. Nationwide Claims Personnel will offer the BRS (Blue Ribbon Service) to maximize customer service, in addition to our drive-in-claim service and field inspections.

Priority service will be given by the B.R. facility to vehicles being repaired under our program. Service and communication to the vehicle owner must be of the highest level. Work progress and delays must be communicated to the vehicle owner and Nationwide whenever current volume prevents a high degree of service. The shop will immediately advise the Nationwide representative.

A control log will be maintained by the shop for all vehicles referred under this program. The control log will be furnished by Nationwide. The log must be available for examination by a Nationwide representative at all times.

The shop will immediately pick up non-driveable vehicles and pay any towing, storage, and accident-related charges. These charges are to be included in the estimate. A copy of these paid bills will be sent along with the estimate to the Nationwide representative.

An estimate is to be prepared the same day that the vehicle arrives at the shop. After the vehicle is inspected, the shop will prepare an itemized estimate including only the damage which is visible and verifiable at the time of the initial inspection. Upon completion, the estimate will be sent via FAX to the Nationwide representative. If a teardown is necessary to complete a proper estimate, the shop will immediately notify the Nationwide representative. In the event that the vehicle is deemed a total loss, the shop is to immediately notify the Nationwide representative so that proper action can be taken.

(547)

COPY OF EXHIBIT NO. 34 (Page 4 of 9)

BLUE RIBBON REPAIR STANDARDS

Used Parts

Used parts will be sought on all vehicles except current year or vehicles with under 15,000 miles. If used parts are not available, aftermarket parts availability should be explored.

Exchange or Aftermarket Bumpers

Exchange or aftermarket bumpers, rubber covers, shocks or reinforcements shocks will be sought on all vehicles except current year or vehicles with under 15,000 miles. Cost differences between exchange, aftermarket and discounted parts must be carefully weighed.

Aftermarket Parts

When used parts are not available, an effort must be made to locate aftermarket parts to affect the most economical repair. The vehicle owner should be notified of our decision to utilize aftermarket parts to repair their vehicle. In those states requiring disclosure, the body shop should ensure that the disclosure meets the specifications outlined in the regulation.

Overlap and Included

All flat rate and parts prices will be carefully checked. Overlap and included operations should be properly removed.

Wheel Alignment

Wheel alignment should be considered only when the frame, wheel or other integral parts of the suspension have received damage, or the impact was such that an alignment was warranted.

Repair vs. Replacement

Items which are safely and economically repairable and acceptable in appearance should be repaired.

Repair Time

Repair time should be correctly estimated.

Paint Labor and Material

The body shop will note, in the paint column of the estimate, the flat rate for each panel to be painted. They will also note reductions for overlap and spot painting. Block or segment estimating of painting is encouraged and should be utilized when applicable.

Frame and Unibody

All frame damage will be checked and illustrated on the estimate. Labor time should be calculated and shown in hours rather than a whole dollar amount.

548

NATIONWIDE BLUE RIBBON DIRECT REPAIR SERVICE

RECORD OF REPAIRS

BODY SHOP: _____

ARRIVED	ESTIMATED	COMPLETED	CLAIMS KEY	OWNERS NAME	PH	CL	VEHICLE YEAR-MAKE-MODEL	EST. AMT.	SUPP. AMT.	CHECK AMT.

549

NATIONWIDE MUTUAL INSURANCE COMPANY
AUTO
ASSIGNMENT AND COVERAGE CONFIRMATION

Date _____ FAX to: (Body Shop) _____

Claims Key: _____

Insured: _____

Vehicle Owner: _____

Vehicle Owners Address: _____

Vehicle Owners Phone Number: HTEL: _____ BTEL _____

Vehicle Make: _____ Year _____ Model _____

Vehicle License Number: _____ Vin Number: _____

Area of Damage: _____

Type of Loss: Coll _____ FTC _____ PD _____ Theft _____

Driveable _____ Non Driveable _____

Rental Approved: Yes _____ No _____

Amount to be paid by vehicle owner: _____ Deductible \$ _____

COMMENTS: _____

NATIONWIDE INSURANCE COMPANY

TEL:

FAX:

550

EVALUATION OF MATERIAL DAMAGE LOSS

Vehicle Owner: _____ Repair Shop: _____

Vehicle Make: _____ Year _____ Model _____ Mileage _____

Repair Inspection:

Prior _____

During _____

Post _____

Type of Loss:

COLL _____

FTC _____

PD _____

REPAIR EVALUATION

LOSS CONTROL			LOSS CONTROL		
A-ADEQUATE	A	I	I - INADEQUATE	A	I
Used Parts			Repair Time		
After Market			Paint Time		
Rechrome			Paint & Material		
Overlap & Included			Unibody Repairs		
Wheel Alignment			Items Left Open		
Repair vs. Replacement			Supplemental Repairs		

DETAILED AREAS OF DISCREPANCY

Evaluator _____ Date of Inspection _____

(55)

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA



Valerie E. West
District Claims Manager
Nationwide Insurance Co.
740 S Chester Road, Suite F
Swarthmore PA 19081

Sept. 28, 1992

Penn-Del Auto Body, Inc.
Attn: George Moore and
Frank Toth
1360 Market Street & Rte. 452
Linwood, PA 19061

Gentlemen:

Congratulations! You have been selected as our participant in Nationwide's Direct Repair Program. Enclosed please find a complete package that explains the process of the program. Please review and if you have any questions, please do not hesitate to call me.

Again, congratulations and we look forward to a long lasting relationship and program.

Sincerely yours,
Valerie West

Valerie West
District Claims Manager
Delaware County

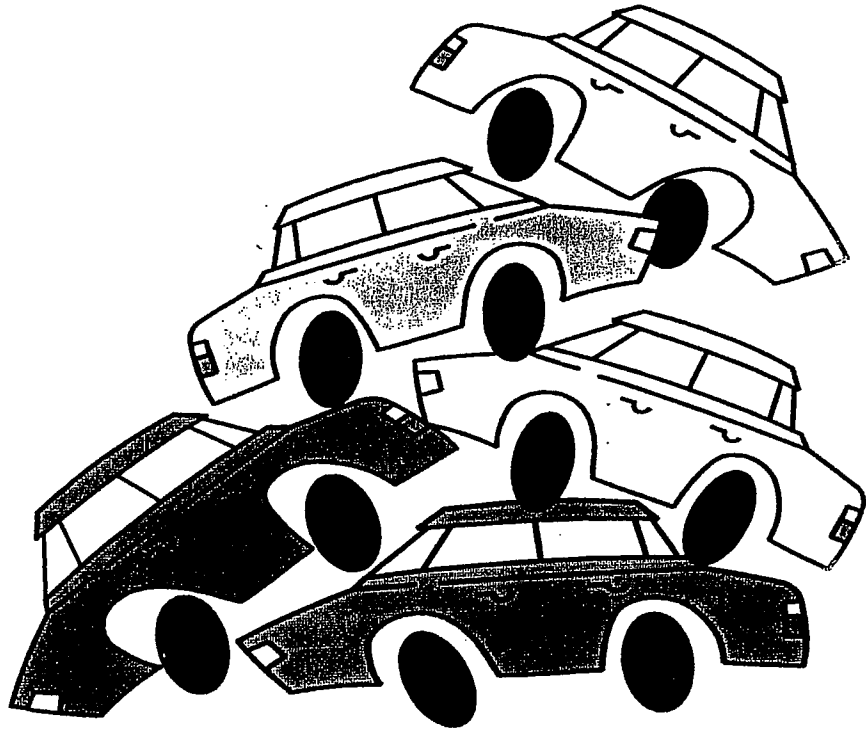
NATIONWIDE MUTUAL INSURANCE COMPANY
NATIONWIDE MUTUAL FIRE INSURANCE COMPANY
NATIONWIDE LIFE INSURANCE COMPANY
NATIONWIDE GENERAL INSURANCE COMPANY
HOME OFFICE, COLUMBIA, MO

552

COPY OF EXHIBIT NO. 34 (Page 9 of 9)

Trial Exhibit 35

PENNSYLVANIA BLUE RIBBON PROGRAM



PROCEDURE MANUAL

EXHIBIT
35
me 9/7/07

(647)

COPY OF EXHIBIT NO. 35 (Page 1 of 8)

BRRP CONTACT INFORMATION

State Toll Free Number - 1-800-932-0630

Desk Reviewer - **CHUCK HOOVEN**

Processor - **888-249-8151**

PDS - **KEN MORASKI**

State Blue Ribbon Manager - Mike O'Leary - 717-657-6669
- Bruce Bashore - 717-657-6712

State Managing Consultant - Len Peterman - 717-657-6783

Customer Complaints - Bev Carlson - 717-657-6895

Computer and vendor problems - Ron Stitzel - 717-235-1221

BRRP STAFF FUNCTION AND ACCOUNTABILITY

Processor - handles the administrative information - is responsible for maintaining the fax notices, answering questions on lost assignments and assignment status.

Desk Reviewer - handles the damage report - answers questions on damage analysis and total losses.

PDS - handles the field reinspections - works with shop to maintain a quality product, performs training and mentoring and handles field complaints.

STATE MANAGER - oversees the Blue Ribbon Program - is responsible for the BRRP staff.

(648)

Appraisal / Estimating Summary

- The appraisal assignment will be sent to you through the appraisal systems communication network.
- The assignment will indicate Blue Ribbon Appraisal.
- Call the Processor if there is a question regarding the appraisal assignment.
- Immediately call the vehicle owner to schedule an appointment to appraise the vehicle.
- Complete and return the appraisal within 24 hours of the vehicle arrival. The exception would be a vehicle that requires tear down. Appraisals are to be written on an automated appraisal system with "P" page logic and imaging capability.
- Return the appraisal and images, through electronic communications.
- A copy of the appraisal is also to be given and explained to vehicle owner unless the assignment sheet indicates otherwise.
- A status report must be submitted on all assignments not completed within 5 days of receipt of assignment.
- Immediately contact Nationwide when the repair method will differ from the appraisal.

(649)

COPY OF EXHIBIT NO. 35 (Page 3 of 8)

BRRP SHOP FAX NOTICE

TO: The Blue Ribbon Unit

FROM: (shop name) _____

RE: Claim Number: _____

Customer Name: _____

Please be informed that: (circle one)

- 1. The vehicle is a total loss. (Be sure vehicle is coded TOTAL LOSS and uploaded).
 The estimate is prepared and above visor: YES or NO
 Towing Charges: _____
 Driveable: YES or NO

If claimant vehicle please fill in blanks below:
 COLOR: _____
 VIN : _____
 MILEAGE: _____

- 2. The damage is being handled by another carrier.
- 3. The damage is less than deductible.
- 4. I have been unable to contact this customer, please send them a follow-up letter.
- 5. The customer is not having the vehicle repaired at this facility, please RA to field representative for handling.
- 6. Customer contacted on _____ (date) appraisal scheduled for _____ (date).

OTHER/COMMENTS: _____

650

IMAGING PROCEDURES

Imaging is used by the Nationwide Blue Ribbon Program to receive photo images electronically. Each appraisal company has it's own program to transfer the images to Nationwide. Photo imaging is necessary to be a part of the Blue Ribbon Program.

Photos sent with the appraisal should be at a minimum. You must show two photos of the vehicle to include the damaged area. Work your way in to the vehicle producing clear images with descriptions when needed. Start with the primary damage and go to the secondary damage. Provide images supporting frame time or structural repairs. Images should show interior or "hidden damage" (tear down if needed). Provide an image of the opposite corner or side to document old damage or lack of. The last three images should be the VIN, license plate and odometer.

Remember that the images need to be clear. Check them before they are sent. If you can't see the damage on the images; the desk reviewer will not be able to see it either.

(651)

SUPPLEMENT PROCEDURE

The shop is responsible for completing and faxing the supplement worksheet on all supplements over \$300.00. This does not include parts price increases. Supplementing an OEM part in place of an Aftermarket or LKQ part is not a part price increase. You must fill out the supplement worksheet for any and all substitutions of OEM for Aftermarket or LKQ parts, even if less than \$300.00. a CAPA quality complaint form must be filled out, faxed to CAPA and also faxed to the Blue Ribbon Unit. The CAPA response must be faxed to the Blue Ribbon Unit as a follow up to this procedure.

The shop must send the fax before the supplemental repairs are begun and keep a copy of the fax along with the fax confirmation in your file. If you are not contacted by the Desk Reviewer within one hour of sending the fax sheet, you may continue to work on the vehicle.

No supplements will be honored unless the procedure is followed.

(652)

TOTAL LOSS HANDLING

All appraisals should indicate if the vehicle is a possible total loss.

If the vehicle is an obvious total loss, fax the BRRP SHOP FAX NOTICE to the Blue Ribbon Unit.

Contact your desk reviewer if a vehicle is a possible total loss.

An appraisal of the damage is required on all but obvious total losses. Place a copy of the appraisal above the driver's side sunvisor.

All decisions relating to Salvage Value, Actual Cash Value (ACV), and Total Losses will be handled by Nationwide. The repair facility should not discuss these issues with the vehicle owner.

Nationwide will arrange for the salvage pickup. Call the processor if a total loss sits at your shop more than 7 days after you notify Nationwide of a total loss.

Blue Ribbon repair Centers are not allowed to bid on or buy the salvage except through an auction pool.

653

**Nationwide
Blue Ribbon Supplement
Fax Notice**

Shop: _____

Claim#: _____ Customer: _____

To: (Check Desk Reviewer)

___ Chuck Hooven

___ George Archer

___ Phil Susemihl

___ Troy Bixler

___ Kevin McNeill---(Replaced Gordon Rader)

Scope of additional damage:

Estimated Cost:

_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

Original Estimate \$ _____ Total Supplement \$ _____

This form ***must*** be completed and faxed on all supplements over \$300.00 and anytime you supplement on OEM part in place of an LKQ or Aftermarket part, ***before*** any additional work is performed. This form, along with the fax confirmation, must be kept in your file. ***No Supplements will be honored without this notice.***

654

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

Trial Exhibit 36

PERRINO LITIGATION STRATEGY - 1993

I. Claim Handling Philosophy and Strategy for 1993 and Beyond

A. Philosophy

1. Reduce the average claim payment in injury coverages to a level-first consistent with - then lower than our major competitors.
2. Continued reinforcement of Nationwide being a "defense-minded" carrier in the minds of the plaintiff legal community.
3. Consistent and professional claims handling and case management throughout the state.

B. Strategy

1. Litigation Avoidance

- A. Reduce the average pending per liability Claim Representative to the range of (120 - 125) files through a combination of refined optimal resource utilization and additional staffing located in the field.
- B. Continued emphasis on time service along with timely claimant follow-up control to avoid the need and/or desire to seek counsel.
- C. Increase and refine medical co-ordinator utilization and input on liability claim files (BI, UR/UL).
- D. Schedule activities to allow DCM's the opportunity (time) for proper file review, resolution planning with the Claim Representative, and coaching to case conclusion. Span of control (6-7) Claim Representatives.
- E. Implement a more aggressive posture in handling cases of lesser probable exposure (i.e. cases not exceeding \$25,000.00). Create and reinforce a defense minded perception.
- F. Organize Claim Conference Committees within each division including the following personnel: Claim Representative, Two DCM's, Claim Attorney for the division, Medical Coordinator (optional), and CDM on cases with limits potential of \$15,000.00 or \$30,000.00 or any other case necessary.
- G. Proactive medical treatment involvement with claimant and/or physician.

A-6

COPY OF EXHIBIT NO. 2 (Page 63 of 66)

1141

EXHIBIT
36
DMC 6/2/02

COPY OF EXHIBIT NO. 36 (Page 1 of 4)

- H. Continued emphasis in the area of negotiation training, and exposure to the legal process (ie: present litigation management training again in both Service Centers, and schedule the mock trial presentation for the Harrisburg Center in 1993). Additionally, FCCS will conduct a 2-day program on Litigation Management in the Region in 1993. Self-development courses will be emphasized at all claim levels, and schedules should be set to allow Claim Representatives the opportunity to attend trials, certain critical depositions, and settlement conferences.
2. Litigation Management
- A. Once litigation is initiated, develop a strategy for handling each case with input recommendations from the division CA regarding discovery.
 - B. Adhere to the case strategy unless discovery dictates a position change. Any change in strategy must receive DCM and CA (optional) concurrence.
 - C. Developed strategies should avoid and hopefully eliminate allowing defense counsel a "free reign" in handling cases, and establish a proactive rather than reactive approach to handling suit files. The RCA and geographic CDM will create a single set of defense counsel guidelines where strict adherence is required.
 - D. Defense counsel resistance to Claim Representative direction should be conferenced immediately with one or more of the following: DCM, divisional CA, CDM, and Legal Division if necessary, when the Claim Representative has any hesitation regarding the proper course to follow.
 - E. Suit files must be reviewed by the assigned Claim Representative and DCM every 60 days except in rare instances where no further activity can take place until a certain date, (ie: oral argument).
 - F. The Nationwide Trial Division operation within the state will play a major role in our litigation management and outside claims expense control. The RCA and geographic CDM will meet with Trial Division Administrative Attorneys throughout the state to discuss our performance expectations. Trial Division assignment guidelines have been distributed to all liability divisions, and will be reviewed at least annually. Trial Division expertise varies from office to office, and this should be a factor considered upon making case assignments.
3. Alternative Dispute Resolution
- A. Designate an ADR Co-ordinator for each division.

COPY OF EXHIBIT NO. 2 (Page 64 of 66)

1142

COPY OF EXHIBIT NO. 36 (Page 2 of 4)

B. Claims Management collectively must emphasize more aggressive use of ADR.

- (1) Outside Vendors (ie: Judicate)
- (2) Judicial settlement conferences (ie: Special Conciliation Session - Allegheny County)
- (3) Claims Settlement Service Day
- (4) Nationwide sponsored conferences with selected counsel

A. Structured Settlement Alternative

A. Timely, closer claimant contact will give the Claim Representative greater opportunity to discover what the claimant truly needs or wants. This, in turn, will allow the Claim Representative more creativity in the development of attractive structure proposals.

B. Management emphasis on the use of structure offers to reduce average claim payment.

II. Outside Claims Expense Management

A. The Litigation Management Strategy outlined in item (I.B.) will represent a major factor in controlling OCE at the Claim Representative level.

B. Forecast new suit activity by category along with suit closure activity based upon past trends and changes in our operational procedures and the state claims environment. LEAP data can be used as a reference, but the system must mature further to provide truly credible statistics. As the region gains a better understanding of the capabilities of LEAP, all claim divisions will be trained and have access to the system.

C. In conjunction with the "Law of Large Numbers", the average litigation expense per closed suit within each Service Center can provide an adequate barometer of future expenses coupled with the closure forecast.

D. Continued emphasis on the use of Trial Division resources up to the limit of their potential capacity. Currently, Trial Division handles 53% of the assignable cases (exclusive of asbestos and environmental issues) in both Service Centers. Our goal is that by the end of 1993, 60% of the assignable cases will be assigned to Trial Division.

E. PCCS advises they will have a legal auditor on staff by the first quarter of 1993. They recommend we employ a person on staff to audit the Region's legal bills. Alternatively, we could proceed with a pilot program in 1993 of legal fee bill auditing by an outside vendor. The vendor will be Legalgard, and the program has one pilot phase.

COPY OF EXHIBIT NO. 2 (Page 65 of 66)

- 4 -

1. Legal bill audits (50 cases) will be conducted on current bills received for payment. These billings will exceed \$5,000.00, and savings will be compared with audit costs of (2.5% - 3.5%) of the billing.
- F. Continued review of defense counsel by county and potential specialty with a view toward the basis on which we want to do business.
 1. Use of "Flat Fee" on a limited basis
 2. Hourly Rate
 3. Retainer Method
 4. Combination of the above
- G. Outside Defense Counsel will be required to provide a Budget Estimate for each case received. This Budget Estimate should be consistent with the initial defense counsel summary and view of whether the case is one for settlement or trial.
- H. Outside Medical Vendor Review of Cases
 1. MED DATA software is currently under review for evaluation of medical bills.
 2. The cost of utilizing this medical bill review service will range approximately \$265,000.00 for the PENNRO Region in 1993.

COPY OF EXHIBIT NO. 2 (Page 66 of 66)

1144

COPY OF EXHIBIT NO. 36 (Page 4 of 4)

Trial Exhibit 37

EXHIBIT
37
JMC 6/7/07

PREFACE

Attached for review are the Best Claim Practices for the State of Pennsylvania. These are not ultimate practices - but simply the best. We recognize that investment resources are not unlimited and actual return on investment was a focal point in our practice formulation. The practices developed begin with recognition that a claim has occurred and move through the essential phases of claim activity up to the conclusion which deals with customer satisfaction.

The material you are about to read outlines essential priorities at each phase throughout the life of the claim, the best claim practice strategy to address the priority issue, and finally how that strategy can be accomplished within our statewide claim operation. Resource investment will be necessary to achieve the desired result within several listed strategies. However, resource investment was truly limited to key strategic areas. Standards cannot be formulated until a decision is made concerning resource investment.

Projects such as this cannot be accomplished without an excellent team of claim professionals along with the dedicated efforts of a fine support staff. Special thanks are extended to Lisa Lingle, Darlene Staudenmaier, Anita Rhodaberger, Michelle Rissinger, Donna Stewart and finally Alene Kradel who pulled the individual phase activity into a meaningful final product. Special thanks go to each team member along with a SOAR award and include the following: Bob Birkmaier, Linda O'Connor, Vicki Davies, Jeff Keller, Brian Hench, Kathy Holben, John Albano, Joe Cristari, Gane Brenzel, Janice Taylor, Vivian Hazen, Jeff Gooderham, and Richard Jacobs of our Trial Division operation. A final note of thanks goes to Tom Taddeo whose patience allowed 90 days for project completion.

As you review the attached pages, please open your eyes and your mind to how things can be as opposed to how things were or how things are currently. Now, onto the Best Claim Practices For the State of Pennsylvania!

Submitted by: Jack L. Bowling, Jr.

EXHIBIT
37
JMC 6/7/07

COPY OF EXHIBIT NO. 2 (Page 1 of 66)

1079

COPY OF EXHIBIT NO. 37 (Page 1 of 66)

PHASE 1: REPORTING & ASSIGNMENT

PRIORITY

NEXT CLAIM PRACTICES STRATEGY

HOW TO ACCOMPLISH

I. How do we educate our policyholders and agents about the information necessary to report a claim?

A. Staffer to policyholder explaining the necessary information we need to handle a claim. How to report it, etc. The staffer would be mailed at renewal and with all new auto policies.

Staffer will be designed through systems. Currently we have approximately 526,000 policies in force in the state of Pennsylvania with approximately 100,000 new policies issued each year. The staffer would be approximately \$4,600, with additional mailing cost to be determined at a later date if any would be incurred.

B. Marketing Teaps

Claims training for the Sales Force regarding reporting information.

C. Agency/Claims Partnership

Claim handling experience will reinforce the importance of necessary information.

II. How is the claim reported?

In person, by mail or by phone to the report unit. Directly to the Nationwide Agent who has the option to use "3 way calling".

Agents are currently being informed as to the advantages as well as the procedures for using "3-way calling". The staffer referenced in priority issue 1 will advise the insured how the claim may be reported.

III. From whom should the information be accepted?

The office of loss should be accepted from anyone who can supply sufficient information to adequately set up the office of loss.

CSO Training.

IV. What level of detail should be reported on the office of loss?

Copy/Information must obtain all available information from the person making the initial report to make an accurate assignment. The CSO must be customer service oriented but inquisitive and make every effort to secure the details of the office of loss. The importance of this area cannot be stressed enough so that proper assignments can be made to the ultimate owner. Quality, not speed should be the focus. The information should be held in the report unit but assigned to the appropriate Claims Representative/Manager with all available information immediately.

CSO Training and CSO Coordinator monitor of activity.

(1)

REPORTING & ASSIGNMENT
PRIORITY

BEST PRACTICES STRATEGY

HOW TO ACCOMPLISH

IV. Continued.....
PLEASE NOTE: The CSR should determine where the policyholder can be reached within 3 hours and explain the assignment process.

V. What level of expertise should be required of the person (CSR) to be assigned to the policy?
A. Mandatory 4 week training program for all new CSRs before taking any calls.
B. Claims Live Wire Management responsibility along with feedback from the geographical divisions.

C. Regular training and review of the CSR manual.
D. Customer Service Training... CSR should be empowered to contact customer with "Welcome" is on your side" and conclude each contact with a "Thank You" for allowing us to serve that customer. Training to be conducted by Coordinators and LiveWire DCA.

E. Completion of the CSR Certification program within 6 months for new CSRs.

F. Not completion times should be de-emphasized with the emphasis on "customer service". The CSR should not feel pressured to discontinue phone contact due to time standards. However, it is still important to complete the maximum acceptable "Wait" time in regard to productivity area:
a. Auto: Less than 10:45
b. File: Less than 6:45
c. Commercial: Less than 10:45

Leaders, Coordinator and DCA monitor of individual CSR activity through the Live Wire Call Processing system.

**REPORTING & ASSIGNMENT
PRIORITY**

VI. Who makes the assignment?

BEST CLAIM PRACTICES STRATEGY

HOW TO ACCOMPLISH

A. Claims Representative I assignments should be made directly to the Claims Representative responsible for that geographic area, with Coordinator approval.

B. Claims Representative II assignments must be reviewed and assigned by the Coordinator with particular attention being paid to the geographic area. Assignments should be made directly to the ICR responsible for that geographic area. The importance of the Coordinator reviewing and assigning all Claims Representatives II assignments cannot be stressed enough.

C. The CSR, with Coordinator approval, may hold and authorize payment on PA only claims for stopped or parked vehicles without injuries. This type of claim must be assigned to the CSR and verified with the policyholder and/or claimant. All other claims are to be assigned immediately.

H. Payment for collision/comprehensive losses should be authorized by the report center. The CSR should also give the insured the option of going directly through the claimant carrier for the payment of the loss. The CSR will provide the necessary information to contact the claimant carrier. The CSR must also explain our storage policy (maximum 5 days) to the insured. In these situations, the loss must be documented.

(3)

COPY OF EXHIBIT NO. 2 (Page 4 of 66)

1082

COPY OF EXHIBIT NO. 37 (Page 4 of 66)

**REPORTING - A. ASSIGNMENT
PRIORITY**

HOW TO ACCOMPLISH

BEST CLAIM PRACTICES STRATEGY

The revised 4/2/03 assignment criteria with modifications to be refined as deemed necessary. Unrepresented BI claims should be assigned to field liability claim representatives.

ix. What time objective is established from the completion of the report by the DCH/ Claims Representative? This will be accomplished as follows:

Claims Service will remove the MOL from the report center printer, set up the claim tickets and log, date stamp the same, and deliver to the assigned person (DCH or Claims Representative) who will provide the information for the initial report. All field assignments will automatically print in the appropriate field office. Claims are to be delivered beginning at 8:30 AM and ending at 3:30 PM.

A. Claims Representative I: Within one hour of the completion of the MOL, it is to be delivered directly to the assigned Claims Representative.

B. Claims Representative II: Within one hour of the completion of the MOL, it is to be delivered to the DCH responsible for that geographic area. The DCH then has a maximum of 15 minutes to provide direction if necessary and to deliver the MOL to the appropriate Claims Representative.

PLEASE NOTE: For Field Representatives, the DCH is responsible for placing information on the representative voice mail and the representative will be responsible to check in hourly to get the information.

(3)

COPY OF EXHIBIT NO. 2 (Page 5 of 66)

1083

COPY OF EXHIBIT NO. 37 (Page 5 of 66)

REPORTING & ASSIGNMENT

PRIORITY

IX. Continued...

BEST CLAIM PRACTICES STRATEGY

OR

HOW TO ACCOMPLISH

The Field Representatives will have car phones with fax machines and the Division/District Secretary will be responsible for calling the Field Representative within one hour of receipt of the claim. The representative should also be contacted in field areas where appropriate.

X. What is the objective of the claim representative receiving the claim to contacting the insured and claimant?

The representative should make contact the same day contact should coincide with the NOL report date in most situations.

DCU monitor of contact activity through normal file review.

XI. Who will set up bar suit that are our first notice of loss in the Harrisburg Service Center?

Claims Service will fax the lawsuit from Harrisburg to the Butler Report Unit, who will set up the claim immediately upon receipt. The person who will set up the bar suit will print in the appropriate office. Claims Service in Harrisburg will retrieve the claim, set up the jacket, and deliver the claim to the assigned representative/rep/oa within one hour.

XII. Who will set up in Philadelphia in the Harrisburg Service Center?

The person will be provided telephone service to call the Report Unit in Butler directly.

PHASE II: COVERAGE

PRIORITY

How do we ensure that coverage is opened and reserved?

BEST CLAIM PRACTICES STRATEGY

Commercial Coverage Clerk will obtain coverage for Commercial losses.

Assignment standards should be enforced to eliminate unnecessary reserves (if opened for at fault claimant driver)

Timeliness of coverage response is necessary from AIP and Personal Lines.

DCM review of initial coverage and Claims Representative review as investigation progresses. DCM direction should be in file reserves and initial strategy.

DCM and Claims Representative review of coverage within 30 days and at time of class reserve.

(8)

HOW TO ACCOMPLISH

When coverage is not available in CPS, a separate Notice of Loss will be printed for Commercial Coverage Clerk to send to Commercial Underwriting Department within 24 hours.
Also, the 40k screen is obtained by the Commercial Coverage Clerk within 24 hours. The Commercial Coverage Clerk will deliver the declarations and assignment copies to Commercial Claims and Identify Claims representative by DCM list.

Additional training is needed for CSR's to ensure proper identification of BI, IM, and UI claims. Only one BI coverage should be opened for multi-assignment, unless exact claimants are identified.

It is the responsibility of the Coordinator to make sure these practices are met. Additionally, it is the DCM's responsibility to determine that the assignment practices are met.

AIP will make a top priority of situations concerning new application where a claim has been opened within 24 hours of the 24 hours of a reported claim indicating policy status coverage, and if there are any coverage issues. Personal Lines will follow the same standard.

DCM assigns files. Review and direction to be completed at that time. DCM will subsequently review coverage investigation no later than 10 days from receipt regarding position and strategy for cases involving coverage issues.

Use of Claimant Summary Form to reflect this review. (See attachment A-1)

OVERAGE
LIABILITY

BEST CLAIM PRACTICES STRATEGY

DCH concurrence of reserve revisions including GMPs.

Division CAs must share coverage issue inter-divisionally with other CAs. The DCA will be charged with the responsibility to coordinate the region's position on these issues. These opinions should be shared with all divisions.

Agent Support Claims

Each division investigates and resolves its agent support claims.

Coverage questions

The Claims Representative should work with and in the direction of the DCH and CA to ensure Reservation of Rights, Non-Waiver, etc. are properly executed and proper coverage decisions are made.

Art Election

Confirmation of last election must be obtained from all injured parties.

Collateral Source

Should be verified by Claims Representative.

HOW TO ACCOMPLISH

DCH will initial the HIPD regarding any CHPs. DCH concurrence will be reflected in the file on all reserve activity exceeding authority. The HIPD or Claim Authorization Form will be initiated by the DCH.

A PC system should be utilized to gather and distribute information. Possibly add a clerical position in the Legal Department to perform the function or utilize buffer clerical staff with the Major Case Manager move.

Development of a regional coverage support team.

DCH and Legal supervision of the investigation and resolution. Time frame for completion is 5 days. This will be tracked through system. (See attachment A-2)

This should be accomplished through Divisional conference committees including Representatives, DCH, CA, and DM, if needed.

Confirmed by a copy of the declaration sheet and claimant carrier confirmation or visual inspection with personal contact.

Confirmed by declaration on claimant carrier Representative. To be noted on claimant summary by Claims Representative. The source and amount of the collateral benefits paid are to be reflected.

(7)

CONTACT

PRIORITY

How will contact be made?

BEST CLAIM PRACTICES STRATEGY

Personal contact required for unrepresented claimants.

HOW TO ACCOMPLISH

All unrepresented BI, UI, and UJ claimants will be assigned representatives to assure prompt face-to-face contact.

Initial telephone contact may be made to assess exposure and make appointments. Contact by mail should be avoided unless all other options are exhausted.

Who should be contacted?

All interested parties, including passengers, witnesses, police officers, agents, employer, employee, land owner, and all parties bound by a contract.

How promptly should contact be made with various parties to a loss?

Contact should be made immediately upon receipt of the claim or as soon as possible thereafter. Prompt, diligent efforts should be continued to achieve that contact.

Claims Representative will directly contact all parties by phone or in person. The Claims Representative will obtain information from the police department and securing pertinent information or by the use of field assistance as further explained in the investigation section.

Claims Representative will make same day contact, either in person or over the phone with BI, UI, and UJ claimants. EFFORTS will be noted in the claim file.

INVESTIGATION

PRIORITY
What constitutes a complete investigation?

BEST CLAIM PRACTICES STRATEGY

Statements should be taken from all interested parties including named insureds, driver, passenger, witnesses, etc. Reports must be documented.

HOW TO ACCOMPLISH

A complete investigation is one in which all coverage, liability and amount of damages are fully investigated. Evidence supporting these conclusions has been obtained and verified for correct decision making and the most advantageous resolution.

Recorded interviews will be taken by Claims Representatives either in person or over the phone by the use of a micro cassette recording device.

While recorded interviews may not be obtained in every case, the decision maker, the insured driver's version will be written down on an RI resume and kept in the file.

RI's from the insured driver will be taken in cases where the insured driver is in a questionable liability or UM and UI situations.

Get to know the insured and the claimant (i.e., activities, income, etc.) in order to determine credibility (i.e., believability and liability).

Investigation should support strategy. The case facts should be reviewed and a strategy should develop strategy for essential and supportive investigation including physical evidence factors.

Pictures of involved and blameless vehicles must be secured on all injury claims including low impact, soft tissue claims.

Physical evidence will be gathered and preserved (i.e., accident scene pictures and diagram).

(9)

INVESTIGATION PRIORITY

BEST CLAIM PRACTICES STRATEGY

Video taping of accident scene in special cases (i.e., cases where photographs do not show the whole picture such as timing sequence or a dangerous intersection).

Essential investigation should be completed in 48 hours - supportive in 15 days.

Essential investigation includes: the fact gathering process necessary to establish the company's position on liability and exposure for damages. (Supportive is needed to document and verify the essential investigation.)

Who conducts the investigation (Internal)

Claims Representative completes the investigation with direction from UCH. Claims Representative will use all available resources - agents, experts, AD adjusters, etc., to complete within the parameters.

HOW TO ACCOMPLISH

Video equipment will be made available to each division. Use will be based upon UCH approval.

Cross functional training. Use field adjusters to obtain police reports, photos, or other items.

Request for field assistance, other than police reports, photos, or other items, should be turned around time for securing information from the police will be 24 hours.

System for securing information from police:

1. Field adjusters will be responsible for information on claims assigned to them.
2. Inside representatives can obtain police information by making a verbal request to the appropriate field office.
3. The field office will establish a procedure for securing the information and calling or faxing to the inside Claims Representative.
4. Field office should attempt to collect this information in a bulk manner if possible.

(10)

INVESTIGATION

PRIORITY

What documentation is needed along with follow-up on medical status, INES and FROs need to verify ongoing treatment and disability.

BEST CLAIM PRACTICES STRATEGY

Medical assessment form is needed along with follow-up on medical status, INES and FROs need to verify ongoing treatment and disability.

HOW TO ACCOMPLISH

It must be noted that medical investigation is ongoing and regular follow-up is necessary. Increase Medical Coordinator activity in BI and UW/OJ claim files - secure prior medical history (see attachment A-3).

Cover the mechanism of how injury occurred in the claimant's statement. Verify wage information directly with employers. Check medical reports regarding physician recommendations with supporting documents. Develop rapport with physician's office manager/nurse.

Use Redata system for BI, UII, and UJ cases.

Use attached file order formats for liability claims, commercial liability claims, and H.C. claims - attachment A-4).

Reprint file jackets cover for a check list of items to be completed at Claims Representative's option.

How should the investigation process be documented?

A consistent file order regional practice should be implemented.

(11)

COPY OF EXHIBIT NO. 2 (Page 12 of 66)

1090

COPY OF EXHIBIT NO. 37 (Page 12 of 66)

PHASE III: FOLLOW-UP AND FILE CONTROL

PRIORITY

Improved file follow-up by Claims Representative.

BEST CLAIM PRACTICES STRATEGY

Claims Representative will practice proactive file follow-up. Each follow-up should move the file closer to resolution. (Positive contact)

HOW TO ACCOMPLISH

At each MRPO follow-up, contact should be made with the claimant or claimant attorney. A call specialist will not constitute proactive follow-up unless it is done in conjunction with a contact with claimant/claimant attorney.

Settlement offers should be made as soon as medical documentation is contained in the file to justify the offer being made. Timely offers will be assessed in RCR coaching and file follow-up comments.

If claimant or claimant attorney is willing to settle, the Claims Representative should immediately request court option and medical records (immediate). If authorization is refused, Claims Representative should send written request for needed information and establish a follow-up date.

At each follow-up subsequent to the initial 30 day action plan, the Claims Representative should review the value range pricing based on information developed at the time of follow-up.

(12)

COPY OF EXHIBIT NO. 2 (Page 13 of 66)

1091

COPY OF EXHIBIT NO. 37 (Page 13 of 66)

PULL-UP AND FILE CONTROL
PRIORITY

Aggressive claims management involvement in injury files.

BEST CLAIM PRACTICES STRATEGY

Early and ongoing involvement of claims management in the claims file.

HOW TO ACCOMPLISH

- DCH will review coverage questions no later than 48 hours after receipt of the claim. Claims Representatives will identify policy provision when coverage is in question.
- Divisions/ claims attorney will be consulted on non-routine coverage issues and questions involving various inquiries. (United Versus P&I form)
- DCH will review file at 30 days and each subsequent 30 days unless follow-up time frame is altered by DCH.
- Reduce span of control for DCH to 6 Claims Representatives or less per manager.
- Reduce DCH outside responsibilities to allow time for active file involvement.
- DCH will review file within 60 days if special reserve or SIR is required.
- DCH will review file at the time of case base if exposure exceeds DCH authority.
- Claims attorney and DCH should be consulted on files at least 30 days prior to the time of pre-trial or trial, including UWPU, arbitration.
- Hold regular claims committee sessions to discuss files with coverage issues, arrive at consensus on action plan. Committee may include DCH, CA, DCH and Claims Representatives.

(13)

COPY OF EXHIBIT NO. 2 (Page 14 of 66)

1092

COPY OF EXHIBIT NO. 37 (Page 14 of 66)

783

R. 2185a

FOLLOW-UP AND FILE CONTROL

PRIORITY

BEST CLAIM PRACTICES STRATEGY

HOW TO ACCOMPLISH

- Revise management information reports to assist Claims Managers in file follow-up review. (See Procedures Section)
- Each Claims Manager is to have a COP at their desk.
- Establish PMO's as a method for management communication to Claims Representatives.

(14)

COPY OF EXHIBIT NO. 2 (Page 15 of 66)

1093

COPY OF EXHIBIT NO. 37 (Page 15 of 66)

FOLLOW-UP AND FILE CONTROL

PRIORITY

Controlling the medical aspects of claims.

BEST CLAIM PRACTICES STRATEGY

Proper utilization of records reviews, IMEs, and vocational assessments.

HOW TO ACCOMPLISH

Identification of physicians and services which are both reasonable and effective.

- Utilize red flags communicated through Medata.
- Give clear direction including specific questions where appropriate to the medical review team.
- Contact medical personnel prior to completion of their report.
- Assign medical coordinators to assist in preparation of inquiries being reviewed.
- Contact medical personnel prior to completion of their report.
- Claims Representative will have direct contact with the physician or records review physician without the necessity of an outside vendor.
- Early use of medical review/IME to limit claimant's disability period.
- Assignment of SIU Investigator to specifically handle medical claims.
- Designate Medical Coordinator for each geographic division.
- Periodic reviews of medical reports and fee bills by committee comprised of DCI, CA, and Medical Coordinator.

(15)

COPY OF EXHIBIT NO. 2 (Page 16 of 66)

1094

COPY OF EXHIBIT NO. 37 (Page 16 of 66)

785

R. 2187a

FOLLOW-UP AND FILE CONTROL

PRIORITY

Ensure all claims are handled in a fair and ethical manner.

BEST CLAIM PRACTICES STRATEGY

Claims representative will be kept apprised of all laws, regulations and claims handling practices on a continuous basis by the geographic claims attorney and the RCA.

HOW TO ACCOMPLISH

Division claims attorney will provide ongoing information concerning case law, coverage issues, and case evaluation. RCA will communicate legal issues to the geographic divisions. Claim attorney will advise RCA of cases/issues which may affect the region.

All claims handling will conform to the standards issued by the American Arbitration Association and pursuant to the Unfair Claims Practices Act.

Training in Unfair Claims Practices with specific emphasis on cases where potential problems have been identified. Geographic claims attorney to provide training.

DCW will have authority to split files when conflicts arise. A clear state-wide guideline on the splitting of files involving (1) two parties, (2) BI and UJ exposure on the same accident, (3) BI and UJ exposure on the same individual, (4) files involving the same party in multiple files. Claims Representative will advise RCA of potential witness sensitive issues. Appropriate action should be developed by the RCA.

Members of Trial Division and outside defense counsel will address the role of defense counsel in training sessions. Specific case examples will be given to identify potential problems.

(16)

COPY OF EXHIBIT NO. 2 (Page 17 of 66)

1095

COPY OF EXHIBIT NO. 37 (Page 17 of 66)

FOLLOW-UP AND FILE CONTROL

PRIORITY

Improve Claims/Sales relations.

BEST CLAIM PRACTICES STRATEGY

Timely response to sales inquiries and consideration of information furnished by agents. Continued and ongoing evaluation process as new information is received.

HOW TO ACCOMPLISH

- Utilize new Claimant Summary if case status is requested by the agent.
- Presentation to Sales Force of the type of information that would be relevant and helpful through the DMR.
- Same day response to agent inquiries.
- Publication of a state-wide newsletter to community agents in order to increase the number of both Claims and Sales. Involve agents in the publication of the newsletter.
- Utilize agents in check delivery on large cases where appropriate.

(17)

COPY OF EXHIBIT NO. -2 (Page 18 of 66)

1096

COPY OF EXHIBIT NO. 37 (Page 18 of 66)

EVALUATION

PRIORITY

Consideration of all potential sources for contribution.

BEST CLAIM PRACTICES STRATEGY

Complete a thorough investigation, including photographs, accident reconstruction and interviews with all interested parties.

HOW TO ACCOMPLISH

Increased use of accident reconstructionist with DCU approval.

Purchase of additional photography equipment, zoom lens, and wide angle lens available in each Field Office. Video equipment available in each Service Center. Total cost approximately \$1,250.

Increased awareness of all defenses, including comparative negligence, joint and several liability, and contractual defense.

Training with emphasis on liability issues and defenses to be accomplished by Divisional C.A., DCU, and Training Coordinator.

Claims Representatives will obtain copies of all applicable contracts (indemnification agreements, hold harmless, lease agreements, etc.).

Early and ongoing dialogue should be entered with the carrier for joint contracts upon conclusion of liability investigation.

Train Claims Representatives to recognize appropriate contracts and to be accomplished by Divisional C.A., DCU, and Training Coordinator.

Train for awareness to use special arbitration to resolve liability and coverage disputes. Local arbitration committee will make presentations upon request to be coordinated through the Subrogation District.

(18)

COPY OF EXHIBIT NO. 2 (Page 19 of 66)

COPY OF EXHIBIT NO. 37 (Page 19 of 66)

EVALUATION

PRIORITY

Evaluate for settlement earliest possible time.

BEST CLAIM PRACTICES STRATEGY

Opportunity for first call settlements should be explored in lieu of initial contact. If case is not appropriate for first call resolution, reasons should be documented in the file. File should contain sufficient information of damages and loss to support settlement of case. DCH will support first call settlement decisions.

All 15 day liability/coverage investigation should be completed. In those cases, where this cannot be achieved at 15 days, file should reflect why and action required to accomplish.

Claims Representatives should refer any pending 30 to DCH at 30 days from receipt with status on liability and coverage per above. In addition an action plan should be submitted to resolve the matter. DCH will make additional recommendations or concur with an established action plan.

HOW TO ACCOMPLISH

Train Claims Representatives to recognize first call settlement opportunities. To be accomplished by Claims Representatives successful in this settlement method.

Recognition through SOAR, PE, etc.

Reduce average injury pending to 700 or less per Claims Representative.

Reduce average injury pending to 700 or less per Claims Representative.

Reduce span of control for DCH to 6 or less per DCH.

Claimant Summary will be completed at 30 days and updated at Case Base. Claimant Summary will be used to request authority up to \$50,000. Authority exceeding \$50,000 will require File Summary.

(19)

COPY OF EXHIBIT NO. 2 (Page 20 of 66)

COPY OF EXHIBIT NO. 37 (Page 20 of 66)

EVALUATION

PRIORITY

Impact of human factors in the settlement of injury claims.

BEST CLAIM PRACTICES STRATEGY

Ensures that human factors and intangibles are considered in the settlement of bodily injury claims.

HOW TO ACCOMPLISH

Subscribe to Pennsylvania Jury Verdict and Analysis for each Service Center at a cost of approximately \$350 per year.

See notes should incorporate these factors routinely.

Incorporate recognition and consideration of these factors into Claims Department training through training coordinator, BCI, CA and defense counsel.

Purchase JVA Software for each Service Center at a cost of approximately \$600 per year.

Provide PC for JVA in a centralized, readily accessible area for each service center at a cost of approximately \$3,000.

Consideration of human factors, such as:

- a. parties appearance, occupation, age, and whether they are likable
- b. plaintiff's counsel
- c. venue
- d. type of accident and injury (Will jury be sympathetic?)

Divisional claim adjusters will establish an "intangible" service center to accumulate and monitor pertinent data, i.e., opposing counsel history, UW/UI arbitrator experience.

(20)

(SEE ALSO PP. 23, 26)

COPY OF EXHIBIT NO. 2 (Page 21 of 66)

1099

COPY OF EXHIBIT NO. 37 (Page 21 of 66)

EVALUATION

PRIORITY

Outside expense control.

BEST CLAIM PRACTICES STRATEGY

Monitor and manage outside defense counsel, vendors and experts.

HOW TO ACCOMPLISH

Ensure authorization requirements are strictly adhered to.

- Assignments only to outside defense counsel and vendors that fully follow our direction.

- Review of all vendor and expert bills (use of outside auditing firms when appropriate).

- Identification of specialized defense counsel and vendors.

- Recuse letters and signing discussions with defense counsel and vendors utilized in order to ensure counsel understands our expectations.

- Early disposition of lawsuits through Preliminary Dispositions Motions for Summary Judgment and Motions for Judgment on the Pleadings.

- Designate one Medical Coordinator for each geographic division to monitor savings/cost data quarterly.

- Training for Claims Representatives on auditing fee bills to be handled by Division Claims Attorney.

- Development of a list of approved vendors and defense counsel.

(21)

COPY OF EXHIBIT NO. 2 (Page 22 of 66)

1100

COPY OF EXHIBIT NO. 37 (Page 22 of 66)

EVALUATION

PRIORITY

Ensure undervaluing
profitability.

BEST CLAIM PRACTICES STRATEGY

Maintain balance between losses and expenses.

HOW TO ACCOMPLISH

Recognition of proper claims to litigate through
consultation with CMI, Ch, and ADI.

Division claims attorney will publish favorable
and unfavorable results of ACIS's on a monthly
basis.

Division claims attorney will supervise the devel-
opment of resource center which includes D/VI
admission call bank, information on various
cases, in particular, judgments, and informa-
tion on plaintiff counsel.

Early evaluation and disposition of litigation
cases through ADI and actions for Summary Judg-
ment.

Increased use of ADI through Court sanctioned
commitments, outside vendors, and settlement
days with plaintiff's counsel.

Communicate to claims personnel loss and expense
on quarterly basis. AGS and budget com-
parison will provide the necessary information.

(See 4-60 p. 20, 26)

COPY OF EXHIBIT NO. 2 (Page 23 of 66)

1101

(23)

COPY OF EXHIBIT NO. 37 (Page 23 of 66)

VALUATION
RELIABILITY

What kind of data is needed at the District level to enable proper analysis of claims and pricing challenges?

How do we communicate goals and objectives?

BEST CLAIM PRACTICES STRATEGY

Loss and expense data will be analyzed and communicated at the District level on a monthly basis.

Sales data will be analyzed and communicated at the District level on a monthly basis.

Goals and objectives will be established for the Division and the District.

The PE process will recognize achievement of goals and objectives at all levels.

Claims Representatives will assume ownership for all files assigned.

HOW TO ACCOMPLISH

- DCH will use AGOS to gather data.

- Management information reports on cases pending at the district and divisional level.

- DCH will secure sales information from DNT.

- Goals have been established. (Sales Production, RES, ACP, and Bodily Injury Pending.)

- PE criteria will be revised to coincide with goal and objective achievement.

- Claims District will have sufficient clerical support to enhance Claims Representative/DCH productivity.

- Multi-line claims handling should continue to be implemented and enhanced to complement goals and objectives.

- Injury pendings will be reduced to 100 or less per Claims Representative.

- DCH span of control will be reduced to 6 Claims Representatives or less.

(23)

COPY OF EXHIBIT NO. 2 (Page 24 of 66)

COPY OF EXHIBIT NO. 37 (Page 24 of 66)

PHASE IV: NEGOTIATION

PRIORITY

In order to become a low cost provider it is of necessity to make our negotiating team turn out to be the best. We reduce our ACP as well as give credibility in our efforts to raise expectations.

BEST CLAIM PRACTICES STRATEGY

Reduction of pending is a key factor in improving our negotiating attributes.

HOW TO ACCOMPLISH

Divisions will reduce injury pending to a state-wide average of 100 per representative. Pending will be accomplished by more aggressive handling, the addition of PIE, inter/intra district reassigning and retain part time people to reduce pending.

On the job experience is the best teacher, but it takes time (2 to 3 years minimum).

Develop a mentor program where seasoned (skilled) representatives are matched with inexperienced representatives to develop negotiation skills.

Inclusion of Claims Representatives in conference pricing cases by injury and round table discussions as negotiation can begin without all documentation being in the file, but this is dependent on case by case analysis. Learn from "war stories."

Mitigating factors are to be addressed in the file by the representative as to the PIGS and COMS of the claim. Also pursue investigation to reveal unrepresented claimant's wants or desires for settlement.

Must have management involvement and direction in the file in regard to mitigating factors, negotiation strategy and the amount of settlement. (Must offer amount of initial offer, down, (Must be against self.) This is to be done at 30 days and minimum of 60 days thereafter or when case necessitates earlier intervention.

(24)

COPY OF EXHIBIT NO. 2 (Page 25 of 66)

1103

COPY OF EXHIBIT NO. 37 (Page 25 of 66)

NEGOTIATION
PRIORITY

BEST CLAIM PRACTICES STRATEGY

HOW TO ACCOMPLISH

- Representatives will be provided Human Resource Training and Negotiation techniques in Home Office by the Training Department, i.e., Negotiations, Understanding Styles, Psych Profile, Stress Management.
- Recognize the representatives for their negotiation success stories with pat on the back, John, etc.
- There is merit to making offers on the basis of odd dollar amounts. This catches adversary off guard. Incentives should be used to develop inexperienced representatives in their negotiating skills and prevent those 1000 lump sum increments.
- Training should be given in Unfair Claims Practices Act and Bad Faith as well as Litigation Management.
- With decentralization, simulation training should be used. Our field should be allowed to face negotiation. This should be tied to the award program.
- Emphasis is to be placed on negotiations and values. We should be more aggressive. We should be more aggressive to settle at our low limits rather than defend our pricing position. Authority is to be managed according to the representative's experience level.
- Avoid rushing the negotiation process.
- Realize the potential to qualify various Lines with Health care providers, verify, assigned claims plans, workman's compensation, etc.

(23)

COPY OF EXHIBIT NO. 2 (Page 26 of 66)

1104

COPY OF EXHIBIT NO. 37 (Page 26 of 66)

795

R. 2197a

EGOTIATION
PRIORITY

BEST CLAIM PRACTICES STRATEGY

Learn the adversary.

(SEE ALSO P.A. 20, 22.)

HOW TO ACCOMPLISH

- Establishment of a Divisional plaintiff's attorney index to be compiled by the representatives and coordinated by the Division Claims Attorney. Information as to the attorney's history in the legal profession, specialty (tort, criminal, etc.), insurance companies, try or settle cases, handle only soft tissue cases, etc. Also personal information as to hobbies for ice breaker purposes. (see attachment A-5)
- Representatives will also provide information on settlement/offer/counter offer, reflecting liability assessment and settlement amounts. The Division Attorney will report the results in division monthly meetings. This will allow representatives to see not only how an attorney prices certain cases but also settlement ranges for that territory.
- Utilize Medeta software to pick up red flags of treatment as being reasonable and related to the accident.
- Perform aggressive medical reviews, audits of provider's bills.
- Aggressive use of IJE and peer review when appropriate will serve to reduce costs.
- Utilize medical coordinator for each division to act as medical liaison to division.
- All injury representatives are to attend at least one (1) IJE and arbitration each year. Preference is to attend representative's own claim that he/she investigated. Accountability should be addressed in the PT.

Utilization of medical vendors to reduce loss cost by assisting in the identification of medical issues to be addressed in the negotiating strategy.

Learn the court system.

(26)

COPY OF EXHIBIT NO. 2 (Page 27 of 66)

PROPOSITION

PRIORITY

the swift and satisfactory conclusion of claims is the target.

BEST CLAIM PRACTICES STRATEGY

Utilize different methods to conclude a case.

HOW TO ACCOMPLISH

- "Walk-away" release, scheduled release, joint Tortfeasor release in addition to the general release method.
 - Hold settlement day quarterly or semi-annually to move cases with certain counsel.
 - Use advance payments when appropriate.
 - Utilize high-low agreements to move stale cases.
 - Consider special arbitration alternative in comparative situations involving innocent third party.
 - Utilize structured settlements.
 - Exercise sound judgment in using MD/rental concessions to control BI potential.
 - Seek court approval of minors compromise, incompetent and fatalities.
 - Utilize Division CA or Legal Department to review nonstandard releases or questions of law and procedure on coverages, damages and procedural law.
 - Calendar or card system in addition to the HRO flow. Group files with same law firm or geographical area together.
 - Note attachment A-6.
 - Institute a simple method to issue claim checks.
 - Improve work flow timeliness (i.e.: Incoming and outgoing mail, word processing correspondence, etc.).
- Create a monitoring system for representatives to utilize in order to individualize to the needs of specific claims and claimants.
- Litigation Management.
- Improve processing efficiencies while maintaining internal control integrity.

(27)

COPY OF EXHIBIT NO. 2 (Page 28 of 66)

1106

COPY OF EXHIBIT NO. 37 (Page 28 of 66)

RECOVERY

PRIORITY

A means of reducing ACP is collecting money back to the claim.

BEST CLAIM PRACTICES STRATEGY

Substantiate assets to ensure UM/UL recovery.

Subrogation must be aggressively pursued and all avenues of recovery utilized.

HOW TO ACCOMPLISH

Claims Representatives will obtain basic information in their investigation. Succession will be taken with the vendor. Succession will be taken with the vendor should be consulted for further information.

Improve recognition of additional tortfeasors and identify non-auto sources of potential recovery.

Claims Service cannot close subrogation without DCH approval.

DCHs must stress subrogation/contribution and address it in file reviews.

Utilize Trial Division to handle subrogation recovery. This will eliminate contingency fees with outside counsel.

Work subrogation files quickly to the point that they can be collected or reassigned within 120 days to the subrogation district. The older the file becomes, the less likely collection is achieved.

Subrogation DCH and Liability DCH review findings of liability Claims Representatives to identify files that are strong in subrogation and reassign them to workload aimed.

(28)

COPY OF EXHIBIT NO. 2 (Page 29 of 66)

1107

COPY OF EXHIBIT NO. 37 (Page 29 of 66)

CUSTOMER SATISFACTION

PRIORITY

Claims fulfill the customer promise and the result affects customer satisfaction with our agency force, insureds and claimants/customers.

BEST CLAIM PRACTICES STRATEGY

Get to know and establish a rapport with the agent.

HOW TO ACCOMPLISH

- Field representatives will visit agent's office on a schedule determined by the GNT/DNT.
- Communicate to staff the results of Agency Service Monitors to ensure everyone knows what problems exist and work to correct them.
- Emphasis placed on the recapture program with letter (or phone call) to agent at time of settlement.
- Return phone calls promptly and not shirk voicemail messages to be kept specific and change promptly. The DCH is to monitor compliance by Claims Representatives. (See Procedures)
- Emphasis placed on DNT and GNT to be the eyes and ears for the representatives and agents.
- Advise promptly of subrogation collections and respond promptly to agent inquiries.
- Send a letter with deductible checks from the agent offering to review the customer's financial situation.
- Utilization of claims partner to assist agent.
- Recognize long term policyholder by thanking them verbally for their loyalty with Nationwide. Information can be picked up from ROL.
- Continue to send survey letters regarding customer satisfaction with our claims handling. If letter reflects dissatisfaction pursue to see if Justified or not. Communicate both positive and negative comments to staff.

Recognize importance of retention and satisfied customers.

(29)

COPY OF EXHIBIT NO. 2 (Page 30 of 66)

1108

COPY OF EXHIBIT NO. 37 (Page 30 of 66)

CUSTOMER SATISFACTION
PRIORITY

BEST CLAIM PRACTICES STRATEGY

Hand delivery of settlement checks by representative, also advise status of completed case.

HOW TO ACCOMPLISH

- On nonrepresented claims, this will reflect issue settlement checks and obtain executed release more expeditiously.

- Once litigated case is closed, advise insured case has settled or that excess potential has been removed.

(30)

COPY OF EXHIBIT NO. 2 (Page 31 of 66)

1109

COPY OF EXHIBIT NO. 37 (Page 31 of 66)

800

CUSTOMER SATISFACTION

PRIORITY

BEST CLAIM PRACTICES STRATEGY

HOW TO ACCOMPLISH

Hand delivery of settlement checks by representative. Also advise status of concluded case.

On nonrepresented claims, this will be used to issue settlement checks and obtain executed release more expeditiously.

Once litigated case is closed, advise insured case has settled or that excess potential has been removed.

(1)

COPY OF EXHIBIT NO. 2 (Page 32 of 66)

1110

COPY OF EXHIBIT NO. 37 (Page 32 of 66)

**An Analysis of the
UNFAIR INSURANCE PRACTICES ACT
40 Pa.C.S.A. Sec. 1171.5**

Sec. 1171.5 Unfair methods of competition and unfair or deceptive acts or practices defined--

(a) "Unfair methods of competition" and "unfair or deceptive acts or practices" in the business of insurance means

(10) The following acts shall constitute unfair claim settlement or compromise practices if committed with such frequency as to indicate a business practice.

(i) misrepresenting pertinent facts or policy provisions relating to coverages at issue.

(ii) failing to acknowledge and act promptly upon communications with respect to claims.

(iii) failing to adopt and implement reasonable standards for prompt investigation of claims.

(iv) refusing to pay claims without conducting a reasonable investigation.

(v) failing to affirm or deny coverage within a reasonable time after receiving proofs of loss.

(vi) not attempting in good faith to effectuate prompt, fair and equitable settlements once the company's liability is reasonably clear.

(vii) compelling litigation by offering substantially less than the amounts due and ultimately recovered.

(ix) attempting to settle or compromise claims based upon an altered application, unless the insured knew or consented to the alteration.

COPY OF EXHIBIT NO. 2 (Page 33 of 66)

1111

COPY OF EXHIBIT NO. 37 (Page 33 of 66)

(x) a statement setting forth the coverage must accompany the claims payment

(xi) making known to insureds/claimants that there is a policy of appealing arbitration awards to induce settlement for less than the awards

(xii) investigation or payment cannot be delayed by requiring a preliminary claim report, and then subsequently requiring submission of formal proof of loss forms, both of which contain substantially the same information.

(xiii) failing to promptly settle claims, where liability has become reasonably clear, under one portion of coverage in order to influence settlements under other coverages or under other policies.

(xiv) failing to promptly provide a reasonable explanation of the basis in the policy in relation to the facts or applicable law (or denial) of a claim or for the offer of a compromise settlement.

(xv) refusing payment of a claim solely because of the insured's request to do so, unless the insured has immunity from suit, the policy grants the right of consent to settle to the insured, or the refusal of payment is based upon the insurer's independent evaluation of the insured's liability.

COPY OF EXHIBIT NO. 2 (Page 34 of 66)

1112

COPY OF EXHIBIT NO. 37 (Page 34 of 66)

Ch. 146 UNFAIR INSURANCE PRACTICES 31 § 146.1

CHAPTER 146. UNFAIR INSURANCE PRACTICES

Subchapter A. UNFAIR CLAIMS SETTLEMENT PRACTICES 146.1

Authority

The provisions of this Chapter 146 issued under act of May 17, 1921 (P. L. 682, No. 234) (40 P. S. §§ 341-399); act of May 17, 1921 (P. L. 719, No. 237) (40 P. S. §§ 1-311); sections 206, 206, 1501 and 1502 of the act of April 9, 1929 (P. L. 177, No. 173) (71 P. S. §§ 66, 186, 411 and 412); and section 4 of the act of July 22, 1974 (P. L. 589, No. 202) (40 P. S. § 1171-A), unless otherwise noted.

Source

The provisions of this Chapter 146 adopted December 15, 1978, effective December 16, 1978, § Pa.B. 3273, unless otherwise noted.

Subchapter A. UNFAIR CLAIMS SETTLEMENT PRACTICES

- Sec. 146.1. Scope.
- 146.2. Definitions.
- 146.3. File and record documentation.
- 146.4. Misrepresentation of policy provisions.
- 146.5. Failure to acknowledge pertinent communications.
- 146.6. Standards for prompt investigation of claims.
- 146.7. Standards for prompt, fair and equitable settlements applicable to insurers.
- 146.8. Standards for prompt, fair and equitable settlements applicable to automobile insurance.
- 146.9. Comparative negligence.

§146.1. Scope.
This chapter defines certain minimum standards which, if violated with a frequency that indicates a general business practice, will be deemed to constitute unfair claims settlement practices. This chapter applies to persons and to insurance policies and insurance contracts except policies of workers' compensation insurance and fidelity, surety and guaranty bonds. This chapter is not exclusive, and other acts, not herein specified may also be deemed to be a violation of sections 4 and 5(10) of the Unfair Insurance Practices Act (40 P. S. §§ 1171.4 and 1171.5(10)).

Source

The provisions of this § 146.1 adopted December 15, 1978, effective December 16, 1978, § Pa.B. 3273.

146-1

(143783) No. 137 Jun. 90

COPY OF EXHIBIT NO. 2 (Page 35 of 66)

COPY OF EXHIBIT NO. 37 (Page 35 of 66)

§146.2. Definitions.

(a) The definitions of "person" and of "insurance policy or insurance contract" contained in section 2 of the Unfair Insurance Practices Act (40 P. S. § 1171.2) applies to this chapter.

(b) The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Agent—An individual, corporation, association, partnership or other legal entity authorized to represent an insurer with respect to a claim.

Claim—A demand for payment by a claimant and not an inquiry concerning coverage.

Claimant—Either a first-party claimant, a third-party claimant or both, and including the claimant's attorney and a member of the claimant's immediate family designated by the claimant.

Commissioner—The Insurance Commissioner of the Commonwealth.

Department—The Insurance Department of the Commonwealth.

First-party claimant—An individual, corporation, association, partnership or other legal entity asserting a right to payment under an insurance policy or insurance contract arising out of the occurrence of the contingency or loss covered by such policy or contract.

Insured—A natural person, association, corporation, partnership or other legal entity who is insured under an insurance policy or insurance contract issued in this Commonwealth.

Insurer—A person licensed to issue or who issues an insurance policy or insurance contract in this Commonwealth.

Investigation—Activities of an insurer directly or indirectly related to the determination of liabilities under coverages afforded by an insurance policy or insurance contract and settlement of claims or losses thereunder.

Notification of claim—A notification, whether in writing or other means acceptable under the terms of an insurance policy or insurance contract, to an insurer or its agent, by a claimant or insured, which reasonably apprises the insurer of the facts pertinent to a claim.

Third-party claimant—An individual, corporation, association, partnership or other legal entity asserting a claim against an individual, corporation, association, partnership or other legal entity insured under an insurance policy or insurance contract of an insurer.

(c) The term "worker's compensation," in this chapter, includes but is not limited to Longshoremen's and Harbor Worker's Compensation.

Source
The provisions of this § 146.2 derived October 11, 1978, effective December 14, 1978, § Pa.B. 2372.

COPY OF EXHIBIT NO. 2 (Page 36 of 66)

COPY OF EXHIBIT NO. 37 (Page 36 of 66)

Ch. 146 UNFAIR INSURANCE PRACTICES 31 § 146.3

§146.3. File and record documentation.

The claim files of the insurer shall be subject to examination by the Commissioner or by his appointed designees. The files shall contain notes and work papers pertaining to the claim in the detail that pertinent events and the dates of the events can be reconstructed.

Source

The provisions of this § 146.3 adopted December 15, 1978, effective December 16, 1978, 4 Pa.B. 3375.

§146.4. Misrepresentation of policy provisions.

(a) An insurer or agent may not fail to fully disclose to first-party claimants pertinent benefits, coverages or other provisions of an insurance policy or insurance contract under which a claim is presented.

(b) An insurer or agent may not fail to fully disclose to first-party claimants benefits, coverages or other provisions of an insurance policy or insurance contract when the benefits, coverages or other provisions are pertinent to a claim.

(c) An insurer may not deny a claim for failure to exhibit the property without proof of demand and refusal by a claimant to do so.

(d) An insurer may not, except where there is a time limit specified in the policy, make statements—written or otherwise—requiring a claimant to give written notice of loss or proof of loss within a specified time limit and which seek to relieve the company of its obligations if a time limit is not complied with unless the failure to comply with the time limit prejudices the rights of the insurer.

(e) An insurer may not request a first-party claimant to sign a release that extends beyond the subject matter that gave rise to the claim payment.

(f) An insurer may not issue checks or drafts in partial settlement of loss or claim under a specific coverage which checks or drafts contain language which expressly or impliedly releases the insurer or its insurer from its total liability.

Source

The provisions of this § 146.4 adopted December 15, 1978, effective December 16, 1978, 4 Pa.B. 3375.

§146.5. Failure to acknowledge pertinent communications.

(a) Every insurer, upon receiving notification of a claim, shall, within 10 working days, acknowledge the receipt of the notice unless payment is made.

146-3

(143783) No. 187 Jun. 90

COPY OF EXHIBIT NO. 2 (Page 37 of 66)

COPY OF EXHIBIT NO. 37 (Page 37 of 66)

31 § 146.6 MISCELLANEOUS PROVISIONS Pl. VIII

made within the period of time. If an acknowledgment is made by means other than writing, an appropriate notation of the acknowledgment shall be made in the claim file of the insurer and dated. Notification given to an agent of an insurer shall be notification to the insurer, dating from the time the insurer receives notice.

(b) Every insurer, upon receipt of an inquiry from the Department respecting a claim shall, within 15 working days of receipt of the inquiry, furnish the Department with an adequate response to the inquiry.

(c) An appropriate reply shall be made within 10 working days on other pertinent communications from a claimant which reasonably suggest that a response is expected.

(d) Every insurer, upon receiving notification of claim, shall provide within 10 working days necessary claim forms, instructions and reasonable assistance so that first-party claimants can comply with the policy conditions and reasonable requirements of the insurer. Compliance with this subsection within 10 working days of notification of a claim shall constitute compliance with subsection (a).

Severed

The provisions of this § 146.6 adopted December 15, 1978, effective December 16, 1978, § Pa.B. 3273.

§146.6. Standards for prompt investigation of claims.

Every insurer shall complete investigation of a claim within 30 days after notification of claim, unless the investigation cannot reasonably be completed within the time. If the investigation cannot be completed within 30 days, and every 45 days thereafter, the insurer shall provide the claimant with a reasonable written explanation for the delay and state when a decision on the claim may be expected.

Severed

The provisions of this § 146.6 adopted December 15, 1978, effective December 16, 1978, § Pa.B. 3273.

§146.7. Standards for prompt, fair and equitable settlements applicable to insurers.

- (a) Acceptance or denial of a claim shall comply with the following:
 - (1) Within 15 working days after receipt by the insurer of properly executed proofs of loss, the first-party claimant shall be advised of the acceptance or denial of the claim by the insurer. An insurer may not

146-4

(143786) No. 137 Jun. 90

Chapter of the Commonwealth of Pennsylvania

COPY OF EXHIBIT NO. 2 (Page 38 of 66)

COPY OF EXHIBIT NO. 37 (Page 38 of 66)

deny a claim on the grounds of a specific policy provision, condition or exclusion unless reference to the provision, condition or exclusion is included in the denial. The denial shall be given to the claimant in writing and the claim file of the insurer shall contain a copy of the denial.

(2) Where there is a reasonable basis supported by specific information available for review by the insurance regulatory authority that the first-party claimant has fraudulently caused or contributed to the loss by arson or other illegal activity, the insurer is relieved from the requirements of this subsection; provided, however, that the claimant shall be advised of the acceptance or denial of the claim within a reasonable time for full investigation after receipt by the insurer of a properly executed proof of loss.

(b) If a claim is denied for reasons other than those described in subsection (a) and is made by any other means than writing, an appropriate notation shall be made in the claim file of the insurer.

(c) The following provisions govern acceptance or denial of a claim where additional time is needed to make a determination:

(1) If the insurer needs more time to determine whether a first-party claim should be accepted or denied, it shall so notify the first-party claimant within 15 working days after receipt of the proofs of loss giving the reasons more time is needed. If the investigation remains incomplete, the insurer shall, 30 days from the date of the initial notification and every 45 days thereafter, send to the claimant a letter setting forth the reasons additional time is needed for investigation and state when a decision on the claim may be expected.

(2) Where there is a reasonable basis supported by specific information available for review by the insurance regulatory authority to suspecting that the first-party claimant has fraudulently caused or contributed to the loss by arson or other illegal activity, the insurer is relieved from the requirements of this subsection; provided, however, that the claimant shall be advised of the acceptance or denial of the claim by the insurer within a reasonable time for full investigation after receipt by the insurer of a properly executed proof of loss.

(4) Insurers may not fail to settle first-party claims on the basis that responsibility for payment should be assumed by others except as may otherwise be provided by policy provisions.

(6) Insurers may not continue negotiations for settlement of a claim directly with a claimant who is neither an attorney nor represented by an attorney until the rights of the claimant may be affected by a statute.

146-5

(143787) No. 187 Jan. 90

COPY OF EXHIBIT NO. 2 (Page 39 of 66)

1117

COPY OF EXHIBIT NO. 37 (Page 39 of 66)

31 § 146.8 MISCELLANEOUS PROVISIONS Pt. VIII

limitations or a policy or contract time limit, without giving the claimant written notice that the time limit may be expiring and may affect the rights of the claimant. The notice shall be given to first-party claimants 30 days, and to third-party claimants 60 days, before the date on which the time limit may expire.

(9) An insurer may not make statements which indicate that the rights of a third-party claimant may be impaired if a form or release is not completed within a given period of time unless the statement is given for the purpose of notifying the third-party claimant of the provision of a statute of limitations.

Authority

The provisions of this § 146.7 derived under act of July 22, 1974 (P. L. 239, No. 223) (40 P. S. §§ 1171.4-1171.15).

Source

The provisions of this § 146.7 adopted December 15, 1971, effective December 16, 1972, (P. S. B. 1971) amended May 21, 1982, effective May 22, 1982, 13 Pa.B. 1639. Immediately preceding text appears at serial pages (19830) and (44124).

§146.8. Standards for prompt, fair and equitable settlements applicable to automobile insurance.

(a) Insurers may not recommend that third-party claimants make claim under their own policies solely to avoid paying claims under the insurer's insurance policy or insurance contract.

(b) Insurers may not require a claimant to unreasonably either to inspect a replacement automobile, to obtain repair estimate or to have the automobile repaired at specific repair shops.

(c) Insurers shall, upon the request of the claimant, include the first-party claimant's deductible, if any, in subrogation demands. Subrogation recoveries shall be shared on a proportionate basis with the first-party claimant, unless the deductible amount has been otherwise recovered. A deduction for expenses can not be made from the deductible recovery unless an outside attorney is retained to collect the recovery. The deduction may then be for only a pro rata share of the allocated loss adjustment expense.

(d) If an insurer prepares an appraisal of the cost of automobile repairs, the appraisal shall be in an amount for which it may be reasonably expected the damage can be satisfactorily repaired. The insurer shall give a copy of the appraisal to the claimant and may furnish to the claimant, upon his unsolicited request, the names of two or more conveniently located repair shops.

146-6

(143728) No. 187 Jun. 90

Continued on 1988 Continuation of Provisions

COPY OF EXHIBIT NO. 2 (Page 40 of 66)

COPY OF EXHIBIT NO. 37 (Page 40 of 66)

Ch. 146 UNFAIR INSURANCE PRACTICES 31 § 146.2

(e) When the amount claimed is reduced because of betterment or depreciation information for the reduction shall be contained in the claim file. The deductions shall be itemized and specified as to dollar amount and shall be appropriate for the amount of deductions.

(f) When the insurer elects to repair in a first-party claim, the insurer shall cause the damaged automobile to be restored to its condition prior to the loss at no additional cost to the claimant other than as stated in the policy and within a reasonable period of time.

(g) The insurer may not use as a basis for cash settlement with first-party claimant an amount which is less than the amount which it insurer would pay if repairs were made, other than in total loss situation unless the amount is agreed to by the insured or provided by its insurance policy or insurance contract.

Source

The provisions of this § 146.2 adopted December 15, 1978, effective December 16, 1978. P.S. 3735.

§146.9. Comparative negligence.

(a) Where comparative negligence is applied to a claim settlement offer or denial, insurers shall fully disclose to claimants the basis in fact or applicable law for the offer or denial and settlement standards relating to the claim.

(b) Insurers may not use comparative negligence claim settlement standards which are inequitable and which result in compelling claimants to litigate by offering substantially less than the amount due a claimant ultimately recovered in actions brought by the persons. Comparative negligence should not be applied to a claim settlement to reduce amount claimant would otherwise be entitled to but for their negligence with reasonable evidence of the negligence and its relevancy to the negligence involved. A record of the evidence and the evaluation of effect should be maintained in the claim file.

Source

The provisions of this § 146.9 adopted December 15, 1978, effective December 16, 1978. P.S. 3735.

146-7

(140759) No. 187 Jun. 90

COPY OF EXHIBIT NO. 2 (Page 41 of 66)

1119

COPY OF EXHIBIT NO. 37 (Page 41 of 66)

[Next page is 147-1]

11437503 No. 117 Jun. 90

146-8

County of Berks, Pennsylvania

COPY OF EXHIBIT NO. 2 (Page 42 of 66)

1120

COPY OF EXHIBIT NO. 37 (Page 42 of 66)

CLAIMANT SUMMARY

DATE: _____ DISP: _____ INSURED: _____
 CLAIM #: _____ DOL: _____ CLAIMANT NAME: _____ CLAIMANT ID: _____
 D.O.B: / / AGE: _____ SEX: _____ SSN: _____ CLAIMANT ADDR: _____
 MARITAL STAT: _____ SPOUSE'S NAME: _____
 ACC. LOC: _____ POLICY COVERAGE: BIUI BI BIUH CPL MED GLBI
 CLAIMANT STAT: DRIVER PEDEST CYCLIST PASS CLAIMANT VEH INS VEH OTHER
 CLAIMANT INJURIES: _____
 HOSP/TRX DR: _____
 ATTY. INFO: _____
 EMPLOYMENT INFO: _____
 1ST PARTY: _____ 1ST PARTY ADJ NAME/PHONE: _____
 POLICY/CLAIM #: _____ TORT: FULL LTD

ACCIDENT DESCRIPTION: _____
 COVERAGE: _____
 LIABILITY #: _____
 DIAGNOSIS: _____

MEDICAL SPECIALS:
 DISABILITY PERIOD: _____ COLLATERAL RECOVERY: _____
 CHIRO/P.T.: _____ TOTAL TX: _____
 OTHER: _____ TOTAL DIAG: _____ TOTAL SPECIALS: _____
 AMB/E.R.: _____ TOTAL WAGES: _____

*PRE-EXIST. INJ: _____
 *PRO/DME RESULTS: _____
 *PROGNOSIS: _____
 *MITIGATING FACTORS: _____

*SETTLEMENT RANGE: \$ _____ RESERVE: _____
 LIMITS: _____ VENUE: _____
 DEMAND \$: _____ OFFER: _____

AUTHORIZATION **30 DAY SUMMARY AND PRICING**
 CM/DATE: _____ ADJ/DATE: _____
 COM/DATE: _____ DCH/DATE: _____
 CA/DATE: _____
 RCM/DATE: _____ A-1

COPY OF EXHIBIT NO. 2 (Page 43 of 66)

COPY OF EXHIBIT NO. 37 (Page 43 of 66)

CLAIMANT SUMMARY

DATE:	DISP:	INSURED:		
CLAIM #:	DOL:	CLM'T NAME:	CLM'T ID:	
D.O.B: / /	AGE:	SEX:	SS#:	CLM'T ADD:
MARITAL STAT:	SPOUSE'S NAME:			
ACC. LOC:	POLICY COVERAGE: BIUI BI - BIUM CFL 'MED GLBI			
CLM'T STAT:	DRIVER	PEDEST	CYCLIST	PASS 'CLM'T VEN INS VEN OTHER
CLM'T INJURIES:				
HOSP/TRX DR:				
ATTY. INFO:				
EMPLOYMENT INFO:				
1ST PARTY:	1ST PARTY ADJ NAME/PHONE:			
POLICY/CLAIM #:	TORT: FULL		LTD	

COPY OF EXHIBIT NO. 2 (Page 44 of 66)

1122

COPY OF EXHIBIT NO. 37 (Page 44 of 66)

AGENT SUPPORT CLAIM PROCEDURES

PURPOSE

- A. To establish Regional procedures for the administration of the Agent Support Program, as outlined in the "Other Benefits" section of the CASE Manual, which reads:
 "Nationwide's policy is to stand behind the Agent for any error, omission or negligent act within the Agent's written or oral underwriting authority extended in the writing of Nationwide policies provided such acts do not involve dishonesty or fraud."
 If a claim occurs on a Voluntary policy and there is no coverage as a result of an Agent's error or omission, Nationwide will honor the claim. Not included in the Agent Support Program is protection for any error, omission or negligent act for non-Nationwide policies or products, i.e. Assigned Risk, Governmental Programs, brokered policies. The Agent needs an Errors and Omission Policy for these cases.
- B. To establish procedures for handling claims covered by the Program.
- C. To clarify and improve current procedures for verifying coverage when a loss is reported and the policy record has not been established, or the existing record cannot support coverage.
- D. To improve control through positive involvement of Sales, Claims, Customer Services and Underwriting management on a consistent basis.
- E. To reduce the frequency and possible severity of Agent Support claims by the use of these procedures.
- F. Data compiled on these claims is intended to provide a source of information to strengthen Sales management and Agent training.

II. GENERAL INFORMATION

Due to the frequency and severity of claims and/or nature of claims submitted without apparent coverage, more formalized and coordinated handling procedures are necessary. These procedures establish a uniform method of verifying coverage and reporting losses.

NOTE: The following cases are not to be processed under the Agent Support Program:

- 1. Errors or omissions caused in the Service Center. The policy record will be corrected and the claims adjusted based on current procedures.
- 2. An error or omission made by an Agent but a claim has not occurred. Correct the error or problem per current procedures.

III. PROCEDURES

A. Claims

- 1. Live Wire Reporting Unit - To be processed under the Agent Support Program, a claim must be set up in Claims Live Wire.
 - a. The Claims Service Representative (CSR) will take a claim report even though coverage does not appear on the CII, if the Agent or Policyholder insists coverage applies.

- b. The CSR will consult with the Live Wire Coordinator regarding the coverage question. When necessary, the Coordinator will discuss the case with the Policyholder or Agent to obtain more information and if possible, resolve the problem. If first notification of a potential Agent Support claim is by letter or Electronic Mail, whoever receives the document will refer it to the Live Wire Coordinator for handling.
 - c. If the coverage problem cannot be resolved by the CSR and the Live Wire Coordinator, and the claim involves a voluntary Auto policy, the Live Wire Coordinator will assign the claim to the District Claims Manager (DCM) in the geographic area where the policyholder resides for investigation. Claims involving Commercial or Homeowners policies will be assigned to the Commercial or Homeowners DCM.
 - d. Once the DCM resolves the Agent Support issue, the claim will be assigned according to normal claims procedures.
2. Designated Claims Representative
- a. All potential Agent Support claims must be handled on a RUSH basis.
 - b. The DCM will assign the Agent Support investigation to a Claims Representative. Refer to any instructions provided by the DCM.
 - c. Obtain recorded interviews from the Agent and Policyholder.
 - d. Contact Regional Office personnel as needed to make determination.
 - e. After the Claims Representative has completed the investigation, the file must promptly be brought to the DCM's attention for review.
3. District Claims Manager
- a. The DCM will direct the Claims Representative in the handling of the Agent Support investigation.
 - b. If it is determined that the claim is not an Agent Support or Errors or Omissions claim, the DCM will reassign the file to the appropriate District for handling.
 - c. If it is determined that the claim is or may be within the scope of the Agent Support Program, the DCM will determine if coverage should be granted. If there are questions, the DCM will consult with the Regional Claims Attorney (RCA) in Harrisburg or Claims Division Manager-Legal (CMD) in Butler for a resolution.

COPY OF EXHIBIT NO. 2 (Page 46 of 66)

1124

COPY OF EXHIBIT NO. 37 (Page 46 of 66)

815

R. 2217a

-3-

1. If the OCM determines the claim is covered by the Agent Support Program, an Agent Support Claim Report (Attachment "A") will be completed and forwarded to the RCA or CDM Legal for review.
2. Claims Covered by Program
 - a. Claims determined to be covered by the Agent Support Program will be assigned to a Claims Representative for handling.
3. Agent Support Decision

The RCA or CDM Legal will:

 - a. Review all potential Agent Support claims submitted by the OCM and determine if the claim will be handled under the Agent Support Program or the Agent's Errors and Omissions Policy.
 - b. If it is determined the claim is covered by the Agent Support Program, the Agent Support Claim Report will be forwarded to Claims Services for completion.
 - c. If the RCA or CDM Legal determines the claim is covered by the Agent's Errors and Omissions Policy, the claim will be submitted to insurance intermediaries, Inc. (III), for handling.
4. Claims Services - Processing Unit
 1. If an Agent Support claim is received without the completed Agent Support Claim Report, it will be returned to the RCA or CDM Legal.
 2. When the Agent Support Claim Report is received, it will be completed and returned to the RCA or CDM Legal for approval.
 3. When a copy of the approved Agent Support Claim Report is received, place in follow-up for 30 days.
 4. Each day check Reports that are older than 30 days. Complete Loss Cost and if applicable, Claims Expense section. This information is available on the CMI.
 5. The Processing Unit will notify the RCA or CDM Legal when a claim payment has not been issued within 60 days.
 6. After recording all the required information, check and date the block titled Final Report and send to III.
 7. If a claim is pending after six months from Initial Report date, enter the Claim Reserve and date the Interim Report block. Photocopy the report and send copy to III. Continue to follow-up on these cases.
5. Customer Service Supervisors and Managers
 1. All inquiries regarding Agent Support claims must be handled as a high priority.
 2. Figure the premium due for coverage(s) granted under the Agent Support Program, on an individual case basis.

COPY OF EXHIBIT NO. 2 (Page 47 of 66)

1125

COPY OF EXHIBIT NO. 37 (Page 47 of 66)

816

R. 2218a

3. Supervise the follow-up procedure to be certain that Nationwide receives the premium due for the coverage(s) granted.

E. Sales and Geographic Management Team

1. Copies of the Agent Support Claim will be sent to the RSS, RSM, ASM, AM, CDM and PLDM/CLDM.
2. The ASM reviews the Claim Report and any supporting documentation, if needed, to determine "AT FAULT" status.
3. The ASM then sends the appropriate letter to the Agent notifying him/her that a Corrective Action Plan is to be submitted to their Agency Manager and Regional Sales Manager within ten (10) days (See Attachment "B").
4. Upon receipt, the RSM will review the Plan and, if acceptable, the AM will notify the Agent.
5. Within 60 days of the implementation of the Plan, the AM will review the situation and recommend any needed changes.
6. Agent Support claims are monitored closely to determine if additional claims have been presented within 24 months of any existing claims.
7. A second claim within 24 months requires approval by the RSS; a third claim in 36 months requires VZ/RM approval.
8. The purpose of the above program is to take the necessary actions to reduce or eliminate future errors by Agents and to reduce coverage questions.

F. Regional Cabinet

1. The following reports will be supplied by the Marketing Administration Department, Home Office, on a semi-annual basis:
 - a. Agents Support Claims.
 - b. Agents Errors and Omission Claims.
2. Review the reports to develop and implement recommendations to:
 - a. Alleviate the frequency and severity of claims.
 - b. Improve bottom line results.
 - c. Strengthen Sales management and Agent training.

IV. EFFECTIVE

- A. These revisions are effective November 1, 1992.

ATTACHMENTS

- A. Agent Support Claims Report
- B. Corrective Action Plan Notification
- C. Agent Support Codes (for completing Agent Support Claim Reports)

COPY OF EXHIBIT NO. 2 (Page 48 of 66)

1126

COPY OF EXHIBIT NO. 37 (Page 48 of 66)

AGENT SUPPORT/TERRORS AND OMISSIONS CODES

LOSS CAUSE	COMPANY/PLAN	INSURANCE LINE
1. Required coverage not properly placed.	1. Brokerage	1. Private Passenger
2. Required coverage not placed at all.	2. Auto Ins Plan/JUA	2. Res. Vehicles
3. Required coverage not added to existing contract.	3. Fair Plan	3. Pers. Umbrella
4. Required coverage not received.	4. Flood Insurance	4. Mobile Homeowners
5. Failure alleged to advise client as to coverage limitations and/or changes.	5. Federal Crime	5. Homeowners
6. Alleged wrongful cancellation of coverage.	6. Federal Crop	6. Dwelling Fire
7. Error of carrier through whom coverage was placed.	7. Nationwide Mutual	7. Pers. Inland Marine
8. Coverage bound beyond agent's authority.	8. Nationwide Mutual Fire	8. Pers. Other than above
9. Mortgageholder/Lienholder Released.	9. Nationwide PAC	9. Comm. Auto
C. Clerical error/omission.	C. Nationwide General	A. Crime
D. No error-justified denial of coverage.	D. Colonial	B. Farm/FO/RO
E. Agent Error/Company Contributed	E. Nationwide Life	C. FO/RO Umbrella
Z. Other than above	F. Nationwide Variable Life	D. Fire
	G. Pacific Life	E. General Liability
	H. Heritage	F. SMP/Business Owners
	I. Gates/McDonald	G. Serv. Str. Package
	J. Ins. Intermediaries	H. Other Package
	K. Notary Public	I. Politics
	Z. Other than above	L. Combination
		M. Mercantile Umbrella
		N. Com. Inland Marine
		O. Workers' Comp.
		P. Pollution Liab.
		Q. Boiler/Machinery
		R. Fidelity/Surety
		S. Comm. Other than above
		T. Notary Public
		U. Mutual Funds
		V. Permanent Life
		W. Term Life
		X. Variable Annuities
		Y. Universal Life
		Z. Health Income
		AA. Health Hosp.
		AB. Group Life
		AC. Group Health
		AD. Other than Above

Attachment A

COPY OF EXHIBIT NO. 2 (Page 49 of 66)

1127

COPY OF EXHIBIT NO. 37 (Page 49 of 66)

TO:

FROM:

1st ESO/Agent Support Claim
Insured:
Claim #:
Accident Date:
ESO Claim #:
Report Date:

This is to advise you that your 1st "At Fault", ESO/Agent Support Claim has been reported to the Claims Legal Department.

As such, you are required to submit a corrective action plan to your Agency Manager and Regional Sales Manager within 10 days. Your action plan should include a description of the error that caused the claim to be presented, as well as actions you will implement and when, to prevent further occurrences. Failure to submit a timely corrective action plan, or submission of a 2nd "at fault" claim within 24 months, could result in the loss of your binding authority for the line of business in which the errors were made.

If you wish, your Agency Manager will assist you in developing your plan. Your Agency Manager will also be responsible for verifying your implementation of the plan.

Upon receipt, your RM will review your improvement program. If it is acceptable, he will concur and advise you along with your Agency Manager accordingly. If it is not acceptable, your RM will be in touch with you to provide assistance for completion of an acceptable program.

Within 60 days of the implementation of your approved improvement program, your Agency Manager will review the situation with you, recommend any necessary changes, and advise me of the status.

If there are any questions regarding this communication, please discuss it with your Agency Manager.

CC:

ATTACHMENT "B"

COPY OF EXHIBIT NO. 2 (Page 50 of 66)

1128

COPY OF EXHIBIT NO. 37 (Page 50 of 66)

AGENT SUMMARY CLAIM REPORT

	Initial Report	Interim Report	Final Report
	Date	Date	Date
Regional Office No. _____	Sales Region No. _____	Sales District No. _____	
Agent's Name _____	State/Agenc. No. _____		
Insured's Name _____	Agent Support _____		
Error Date _____	Accident/Occurrence Date _____		
Policy No. _____	Claim No./Claim Key _____		
Claims Rep./Attorney Assigned _____	Policy Period _____		
Loss Cause Code _____	Company/Plan Code _____	Insurance Line Code _____	
(Refer to Code Sheet for Appropriate Codes)			
Coverage Question _____			

Coverage Determination _____			

	Premium Due \$ _____		
Remarks _____			

Loss Cost \$ _____	Claims Expense \$ _____	Claims Reserve \$ _____	
(Full Company Payment)			
Deductible: \$ _____	Not Applicable _____		
cc: <input type="checkbox"/> RNS <input type="checkbox"/> RSM <input type="checkbox"/> AM			Signature - Regional Claim Attorney/CDM Legal
<input type="checkbox"/> FLM/CLDM		<input type="checkbox"/> Claims Services Supervisor	
<input type="checkbox"/> CDM		<input type="checkbox"/> _____	
<input type="checkbox"/> DCI		<input type="checkbox"/> _____	
<input type="checkbox"/> Burch Bradley, ASM			
YENHIG 1058			
10/92			

COPY OF EXHIBIT NO. 2 (Page 51 of 66)

1129

COPY OF EXHIBIT NO. 37 (Page 51 of 66)

INDEPENDENT MEDICAL EXAM GUIDELINES

Independent Medical Exams are frequently necessary when handling BI, BIUH, and BIUI claims.

In a third party liability case, the defendant is usually entitled to an IME as part of discovery.

Our BIUH and BIUI contract entitles us to examine the party making a claim under these coverages.

Examples of situations that warrant an IME include (but are not limited to):

- (1) Allegations of ongoing disability
- (2) Allegation of permanency
- (3) Questions of causation
- (4) To verify the need for continued treatment
- (5) To establish the type of continued treatment necessary
- (6) To establish any objective findings when the complaints are subjective in nature.

To schedule an IME:

- (1) Call the selected physician's office to schedule the appointment.
- (2) Send all records to the physician for his review prior to the exam. If there are x-rays, MRIs, or other diagnostic tests, the films or test results should be included.
- (3) Enclose a cover letter confirming the appointment and the purpose of the exam. The doctor should be made aware of the circumstances of the injury. It is frequently helpful to send copies of photos showing damage to the vehicles and the police report. The cover letter should address any specific areas of concern. Any questions that you would like to be specifically answered should be posed in the letter.
- (4) Notify the claimant by telephone and letter of the date, time, and location of the exam. Diary your calendar to remind the insured/claimant 24 hours before the appointment.
- (5) If the claimant is represented by an attorney, you must secure the attorney's permission for the exam. All correspondence concerning the exam (except your letter to the doctor) must go through the attorney's office.

If the claimant fails to show for the scheduled appointment, reschedule. If a second no-show occurs, consult your DCH and Division Claims Attorney. You may want to consider a Peer Review or Records Review.

Please contact the Medical Coordinators in your office for any additional assistance.

A-3

COPY OF EXHIBIT NO. 2 (Page 52 of 66)

1130

COPY OF EXHIBIT NO. 37 (Page 52 of 66)

PRO PROCEDURE
TO INITIATE PRO

1. Identify red flags of medical necessity of care or appropriate setting of care. Red flags may include:
 - a. An unusually lengthy treatment time.
 - b. Treatment in what appears to be an inappropriate setting (i.e., P.T. as an inpatient).
 - c. Duplication of treatment (i.e., chiropractic and orthopedic).
 - d. Sporadic treatment or resumption of treatment after a long stretch of no treatment.*
2. Consider the amount of unpaid medical bills and remaining first party benefits to make a cost-effective assignment.
3. Obtain DCH approval.
4. Be sure that there is a current authorization from the insured.
5. Obtain medical records for the entire period of care for the provider being reviewed prior to the PRO referral.
(Start getting current authorization and records as soon as a concern arises as to the duration, appropriateness, etc. of the treatment. If a pre-existing condition exists, also secure records on that. Remember that the PRO referral must be made within 30 days of receipt of sufficient documentation supporting the bill, or the bill must be paid.)
6. Complete form Auto 6922-E (the yellow rehabilitation referral form) completely, and mark "Other Pro". Request a review by a physician with the same specialty.
7. Send the front copy of 6922-E to the PRO with copies of:
 - a. Current authorization;
 - b. Application for Benefits;
 - c. All appropriate medical records;
 - d. A copy of all bills (UB82 and HCFA 1500) since the date of loss - group all unpaid bills separately; and;
 - e. File information (PR, photos, etc.) that show the severity of the collision.Alternate PRO referrals to vendors on the approved list.
8. Dictate and send CH-78 (ADJ-BE) to all providers who are being PRO'd whose bills are outstanding. Carbon copy the insured.

* Red flags are aides to help identify when a PRO may be beneficial. They are not etched in stone, and will not apply in every situation. Every file should be reviewed individually on its facts to determine if a PRO is necessary.

COPY OF EXHIBIT NO. 2 (Page 53 of 66)

1131

COPY OF EXHIBIT NO. 37 (Page 53 of 66)

WHILE PRO IS PENDING

1. If new bills arrive from the provider being PRO'd, forward them to HEDATA for pricing; also send a copy of the bill to the PRO.
2. The PRO will send acknowledgement of their receipt of the request for a PRO.
3. Monitor the time the PRO is pending.
4. Promptly comply with the PRO's request for additional information.

UPON COMPLETION OF THE PRO

1. Document in your log the date the completed PRO is received. A copy of the PRO must be sent to the provider(s), insured, and/or insured's attorney if represented within 5 days of receipt.
2. Review the PRO immediately, and conference the file with your DCH or HC, if necessary.
3. Make an immediate decision, based on the PRO, as to whether to pay or deny the unpaid medical bills.
 - a. If the PRO finds the care to be reasonable and necessary, immediately pay the bills. (Follow with CH-83 and CH-84 letters.)
 - b. If the PRO finds the care not to be reasonable and/or necessary, dictate a denial letter (CH-82 to the provider, with DCH approval. The denial letter should include the specific dates for which payment is being denied, and must notify the parties that they have 30 days from the date of the initial determination to request a reconsideration, as well as the process and location for filing this request.
4. Absent a change of condition, additional bills from the same provider, or bills for similar service by a new provider to the same insured, may be denied. However, the insured or new provider may request a reconsideration.

* PRO's in PENNRO-East are currently sending a copy of the PRO determination directly to the providers; in the West, they are not. Since the Regulations to Act 6 mandate that the insurer, not the PRO, is responsible for sending copies of the determination to the providers, we should be the ones sending it, and not relying on the PRO to do so.

COPY OF EXHIBIT NO. 2 (Page 54 of 66)

1132

COPY OF EXHIBIT NO. 37 (Page 54 of 66)

RECONSIDERATION

1. An insurer, provider, or insured may request a reconsideration of the initial PRO determination. This must be done, in writing, 30 days from the effective date of the initial determination. (That is, the date that Nationwide acts on the initial PRO.)
2. The reconsideration must be done by the original PRO, but not by the same physician who did the original determination. A different physician of like specialty should do the reconsideration.
3. If you receive the request for reconsideration, contact the PRO. They will make the arrangements with the party requesting reconsideration.
4. If a party requests reconsideration after 30 days, the PRO will not honor the request, nor will we.
5. The insurer must pay for the reconsideration. However, if the reconsideration is in favor of the insurer, we should request reimbursement of the fee, in writing. The reconsideration fee should not be more than the fee for the original PRO review.
6. Document in your log the date the reconsideration determination is received. As with the initial PRO determination, a copy of the reconsideration must be sent to the provider(s) and insured or insured's attorney, if represented.
7. Immediately review the reconsideration. Conference the file with your DCH or HC, if necessary. Make an immediate decision as to whether to pay or deny the unpaid bills in question.

If the reconsideration finds the bills to be reasonable and/or necessary, then pay the bills as soon as possible.

If the bills aren't found to be reasonable and/or necessary, then send, with DCH approval, a denial letter to the provider(s) (CN-84 through CN-88). Include the specific dates for which payment is being denied.

COPY OF EXHIBIT NO. 2 (Page 55 of 66)

1133

COPY OF EXHIBIT NO. 37 (Page 55 of 66)

FILES ORGANIZATION STANDARDS
For Non-Suit Files

Left Side of File
(Top to Bottom)

1. Notice of Loss (if the claim involves stackable coverage, underneath the NOL should be a copy of the dec page or VDZ/UDZ screens).
2. Special Reserve Forms (if applicable)
3. Severe Incident Report (if applicable)
4. File Summary

Right Side of File
(Bottom Up)

1. Recorded Interviews - the envelope should be stapled to the file jacket.
2. Miscellaneous File Correspondence - group it together with paper clips or a manilla folder if excessive material.
3. Investigation Material
 - a. This material should either be paper clipped or grouped together in a manilla folder.
 - b. This material will include the recorded interview summaries, photos and diagrams, police report and expert reports.
4. Medical Information - separated on a claimant basis by using manilla folders (no folder is needed if multiple documents are not received/needed to settle the BI claim).
 - a. Claimant's name should appear on outside of folder.
 - b. Attorney and adjuster correspondence relating to claimant should be on the bottom. Medical bills and reports on the top.
 - c. Bills and reports should be separated and in chronological order.
 - d. The yellow claimant summary form should be attached on top of the claimant's information.
5. Loa
6. HRPO
7. Litigation - When litigation occurs a separate section (manilla folder) will be established within the working file. The pleadings and correspondence pertaining to the suit will be maintained:
 - A. Left Side (Bottom Up - stapled or pronged)
 1. Suit Register
 2. Complaint
 3. All subsequent pleadings
 - B. Right Side - All correspondence in chronological order.

A-4

COPY OF EXHIBIT NO. 2 (Page 56 of 66)

1134

COPY OF EXHIBIT NO. 37 (Page 56 of 66)

FILE ORGANIZATION
Worker's Compensation

Left Side
(Top to Bottom)

1. HOL
2. Coverages
3. 40L
4. RI Tapes

Right Side
(Top to Bottom)

1. HRPO
2. Log
3. Cum Sheet and all state forms, denials, NCP, State of Wages, Supp. Agree, Referee decisions
4. 60 Day Pricing - Initial reserve sheet, green authorization conference form. Clip permission form to this 60 day package.
5. Nationwide counsel correspondence pranged together.
6. Rehab reports pranged together.
7. Medical reports and records pranged together.
8. Investigation - PR, photos, etc.
9. Dictated letters - hearing notices.
10. Drafts.

COPY OF EXHIBIT NO. 2 (Page 57 of 66)

1135

COPY OF EXHIBIT NO. 37 (Page 57 of 66)

826

R. 2228a

LAW FIRM: _____

Plaintiff Attorney: _____

Experience with Firm: _____

Experience with Attorney: _____

Attorney's Experience: _____

Negotiating Style: _____

Suit and Results: _____

Comments (ex. Marital Status, Children, Hobbies, Law School, Etc.):

A-5

COPY OF EXHIBIT NO. 2 (Page 58 of 66)

1136

COPY OF EXHIBIT NO. 37 (Page 58 of 66)

LITIGATION BUDGET AND CHECKLIST

SUIT FILE NUMBER: _____ CLAIM NO.: _____

STYLE: _____

ACTIVITY	CONSIDERED: <input checked="" type="checkbox"/>	TIME & COMPLETED: <input checked="" type="checkbox"/>	COMMENTS
Client Interview			Defense Counsel Budget:
Answer/Response			
Other (e.g. Demurrer, Motion to Quash)			
Interrogatories			
Other (e.g. Request for Production, Motion to Compel)			
Experts			
Reports			
Research			
Depositions/Discovery/Depositions/Specify Whom			
Negotiations/Mediation/Arbitration			
Pretrial Conference			
Request for Admissions			
Motions in Limine			
Trial Preparation (e.g. Instructions, Jury)			
Trial			
Post Trial Motions/Research Appeals			

FINAL COMMENTS: _____ Total Time

COPY OF EXHIBIT NO. 2 (Page 59 of 66)

1137

COPY OF EXHIBIT NO. 37 (Page 59 of 66)

GUIDELINES FOR HANDLING NATIONWIDE CASES

I. Discovery

1. Notify in writing within five days the Claims Attorney or Representative supervising the case that you have received the file and that you have entered your appearance.
2. Provide an initial analysis of the case within 10 days. This analysis should address liability, damages, defenses and recommended discovery needed to resolve these matters, and a time-table for completion. Also, include an estimate of fees and costs associated with the case, consistent with your assessment and recommendations.
3. Provide the Claims Attorney or Representative with summaries of pleadings and discovery. Do not send deposition transcripts or answers to interrogatories unless requested.
4. Obtain authority from the Claims Attorney or Representative to conduct depositions, IMEs, retain experts, file summary judgment motions or pursue declaratory judgment actions.
5. Provide the Claims Attorney or Representative with all medical records, reports, and bills and wage loss documents.
6. Advise the Claims Attorney or Representative of significant changes in the case immediately.
7. Notify the Claims Attorney or Representative of settlement demands and excess demand letters immediately. You should discuss excess demand letters with the insured.

II. Settlement/Trial/Arbitration/Appeal Authority

You must obtain authority from the Claims Attorney or Representative to settle, try, arbitrate or appeal a case. If you receive settlement authority but are unable to settle the case, you must obtain separate authority to go to trial or arbitration. When requesting authority, you are required to provide the Claims Attorney or Representative with at least the following information in writing:

1. Summary of the facts.
2. Theories of liability and defenses.

COPY OF EXHIBIT NO. 2 (Page 60 of 66)

1138

COPY OF EXHIBIT NO. 37 (Page 60 of 66)

829

R. 2231a

Page 2

3. Discussion of evidence (including witnesses).
4. Summary of plaintiff's injuries, including medical opinions, medical bills, dates of hospitalization, dates of treatment, periods of disability, whether plaintiff's injuries are permanent and whether plaintiff is still treating.
5. Summary of plaintiff's wage loss claim, including claimed future lost earnings and vocational expert opinions.
6. Plaintiff's demand and any offers on behalf of our insured or co-defendants.
7. The judge's assessment of the case, if available.
8. Your assessment of the outcome.

Requests for authority should be received when there is sufficient information to evaluate the case, but no later than one month before trial is scheduled. Additionally, please advise the Claims Attorney or Representative in advance of a pre-trial conference so he/she can attend or be available by phone, if needed.

III. Closing Files

Claims Attorneys and Representative can close files only after receiving: (1) executed release; (2) documentation from the Prothonotary or Clerk of Court showing the case is settled or satisfied or a judgment has been satisfied; and (3) your final bill. Please provide these documents as soon as possible upon settling a case or satisfying a judgment.

IV. Billing Procedures

Expenses:

When expense bills in a case total \$100 or more, individually or cumulatively, they may be submitted for payment.

Final Legal Bills:

Final legal bills should include an itemized description of the services provided, the date provided, by whom, the time for the service and the billing rate. Expenses of less than \$100 are to be included in the final legal bill. Final legal bills will be honored only upon receipt of all closing documents.

Interim Legal Bills:

No interim legal bills will be honored, unless:

COPY OF EXHIBIT NO. 2 (Page 61 of 66)

1139

COPY OF EXHIBIT NO. 37 (Page 61 of 66)

Page 3

1. The case is appealed.
 2. The bill is over \$1,000.
 3. The bill is approved by the Claims Attorney or Representative on a case by case basis.
- All bills should include a tax identification number and should be itemized.

COPY OF EXHIBIT NO. 2 (Page 62 of 66)

1140

COPY OF EXHIBIT NO. 37 (Page 62 of 66)

PENRO LITIGATION STRATEGY - 1993

I. Claim Handling Philosophy and Strategy for 1993 and Beyond

A. Philosophy

1. Reduce the average claim payment in injury coverages to a level first consistent with - then lower than our major competitors.
2. Continued reinforcement of Nationwide being a "defense-minded" carrier in the minds of the plaintiff legal community.
3. Consistent and professional claims handling and case management throughout the state.

B. Strategy

1. Litigation Avoidance

- A. Reduce the average pending per Liability Claim Representative to the range of (120 - 125) files through a combination of refined optimal resource utilization and additional staffing located in the field.
- B. Continued emphasis on time service along with timely claimant follow-up control to avoid the need and/or desire to seek counsel.
- C. Increase and refine medical to-ordinator utilization and input on liability claim files (BI, UM/UI).
- D. Schedule activities to allow DCM's the opportunity (time) for proper file review, resolution planning with the Claim Representative, and coaching to case conclusion. Span of control (6-7) Claim Representatives.
- E. Implement a more aggressive posture in handling cases of lesser probable exposure (i.e. cases not exceeding \$25,000.00). Create and reinforce a defense minded perception.
- F. Organize Claim Conference Committees within each division including the following personnel: Claim Representative, Two DCM's, Claim Attorney for the division, Medical Coordinator (optional), and CDM on cases with limits potential of \$15,000.00 or \$30,000.00 or any other case necessary.
- G. Proactive medical treatment involvement with claimant and/or physician.

A-6

COPY OF EXHIBIT NO. 2 (Page 63 of 66)

1141

COPY OF EXHIBIT NO. 37 (Page 63 of 66)

H. Continued emphasis in the area of negotiation training, and exposure to the legal process (ie: present litigation management training again in both Service Centers, and schedule the mock trial presentation for the Harrisburg Center in 1993). Additionally, ECOS will conduct a 2-day program on Litigation Management in the Region in 1993. Self-development courses will be emphasized at all claim levels, and schedules should be set to allow Claim Representatives the opportunity to attend trials, certain critical depositions, and settlement conferences.

2. Litigation Management

- A. Once litigation is initiated, develop a strategy for handling each case with input recommendations from the division CA regarding discovery.
- B. Adhere to the case strategy unless discovery dictates a position change. Any change in strategy must receive DCM and CA (optional) concurrence.
- C. Developed strategies should avoid and hopefully eliminate allowing defense counsel a "free reign" in handling cases, and establish a proactive rather than reactive approach to handling suit filings. The RCA and geographic CM will create a single set of defense counsel guidelines where strict adherence is required.
- D. Defense counsel resistance to Claim Representative direction should be confronted immediately with one or more of the following: DCM, divisional CA, CM, and Legal Division if necessary; when the Claim Representative has any hesitation regarding the proper course to follow.
- E. Suit files must be reviewed by the assigned Claim Representative and DCM every 60 days except in rare instances where no further activity can take place until a certain date, (ie: oral argument).
- F. The Nationwide Trial Division operation within the state will play a major role in our litigation management and outside claims expense control. The RCA and geographic CM will meet with Trial Division Administrative Attorneys throughout the state to discuss our performance expectations. Trial Division assignment guidelines have been distributed to all liability divisions, and will be reviewed at least annually. Trial Division expertise varies from office to office, and this should be a factor considered upon making case assignments.

3. Alternative Dispute Resolution

- A. Designate an ADR Co-ordinator for each division.

COPY OF EXHIBIT NO. 2 (Page 64 of 66)

1142

COPY OF EXHIBIT NO. 37 (Page 64 of 66)

- 3 -

B. Claims Management collectively must emphasize more aggressive use of ADR.

- (1) Outside vendors (i.e. Judges)
- (2) Judicial settlement conferences (i.e. Special Conciliation Session - Allegheny County)
- (3) Claims Settlement Service Day
- (4) Nationwide sponsored conferences with selected counsel.

4. Structured Settlement Alternative

A. Timely, closer claimant contact will give the Claim Representative greater opportunity to discover what the claimant truly needs or wants. This, in turn, will allow the Claim Representative more creativity in the development of attractive structure proposals.

B. Management emphasis on the use of structure offers to reduce average claim payment.

II. Outside Claims Expense Management

A. The Litigation Management Strategy outlined in item (I.B.) will represent a major factor in controlling OCE at the Claim Representative level.

B. Forecast new suit activity by category along with suit closure activity based upon past trends and changes in our operational procedures and the state claims environment. LEAP data can be used as a reference; but the system must mature further to provide truly credible statistics. As the region gains a better understanding of the capabilities of LEAP, all claim divisions will be trained and have access to the system.

C. In conjunction with the "Law of Large Numbers", the average litigation expense per closed suit within each Service Center can provide an adequate barometer of future expenses coupled with the closure forecast.

D. Continued emphasis on the use of Trial Division resources up to the limit of their potential capacity. Currently, Trial Division handles 5% of the assignable cases (exclusive of asbestos and environmental issues) in both Service Centers. Our goal is that by the end of 1993, 60% of the assignable cases will be assigned to Trial Division.

E. ECCS advises they will have a legal auditor on staff by the first quarter of 1993. They recommend we employ a person on staff to audit the Region's legal bills. Alternatively, we could proceed with a pilot program in 1993 of legal fee bill auditing by an outside vendor. The vendor will be Legalgard, and the program has one pilot phase.

COPY OF EXHIBIT NO. 2 (Page 65 of 66)

1143

COPY OF EXHIBIT NO. 37 (Page 65 of 66)

1. Legal bill audits (50 cases) will be conducted on current bills received for payment. These billings will exceed \$5,000.00, and savings will be compared with audit costs of (2.5% - 3.5%) of the billing.
- F. Continued review of defense counsel by county and potential specialty with a view toward the basis on which we want to do business.
 1. Use of "Flat Fee" on a limited basis
 2. Hourly Rate
 3. Retainer Method
 4. Combination of the above
- G. Outside Defense Counsel will be required to provide a Budget Estimate for each case received. This Budget Estimate should be consistent with the initial defense counsel summary and view of whether the case is one for settlement or trial.
- H. Outside Medical Vendor Review of Cases
 1. MED DATA software is currently under review for evaluation of medical bills.
 2. The cost of utilizing this medical bill review service will range approximately \$265,000.00 for the PENNSD Region in 1993.

COPY OF EXHIBIT NO. 2 (Page 66 of 66)

1144

COPY OF EXHIBIT NO. 37 (Page 66 of 66)

Trial Exhibit 39

AFFIDAVIT OF DAVID A. BANO

STATE OF OHIO :
 : ss
COUNTY OF FRANKLIN :

David A. Bano, being duly sworn according to law, deposes and says:

1. I am currently employed as Vice President of Claims for Nationwide Mutual Insurance Company.
2. I served in various management positions in Nationwide's Pennsylvania claims operations during the time that the Pennsylvania Best Claim Practices Manual (the "Manual") discussed in *Bonenberger v. Nationwide Mut. Ins. Co.*, 791 A.2d 378 (Pa. Super. Ct. 2002) was utilized by Nationwide in the state of Pennsylvania.
3. The Manual was utilized by Nationwide Pennsylvania casualty claims adjusters from 1993 until January 1, 1996.
4. On January 1, 1996, the Manual was superseded by a Corporate Best Claims Practices Manual issued on a companywide basis.
5. As of January 1, 1996, the Manual was no longer in effect.
6. The Manual was not in effect at the time of Daniel Berg and Sharon Berg's loss on September 4, 1996.
7. Furthermore, the Manual applied only to bodily injury/casualty claims, and was not applicable to automobile property damage claims, such as that brought by Daniel Berg and Sharon Berg.

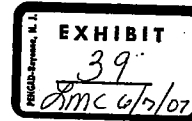
FURTHER AFFIANT SAYETH NAUGHT.

David A. Bano
David A. Bano

Sworn to and Subscribed
before me this 7 day
of December, 2005.

Paul Wayne Bailey
Notary Public

PAUL WAYNE BAILEY
Notary Public, State of Ohio
My Commission Expires 9-5-2007



COPY OF EXHIBIT NO. 39 (Page 1 of 1)

Trial Exhibit 42

**ITEMIZATION OF PLAINTIFFS' ATTORNEYS' FEES
TOTAL BILLED THRU 06/05/07: \$821,143.00**

1997:		2002:		2006:	
10/97:	\$418.75	01/02:	\$255.00	01/06:	\$10,111.25
11/97:	\$202.50	02/02:	\$262.50	02/06:	\$24,874.25
12/97:	\$518.75	03/02:	\$6,255.00	03/06:	\$22,996.68
Total:	\$1,140.00	04/02:	\$6,370.00	04/06:	\$1,748.05
		05/02:	\$7,065.00	05/06:	\$290.25
1998:		06/02:	\$7,498.75	06/06:	\$31.25
01/98:	\$252.50	07/02:	\$7,148.75	07/06:	\$572.75
02/98:	\$462.50	08/02:	\$4,657.50	08/06:	\$11,774.25
03/98:	\$762.50	09/02:	\$341.25	09/06:	\$6,858.29
04/98:	\$849.75	10/02:	\$1,478.75	10/06:	\$10,727.50
05/98:	\$1,682.25	11/02:	\$253.75	11/06:	\$25,430.00
06/98:	\$956.25	12/02:	\$440.00	12/06:	\$14,088.75
07/98:	\$3,538.50	Total:	\$42,026.25	Total:	\$129,503.23
08/98:	\$662.50				
09/98:	\$932.25	2003:		2007:	
10/98:	\$872.50	01/03:	\$4,768.75	1/07:	\$6,067.5
11/98:	\$1,360.00	02/03:	\$7,306.25	2/07:	\$9,990.00
12/98:	\$783.75	03/03:	\$12,445.00	3/07:	\$25,077.50
Total:	\$13,115.25	04/03:	\$8,522.50	4/07:	\$2,857.50
		05/03:	\$29,513.75	5/07:	\$16,042.50
1999:		06/03:	\$24,902.50	6/07:	\$22,342.50
01/99:	\$1,635.00	07/03:	\$4,415.00	Total:	\$93,183.75
02/99:	\$1,467.50	08/03:	\$3,823.75		
03/99:	\$751.25	09/03:	\$4,663.75	TOTAL:	\$821,143.00
04/99:	\$4,973.75	10/03:	\$5,341.25		
05/99:	\$1,279.75	11/03:	\$7,385.00		
06/99:	\$1,232.50	12/03:	\$8,916.25		
07/99:	\$3,181.25	Total:	\$122,003.75		
08/99:	\$2,426.25				
09/99:	\$686.25	2004:			
10/99:	\$1,612.25	01/04:	\$22,968.75		
11/99:	\$0.00	02/04:	\$13,912.50		
12/99:	\$0.00	03/04:	\$9,141.25		
Total:	\$19,245.75	04/04:	\$9,012.50		
		05/04:	\$1,592.50		
2000:		06/04:	\$1245.00		
01/00:	\$1,715.00	07/04:	\$7,495.00		
02/00:	\$423.75	08/04:	\$23,694.75		
03/00:	\$1,097.50	09/04:	\$52,712.50		
04/00:	\$427.50	10/04:	\$4,077.50		
05/00:	\$2,123.75	11/04:	\$27,608.75		
06/00:	\$872.50	12/04:	\$80,944.65		
07/00:	\$2,400.00	Total:	\$254,405.65		
08/00:	\$277.50				
09/00:	\$337.50	2005:			
10/00:	\$955.00	01/05:	\$14,951.75		
11/00:	\$1,005.00	02/05:	\$1,017.00		
12/00:	\$1,155.00	03/05:	\$191.25		
Total:	\$12,790.00	04/05:	\$209.75		
		05/05:	\$465.00		
2001:		06/05:	\$2,258.75		
01/01:	\$768.50	07/05:	\$3,586.50		
02/01:	\$2,820.00	08/05:	\$11,731.25		
03/01:	\$2,000.00	09/05:	\$26,630.75		
04/01:	\$427.50	10/05:	\$11,514.75		
05/01:	\$1,290.00	11/05:	\$31,200.38		
06/01:	\$2,527.50	12/05:	\$15,953.75		
07/01:	\$360.00	Total:	\$119,510.87		
08/01:	\$1,560.00				
09/01:	\$950.00				
10/01:	\$120.00				
11/01:	\$720.00				
12/01:	\$675.00				
Total:	\$14,218.50				



Trial Exhibit 44

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
10/03/97	BH	Telephone interview w/ David Wert, former L. employee (whistle blower) - See memo attached as Exhibit "A."	0.50	\$125.00	\$62.50
10/03/97	BJM	Memo to file	1.50	\$125.00	\$187.50
10/03/97	BJM	Memo to file	0.50	\$125.00	\$62.50
10/03/97	BJM	Memo to file	0.50	\$125.00	\$62.50
10/03/97	BJM	Memo to file	0.25	\$125.00	\$31.25
10/30/97	BJM	Telephone call with Consultant	0.10	\$125.00	\$12.50
11/03/97	BJM	Letter to D. Witmer/Nationwide re representation	0.25	\$125.00	\$31.25
11/03/97	BJM	Memo to file	0.30	\$125.00	\$37.50
11/03/97	BJM	Memo to file	0.10	\$125.00	\$12.50
11/03/97	BJM	Memo to file	0.10	\$125.00	\$12.50
11/03/97	BJM	Telephone call to C&J Tire	0.10	\$125.00	\$12.50
11/11/97	BJM	Letter to Bergs	0.10	\$125.00	\$12.50
11/11/97	BJM	Letter to Smith, Stephens, Reed & Phillips	0.25	\$125.00	\$31.25
11/11/97	BJM	Memo to file on fees/costs	0.10	\$125.00	\$12.50
11/11/97	BJM	Memo to BJM	0.25	\$35.00	\$8.75
11/12/97	BJM	Letter to Bergs	0.25	\$125.00	\$31.25
12/02/97	BJM	Letter to Bergs	0.25	\$125.00	\$31.25
12/05/97	BJM	Memo to file (telephone conversation w/ Wert)	0.50	\$125.00	\$62.50
12/08/97	BJM	Memo to file	0.25	\$125.00	\$31.25
12/08/97	BJM	Memo to file (conversation with Harlow on Lindgren)	0.50	\$125.00	\$62.50
12/09/97	BJM	Memo to BJM	0.25	\$350.00	\$87.50
12/11/97	BJM	Letter to Marlene Harlowe	0.25	\$125.00	\$31.25
12/16/97	BJM	Review letter from Smith, Reed & Phillips	0.10	\$125.00	\$12.50
12/19/97	BJM	Letter to C. Barone	0.25	\$125.00	\$31.25
12/19/97	BJM	Memo to file (call from Dan Berg)	0.50	\$125.00	\$62.50
12/19/97	BJM	Telephone call to Consultant	0.10	\$125.00	\$12.50
12/22/97	BJM	Letter to C. Barone	0.25	\$125.00	\$31.25
12/29/97	BJM	Letter to Lindgren re representation and expert inspection	0.50	\$125.00	\$62.50
01/06/98	BJM	Memo to BJM	0.25	\$35.00	\$8.75
01/07/98	BJM	Memo to file	0.25	\$125.00	\$31.25
01/08/98	BJM	Letter to Lindgren re vehicle inspection	0.50	\$125.00	\$62.50
01/20/98	BJM	Letter to Prothonotary re Writ of Summons	0.10	\$125.00	\$12.50
01/21/98	BJM	Motion for Leave of Court to Take Pre-Complaint Depositions	0.50	\$125.00	\$62.50
01/23/98	BJM	Writ of Summons	0.25	\$125.00	\$31.25
01/23/98	BJM	Letter to Greg Miller re vehicle inspection	0.10	\$125.00	\$12.50
01/27/98	BJM	Memo to file	0.25	\$125.00	\$31.25
02/03/98	BJM	2 Memos to file	0.25	\$125.00	\$31.25
02/04/98	BJM	Read 2/3/98 Order on Motion for Pre-Complaint Depositions	0.10	\$125.00	\$12.50
02/11/98	BJM	Read Lindgren's Rule to File Complaint	0.10	\$125.00	\$12.50
02/11/98	BJM	Letter to Lindgren re deposition notice	0.25	\$125.00	\$31.25
02/11/98	BJM	Letter to Prothonotary re Motion for Leave of Court to take Pre-Complaint Deposition	0.25	\$125.00	\$31.25
02/11/98	BJM	Review letter from Frederick McGavin re Rule to File Complaint	0.10	\$125.00	\$12.50
02/12/98	BJM	Memo to file (review of Barone report and Appraiser Act)	0.75	\$125.00	\$93.75
02/12/98	BJM	Telephone call to Consultant	0.10	\$125.00	\$12.50
02/17/98	BJM	Motion for Leave of Court to Take Pre-Complaint Depositions	1.00	\$125.00	\$125.00



Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
02/24/98	BJM	Letter to Dan Berg	0.25	\$125.00	\$31.25
02/26/98	BJM	Review fax from C. Barone	0.10	\$125.00	\$12.50
02/27/98	BJM	Review fax from K. Myers re notice of deposition and Rule to File Complaint	0.20	\$125.00	\$25.00
02/27/98	BJM	Letter to Bergs	0.25	\$125.00	\$31.25
03/02/98	BJM	Read Order of 2/24/98 Granting Pre-Complaint Discovery	0.10	\$125.00	\$12.50
03/02/98	BJM	Review fax from K. Myers re extension of time to file Complaint	0.10	\$125.00	\$12.50
03/02/98	BJM	Letter to K. Myers re extension of time to file Complaint	0.25	\$125.00	\$31.25
03/03/98	BJM	Letter to Smith, Stephens, Reed & Phillips	0.25	\$125.00	\$31.25
03/03/98	BJM	Letter to Bergs	0.25	\$125.00	\$31.25
03/04/98	BJM	Cert of Service upon Lindgren of Order dated 2/24/98	0.10	\$125.00	\$12.50
03/04/98	BJM	Letter to Prothonotary re Certificate of Service of 2/24/98 Order by Judge Stallone	0.25	\$125.00	\$31.25
03/04/98	BJM	Letter to K. Myers re 2/24/98 Order	0.25	\$125.00	\$31.25
03/04/98	BJM	Letter to K. Myers	0.25	\$125.00	\$31.25
03/05/98	BJM	Review note and letter from L. Sklar	0.30	\$125.00	\$37.50
03/05/98	BJM	Review Email from L. Sklar	0.10	\$125.00	\$12.50
03/06/98	BJM	Letter to K. Myers re claims against Lindgren	0.25	\$125.00	\$31.25
03/06/98	BJM	Letter to Chrysler Corporation re claims against Chrysler Corporation	0.25	\$125.00	\$31.25
03/11/98	BJM	Memo to file	0.25	\$125.00	\$31.25
03/12/98	BJM	Read Entry of Appearance for Defendant Lindgren	0.10	\$125.00	\$12.50
03/12/98	BJM	Memo to file	0.25	\$125.00	\$31.25
03/17/98	BJM	Review letter from Chrysler Corporation re vehicle ID No.	0.10	\$125.00	\$12.50
03/20/98	BJM	Read Lindgren's Ten Day Notice to File Complaint	0.10	\$125.00	\$12.50
03/20/98	BJM	Review letter from K. Myers re Notice per Rule 237.1, Rule to File Complaint, 2/24/98 Order and deposition	0.20	\$125.00	\$25.00
03/20/98	BJM	Letter to K. Myers re deposition continuance	0.25	\$125.00	\$31.25
03/23/98	BJM	Email to HM	0.10	\$125.00	\$12.50
03/23/98	BJM	Review Email from L. Sklar	0.10	\$125.00	\$12.50
03/24/98	BJM	Letter to Prothonotary re Motion to Stay Rule to File Complaint	0.25	\$125.00	\$31.25
03/24/98	BJM	Letter to K. Myers re deposition of Lindgren manager	0.25	\$125.00	\$31.25
03/24/98	BJM	Letter to Berks County Bar Association re room	0.25	\$125.00	\$31.25
03/24/98	BJM	Memo to file	0.25	\$125.00	\$31.25
03/26/98	BJM	Motin to Stay Rule	0.50	\$125.00	\$62.50
03/27/98	BJM	Read order of 3/27/98 Granting Stay Pending Depositions	0.10	\$125.00	\$12.50
03/31/98	BJM	Letter to K. Myers re deposition continuance and agreement to produce documents requested in deposition notice	0.25	\$125.00	\$31.25
03/31/98	BJM	Review letter from K. Myers re deposition and change caption	0.10	\$125.00	\$12.50
04/01/98	BJM	Letter to K. Myers re Stallone Order granting Motion to Stay the Rule to File Complaint	0.25	\$125.00	\$31.25
04/01/98	BJM	Letter to Bergs	0.10	\$125.00	\$12.50
04/02/98	BJM	Letter to Chrysler Corporation re vehicle ID No.	0.25	\$125.00	\$31.25
04/13/98	BJM	Letter to K. Myers re continuance of deposition	0.25	\$125.00	\$31.25

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
04/14/98	BJM	Pre-Complaint dep of Lindgren's Doug Joffred	1.75	\$125.00	\$218.75
04/14/98	BJM	Deposition of Greg Miller	0.50	\$125.00	\$62.50
04/14/98	BJM	Travel to depositions of Joffred/Miller	2.00	\$125.00	\$250.00
04/15/98	BJM	Email to HM	0.10	\$125.00	\$12.50
04/16/98	BJM	Letter to C. Barone	0.25	\$125.00	\$31.25
04/20/98	BJM	Letter to C. Barone	0.25	\$125.00	\$31.25
04/20/98	BJM	Letter to L. Sklar	0.10	\$125.00	\$12.50
04/20/98	BJM	Memo to BJM	0.25	\$35.00	\$8.75
04/21/98	BJM	Review letter from K. Myers to Court Reporter re exhibits L-7, L-8 and L-9	0.10	\$125.00	\$12.50
04/22/98	BJM	Letter to R. Stitzel/Nationwide	0.25	\$125.00	\$31.25
04/22/98	BJM	Letter to K. Myers re letter to Nationwide and request for extension to file complaint	0.25	\$125.00	\$31.25
04/28/98	BJM	Email to BJM	0.10	\$350.00	\$35.00
04/30/98	BJM	Fax to L. Sklar	0.10	\$35.00	\$3.50
04/30/98	BJM	Letter to Prothonotary re: 5th Amended Complaint	0.10	\$25.00	\$2.50
05/01/98	BJM	Email to BJM	0.10	\$350.00	\$35.00
05/04/98	BJM	Complaint (Drafted by Ben Mayerson, Hy Mayerson and Lori Sklar)	10.00	\$125.00	\$1,250.00
05/04/98	BJM	Letter to L. Sklar	0.25	\$125.00	\$31.25
05/05/98	BJM	Letter to Sheriff's Office re Complaint	0.25	\$125.00	\$31.25
05/05/98	BJM	Letter to Ferdie Gonzales	0.25	\$125.00	\$31.25
05/12/98	BJM	Letter to Ferdie Gonzales	0.25	\$125.00	\$31.25
05/14/98	BJM	Letter to Ferdie Gonzalez	0.10	\$35.00	\$3.50
05/21/98	BJM	Letter to Ferdie Gonzales	0.25	\$125.00	\$31.25
05/21/98	BJM	Letter to C. Barone	0.25	\$125.00	\$31.25
05/22/98	BJM	Review letter from K. Myers re Complaint and request for extension of time to answer	0.10	\$125.00	\$12.50
05/27/98	BJM	Review letter from Matthew Stool re POs to Complaint	0.10	\$125.00	\$12.50
05/28/98	BJM	Read Nationwide's Entry of Appearance of Matt Stool	0.10	\$125.00	\$12.50
05/28/98	BJM	Review letter from Matthew Stool to Prothonotary re POs to Complaint	0.10	\$125.00	\$12.50
05/29/98	BJM	Read Preliminary Objections of Nationwide	1.25	\$125.00	\$156.25
06/01/98	BJM	Review letter from Matthew Stool	0.10	\$125.00	\$12.50
06/02/98	BJM	Read Order of 6/1/98 (no action on POs until argument praecipe filed)	0.10	\$125.00	\$12.50
06/03/98	BJM	Review letter from William Longo re Entry of Appearance and request for extension to answer complaint	0.10	\$125.00	\$12.50
06/03/98	BJM	Letter to Bergs	0.25	\$125.00	\$31.25
06/04/98	BJM	Read Lindgren's Entry of Appearance of William Longo	0.10	\$125.00	\$12.50
06/05/98	BJM	Review letter from Matthew Stool to Prothonotary re 6/1/98 Order and Praecipe for Argument	0.10	\$125.00	\$12.50
06/05/98	BJM	Letter to C. Barone	0.25	\$350.00	\$87.50
06/08/98	BJM	Read Nationwide's Praecipe for Argument	0.10	\$125.00	\$12.50
06/08/98	BJM	Review letter from Matthew Stool re amended Complaint	0.10	\$125.00	\$12.50
06/10/98	BJM	Review letter from Erik Vogel and William Longo re Lindgren POs to Complaint	0.10	\$125.00	\$12.50
06/12/98	BJM	Read Lindgren's Preliminary Objections and Memo of Law	1.50	\$125.00	\$187.50
06/12/98	BJM	Letter to Bergs	0.25	\$125.00	\$31.25

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
06/12/98	BJM	Letter to Matthew Stool	0.25	\$125.00	\$31.25
06/23/98	BJM	Review letter from Matthew Stool re Praecepte for Argument	0.10	\$125.00	\$12.50
06/23/98	BJM	Memo to All	0.25	\$350.00	\$87.50
06/23/98	BJM	Memo to BJM	0.25	\$350.00	\$87.50
06/24/98	BJM	Conv. w/ Att. Stool - stipulate to extension to file amended comp	0.10	\$125.00	\$12.50
06/24/98	BJM	Read Stipulation to file amended complaint	0.10	\$125.00	\$12.50
06/24/98	BJM	Review letter from Erik Vogel and William Longo re Praecepte for Argument	0.10	\$125.00	\$12.50
06/24/98	BJM	Review letter from Matthew Stool re extension to file amended complaint	0.10	\$350.00	\$35.00
06/24/98	BJM	Fax to Bergs	0.25	\$350.00	\$87.50
06/25/98	BJM	Memo to BJM	0.25	\$35.00	\$8.75
06/25/98	BJM	Memo to file	0.25	\$125.00	\$31.25
06/26/98	BJM	Memo to file	0.10	\$125.00	\$12.50
06/26/98	BJM	Telephone call with Consultant	0.10	\$125.00	\$12.50
06/26/98	BJM	Letter to Matthew Stool re deposition	0.25	\$350.00	\$87.50
06/26/98	BJM	Letter to Matthew Stool, Erik Vogel and William Longo re amended complaint and extension	0.25	\$350.00	\$87.50
07/01/98	BJM	Review letter from Matthew Stool to Erik Vogel re deposition	0.10	\$125.00	\$12.50
07/06/98	BJM	Review Letter from Matthew Stool re initial inspection, second inspection and deposition	0.10	\$350.00	\$35.00
07/10/98	BJM	Draft Amended Complaint	2.00	\$350.00	\$700.00
07/13/98	BJM	Draft Amended Complaint (via prior file memo)	1.50	\$350.00	\$525.00
07/14/98	BJM	Draft Amended Complaint (via prior file memo)	4.00	\$350.00	\$1,400.00
07/14/98	BJM	Letter to Prothonotary re 1st Amended Complaint	0.25	\$350.00	\$87.50
07/16/98	BJM	Amended Complaint (no class action count)	0.20	\$350.00	\$70.00
07/17/98	BJM	Memo to file	0.25	\$350.00	\$87.50
07/21/98	BJM	Req to Produce to Nationwide for check issued to Lindgren	0.10	\$125.00	\$12.50
07/22/98	BJM	Req to Produce to Lindgren for purchase orders of parts (received 2/9/99)	0.10	\$125.00	\$12.50
07/22/98	BJM	Letter to Matthew Stool re Bergs' 7/21/98 RTPs	0.25	\$125.00	\$31.25
07/22/98	BJM	Letter to Erik Vogel re Bergs 7/21/98 RTPs	0.25	\$125.00	\$31.25
07/22/98	BJM	Letter to K. Myers re Bergs 7/21/98 RTPs	0.25	\$125.00	\$31.25
07/27/98	BJM	Telephone call with Lisa Buenzle	0.10	\$35.00	\$3.50
07/27/98	BJM	Telephone call to Bergs	0.10	\$35.00	\$3.50
07/27/98	BJM	Telephone call with Dan Berg	0.10	\$35.00	\$3.50
07/27/98	BJM	Telephone call to Lisa Buenzle	0.10	\$35.00	\$3.50
07/27/98	BJM	Telephone call with Lisa Buenzle	0.10	\$35.00	\$3.50
07/27/98	BJM	Telephone call to Bergs	0.10	\$35.00	\$3.50
07/27/98	BJM	Memo to BJM	0.25	\$35.00	\$8.75
07/29/98	BJM	Review fax from Lisa Buenzle re inspection	0.10	\$125.00	\$12.50
07/30/98	BJM	Read Nationwide's POs to Amended Complaint	1.50	\$225.00	\$337.50
07/31/98	BJM	Review letter from Matthew Stool re POs to 1st Amended Complaint	0.10	\$350.00	\$35.00
08/04/98	BJM	Read Nationwide's Amended Praecepte for Argument on POs	0.10	\$125.00	\$12.50
08/20/98	BJM	Review letter from Matthew Stool	0.10	\$125.00	\$12.50
08/20/98	BJM	Second Amended Complaint reviewed	0.00	\$225.00	\$0.00
08/20/98	BJM	Second Amended Complaint	2.50	\$225.00	\$562.50
08/21/98	BJM	Letter to Matthew Stool, Erik Vogel and Frederick McGavin re 2nd Amended Class Action Complaint	0.25	\$125.00	\$31.25

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
08/21/98	BJM	Letter to Prothonotary re 2nd Amended Class Action Complaint	0.25	\$125.00	\$31.25
08/26/98	BJM	Review letter from Julie Clark re responses to RTPs	0.10	\$125.00	\$12.50
09/08/98	BJM	Letter to Erik Vogel re response to 7/21/98 RTPs	0.25	\$125.00	\$31.25
09/08/98	BJM	Review 2 letters from Erik Vogel and William Longo re POs to 2nd Amended Class Action Complaint and amended praecipe for argument	0.25	\$125.00	\$31.25
09/08/98	BJM	Read Lindgren's POs to Second Amended Complaint	1.00	\$225.00	\$225.00
09/11/98	BJM	Letter to Bergs	0.10	\$35.00	\$3.50
09/16/98	BJM	Review letter from Michael Nelson re POs, measurement, disassembly and inspection of vehicle	0.10	\$350.00	\$35.00
09/22/98	BJM	Read Order of 9/21/98 striking argument on POs	0.10	\$125.00	\$12.50
09/22/98	BJM	Read Nationwide's POs to Amended Complaint	1.00	\$225.00	\$225.00
09/23/98	BJM	Letter to First Valley Bank re lease	0.25	\$125.00	\$31.25
09/24/98	BJM	Letter to Prothonotary re 3rd Amended Class Action Complaint	0.25	\$225.00	\$56.25
09/25/98	BJM	Third Amended Complaint reviewed	0.00	\$225.00	\$0.00
09/25/98	BJM	Third Amended Complaint	1.00	\$225.00	\$225.00
09/25/98	BJM	Letter to Prothonotary re 3rd Amended Class Action Complaint	0.25	\$225.00	\$56.25
10/08/98	BJM	Letter from Erik Vogel and William Longo re POs and praecipe for argument	0.25	\$125.00	\$31.25
10/08/98	BJM	Review letter from Summit Bank re lease	0.10	\$125.00	\$12.50
10/09/98	BJM	Review letter from Michael Nelson re inspection	0.10	\$125.00	\$12.50
10/13/98	BJM	Read Lindgren's Pos to Third Amended Complaint	1.00	\$125.00	\$125.00
10/13/98	BJM	Letter to Michael Nelson re inspection	0.25	\$125.00	\$31.25
10/13/98	BJM	Letter to C. Barone	0.25	\$125.00	\$31.25
10/15/98	BJM	Review letter from Erik Vogel and William Longo to Prothonotary re Amended Praecipe for Argument	0.10	\$125.00	\$12.50
10/15/98	BJM	Review letter from Matthew Stool to Prothonotary re POs to 3rd Amended Class Action Complaint	0.10	\$125.00	\$12.50
10/15/98	BJM	Letter to Bergs	0.25	\$225.00	\$56.25
10/16/98	BJM	Letter to Bergs	0.25	\$125.00	\$31.25
10/19/98	BJM	Read Lindgren's Amended Praecipe for Argument	0.10	\$125.00	\$12.50
10/19/98	BJM	Read Nationwide's POs to Third Amended Complaint	1.00	\$125.00	\$125.00
10/21/98	BJM	Letter to Erik Vogel re response to 7/21/98 RTPs	0.25	\$125.00	\$31.25
10/21/98	BJM	Review letter from Matthew Stool to Prothonotary re Amended Praecipe for Argument	0.10	\$125.00	\$12.50
10/23/98	BJM	Review fax from Michael Nelson to BJM, DL, William Longo and Erik Vogel re inspection	0.10	\$125.00	\$12.50
10/23/98	BJM	Letter to Erik Vogel and William Longo re inspection	0.25	\$225.00	\$56.25
10/23/98	BJM	Letter to Erik Vogel, William Longo and Michael Nelson re inspection	0.25	\$225.00	\$56.25
10/26/98	BJM	Letter to Erik Vogel and Michael Nelson re inspection	0.25	\$125.00	\$31.25
10/27/98	BJM	Letter to William Longo and Michael Nelson	0.25	\$125.00	\$31.25
10/27/98	BJM	Review letter from Michael Nelson re inspection	0.10	\$125.00	\$12.50
10/27/98	BJM	Review fax from Michael Nelson	0.10	\$125.00	\$12.50
10/27/98	BJM	Letter to Erik Vogel and Michael Nelson re inspection	0.25	\$350.00	\$87.50

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
10/27/98	BJM	Review fax from William Longo to HM and Michael Nelson	0.10	\$350.00	\$35.00
11/03/98	BJM	Letter to William Longo re POs	0.25	\$125.00	\$31.25
11/03/98	BJM	Letter to Prothonotary re Response to Nationwide's POs	0.25	\$125.00	\$31.25
11/04/98	BJM	Reply to Nationwide's POs	4.00	\$125.00	\$500.00
11/05/98	BJM	Letter to Michael Nelson, Matthew Stool, Erik Vogel, William Longo and K. Myers	0.25	\$350.00	\$87.50
11/06/98	BJM	Req to Produce Documents	1.50	\$225.00	\$337.50
11/06/98	BJM	Letter to Matthew Stool re Bergs RTPs to Nationwide	0.25	\$225.00	\$56.25
11/09/98	BJM	Letter to Prothonotary re Response to Lindgren's POs	0.25	\$125.00	\$31.25
11/09/98	BJM	Letter to CJs Tire and Automotive Service	0.25	\$225.00	\$56.25
11/10/98	BJM	Reply to Lindgren's POs	0.30	\$125.00	\$37.50
11/13/98	BJM	Review letter from Matthew Stool to Prothonotary re Sur Reply to Bergs Response to POs	0.10	\$125.00	\$12.50
11/17/98	BJM	Read Natiownide's Sur Reply to Plaintiffs' Reply to POs	0.50	\$125.00	\$62.50
11/17/98	BJM	Letter to Prothonotary re Praeicpe to Substitute Verification	0.25	\$225.00	\$56.25
11/19/98	BJM	Praeicpe to Substitute Verification of Complaint	0.10	\$125.00	\$12.50
11/23/98	BJM	Review fax from Michael Neslon re purchase of vehicle	0.10	\$350.00	\$35.00
11/30/98	BJM	Read Order of 11/30/98 sustaining Defendants' POs	0.10	\$125.00	\$12.50
12/07/98	BJM	Review letter from Micahel Nelson to Summit Bank re purchase of vehicle	0.10	\$125.00	\$12.50
12/07/98	BJM	Review letter from Matthew Stool to William Longo re RTPs	0.10	\$125.00	\$12.50
12/08/98	BJM	Review letter from M. Stool to W. Longo and BJM re subpoena	0.10	\$125.00	\$12.50
12/08/98	BJM	Memo to file	0.25	\$125.00	\$31.25
12/10/98	BJM	Letter to Consultant	0.10	\$25.00	\$2.50
12/11/98	BJM	Letter to Longo, Nelson and McGavin re lease and disposition of vehicle	0.25	\$350.00	\$87.50
12/22/98	BJM	Letter to Longo, Nelson and McGavin	0.25	\$125.00	\$31.25
12/22/98	BJM	Review fax from Summit Bank re deposit confirmation	0.10	\$125.00	\$12.50
12/24/98	BJM	Review fax from Julie Clark re purchase of vehicle	0.10	\$125.00	\$12.50
12/28/98	BJM	Letter to Longo and Nelson re purchase of vehicle and inspection	0.25	\$125.00	\$31.25
12/28/98	BJM	Letter to Summit Bank re purchase of vehicle	0.25	\$125.00	\$31.25
12/30/98	BJM	Plaintiffs' Motion to Compel Defendant Nationwide w/ memo of law	0.30	\$125.00	\$37.50
12/30/98	BJM	Plaintiffs' Motion to Compel Defendant Lindgren w/ memo of law	0.30	\$125.00	\$37.50
12/30/98	BJM	Plaintiffs' Motion to Extend Time for Filing	0.30	\$125.00	\$37.50
12/30/98	BJM	Fourth Amended Complaint	1.50	\$225.00	\$337.50
12/30/98	BJM	Letter to Longo, Nelson and McGavin re 4th Amended Complaint, Motion for Class Action and Motions to Compel	0.25	\$225.00	\$56.25
01/05/99	BJM	Read Order of 1/4/99 directing Nationwide to produce documents	0.10	\$125.00	\$12.50

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
01/05/99	BJM	Read Order of 1/4/99 directing Lindgren to produce documents	0.10	\$125.00	\$12.50
01/05/99	BJM	Read Order of 1/4/99 granting Plaintiffs' extension to file Complaint	0.10	\$125.00	\$12.50
01/05/99	BJM	Review letter from Michael Nelson to Prothonotary re: Motion for Sanctions	0.10	\$125.00	\$12.50
01/05/99	BJM	Review letter from Julie Clark re document request	0.10	\$225.00	\$22.50
01/06/99	BJM	Letter to W. Longo, M. Nelson and F. McGavin re: Berg vehicle	0.25	\$125.00	\$31.25
01/08/99	BJM	Review fax from Julie Clark	0.10	\$125.00	\$12.50
01/08/99	BJM	Review letter from Matthew Stool re: purchase/storage of vehicle	0.10	\$125.00	\$12.50
01/11/99	BJM	Read Nationwide's Motion for Sanctions against Lindgren	0.50	\$125.00	\$62.50
01/11/99	BJM	Read N.'s Ints (Set I) to Plaintiffs (reply mailed 4/13/99)	0.30	\$125.00	\$37.50
01/11/99	BJM	Read N.'s Ints (Set II) to Plaintiffs (reply mailed 4/13/99)	0.30	\$125.00	\$37.50
01/11/99	BJM	Read N.'s Expert Ints (Set I) to Plaintiffs (after 7/30/99)	0.30	\$125.00	\$37.50
01/11/99	BJM	Read N.'s Contention Ints (Set I) to Plaintiffs	0.30	\$125.00	\$37.50
01/11/99	BJM	Read N.'s RTPs (Set I) to Plaintiff Bergs (reply mailed 4/13/99)	0.30	\$125.00	\$37.50
01/11/99	BJM	Review letter from Matthew Stool re: Motion for Reconsideration	0.10	\$125.00	\$12.50
01/11/99	BJM	Review letter from Matthew Stool to W. Longo and F. McGavin re: discovery requests	0.10	\$125.00	\$12.50
01/11/99	BJM	Review letter from Matthew Stool re: discovery requests	0.10	\$125.00	\$12.50
01/11/99	BJM	Letter to Matthew Stool re: arrangements	0.25	\$225.00	\$56.25
01/12/99	BJM	Letter to Summit Bank re: purchase and storage of vehicle	0.25	\$125.00	\$31.25
01/12/99	BJM	Review letter from Matthew Stool to Prothonotary re: Motion for Reconsideration	0.10	\$125.00	\$12.50
01/12/99	BJM	Letter to Bergs	0.25	\$225.00	\$56.25
01/13/99	BJM	Letter to Nationwide	0.25	\$125.00	\$31.25
01/13/99	BJM	Letter to Matthew Stool	0.25	\$225.00	\$56.25
01/14/99	BJM	Review letter from Matthew Stool re: proposed agreement	0.10	\$225.00	\$22.50
01/15/99	BJM	Read Nationwide's Motion for Reconsideration of Order of 1/4/99	0.50	\$125.00	\$62.50
01/15/99	BJM	Email to DL and Consultant	0.10	\$350.00	\$35.00
01/18/99	BJM	Letter to Prothonotary re: Praecepto to Substitute Verification	0.25	\$125.00	\$31.25
01/18/99	BJM	Letter to Matthew Stool re: proposed stipulation	0.25	\$225.00	\$56.25
01/19/99	BJM	Read Order of 1/19/99 denying Nationwide's Motion for Reconsideration	0.10	\$125.00	\$12.50
01/19/99	BJM	Read Nationwide's Motion for Reconsideration of Order granting ext.	0.50	\$125.00	\$62.50
01/19/99	BJM	Review letters (2) from Matthew Stool to W. Longo re: discovery and extension of time to respond	0.25	\$125.00	\$31.25
01/19/99	BJM	Review letter from Matthew Stool re: proposed agreement	0.10	\$225.00	\$22.50
01/20/99	BJM	Praecepto to Substitute Verification of Complaint	0.10	\$125.00	\$12.50

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
01/20/99	BJM	Review letter from William Longo to Matthew Stool re: extension of time to respond to discovery requests	0.10	\$125.00	\$12.50
01/20/99	BJM	Review letter from Matthew Stool to Prothonotary re: Pos to 4th Amended Complaint	0.10	\$125.00	\$12.50
01/20/99	BJM	Letter to Summit Bank re: documents/lease agreement	0.25	\$225.00	\$56.25
01/22/99	BJM	Letter to Prothonotary re: Opposition to Motion for Reconsideration	0.25	\$225.00	\$56.25
01/22/99	BJM	Review letter from William Longo to Prothonotary re: Response to Nationwide's Motion for Sanctions	0.10	\$350.00	\$35.00
01/25/99	BJM	Motion in Opposition to Nationwide's Motion for Reconsideration	0.50	\$125.00	\$62.50
01/25/99	BJM	Read Lindgren's Reply to Nationwide's Motion for Sanctions	0.50	\$125.00	\$62.50
01/26/99	BJM	Review letter from Summit Bank to Matthew Stool re: draft	0.10	\$125.00	\$12.50
01/27/99	BJM	Letter to Matthew Stool, William Longo and Frederick McGavin re: discovery/sanctions	0.25	\$225.00	\$56.25
01/29/99	BJM	Review letter from Matthew Stool to Prothonotary re: Motion for Protective Order	0.10	\$125.00	\$12.50
01/29/99	BJM	Letter to Matthew Stool re: Notice of Intent	0.25	\$225.00	\$56.25
01/29/99	BJM	Letter to F. McGavin re: Notice of Intent	0.25	\$225.00	\$56.25
01/29/99	BJM	Letter to W. Longo re: Notice of Intent	0.25	\$225.00	\$56.25
01/29/99	BJM	Letter to Counsel re: outstanding discovery	0.25	\$225.00	\$56.25
01/29/99	BJM	Review letter from Matthew Stool re: Orders/Motions	0.10	\$225.00	\$22.50
02/01/99	BJM	Read Nationwide's Motion for Protective Order	1.50	\$125.00	\$187.50
02/01/99	BJM	Read Order of 2/1/99 regarding Nationwide's failure to file arg praecipe	0.10	\$125.00	\$12.50
02/03/99	BJM	Letter to Matthew Stool re: stipulation	0.25	\$125.00	\$31.25
02/04/99	BJM	Review letter from Matthew Stool to Prothonotary re: Praecipe for Argument	0.10	\$125.00	\$12.50
02/04/99	BJM	Review letter from Matthew Stool re: stipulation	0.10	\$350.00	\$35.00
02/05/99	BJM	Read Nationwide's Praecipe for Argument	0.10	\$125.00	\$12.50
02/05/99	BJM	Review letter from Matthew Stool to Prothonotary re: Praecipe for Argument	0.10	\$125.00	\$12.50
02/05/99	BJM	Letter to Matthew Stool re: stipulation	0.25	\$225.00	\$56.25
02/09/99	BJM	Read L.'s Reply to Plaintiffs' 7/21/98 RTP for Paris Purchase Order	1.00	\$125.00	\$125.00
02/09/99	BJM	Review letter from W. Longo/J. Benedetto to Prothonotary re: Pos to 4th Amended Complaint	0.10	\$125.00	\$12.50
02/09/99	BJM	Review letter from J. Benedetto and W. Longo re: Lindgren's response to RTPs	0.10	\$125.00	\$12.50
02/09/99	BJM	Review letter from Matthew Stool re: stipulation	0.10	\$225.00	\$22.50
02/09/99	BJM	Review letter from Matthew Stool to Prothonotary re: stipulation	0.10	\$225.00	\$22.50
02/09/99	BJM	Review letter from Matthew Stool to DL and W. Longo re: Motion for Protective Order	0.10	\$225.00	\$22.50
02/10/99	BJM	Read Nationwide's Reply to New Matter on Motion for sanctions	0.50	\$125.00	\$62.50
02/10/99	BJM	Read Lindgren's POs to 4th Amended Complaint	1.00	\$125.00	\$125.00
02/10/99	BJM	Stipulation regarding storage of vehicle	1.25	\$225.00	\$281.25
02/11/99	BJM	Read Order of 2/11/99 on storage of vehicle	0.10	\$125.00	\$12.50

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
02/12/99	BJM	Review letter from J. Benedetto and W. Longo re: Praecept for Argument	0.10	\$125.00	\$12.50
02/19/99	BJM	POs to Lindgren's POs to 4th Amended Complaint	0.30	\$125.00	\$37.50
02/19/99	BJM	Letter to M. Stool, W. Longo and F. McGavin re: Bergs' Pos to Lindgren's	0.25	\$125.00	\$31.25
02/19/99	BJM	POs to Nationwide's POs to 4th Amended Complaint	0.30	\$225.00	\$67.50
02/19/99	BJM	Motion in Opposition to Nationwide's Motion for Prot. Order	0.50	\$225.00	\$112.50
02/19/99	BJM	Motion for Sanctions against Nationwide	0.50	\$225.00	\$112.50
02/22/99	BJM	Read Order of 2/22/99 on above and Nationwide's motion for prot. Order	0.10	\$125.00	\$12.50
02/26/99	BJM	Review letter from M. Stool re: stipulation/storage	0.10	\$225.00	\$22.50
03/02/99	BJM	Review letter from M. Stool to W. Longo re: Berg vehicle	0.10	\$125.00	\$12.50
03/02/99	BJM	Review letter from M. Stool re: Berg vehicle	0.10	\$125.00	\$12.50
03/02/99	BJM	Memo to BJM and DL	0.25	\$35.00	\$8.75
03/03/99	BJM	Memo to EVW	0.25	\$35.00	\$8.75
03/08/99	BJM	Review letter from M. Stool to Prothonotary re: Sur Reply to Bergs' Opposition to Motion for Protective Order	0.10	\$125.00	\$12.50
03/08/99	BJM	Letter to M. Stool re: Berg vehicle	0.25	\$225.00	\$56.25
03/10/99	BJM	Review letter from M. Stool re: Berg vehicle	0.10	\$125.00	\$12.50
03/10/99	BJM	Read N. Sur Reply to N. motion for prot. Order	0.30	\$225.00	\$67.50
03/11/99	BJM	Read Nationwide's Reply to Plaintiffs' POs to Nationwide's POs	0.50	\$125.00	\$62.50
03/11/99	BJM	Letter to Bergs	0.25	\$225.00	\$56.25
03/12/99	BJM	Sur Reply to Sur Reply citing Mountain View	1.00	\$225.00	\$225.00
03/12/99	BJM	Letter to Prothonotary re: Reply to Nationwide's Sur Reply	0.25	\$225.00	\$56.25
03/15/99	BJM	Read Order of 3/15/99 granting/denying Nationwide's Motion for protective order, ordering Nationwide to produce documents w/in 30 days	0.10	\$125.00	\$12.50
03/17/99	BJM	Letter to W. Longo re: settlement	0.25	\$125.00	\$31.25
03/22/99	BJM	Read Order of 3/18/99 overruling in part Nationwide's POs	0.10	\$125.00	\$12.50
03/23/99	BJM	Read Order of 3/22/99 overruling in part Lindgren's POs	0.10	\$125.00	\$12.50
03/24/99	BJM	Email to BJM, DL and Consultant	0.10	\$350.00	\$35.00
03/25/99	BJM	Letter to M. Stool and M. Nelson re: 3/15/99 Order	0.25	\$225.00	\$56.25
04/01/99	BJM	Review letter from T. Cusack re: discovery	0.10	\$225.00	\$22.50
04/06/99	BJM	Review letter from Michael Nelson to BJM and DL re: inspection	0.10	\$125.00	\$12.50
04/08/99	BJM	Review letter from Michael Nelson re: discovery	0.10	\$225.00	\$22.50
04/13/99	BJM	Reply to Nationwide's Ints (Set I)	5.00	\$225.00	\$1,125.00
04/13/99	BJM	Reply to Nationwide's Ints (Set II)	5.00	\$225.00	\$1,125.00
04/13/99	BJM	Reply to Nationwide's RTPs (Set I)	5.00	\$225.00	\$1,125.00
04/13/99	BJM	Reply to N.'s Contention Ints (Set I)	2.50	\$225.00	\$562.50
04/14/99	BJM	Review letter from M. Nelson to BJM and DL re: response to RTPs	0.10	\$125.00	\$12.50
04/16/99	BJM	Review Nationwide's document production	4.00	\$125.00	\$500.00
04/16/99	BJM	Memo to file	0.25	\$125.00	\$31.25
04/16/99	BJM	Review Email from Consultant	0.10	\$125.00	\$12.50
04/16/99	BJM	Memo to BJM and DL	0.25	\$35.00	\$8.75
04/19/99	BJM	Review letter from M. Nelson re: 3/18/99 Order	0.10	\$225.00	\$22.50

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
04/22/99	BJM	Review fax from Michael Nelson	0.10	\$225.00	\$22.50
04/26/99	BJM	Letter to Bergs	0.25	\$125.00	\$31.25
04/29/99	BJM	Fifth Amended Complaint	1.50	\$225.00	\$337.50
05/03/99	BJM	Letter to Prothonotary	0.10	\$25.00	\$2.50
05/03/99	BJM	Letter to M. Nelson and T. Cusack re: Order and discovery	0.25	\$225.00	\$56.25
05/03/99	BJM	Review letter from M. Nelson re: subpoenas	0.10	\$225.00	\$22.50
05/05/99	BJM	Telephone call with David Wert	0.10	\$35.00	\$3.50
05/05/99	BJM	Memo to BJM	0.25	\$35.00	\$8.75
05/05/99	BJM	Letter to M. Nelson re: subpoenas	0.25	\$225.00	\$56.25
05/05/99	BJM	Review letter from M. Nelson to MCS Group re: subpoenas	0.10	\$225.00	\$22.50
05/06/99	BJM	Review letter from M. Nelson to Prothy re: subpoena objections	0.10	\$225.00	\$22.50
05/07/99	BJM	Read Nationwide's Objection to Subpoena (18)	0.10	\$125.00	\$12.50
05/10/99	BJM	Read Nationwide's Objection to Subpoena (77)	0.10	\$125.00	\$12.50
05/18/99	BJM	Read Nationwide's POs to Fifth Amended Complaint (note: Nationwide raises same objections overruled by Court)	1.50	\$125.00	\$187.50
05/18/99	BJM	Review letter from M. Nelson to Prothy re: Pos to 5th Amended Complaint	0.10	\$125.00	\$12.50
05/19/99	BJM	Email to BJM and DL	0.10	\$350.00	\$35.00
05/20/99	BJM	Read Order of 5/20/99 on Nationwide's failure to file cert of service	0.10	\$125.00	\$12.50
05/20/99	BJM	Letter to Charlie Barone	0.25	\$125.00	\$31.25
05/20/99	BJM	Review Email from Consultant	0.10	\$125.00	\$12.50
05/20/99	BJM	Memo to BJM	0.25	\$35.00	\$8.75
05/20/99	BJM	Memo to file	2.00	\$350.00	\$700.00
05/21/99	BJM	Review letter from M. Nelson to Prothy re: Certificate Prerequisite to Service of Subpoena	0.10	\$225.00	\$22.50
05/24/99	BJM	Read Nationwide's notice to serve subpoena	0.10	\$125.00	\$12.50
05/26/99	BJM	Read Nationwide's cert of service	0.10	\$125.00	\$12.50
05/28/99	BJM	Email to BS	0.10	\$125.00	\$12.50
06/01/99	BJM	Memo to file	2.00	\$350.00	\$700.00
06/10/99	BJM	Letter to W. Longo, M. Nelson, K. Myers and C. Cheyney, III re: depositions	0.25	\$150.00	\$37.50
06/17/99	BJM	Letter to M. Nelson re: 6th Amended Complaint	0.25	\$150.00	\$37.50
06/17/99	BJM	Letter to W. Longo, M. Nelson, K. Myers and C. Cheyney, III re: depositions	0.25	\$150.00	\$37.50
06/17/99	BJM	Sixth Amended Complaint	1.00	\$225.00	\$225.00
06/21/99	BJM	Read Order of 6/21/99 on Nationwide's POs later vacated	0.10	\$150.00	\$15.00
06/23/99	BJM	Read Order of 6/23/99 vacating Order of 6/21/99	0.10	\$150.00	\$15.00
06/23/99	BJM	Review letter from M. Nelson to J. Stallone re: settlement conference	0.10	\$225.00	\$22.50
06/24/99	BJM	Letter to Judge Stallone re: answer to 6th Amended Complaint and settlement conference	0.25	\$150.00	\$37.50
06/25/99	BJM	Memo to file	0.25	\$150.00	\$37.50
06/29/99	BJM	Letter to M. Nelson and T. Cusack re: answer to 6th Amended Complaint and Stipulation	0.25	\$150.00	\$37.50
06/29/99	BJM	Review letter from M. Nelson re: settlement conference	0.10	\$150.00	\$15.00
06/29/99	BJM	Review letter from T. Cusack re: extension of time to answer 6th Amended Complaint	0.10	\$150.00	\$15.00

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
07/01/99	BJM	Letter to W. Longo, M. Nelson, K. Myers, C. Cheyney, III re: depositions	0.25	\$150.00	\$37.50
07/06/99	BJM	Email to HM	0.10	\$150.00	\$15.00
07/08/99	BJM	RTPs to Lindgren (response received 8/27/99)	2.50	\$150.00	\$375.00
07/08/99	BJM	Read Nationwide's POs to Sixth Amended Complaint	0.50	\$150.00	\$75.00
07/08/99	BJM	Letter to K. Myers re: Bergs' 7/6/99 RTPs	0.25	\$150.00	\$37.50
07/08/99	BJM	Letter to W. Longo re: Bergs' 7/6/99 RTPs	0.25	\$150.00	\$37.50
07/09/99	BJM	Email to BS	0.10	\$150.00	\$15.00
07/09/99	BJM	Telephone call with J. Benedetto/Margolis Edelman	0.10	\$150.00	\$15.00
07/12/99	BJM	Read Nationwide's Motion to Compel Lindgren to produce discovery	0.30	\$150.00	\$45.00
07/12/99	BJM	Read Nationwide's Motion to Compel Plaintiffs to produce discovery	0.50	\$150.00	\$75.00
07/12/99	BJM	Letter to J. Benedetto re: depositions	0.25	\$150.00	\$37.50
07/13/99	BJM	Memo to BH	0.25	\$35.00	\$8.75
07/14/99	BJM	Read Nationwide's Amended Argument Praecipe	0.10	\$150.00	\$15.00
07/14/99	BJM	Travel to David Wert's home for formal interview	4.00	\$150.00	\$600.00
07/14/99	BJM	Review letter from J. Benedetto and W. Longo re: extension of time to answer 6th Amended Complaint	0.10	\$150.00	\$15.00
07/15/99	BJM	Read N.'s Production of Records received from KC (no bill for pull)	0.10	\$150.00	\$15.00
07/15/99	BJM	Review letter from N. Nelson re: settlement	0.10	\$150.00	\$15.00
07/16/99	BJM	Memo from Jack Marden on Nationwide's expert INTs	0.50	\$225.00	\$112.50
07/19/99	BJM	Letter to Bergs	0.25	\$150.00	\$37.50
07/20/99	BJM	Review letter from J. Benedetto re: depositions	0.10	\$150.00	\$15.00
07/21/99	BJM	Read Order of 7/21/99 directing Plaintiffs to answer discovery	0.10	\$150.00	\$15.00
07/21/99	BJM	Read Order of 7/21/99 directing Lindgren to answer discovery	0.10	\$150.00	\$15.00
07/27/99	BJM	Dep Notice for Lindgren Employees Kreider and Wenrich	0.10	\$150.00	\$15.00
07/27/99	BJM	Letter to M. Nelson re: settlement	0.25	\$150.00	\$37.50
07/27/99	BJM	Letter to W. Longo enc: dep notices for Keith Kreider and Rich Weinrich	0.25	\$150.00	\$37.50
07/28/99	BJM	Seventh Amended Complaint	1.00	\$225.00	\$225.00
07/30/99	BJM	Response to N.'s Expert Ints verified by C. Barone	5.50	\$225.00	\$1,237.50
08/06/99	BJM	Memo to file	0.50	\$225.00	\$112.50
08/09/99	BJM	Letter to Charlie Barone	0.25	\$225.00	\$56.25
08/11/99	BJM	Memo to file	0.25	\$225.00	\$56.25
08/17/99	BJM	Letter to M. Stool re: Bergs' discovery responses	0.25	\$225.00	\$56.25
08/18/99	BJM	Read Nationwide's POs to Seventh Amended Complaint	0.50	\$150.00	\$75.00
08/18/99	BJM	Letter to Bergs	0.25	\$225.00	\$56.25
08/18/99	BJM	Review letter from T. Cusack to Prothy re: Pos to 7th Amended Complaint	0.10	\$225.00	\$22.50
08/19/99	BJM	Letter to Management	0.25	\$150.00	\$37.50
08/20/99	BJM	Expert Ints to Lindgren (answered 9/1/99 and 4/10/00)	0.25	\$225.00	\$56.25
08/20/99	BJM	Expert Ints to Nationwide	0.25	\$225.00	\$56.25
08/20/99	BJM	Letter to K. Myers re: outstanding discovery responses	0.25	\$225.00	\$56.25

Page 11 of 110

COPY OF EXHIBIT NO. 44 (Page 11 of 110)

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
08/20/99	BJM	Letter to W. Longo re: outstanding discovery responses	0.25	\$225.00	\$56.25
08/20/99	BJM	Letter to W. Longo re: expert INTs to Lindgren	0.25	\$225.00	\$56.25
08/20/99	BJM	Letter to M. Nelson re: discovery requests	0.25	\$225.00	\$56.25
08/20/99	BJM	Letter to K. Myers enc: expert INTs	0.25	\$225.00	\$56.25
08/23/99	BJM	Review letter from C. Boonswang and W. Longo to M. Nelson and T. Cusack re: discovery responses	0.10	\$150.00	\$15.00
08/23/99	BJM	Review letter from K. Myers re: discovery requests	0.10	\$225.00	\$22.50
08/24/99	BJM	Letter to Harold Josephs	0.25	\$150.00	\$37.50
08/24/99	BJM	Letter to W. Longo re: outstanding discovery responses	0.25	\$150.00	\$37.50
08/24/99	BJM	Letter to K. Myers re: outstanding discovery responses	0.25	\$150.00	\$37.50
08/25/99	BJM	Supp. Production of Documents to All Defendants (Phillips Report)	0.10	\$150.00	\$15.00
08/25/99	BJM	Letter to M. Nelson re: Phillips report	0.25	\$150.00	\$37.50
08/25/99	BJM	Letter to M. Nelson re: 8/25/99 RTPs	0.25	\$150.00	\$37.50
08/25/99	BJM	Review letter from C. Boonswang and W. Longo to M. Nelson re: color photos	0.10	\$150.00	\$15.00
08/25/99	BJM	Email to BS	0.10	\$150.00	\$15.00
08/26/99	BJM	Review letter from K. Myers re: representation of Lingren	0.10	\$150.00	\$15.00
08/26/99	BJM	Letter to Charlie Barone	0.25	\$150.00	\$37.50
08/26/99	BJM	Letter to Consultant, P.E.	0.25	\$150.00	\$37.50
08/27/99	BJM	Read Lindgren's Production of Documents (served on 7/8/99)	8.00	\$150.00	\$1,200.00
09/01/99	BJM	Read Lindgren's Reply to Expert Ints (served 8/20/99)	0.10	\$150.00	\$15.00
09/01/99	BJM	Review letter from C. Boonswang and W. Longo re: Lindgren's response to expert INTs of Bergs	0.10	\$150.00	\$15.00
09/07/99	BJM	Read Nationwide's Writ to Join KC Auto Body	0.10	\$150.00	\$15.00
09/08/99	BJM	Letter to W. Longo re: depositions of Kreider/Weinrich	0.25	\$150.00	\$37.50
09/09/99	BJM	Review letter from W. Longo re: depositions of Kreider/Weinrich	0.10	\$150.00	\$15.00
09/10/99	BJM	Praecipe to Enter Default Against Lindgren	0.10	\$150.00	\$15.00
09/10/99	BJM	Memo to file	0.25	\$225.00	\$56.25
09/14/99	BJM	Review letter from Smith, Stephens, Phillips & Deegan	0.10	\$150.00	\$15.00
09/14/99	BJM	Review letter from N. Nelson re: class action against Nationwide	0.10	\$350.00	\$35.00
09/16/99	BJM	Review letter from C. Boonswang and W. Longo to Prothy re: Lindgren's Pos to 7th Amended Complaint	0.10	\$150.00	\$15.00
09/20/99	BJM	Read Entry of Appearance of Boonswang for Lindgren	0.10	\$150.00	\$15.00
09/20/99	BJM	Read Lindgren's POs to Sevent Amended Complaint	1.25	\$150.00	\$187.50
09/20/99	BJM	Review letter from T. Cusack to KC Auto Body re: INTs and RTPs	0.10	\$150.00	\$15.00
09/20/99	BJM	Review letter from T. Cusack and C. Boonswang and W. Longo re: Nationwide's INT re: color photos	0.10	\$150.00	\$15.00
09/20/99	BJM	Review letter from M. Nelson re: deposition dates	0.10	\$150.00	\$15.00
09/20/99	BJM	Letter to M. Nelson re: 9/14/99 letter to Nelson	0.25	\$350.00	\$87.50

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
09/20/99	BJM	Letter to Judge Stallone re: class action allegations	0.25	\$350.00	\$87.50
09/27/99	BJM	Read Orders of 9/23/99 and 9/24/99 sustaining Defendants POs	0.20	\$150.00	\$30.00
10/05/99	BJM	Letter to Prothonotary	0.10	\$35.00	\$3.50
10/11/99	BJM	Email to BJM, BS and DL	0.10	\$350.00	\$35.00
10/15/99	BJM	Review letter from C. Boonswang and W. Longo to M. Nelson re: signed Verification to discovery answers	0.10	\$150.00	\$15.00
10/18/99	BJM	Review letter from C. Boonswang and W. Longo to M. Nelson re: Lindgren's supp. INT answers	0.10	\$150.00	\$15.00
10/19/99	BJM	Letter to U.S. Department of Transportation	0.25	\$225.00	\$56.25
10/21/99	BJM	Memo to BJM and DL	0.25	\$350.00	\$87.50
10/22/99	BJM	Letter to W. Longo re: 8th Amended Complaint	0.25	\$350.00	\$87.50
10/22/99	BJM	Letter to Judge Stallone re: 8th Amended Complaint	0.25	\$350.00	\$87.50
10/22/99	BJM	Letter to Prothonotary re: 8th Amended Complaint	0.25	\$350.00	\$87.50
10/25/99	BJM	Eighth Amended Complaint	3.00	\$350.00	\$1,050.00
10/29/99	BJM	Letter to Bergs	0.25	\$350.00	\$87.50
10/29/99	BJM	Letter to Bergs	0.50	\$225.00	\$112.50
01/19/00	BJM	Read N.'s 2nd Set of RTPs to Plaintiffs	0.30	\$225.00	\$67.50
01/19/00	BJM	Read N.'s 3rd Set of Ints to Plaintiffs (Set III)	1.00	\$225.00	\$225.00
01/19/00	BJM	Read N.'s 2nd Set of Contention Ints to Plaintiffs (48 pages)	1.00	\$225.00	\$225.00
01/19/00	BJM	Review letter from T. Cusack to Prothy re: answer to 8th Amended Complaint	0.10	\$350.00	\$35.00
01/19/00	BJM	Review letter from T. Cusack re: discovery requests to Bergs	0.10	\$350.00	\$35.00
01/20/00	BJM	Read Nationwide's Answer to Complaint	0.50	\$350.00	\$175.00
01/21/00	BJM	Ten Day Default Notice to Lindgren	0.10	\$225.00	\$22.50
01/21/00	BJM	Letter to W. Longo and C. Boonswang re: Notice of Intent to File Praecipe for Default Judgment	0.25	\$225.00	\$56.25
01/26/00	BJM	Letter to W. Longo and M. Nelson re: Bergs' expert INTs to Nationwide	0.25	\$225.00	\$56.25
01/27/00	BJM	Review letter from C. Boonswang and W. Longo to Prothy re: Lindgren's answer and New Matter to Complaint	0.10	\$150.00	\$15.00
01/27/00	BJM	Review letter from W. Longo to Prothy re: response to New Matter Cross-claim	0.10	\$150.00	\$15.00
01/27/00	BJM	Letter to Prothy re: Answer to New Matter	0.25	\$225.00	\$56.25
01/27/00	BJM	Letter to Prothy re: Cert of Service of Bergs' RTPs to KC Auto Body	0.25	\$225.00	\$56.25
01/27/00	BJM	Letter to Prothy re: Cert of Service of Bergs' expert INTs to KC Auto Body	0.25	\$225.00	\$56.25
01/27/00	BJM	Letter to W. Longo re: expert INTs to Lindgren	0.25	\$225.00	\$56.25
01/27/00	BJM	Letter to KC Auto Body re: expert INTs	0.25	\$225.00	\$56.25
01/27/00	BJM	Letter to KC Auto Body re: RTPs to Def	0.25	\$225.00	\$56.25
01/27/00	BJM	Letter to T. Cusack re: discovery	0.25	\$225.00	\$56.25
01/27/00	BJM	Letter to Prothy re: Objections to Nationwide's discovery requests and Cert of Service	0.25	\$225.00	\$56.25
01/28/00	BJM	Read Lindgren's Answer to Complaint	0.50	\$150.00	\$75.00
01/28/00	BJM	Objections to Nationwide's Discovery	1.00	\$150.00	\$150.00
01/28/00	BJM	Req to Produce to KC Auto Body (can't locate)	0.10	\$225.00	\$22.50
01/28/00	BJM	Answer to Nationwide's New Matter	0.10	\$225.00	\$22.50
01/28/00	BJM	Req to Produce to KC Auto Body	0.50	\$225.00	\$112.50
01/31/00	BJM	Expert Ints to KC Auto Body	0.30	\$225.00	\$67.50

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
02/03/00	BJM	Review letter from W. Longo to T. Cusack re: Lindgren's response to New Matter Cross-claim	0.10	\$350.00	\$35.00
02/04/00	BJM	Letter to Prothy re: reply to New Matter	0.25	\$150.00	\$37.50
02/07/00	BJM	Reply to Lindgren's New Matter	0.10	\$150.00	\$15.00
02/07/00	BJM	Letter to Prothy re: Praeipce to Substitute Verification to 8th Amended Complaint	0.25	\$225.00	\$56.25
02/09/00	BJM	Praeipce to Substitute Verification	0.10	\$225.00	\$22.50
02/11/00	BJM	Read Lindgren's Reply to Nationwide's New Matter	0.10	\$150.00	\$15.00
02/11/00	BJM	Review letter from T. Cusack re: Nationwide's answers to Bergs' Expert INTs (Set I)	0.10	\$350.00	\$35.00
02/15/00	BJM	Review letter from T. Cusack to Prothy re: Nationwide's response to New Matter Cross-claim	0.10	\$150.00	\$15.00
02/16/00	BJM	Read Nationwide's Reply to Lindgren's New Matter	0.10	\$350.00	\$35.00
02/17/00	BJM	Review letter from Maryanne Smalley to Prothy re: Joinder Complaint	0.10	\$150.00	\$15.00
02/18/00	BJM	Read Nationwide's Joinder Complaint to KC Auto Body	0.10	\$350.00	\$35.00
02/21/00	BJM	Review letter from T. Cusack re: objectiosn to supp RTPs	0.10	\$350.00	\$35.00
02/22/00	BJM	Review letter from C. Boonswang and W. Longo to Prothy re: Cross-claim of Lindgren against KC Auto Body	0.10	\$150.00	\$15.00
02/23/00	BJM	Read Cross Claim of Lindgren against KC Auto Body	0.10	\$225.00	\$22.50
02/24/00	BJM	Review letter from T. Cusack re: discovery	0.10	\$350.00	\$35.00
03/02/00	BJM	Review letter from T. Cusack to KC Auto Body re: Joinder Complaint	0.10	\$150.00	\$15.00
03/10/00	BJM	Read Lindgren's Reply to Plaintiffs' Expert Ints (served 8/20/99)	0.10	\$225.00	\$22.50
03/15/00	BJM	Review letter from M. Smalley to Prothy re: Application for Allowance of Specific Additional INTs	0.10	\$225.00	\$22.50
03/16/00	BJM	Read N.'s Motion for Addit. Ints. (citing Pitts. Legal J.)	1.50	\$225.00	\$337.50
03/16/00	BJM	Review letter from T. Cusack to Prothy re: Proof of Service	0.10	\$225.00	\$22.50
03/24/00	BJM	Read Order of 3/21/00 granting N. Request for 35 Addt'l Inter and 20 addit'l document requests buy denying N. Req for 95 Cont Ints	0.10	\$150.00	\$15.00
03/24/00	BJM	Reply (filed 3/27) to Nationwide's Motion for Addit. Ints	1.50	\$225.00	\$337.50
03/24/00	BJM	Letter to Prothy re: Bergs' Opposition to Nationwide's Application for Allowance of Specific Additional INTs	0.25	\$225.00	\$56.25
03/24/00	BJM	Letter to Prothy re: Motion to Compel	0.25	\$225.00	\$56.25
03/27/00	BJM	Motion to Compel Nationwide	0.50	\$225.00	\$112.50
03/30/00	BJM	Review letter from T. Cusack to W. Longo re: depositions of Lindgren employees	0.10	\$225.00	\$22.50
03/31/00	BJM	Read Order of 3/31/00 granting Plaintiffs' Motion to Compel Nationwide	0.10	\$150.00	\$15.00
03/31/00	BJM	Read Nationwide's Notice to Take Default Against KC Auto Body	0.10	\$150.00	\$15.00
03/31/00	BJM	Review letter from T. Cusack to KC Auto Body re: Notice of Intention to Take Default Judgment	0.10	\$350.00	\$35.00
04/07/00	BJM	Read Answer of KC Auto	0.75	\$150.00	\$112.50

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
04/07/00	BJM	Read N.'s Dep Notice to KC Auto Body	0.10	\$150.00	\$15.00
04/07/00	BJM	Read N.'s Dep Notice to Lindgren, Joffred, Wilmer, Kreider, Wenrich	0.10	\$150.00	\$15.00
04/07/00	BJM	Read N.'s Dep Notice to Bergs	0.10	\$150.00	\$15.00
04/07/00	BJM	Review letter from T. Cusack to W. Longo re: Notices of Deposition of Lindgren employees	0.10	\$350.00	\$35.00
04/07/00	BJM	Review letter from T. Cusack to KC Auto Body re: Notice of Deposition of David Bowen	0.10	\$350.00	\$35.00
04/07/00	BJM	Review letter from T. Cusack re: Notices of Deposition to Bergs	0.10	\$350.00	\$35.00
04/10/00	BJM	Read Response of KC Auto Body to Plaintiffs' Expert Ints (see 9/1/99)	0.10	\$150.00	\$15.00
04/10/00	BJM	Letter to Bergs	0.25	\$225.00	\$56.25
04/14/00	BJM	Letter to W. Longo and T. Cusack re: 3/31/00 Order compelling discovery responses	0.25	\$225.00	\$56.25
04/18/00	BJM	Review letter from M. Nelson to Prothy re: entry of appearance and withdrawal of appearance of Cusack	0.10	\$225.00	\$22.50
04/19/00	BJM	Read Entry of Appearance of Michael R. Nelson for Nationwide	0.10	\$150.00	\$15.00
05/02/00	BJM	Review letter from D. Harrison re: discovery	0.10	\$225.00	\$22.50
05/03/00	BJM	Letter to M. Nelson re: discovery	0.25	\$225.00	\$56.25
05/05/00	BJM	Review letter from D. Harrison to Prothy re: Entry of Appearance	0.10	\$350.00	\$35.00
05/08/00	BJM	Read entry of Appearance of Darren Harrison for Nationwide	0.10	\$150.00	\$15.00
05/08/00	BJM	Review letter from D. Harrison re: discovery	0.10	\$225.00	\$22.50
05/09/00	BJM	Letter to Bergs	0.25	\$150.00	\$37.50
05/15/00	BJM	Read N.'s Add'l Req for Documents (3rd) to Plaintiffs (reply 7/14/00)	0.30	\$225.00	\$67.50
05/15/00	BJM	Read N.'s Add'l Ints to Plaintiffs	0.30	\$225.00	\$67.50
05/15/00	BJM	Read N.'s Add'l Contention Ints to Plaintiffs	0.50	\$225.00	\$112.50
05/15/00	BJM	Review letter from D. Harrison re: Nationwide's additional discovery requests to Bergs	0.10	\$225.00	\$22.50
05/17/00	BJM	Review letter from D. Harrison re: videotape and Anderton's file	0.10	\$225.00	\$22.50
05/17/00	BJM	Review letter from D. Harrison to John Hoffert, Jr., re: Nationwide's discovery requests to KC Auto Body	0.10	\$225.00	\$22.50
05/25/00	BJM	Review letter from D. Harrison re: videotapes	0.10	\$225.00	\$22.50
05/26/00	BJM	Review letter from D. Harrison re: subpoena	0.10	\$225.00	\$22.50
05/27/00	BJM	Reply to Nationwide's Add'l Cont. Ints and RTPs	6.50	\$150.00	\$975.00
05/27/00	BJM	Reply to Nationwide's Add'l Cont. Ints and RTPs	2.50	\$225.00	\$562.50
05/27/00	BJM	Letter to M. Nelson re: Anderton's file	0.25	\$150.00	\$37.50
05/31/00	BJM	Letter to W. Longo re: discovery	0.25	\$150.00	\$37.50
06/02/00	BJM	Letter to D. Harrison re: videotapes	0.25	\$150.00	\$37.50
06/05/00	BJM	Letter to Charlie Barone	0.25	\$150.00	\$37.50
06/07/00	BJM	Letter to Prothy re: Bergs' Motion for Sanctions	0.25	\$150.00	\$37.50
06/08/00	BJM	Letter to Prothy re: Bergs' Motion for Sanctions	1.50	\$150.00	\$225.00
06/09/00	BJM	Motion for Sanctions against Nationwide	0.25	\$150.00	\$37.50
06/09/00	BJM	Letter to Bergs	0.10	\$150.00	\$15.00
06/12/00	BJM	Read Order of 6/12/00 granting in part and denying in part	0.25	\$150.00	\$37.50
06/14/00	BJM	Letter to M. Nelson re: depositions	0.25	\$150.00	\$37.50
06/16/00	BJM	Letter to Bergs	0.25	\$150.00	\$37.50

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
06/16/00	BJM	Review letter from D. Harrison to Esquire Deposition Services re: subpoena to Summit Bank	0.10	\$350.00	\$35.00
06/16/00	BJM	Review letter from D. Harrison to Prothy re: Certificate Prerequisite to Service of a Subpoena	0.10	\$350.00	\$35.00
06/19/00	BJM	Read N.'s notice of subpoena	0.10	\$150.00	\$15.00
06/19/00	BJM	Review Email from Consultant	0.10	\$150.00	\$15.00
06/20/00	BJM	Review letter from D. Harrison to Prothy re: Motion for Protective Order	0.10	\$150.00	\$15.00
06/21/00	BJM	Read N.'s Motion for Protective Order on expert Anderton's file	1.25	\$150.00	\$187.50
06/21/00	BJM	Review letter from D. Harrison to J. Hoffert, Jr., re: discovery	0.10	\$150.00	\$15.00
06/23/00	BJM	Read Order of 6/23/00 granting protection "until it designates him as an expert for trial."	0.10	\$150.00	\$15.00
06/26/00	BJM	Letter to D. Harrison re: Summit Bank subpoena	0.25	\$150.00	\$37.50
07/11/00	BJM	Letter to Charlie Barone	0.25	\$150.00	\$37.50
07/13/00	BJM	Review letter from D. Harrison re: Summit Bank records	0.10	\$150.00	\$15.00
07/14/00	BJM	Letter to D. Harrison re: discovery	0.25	\$150.00	\$37.50
07/14/00	BJM	Reply to N.'s 5/15/00 Add't (3rd) Req for Documents to Plaintiffs	3.50	\$225.00	\$787.50
07/14/00	BJM	Reply to N.'s 5/15/00 Add't Ints (client meeting)	3.00	\$225.00	\$675.00
07/14/00	BJM	Reply to N.'s 5/15/00 Add't Contention Ints	3.50	\$225.00	\$787.50
07/19/00	BJM	Read Entry of Appearance of Brett Huckabee for KC Auto	0.10	\$150.00	\$15.00
07/19/00	BJM	Read Praecept for Substitution Verification	0.10	\$150.00	\$15.00
07/19/00	BJM	Review letter from B. Huckabee to BJM, D. Harrison, W. Longo re: discovery	0.10	\$150.00	\$15.00
07/19/00	BJM	Review letter from D. Harrison re: discovery	0.10	\$150.00	\$15.00
08/01/00	BJM	Review letter from D. Harrison to BJM, C. Boonswang and B. Huckabee re: cassette of Sharon Berg's telephone interview	0.10	\$150.00	\$15.00
08/02/00	BJM	Letter to Bergs	0.25	\$150.00	\$37.50
08/04/00	BJM	Review letter from M. Nelson re: new law firm to represent Nationwide	0.10	\$150.00	\$15.00
08/08/00	BJM	Review letter from D. Harrison to Prothy re: representation of Nationwide	0.10	\$150.00	\$15.00
08/08/00	BJM	Review letter from D. Harrison re: depositions	0.10	\$150.00	\$15.00
08/09/00	BJM	Review letter from D. Harrison to C. Boonswang re: discovery	0.10	\$150.00	\$15.00
08/10/00	BJM	Review letter from D. Harrison re: settlement conference	0.10	\$150.00	\$15.00
08/17/00	BJM	Letter to D. Harrison, M. Nelson, C. Boonswang and B. Huckabee re: subpoena to Erie	0.25	\$150.00	\$37.50
08/17/00	BJM	Letter to D. Harrison, M. Nelson, C. Boonswang and B. Huckabee re: subpoena to Erie	0.25	\$150.00	\$37.50
08/18/00	BJM	Review letter from B. Huckabee re: subpoena to Erie	0.10	\$150.00	\$15.00
08/29/00	BJM	Review letter from D. Harrison to BJM, DL, W. Longo, C. Boonswang and B. Huckabee re: subpoena	0.10	\$150.00	\$15.00
08/30/00	BJM	Read N.'s Subpoena/Dep Notice to Morgantown Garage	0.10	\$150.00	\$15.00

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
08/30/00	BJM	Review letter from D. Harrison to BJM, dl, w. Longo, C. Boonswang and B. Huckabee re: deposition notices	0.10	\$150.00	\$15.00
08/30/00	BJM	Review letter from D. Harrison to Gerald Kurtz re: deposition	0.10	\$150.00	\$15.00
09/08/00	BJM	Read N.'s Production of documents received from Morgantown Garage	0.10	\$150.00	\$15.00
09/08/00	BJM	Notice Dep of Stephen Potosnak	0.10	\$150.00	\$15.00
09/08/00	BJM	Notice Dep of David Bowen and KC Auto Body	0.10	\$150.00	\$15.00
09/08/00	BJM	Letter to D. Harrison, M. Nelson, C. Boonswang and B. Huckabee re: depositions	0.25	\$150.00	\$37.50
09/08/00	BJM	Review letter from D. Harrison to BJM, DL, W. Longo, C. Boonswang and B. Huckabee re: invoice	0.10	\$150.00	\$15.00
09/08/00	BJM	Letter to Prothy re: Subpoena	0.25	\$150.00	\$37.50
09/08/00	BJM	Letter to Erie Insurance re: Subpoena	0.25	\$150.00	\$37.50
09/11/00	BJM	Notice to Serve Subpoena to Erie on Chevy Tahoe (other inv vehicle)	0.10	\$150.00	\$15.00
09/20/00	BJM	Review letter from D. Harrison to Prothy re: subpoena	0.10	\$150.00	\$15.00
09/21/00	BJM	Review documents received from Erie Subpoena	0.30	\$150.00	\$45.00
09/22/00	BJM	Read N.'s Notice to Serve Subpoena	0.10	\$150.00	\$15.00
09/22/00	BJM	Review letter from D. Harrison to Prothy re: discovery	0.10	\$150.00	\$15.00
09/25/00	BJM	Read N.'s Motion to Compel L's discovery response	0.30	\$150.00	\$45.00
09/29/00	BJM	Read Order of 9/28/00 granting N.'s Motion to Compel Lindgren	0.10	\$150.00	\$15.00
10/11/00	BJM	Letter to D. Harrison, M. Nelson, C. Boonswang and B. Huckabee re: Potosnak deposition	0.25	\$150.00	\$37.50
10/11/00	BJM	Deposition of Stephen Potosnak	3.00	\$150.00	\$450.00
10/11/00	BJM	Travel to deposition of Stephen Potosnak	2.00	\$150.00	\$300.00
10/11/00	BJM	Letter to Berks County Bar Association re: deposition room	0.10	\$25.00	\$2.50
10/12/00	BJM	Letter to D. Harrison, M. Nelson, C. Boonswang and B. Huckabee re: depositions	0.25	\$150.00	\$37.50
10/13/00	BJM	Review letter from B. Huckabee re: deposition dates	0.10	\$150.00	\$15.00
10/16/00	BJM	Review letter from M. Nelson re: depositions	0.10	\$150.00	\$15.00
10/23/00	BJM	Notice Dep of Nationwide's O'Leary, Stitzel and Witmer	0.10	\$150.00	\$15.00
10/23/00	BJM	Letter to D. Harrison and M. Nelson re: dep notices	0.25	\$150.00	\$37.50
10/25/00	BJM	Read N.'s subpoena to Gerald Kutze of Morgantown Garage	0.10	\$150.00	\$15.00
10/25/00	BJM	Review letter from D. Harrison to Gerald Kurtz re: deposition	0.10	\$150.00	\$15.00
10/31/00	BJM	Review letter from D. Harrison re: dep notices	0.10	\$150.00	\$15.00
11/01/00	BJM	Letter to D. Harrison and M. Nelson re: depositions	0.25	\$150.00	\$37.50
11/01/00	BJM	Review fax from D. Harrison re: Lindgren docs	0.10	\$150.00	\$15.00
11/03/00	BJM	Supplemental RTPs to Nationwide re Doug Witmer	0.30	\$150.00	\$45.00
11/03/00	BJM	Notice Dep of Doug Witmer	0.10	\$150.00	\$15.00
11/03/00	BJM	Letter to Anita Hannah re: dep notice	0.25	\$150.00	\$37.50
11/03/00	BJM	Letter to C. Boonswang re: discovery	0.25	\$150.00	\$37.50
11/03/00	BJM	Letter to D. Harrison and M. Nelson re: discovery	0.25	\$150.00	\$37.50
11/03/00	BJM	Review letter from D. Harrison re: Motion to Protect	0.10	\$150.00	\$15.00

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
11/03/00	BJM	Review letter from D. Harrison to Anita Hannah re: Witmer dep	0.10	\$150.00	\$15.00
11/03/00	BJM	RTP to L. for photos pertaining to RO 205020 and invoice 4/17/96	0.10	\$225.00	\$22.50
11/13/00	BJM	Review letter from D. Harrison to Anita Hannah re: Witmer dep	0.10	\$150.00	\$15.00
11/14/00	BJM	Review letter from D. Harrison to Prothy re: subpoena	0.10	\$150.00	\$15.00
11/15/00	BJM	Deposition of Gerald Kurtz	1.00	\$150.00	\$150.00
11/15/00	BJM	Travel to deposition of Gerald Kurtz	2.00	\$150.00	\$300.00
11/16/00	BJM	Read N.'s Objections to RTPs on Witmer	0.30	\$150.00	\$45.00
11/16/00	BJM	Read N.'s cover letter and proposed Confidentiality Agreement	1.00	\$150.00	\$150.00
11/16/00	BJM	Review letter from D. Harrison re: Confidentiality Agreement as to E. Michael O'Leary, Doug Witmer and Ron Stitzel; Nationwide's objections to Bergs' discovery requests	0.10	\$150.00	\$15.00
11/30/00	BJM	Letter to D. Harrison, M. Nelson, C. Boonswang and B. Huckabee re: Confidentiality Agreement	0.25	\$150.00	\$37.50
12/04/00	BJM	Review letter from D. Harrison to Prothy re: Motion for Protective Order	0.10	\$150.00	\$15.00
12/06/00	BJM	Letter to Prothy re: Motion to Compel deps	0.25	\$150.00	\$37.50
12/07/00	BJM	Motion to Compel Deps of O'Leary, Witmer and Stitzel	1.50	\$150.00	\$225.00
12/07/00	BJM	Read N.'s Motion for Protection Order	1.00	\$150.00	\$150.00
12/07/00	BJM	Letter to Prothy re: Certificate of Addresses	0.25	\$150.00	\$37.50
12/07/00	BJM	Letter to Prothy re: Motion to Compel doc production	0.25	\$150.00	\$37.50
12/08/00	BJM	Read Order of 12/8/00 directing parties to negotiate confidentiality order	0.10	\$150.00	\$15.00
12/08/00	BJM	Review letter from D. Harrison re: depositions	0.10	\$150.00	\$15.00
12/08/00	BJM	Numerous hours spent negotiating Confidentiality Order	0.00	\$225.00	\$0.00
12/09/00	BJM	Letter to C. Boonswang re: discovery	0.25	\$150.00	\$37.50
12/11/00	BJM	Motion to Compel Documents re Doug Witmer	1.00	\$150.00	\$150.00
12/11/00	BJM	Read Orders pertaining to motions to compel - denied	0.10	\$150.00	\$15.00
12/12/00	BJM	Letter to D. Harrison and M. Nelson re: 12/8/00 Order, supp. Discovery and Confidentiality Agreement	0.25	\$150.00	\$37.50
12/13/00	BJM	Read N.'s Opposition Motion on Deps of O'Leary, et al	1.00	\$150.00	\$150.00
12/13/00	BJM	Read N.'s Opposition to Motion regarding subpoena on Witmer	1.00	\$150.00	\$150.00
12/13/00	BJM	Review letter from D. Harrison to Prothy re: Nationwide's response to Bergs' MTC deps	0.10	\$150.00	\$15.00
12/13/00	BJM	Review letter from D. Harrison to Prothy re: Nationwide's response to Bergs' MTC doc prod	0.10	\$150.00	\$15.00
12/22/00	BJM	Review letter from D. Harrison re: discovery and Confidentiality Agreement	0.10	\$150.00	\$15.00
12/27/00	BJM	Letter to D. Harrison and M. Nelson re: Confidentiality Agreement	0.25	\$150.00	\$37.50
01/05/01	BJM	Letter to D. Harrison and M. Nelson re: Confidentiality Agreement	0.25	\$150.00	\$37.50

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
01/05/01	BJM	Letter to Judge Stallone re: Confidentiality Agreement	0.25	\$150.00	\$37.50
01/08/01	BJM	Review letter from D. Harrison re: Confidentiality Agreement	0.10	\$150.00	\$15.00
01/08/01	BJM	Review letter from D. Harrison to Judge Stallone re: Order of 12/8/00 and Confidentiality Agreement	0.10	\$150.00	\$15.00
01/09/01	BJM	Letter to D. Harrison re: Nationwide's position on Protective Orders	0.25	\$150.00	\$37.50
01/09/01	BJM	Review letter from D. Harrison to W. Longo and B. Huckabee re: Confidentiality Agreement	0.10	\$150.00	\$15.00
01/11/01	BJM	Review letter from D. Harrison re: Nationwide's position on Protective Orders	0.10	\$150.00	\$15.00
01/15/01	BJM	Letter to D. Harrison re: Harrison's 1/11/01 letter and Confidentiality Agreement	0.25	\$150.00	\$37.50
01/18/01	BJM	Letter to Judge Stallone re: Confidentiality Agreement	0.25	\$150.00	\$37.50
01/18/01	BJM	Letter to D. Harrison and M. Nelson re: Confidentiality Agreement	0.25	\$150.00	\$37.50
01/18/01	BJM	Review letter from D. Harrison re: Confidentiality Agreement	0.10	\$150.00	\$15.00
01/19/01	BJM	Letter to D. Harrison re: Confidentiality Agreement	0.25	\$150.00	\$37.50
01/19/01	BJM	Review letter from D. Harrison re: Confidentiality Agreement	0.10	\$150.00	\$15.00
01/19/01	BJM	Review letter from D. Harrison to Judge Stallone re: Confidentiality Agreement	0.10	\$150.00	\$15.00
01/19/01	BJM	Letter to D. Harrison re: settlement offer	0.25	\$150.00	\$37.50
01/19/01	BJM	Letter to D. Harrison re: Confidentiality Agreement	0.25	\$150.00	\$37.50
01/19/01	BJM	Letter to D. Harrison and M. Nelson re: Confidentiality Agreement	0.25	\$150.00	\$37.50
01/19/01	BJM	Letter to D. Harrison and M. Nelson re: Confidentiality Agreement	0.25	\$150.00	\$37.50
01/19/01	BJM	Letter to Judge Stallone re: Confidentiality Agreement not acceptable by Nationwide	0.25	\$150.00	\$37.50
01/23/01	BJM	Letter to D. Harrison and M. Nelson re: 2 proposals	0.25	\$150.00	\$37.50
01/24/01	BJM	Review letter from D. Harrison re: Confidentiality Agreement	0.10	\$150.00	\$15.00
01/24/01	BJM	Letter to D. Harrison re: Confidentiality Agreement	0.25	\$150.00	\$37.50
01/25/01	BJM	RTP to N, seeking list of documents claimed to be trade secrets (2/6/01)	0.10	\$150.00	\$15.00
01/25/01	BJM	Letter to Judge Stallone re: Confidentiality Agreement	0.25	\$150.00	\$37.50
01/25/01	BJM	Review letter from D. Harrison to Judge Stallone re: Confidentiality Agreement	0.10	\$150.00	\$15.00
01/25/01	BJM	Letter to D. Harrison re: discovery	0.25	\$150.00	\$37.50
01/26/01	BJM	Letter to American Bar Association re: opinion	0.10	\$35.00	\$3.50
02/01/01	BJM	Review letter from D. Harrison re: discovery	0.10	\$150.00	\$15.00
02/01/01	BJM	Review letter from D. Harrison to Prothy re: Motion for Protective Order	0.10	\$150.00	\$15.00
02/05/01	BJM	Read N.'s Motion for Protective Order	1.50	\$150.00	\$225.00
02/06/01	BJM	Read N.'s Reply to Plaintiffs' 1/25/01 RTP list of trade secret documents	0.10	\$150.00	\$15.00
02/06/01	BJM	Review letter from D. Harrison re: discovery	0.10	\$150.00	\$15.00
02/07/01	BJM	Read N.'s Amended Argument Praecipe	0.10	\$150.00	\$15.00

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
02/07/01	BJM	Letter to D. Harrison, M. Nelson, W. Longo and B. Huckabee re: dep of R. Weinrich	0.25	\$150.00	\$37.50
02/07/01	BJM	Review letter from D. Harrison to Prothy re: Amended Praecipe for Argument	0.10	\$150.00	\$15.00
02/08/01	BJM	Notice Dep of Wenrich	0.10	\$150.00	\$15.00
02/08/01	BJM	Letter to D. Harrison, M. Nelson, W. Longo and B. Huckabee re: depts	0.25	\$150.00	\$37.50
02/08/01	BJM	Letter to B. Huckabee re: Motion for Protective Order	0.25	\$150.00	\$37.50
02/14/01	BJM	Amended Dep Notice to Lindgren's Rich Wenrich	0.10	\$150.00	\$15.00
02/14/01	BJM	Letter to D. Harrison, M. Nelson, W. Longo and B. Huckabee re: deposition of Weinrich	0.25	\$150.00	\$37.50
02/19/01	BJM	Letter to D. Harrison and M. Nelson re: settlement	0.25	\$150.00	\$37.50
02/20/01	BJM	Letter to Prothy re: response to Motion for Protective Order	0.25	\$150.00	\$37.50
02/21/01	BJM	Reply to N.'s Motion for Protective Order and Brief	15.00	\$150.00	\$2,250.00
03/01/01	BJM	Letter to Prothy re: Supplemental Brief in Support of Plaintiffs' response to Motion for Protective Order	0.25	\$150.00	\$37.50
03/01/01	BJM	Letter to Judge Stallone and Judge Edenharter re: Supplemental Brief in Support of Plaintiffs' response to Motion for Protective Order	0.25	\$150.00	\$37.50
03/02/01	BJM	Supplemental Brief in Support of Plaintiffs' Reply to N.'s Motion	1.00	\$150.00	\$150.00
03/02/01	BJM	RTP to N. for BRR Service Agment in force on 9/96 (received 3/21/01)	0.10	\$150.00	\$15.00
03/02/01	BJM	Letter to D. Harrison re: discovery	0.25	\$150.00	\$37.50
03/05/01	BJM	Hearing on N.'s Motion for Protective Order	3.00	\$150.00	\$450.00
03/08/01	BJM	Read Order of 3/6/01 denying N.'s Motion for Protective Order	0.10	\$150.00	\$15.00
03/08/01	BJM	Supp Reply of Doc Prod to Defendants (Wert Statements)	0.10	\$150.00	\$15.00
03/08/01	BJM	Letter to D. Harrison, M. Nelson, W. Longo and B. Huckabee re: discovery and production of Wert statement	0.25	\$150.00	\$37.50
03/09/01	BJM	Letter to D. Harrison re: personnel file of Doug Witmer and deposition of Mike O'Leary	0.25	\$150.00	\$37.50
03/11/01	BJM	Email to BJM	0.10	\$350.00	\$35.00
03/14/01	BJM	Letter to Mrs. Marlene Harlow	0.25	\$150.00	\$37.50
03/19/01	BJM	Dep Notice of O'Leary	0.10	\$150.00	\$15.00
03/19/01	BJM	Letter to W. Longo re: photos and Weinrich dep	0.25	\$150.00	\$37.50
03/19/01	BJM	Letter to D. Harrison re: dep of O'Leary	0.25	\$150.00	\$37.50
03/21/01	BJM	Read N.'s Reply to RTP of 3/2/01 for copy of contract btw co-defendants	0.10	\$150.00	\$15.00
03/21/01	BJM	Review letter from D. Harrison re: discovery	0.10	\$150.00	\$15.00
03/21/01	BJM	Deposition of Richard Wenrich	3.00	\$150.00	\$450.00
03/21/01	BJM	Travel to deposition of Richard Wenrich	2.00	\$150.00	\$300.00
03/26/01	BJM	Email to SD	0.10	\$150.00	\$15.00
03/27/01	BJM	RTP to KC Auto Body (response received 5/23/01)	0.30	\$150.00	\$45.00
03/27/01	BJM	RTP to N. for BR documents supplied to Lindgren btw. 1993-1996	0.10	\$150.00	\$15.00
03/27/01	BJM	Letter to D. Harrison re: discovery	0.25	\$150.00	\$37.50
03/27/01	BJM	Letter to B. Huckabee re: discovery	0.25	\$150.00	\$37.50
03/27/01	BJM	N. Reply to Plaintiffs RTP for BR documents supplied to Lindgren	0.10	\$225.00	\$22.50

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
03/29/01	BJM	Letter to D. Harrison, M. Nelson, W. Longo and B. Huckabee re: deps	0.25	\$150.00	\$37.50
03/30/01	BJM	Review letter from B. Huckabee re: dep dates	0.10	\$150.00	\$15.00
04/09/01	BJM	Letter to D. Harrison re: discovery	0.25	\$150.00	\$37.50
04/16/01	BJM	Review letter from D. Harrison re: discovery	0.10	\$150.00	\$15.00
04/19/01	BJM	Email to SD	0.10	\$150.00	\$15.00
04/20/01	BJM	Dep Notice of Nationwide's Stitzel, Witmer	0.10	\$150.00	\$15.00
04/20/01	BJM	Letter to Anita Hannah re: Witmer dep	0.25	\$150.00	\$37.50
04/20/01	BJM	Letter to B. Huckabee re: depositions	0.25	\$150.00	\$37.50
04/20/01	BJM	Letter to D. Harrison re: depositions	0.25	\$150.00	\$37.50
04/24/01	BJM	Amended Dep Notice for Doug Witmer	0.10	\$150.00	\$15.00
04/24/01	BJM	Dep Notice for Lindgren's Joffred	0.10	\$150.00	\$15.00
04/24/01	BJM	Letter to D. Harrison, M. Nelson, W. Longo, B. Huckabee and Anita Hannah re: depositions	0.25	\$150.00	\$37.50
04/25/01	BJM	Review letter from D. Harrison re: depositions	0.10	\$150.00	\$15.00
04/25/01	BJM	Letter to D. Harrison re: depositions	0.25	\$150.00	\$37.50
04/25/01	BJM	Review letter from D. Harrison re: depositions	0.10	\$150.00	\$15.00
04/26/01	BJM	Review letter from D. Harrison re: depositions	0.10	\$150.00	\$15.00
04/27/01	BJM	Review letter from D. Harrison re: depositions	0.10	\$150.00	\$15.00
04/27/01	BJM	Review letter from B. Huckabee re: depositions	0.10	\$150.00	\$15.00
04/30/01	BJM	Reminder to counsel for KC Auto Body on outstanding discovery	0.10	\$150.00	\$15.00
04/30/01	BJM	Letter to B. Huckabee re: discovery	0.25	\$150.00	\$37.50
05/01/01	BJM	Dep Notice for N.'s Stitzel and Witmer	0.10	\$150.00	\$15.00
05/01/01	BJM	Dep Notice for KC's David Bowen	0.10	\$150.00	\$15.00
05/01/01	BJM	Letter to D. Harrison re: Blue Ribbon Repair Service Agreement	0.25	\$150.00	\$37.50
05/01/01	BJM	Letter to D. Harrison, M. Nelson, W. Longo and B. Huckabee re: depositions	0.25	\$150.00	\$37.50
05/11/01	BJM	Review letter from A. Levy re: representation and depositions	0.10	\$150.00	\$15.00
05/11/01	BJM	Letter to A. Levy re: depositions	0.25	\$150.00	\$37.50
05/14/01	BJM	Letter to Prothy re: Motion to Compel	0.25	\$150.00	\$37.50
05/16/01	BJM	Motion to Compel against KC Auto Body	0.50	\$150.00	\$75.00
05/16/01	BJM	Letter to W. Longo re: dep of Doug Joffred	0.25	\$150.00	\$37.50
05/16/01	BJM	Review letter from A. Levy re: depositions and Blue Ribbon Repair Service Agreement	0.10	\$150.00	\$15.00
05/17/01	BJM	Letter to B. Huckabee re: discovery	0.25	\$150.00	\$37.50
05/17/01	BJM	Deposition of David Bowen	2.50	\$150.00	\$375.00
05/17/01	BJM	Travel to deposition of David Bowen	2.00	\$150.00	\$300.00
05/18/01	BJM	Read Order of 5/17/01 granting Motion to Compel KC Auto	0.10	\$150.00	\$15.00
05/18/01	BJM	Letter to A. Levy, M. Nelson, W. Longo and B. Huckabee re: inspection of vehicle/stipulation	0.25	\$150.00	\$37.50
05/18/01	BJM	Letter to W. Longo re: discovery	0.25	\$150.00	\$37.50
05/21/01	BJM	Review letter from B. Huckabee re: stipulation	0.10	\$150.00	\$15.00
05/22/01	BJM	Letter to W. Longo re: dep of Doug Joffred	0.25	\$150.00	\$37.50
05/22/01	BJM	Review letter from B. Huckabee to BJM, A. Levy and W. Longo re: discovery responses	0.10	\$150.00	\$15.00
05/23/01	BJM	Read KC Auto Body's reply to discovery (served 3/27/01)	0.30	\$150.00	\$45.00
05/23/01	BJM	Dep Notice to N.'s Stitzel and Witmer	0.10	\$150.00	\$15.00
05/23/01	BJM	Letter to A. Levy re: Witmer/Stitzel deps	0.25	\$150.00	\$37.50
06/01/01	BJM	Grass Roots Discovery Efforts, i.e. securing Blue Ribbon Documents	7.00	\$150.00	\$1,050.00

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
06/04/01	BJM	Review Stitzel's Deposition	1.00	\$150.00	\$150.00
06/04/01	BJM	Review Grumbein's Deposition	1.00	\$150.00	\$150.00
06/04/01	BJM	Review Potosnak's Deposition	1.00	\$150.00	\$150.00
06/04/01	BJM	Review Joffred's Deposition	1.00	\$150.00	\$150.00
06/14/01	BJM	Letter to W. Longo re: dep of Doug Joffred	0.25	\$150.00	\$37.50
06/20/01	BJM	Letter to A. Levy, M. Nelson, W. Longo and B. Huckabee re: depositions of Witmer/Stitzel	0.25	\$150.00	\$37.50
06/27/01	BJM	Review letter from A. Levy to B. Huckabee re: discovery requests to KC Auto Body	0.10	\$150.00	\$15.00
06/28/01	BJM	Deposition of Doug Witmer	2.00	\$150.00	\$300.00
06/28/01	BJM	Deposition of Ron Stitzel	1.25	\$150.00	\$187.50
06/28/01	BJM	Travel to depositions of Witmer/Stitzel	2.00	\$150.00	\$300.00
07/02/01	BJM	Letter to A. Levy and M. Nelson re: discovery requests, depositions and resume of Ron Stitzel	0.25	\$150.00	\$37.50
07/02/01	BJM	Letter to W. Longo re: discovery and Joffred dep	0.25	\$150.00	\$37.50
07/03/01	BJM	Letter to Charlie Barone	0.25	\$150.00	\$37.50
07/06/01	BJM	Review letter from A. Levy to B. Huckabee re: discovery	0.10	\$150.00	\$15.00
07/18/01	BJM	Letter to W. Longo re: discovery	0.25	\$150.00	\$37.50
07/18/01	BJM	Letter to A. Levy and M. Nelson re: depositions	0.25	\$150.00	\$37.50
07/23/01	BJM	Request Ron Stitzel's Resume	0.10	\$150.00	\$15.00
07/23/01	BJM	Letter to A. Levy and M. Nelson re: Ron Stitzel's resume	0.25	\$150.00	\$37.50
07/26/01	BJM	Letter to Trial Lawyers for Public Justice	0.25	\$150.00	\$37.50
07/27/01	BJM	Read Nationwide's Objection to producing Resume	0.10	\$150.00	\$15.00
07/27/01	BJM	Review letter from A. Levy re: Stitzel resume	0.10	\$150.00	\$15.00
07/31/01	BJM	Letter to Prothy re: Motion to Compel Resume of Ron Stitzel	0.25	\$150.00	\$37.50
08/01/01	BJM	Motion to Compel resume of Ron Stitzel	0.50	\$150.00	\$75.00
08/03/01	BJM	Review letter from D. Harrison to Prothy re: Nationwide's Opposition to Motion to Compel Resume of Ron Stitzel	0.10	\$150.00	\$15.00
08/06/01	BJM	Read N.'s Response to Motion to Compel Stitzel Resume	1.00	\$150.00	\$150.00
08/07/01	BJM	Read Order of 8/7/01 - Rule to Show Cause	0.10	\$150.00	\$15.00
08/10/01	BJM	Letter to A. Levy and M. Nelson re: Grumbein dep	0.25	\$150.00	\$37.50
08/13/01	BJM	Letter to A. Levy and M. Nelson re: depositions of Grumbein and O'Leary	0.25	\$150.00	\$37.50
08/13/01	BJM	Letter to Prothy re: RFAs	0.25	\$150.00	\$37.50
08/13/01	BJM	Letter to W. Longo re: discovery	0.25	\$150.00	\$37.50
08/14/01	BJM	Letter to Prothy re: Brief in Support of Motion to Compel Resume of Ron Stitzel	0.25	\$150.00	\$37.50
08/15/01	BJM	Brief in Support of Motion to Compel	1.00	\$150.00	\$150.00
08/15/01	BJM	Email to SD	0.10	\$150.00	\$15.00
08/16/01	BJM	Request for Admissions (8/13) to Nationwide on BR Documents	3.50	\$150.00	\$525.00
08/16/01	BJM	Dep Notice to Mike Grumbein	0.10	\$150.00	\$15.00
08/16/01	BJM	Letter to B. Huckabee re: Grumbein dep	0.25	\$150.00	\$37.50
08/16/01	BJM	Letter to Carolyn Rack	0.25	\$150.00	\$37.50
08/16/01	BJM	Email to SD	0.10	\$150.00	\$15.00
08/17/01	BJM	Read Supplemental Response of N	0.50	\$150.00	\$75.00
08/17/01	BJM	Read Order of 8/16/01 denying Motion to Compel Stitzel file	0.10	\$150.00	\$15.00

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
08/17/01	BJM	Review letter from D. Harrison to Prothy re: supp. Response to Plaintiffs' Brief in Support of Motion to Compel Resume of Ron Stitzel	0.10	\$150.00	\$15.00
08/20/01	BJM	Letter to A. Levy re: O'Leary dep	0.25	\$150.00	\$37.50
08/20/01	BJM	Letter to W. Longo re: discovery and Joffred dep	0.25	\$150.00	\$37.50
08/24/01	BJM	Letter to Fred McGavin	0.25	\$150.00	\$37.50
08/27/01	BJM	Letter to Prothy re: Praecepte to Substitute Certification of Service of 8/13/01 RFAs	0.25	\$150.00	\$37.50
08/29/01	BJM	File Praecepte to Substitute Verification to 8/13/01 RFAs	0.10	\$150.00	\$15.00
08/30/01	BJM	Letter to A. Levy re: O'Leary dep	0.25	\$150.00	\$37.50
08/30/01	BJM	Email to SD	0.10	\$150.00	\$15.00
09/05/01	BJM	Letter to Karasch & Associates	0.25	\$350.00	\$87.50
09/07/01	BJM	Review letter from A. Levy re: O'Leary dep	0.10	\$150.00	\$15.00
09/10/01	BJM	Review letter from A. Levy re: Objections to 8/13/01 RFAs	0.10	\$150.00	\$15.00
09/12/01	BJM	Read N.'s Objections and Responses to Plaintiffs' RFA	1.00	\$150.00	\$150.00
09/12/01	BJM	Dep Notice for N.'s O'Leary	0.10	\$150.00	\$15.00
09/12/01	BJM	Letter to A. Levy re: O'Leary dep	0.25	\$150.00	\$37.50
09/13/01	BJM	Letter to Consentdecree.com	0.25	\$150.00	\$37.50
09/14/01	BJM	Deposition of Michael Grumbein	1.50	\$150.00	\$225.00
09/14/01	BJM	Travel to deposition of Michael Grumbein	2.00	\$150.00	\$300.00
09/20/01	BJM	Dep Notice to Lindgren's Kreider, Joffred and Paint Tech	0.10	\$150.00	\$15.00
09/20/01	BJM	Dep Notice to N.'s Bruce Bashore	0.10	\$150.00	\$15.00
09/20/01	BJM	Letter to W. Longo re: depositions	0.25	\$150.00	\$37.50
10/01/01	BJM	Review letter from D. Alperstein re: discovery documents	0.10	\$150.00	\$15.00
10/10/01	BJM	Review letter from B. Huckabee re: discovery answers	0.10	\$150.00	\$15.00
10/26/01	BJM	Letter to A. Levy, M. Nelson, W. Longo and B. Huckabee re: depositions	0.25	\$150.00	\$37.50
10/26/01	BJM	Review letter from B. Huckabee re: depositions	0.10	\$150.00	\$15.00
10/30/01	BJM	Letter to Bergs	0.25	\$150.00	\$37.50
11/05/01	BJM	Letter to Prothy re: 11/5/01 RFAs	0.25	\$150.00	\$37.50
11/06/01	BJM	Letter to A. Levy, M. Nelson, W. Longo and B. Huckabee re: supp. Discovery	0.25	\$150.00	\$37.50
11/06/01	BJM	Letter to A. Levy, M. Nelson, W. Longo and B. Huckabee re: deps, supp. Discovery and settlement	0.25	\$150.00	\$37.50
11/07/01	BJM	Req for Admissions to Nationwide of 11/5/01	3.50	\$150.00	\$525.00
11/08/01	BJM	Read Entry of Appearance of Adam Levy for Nationwide	0.10	\$150.00	\$15.00
11/09/01	BJM	Review letter from A. Levy re: RFAs and settlement	0.10	\$150.00	\$15.00
11/13/01	BJM	Letter to A. Levy re: bad faith	0.25	\$150.00	\$37.50
11/14/01	BJM	Review letter from A. Levy re: Entry of Appearance	0.10	\$150.00	\$15.00
12/05/01	BJM	Review letter from A. Levy re: answers to RFAs and deps of Bergs	0.10	\$150.00	\$15.00
12/06/01	BJM	Review letter from A. Levy to Prothy re: Nationwide's objections and answers to 11/5/01 RFAs	0.10	\$150.00	\$15.00
12/06/01	BJM	Review letter from W. Longo re: dismissal of Lindgren	0.10	\$150.00	\$15.00

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
12/10/01	BJM	Read N.'s Objections and Response to RFA of 11/5/01	1.00	\$150.00	\$150.00
12/21/01	BJM	Letter to W. Longo re: response to 12/6/01 letter	0.25	\$150.00	\$37.50
12/21/01	BJM	Letter to A. Levy re: Bruce Bashore dep	0.25	\$150.00	\$37.50
12/27/01	BJM	Review letter from A. Levy re: Berg deps	0.10	\$150.00	\$15.00
12/28/01	BJM	Read N.'s supp. To document production (w/cover letter)	2.00	\$150.00	\$300.00
12/28/01	BJM	Letter to Bergs	0.25	\$150.00	\$37.50
12/28/01	BJM	Review letter from A. Levy re: discovery	0.10	\$150.00	\$15.00
12/31/01	BJM	Letter to A. Levy re: discovery	0.25	\$150.00	\$37.50
01/08/02	BJM	Review letter from A. Levy re: Bashore dep	0.10	\$150.00	\$15.00
01/09/02	BJM	Letter to Bergs	0.25	\$150.00	\$37.50
01/16/02	BJM	Letter to A. Levy re: Berg deps	0.25	\$150.00	\$37.50
01/23/02	BJM	Review letter from A. Levy re: Berg deps	0.10	\$150.00	\$15.00
01/23/02	BJM	Letter to Bergs	0.25	\$150.00	\$37.50
01/24/02	BJM	Review letter from W. Longo re: Berg deps	0.10	\$150.00	\$15.00
01/24/02	BJM	Review letter from W. Longo re: Berg deps	0.10	\$150.00	\$15.00
01/25/02	BJM	Review letter from A. Levy re: Berg deps	0.10	\$150.00	\$15.00
01/28/02	BJM	Review letter from B. Huckabee re: Berg deps	0.10	\$150.00	\$15.00
01/28/02	BJM	Review letter from W. Longo re: Berg deps	0.10	\$150.00	\$15.00
01/28/02	BJM	Letter to A. Levy re: Berg and Bashore deps	0.25	\$150.00	\$37.50
02/12/02	BJM	Letter to A. Levy re: Berg and Bashore deps	0.25	\$150.00	\$37.50
02/19/02	BJM	Letter to A. Levy re: Bashore dep	0.25	\$150.00	\$37.50
02/20/02	BJM	Review letter from A. Levy re: Berg and Bashore deps	0.10	\$150.00	\$15.00
02/21/02	BJM	Letter to A. Levy re: depositions	0.25	\$150.00	\$37.50
02/21/02	BJM	Review letter from B. Huckabee to A. Levy re: Berg deps	0.10	\$150.00	\$15.00
02/25/02	BJM	Review letter from A. Levy re: response to BJM 2/21/02 letter and deps	0.10	\$150.00	\$15.00
02/27/02	BJM	Dep Notice for N.'s Bruce Bashore	0.10	\$150.00	\$15.00
02/27/02	BJM	Letter to A. Levy re: Bashore dep	0.25	\$150.00	\$37.50
02/27/02	BJM	Letter to Bergs	0.25	\$150.00	\$37.50
02/27/02	BJM	Review letter from A. Levy re: Berg dep notices	0.10	\$150.00	\$15.00
03/09/02	BJM	Letter to A. Levy	0.25	\$150.00	\$37.50
03/18/02	BJM	Document review for Bergs' depositions	2.00	\$150.00	\$300.00
03/19/02	BJM	Document review for Bergs' depositions	4.00	\$150.00	\$600.00
03/19/02	BJM	Client prep time and travel	3.00	\$150.00	\$450.00
03/20/02	BJM	Deposition of Dan Berg	7.50	\$150.00	\$1,125.00
03/20/02	BJM	Travel to deposition of Dan Berg	2.00	\$150.00	\$300.00
03/21/02	BJM	Supplemental RTP to Lindgren on Wert (Obj. received 4/23/02)	0.10	\$150.00	\$15.00
03/21/02	BJM	Supplemental RTP to KC Auto Body on Wert (Reply 3/28/02)	0.10	\$150.00	\$15.00
03/21/02	BJM	Supplemental RTP to Nationwide on Wert (Reply 4/4/02)	0.10	\$150.00	\$15.00
03/21/02	BJM	Letter to A. Levy, M. Nelson, W. Longo and B. Huckabee re: supp. Discovery	0.25	\$150.00	\$37.50
03/23/02	BJM	Document review for Bashore deposition	3.00	\$150.00	\$450.00
03/24/02	BJM	Document review for Bashore deposition	2.00	\$150.00	\$300.00
03/26/02	BJM	Dep Notice for L.'s former employee David Wert	0.10	\$150.00	\$15.00
03/26/02	BJM	Letter to A. Levy, M. Nelson, W. Longo and B. Huckabee re: Wert deposition notice	0.25	\$150.00	\$37.50
03/26/02	BJM	Letter to David Wert	0.25	\$150.00	\$37.50
03/26/02	BJM	Email to SD	0.10	\$150.00	\$15.00

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
03/27/02	BJM	Document review for Bashore deposition	7.00	\$150.00	\$1,050.00
03/28/02	BJM	Read Reply of KC Auto Body to RTP on Wert (served 3/21/01)	0.10	\$150.00	\$15.00
03/28/02	BJM	Review letter from B. Huckabee re: Wert dep	0.10	\$150.00	\$15.00
03/28/02	BJM	Dep prep the morning of the dep	3.00	\$150.00	\$450.00
03/28/02	BJM	Deposition of Bruce Bashore	5.50	\$150.00	\$825.00
03/29/02	BJM	RTP to N on assessing risk of BRRP (includes rev of N. Documents)	0.30	\$150.00	\$45.00
03/29/02	BJM	RTP to N on Best Claims Practices, BR Service Manual & RO (4/26/02)	0.20	\$150.00	\$30.00
03/29/02	BJM	Letter to A. Levy re: Blue Ribbon Repair Service Manual	0.25	\$150.00	\$37.50
03/29/02	BJM	Letter to A. Levy re: supp. Discovery	0.25	\$150.00	\$37.50
04/01/02	BJM	Letter to A. Levy re: depositions	0.25	\$150.00	\$37.50
04/01/02	BJM	Review letter from A. Levy re: response to 3/29/02 letter, depositions and discovery	0.10	\$150.00	\$15.00
04/01/02	BJM	Responsive letter to A. Levy	4.00	\$150.00	\$600.00
04/01/02	BJM	Type Time-Line and General review of file including Nationwide log notes and witness dep selection	3.50	\$150.00	\$525.00
04/02/02	BJM	Letter to A. Levy re: response to 4/1/02 letter	0.50	\$150.00	\$75.00
04/02/02	BJM	Reviewed file in response to Nationwide's 4/1/02 letter	3.50	\$150.00	\$525.00
04/02/02	BJM	Reviewed file with HM including Orders and 4/1/02 letter	0.50	\$150.00	\$75.00
04/02/02	BJM	Reviewed and condensed file	4.50	\$150.00	\$675.00
04/02/02	BJM	Reviewed file with BJM including Orders and 4/1/02 letter	0.50	\$350.00	\$175.00
04/03/02	BJM	Letter to B. Huckabee re: Wert dep	0.25	\$150.00	\$37.50
04/03/02	BJM	Letter to David Wert	0.25	\$150.00	\$37.50
04/03/02	BJM	Review letter from B. Huckabee re: answers to supp. INTs	0.10	\$150.00	\$15.00
04/03/02	BJM	Review letter from D. Alperstein re: Wert dep	0.10	\$150.00	\$15.00
04/03/02	BJM	Reviewed and condensed file	8.25	\$150.00	\$1,237.50
04/04/02	BJM	Read N.'s Reply to Plaintiffs' RTP of 3/21/02	0.10	\$150.00	\$15.00
04/04/02	BJM	Letter to D. Alperstein re: Wert dep	0.25	\$150.00	\$37.50
04/04/02	BJM	Review letter from A. Levy re: response to 3/21/02 RTPs	0.10	\$150.00	\$15.00
04/04/02	BJM	Reviewed and condensed file	5.75	\$150.00	\$862.50
04/05/02	BJM	Letter to A. Levy re: response to Levy 4/4/02 letter	1.00	\$150.00	\$150.00
04/08/02	BJM	Letter to A. Levy re: depositions	0.25	\$150.00	\$37.50
04/08/02	BJM	Telephone call to Adam Levy	0.25	\$150.00	\$37.50
04/09/02	BJM	Letter to A. Levy re: Confidentiality Agreement	0.25	\$150.00	\$37.50
04/09/02	BJM	Review letter from A. Levy re: depositions	0.10	\$150.00	\$15.00
04/09/02	BJM	Telephone call to Mrs. Berg to secure dates for her deposition	0.25	\$150.00	\$37.50
04/10/02	BJM	Review letter from B. Huckabee re: Wert dep	0.10	\$150.00	\$15.00
04/10/02	BJM	Letter to A. Levy re: depositions	0.75	\$150.00	\$112.50
04/11/02	BJM	Letter to D. Alperstein re: Wert dep	0.25	\$150.00	\$37.50
04/11/02	BJM	Letter to D. Alperstein re: Wert dep	0.25	\$150.00	\$37.50
04/11/02	BJM	Letter to David Wert	0.25	\$150.00	\$37.50
04/23/02	BJM	Read Lindgren's Reply to Plaintiffs' RTPs on Wert (served 3/21/02)	0.50	\$150.00	\$75.00
04/23/02	BJM	Review letter from D. Alperstein re: discovery responses	0.10	\$150.00	\$15.00

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
04/26/02	BJM	Read N.'s Objections & Reply to Plaintiffs' 3/29/02 RTPs on risk assess	0.30	\$150.00	\$45.00
04/26/02	BJM	Read N.'s Obj. to Plaintiffs' 3/29/02 RTPs on Best Claims	0.50	\$150.00	\$75.00
04/26/02	BJM	Review letter from A. Levy to Prothonotary re: Motion for Protective Order	0.10	\$150.00	\$15.00
04/26/02	BJM	Review letter from A. Levy re: discovery responses	0.10	\$150.00	\$15.00
04/30/02	BJM	Draft Reply to N.'s Motion for Protective Order (not estimate/actual time)	4.00	\$150.00	\$600.00
05/01/02	BJM	Draft Reply to N.'s Motion for Protective Order (not estimate/actual time)	3.00	\$150.00	\$450.00
05/02/02	BJM	Read Order of 4/30/02 on N.'s Motion for Protective Order	0.10	\$150.00	\$15.00
05/03/02	BJM	Prepare Comprehensive Motion	10.00	\$150.00	\$1,500.00
05/03/02	BJM	Set up office computer at home specifically for Berg	0.25	\$150.00	\$37.50
05/04/02	BJM	Prepare Comprehensive Motion	2.00	\$150.00	\$300.00
05/05/02	BJM	Prepare Comprehensive Motion	1.50	\$150.00	\$225.00
05/06/02	BJM	Prepare Comprehensive Motion	3.50	\$150.00	\$525.00
05/06/02	BJM	Letter to A. Levy re: depositions	0.25	\$150.00	\$37.50
05/07/02	BJM	Letter to A. Levy re: depositions	0.25	\$150.00	\$37.50
05/07/02	BJM	Review letter from A. Levy re: depositions	0.10	\$150.00	\$15.00
05/07/02	BJM	Letter to A. Levy re: deposition notices	0.25	\$150.00	\$37.50
05/08/02	BJM	Letter to A. Levy re: deposition exhibit	0.25	\$150.00	\$37.50
05/13/02	BJM	Review letter from A. Levy re: depositions	0.10	\$150.00	\$15.00
05/13/02	BJM	Letter to A. Levy re: depositions	0.50	\$150.00	\$75.00
05/13/02	BJM	Telephone call to Nationwide re: depositions	0.50	\$150.00	\$75.00
05/14/02	BJM	Prepare Comprehensive Motion	5.00	\$150.00	\$750.00
05/14/02	BJM	Letter to A. Levy re: depositions	0.50	\$150.00	\$75.00
05/14/02	BJM	Letter confirming Sherry's deposition	0.25	\$150.00	\$37.50
05/14/02	BJM	Telephone call re: depositions	0.50	\$150.00	\$75.00
05/14/02	BJM	Telephone calls confirming Sherry's deposition	0.25	\$150.00	\$37.50
05/14/02	BJM	Supplied Dan's deposition to Sherry for dep prep	0.25	\$150.00	\$37.50
05/17/02	BJM	Read N.'s Amended Dep Notice of Sharon Berg	0.10	\$150.00	\$15.00
05/17/02	BJM	Read N.'s 5/17/02 Ints (Objections filed 6/13/02)	0.50	\$150.00	\$75.00
05/17/02	BJM	Draft Objections to N.'s 5/17/02 Ints (actual time/not estimate)	2.00	\$150.00	\$300.00
05/17/02	BJM	Draft reply to N.'s 5/17/02 discovery (actual time/not estimate)	2.00	\$150.00	\$300.00
05/17/02	BJM	Review letter from A. Levy re: supp. Discovery	0.10	\$150.00	\$15.00
05/17/02	BJM	Review letter from A. Levy re: Berg dep notice	0.10	\$150.00	\$15.00
05/20/02	BJM	Review letter from W. Longo to K. Myers re: Entry/Withdrawal of Appearance	0.10	\$150.00	\$15.00
05/22/02	BJM	Deposition of David Wert	4.00	\$150.00	\$600.00
05/22/02	BJM	Travel to deposition of David Wert	2.00	\$150.00	\$300.00
05/28/02	BJM	Read Entry of Appearance of Myers for Lindgren	0.10	\$150.00	\$15.00
05/28/02	BJM	Review letter from K. Myers to W. Longo re: Entry/Withdrawal of Appearance	0.10	\$150.00	\$15.00
05/28/02	BJM	Deposition of Dean Jones	3.25	\$150.00	\$487.50
05/28/02	BJM	Deposition of Jennifer Coffman	0.50	\$150.00	\$75.00
05/28/02	BJM	Travel to depositions of Jones/Coffman	2.00	\$150.00	\$300.00
05/29/02	BJM	Letter to K. Myers re: depositions	0.25	\$150.00	\$37.50
05/29/02	BJM	Letter to Commonwealth of Pennsylvania	0.25	\$150.00	\$37.50
05/29/02	BJM	Letter to Judge Stallone re: Berg Brothers Logging	0.25	\$150.00	\$37.50

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
05/30/02	BJM	Read N.'s Reply to Plaintiffs RTPs seeking RO possessed by N. in 1997	0.10	\$150.00	\$15.00
05/30/02	BJM	Review letter from A. Levy re: discovery responses	0.10	\$150.00	\$15.00
06/05/02	BJM	Letter to Franklin County CCP	1.00	\$175.00	\$175.00
06/05/02	BJM	Letter to Jonathan Waller, Esquire	1.00	\$175.00	\$175.00
06/05/02	BJM	Review letter from A. Levy to K. Myers re: depts	0.25	\$175.00	\$43.75
06/05/02	BJM	Investigated Whitworth v. Nationwide and CCC online	2.00	\$175.00	\$350.00
06/10/02	BJM	Review letter from K. Myers re: depts	0.25	\$175.00	\$43.75
06/11/02	BJM	Letter to K. Myers re: response to Myers 6/10/02	0.50	\$175.00	\$87.50
06/11/02	BJM	Reviewed deposition of Dan Berg with Trial Notes	2.50	\$175.00	\$437.50
06/11/02	BJM	Letter to Prothy re: objections to supp. Discovery requests by Nationwide to Bergs	0.25	\$175.00	\$43.75
06/12/02	BJM	Letter to A. Levy re: discovery responses	0.50	\$175.00	\$87.50
06/12/02	BJM	Reviewed deposition of Dan Berg with Trial Notes	2.50	\$175.00	\$437.50
06/13/02	BJM	Objections to N.'s Ints of 5/17/02	0.30	\$175.00	\$52.50
06/13/02	BJM	Letter to A. Levy re: discovery responses	0.50	\$175.00	\$87.50
06/13/02	BJM	Telephone call with Sherry responding to Nationwide's 5/17/02 discovery	0.50	\$175.00	\$87.50
06/14/02	BJM	Read N.'s Dep Notice to Lindgren's Joffred and Kreider	0.10	\$175.00	\$17.50
06/14/02	BJM	Review letter from A. Levy re: discovery responses	0.10	\$175.00	\$17.50
06/14/02	BJM	Review letter from A. Levy to K. Myers re: dep notices	0.10	\$175.00	\$17.50
06/18/02	BJM	Document review for Sherry Berg dep	3.75	\$175.00	\$656.25
06/19/02	BJM	Document review for Sherry Berg dep	2.00	\$175.00	\$350.00
06/19/02	BJM	Client prep for deposition w/ 2 hrs travel time	4.25	\$175.00	\$743.75
06/20/02	BJM	Letter to Prothy re: discovery objections/responses	0.25	\$175.00	\$43.75
06/20/02	BJM	Document review for Sherry Berg dep	3.50	\$175.00	\$612.50
06/21/02	BJM	Reply w/ Objections to N.'s RTPs and Supplemental Ints (met w/client)	1.50	\$175.00	\$262.50
06/21/02	BJM	Deposition of Sharon Berg	5.00	\$175.00	\$875.00
06/21/02	BJM	Travel to deposition of Sharon Berg	2.00	\$175.00	\$350.00
06/25/02	BJM	Prepare Comprehensive Motion	3.00	\$175.00	\$525.00
06/25/02	BJM	Research internet (211 CMR 123.00)	1.00	\$175.00	\$175.00
06/25/02	BJM	Networking: consultant in CA and in Mass	1.50	\$175.00	\$262.50
06/26/02	BJM	Letter to Rocco Avallini	0.25	\$175.00	\$43.75
06/26/02	BJM	Gathered info and sent Email to Consultant	0.50	\$175.00	\$87.50
06/27/02	BJM	Letter to K. Myers re: response to letter/depts	0.50	\$175.00	\$87.50
06/27/02	BJM	Letter to Bergs	0.25	\$175.00	\$43.75
06/27/02	BJM	Reviewed documents re: Whitworth v. Nationwide	1.00	\$175.00	\$175.00
06/28/02	BJM	Telephone call to Consultant	0.25	\$175.00	\$43.75
06/28/02	BJM	Organizing and packing file for weekend work (no charge)	0.00	\$175.00	\$0.00
07/01/02	BJM	Conference with Consultant	4.00	\$175.00	\$700.00
07/01/02	BJM	Prepare for 7/2/02 deposition of Lindgren employees	6.00	\$175.00	\$1,050.00
07/02/02	BJM	Prepare for 7/2/02 deposition of Lindgren employees	5.00	\$175.00	\$875.00
07/02/02	BJM	Deposition of Doug Joffred	7.00	\$175.00	\$1,225.00
07/02/02	BJM	Travel to deposition of Doug Joffred	2.00	\$175.00	\$350.00
07/03/02	BJM	Telephone call to Consultant	0.25	\$175.00	\$43.75
07/05/02	BJM	Letter to Bergs	0.25	\$175.00	\$43.75
07/05/02	BJM	Re-draft letters to K. Myers and Bergs	0.25	\$175.00	\$43.75

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
07/05/02	BJM	Scheduled trip to meet with Consultant on 7/23/02-7/26/02	1.50	\$175.00	\$262.50
07/12/02	BJM	Letter to Consultant	0.50	\$175.00	\$87.50
07/12/02	BJM	Compiling records for Consultant	1.50	\$175.00	\$262.50
07/18/02	BJM	Letter to Consultant	0.25	\$175.00	\$43.75
07/18/02	BJM	Letter to B. Huckabee, A. Levy and K. Myers re: supp. Discovery responses	0.25	\$175.00	\$43.75
07/19/02	BJM	Supp to Plaintiffs' Reply to Expert Ints (G. Fye identified as consultant)	0.10	\$175.00	\$17.50
07/23/02	BJM	Conference with Consultant	8.00	\$175.00	\$1,400.00
07/31/02	BJM	Draft Motion to Expand Discovery (actual time/not estimate)	4.00	\$175.00	\$700.00
08/01/02	BJM	Draft Motion to Expand Discovery (actual time/not estimate)	4.00	\$175.00	\$700.00
08/01/02	BJM	Initial Facts Memo	1.00	\$175.00	\$175.00
08/05/02	BJM	Draft Motion to Expand Discovery (actual time/not estimate)	3.00	\$175.00	\$525.00
08/05/02	BJM	Letter to Robert Maniero, CPA	0.25	\$175.00	\$43.75
08/05/02	BJM	Telephone call to Consultant	0.25	\$175.00	\$43.75
08/05/02	BJM	Letter to Blue Bell National Bank	0.10	\$25.00	\$2.50
08/06/02	BJM	Draft Motion to Expand Discovery (actual time/not estimate)	3.00	\$175.00	\$525.00
08/06/02	BJM	Prepare numbered records and index for Consultant	1.50	\$175.00	\$262.50
08/07/02	BJM	Draft Appendix A, B, C (actual time/not estimate)	4.50	\$175.00	\$787.50
08/08/02	BJM	Draft Appendix D (actual time/not estimate)	6.00	\$175.00	\$1,050.00
08/09/02	BJM	Letter to Consultant	0.25	\$175.00	\$43.75
08/12/02	BJM	Letter to Consultant	0.25	\$175.00	\$43.75
08/12/02	BJM	Letter to A. Levy re: depositions	0.25	\$175.00	\$43.75
08/13/02	BJM	Letter to K. Myers re: supp. Discovery requests	0.25	\$175.00	\$43.75
08/13/02	BJM	Letter to A. Levy re: Answer to Complaint	0.25	\$175.00	\$43.75
08/14/02	BJM	Letter to Prothy re: supp. Discovery requests	0.25	\$175.00	\$43.75
08/15/02	BJM	Supplemental RTPs to Lindgren	0.10	\$175.00	\$17.50
08/16/02	BJM	Letter to K. Myers re: depositions	0.25	\$175.00	\$43.75
08/16/02	BJM	Letter to Bursner & Associates Court Reporting	0.25	\$175.00	\$43.75
08/19/02	BJM	Letter to Bursner & Associates Court Reporting	0.25	\$175.00	\$43.75
08/23/02	BJM	Letter to A. Levy re: depositions	0.25	\$175.00	\$43.75
08/23/02	BJM	Letter to David Wert	0.25	\$175.00	\$43.75
08/29/02	BJM	Letter to A. Levy re: depositions	0.25	\$175.00	\$43.75
09/03/02	BJM	Letter to A. Levy re: depositions	0.25	\$175.00	\$43.75
09/04/02	BJM	Notice Deps of Len Peterman and Ed Nieves	0.10	\$175.00	\$17.50
09/04/02	BJM	Review letter from Consultant	0.10	\$175.00	\$17.50
09/05/02	BJM	Review letter from K. Myers re: depositions	0.10	\$175.00	\$17.50
09/06/02	BJM	Notice of Intent to Subpoena Joffred's Appraiser's Licensing Info	0.20	\$175.00	\$35.00
09/10/02	BJM	RTP to Nationwide for list of trial witnesses (replied on 10/10/02)	0.10	\$175.00	\$17.50
09/10/02	BJM	Ints to KC for identity of trial witnesses (received 9/13/02)	0.10	\$175.00	\$17.50
09/10/02	BJM	Review letter from A. Levy re: depositions	0.10	\$175.00	\$17.50
09/10/02	BJM	Letter to K. Myers, A. Levy and B. Huckabee re: supp. RTPs	0.25	\$175.00	\$43.75
09/10/02	BJM	Letter to K. Myers re: deposition notices	0.25	\$175.00	\$43.75
09/11/02	BJM	Notice Deps of Lindgren's Kreider and Carr	0.10	\$175.00	\$17.50

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
09/13/02	BJM	Read KC's Reply to Ints on trial witnesses (served 9/10/02)	0.20	\$175.00	\$35.00
09/17/02	BJM	Review letter from B. Huckabee re: discovery responses	0.10	\$175.00	\$17.50
10/04/02	BJM	Letter to the MCS Group	0.25	\$175.00	\$43.75
10/08/02	BJM	Review letter from A. Levy to Prothy re: Motion for Protective Order re: deps of Len Peterman and Ed Nieves	0.10	\$175.00	\$17.50
10/09/02	BJM	Read N.'s Motion to Protect Deps of Peterman and Nieves	1.00	\$175.00	\$175.00
10/09/02	BJM	Deposition of Steven Karr	0.50	\$175.00	\$87.50
10/09/02	BJM	Deposition of Keith Kreider	2.50	\$175.00	\$437.50
10/09/02	BJM	Travel to depositions of Karr/Kreider	2.00	\$175.00	\$350.00
10/10/02	BJM	Read Order of 10/10/02 - Rule to Show Cause	0.10	\$175.00	\$17.50
10/10/02	BJM	Supp RTP to Lindgren for identify of trial witnesses and offer of prof	0.10	\$175.00	\$17.50
10/10/02	BJM	Read N.'s Reply to Plaintiffs' RTP of 9/10/02 seeking list of witnesses	0.10	\$175.00	\$17.50
10/10/02	BJM	Letter to Judge Stallone re: Bergs' Response to Motion for Protective Order re: deps of Len Peterman and Ed Nieves	0.25	\$175.00	\$43.75
10/10/02	BJM	Letter to A. Levy, K. Myers and B. Huckabee re: deps	0.25	\$175.00	\$43.75
10/10/02	BJM	Letter to Prothy re: Bergs' Response to Motion for Protective Order re: deps of Len Peterman and Ed Nieves	0.25	\$175.00	\$43.75
10/10/02	BJM	Review letter from A. Levy re: discovery responses	0.10	\$175.00	\$17.50
10/11/02	BJM	Response to N.'s Motion to Protect	0.30	\$175.00	\$52.50
10/21/02	BJM	Letter to Matthew Haeckler	0.25	\$175.00	\$43.75
10/23/02	BJM	Review letter from A. Levy to Prothy re: Praeipce to Withdraw Motion for Protective Order re: deps of Len Peterman and Ed Nieves	0.10	\$175.00	\$17.50
10/24/02	BJM	Read N.'s Praeipce to Withdraw Motion for Prot Order	0.10	\$175.00	\$17.50
10/24/02	BJM	Review letter from A. Levy re: discovery	0.10	\$175.00	\$17.50
10/25/02	BJM	Read Order cancelling argument	0.10	\$175.00	\$17.50
11/08/02	BJM	Req for Admissions to Nationwide	0.50	\$175.00	\$87.50
11/08/02	BJM	Letter to Prothy re: RFAs	0.25	\$175.00	\$43.75
11/08/02	BJM	Letter to A. Levy re: documents and Weintraub v. Nationwide	0.25	\$175.00	\$43.75
11/08/02	BJM	Letter to A. Levy re: RFAs	0.25	\$175.00	\$43.75
11/14/02	BJM	Cert of Service for Plaintiffs' RFAs of 11/8/02	0.10	\$175.00	\$17.50
11/18/02	BJM	Review letter from A. Levy re: documents	0.10	\$175.00	\$17.50
12/03/02	BJM	Letter to A. Levy re: discovery and designated witness dep	0.25	\$175.00	\$43.75
12/06/02	BJM	Read and Receive N.'s production of photographs taken on 5/16/98	0.20	\$175.00	\$35.00
12/06/02	BJM	Review letter from A. Levy to Prothy re: Objections to Bergs' 11/8/02 RFAs	0.10	\$175.00	\$17.50
12/06/02	BJM	Review letter from A. Levy to BJM re: Objections to Bergs' 11/8/02 RFAs	0.10	\$175.00	\$17.50
12/06/02	BJM	Review letter from A. Levy re: documents/designated witness deposition	0.10	\$175.00	\$17.50
12/10/02	BJM	Letter to A. Levy re: supp. Discovery and designated witness	0.25	\$175.00	\$43.75

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
12/10/02	BJM	Letter to Prothy re: supp. Discovery requests	0.25	\$175.00	\$43.75
12/12/02	BJM	Notice of Intent to Subpoena Joffred's Appraiser's License (again)	0.10	\$175.00	\$17.50
12/12/02	BJM	Supp RTP to Nationwide re Automotive Legal Services (received 1/9/03)	0.10	\$175.00	\$17.50
12/13/02	BJM	Read N.'s Objections to RFAs	0.20	\$175.00	\$35.00
12/17/02	BJM	Review letter from A. Levy re: designated witness dep	0.10	\$175.00	\$17.50
12/17/02	BJM	Letter to the MCS Group	0.25	\$175.00	\$43.75
12/18/02	BJM	Letter to A. Levy re: designated witness dep	0.25	\$175.00	\$43.75
12/18/02	BJM	Letter to House Archives and Records Center	0.10	\$25.00	\$2.50
12/30/02	BJM	Letter to A. Levy re: designated witness dep	0.25	\$175.00	\$43.75
01/01/03	BJM	Preparation of numerous transmittal letters, notices of intent to serve subpoenas, supporting documents for filing, photocopying, filing, etc.	60.00	\$25.00	\$1,500.00
01/01/03	BJM	Copying through the course of litigation (2003-2004)	80.00	\$18.00	\$1,440.00
01/06/03	BJM	Letter to K. Myers, B. Huckabee and A. Levy re: prior Berg business matter with Judge Stallone	0.25	\$175.00	\$43.75
01/06/03	BJM	Letter to K. Myers and B. Huckabee re: designated Nationwide witness deposition	0.25	\$175.00	\$43.75
01/06/03	BJM	Letter to A. Levy re: designated witness dep	0.25	\$175.00	\$43.75
01/06/03	BJM	Letter to A. Levy re: depositions/discovery	0.25	\$175.00	\$43.75
01/09/03	BJM	Draft Memo of Law re: Motion for Summary Judgment	7.00	\$175.00	\$1,225.00
01/09/03	BJM	Read Nationwide's Objection and Reply to Plaintiffs' 12/10/02 RTPs	1.00	\$175.00	\$175.00
01/09/03	BJM	Review letter from A. Levy re: objections/responses to Bergs' 12/10/02 RTPs	0.10	\$175.00	\$17.50
01/10/03	BJM	Review Nationwide's objections and response to discovery with documents and photographs	0.25	\$175.00	\$43.75
01/10/03	BJM	Letter to A. Levy re: discovery responses	0.25	\$175.00	\$43.75
01/15/03	BJM	Review letter from A. Levy re: discovery	0.25	\$175.00	\$43.75
01/16/03	BJM	Letter to K. Myers and B. Huckabee re: designated Nationwide witness deposition	0.25	\$175.00	\$43.75
01/23/03	BJM	Review letter from A. Levy re: depositions	0.10	\$175.00	\$17.50
01/27/03	BJM	Letter to A. Levy re: amended deposition notice	0.25	\$175.00	\$43.75
02/03/03	BJM	Draft Nationwide designated witness deposition notice	0.50	\$175.00	\$87.50
02/03/03	BJM	Letter to K. Myers and B. Huckabee re: designated Nationwide witness deposition	0.25	\$175.00	\$43.75
02/03/03	BJM	Letter to A. Levy re: designated witness dep	0.25	\$175.00	\$43.75
02/03/03	BJM	Telephone call to Nationwide re: designated witness deposition	0.25	\$175.00	\$43.75
02/05/03	BJM	Letter to A. Levy re: deposition date/time	0.25	\$175.00	\$43.75
02/05/03	BJM	Review letter from K. Myers re: deposition date/time	0.10	\$175.00	\$17.50
02/05/03	BJM	Review letter from A. Levy re: amended dep notice	0.10	\$175.00	\$17.50
02/08/03	BJM	Prepare for designated witness deposition	3.00	\$175.00	\$525.00
02/10/03	BJM	Draft Nationwide designated witness deposition notice	0.25	\$175.00	\$43.75
02/10/03	BJM	Review letter from A. Levy re: designated witness dep	0.10	\$175.00	\$17.50
02/10/03	BJM	Letter to K. Myers re: deposition	0.25	\$175.00	\$43.75
02/11/03	BJM	Reviewing draft Motion for Summary Judgment	2.00	\$175.00	\$350.00

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
02/11/03	BJM	Organize and copy prior court orders and responses re: designated witness deposition	2.00	\$175.00	\$350.00
02/11/03	BJM	Document review re: designated witness dep	2.00	\$175.00	\$350.00
02/11/03	BJM	Amend designated witness deposition notice to include repair estimates	0.50	\$175.00	\$87.50
02/11/03	BJM	Document review and prepare questions re: designated witness deposition	1.50	\$175.00	\$262.50
02/11/03	BJM	Letter to A. Levy re: designated witness dep	0.25	\$175.00	\$43.75
02/12/03	BJM	Prepare questions re: designated witness dep	5.50	\$175.00	\$962.50
02/12/03	BJM	Letter to A. Levy re: scope of designated witness dep	0.25	\$175.00	\$43.75
02/12/03	BJM	Review letter from A. Levy re: Bates documents	0.10	\$175.00	\$17.50
02/12/03	BJM	File review	2.00	\$175.00	\$350.00
02/13/03	BJM	Prepare questions re: designated witness dep	5.50	\$175.00	\$962.50
02/14/03	BJM	Prepare questions re: designated witness dep	2.75	\$175.00	\$481.25
02/14/03	BJM	Letter to K. Myers re: deposition exhibits	0.25	\$175.00	\$43.75
02/15/03	BJM	Prepare questions re: designated witness dep	3.50	\$175.00	\$612.50
02/16/03	BJM	Review letter from K. Myers re: deposition	0.10	\$175.00	\$17.50
02/18/03	BJM	Prepare questions re: designated witness dep	1.50	\$175.00	\$262.50
02/20/03	BJM	Prepare new deposition notice to designated witness	0.50	\$175.00	\$87.50
02/20/03	BJM	Letter to A. Levy re: amended deposition notice	0.25	\$175.00	\$43.75
02/25/03	BJM	Prepare new deposition notice to designated witness	2.00	\$175.00	\$350.00
02/26/03	BJM	Prepare new deposition notice to designated witness	2.00	\$175.00	\$350.00
02/28/03	BJM	Prepare new deposition notice to designated witness	2.00	\$175.00	\$350.00
03/03/03	BJM	Letter to A. Levy re: settlement	0.25	\$175.00	\$43.75
03/04/03	BJM	Prepare new deposition notice to designated witness	4.00	\$175.00	\$700.00
03/05/03	BJM	Prepare new deposition notice to designated witness	2.25	\$175.00	\$393.75
03/05/03	BJM	Letter to A. Levy re: deposition	0.10	\$25.00	\$2.50
03/06/03	BJM	Prepare new deposition notice to designated witness	1.00	\$175.00	\$175.00
03/06/03	BJM	Review letter from K. Myers re: deposition	0.10	\$175.00	\$17.50
03/07/03	BJM	Letter to A. Levy, K. Myers, B. Huckabee re: deps	0.25	\$175.00	\$43.75
03/09/03	BJM	Prepare new deposition notice to designated witness	3.00	\$175.00	\$525.00
03/10/03	BJM	Prepare new deposition notice to designated witness	0.50	\$175.00	\$87.50
03/10/03	BJM	Letter to A. Levy re: settlement	0.25	\$175.00	\$43.75
03/11/03	BJM	Prepare questions re: designated witness dep and organization for deposition	4.50	\$175.00	\$787.50
03/11/03	BJM	Deposition of E. Michael O'Leary	3.25	\$175.00	\$568.75
03/11/03	BJM	Packing/travel to deposition of E. Michael O'Leary	2.00	\$175.00	\$350.00
03/12/03	BJM	"Clean up" following deps including correspondence to Defs	1.50	\$175.00	\$262.50
03/13/03	BJM	Review letter from A. Levy re: response to BJM 3/12/03 letter	0.25	\$175.00	\$43.75
03/13/03	BJM	Telephone call to Nationwide	0.25	\$175.00	\$43.75
03/18/03	BJM	Prepare Motion for Summary Judgment	7.00	\$175.00	\$1,225.00
03/18/03	BJM	Letter to A. Levy re: discovery, motion and settlement	0.25	\$175.00	\$43.75

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
03/18/03	BJM	Telephone call to Nationwide	0.25	\$175.00	\$43.75
03/19/03	BJM	Prepare Motion for Summary Judgment	10.50	\$175.00	\$1,837.50
03/20/03	BJM	Prepare Motion for Summary Judgment	13.75	\$175.00	\$2,406.25
03/21/03	BJM	Draft RTPs to Nationwide	2.00	\$175.00	\$350.00
03/21/03	BJM	Draft RFAs and Certificate of Service to Nationwide	2.50	\$175.00	\$437.50
03/21/03	BJM	Letter to A. Levy re: RFAs	0.25	\$175.00	\$43.75
03/22/03	BJM	Revise Motion for Summary Judgment	2.00	\$175.00	\$350.00
03/23/03	BJM	Revise Motion for Summary Judgment	2.75	\$175.00	\$481.25
03/24/03	BJM	Draft RTP to Lindgren	2.50	\$175.00	\$437.50
03/24/03	BJM	Letter to Prothy re: RFAs	0.25	\$175.00	\$43.75
03/25/03	BJM	Draft RFAs and Certificate of Service to Lindgen	2.50	\$175.00	\$437.50
03/25/03	BJM	Letter to Prothy re: RFAs	0.25	\$175.00	\$43.75
03/25/03	BJM	Letter to K. Myers re: RFAs	0.25	\$175.00	\$43.75
03/31/03	BJM	Draft supp. RTPs to Nationwide	0.25	\$175.00	\$43.75
03/31/03	BJM	Letter to A. Levy re: supp. RTPs	0.25	\$175.00	\$43.75
03/31/03	BJM	Letter to Prothy re: supp. RTPs	0.25	\$175.00	\$43.75
04/01/03	BJM	File Certificate of Service of Plaintiffs' 3/31/03 supp. RTPs to Nationwide	0.10	\$175.00	\$17.50
04/03/03	BJM	Draft supp. INTs to Nationwide	1.00	\$175.00	\$175.00
04/03/03	BJM	Letter to A. Levy re: supp. INTs	0.25	\$175.00	\$43.75
04/03/03	BJM	Letter to Prothy re: supp. INTs	0.25	\$175.00	\$43.75
04/04/03	BJM	Review and copy Nationwide's document production for pending motion	2.50	\$175.00	\$437.50
04/04/03	BJM	File Certificate of Service of Plaintiffs' 4/3/03 supp. INTs	0.10	\$175.00	\$17.50
04/04/03	BJM	Review Act and Regs online	1.50	\$175.00	\$262.50
04/04/03	BJM	Pack materials for weekend work at home	0.50	\$175.00	\$87.50
04/05/03	BJM	Review David Wert's deposition	1.50	\$175.00	\$262.50
04/07/03	BJM	Prepare chronology of Defendants' discovery responses and Nationwide's inspections	3.50	\$175.00	\$612.50
04/07/03	BJM	Letter to A. Levy, K. Myers, B. Huckabee re: Notice of Intent to Serve Subpoena to PA Insurance Dept	0.25	\$175.00	\$43.75
04/09/03	BJM	Review Doug Wiltmer's deposition	1.50	\$175.00	\$262.50
04/09/03	BJM	Review Keith Kreider's deposition	1.00	\$175.00	\$175.00
04/10/03	BJM	Review Kreider and Weinrich depositions	2.50	\$175.00	\$437.50
04/10/03	BJM	Letter to A. Levy re: discovery	0.75	\$175.00	\$131.25
04/10/03	BJM	Letter to K. Myers re: repair documents	0.25	\$175.00	\$43.75
04/10/03	BJM	Review letter from A. Levy re: responses to RFAs/Subpoena	0.10	\$175.00	\$17.50
04/10/03	BJM	Telephone call from A. Levy	0.50	\$175.00	\$87.50
04/11/03	BJM	Letter to K. Myers re: repair documents and inspection	0.25	\$175.00	\$43.75
04/11/03	BJM	Discuss file with HM	1.00	\$175.00	\$175.00
04/11/03	BJM	Discuss file with BJM	1.00	\$350.00	\$350.00
04/16/03	BJM	Discuss file with Consultant and investigation regarding subpoena to Chrysler, Car-O-Liner and I-Car	2.00	\$175.00	\$350.00
04/16/03	BJM	Review I-CAR web page and courses	1.00	\$175.00	\$175.00
04/17/03	BJM	Review KC's deposition	1.00	\$175.00	\$175.00
04/17/03	BJM	Review I-CAR publications	1.25	\$175.00	\$218.75
04/18/03	BJM	Letter to K. Myers re: inspection of repair docs	0.25	\$175.00	\$43.75
04/18/03	BJM	Telephone call with Lindgren's counsel	0.25	\$175.00	\$43.75
04/18/03	BJM	Internet Research re: Blue Ribbon	1.00	\$175.00	\$175.00
04/21/03	BJM	Draft INTs to KC Auto Body	0.25	\$175.00	\$43.75
04/21/03	BJM	Review and digest David Bowen's deposition	2.00	\$175.00	\$350.00

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
04/21/03	BJM	Letter to A. Levy re: discovery and designated witness dep	0.25	\$175.00	\$43.75
04/21/03	BJM	Letter to B. Huckabee re: missing documents and deposition testimony	0.25	\$175.00	\$43.75
04/21/03	BJM	Letter to Prothy re: Bergs' INTs to KC Auto	0.25	\$175.00	\$43.75
04/21/03	BJM	Telephone call to KC Auto	0.25	\$175.00	\$43.75
04/21/03	BJM	Telephone call to Consultant	0.25	\$175.00	\$43.75
04/21/03	BJM	Review ASE's web page	1.00	\$175.00	\$175.00
04/23/03	BJM	Review and digest Joffred's 2nd deposition	2.00	\$175.00	\$350.00
04/23/03	BJM	Letter to B. Huckabee re: Bergs' INTs to KC Auto	0.25	\$175.00	\$43.75
04/24/03	BJM	INTs to KC requesting amounts paid by Lindgren to KC for frame work	0.25	\$175.00	\$43.75
04/25/03	BJM	Letter to K. Myers re: document production and original repair documents inspection	0.25	\$175.00	\$43.75
04/25/03	BJM	Review letter from K. Myers re: Lindgren's file material	0.10	\$175.00	\$17.50
04/25/03	BJM	Review letter from A. Levy re: Notice of Intent to Serve Subpoena to PA Dept of Insurance	0.10	\$175.00	\$17.50
04/25/03	BJM	Review documents faxed by K. Myers	1.00	\$175.00	\$175.00
04/25/03	BJM	Conference with K. Myers	2.00	\$175.00	\$350.00
04/25/03	BJM	Travel time to conference with K. Myers	0.75	\$175.00	\$131.25
04/25/03	BJM	Review Lindgren's RTPs	1.50	\$175.00	\$262.50
04/28/03	BJM	Review Nationwide's subpoena	0.25	\$175.00	\$43.75
04/28/03	BJM	Review Dan Berg's deposition	0.50	\$175.00	\$87.50
04/28/03	BJM	Letter to K. Myers re: document production and Lindgren's responses to Bergs' RFAs	0.25	\$175.00	\$43.75
04/28/03	BJM	Revise letter to K. Myers	0.25	\$175.00	\$43.75
04/28/03	BJM	Letter to PA Insurance Dept re: subpoena	0.25	\$175.00	\$43.75
04/28/03	BJM	Letter to Prothy re: Certificate Prerequisite to Service of Subpoena	0.25	\$175.00	\$43.75
04/28/03	BJM	Email to Consultant	0.10	\$175.00	\$17.50
04/29/03	BJM	Draft and file Certificate Prerequisite to Service of a Subpoena	0.25	\$175.00	\$43.75
04/29/03	BJM	Review and digest Dan Berg's deposition	1.50	\$175.00	\$262.50
04/29/03	BJM	Review and digest Dan Berg's deposition	3.00	\$175.00	\$525.00
04/29/03	BJM	Review letter from A. Levy re: discovery responses	0.10	\$175.00	\$17.50
04/29/03	BJM	Review reports of Consultant	1.00	\$175.00	\$175.00
04/30/03	BJM	Letter/Email to Consultant	0.25	\$175.00	\$43.75
05/01/03	BJM	Review Sharon Berg's deposition	2.00	\$175.00	\$350.00
05/01/03	BJM	Review letter from B. Huckabee re: discovery responses	0.10	\$175.00	\$17.50
05/02/03	BJM	Review Sharon Berg's deposition	2.75	\$175.00	\$481.25
05/03/03	BJM	Review Sharon Berg's deposition	1.00	\$175.00	\$175.00
05/05/03	BJM	Revise Motion for Summary Judgment	4.25	\$175.00	\$743.75
05/05/03	BJM	Review letter from A. Levy to Prothy re: objections and answers to Bergs' 3/21/03 RFAs	0.10	\$175.00	\$17.50
05/05/03	BJM	Review letter from A. Levy re: objections and answers to Bergs' 3/21/03 RFAs	0.10	\$175.00	\$17.50
05/06/03	BJM	Review Nationwide's reply to INTs/RTPs	0.50	\$175.00	\$87.50
05/06/03	BJM	Review Nationwide's Objections and Answers to Plaintiffs' 3/21/03 RFAs	0.50	\$175.00	\$87.50
05/06/03	BJM	Revise Motion for Summary Judgment	5.75	\$175.00	\$1,006.25
05/07/03	BJM	Review Motion for Summary Judgment	3.00	\$175.00	\$525.00
05/07/03	BJM	Review Joffred deposition	2.50	\$175.00	\$437.50

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
05/07/03	BJM	Letter to K. Myers re: inspection of original repair documents and request for additional documents	0.25	\$175.00	\$43.75
05/07/03	BJM	Review transcript re: Berg appraisal dispute	2.25	\$175.00	\$393.75
05/08/03	BJM	Revise Motion for Summary Judgment	5.50	\$175.00	\$962.50
05/08/03	BJM	Review Kreider, Weinrich and Wert depositions	1.50	\$175.00	\$262.50
05/08/03	BJM	Telephone call to Consultant	0.50	\$175.00	\$87.50
05/08/03	BJM	Discuss file with HM re: roof damage and total loss appraisal	0.50	\$175.00	\$87.50
05/08/03	BJM	Discuss file with BJM re: roof damage and total loss appraisal	0.50	\$350.00	\$175.00
05/09/03	BJM	Review Nationwide's reply to RTPs/Exhibit "A"	0.75	\$175.00	\$131.25
05/09/03	BJM	Draft supp. Discovery to Nationwide	3.00	\$175.00	\$525.00
05/09/03	BJM	Supp. RTP to Lindgren for check used to pay KC Auto	0.25	\$175.00	\$43.75
05/09/03	BJM	Letter to Michael Nelson re: discovery documents and Bergs' 6/8/00 Motion for Sanctions	0.75	\$175.00	\$131.25
05/09/03	BJM	Revise letter to Michael Nelson re: discovery documents and Bergs' 6/8/00 Motion for Sanctions	1.00	\$175.00	\$175.00
05/09/03	BJM	Memo/notes consultant and HM re: invoice items	2.00	\$175.00	\$350.00
05/09/03	BJM	Telephone call to Consultant	0.75	\$175.00	\$131.25
05/09/03	BJM	Telephone call to Consultant	0.50	\$175.00	\$87.50
05/09/03	BJM	Discuss file with HM	1.00	\$175.00	\$175.00
05/09/03	BJM	Discuss file with BJM	1.00	\$350.00	\$350.00
05/10/03	BJM	Revise Motion for Summary Judgment and develop motion on fees	3.75	\$175.00	\$656.25
05/12/03	BJM	Revise Motion for Summary Judgment/DL photos	1.75	\$175.00	\$306.25
05/12/03	BJM	Draft supp. RTPs to Nationwide	0.00	\$175.00	\$0.00
05/12/03	BJM	Prepare Notice of Deposition to Terry Shaw	0.25	\$175.00	\$43.75
05/12/03	BJM	Review letter from A. Levy re: Ruoss deposition	0.10	\$175.00	\$17.50
05/12/03	BJM	Review fax from Nationwide	0.10	\$175.00	\$17.50
05/12/03	BJM	Letter to A. Levy re: Ruoss dep and settlement	0.25	\$175.00	\$43.75
05/12/03	BJM	Letter to A. Levy re: supp. Discovery requests	0.25	\$175.00	\$43.75
05/12/03	BJM	Letter to K. Myers re: supp. Discovery requests	0.25	\$175.00	\$43.75
05/12/03	BJM	Telephone call to Dick Fatkin/Dick's Auto Body	0.25	\$175.00	\$43.75
05/12/03	BJM	Telephone call to Dan Ruoss	0.25	\$175.00	\$43.75
05/12/03	BJM	Telephone call to Consultant	0.50	\$175.00	\$87.50
05/12/03	BJM	Schedule trip to Fye's for 6/12/03	0.50	\$175.00	\$87.50
05/12/03	BJM	Draft affidavit of MAG re: Rouse	0.25	\$175.00	\$43.75
05/12/03	BJM	Review documens from Herb Motors	2.00	\$175.00	\$350.00
05/13/03	BJM	Revise Motion for Summary Judgment (up to Wert)	2.25	\$175.00	\$393.75
05/13/03	BJM	Review letter from B. Buckabee to A. Levy re: Ruoss dep	0.10	\$175.00	\$17.50
05/14/03	BJM	Revise Motion for Summary Judgment (Wert, O'Leary and BR Guarantees)	13.50	\$175.00	\$2,362.50
05/14/03	BJM	Review letter from PA Insurance Dept	0.10	\$175.00	\$17.50
05/15/03	BJM	Revise Motion for Summary Judgment	1.50	\$175.00	\$262.50
05/15/03	BJM	Review Insurance Department 5/14/03 reply to Subpoena	0.25	\$175.00	\$43.75
05/15/03	BJM	Review O'Leary's deposition	1.00	\$175.00	\$175.00
05/15/03	BJM	Letter to A. Levy, K. Myers and B. Huckabee re: production of documents from the Insurance Dept	0.25	\$175.00	\$43.75
05/15/03	BJM	Review old correspondence	2.00	\$175.00	\$350.00
05/16/03	BJM	Revise Motion for Summary Judgment (BR Guarantee) and chronology	6.00	\$175.00	\$1,050.00
05/16/03	BJM	Review O'Leary deposition and web research	0.25	\$175.00	\$43.75

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
05/16/03	BJM	Prepare chronology (claim log)	1.75	\$175.00	\$306.25
05/17/03	BJM	Review Emails at home	6.00	\$175.00	\$1,050.00
05/19/03	BJM	Revise Motion for Summary Judgment; footnote 10; bad faith; Appendix C	7.50	\$175.00	\$1,312.50
05/19/03	BJM	Telephone call to Consultant	1.50	\$175.00	\$262.50
05/20/03	BJM	Revise Motion for Summary Judgment - Appendix B and Index	3.25	\$175.00	\$568.75
05/21/03	BJM	Revise Motion for Summary Judgment - Appendix B and Index	9.75	\$175.00	\$1,706.25
05/22/03	BJM	Revise Motion for Summary Judgment - "Ghost Claim Log"	5.50	\$175.00	\$962.50
05/22/03	BJM	Research O'Donnell v. Allstate and Unfair Claims Act	3.25	\$175.00	\$568.75
05/23/03	BJM	Revise Motion for Summary Judgment - BR control log	2.25	\$175.00	\$393.75
05/23/03	BJM	Revise Motion for Summary Judgment - Appendix B	3.50	\$175.00	\$612.50
05/23/03	BJM	Review Stitzel dep and claim log - "ghost log"	1.75	\$175.00	\$306.25
05/23/03	BJM	Review dep transcripts re: random inspections re: "ghost log"	3.25	\$175.00	\$568.75
05/25/03	BJM	Prepare outline to Section III - Motion for Summary Judgment	1.00	\$175.00	\$175.00
05/26/03	BJM	Missing total loss appraisal	1.75	\$175.00	\$306.25
05/26/03	BJM	Revise Motion for Summary Judgment - conversion of Appendix C	2.25	\$175.00	\$393.75
05/27/03	BJM	Dictation - Index to Exhibits	1.00	\$175.00	\$175.00
05/27/03	BJM	Revise Motion for Summary Judgment - conversion of Appendix C	10.50	\$175.00	\$1,837.50
05/28/03	BJM	Revise Motion for Summary Judgment - conversion of Appendix C	1.50	\$175.00	\$262.50
05/28/03	BJM	Memo and conference with law clerk on load star	1.00	\$175.00	\$175.00
05/28/03	BJM	Collating exhibits re: Motion for Summary Judgment	2.00	\$175.00	\$350.00
05/28/03	BJM	Review letter from A. Levy re: Shaw/Ruoss depts	0.10	\$175.00	\$17.50
05/28/03	BJM	Letter to A. Levy re: Ruoss dep	0.25	\$175.00	\$43.75
05/28/03	BJM	Review letter from A. Levy to Dept of Transport re: subpoena	0.10	\$175.00	\$17.50
05/29/03	BJM	Review Nationwide correspondence	0.25	\$175.00	\$43.75
05/29/03	BJM	Revise Motion for Summary Judgment - missing photos/appraisal	3.25	\$175.00	\$568.75
05/29/03	BJM	Revise Motion for Summary Judgment - BR design flaws	2.00	\$175.00	\$350.00
05/29/03	BJM	Review Nationwide's Certificate Prerequisite to Service of Subpoenas (2)	0.00	\$175.00	\$0.00
05/30/03	BJM	Revise Motion for Summary Judgment - BR design flaws	5.25	\$175.00	\$918.75
05/31/03	BJM	Revise Motion for Summary Judgment - conversion of Appendix D - Exhibit 90	3.50	\$175.00	\$612.50
06/01/03	BJM	Revise Motion for Summary Judgment - conversion of Appendix D - Exhibit 98	1.75	\$175.00	\$306.25
06/02/03	BJM	Revise Motion for Summary Judgment - conversion of Appendix D - Exhibit 101	1.50	\$175.00	\$262.50
06/02/03	BJM	Gathering exhibits	0.50	\$175.00	\$87.50
06/02/03	BJM	Finalization of conversion of Appendix B	2.00	\$175.00	\$350.00
06/02/03	BJM	Telephone call to A. Levy re: Ruoss dep	0.25	\$175.00	\$43.75

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
06/03/03	BJM	Revise Motion for Summary Judgment - Parts and Labor discounts	2.00	\$175.00	\$350.00
06/03/03	BJM	Letter to John Elash, Esquire	0.25	\$175.00	\$43.75
06/03/03	BJM	Email : O'Leary dep re: admissions of utmost good faith and fair dealing, concealment, etc.	1.25	\$175.00	\$218.75
06/03/03	BJM	Telephone call to Attorney Elash re: Bonenberger	0.25	\$175.00	\$43.75
06/04/03	BJM	Review Motion for Summary Judgment	5.25	\$175.00	\$918.75
06/04/03	BJM	Review Bonenberger documents	1.25	\$175.00	\$218.75
06/04/03	BJM	Review letter from A. Levy re: Ruoss deposition	0.10	\$175.00	\$17.50
06/04/03	BJM	Letter to A. Levy re: Stipulation and Ruoss dep	0.25	\$175.00	\$43.75
06/04/03	BJM	Telephone call to Dan Ruoss	0.50	\$175.00	\$87.50
06/05/03	BJM	Review Bonenberger motion for counsel fees, Nationwide's reply and internet research	1.00	\$175.00	\$175.00
06/05/03	BJM	Review letter from A. Levy re: subpoena to CJ Tires and Norco Jeep, 0	0.10	\$175.00	\$17.50
06/06/03	BJM	Revise language and exhibit order re: Motion for Summary Judgment	5.25	\$175.00	\$918.75
06/06/03	BJM	Revise Motion for Summary Judgment - finalize conversion of Appendix D	1.00	\$175.00	\$175.00
06/06/03	BJM	Draft sequential Bad Faith section after Appendix D	3.25	\$175.00	\$568.75
06/06/03	BJM	Review letter from A. Levy to Daniel Ruoss re: deposition	0.10	\$175.00	\$17.50
06/07/03	BJM	Revise Motion for Summary Judgment - Footnote 22	1.25	\$175.00	\$218.75
06/08/03	BJM	Revise Motion for Summary Judgment - Polishing	1.00	\$175.00	\$175.00
06/09/03	BJM	Revise Motion for Summary Judgment -language from Leab and BMW	1.00	\$175.00	\$175.00
06/09/03	BJM	Revise Motion for Summary Judgment - review Leab and adding language to motion	0.50	\$175.00	\$87.50
06/09/03	BJM	Revise Motion for Summary Judgment	2.25	\$175.00	\$393.75
06/09/03	BJM	Revise Motion for Summary Judgment - Bad Faith section	4.25	\$175.00	\$743.75
06/09/03	BJM	Review documents/dep summaries	2.00	\$175.00	\$350.00
06/09/03	BJM	Letter to A. Levy re: Ruoss deposition	0.25	\$175.00	\$43.75
06/09/03	BJM	Telephone call from Dan Ruoss	0.50	\$175.00	\$87.50
06/10/03	BJM	Regulatory Amendments	1.50	\$175.00	\$262.50
06/10/03	BJM	Revise Motion for Summary Judgment - footnotes 36 and 37, finalize bad faith section, conflict of interest	5.50	\$175.00	\$962.50
06/11/03	BJM	Revise Motion for Summary Judgment - lodestar research	1.50	\$175.00	\$262.50
06/11/03	BJM	Revise Motion for Summary Judgment - Bad Faith: Total loss handling procedure	4.75	\$175.00	\$831.25
06/11/03	BJM	Locating copy of House Bill 1250 and lodestar research	1.00	\$175.00	\$175.00
06/11/03	BJM	Letter to A. Levy re: supp. RTPs	0.25	\$175.00	\$43.75
06/11/03	BJM	Letter to K. Myers re: supp RTPs	0.25	\$175.00	\$43.75
06/11/03	BJM	Letter to B. Huckabee re: Joffred dep testimony	0.25	\$175.00	\$43.75
06/11/03	BJM	Review letter from A. Levy re: discovery responses	0.10	\$175.00	\$17.50
06/12/03	BJM	See Email documentation	3.00	\$175.00	\$525.00
06/12/03	BJM	Footnotes, Lindgren's fraud	4.25	\$175.00	\$743.75
06/12/03	BJM	Lindgren's fraud	4.50	\$175.00	\$787.50
06/12/03	BJM	Telephone call with Consultant	0.75	\$175.00	\$131.25
06/13/03	BJM	See Email documentation	11.00	\$175.00	\$1,925.00

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
06/13/03	BJM	Review letter from A. Levy re: Shaw deposition	0.10	\$175.00	\$17.50
06/14/03	BJM	See Email documentation	4.25	\$175.00	\$743.75
06/15/03	BJM	See Email documentation	1.75	\$175.00	\$306.25
06/16/03	BJM	See Email documentation	0.50	\$175.00	\$87.50
06/16/03	BJM	Review Complaint	0.50	\$175.00	\$87.50
06/16/03	BJM	Review documents from Ruoss	1.00	\$175.00	\$175.00
06/16/03	BJM	Revise Motion for Summary Judgment - adding exhibits	0.50	\$175.00	\$87.50
06/16/03	BJM	Revise Motion for Summary Judgment - consumer reports exhibits and loss of certainty effect	3.00	\$175.00	\$525.00
06/16/03	BJM	Revise Motion for Summary Judgment and Memo	1.00	\$175.00	\$175.00
06/16/03	BJM	Letter to A. Levy re: Shaw deposition	0.25	\$175.00	\$43.75
06/16/03	BJM	Review letter from A. Levy re: Shaw deposition and Ruoss call	0.10	\$175.00	\$17.50
06/16/03	BJM	Telephone call with Dan Berg	0.50	\$175.00	\$87.50
06/17/03	BJM	Draft Memo of Law re: Motion for Summary Judgment	6.50	\$175.00	\$1,137.50
06/17/03	BJM	See Email documentation	1.50	\$175.00	\$262.50
06/17/03	BJM	Senate bill research	0.25	\$175.00	\$43.75
06/17/03	BJM	Letter to Crawford's Auto Center	0.25	\$175.00	\$43.75
06/17/03	BJM	Work Product Important Points	1.50	\$175.00	\$262.50
06/18/03	BJM	Draft Memo of Law re: Motion for Summary Judgment	4.00	\$175.00	\$700.00
06/18/03	BJM	Prepare for Ruoss dep	1.50	\$175.00	\$262.50
06/18/03	BJM	Letter to A. Levy re: Ruoss telephone call	0.50	\$175.00	\$87.50
06/18/03	BJM	Letter to A. Levy re: Ruoss dep	0.50	\$175.00	\$87.50
06/18/03	BJM	Letter to Crawford's Auto Center	0.25	\$175.00	\$43.75
06/18/03	BJM	Letter to Dan Ruoss	0.50	\$175.00	\$87.50
06/18/03	BJM	Telephone call with Levy and Ruoss	0.75	\$175.00	\$131.25
06/18/03	BJM	Telephone call with Steve Berhnt of Crawford	0.50	\$175.00	\$87.50
06/19/03	BJM	See Email documentation	7.00	\$175.00	\$1,225.00
06/19/03	BJM	Prepare for Ruoss dep	1.75	\$175.00	\$306.25
06/19/03	BJM	Deposition of Daniel Ruoss	4.75	\$175.00	\$831.25
06/19/03	BJM	Travel to deposition of Daniel Ruoss	1.75	\$175.00	\$306.25
06/20/03	BJM	Motion for Summary Judgment complete	2.25	\$175.00	\$393.75
06/20/03	BJM	Revise Memo of Law re: Motion for Summary Judgment	4.75	\$175.00	\$831.25
06/20/03	BJM	Letter to Consultant	0.25	\$175.00	\$43.75
06/25/03	BJM	Review letter from A. Levy re: production of documents of PA Dept of Transportation	0.10	\$175.00	\$17.50
06/26/03	BJM	Review letter from A. Levy to Prothy re: Certificate Prerequisite to Service of Subpoena	0.10	\$175.00	\$17.50
06/27/03	BJM	Review Nationwide's Certificate Prerequisite to Service of Subpoen	0.00	\$175.00	\$0.00
06/30/03	BJM	Complete Memo of Law re: Motion for Summary Judgment	8.25	\$175.00	\$1,443.75
07/01/03	BJM	Complete Memo of Law re: Motion for Summary Judgment	7.25	\$175.00	\$1,268.75
07/02/03	BJM	Memo of Law re: Motion for Summary Judgment complete and printing	4.00	\$175.00	\$700.00
07/02/03	BJM	Motion for Summary Judgment complete and printing	3.25	\$175.00	\$568.75
07/02/03	BJM	Draft proposed Order - Motion for Summary Judgment	2.00	\$175.00	\$350.00
07/02/03	BJM	Prepare supporting documents to MSJ	3.00	\$25.00	\$75.00

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
07/03/03	BJM	Revise Motion for Summary Judgment - Exhibit C - reprint	2.00	\$175.00	\$350.00
07/03/03	BJM	Revise proposed Order - Motion for Summary Judgment	0.75	\$175.00	\$131.25
07/03/03	BJM	Draft index to exhibits - Motion for Summary Judgment	2.25	\$175.00	\$393.75
07/03/03	BJM	File Motion for Partial Summary Judgment against Nationwide	0.50	\$175.00	\$87.50
07/15/03	BJM	Review letter from A. Levy re: stipulation	0.10	\$175.00	\$17.50
07/17/03	BJM	Review letter from D. Harrison re: stipulation	0.10	\$175.00	\$17.50
07/21/03	BJM	Review letter from D. Harrison to Prothy re: stipulation	0.10	\$175.00	\$17.50
07/22/03	BJM	File Stipulation of Counsel for an extension to Nationwide to file its response to Plaintiffs' Motion for Summary Judgment	0.10	\$175.00	\$17.50
07/23/03	BJM	Review WV Realty v. Northern Ins and letter to Nationwide	1.00	\$175.00	\$175.00
07/23/03	BJM	Letter to Dan Berg	0.25	\$175.00	\$43.75
07/23/03	BJM	Review letter from A. Levy re: supp. Records from PA Dept of Transportation	0.10	\$175.00	\$17.50
07/24/03	BJM	Letter to A. Levy re: supp. Records from PA Dept of Transportation	0.25	\$175.00	\$43.75
07/24/03	BJM	Letter to Bergs	0.25	\$175.00	\$43.75
07/24/03	BJM	Review letter from A. Levy re: supp. Records from PA Dept of Transportation	0.10	\$175.00	\$17.50
07/24/03	BJM	Letter to A. Levy re: original documents supplied by PA Dept of Transportation	0.25	\$175.00	\$43.75
07/24/03	BJM	Review letter from A. Levy re: production of documents from Norco Motors	0.10	\$175.00	\$17.50
07/28/03	BJM	Review 7/28/03 Order Granting Stipulation of Counsel	0.10	\$175.00	\$17.50
08/20/03	BJM	Review Nationwide's reply to Motion for Summary Judgment	3.00	\$175.00	\$525.00
08/21/03	BJM	Review Nationwide's reply to Motion for Summary Judgment	2.00	\$175.00	\$350.00
08/21/03	BJM	Prepare and file Praeipe for Argument list with Certificate of Service re: Motion for Partial Summary Judgment against Nationwide	0.50	\$175.00	\$87.50
08/21/03	BJM	Review letter from A. Levy to Prothy re: Praeipe to Remove Original Pages in Brief in Opposition to Bergs' Motion for Partial Summary Judgment	0.10	\$175.00	\$17.50
08/22/03	BJM	Review Praeipe to Remove and Insert Pages in Nationwide's Opposition to Motion for Summary Judgment and compare changes	0.50	\$175.00	\$87.50
08/23/03	BJM	Review Nationwide's reply to Motion for Summary Judgment	2.00	\$175.00	\$350.00
08/24/03	BJM	Review Nationwide's reply to Motion for Summary Judgment	1.50	\$175.00	\$262.50
08/26/03	BJM	Review Nationwide's reply to Motion for Summary Judgment	4.25	\$175.00	\$743.75
08/26/03	BJM	Atty conference re: Nationwide's reply to MSJ	0.25	\$175.00	\$43.75
08/26/03	BJM	Draft letter to Nationwide/Adam Levy	0.25	\$175.00	\$43.75
08/26/03	BJM	Atty conference re: Nationwide's reply to MSJ	0.25	\$350.00	\$87.50
08/27/03	BJM	Review of Motion for Summary Judgment with exhibits/RTPs	0.75	\$175.00	\$131.25

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
08/27/03	BJM	Finished review of Nationwide's brief to reply to Motion for Summary Judgment	2.00	\$175.00	\$350.00
08/27/03	BJM	Research Pa.R.Civ.P. 4003.3	1.25	\$175.00	\$218.75
08/27/03	BJM	Conference with HM re: file	1.00	\$175.00	\$175.00
08/27/03	BJM	Conference with BJM re: file	1.00	\$350.00	\$350.00
09/02/03	BJM	Review claim log with HM; discuss 4003.3 redactions	1.00	\$175.00	\$175.00
09/02/03	BJM	Review claim log with BJM; discuss 4003.3 redactions	1.00	\$350.00	\$350.00
09/04/03	BJM	Review letter from A. Levy re: CJ Tires documents received via subpoena	0.10	\$175.00	\$17.50
09/05/03	BJM	Web page and Mapquest research	1.00	\$175.00	\$175.00
09/11/03	BJM	Review Motion for Argument	2.00	\$175.00	\$350.00
09/12/03	BJM	Review Motion for Argument	5.50	\$175.00	\$962.50
09/12/03	BJM	Supplemental Brief for Argument	3.00	\$175.00	\$525.00
09/14/03	BJM	Prepare for Argument	3.25	\$175.00	\$568.75
09/15/03	BJM	Argumen with travel time	3.00	\$175.00	\$525.00
09/15/03	BJM	Letter to B. Huckabee re: Certificate of Trial Readiness	0.25	\$175.00	\$43.75
09/15/03	BJM	Conference, organization and Trial Praecipe	1.00	\$175.00	\$175.00
09/16/03	BJM	Research Rule 1035.3, 813 A.2d 778	1.00	\$175.00	\$175.00
09/17/03	BJM	Review 9/17/03 Order Denying Plaintiffs' Motion for Summary Judgment	0.10	\$175.00	\$17.50
09/17/03	BJM	Review documents at home	0.25	\$175.00	\$43.75
09/18/03	BJM	Letter to A. Levy re: settlement	1.25	\$175.00	\$218.75
09/18/03	BJM	Telephone call with A. Levy	0.25	\$175.00	\$43.75
09/18/03	BJM	Conference with attorneys to discuss letter to Nationwide	0.50	\$175.00	\$87.50
09/19/03	BJM	Letter to B. Huckabee, A. Levy and K. Myers re: Certificate of Trial Readiness	0.50	\$175.00	\$87.50
09/19/03	BJM	Letter to expert	0.50	\$175.00	\$87.50
09/20/03	BJM	Telephone call with A. Levy	0.10	\$175.00	\$17.50
09/26/03	BJM	Review letter from A. Levy re: objection to Certificate of Trial Readiness	0.10	\$175.00	\$17.50
10/01/03	BJM	Letter to A. Levy re: stipulation re: expert bad faith testimony and William Anderton	0.25	\$175.00	\$43.75
10/01/03	BJM	Searching for Don Phillips, P.E.	0.50	\$175.00	\$87.50
10/03/03	BJM	Review letter from A. Levy re: refusal to stipulate to expert bad faith testimony	0.10	\$175.00	\$17.50
10/06/03	BJM	Letter to Prothy re: Notice of Presenting Certificate of Trial Readiness	0.25	\$175.00	\$43.75
10/07/03	BJM	Prepare Certificate of Readiness of Plaintiffs' Notice of Presenting Certificate of Readiness for trial at Motion/Argument Court	0.50	\$175.00	\$87.50
10/07/03	BJM	Letter to A. Levy re: expert reports	0.25	\$175.00	\$43.75
10/07/03	BJM	Review fax from Consultant	0.10	\$175.00	\$17.50
10/07/03	BJM	Telephone call with A. Levy	0.25	\$175.00	\$43.75
10/07/03	BJM	Memo to BJM (5 pages) re: Fraud: Punitive Damages may be Awarded for Fraud	4.50	\$225.00	\$1,012.50
10/08/03	BJM	Letter to Consultant	0.50	\$175.00	\$87.50
10/08/03	BJM	Telephone call with Consultant	1.00	\$175.00	\$175.00
10/09/03	BJM	Review letter from A. Levy re: Certificate of Trial Readiness	0.10	\$175.00	\$17.50
10/10/03	BJM	Review Nationwide's Motion for Clarification of 6/23/00 Order	0.00	\$175.00	\$0.00

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
10/10/03	BJM	Respond to Nationwide's Motion of 10/9/03 and review docs	8.00	\$175.00	\$1,400.00
10/10/03	BJM	Review memos re: settlement	1.00	\$175.00	\$175.00
10/14/03	BJM	Review Nationwide motion of 10/9/03	0.75	\$175.00	\$131.25
10/14/03	BJM	Review letter from A. Levy re: Certificate of Trial Readiness	0.10	\$175.00	\$17.50
10/14/03	BJM	Telephone call with M. Burke re: Nelson	0.75	\$175.00	\$131.25
10/14/03	BJM	Review correspondence re: settlement negotiations	4.00	\$175.00	\$700.00
10/15/03	BJM	Review 10/14/03 Order Denying Nationwide's Motion for Clarification	0.10	\$175.00	\$17.50
10/15/03	BJM	Letter to Prothy re: Certificate of Service of Notice of Presenting Certificate of Trial Readiness	0.25	\$175.00	\$43.75
10/15/03	BJM	Letter to A. Levy re: Certificate of Trial Readiness	0.25	\$175.00	\$43.75
10/15/03	BJM	Prepare Notice of Presenting Certificate of Trial Readiness on 11/19/03 and transmittal letter	1.00	\$25.00	\$25.00
10/16/03	BJM	Prepare/file Certificate of Service of Plaintiffs' Notice of Presenting Certificate of Readiness for trial	0.10	\$175.00	\$17.50
10/16/03	BJM	Letter/Email to Herb Consultant	1.00	\$175.00	\$175.00
10/17/03	BJM	Letter to A. Levy re: William Anderton and settlement	1.50	\$175.00	\$262.50
10/17/03	BJM	Nationwide net worth research	0.75	\$175.00	\$131.25
10/17/03	BJM	Conference with DES	0.75	\$175.00	\$131.25
10/17/03	BJM	Conference with BJM	0.75	\$200.00	\$150.00
10/22/03	BJM	Letter to PA Insurance Commission	0.25	\$175.00	\$43.75
10/22/03	BJM	Letter to A. Levy re: Certificate of Trial Readiness	0.25	\$175.00	\$43.75
10/28/03	BJM	Prepare Withdrawal of Appearance of Donald Litman and transmittal letters	0.25	\$25.00	\$6.25
10/30/03	BJM	File Withdrawal of Appearance of DL	0.10	\$175.00	\$17.50
11/05/03	BJM	Review letter from A. Levy re: settlement	0.10	\$175.00	\$17.50
11/05/03	BJM	Letter to A. Levy re: settlement and Anderton file	0.50	\$175.00	\$87.50
11/05/03	BJM	Telephone call with A. Levy	0.10	\$175.00	\$17.50
11/12/03	BJM	Review letter from A. Levy re: settlement	0.10	\$175.00	\$17.50
11/18/03	BJM	Review for hearing and trial	2.00	\$175.00	\$350.00
11/18/03	BJM	Review Dan Berg's deposition	0.50	\$175.00	\$87.50
11/18/03	BJM	Letter to A. Levy, K. Myers and B. Huckabee re: Burke	0.25	\$175.00	\$43.75
11/18/03	BJM	Review letter from A. Levy re: Anderton expert report and CV	0.10	\$175.00	\$17.50
11/18/03	BJM	Telephone call with M. Burke	0.50	\$175.00	\$87.50
11/19/03	BJM	Travel to hearing	1.00	\$175.00	\$175.00
11/19/03	BJM	Hearing	1.00	\$175.00	\$175.00
11/19/03	BJM	Review 11/19/03 Order Denying Certificate of Readiness	0.00	\$175.00	\$0.00
11/19/03	BJM	Prothy's office and travel time	1.00	\$175.00	\$175.00
11/19/03	BJM	Review Nationwide expert report (Anderton)	1.00	\$175.00	\$175.00
11/19/03	BJM	Online research re: Foster	1.25	\$175.00	\$218.75
11/20/03	BJM	Preparing for trial	1.00	\$175.00	\$175.00
11/20/03	BJM	Review letter from A. Levy re: Burke	0.10	\$175.00	\$17.50
11/20/03	BJM	Letter to Consultant with exhibits	2.00	\$175.00	\$350.00
11/20/03	BJM	Telephone call with D. Garrity of Schwartzman's office	0.50	\$175.00	\$87.50
11/20/03	BJM	Re-draft letters to Consultant, file review, conference	3.00	\$175.00	\$525.00

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
11/21/03	BJM	Letter to A. Levy re: David Burke and Constance Foster	0.25	\$175.00	\$43.75
11/22/03	BJM	Review Anderton's report	1.00	\$175.00	\$175.00
11/22/03	BJM	Review videotapes re: Anderton inspection	2.00	\$175.00	\$350.00
11/24/03	BJM	Letter to A. Levy re: Anderton's file	0.25	\$175.00	\$43.75
11/24/03	BJM	Telephone call with Don Phillips	0.50	\$175.00	\$87.50
11/24/03	BJM	Gathering evidence to mail to Phillips	1.00	\$175.00	\$175.00
11/25/03	BJM	Draft RFAs to Nationwide	2.00	\$175.00	\$350.00
11/25/03	BJM	Letter to PA Insurance Commission	0.25	\$175.00	\$43.75
11/25/03	BJM	Letter to Consultant with enclosures	1.00	\$175.00	\$175.00
11/25/03	BJM	Letter to Consultant	0.50	\$175.00	\$87.50
11/25/03	BJM	Fax to Nationwide/A. Levy	0.50	\$175.00	\$87.50
11/25/03	BJM	Telephone call with A. Levy	0.50	\$175.00	\$87.50
11/25/03	BJM	Organizing old records	1.00	\$175.00	\$175.00
11/25/03	BJM	Gathering enclosures for Phillips package	1.00	\$175.00	\$175.00
11/26/03	BJM	Deps review	3.25	\$175.00	\$568.75
11/26/03	BJM	Review letter from A. Levy re: Foster expert report and CV	0.10	\$175.00	\$17.50
11/26/03	BJM	Review letter from A. Levy to Prothy re: Motion for Reconsideration of 6/23/00 and 10/14/03 Orders	0.10	\$175.00	\$17.50
11/26/03	BJM	Letter to Consultant	1.00	\$175.00	\$175.00
11/26/03	BJM	Telephone call with Schwartzman	0.25	\$175.00	\$43.75
11/26/03	BJM	Review Foster report	0.75	\$175.00	\$131.25
11/26/03	BJM	Checking facts against Foster report	0.50	\$175.00	\$87.50
11/27/03	BJM	Review Grumbein and Coffman deps	0.75	\$175.00	\$131.25
11/27/03	BJM	Review of deposition of Mike Grumbein	0.75	\$175.00	\$131.25
11/27/03	BJM	Gathering and reviewing documents	1.75	\$175.00	\$306.25
11/28/03	BJM	Draft RFAs to Nationwide	2.75	\$175.00	\$481.25
11/28/03	BJM	Review Nationwide Motion for Reconsideration	2.00	\$175.00	\$350.00
11/28/03	BJM	Review Nationwide Motion for Reconsideration	0.50	\$175.00	\$87.50
11/28/03	BJM	Organizing file and Emails	2.50	\$175.00	\$437.50
12/01/03	BJM	Finalizing 12/1/03 RFAs to Nationwide	1.50	\$175.00	\$262.50
12/01/03	BJM	Review Nationwide's production of documents	0.25	\$175.00	\$43.75
12/01/03	BJM	Letter to Prothy re: RFAs to Nationwide	0.25	\$175.00	\$43.75
12/01/03	BJM	Letter to A. Levy re: RFAs to Nationwide	0.25	\$175.00	\$43.75
12/02/03	BJM	File Certificate of Service of Plaintiffs' RFAs to Nationwide	0.00	\$175.00	\$0.00
12/03/03	BJM	Telephone call with Atty Gorberg on Warranty 8371	0.10	\$175.00	\$17.50
12/04/03	BJM	Telephone call with Don Phillips	1.25	\$175.00	\$218.75
12/04/03	BJM	Received fee agreement from Schwartzman, management meeting, check/letter to Schwartzman	0.50	\$175.00	\$87.50
12/04/03	BJM	Prepare package for Phillips	1.00	\$175.00	\$175.00
12/11/03	BJM	Telephone call with Sara of Schwartzman's office	0.50	\$175.00	\$87.50
12/11/03	BJM	Telephone call with M. Burke	0.25	\$175.00	\$43.75
12/12/03	BJM	Review 12/11/03 Order Denying Nationwide's Motion for Reconsideration	0.00	\$175.00	\$0.00
12/12/03	BJM	Review documents for Schwartzman	2.25	\$175.00	\$393.75
12/12/03	BJM	Package and letter to Schwartzman	0.50	\$175.00	\$87.50
12/12/03	BJM	Conference with Schwartzman	0.50	\$175.00	\$87.50
12/15/03	BJM	Letter to Consultant with enclosures	3.50	\$175.00	\$612.50
12/15/03	BJM	Review old motions to go to Schwartzman	1.00	\$175.00	\$175.00
12/16/03	BJM	Draft RTPs to Nationwide pursuant to 12/11/03 Order re: Anderton	3.50	\$175.00	\$612.50
12/16/03	BJM	Letter to A. Levy re: supp. RTPs	0.25	\$175.00	\$43.75
12/16/03	BJM	Telephone call with Don Phillips	0.25	\$175.00	\$43.75
12/16/03	BJM	Review old memos to go to Schwartzman	1.00	\$175.00	\$175.00

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
12/16/03	BJM	Received Court's Order re: Anderton	0.25	\$175.00	\$43.75
12/17/03	BJM	Draft INTs re: \$15K settlement v. legal costs	0.50	\$175.00	\$87.50
12/17/03	BJM	Draft INTs	2.50	\$175.00	\$437.50
12/17/03	BJM	Draft supp. RTPs to Nationwide	0.00	\$175.00	\$0.00
12/17/03	BJM	Letter to A. Levy re: supp INTs	0.25	\$175.00	\$43.75
12/17/03	BJM	Letter to Prothy re: supp. RTPs	0.25	\$175.00	\$43.75
12/17/03	BJM	Letter to Prothy re: supp INTs	0.25	\$175.00	\$43.75
12/18/03	BJM	File Certificate of Service of RTPs to Nationwide	0.00	\$175.00	\$0.00
12/18/03	BJM	File Certificate of Service of INTs to Nationwide	0.00	\$175.00	\$0.00
12/18/03	BJM	Letter to PA Insurance Commission	0.25	\$175.00	\$43.75
12/18/03	BJM	Telephone call with Allen Wood, Cal BAR	0.50	\$175.00	\$87.50
12/18/03	BJM	Online research - CA Bureau of Auto Repair (BAR)	0.50	\$175.00	\$87.50
12/19/03	BJM	Telephone call with M. Burke	0.50	\$175.00	\$87.50
12/19/03	BJM	Telephone call with Don Phillips	0.25	\$175.00	\$43.75
12/22/03	BJM	Review Bergs' document production to Nationwide	1.00	\$175.00	\$175.00
12/22/03	BJM	Review Nationwide's Motion for Summary Judgment	1.25	\$175.00	\$218.75
12/22/03	BJM	Letter to A. Levy re: Nationwide MSJ	0.25	\$175.00	\$43.75
12/22/03	BJM	Letter to A. Levy re: Summit Bank Lease Buyout	0.25	\$175.00	\$43.75
12/22/03	BJM	Letter to Counsel re: Anderton and Phillips	0.25	\$175.00	\$43.75
12/22/03	BJM	Telephone call with Tom Flynn, CBS News	0.50	\$175.00	\$87.50
12/22/03	BJM	Received and reviewed Phillips report	0.50	\$175.00	\$87.50
12/22/03	BJM	Reviewed 99-00 correspondence re: efforts to streamline litigation	1.50	\$175.00	\$262.50
12/23/03	BJM	Review Nationwide's PO'S	0.50	\$175.00	\$87.50
12/23/03	BJM	Review Nationwide's Memo of Law re: Motion for Summary Judgment	1.75	\$175.00	\$306.25
12/23/03	BJM	Review Nationwide's document requests	0.50	\$175.00	\$87.50
12/23/03	BJM	Review Kreider dep	1.75	\$175.00	\$306.25
12/23/03	BJM	Letter to A. Levy re: Nationwide MSJ	0.25	\$175.00	\$43.75
12/23/03	BJM	"House cleaning" Emails, deps, etc.	0.25	\$175.00	\$43.75
12/23/03	BJM	Review internal memos in opposition to Nationwide allegations of "set up"	0.50	\$175.00	\$87.50
12/23/03	BJM	Lexis search and review: Birth Center & Jones v. Nationwide	1.25	\$175.00	\$218.75
12/23/03	BJM	Gathering and packaging documents to Schwartzman	1.75	\$175.00	\$306.25
12/23/03	BJM	Organizing file, case law and publications	2.00	\$175.00	\$350.00
12/24/03	BJM	Review letter from A. Levy to Judge Stallone re: Nationwide's corrected MSJ	0.10	\$175.00	\$17.50
12/24/03	BJM	Review letter from A. Levy to Prothy re: Nationwide's corrected MSJ	0.10	\$175.00	\$17.50
12/29/03	BJM	Review letter from K. Myers re: dismissal	0.10	\$175.00	\$17.50
12/30/03	BJM	Review Nationwide's new Motion for Summary Judgment	1.00	\$175.00	\$175.00
12/30/03	BJM	Letter to A. Levy re: discovery and extension to respond to Nationwide's MSJ	0.25	\$175.00	\$43.75
12/30/03	BJM	Review letter from A. Levy re: Nationwide's objections to Bergs' 12/1/03 RFAs	0.10	\$175.00	\$17.50
12/30/03	BJM	Review letter from A. Levy re: response to BJM 12/30/03 letter	0.10	\$175.00	\$17.50
12/30/03	BJM	Letter to Consultant	1.50	\$175.00	\$262.50
12/30/03	BJM	Gathering documents for C. Barone	1.50	\$175.00	\$262.50
12/31/03	BJM	Review Nationwide's reply to RFAs	0.75	\$175.00	\$131.25
12/31/03	BJM	Deps review	1.00	\$175.00	\$175.00

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
12/31/03	BJM	Letter to K. Myers re: response to BJM 12/29/03 letter	1.00	\$175.00	\$175.00
12/31/03	BJM	Letter to Prothy re: BJM and DES Entry of Appearance	0.25	\$175.00	\$43.75
12/31/03	BJM	Review letter from B. Huckabee re: dismissal	0.10	\$175.00	\$17.50
12/31/03	BJM	Telephone call with Ken Myers	0.25	\$175.00	\$43.75
01/01/04	BJM	Preparation of numerous transmittal letters, notices of intent to serve subpoenas, supporting documents for filing, photocopying, filing, etc.	45.00	\$25.00	\$1,125.00
01/02/04	BJM	File Appearance of BJM and DES	0.10	\$175.00	\$17.50
01/02/04	BJM	Prepare Entry of Appearance of BJM and DES	0.25	\$25.00	\$6.25
01/05/04	BJM	Letter to A. Levy, K. Myers and B. Huckabee re: BJM/DES Entry of Appearance	0.25	\$175.00	\$43.75
01/07/04	BJM	Review letter from B. Huckabee re: dismissal	0.10	\$175.00	\$17.50
01/09/04	BJM	Letter to A. Levy re: settlement	0.25	\$175.00	\$43.75
01/09/04	BJM	Conference with HM	0.75	\$175.00	\$131.25
01/09/04	BJM	Prepare for M. Burke conference	1.00	\$175.00	\$175.00
01/09/04	BJM	Travel for Penn Dell	1.00	\$175.00	\$175.00
01/09/04	BJM	Conference with M. Burke and G. Moore	5.00	\$175.00	\$875.00
01/09/04	BJM	Conference with BJM	0.75	\$350.00	\$262.50
01/12/04	BJM	Review Nationwide's new Motion for Summary Judgment	2.00	\$175.00	\$350.00
01/12/04	BJM	Telephone call with Schwartzman	0.25	\$175.00	\$43.75
01/13/04	BJM	Draft intro to reply to Motion for Summary Judgment	3.00	\$175.00	\$525.00
01/13/04	BJM	Finalize intro and draft reply to Motion for Summary Judgment	4.50	\$175.00	\$787.50
01/13/04	BJM	Letter to A. Levy re: stipulation	0.25	\$175.00	\$43.75
01/13/04	BJM	Telephone call with M. Burke	0.25	\$175.00	\$43.75
01/14/04	BJM	Draft reply to Motion for Summary Judgment	7.25	\$175.00	\$1,268.75
01/14/04	BJM	Review letter from A. Levy re: stipulation	0.10	\$175.00	\$17.50
01/14/04	BJM	Letter to Prothy re: stipulation	0.25	\$175.00	\$43.75
01/14/04	BJM	Telephone call with client and M. Burke	0.50	\$175.00	\$87.50
01/15/04	BJM	Draft reply to Motion for Summary Judgment	6.75	\$175.00	\$1,181.25
01/15/04	BJM	Prepare/file Stipulation that Plaintiffs' response to Nationwide's Motion for Summary Judgment is triggered by Nationwide's filing of 12/24/03 not 12/19/03 specifically Plaintiffs' response is due 1/23/04	0.25	\$175.00	\$43.75
01/15/04	BJM	Telephone call with Mike Sobeck	0.25	\$175.00	\$43.75
01/16/04	BJM	Review letter from A. Levy re: response to BJM 1/9/04 letter	0.10	\$175.00	\$17.50
01/16/04	BJM	Letter to A. Levy re: settlement	0.50	\$175.00	\$87.50
01/16/04	BJM	Review letter from A. Levy re: objections to Bergs' 12/17/03 RTPs	0.10	\$175.00	\$17.50
01/16/04	BJM	Review letter from A. Levy to Judge Stallone re: Motion for Protective Order	0.10	\$175.00	\$17.50
01/16/04	BJM	Review letter from A. Levy to Prothy re: Motion for Protective Order	0.10	\$175.00	\$17.50
01/16/04	BJM	Draft memo of thoughts re: reply to MSJ	1.00	\$175.00	\$175.00
01/16/04	BJM	Conference with HM	0.50	\$175.00	\$87.50
01/16/04	BJM	Conference with HM and MRC	1.00	\$175.00	\$175.00
01/16/04	BJM	Conference with BJM	0.50	\$350.00	\$175.00
01/16/04	BJM	Conference with BJM and MRC	1.00	\$350.00	\$350.00
01/16/04	BJM	Conference with BJM and HM	1.00	\$225.00	\$225.00

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
01/17/04	BJM	Draft reply to Motion for Summary Judgment	3.25	\$175.00	\$568.75
01/17/04	BJM	Letter to A. Levy and K. Myers re: Tom Campuzano	0.25	\$175.00	\$43.75
01/17/04	BJM	Telephone call with Dan Berg	0.50	\$175.00	\$87.50
01/18/04	BJM	Work from home	1.00	\$175.00	\$175.00
01/19/04	BJM	Gather documents and draft Motion to Compel Anderton file	1.00	\$175.00	\$175.00
01/19/04	BJM	Draft Motion for Sanctions and Brief	4.00	\$175.00	\$700.00
01/19/04	BJM	Telephone call to Campuzano Atty	0.25	\$175.00	\$43.75
01/20/04	BJM	Review Nationwide Motion to Protect Anderton file	1.00	\$175.00	\$175.00
01/20/04	BJM	Draft Motion for Sanctions and/or In Camera Review	5.00	\$175.00	\$875.00
01/20/04	BJM	Deps review	0.25	\$175.00	\$43.75
01/20/04	BJM	Review letter from Todd Heyman, Esquire	0.10	\$175.00	\$17.50
01/20/04	BJM	Review letter from A. Levy re: objections to Bergs' 12/17/03 INTs	0.10	\$175.00	\$17.50
01/20/04	BJM	Memo to file	0.25	\$175.00	\$43.75
01/20/04	BJM	Telephone call with Campuzano Atty	0.25	\$175.00	\$43.75
01/21/04	BJM	Draft Motion for Sanctions and/or In Camera Review	9.00	\$175.00	\$1,575.00
01/21/04	BJM	Review Schwartzman report	0.75	\$175.00	\$131.25
01/22/04	BJM	Draft Motion for Sanctions and/or In Camera Review	4.50	\$175.00	\$787.50
01/22/04	BJM	Draft reply to Motion for Summary Judgment	6.50	\$175.00	\$1,137.50
01/22/04	BJM	Letter to A. Levy re: extension of time to respond to Nationwide's MSJ	0.25	\$175.00	\$43.75
01/23/04	BJM	Draft reply to Motion for Summary Judgment	6.75	\$175.00	\$1,181.25
01/25/04	BJM	Finalizing reply to Motion for Summary Judgment and Brief	4.50	\$175.00	\$787.50
01/26/04	BJM	Review Motion after filed	0.50	\$175.00	\$87.50
01/26/04	BJM	File Reply/Brief to Nationwide's Motion for Summary Judgment and Proposed Order	0.50	\$175.00	\$87.50
01/26/04	BJM	Last minute changes; travel to hand-file Reply to Nationwide's Motion for Summary Judgment in Reading	2.50	\$175.00	\$437.50
01/26/04	BJM	Packaging copies of reply to Nationwide's Motion for Summary Judgment to Counsel and cleaning desk	2.00	\$175.00	\$350.00
01/26/04	BJM	Review 1/23/04 Order Issuing Rule upon Plaintiffs to show cause	0.00	\$175.00	\$0.00
01/26/04	BJM	Letter to Prothy re: Certificate of Service	0.25	\$175.00	\$43.75
01/26/04	BJM	Letter to A. Levy re: reply to Nationwide's MSJ	0.25	\$175.00	\$43.75
01/26/04	BJM	Letter to Todd Heyman, Esquire, re: Tom Campuzano	0.25	\$175.00	\$43.75
01/26/04	BJM	Letter to M. Burke re: subpoena	0.25	\$175.00	\$43.75
01/27/04	BJM	Draft Motion for Sanctions and/or In Camera Review	7.00	\$175.00	\$1,225.00
01/27/04	BJM	Prepare/file Certificate of Service of Plaintiffs' Reply to Nationwide's Motion for Summary Judgment w/ Brief	0.25	\$175.00	\$43.75
01/27/04	BJM	Review letter from K. Myers re: discovery answers/requests	0.25	\$175.00	\$43.75
01/27/04	BJM	Email to DH re: Ron Stitzel	0.10	\$175.00	\$17.50
01/28/04	BJM	Telephone call with Consultant	0.50	\$175.00	\$87.50
01/28/04	BJM	Atty conference re: 1/23/04 Order	0.50	\$175.00	\$87.50

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
01/29/04	BJM	Draft Motion for Sanctions and/or In Camera Review	8.00	\$175.00	\$1,400.00
01/29/04	BJM	Review Certificate of Service/RTPs to Plaintiffs	0.00	\$175.00	\$0.00
01/29/04	BJM	Review Certificate of Service/INTs to Plaintiffs	0.00	\$175.00	\$0.00
01/29/04	BJM	Review letter from A. Levy re: settlement	0.25	\$175.00	\$43.75
01/30/04	BJM	Draft Motion for Sanctions and/or In Camera Review	2.25	\$175.00	\$393.75
01/30/04	BJM	Letter to A. Levy, K. Myers and B. Huckabee re: discovery	0.25	\$175.00	\$43.75
01/31/04	BJM	Draft Motion for Sanctions and/or In Camera Review	6.25	\$175.00	\$1,093.75
02/01/04	BJM	Draft Brief in Support of Motion for Sanctions and/or In Camera Review	5.75	\$175.00	\$1,006.25
02/02/04	BJM	Draft Brief in Support of Motion for Sanctions and/or In Camera Review	7.75	\$175.00	\$1,356.25
02/02/04	BJM	Review letter from A. Levy to Prothy re: Praecipe for Argument List on Nationwide's MSJ	0.10	\$175.00	\$17.50
02/02/04	BJM	Review letter from K. Myers re: trial list and motions	0.10	\$175.00	\$17.50
02/03/04	BJM	Draft Brief in Support of Motion for Sanctions and/or In Camera Review	8.75	\$175.00	\$1,531.25
02/03/04	BJM	Review Certificate of Service/Lindgren's Answers to Plaintiffs' RFAs	0.00	\$175.00	\$0.00
02/03/04	BJM	Review Nationwide's Praecipe for Argument for 3/1/04 re: Corrected Motion for Summary Judgment	0.00	\$175.00	\$0.00
02/03/04	BJM	Review letter from K. Myers re: MFA and In Camera Review	0.50	\$175.00	\$87.50
02/03/04	BJM	Letter to A. Levy re: Nelson deposition	0.25	\$175.00	\$43.75
02/03/04	BJM	Secretary failed to attach Verifications	0.50	\$175.00	\$87.50
02/04/04	BJM	Hand-file Motion for Sanctions and/or In Camera Review, Proposed Rule, Proposed Order, Brief and Certificate of Service (no bill)	0.00	\$175.00	\$0.00
02/04/04	BJM	Review 2/4/04 Order Issuing Rule to Show Cause	0.00	\$175.00	\$0.00
02/04/04	BJM	Draft response to Lindgren's 1/27/04 INTs, 2/4/04 Supp. INTs, 1/27/04 RTPs and 2/4/04 RTPs	0.25	\$175.00	\$43.75
02/04/04	BJM	Letter to K. Myers re: discovery	0.50	\$175.00	\$87.50
02/04/04	BJM	Letter to A. Levy re: MFS & In Camera Review	0.10	\$175.00	\$17.50
02/04/04	BJM	Review letter from K. Myers re: discovery requests	0.10	\$175.00	\$17.50
02/04/04	BJM	Review letter from Daniel D. Martin re: subpoena	0.10	\$175.00	\$17.50
02/04/04	BJM	Email to DH re: Jack Aigner	0.50	\$175.00	\$87.50
02/04/04	BJM	Legal research and review	0.10	\$25.00	\$2.50
02/04/04	BJM	Email BJM re: Jack Aigner	5.50	\$175.00	\$962.50
02/05/04	BJM	Draft response to Nationwide's Motion for Protective Order	0.50	\$175.00	\$87.50
02/05/04	BJM	Review Lindgren's reply to RFAs	0.25	\$175.00	\$43.75
02/05/04	BJM	Letter to Bergs	0.25	\$175.00	\$43.75
02/05/04	BJM	Letter to B. Huckabee re: videotape	0.25	\$175.00	\$43.75
02/05/04	BJM	Letter from BJM to A. Levy, K. Myers and B. Huckabee re: Exhibit 12 to Bergs' Brief	0.10	\$175.00	\$17.50
02/05/04	BJM	Review letter from K. Myers re: answers to RFAs	0.10	\$175.00	\$17.50
02/05/04	BJM	Review letter from A. Levy re: depts/discovery	5.75	\$175.00	\$1,006.25
02/06/04	BJM	Draft response to Nationwide's Motion for Protective Order	0.10	\$175.00	\$17.50
02/06/04	BJM	Review letter from A. Levy re: settlement			

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
02/06/04	BJM	Email DH	0.10	\$25.00	\$2.50
02/09/04	BJM	Finalizing Reply and Brief to Nationwide's Motion for Protective Order	3.75	\$175.00	\$656.25
02/09/04	BJM	Letter to Prothy re: Bergs' Reply to Nationwide's Motion for Protective Order	0.25	\$175.00	\$43.75
02/09/04	BJM	Letter to A. Levy re: response to 2/6/04 letter	0.50	\$175.00	\$87.50
02/09/04	BJM	Letter to Counsel re: offer of settlement and/or Invitation to settle	1.50	\$175.00	\$262.50
02/10/04	BJM	File Reply to Nationwide's Motion for Protective Order Pertaining to Plaintiffs' 12/17/03 RTPs	0.00	\$175.00	\$0.00
02/10/04	BJM	Letter to A. Levy re: depositions and Bergs' reply to Nationwide's Motion for Protective Order	0.25	\$175.00	\$43.75
02/10/04	BJM	Letter to A. Levy re: 2/4/04 Order and depositions	1.50	\$175.00	\$262.50
02/10/04	BJM	Letter to K. Myers re: discovery and inspection of repair documents and computer	0.50	\$175.00	\$87.50
02/10/04	BJM	Letter to Prothy re: Certificate of Service	0.25	\$175.00	\$43.75
02/10/04	BJM	Letter to A. Levy, K. Myers and B. Huckabee re: Bergs' supp. Discovery response	0.25	\$175.00	\$43.75
02/11/04	BJM	Draft request to see Lindgren's computer	0.25	\$175.00	\$43.75
02/11/04	BJM	Draft and file Certificate of Service of Plaintiffs' Supp. Response to Defs' INTs	0.25	\$175.00	\$43.75
02/11/04	BJM	Letter to Prothy re: Cert of Service of Bergs' 2/11/04 Request for Entry Upon Property	0.25	\$175.00	\$43.75
02/11/04	BJM	Letter to K. Myers re: Bergs' 2/11/04 Request for Entry Upon Property and Supp. INTs	0.25	\$175.00	\$43.75
02/12/04	BJM	File Certificate of Service of Plaintiffs' 2/11/04 Request for Entry Upon Property to Inspect Lindgren's Computer	0.00	\$175.00	\$0.00
02/12/04	BJM	Re: Lindgren's Computer and amended INTs	1.00	\$175.00	\$175.00
02/12/04	BJM	Inspect original documents request	0.50	\$175.00	\$87.50
02/12/04	BJM	Draft/file Certificate of Service of Plaintiffs' 2/11/04 Supp. INTs to Lindgren	0.00	\$175.00	\$0.00
02/12/04	BJM	Letter to Prothy re: COS of Supp. INTs	0.25	\$175.00	\$43.75
02/12/04	BJM	Letter to K. Myers re: amended supp. INTs	0.25	\$175.00	\$43.75
02/12/04	BJM	Review letter from K. Myers re: response to 2/5/04 letter, answers to RFAs, declining inspection of original repair documents and computer	0.10	\$175.00	\$17.50
02/12/04	BJM	Review letter from K. Myers re: discovery	0.10	\$175.00	\$17.50
02/12/04	BJM	Letter to K. Myers re: formal request to conduct inspection	0.25	\$175.00	\$43.75
02/13/04	BJM	Draft/file Certificate of Service of Plaintiff Bergs' Amended 2/11/04 Supp. INTs to Lindgren	0.25	\$175.00	\$43.75
02/13/04	BJM	Letter to Prothy re: COS of Bergs' Request for Entry Upon Property to Inspect Original Repair Documents	0.25	\$175.00	\$43.75
02/13/04	BJM	Telephone call with Dan Berg re: settlement	0.25	\$175.00	\$43.75
02/16/04	BJM	Letter to Bergs	0.75	\$175.00	\$131.25
02/16/04	BJM	Telephone call with Bergs	0.50	\$175.00	\$87.50
02/16/04	BJM	Telephone call with A. Levy	0.25	\$175.00	\$43.75
02/16/04	BJM	Release	0.50	\$175.00	\$87.50
02/17/04	BJM	Draft/file Certificate of Service of Plaintiffs' 2/12/04 Request for Entry Upon Property to Inspect Original Repair Documents	0.00	\$175.00	\$0.00
02/17/04	BJM	Letter to A. Levy re: settlement	0.50	\$175.00	\$87.50
02/17/04	BJM	Telephone call with Sherry Berg	0.25	\$175.00	\$43.75

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
02/18/04	BJM	Securing computer expert	0.25	\$175.00	\$43.75
02/18/04	BJM	Draft affidavit for Pachik	1.00	\$175.00	\$175.00
02/19/04	BJM	Review letter from A. Levy to Prothy re: Praecipe for Argument List on Nationwide's Motion for Protective Order	0.10	\$175.00	\$17.50
02/20/04	BJM	Review Nationwide's Praecipe for Argument for 3/15/03 re: Motion for Protective Order Pertaining to Plaintiffs' 12/17/03 RTPs	0.00	\$175.00	\$0.00
02/20/04	BJM	Prepare notices of deposition to M. Burke and T. Campuzano	0.25	\$175.00	\$43.75
02/20/04	BJM	Prepare Notice of Videotape deposition of Michael Burke	0.25	\$175.00	\$43.75
02/20/04	BJM	Letter to A. Levy re: Blue Ribbon documents testimony	0.50	\$175.00	\$87.50
02/20/04	BJM	Letter to Todd Heyman, Esquire, re: dep notice to Tom Campuzano	0.25	\$175.00	\$43.75
02/23/04	BJM	Draft supp. INTs to Nationwide	0.00	\$175.00	\$0.00
02/23/04	BJM	Prepare Notice of Deposition to Michael Nelson	0.25	\$175.00	\$43.75
02/23/04	BJM	Prepare Notices of Deposition to S. Potosnak, M. Grumbain, B. Bashore and R. Stitzel	0.25	\$175.00	\$43.75
02/23/04	BJM	Letter to A. Levy re: deps and discovery	1.50	\$175.00	\$262.50
02/23/04	BJM	Letter to M. Nelson re: subpoena	0.25	\$175.00	\$43.75
02/23/04	BJM	Letter to Prothy re: COS of 2/23/04 Supp. INTs to Nationwide	0.25	\$175.00	\$43.75
02/23/04	BJM	Letter to A. Levy re: 2/23/04 Supp. INTs	0.25	\$175.00	\$43.75
02/23/04	BJM	Review letter from K. Myers re: 2/20/04 BJM letter	0.10	\$175.00	\$17.50
02/23/04	BJM	Letter to Ron Stitzel re: subpoena	0.25	\$175.00	\$43.75
02/23/04	BJM	Letter to M. Nelson re: subpoena	0.25	\$175.00	\$43.75
02/23/04	BJM	Telephone call with Consultant	0.50	\$175.00	\$87.50
02/23/04	BJM	Draft/file Certificate of Service of Supp. INTs to Nationwide	0.00	\$175.00	\$0.00
02/25/04	BJM	Review letter from A. Levy re: Penn Dell documents/discovery/MSJ	0.25	\$175.00	\$43.75
02/25/04	BJM	Letter to A. Levy re: Penn Dell documents, depositions and settlement	0.75	\$175.00	\$131.25
02/25/04	BJM	Letter to Counsel re: Penn Dell Auto Body docs	0.25	\$175.00	\$43.75
02/25/04	BJM	Review letter from A. Levy re: BJM 2/25/04 letter	0.10	\$175.00	\$17.50
02/26/04	BJM	Draft supp. Reply to Nationwide's Motion for Protective Order	1.50	\$175.00	\$262.50
02/26/04	BJM	Finalize Supplemental Reply to Nationwide's Motion for Summary Judgment	0.75	\$175.00	\$131.25
02/26/04	BJM	Letter to A. Levy re: C. Barone testimony	0.50	\$175.00	\$87.50
02/26/04	BJM	Letter to Prothy re: 2/26/04 Supp. Reply to MSJ	0.25	\$175.00	\$43.75
02/26/04	BJM	Letter to Prothy re: 2/26/04 Supp. Reply to Nationwide's Motion for Protective Order	0.25	\$175.00	\$43.75
02/26/04	BJM	Telephone call with Consultant	0.25	\$175.00	\$43.75
02/26/04	BJM	Telephone call with Consultant	0.75	\$175.00	\$131.25
02/26/04	BJM	Telephone call with A. Levy	0.25	\$175.00	\$43.75
02/26/04	BJM	Review Penn Dell documents	0.75	\$175.00	\$131.25
02/26/04	BJM	Draft affidavit re: C. Barone	0.75	\$175.00	\$131.25
02/26/04	BJM	Conference with MRC re: C. Barone	0.25	\$175.00	\$43.75
02/26/04	BJM	Review motions for Monday's argument	1.25	\$175.00	\$218.75
02/26/04	BJM	Draft supp. Reply to Nationwide's Motion for Summary Judgment and Certificate of Service	1.50	\$175.00	\$262.50
02/26/04	BJM	Conference with BJM re: C. Barone	0.25	\$225.00	\$56.25

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
02/27/04	BJM	File Supplemental Reply to Nationwide's Motion for Summary Judgment	0.00	\$175.00	\$0.00
02/27/04	BJM	File Supplemental Reply to Nationwide's Motion for Protective Order Pertaining to Plaintiffs' 12/17/03 RTPs and Certificate of Service	0.50	\$175.00	\$87.50
02/27/04	BJM	Review letter from A. Levy re: settlement	0.10	\$175.00	\$17.50
02/27/04	BJM	Letter to A. Levy re: settlement/release	0.75	\$175.00	\$131.25
02/27/04	BJM	Letter to K. Myers and B. Huckabee re: release	0.25	\$175.00	\$43.75
02/27/04	BJM	Conference with HM re: Monday's argument	1.00	\$175.00	\$175.00
02/27/04	BJM	Prepare for argument	4.00	\$175.00	\$700.00
02/27/04	BJM	Conference with BJM re: Monday's argument	1.00	\$350.00	\$350.00
02/27/04	BJM	Review Entry of Appearance of Craig Cohen	0.00	\$175.00	\$0.00
03/01/04	BJM	Review 3/1/04 Order Denying Nationwide's Motion for Summary Judgment	0.00	\$175.00	\$0.00
03/01/04	BJM	Review letter from A. Levy re: discovery/MIL	0.10	\$175.00	\$17.50
03/01/04	BJM	Email to DH re: cancelling deps	0.10	\$175.00	\$17.50
03/01/04	BJM	Prepare for argument	1.50	\$175.00	\$262.50
03/01/04	BJM	Travel to argument	0.75	\$175.00	\$131.25
03/01/04	BJM	Attendance at argument	0.75	\$175.00	\$131.25
03/01/04	BJM	Travel from argument	0.75	\$175.00	\$131.25
03/01/04	BJM	Conference with HM re: case	0.50	\$175.00	\$87.50
03/01/04	BJM	Conference with BJM re: case	0.50	\$350.00	\$175.00
03/02/04	BJM	Letter to A. Levy re: dep cancellations	0.25	\$175.00	\$43.75
03/02/04	BJM	Letter to Todd Heyman re: Tom Campuzano	0.25	\$175.00	\$43.75
03/02/04	BJM	Letter to Ron Stitzel re: dep cancellation	0.25	\$175.00	\$43.75
03/02/04	BJM	Letter to Daniel Martin re: Burke deposition cancellation	0.25	\$175.00	\$43.75
03/02/04	BJM	Letter to M. Nelson re: dep cancellation	0.10	\$175.00	\$17.50
03/02/04	BJM	Review letter from K. Myers re: discovery/settlement	0.25	\$175.00	\$43.75
03/02/04	BJM	Letter to A. Levy re: affidavit	0.10	\$175.00	\$17.50
03/02/04	BJM	Review letter from A. Levy to Prothy re: response to MFS & In Camera Review	0.75	\$175.00	\$131.25
03/02/04	BJM	Research: Condio v. Erie	0.25	\$175.00	\$43.75
03/02/04	BJM	Conference with HM re: Oral Order	1.00	\$175.00	\$175.00
03/02/04	BJM	Conference with HM and MRC re: case	0.25	\$350.00	\$87.50
03/02/04	BJM	Conference with BJM re: Oral Order	1.00	\$350.00	\$350.00
03/02/04	BJM	Conference with BJM and MRC re: case	1.00	\$225.00	\$225.00
03/02/04	BJM	Conference with BJM and HM re: case	0.00	\$175.00	\$0.00
03/03/04	BJM	Review Nationwide's Response to Plaintiffs' Motion for Sanctions and In-Camera Review	0.25	\$175.00	\$43.75
03/03/04	BJM	Letter to A. Levy re: response to Levy 2/25/04 letter	0.25	\$175.00	\$43.75
03/03/04	BJM	Letter to Prothy re: response to Lindgren's 1/27/04 discovery requests	0.25	\$175.00	\$43.75
03/03/04	BJM	Letter to K. Myers re: response to Lindgren's 1/27/04 discovery requests	0.25	\$175.00	\$43.75
03/03/04	BJM	Letter to K. Myers re: answer to Lindgren's RFAs	1.00	\$175.00	\$175.00
03/03/04	BJM	Conference with HM	0.25	\$175.00	\$43.75
03/03/04	BJM	Review Rules 212.2-214.3/Exhibit List	1.00	\$350.00	\$350.00
03/03/04	BJM	Conference with BJM	0.00	\$175.00	\$0.00
03/04/04	BJM	Draft/file Certificate of Service of Plaintiffs' Response to Lindgren's 1/27/04 INTs, 2/4/04 RTPs and 2/4/04 RTPs			

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
03/05/04	BJM	Review letter from K. Myers re: discovery answers and special damages	0.10	\$175.00	\$17.50
03/08/04	BJM	Review letter from A. Levy re: Nationwide's objections to Bergs' 2/23/04 Supp. INTs	0.10	\$175.00	\$17.50
03/08/04	BJM	Review letter from K. Myers re: Lindgren's answers to RFAs	0.10	\$175.00	\$17.50
03/09/04	BJM	Letter to Counsel re: special damages and economic report of Katherine VanGorder	0.25	\$175.00	\$43.75
03/10/04	BJM	Conference with HM	1.00	\$175.00	\$175.00
03/10/04	BJM	Conference with BJM	1.00	\$350.00	\$350.00
03/11/04	BJM	Discussion with HM via Email	0.50	\$175.00	\$87.50
03/11/04	BJM	Discussion with BJM via Email	0.50	\$350.00	\$175.00
03/12/04	BJM	Review letter from K. Myers re: special damages, bad faith and VanGorder report	0.10	\$175.00	\$17.50
03/16/04	BJM	Letter to Counsel re: settlement and Praeipce for Trial Readiness	0.25	\$175.00	\$43.75
03/16/04	BJM	Reviewed Order of 11/19/03 and Rules for Trial Listing	0.25	\$175.00	\$43.75
03/17/04	BJM	Letter to Counsel re: CV of VanGorder	0.25	\$175.00	\$43.75
03/17/04	BJM	Conference with C. Barone	1.00	\$175.00	\$175.00
03/17/04	BJM	Conference with C. Barone and HM	4.25	\$175.00	\$743.75
03/17/04	BJM	Review and deliver VanGorder CV	0.25	\$175.00	\$43.75
03/17/04	BJM	Conference with C. Barone and BJM	4.25	\$350.00	\$1,487.50
03/19/04	BJM	Review letter from K. Myers re: BJM 3/16/04 letter	0.10	\$175.00	\$17.50
03/24/04	BJM	Review Joffred's 1st dep	0.25	\$175.00	\$43.75
03/24/04	BJM	Review letter from A. Levy re: Certificate of Trial Readiness	0.10	\$175.00	\$17.50
03/24/04	BJM	Prepare Order of Proof and Exhibit List	6.00	\$175.00	\$1,050.00
03/25/04	BJM	Prepare Order of Proof and Exhibit List	3.00	\$175.00	\$525.00
03/26/04	BJM	Letter to Counsel re: Trial Praeipce and settlement	0.25	\$175.00	\$43.75
03/26/04	BJM	Letter to Prothy re: Certificate of Readiness for Trial	0.25	\$175.00	\$43.75
03/26/04	BJM	Prepare cover letter to Prothonotary	0.25	\$35.00	\$8.75
03/26/04	BJM	Telephone call to Prothonotary	0.25	\$35.00	\$8.75
03/26/04	BJM	Copy letter to Prothonotary/Trial Praeipce	0.25	\$35.00	\$8.75
03/26/04	BJM	Review local rules	0.25	\$35.00	\$8.75
03/29/04	BJM	Prepare/file/review Certificate of Readiness for Trial with Proposed Order, Certificate of Service	0.25	\$175.00	\$43.75
03/29/04	BJM	Letter to Berks County Courthouse re: Certificate of Service of Certificate of Readiness of Trial	0.25	\$175.00	\$43.75
03/29/04	BJM	Prepare Order of Proof and Exhibit List	2.75	\$175.00	\$481.25
03/29/04	BJM	Conference with HM	0.50	\$175.00	\$87.50
03/29/04	BJM	Conference with BJM	0.50	\$350.00	\$175.00
03/31/04	BJM	Letter to Berks County Courthouse re: Certificate of Service of Certificate of Readiness of Trial	0.25	\$175.00	\$43.75
04/02/04	BJM	Prepare Order of Proof and Exhibit List	3.00	\$175.00	\$525.00
04/05/04	BJM	Review 4/5/04 Order Approving Certificate of Readiness for Trial	0.00	\$175.00	\$0.00
04/05/04	BJM	Prepare Grumbein dep summary	0.50	\$175.00	\$87.50
04/05/04	BJM	Prepare Order of Proof and Exhibit List	3.50	\$175.00	\$612.50
04/05/04	BJM	Prepare trial questions for Grumbein	2.75	\$175.00	\$481.25
04/06/04	BJM	Finalize trial questions for Grumbein	1.75	\$175.00	\$308.25
04/07/04	BJM	Prepare Order of Proof and Exhibit List	4.25	\$175.00	\$743.75
04/12/04	BJM	Prepare Order of Proof and Exhibit List	1.25	\$175.00	\$218.75
04/13/04	BJM	Telephone call with C. Barone	1.00	\$175.00	\$175.00

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
04/13/04	BJM	Research Stitzel/letter to O'Pake	1.00	\$175.00	\$175.00
04/14/04	BJM	Draft Pre-Trial Memo	3.25	\$175.00	\$568.75
04/21/04	BJM	Draft Pre-Trial Memo	7.25	\$175.00	\$1,268.75
04/22/04	BJM	Draft Pre-Trial Memo	4.50	\$175.00	\$787.50
04/23/04	BJM	Draft Pre-Trial Memo	5.75	\$175.00	\$1,006.25
04/23/04	BJM	Conference with HM	0.50	\$175.00	\$87.50
04/23/04	BJM	Conference with BJM	0.50	\$350.00	\$175.00
04/26/04	BJM	Draft Pre-Trial Memo	0.75	\$175.00	\$131.25
04/27/04	BJM	Draft Pre-Trial Memo	3.00	\$175.00	\$525.00
04/28/04	BJM	Draft Pre-Trial Memo	6.50	\$175.00	\$1,137.50
05/04/04	BJM	Review letter from A. Levy to Prothy re: withdrawal of appearance	0.10	\$175.00	\$17.50
05/05/04	BJM	Review Withdrawal of Appearance of A. Levy	0.00	\$175.00	\$0.00
05/05/04	BJM	Letter to A. Levy re: subpoena to M. Nelson	0.25	\$175.00	\$43.75
05/10/04	BJM	Draft Pre-Trial Memo	2.50	\$175.00	\$437.50
05/11/04	BJM	Draft Chronology/Pre-Trial Memo	3.75	\$175.00	\$656.25
05/12/04	BJM	Review 5/12/04 Order Scheduling Pre-Trial for 8/13/04	0.00	\$175.00	\$0.00
05/27/04	BJM	Review 3/1/04 Order Granting Nationwide's Motion for Reconsideration	0.00	\$175.00	\$0.00
05/27/04	BJM	Review of dockets at Courthouse	1.50	\$175.00	\$262.50
05/28/04	BJM	Letter to C. Cohen re: 3/1/04 Order and motions	1.00	\$175.00	\$175.00
06/08/04	BJM	Letter to C. Cohen re: BJM 5/28/04 letter	0.25	\$200.00	\$50.00
06/08/04	BJM	Review letter from C. Cohen re: BJM 5/28/04 letter	0.10	\$200.00	\$20.00
06/10/04	BJM	Letter to C. Cohen re: Cohen 6/8/04 letter	0.50	\$200.00	\$100.00
06/11/04	BJM	Letter to Consultant	0.25	\$200.00	\$50.00
06/11/04	BJM	Letter to Consultant	0.25	\$200.00	\$50.00
06/11/04	BJM	Letter to Consultant	0.25	\$200.00	\$50.00
06/22/04	BJM	Letter to Bergs	0.25	\$200.00	\$50.00
06/24/04	BJM	Review Entry of Appearance of Erin McNulty	0.00	\$200.00	\$0.00
06/24/04	BJM	Read Defendants' POs	2.50	\$350.00	\$875.00
07/13/04	BJM	Draft Pre-Trial Memo	2.00	\$200.00	\$400.00
07/14/04	BJM	Draft Pre-Trial Memo	1.75	\$200.00	\$350.00
07/14/04	BJM	Review letter from C. Cohen re: expert CVs	0.10	\$200.00	\$20.00
07/14/04	BJM	Review letter from C. Cohen re: expert CVs	0.10	\$25.00	\$2.50
07/15/04	BJM	Draft letter to C. Cohen re: Expert CVs	3.75	\$200.00	\$750.00
07/20/04	BJM	Draft Pre-Trial Memo	0.50	\$200.00	\$100.00
07/20/04	BJM	Letter to C. Cohen re: settlement	7.50	\$200.00	\$1,500.00
07/21/04	BJM	Draft Pre-Trial Memo	0.25	\$200.00	\$50.00
07/21/04	BJM	Letter to David Wert	2.50	\$200.00	\$500.00
07/22/04	BJM	Draft Pre-Trial Memo	0.10	\$200.00	\$20.00
07/22/04	BJM	Review letter from C. Cohen re: Witmer-2 exhibits	3.25	\$200.00	\$650.00
07/23/04	BJM	Draft Pre-Trial Memo	0.50	\$200.00	\$100.00
07/23/04	BJM	Review letter from C. Cohen re: settlement	0.50	\$200.00	\$100.00
07/23/04	BJM	Letter to C. Cohen re: settlement	2.25	\$200.00	\$450.00
07/26/04	BJM	Draft Pre-Trial Memo	0.25	\$200.00	\$50.00
07/26/04	BJM	Letter to C. Cohen re: Witmer-2 exhibit	3.50	\$200.00	\$700.00
07/26/04	BJM	Conference with C. Barone	3.75	\$200.00	\$750.00
07/27/04	BJM	Draft Pre-Trial Memo	1.50	\$200.00	\$300.00
07/28/04	BJM	Draft Pre-Trial Memo	4.00	\$35.00	\$140.00
07/28/04	BJM	Discovery Files Re-Organization	0.10	\$25.00	\$2.50
07/29/04	BJM	Email BJM re: Stallone's rules	8.00	\$35.00	\$280.00
07/29/04	BJM	Discovery Files Re-Organization	8.00	\$35.00	\$280.00
07/30/04	BJM	Pre-Trial Prep	3.00	\$200.00	\$600.00
08/02/04	BJM	Draft Pre-Trial Memo	0.10	\$200.00	\$20.00
08/02/04	BJM	Email to JA re: response to JA 8/2/04 Email			

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
08/02/04	BJM	Email to JA re: Stallone's rules	0.10	\$200.00	\$20.00
08/02/04	BJM	Email to JA re: Daniel Ruoss	0.10	\$200.00	\$20.00
08/02/04	BJM	Email to JA re: subpoenas/notices to attend	0.10	\$200.00	\$20.00
08/02/04	BJM	Email to JA re: pretrial hearing	0.10	\$200.00	\$20.00
08/02/04	BJM	Email to JA re: witnesses book (2)	0.25	\$200.00	\$50.00
08/02/04	BJM	Pre-Trial Prep	8.00	\$35.00	\$280.00
08/02/04	BJM	Email BJM re: Order Scheduling pretrial conference/demands	0.10	\$35.00	\$3.50
08/02/04	BJM	Email BJM re: Dan Ruoss	0.10	\$35.00	\$3.50
08/02/04	BJM	Email BJM re: subpoenas/notices to attend	0.10	\$35.00	\$3.50
08/02/04	BJM	Email BJM re: subpoenas/Dan Ruoss	0.10	\$35.00	\$3.50
08/02/04	BJM	Email BJM re: admissions in discovery	0.10	\$35.00	\$3.50
08/02/04	BJM	Email BJM re: witness book (2)	0.25	\$35.00	\$8.75
08/03/04	BJM	Draft Pre-Trial Memo	7.25	\$200.00	\$1,450.00
08/03/04	BJM	Email to JA re: admissions in discovery	0.10	\$200.00	\$20.00
08/03/04	BJM	Email to JA re: admissions in depts	0.10	\$200.00	\$20.00
08/03/04	BJM	Email to JA re: Notices to Attend and RFAs	0.10	\$200.00	\$20.00
08/03/04	BJM	Pre-Trial Prep	8.00	\$35.00	\$280.00
08/03/04	BJM	Email BJM re: admissions in depositions	0.10	\$35.00	\$3.50
08/03/04	BJM	Email BJM re: notices to attend	0.10	\$35.00	\$3.50
08/04/04	BJM	Draft Pre-Trial Memo	6.50	\$200.00	\$1,300.00
08/04/04	BJM	Letter to C. Cohen re: Nationwide employees/witnesses	0.25	\$200.00	\$50.00
08/04/04	BJM	Letter to K. Myers re: Lindgren employees/witnesses	0.25	\$200.00	\$50.00
08/04/04	BJM	Letter to Bergs	0.25	\$200.00	\$50.00
08/04/04	BJM	Email to JA re: Rule 212.2	0.10	\$200.00	\$20.00
08/04/04	BJM	Email to JA re: correspondence	0.10	\$200.00	\$20.00
08/04/04	BJM	Email to JA re: letter to Bergs	0.10	\$200.00	\$20.00
08/04/04	BJM	Email to JA re: DES	0.10	\$200.00	\$20.00
08/04/04	BJM	Email to JA re: DES and HM	0.10	\$200.00	\$20.00
08/04/04	BJM	Email to JA re: HM and exhibits	0.10	\$200.00	\$20.00
08/04/04	BJM	Email to JA re: Burke affidavit	0.10	\$200.00	\$20.00
08/04/04	BJM	Email to JA re: Burke affidavit	0.10	\$200.00	\$20.00
08/04/04	BJM	Email to JA re: legal fees	0.10	\$200.00	\$20.00
08/04/04	BJM	Review Hollock and Campbell	1.00	\$200.00	\$200.00
08/04/04	BJM	Pre-Trial Prep	8.00	\$35.00	\$280.00
08/04/04	BJM	Email BJM and DH re: Rule 212.2	0.10	\$35.00	\$3.50
08/04/04	BJM	Email BJM re: Judge Stallone's rules	0.10	\$35.00	\$3.50
08/04/04	BJM	Email BJM re: DES	0.10	\$35.00	\$3.50
08/04/04	BJM	Email BJM re: HM	0.10	\$35.00	\$3.50
08/04/04	BJM	Email BJM re: Burke Affidavit (2)	0.25	\$35.00	\$8.75
08/04/04	BJM	Email BJM re: motions in limine	0.10	\$35.00	\$3.50
08/05/04	BJM	Draft Pre-Trial Memo	8.50	\$200.00	\$1,700.00
08/05/04	BJM	Email to JA re: tracking hours	0.00	\$200.00	\$0.00
08/05/04	BJM	Email to JA re: exhibits	0.00	\$200.00	\$0.00
08/05/04	BJM	Email to JA re: time sheets	0.00	\$200.00	\$0.00
08/05/04	BJM	Email to JA re: exhibits (9)	0.00	\$200.00	\$0.00
08/05/04	BJM	Email to JA re: CCC (2)	0.00	\$200.00	\$0.00
08/05/04	BJM	Email to JA re: appraisals	0.00	\$200.00	\$0.00
08/05/04	BJM	Email to JA re: pretrial	0.00	\$200.00	\$0.00
08/05/04	BJM	Pre-Trial Prep	10.00	\$35.00	\$350.00
08/06/04	BJM	Finalize Pre-Trial, Appendix 1	5.50	\$200.00	\$1,100.00

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
08/06/04	BJM	File Plaintiff Bergs' Pretrial Conference Memorandum and Proof of Service	0.50	\$200.00	\$100.00
08/06/04	BJM	Review Nationwide's Pre-Trial Memorandum	0.00	\$200.00	\$0.00
08/06/04	BJM	Email to JA re: notices to attend	0.10	\$200.00	\$20.00
08/06/04	BJM	Email to JA re: notices to attend	0.10	\$200.00	\$20.00
08/06/04	BJM	Email to JA re: notices to attend	0.10	\$200.00	\$20.00
08/06/04	BJM	Email to JA re: 7/9/97 Transcript of Testimony (2)	0.25	\$200.00	\$50.00
08/06/04	BJM	Email BJM re: CCC (2)	0.25	\$35.00	\$8.75
08/06/04	BJM	Email BJM re: 7/9/97 Transcript of Testimony	0.10	\$35.00	\$3.50
08/06/04	BJM	Letter to Bergs	0.25	\$200.00	\$50.00
08/09/04	BJM	Letter to C. Cohen re: Witmer-2 exhibit	0.25	\$200.00	\$50.00
08/09/04	BJM	Email to JA re: pretrial (5)	0.50	\$200.00	\$100.00
08/09/04	BJM	Email to JA re: Greg Miller	0.10	\$200.00	\$20.00
08/09/04	BJM	Email to JA re: MFS	0.10	\$200.00	\$20.00
08/09/04	BJM	Pre-Trial Prep	2.00	\$35.00	\$70.00
08/09/04	BJM	Email BJM re: pretrial (2)	0.25	\$35.00	\$8.75
08/09/04	BJM	Draft Argument Brief	3.00	\$200.00	\$600.00
08/10/04	BJM	Letter to Patrick Loughren	0.25	\$200.00	\$50.00
08/10/04	BJM	Letter to C. Cohen re: 7/9/97 Transcript of Testimony of E. Michael O'Leary	0.25	\$200.00	\$50.00
08/10/04	BJM	Email to JA re: David Cole	0.10	\$200.00	\$20.00
08/10/04	BJM	Email to JA re: exhibit list	0.10	\$200.00	\$20.00
08/10/04	BJM	Email to SF and JA re: costs	0.10	\$200.00	\$20.00
08/10/04	BJM	Review Motion for Sanctions and local rules	0.50	\$200.00	\$100.00
08/10/04	BJM	Discuss case with HM	1.00	\$200.00	\$200.00
08/10/04	BJM	Discuss case with BJM	1.00	\$350.00	\$350.00
08/10/04	BJM	Pre-Trial Prep	3.50	\$35.00	\$122.50
08/10/04	BJM	Exhibit List, copy checks, organize deposition transcripts	1.50	\$35.00	\$52.50
08/10/04	BJM	Email SF re: costs	0.10	\$35.00	\$3.50
08/11/04	BJM	Draft Argument Brief	1.50	\$200.00	\$300.00
08/11/04	BJM	Review Lindgren's Pre-Trial Memorandum	0.00	\$200.00	\$0.00
08/11/04	BJM	Draft Proposed Orders re: Motion for Sanctions	0.25	\$200.00	\$50.00
08/11/04	BJM	Review letter from C. Cohen re: settlement	0.10	\$200.00	\$20.00
08/11/04	BJM	Review letter from K. Myers re: Lindgren's Pre-Trial Memo	0.10	\$200.00	\$20.00
08/11/04	BJM	Review letter from B. Huckabee re: KC Auto Body's Pre-Trial Memo	0.10	\$200.00	\$20.00
08/11/04	BJM	Letter to Bergs	0.25	\$200.00	\$50.00
08/11/04	BJM	Letter to Counsel re: settlement	0.25	\$200.00	\$50.00
08/11/04	BJM	Letter to Counsel re: supp to PreTrial Conference Memo	0.25	\$200.00	\$50.00
08/11/04	BJM	Review letter from K. Myers re: employees of Lindgren	0.10	\$200.00	\$20.00
08/11/04	BJM	Telephone call with Dan Berg	0.50	\$200.00	\$100.00
08/11/04	BJM	Letter to Kelly Kubiak, Esquire	0.25	\$350.00	\$87.50
08/11/04	BJM	Pre-Trial Prep	3.00	\$35.00	\$105.00
08/11/04	BJM	Draft Appendix 1/Exhibit List	2.25	\$200.00	\$450.00
08/12/04	BJM	Prepare and file Praecepte for Argument on 9/7/04 with Affidavit of Service for Argument Court re: Motion for Sanctions and In Camera Review	0.50	\$200.00	\$100.00
08/12/04	BJM	File Brief of Argument in Support of Plaintiff Bergs' 2/3/04 Motion for Sanctions and In Camera Review with Proposed Orders	0.50	\$200.00	\$100.00
08/12/04	BJM	Prepare Pre-Trial Conference Folder	2.75	\$200.00	\$550.00

Page 52 of 110

COPY OF EXHIBIT NO. 44 (Page 52 of 110)

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
08/12/04	BJM	Review KC Auto Bodys Pre-Trial Memorandum	0.00	\$200.00	\$0.00
08/12/04	BJM	Prepare/file Praecipe for Argument for 9/7/04 re: Plaintiffs' Motion for Sanctions and In Camera Review	0.00	\$200.00	\$0.00
08/12/04	BJM	File Brief of Argument in Support of Plaintiff Bergs' 2/3/04 Motion for Sanctions and In Camera Review with Proposed Orders	0.00	\$200.00	\$0.00
08/12/04	BJM	Review letter from K. Myers re: settlement	0.10	\$200.00	\$20.00
08/12/04	BJM	Email to JA re: hours (4)	0.50	\$200.00	\$100.00
08/12/04	BJM	Email to JA re: release	0.10	\$200.00	\$20.00
08/12/04	BJM	Conference with HM	1.50	\$200.00	\$300.00
08/12/04	BJM	Organizing additional evidence to share w/ Court	2.50	\$200.00	\$500.00
08/12/04	BJM	Conference with BJM	1.50	\$350.00	\$525.00
08/12/04	BJM	Pre-Trial Prep	8.00	\$35.00	\$280.00
08/12/04	BJM	Email BJM re: hours (2)	0.25	\$35.00	\$8.75
08/13/04	BJM	Pre-Trial Conference	4.00	\$200.00	\$800.00
08/13/04	BJM	Letter to Daniel Ruoss	0.25	\$200.00	\$50.00
08/13/04	BJM	Letter to Katherine VanGorder	0.25	\$200.00	\$50.00
08/16/04	BJM	Letter to Judge Stallone re: Bergs' Exhibit List	0.25	\$200.00	\$50.00
08/16/04	BJM	Email to JA re: exhibit list/notices to attend	0.10	\$200.00	\$20.00
08/16/04	BJM	Email to JA re: notices to attend	0.10	\$200.00	\$20.00
08/16/04	BJM	Email to JA re: notices to attend	0.10	\$200.00	\$20.00
08/16/04	BJM	Draft Exhibit List	6.25	\$200.00	\$1,250.00
08/16/04	BJM	Trial Prep	3.00	\$18.00	\$54.00
08/16/04	BJM	Trial Prep/Exhibits	7.00	\$35.00	\$245.00
08/16/04	BJM	Email BJM re: exhibit list	0.10	\$35.00	\$3.50
08/16/04	BJM	Email BJM re: order/subpoenas/notices to attend	0.10	\$35.00	\$3.50
08/16/04	BJM	Letter to C. Cohen re: witness disclosure	0.25	\$200.00	\$50.00
08/17/04	BJM	Review letter from C. Cohen re: witness disclosure and Greg Miller dep, L-9	0.10	\$200.00	\$20.00
08/17/04	BJM	Letter to Counsel re: witness disclosure	0.25	\$200.00	\$50.00
08/17/04	BJM	Trial Prep	3.00	\$18.00	\$54.00
08/17/04	BJM	Draft MILs list, review important trial notes/issues	3.00	\$35.00	\$105.00
08/17/04	BJM	Read Judge Stallone's rules and Email BJM	2.50	\$35.00	\$87.50
08/18/04	BJM	Review letter from C. Cohen re: Greg Miller exhibit and objections to witnesses	0.10	\$200.00	\$20.00
08/18/04	BJM	Email to JA re: witnesses (2)	0.25	\$200.00	\$50.00
08/18/04	BJM	Trial Prep	3.00	\$18.00	\$54.00
08/18/04	BJM	Trial Prep	6.00	\$35.00	\$210.00
08/18/04	BJM	Email BJM re: witnesses (3)	0.25	\$35.00	\$8.75
08/19/04	BJM	Review Pre-Trial Order of 8/13/04	0.00	\$200.00	\$0.00
08/19/04	BJM	Review letter from C. Cohen to J. Stallone re: Motions in Limine	0.10	\$200.00	\$20.00
08/19/04	BJM	Review letter from C. Cohen to Prothy re: Motions in Limine	0.10	\$200.00	\$20.00
08/19/04	BJM	Email to JA re: Bergs	0.10	\$200.00	\$20.00
08/19/04	BJM	Trial Prep	3.00	\$18.00	\$54.00
08/19/04	BJM	Trial Prep	9.50	\$35.00	\$332.50
08/19/04	BJM	Email BJM re: Bergs	0.00	\$35.00	\$0.00
08/20/04	BJM	Trial Prep	2.00	\$18.00	\$36.00
08/23/04	BJM	Review Nationwide's Motions in Limine and to Bifurcate	1.50	\$200.00	\$300.00
08/23/04	BJM	Letter to Counsel re: witness	0.25	\$200.00	\$50.00
08/23/04	BJM	Letter to Counsel re: Expense Summary	0.75	\$200.00	\$150.00
08/23/04	BJM	Letter to C. Cohen re: Daniels v. Alexander	0.25	\$200.00	\$50.00

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
08/23/04	BJM	Letter to Counsel re: settlement	0.25	\$200.00	\$50.00
08/23/04	BJM	Letter to Counsel re: Miller dep exhibits	0.25	\$200.00	\$50.00
08/23/04	BJM	Trial Prep	4.00	\$18.00	\$72.00
08/23/04	BJM	Trial Prep/Exhibits	7.00	\$35.00	\$245.00
08/24/04	BJM	Review letter from B. Huckabee to J. Stallone re: PreTrial Settlement Conference Disposition Order	0.10	\$200.00	\$20.00
08/24/04	BJM	Review letter from C. Cohen re: Miller deposition exhibit L-9	0.10	\$200.00	\$20.00
08/24/04	BJM	Email to JA re: deposition exhibits	0.10	\$200.00	\$20.00
08/24/04	BJM	Email BJM re: Berg trial exhibits	0.10	\$35.00	\$3.50
08/24/04	BJM	Trial Prep	5.00	\$18.00	\$90.00
08/24/04	BJM	Trial Prep	7.00	\$35.00	\$245.00
08/24/04	BJM	Trial Prep	0.10	\$35.00	\$3.50
08/24/04	BJM	Email BJM re: dep exhibits	0.50	\$200.00	\$100.00
08/25/04	BJM	Letter to Judge Stallone re: Disposition Order	0.10	\$200.00	\$20.00
08/25/04	BJM	Review letter from C. Cohen to J. Stallone re: Motions in Limine	0.10	\$200.00	\$20.00
08/25/04	BJM	Review letter from C. Cohen to Prothy re: Motions in Limine	0.25	\$200.00	\$50.00
08/25/04	BJM	Telephone call with Brett Huckabee	1.00	\$200.00	\$200.00
08/25/04	BJM	Review and discuss Disposition Order	2.00	\$200.00	\$400.00
08/25/04	BJM	Review Nationwide's motions	3.00	\$18.00	\$54.00
08/25/04	BJM	Trial Prep	8.00	\$35.00	\$280.00
08/25/04	BJM	Trial Prep	0.25	\$200.00	\$50.00
08/26/04	BJM	Email to JA re: experts (2)	0.25	\$35.00	\$8.75
08/26/04	BJM	Telephone call to Dan Berg	8.00	\$35.00	\$280.00
08/26/04	BJM	Trial Prep	0.25	\$35.00	\$8.75
08/26/04	BJM	Email BJM re: experts (2)	0.10	\$200.00	\$20.00
08/27/04	BJM	Email to JA re: notice to attend	0.10	\$200.00	\$20.00
08/27/04	BJM	Email to JA re: jury instructions	0.10	\$200.00	\$20.00
08/27/04	BJM	Email to JA re: trial	3.00	\$18.00	\$54.00
08/27/04	BJM	Trial Prep	8.00	\$35.00	\$280.00
08/27/04	BJM	Trial Prep	0.10	\$35.00	\$3.50
08/27/04	BJM	Email BJM re: jury instructions	0.25	\$200.00	\$50.00
08/30/04	BJM	Letter to Counsel re: subpoenas	0.25	\$200.00	\$50.00
08/30/04	BJM	Letter to David Cole re: subpoena	0.25	\$200.00	\$50.00
08/30/04	BJM	Letter to George Moore re: subpoena	0.25	\$200.00	\$50.00
08/30/04	BJM	Letter to Tom Campuzano re: subpoena	0.25	\$200.00	\$50.00
08/30/04	BJM	Letter to Ron Stitzel re: subpoena	0.25	\$200.00	\$50.00
08/30/04	BJM	Letter to David Wert re: subpoena	0.25	\$200.00	\$50.00
08/30/04	BJM	Letter to Doug Witmer re: subpoena	0.25	\$200.00	\$50.00
08/30/04	BJM	Letter to C. Cohen re: Witmer subpoena	0.25	\$200.00	\$50.00
08/30/04	BJM	Letter to M. Nelson re: subpoena	0.25	\$200.00	\$50.00
08/30/04	BJM	Letter to Lisa Buenzle re: subpoena	0.25	\$200.00	\$50.00
08/30/04	BJM	Letter to Michael Burke re: subpoena	0.25	\$200.00	\$50.00
08/30/04	BJM	Letter to BS re: subpoena	0.25	\$200.00	\$50.00
08/30/04	BJM	Letter to Kristofer Snader re: subpoena	0.25	\$200.00	\$50.00
08/30/04	BJM	Letter to Counsel re: jury instructions meeting	0.25	\$200.00	\$50.00
08/30/04	BJM	Letter to B. Huckabee re: Notices to Attend	0.25	\$200.00	\$50.00
08/30/04	BJM	Letter to K. Myers re: Notices to Attend	0.25	\$200.00	\$50.00
08/30/04	BJM	Letter to CCC re: subpoena	0.25	\$200.00	\$50.00
08/30/04	BJM	Letter to C. Cohen re: Notices to Attend	0.25	\$200.00	\$50.00
08/30/04	BJM	Email to JA re: VanGorder	0.10	\$200.00	\$20.00
08/30/04	BJM	Email to Michael Burke	0.10	\$200.00	\$20.00
08/30/04	BJM	Review Email from Michael Burke	0.10	\$200.00	\$20.00
08/30/04	BJM	Email to JA re: Stitzel	0.10	\$200.00	\$20.00

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
08/30/04	BJM	Email to JA re: George Moore	0.10	\$200.00	\$20.00
08/30/04	BJM	Email to JA re: supp. Witnesses/Exhibits (3)	0.25	\$200.00	\$50.00
08/30/04	BJM	Email to JA re: Tom Campuzano	0.10	\$200.00	\$20.00
08/30/04	BJM	Email to JA re: Motions in Limine	0.10	\$200.00	\$20.00
08/30/04	BJM	Email to JA re: supplemental witnesses	0.10	\$200.00	\$20.00
08/30/04	BJM	Trial Prep	3.00	\$18.00	\$54.00
08/30/04	BJM	Trial Prep	8.00	\$35.00	\$280.00
08/30/04	BJM	Email BJM re: George Moore	0.10	\$35.00	\$3.50
08/30/04	BJM	Email BJM re: supp. Witnesses/exhibits (3)	0.25	\$35.00	\$8.75
08/30/04	BJM	Email BJM re: motions in limine	0.10	\$35.00	\$3.50
08/31/04	BJM	Letter to Daniel Ruoss	0.25	\$200.00	\$50.00
08/31/04	BJM	Email to JA re: notices to attend	0.10	\$200.00	\$20.00
08/31/04	BJM	Prepare Jury Instructions	1.00	\$200.00	\$200.00
08/31/04	BJM	Review case law for Jury Instructions	1.50	\$200.00	\$300.00
08/31/04	BJM	Review Standard Jury Instructions and Comments	2.50	\$200.00	\$500.00
08/31/04	BJM	Trial Prep	3.00	\$18.00	\$54.00
09/01/04	BJM	Review letter from C. Cohen re: jury instructions meeting	0.10	\$200.00	\$20.00
09/01/04	BJM	Letter to C. Cohen re: jury instructions meeting	0.25	\$200.00	\$50.00
09/01/04	BJM	Email to JA re: correspondence (6)	0.50	\$200.00	\$100.00
09/01/04	BJM	Email to JA re: discovery (2)	0.25	\$200.00	\$50.00
09/01/04	BJM	Email to JA re: supplemental exhibits	0.10	\$200.00	\$20.00
09/01/04	BJM	Email to JA re: notice to attend	0.10	\$200.00	\$20.00
09/01/04	BJM	Email to JA re: supplemental witness list	0.10	\$200.00	\$20.00
09/01/04	BJM	Email to MRC re: motion in limine	0.10	\$200.00	\$20.00
09/01/04	BJM	Review case law for Trial motion	5.00	\$200.00	\$1,000.00
09/01/04	BJM	Discuss case with MRC	0.25	\$200.00	\$50.00
09/01/04	BJM	Trial Prep	6.00	\$18.00	\$108.00
09/01/04	BJM	Trial Prep	5.50	\$35.00	\$192.50
09/01/04	BJM	Email BJM re: supp. Exhibits	0.10	\$35.00	\$3.50
09/01/04	BJM	Email to JA re: file	0.10	\$225.00	\$22.50
09/01/04	BJM	Discuss case with BJM	0.25	\$225.00	\$56.25
09/02/04	BJM	Letter to Michael Kane	0.25	\$200.00	\$50.00
09/02/04	BJM	Letter to Consultant	0.25	\$200.00	\$50.00
09/02/04	BJM	Letter to Donald Phillips	0.25	\$200.00	\$50.00
09/02/04	BJM	Letter to Bergs	0.25	\$200.00	\$50.00
09/02/04	BJM	Letter to Counsel re: Summit Bank stipulation	0.25	\$200.00	\$50.00
09/02/04	BJM	Email to JA re: experts	0.10	\$200.00	\$20.00
09/02/04	BJM	Email to JA re: notice to attend	0.10	\$200.00	\$20.00
09/02/04	BJM	Email to JA re: motion in limine	0.10	\$200.00	\$20.00
09/02/04	BJM	Email to JA re: notice to attend	0.10	\$200.00	\$20.00
09/02/04	BJM	Email to JA re: experts	0.10	\$200.00	\$20.00
09/02/04	BJM	Email to JA re: witnesses (4)	0.25	\$200.00	\$50.00
09/02/04	BJM	Email to JA re: To-Do List	0.10	\$200.00	\$20.00
09/02/04	BJM	Draft cross of Nationwide Corporate Designee	3.25	\$200.00	\$650.00
09/02/04	BJM	Prepare Jury Instructions	1.75	\$200.00	\$350.00
09/02/04	BJM	Trial Prep	5.00	\$18.00	\$90.00
09/02/04	BJM	Trial Prep	7.50	\$35.00	\$262.50
09/02/04	BJM	Email BJM re: experts	0.10	\$35.00	\$3.50
09/02/04	BJM	Email BJM re: motions in limine	0.10	\$35.00	\$3.50
09/02/04	BJM	Email BJM re: witnesses	0.10	\$35.00	\$3.50
09/02/04	BJM	Review letter from C. Cohen re: Summit Bank and jury instructions conference call	0.50	\$200.00	\$100.00
09/03/04	BJM	Review letter from K. Myers to Judge Stallone re: jury selection date and time	0.10	\$200.00	\$20.00

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
09/03/04	BJM	Letter to C. Cohen re: Summit Bank and insurance regulations stipulations	0.25	\$200.00	\$50.00
09/03/04	BJM	Review fax from Michael Kane	0.10	\$200.00	\$20.00
09/03/04	BJM	Email to JA re: notice to attend	0.10	\$200.00	\$20.00
09/03/04	BJM	Email to JA re: correspondence	0.10	\$200.00	\$20.00
09/03/04	BJM	Email to JA re: experts	0.10	\$200.00	\$20.00
09/03/04	BJM	Email to JA re: subpoena	0.10	\$200.00	\$20.00
09/03/04	BJM	Email to JA re: Berg testimony	0.10	\$200.00	\$20.00
09/03/04	BJM	Review Supplemental Exhibit/Witness List	0.75	\$200.00	\$150.00
09/03/04	BJM	Gathering Case Law	2.00	\$200.00	\$400.00
09/03/04	BJM	Draft Jury Instructions (Standard and Novel)	3.00	\$200.00	\$600.00
09/03/04	BJM	Letter to Michael Kane	0.25	\$35.00	\$8.75
09/03/04	BJM	Trial Prep	1.00	\$18.00	\$18.00
09/03/04	BJM	Draft Motions in Limine	6.00	\$225.00	\$1,350.00
09/03/04	BJM	Trial Prep	3.00	\$35.00	\$105.00
09/05/04	BJM	Trial Prep	1.50	\$35.00	\$52.50
09/06/04	BJM	Trial Prep	0.10	\$200.00	\$20.00
09/07/04	BJM	Email to JA re: experts	0.10	\$200.00	\$20.00
09/07/04	BJM	Email to JA re: motion	0.10	\$200.00	\$20.00
09/07/04	BJM	Email to JA re: Bergs	0.10	\$200.00	\$20.00
09/07/04	BJM	Review Email from Consultant re: experts	0.10	\$200.00	\$20.00
09/07/04	BJM	Email to Consultant and JA re: experts	0.10	\$200.00	\$20.00
09/07/04	BJM	Email to JA re: Tom Campuzano	0.10	\$200.00	\$20.00
09/07/04	BJM	Trial Prep	5.50	\$200.00	\$1,100.00
09/07/04	BJM	Trial Prep	7.00	\$35.00	\$245.00
09/07/04	BJM	Email BJM re: motion	0.10	\$35.00	\$3.50
09/07/04	BJM	Email BJM re: Bergs	0.10	\$35.00	\$3.50
09/07/04	BJM	Email BJM re: Tom Campuzano	0.10	\$35.00	\$3.50
09/07/04	BJM	Draft Motions in Limine	4.50	\$225.00	\$1,012.50
09/08/04	BJM	Review 9/8/04 Order Denying Plaintiffs' Motion for Sanctions and In Camera Review	0.00	\$200.00	\$0.00
09/08/04	BJM	Draft reply to Nationwide's Motion in Limine	3.75	\$200.00	\$750.00
09/08/04	BJM	Letter to C. Cohen re: Lisa Buenzle	0.25	\$200.00	\$50.00
09/08/04	BJM	Review letter from C. Cohen re: Lisa Buenzle	0.10	\$200.00	\$20.00
09/08/04	BJM	Review letter from K. Myers re: jury instruction meeting	0.10	\$200.00	\$20.00
09/08/04	BJM	Review letter from C. Cohen re: insurance regulations stipulation	0.10	\$200.00	\$20.00
09/08/04	BJM	Letter to Commonwealth of PA Insurance Dept re: subpoena	0.25	\$200.00	\$50.00
09/08/04	BJM	Letter to Counsel re: Summit Bank and Appraiser Act with Amendments stipulations	0.25	\$200.00	\$50.00
09/08/04	BJM	Email to JA re: motion in limine	0.10	\$200.00	\$20.00
09/08/04	BJM	Review Email from C. Cohen re: phone conference	0.10	\$200.00	\$20.00
09/08/04	BJM	Email to JA and DH re: phone conference	0.10	\$200.00	\$20.00
09/08/04	BJM	Trial Prep	1.00	\$200.00	\$200.00
09/08/04	BJM	Trial Prep	6.00	\$35.00	\$210.00
09/08/04	BJM	Draft Motions in Limine	5.50	\$225.00	\$1,237.50
09/08/04	BJM	Review letter from C. Cohen to Prothy re: Motions in Limine	0.10	\$200.00	\$20.00
09/09/04	BJM	Letter to Counsel re: dep of Stephen Potosnak	0.25	\$200.00	\$50.00
09/09/04	BJM	Letter to Prothy re: Bergs' Supp. Exhibit/Witness List	0.25	\$200.00	\$50.00
09/09/04	BJM	Letter to C. Cohen re: Notice to Attend - O'Leary	0.25	\$200.00	\$50.00
09/09/04	BJM	Letter to Counsel re: Supp. Exhibit/Witness List	0.25	\$200.00	\$50.00

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
09/09/04	BJM	Letter to C. Cohen re: Nationwide employees/witnesses	0.25	\$200.00	\$50.00
09/09/04	BJM	Email to JA re: Matthew Stool	0.10	\$200.00	\$20.00
09/09/04	BJM	Email to JA re: Steve Potosnak	0.10	\$200.00	\$20.00
09/09/04	BJM	Review Email from C. Cohen re: witnesses not employees of Nationwide	0.10	\$200.00	\$20.00
09/09/04	BJM	Review Barone report with HM and supplement to Exhibit/Witness List	2.25	\$200.00	\$450.00
09/09/04	BJM	Locating witnesses, scheduling trial testimony, conversation with Counsel, call to Court	3.75	\$200.00	\$750.00
09/09/04	BJM	Review Barone report with BJM	2.25	\$350.00	\$787.50
09/09/04	BJM	Trial Prep	9.00	\$35.00	\$315.00
09/09/04	BJM	Draft Motions in Limine responses	6.00	\$225.00	\$1,350.00
09/10/04	BJM	Draft Trial Brief	5.25	\$200.00	\$1,050.00
09/10/04	BJM	Letter to Stephen Potosnak re: subpoena	0.25	\$200.00	\$50.00
09/10/04	BJM	Letter to Judge Stallone re: trial date and videotape deps	0.25	\$200.00	\$50.00
09/10/04	BJM	Email to HM re: Barone	0.50	\$200.00	\$100.00
09/10/04	BJM	Review Email from C. Cohen	0.10	\$200.00	\$20.00
09/10/04	BJM	Email to C. Cohen (4)	0.50	\$200.00	\$100.00
09/10/04	BJM	Preparing for Barone	2.50	\$200.00	\$500.00
09/10/04	BJM	Scheduling Issues with Testimony	1.50	\$200.00	\$300.00
09/10/04	BJM	Trial Prep	6.00	\$35.00	\$210.00
09/13/04	BJM	Draft Trial Brief	3.00	\$200.00	\$600.00
09/13/04	BJM	Review Supp. Witness/Exhibit List of Lindgren	0.00	\$200.00	\$0.00
09/13/04	BJM	Prepare/file Plaintiffs' Supp. Witness/Exhibit List	0.00	\$200.00	\$0.00
09/13/04	BJM	Letter to Tom Campuzano re: trial date	0.25	\$200.00	\$50.00
09/13/04	BJM	Letter to Ron Stitzel re: trial date	0.25	\$200.00	\$50.00
09/13/04	BJM	Letter to Stephen Potosnak re: trial date	0.25	\$200.00	\$50.00
09/13/04	BJM	Letter to Kristofer Snader re: trial date	0.25	\$200.00	\$50.00
09/13/04	BJM	Letter to Lisa Buenzle re: trial date	0.25	\$200.00	\$50.00
09/13/04	BJM	Letter to Matthew Stool, Esq., re: trial date	0.25	\$200.00	\$50.00
09/13/04	BJM	Letter to Michael Burke re: trial date	0.25	\$200.00	\$50.00
09/13/04	BJM	Letter to Michael Nelson re: trial date	0.25	\$200.00	\$50.00
09/13/04	BJM	Letter to George Moore re: trial date	0.25	\$200.00	\$50.00
09/13/04	BJM	Letter to Doug Witmer re: trial date	0.25	\$200.00	\$50.00
09/13/04	BJM	Letter to PA Insurance Dept re: trial date	0.25	\$200.00	\$50.00
09/13/04	BJM	Letter to David Wert re: trial date	0.25	\$200.00	\$50.00
09/13/04	BJM	Letter to David Cole re: trial date	0.25	\$200.00	\$50.00
09/13/04	BJM	Letter to Daniel Ruoss re: trial date	0.25	\$200.00	\$50.00
09/13/04	BJM	Letter to CCC re: trial date	0.25	\$200.00	\$50.00
09/13/04	BJM	Letter to BS re: trial date	0.25	\$200.00	\$50.00
09/13/04	BJM	Review letter from K. Myers re: Potosnak video dep	0.10	\$200.00	\$20.00
09/13/04	BJM	Conference with HM and Barone	3.25	\$200.00	\$650.00
09/13/04	BJM	Conference with BJM and Barone	3.25	\$350.00	\$1,137.50
09/13/04	BJM	Trial Prep	3.00	\$35.00	\$105.00
09/13/04	BJM	Draft Motions in Limine responses	6.00	\$225.00	\$1,350.00
09/14/04	BJM	Draft Trial Brief	5.00	\$200.00	\$1,000.00
09/14/04	BJM	Email to JA re: motion in limine	0.10	\$200.00	\$20.00
09/14/04	BJM	Email to JA re: motion in limine	0.10	\$200.00	\$20.00
09/14/04	BJM	Email to JA re: motion in limine	0.10	\$200.00	\$20.00
09/14/04	BJM	Email to JA re: notices to attend/exhibits	0.10	\$200.00	\$20.00
09/14/04	BJM	Email to JA re: Nationwide witnesses (2)	0.25	\$200.00	\$50.00
09/14/04	BJM	Review Email from C. Cohen re: stipulation to insurance regs (2)	0.10	\$200.00	\$20.00

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
09/14/04	BJM	Review Email from K. Myers re: insurance regs	0.10	\$200.00	\$20.00
09/14/04	BJM	Trial Prep	6.50	\$35.00	\$227.50
09/14/04	BJM	Email BJM re: motion in limine (2)	0.25	\$35.00	\$8.75
09/14/04	BJM	Email BJM re: notices to attend/exhibits	0.10	\$35.00	\$3.50
09/14/04	BJM	Review new Motion in Limine	1.00	\$225.00	\$225.00
09/14/04	BJM	Email to BJM and JA re: motion in limine	0.10	\$225.00	\$22.50
09/15/04	BJM	Draft Trial Brief	8.75	\$200.00	\$1,750.00
09/15/04	BJM	Review fax from Barnaby Wittels	0.00	\$200.00	\$0.00
09/15/04	BJM	Letter to Barnaby Wittels	0.00	\$200.00	\$0.00
09/15/04	BJM	Letter to K. Myers re: supp. Witness/Exhibit List/Varnes report	0.00	\$200.00	\$0.00
09/15/04	BJM	Review letter from C. Cohen re: Nationwide's proposed jury instructions	0.00	\$200.00	\$0.00
09/15/04	BJM	Review letter from C. Cohen to Prothy re: Motions in Limine	0.00	\$200.00	\$0.00
09/15/04	BJM	Review letter from C. Cohen to Prothy re: Supp. Authority in Support of Motions in Limine	0.00	\$200.00	\$0.00
09/15/04	BJM	Review letter from C. Cohen to Prothy re: Trial Brief	0.00	\$200.00	\$0.00
09/15/04	BJM	Review Nationwide's Proposed Jury Instructions	1.00	\$200.00	\$200.00
09/15/04	BJM	Email BJM and SF re: Phillips bill	0.10	\$25.00	\$2.50
09/15/04	BJM	Email JA re: motions in limine	0.10	\$25.00	\$2.50
09/15/04	BJM	Email BJM re: check request	0.10	\$25.00	\$2.50
09/15/04	BJM	Trial Prep/Responses to MILs	10.00	\$35.00	\$350.00
09/15/04	BJM	Draft Motions in Limine	6.50	\$225.00	\$1,462.50
09/16/04	BJM	Review Motions in Limine	0.50	\$200.00	\$100.00
09/16/04	BJM	Draft Trial Brief	9.00	\$200.00	\$1,800.00
09/16/04	BJM	Letter to K. Myers re: Varnes report	0.00	\$200.00	\$0.00
09/16/04	BJM	Review letter from E. McNulty to Prothy re: Motion in Limine	0.00	\$200.00	\$0.00
09/16/04	BJM	Letter to Counsel re: PA Best Claims Practice Manual/employees	0.00	\$200.00	\$0.00
09/16/04	BJM	Letter to C. Cohen re: K. Holben, T. Gall and J. Gooderham, Esquire	0.00	\$200.00	\$0.00
09/16/04	BJM	Letter to Prothy re: Supp. Exhibit/Witness List	0.00	\$200.00	\$0.00
09/16/04	BJM	Email to JA re: jury instructions	0.00	\$200.00	\$0.00
09/16/04	BJM	Email to JA re: Defs' exhibits (2)	0.00	\$200.00	\$0.00
09/16/04	BJM	Telephone call with C. Cohen	0.00	\$200.00	\$0.00
09/16/04	BJM	Trial Prep/Responses to MILs	9.50	\$35.00	\$332.50
09/16/04	BJM	Email BJM re: jury instructions	0.00	\$35.00	\$0.00
09/16/04	BJM	Email BJM re: defs' exhibits (2)	0.00	\$35.00	\$0.00
09/17/04	BJM	Draft Trial Brief and Motion in Limine	3.50	\$200.00	\$700.00
09/17/04	BJM	Draft Trial Brief	7.75	\$200.00	\$1,550.00
09/17/04	BJM	Prepare and file Certificate of Service of Supp. Exhibit/Witness Lists	0.25	\$200.00	\$50.00
09/17/04	BJM	File Trial Brief with Certificate of Service	0.25	\$200.00	\$50.00
09/17/04	BJM	Review Trial Brief of Lindgren	0.00	\$200.00	\$0.00
09/17/04	BJM	File Plaintiffs' Motions in Limine	0.00	\$200.00	\$0.00
09/17/04	BJM	Review letter/opinions of C. Barone	0.00	\$200.00	\$0.00
09/17/04	BJM	Letter to Prothy re: Bergs' Motions in Limine	0.00	\$200.00	\$0.00
09/17/04	BJM	Letter to Counsel re: Bergs' Standard jury instructions	0.00	\$200.00	\$0.00
09/17/04	BJM	Review letter from K. Myers re: Varnes report	0.00	\$200.00	\$0.00
09/17/04	BJM	Review letter from K. Myers re: Lindgren's Trial Brief	0.00	\$200.00	\$0.00
09/17/04	BJM	Email to JA re: jury selection	0.00	\$200.00	\$0.00

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
09/17/04	BJM	Email to JA re: case law	0.00	\$200.00	\$0.00
09/17/04	BJM	Review Lindgren's Trial Brief	0.00	\$200.00	\$0.00
09/17/04	BJM	Trial Prep	8.00	\$35.00	\$280.00
09/17/04	BJM	Email BJM re: jury selection	0.00	\$35.00	\$0.00
09/17/04	BJM	Email to BJM and JA re: motions in limine	0.10	\$225.00	\$22.50
09/18/04	BJM	Review Nationwide's Trial Brief and Motions	1.50	\$200.00	\$300.00
09/19/04	BJM	Letter to C. Cohen re: Nationwide's Motions in Limine	0.25	\$200.00	\$50.00
09/19/04	BJM	Letter to Todd Heyman re: Tom Campuzano	0.25	\$200.00	\$50.00
09/20/04	BJM	Draft reply to Nationwide's Motions in Limine	8.50	\$200.00	\$1,700.00
09/20/04	BJM	Review Nationwide's new Motions in Limine	0.00	\$200.00	\$0.00
09/20/04	BJM	Review Nationwide's Supp. Authority in Support of Motions in Limine	0.00	\$200.00	\$0.00
09/20/04	BJM	Review letter from C. Cohen to Judge Stallone re: Trial Brief, Proposed Jury Instructions and Motions in Limine sent to Bucks County	0.00	\$200.00	\$0.00
09/20/04	BJM	Letter to C. Cohen re: objection to late filings and request for postage information	0.00	\$200.00	\$0.00
09/20/04	BJM	Review letter from K. Myers re: PA Insurance Dept Appraiser Act/Regulations Stip	0.00	\$200.00	\$0.00
09/20/04	BJM	Review letter from K. Myers to B. Huckabee re: stipulation	0.00	\$200.00	\$0.00
09/20/04	BJM	Review fax from C. Cohen re: mailing label	0.00	\$200.00	\$0.00
09/20/04	BJM	Email to JA re: jury instructions (2)	0.00	\$200.00	\$0.00
09/20/04	BJM	Email to JA re: Tom Campuzano	0.00	\$200.00	\$0.00
09/20/04	BJM	Email to JA re: Motions in Limine	0.00	\$200.00	\$0.00
09/20/04	BJM	Email to C. Cohen, K. Myers and B. Huckabee re: Trial Brief	0.00	\$200.00	\$0.00
09/20/04	BJM	Review Nationwide's Trial Brief	0.00	\$200.00	\$0.00
09/20/04	BJM	Organize file and desk	0.00	\$35.00	\$0.00
09/20/04	BJM	Prepare Motion in Limine to Preclude the Evidence, Testimony and Argument Pertaining to Lindgren's Reply to Plaintiffs' 3/25/03 RFAs with COS, Order and Memo of Law	10.00	\$35.00	\$350.00
09/20/04	BJM	Trial Prep	0.00	\$35.00	\$0.00
09/20/04	BJM	Email BJM re: jury instructions (2)	0.00	\$35.00	\$0.00
09/20/04	BJM	Email BJM and MRC re: due dates	0.00	\$35.00	\$0.00
09/20/04	BJM	Email BJM re: Tom Campuzano	0.00	\$35.00	\$0.00
09/20/04	BJM	Email BJM re: motions in limine	0.00	\$35.00	\$0.00
09/21/04	BJM	Draft reply to Nationwide's Motions in Limine	8.50	\$200.00	\$1,700.00
09/21/04	BJM	Letter to B. Huckabee re: Varnes report	0.00	\$200.00	\$0.00
09/21/04	BJM	Review letter from C. Cohen to Prothy re: Nationwide's Objections to Expert Testimony of C. Barone	0.00	\$200.00	\$0.00
09/21/04	BJM	Letter to Consultant	0.00	\$200.00	\$0.00
09/21/04	BJM	Email to SF and DH re: check request	0.00	\$200.00	\$0.00
09/21/04	BJM	Telephone conference with Counsel on Jury Instructions	0.50	\$200.00	\$100.00
09/21/04	BJM	Review Jury Instructions	1.50	\$200.00	\$300.00
09/21/04	BJM	Trial Prep/Jury Instructions/Responses to MILs/Preparation of Orders/COS/COA/Exhibits	12.00	\$35.00	\$420.00
09/22/04	BJM	Review Nationwide's Objections to Expert Testimony of Charlie Barone	0.00	\$200.00	\$0.00
09/22/04	BJM	Review letter from B. Huckabee re: Insurance Dept Act and Regulations Stipulation	0.10	\$200.00	\$20.00

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
09/22/04	BJM	Letter to Counsel re: Bonenberger v. Nationwide	0.25	\$200.00	\$50.00
09/22/04	BJM	Review letter from C. Cohen to Prothy re: Proposed Jury Instructions Agreed Upon by the Parties	0.10	\$200.00	\$20.00
09/22/04	BJM	Review letter from B. Huckabee re: KC Auto Body's Pretrial Memo	0.10	\$200.00	\$20.00
09/22/04	BJM	Review letter from C. Cohen to Prothy re: Nationwide's responses to Bergs' Motions in Limine	0.10	\$200.00	\$20.00
09/22/04	BJM	Email to JA re: notices to attend	0.10	\$200.00	\$20.00
09/22/04	BJM	Email to JA re: jury instructions - Email from Cohen	0.10	\$200.00	\$20.00
09/22/04	BJM	Email to JA re: Best Claims Manual	0.10	\$200.00	\$20.00
09/22/04	BJM	Review Email from C. Cohen re: jury instructions	0.10	\$200.00	\$20.00
09/22/04	BJM	Email to JA re: O'Leary Notice to Attend	0.10	\$200.00	\$20.00
09/22/04	BJM	Review KC Auto Body's Trial Brief	0.50	\$200.00	\$100.00
09/22/04	BJM	Trial Prep/Jury Instructions/Responses to Late Filings	14.00	\$35.00	\$490.00
09/23/04	BJM	Draft reply to Nationwide's Motions in Limine	9.25	\$200.00	\$1,850.00
09/23/04	BJM	File Plaintiffs' Responses in Opposition to Nationwide's Motions in Limine	0.00	\$200.00	\$0.00
09/23/04	BJM	File Plaintiffs' Objections to Nationwide's Untimely Motions	0.00	\$200.00	\$0.00
09/23/04	BJM	Letter to Prothy re: Bergs' supp. Jury Instructions	0.00	\$200.00	\$0.00
09/23/04	BJM	Letter to C. Cohen and B. Huckabee re: Varnes report	0.00	\$200.00	\$0.00
09/23/04	BJM	Letter to Counsel re: Bergs' Responses to Nationwide's Motions in Limine	0.00	\$200.00	\$0.00
09/23/04	BJM	Letter to Consultant and Consultant	0.00	\$200.00	\$0.00
09/23/04	BJM	Letter to Prothy re: Bergs' supp. Jury Instructions	0.00	\$200.00	\$0.00
09/23/04	BJM	Review letter from C. Cohen to Prothy re: Nationwide's Supp. Proposed Jury Instructions	0.00	\$200.00	\$0.00
09/23/04	BJM	Email to JA re: pretrial	0.00	\$200.00	\$0.00
09/23/04	BJM	Trial Prep	8.50	\$35.00	\$297.50
09/23/04	BJM	Email BJM re: pretrial	0.00	\$35.00	\$0.00
09/23/04	BJM	Draft reply to Nationwide's Motions in Limine	4.50	\$200.00	\$900.00
09/24/04	BJM	Letter to Counsel re: Bergs' Responses to Nationwide's Motions in Limine	0.25	\$200.00	\$50.00
09/24/04	BJM	Review letter from K. Myers re: Joinder of Lindgren in Nationwide's Objections, Proposed Jury Instructions and Motions in Limine	0.10	\$200.00	\$20.00
09/24/04	BJM	Review letter from C. Cohen to Prothy re: Nationwide's Objections to Bergs' Supp. Proposed Jury Instructions	0.10	\$200.00	\$20.00
09/24/04	BJM	Letter to Counsel re: disability slip of Ruoss	0.25	\$200.00	\$50.00
09/24/04	BJM	Review letter from K. Myers re: Varnes report	0.10	\$200.00	\$20.00
09/24/04	BJM	Letter to Counsel re: certified copies of 31 Pa Code Chapter 162 and Stipulation	0.25	\$35.00	\$8.75
09/24/04	BJM	Trial Prep	6.00	\$35.00	\$210.00
09/25/04	BJM	Review final Motion in Limine	1.00	\$200.00	\$200.00
09/27/04	BJM	Review Nationwide's motions and Trial Brief	1.50	\$200.00	\$300.00
09/27/04	BJM	Voir Dire, review Def's Motions and Final Reply to Motion	5.00	\$200.00	\$1,000.00
09/27/04	BJM	Letter to Counsel re: Bergs' Objections to Nationwide's Proposed Jury Instructions	0.25	\$200.00	\$50.00

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
09/27/04	BJM	Review letter from C. Cohen to Judge Stallone re: Voire Dire	0.10	\$200.00	\$20.00
09/27/04	BJM	Prepare for Jury Selection/Objections to Voir Dire/Travel to Berks County Courthouse	11.00	\$35.00	\$385.00
09/28/04	BJM	Letter to Counsel re: docket entries	0.25	\$200.00	\$50.00
09/28/04	BJM	Attend Jury Selection	6.00	\$200.00	\$1,200.00
09/28/04	BJM	Travel to Jury Selection and Conference with Counsel	1.25	\$200.00	\$250.00
09/28/04	BJM	Travel Home	0.50	\$200.00	\$100.00
09/28/04	BJM	Attend Jury Selection	6.00	\$350.00	\$2,100.00
09/28/04	BJM	Drafted suggestions to Voir Dire for BJM	2.00	\$350.00	\$700.00
09/28/04	BJM	Travel to Jury Selection and Conference with Counsel	1.25	\$350.00	\$437.50
09/28/04	BJM	Travel Home	0.50	\$350.00	\$175.00
09/28/04	BJM	Trial Prep/Re-organization	7.50	\$35.00	\$262.50
09/28/04	BJM	Memo to file	0.25	\$225.00	\$56.25
09/28/04	BJM	Attend Jury Selection	6.00	\$225.00	\$1,350.00
09/28/04	BJM	Travel to Jury Selection and Conference with Counsel	1.25	\$225.00	\$281.25
09/28/04	BJM	Travel Home	1.00	\$225.00	\$225.00
09/29/04	BJM	Letter to Counsel re: VanGorder CV	0.25	\$200.00	\$50.00
09/29/04	BJM	Review letter from C. Cohen to Prothy re: Voire Dire	0.10	\$200.00	\$20.00
09/29/04	BJM	Letter to Prothy re: Bergs' Voir Dire	0.25	\$200.00	\$50.00
09/29/04	BJM	Email to JA re: Ruoss	0.10	\$200.00	\$20.00
09/29/04	BJM	Trial/Letters to Experts and Witnesses	3.00	\$35.00	\$105.00
09/29/04	BJM	Email BJM re: Ruoss	0.10	\$35.00	\$3.50
09/30/04	BJM	Letter to Stephen Potosnak re: trial date	0.25	\$200.00	\$50.00
09/30/04	BJM	Letter to Matthew Stool, Esq., re: trial date	0.25	\$200.00	\$50.00
09/30/04	BJM	Letter to Lisa Buenzle re: trial date	0.25	\$200.00	\$50.00
09/30/04	BJM	Letter to Kristofer Snader re: trial date	0.25	\$200.00	\$50.00
09/30/04	BJM	Letter to George Moore re: trial date	0.25	\$200.00	\$50.00
09/30/04	BJM	Letter to Doug Witmer re: trial date	0.25	\$200.00	\$50.00
09/30/04	BJM	Letter to David Cole re: trial date	0.25	\$200.00	\$50.00
09/30/04	BJM	Letter to CCC re: trial date	0.25	\$200.00	\$50.00
09/30/04	BJM	Letter to David Wert re: trial date	0.25	\$200.00	\$50.00
09/30/04	BJM	Letter to Michael Nelson re: trial date	0.25	\$200.00	\$50.00
09/30/04	BJM	Letter to Michael Burke re: trial date	0.25	\$200.00	\$50.00
09/30/04	BJM	Letter to Ron Stitzel re: trial date	0.25	\$200.00	\$50.00
09/30/04	BJM	Letter to BS re: trial date	0.25	\$200.00	\$50.00
09/30/04	BJM	Letter to Todd Heyman re: Tom Campuzano	0.25	\$200.00	\$50.00
09/30/04	BJM	Letter to C. Cohen re: agreement to ensure Nationwide witnesses' attendance at trial	0.25	\$200.00	\$50.00
09/30/04	BJM	Letter to C. Cohen re: Kristofer Snader	0.25	\$200.00	\$50.00
09/30/04	BJM	Letter to Michael Kane	0.25	\$200.00	\$50.00
09/30/04	BJM	Letter to Counsel re: Barone 9/17/04 report	0.25	\$200.00	\$50.00
09/30/04	BJM	Letter to Bergs	0.25	\$200.00	\$50.00
09/30/04	BJM	Letter to Bergs	0.25	\$200.00	\$50.00
09/30/04	BJM	Trial Prep	3.50	\$35.00	\$122.50
10/01/04	BJM	Letter to Bergs	0.25	\$200.00	\$50.00
10/01/04	BJM	Letter to Doug Witmer re: trial date	0.25	\$200.00	\$50.00
10/01/04	BJM	Review fax from Michael Kane re: Tom Campuzano	0.10	\$200.00	\$20.00
10/01/04	BJM	Email to JA re: subpoenas	0.10	\$200.00	\$20.00
10/01/04	BJM	Email to JA re: Lindgren witnesses	0.10	\$200.00	\$20.00
10/01/04	BJM	Email to JA re: subpoenas/witnesses	0.10	\$200.00	\$20.00

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
10/01/04	BJM	Email to JA re: trial	0.10	\$200.00	\$20.00
10/01/04	BJM	Email to JA re: trial schedule	0.10	\$200.00	\$20.00
10/01/04	BJM	Email JA re: HM hours	0.10	\$35.00	\$3.50
10/01/04	BJM	Draft and sent Email to BJM	2.50	\$350.00	\$875.00
10/01/04	BJM	Email BJM re: subpoenas (2)	0.25	\$35.00	\$8.75
10/01/04	BJM	Email BJM re: Lindgren witnesses	0.10	\$35.00	\$3.50
10/01/04	BJM	Email BJM re: trial	0.10	\$35.00	\$3.50
10/01/04	BJM	Email BJM re: trial schedule	0.10	\$35.00	\$3.50
10/04/04	BJM	Letter to Michael Burke re: subpoena	0.25	\$200.00	\$50.00
10/04/04	BJM	Letter to Michael Nelson re: subpoena	0.25	\$200.00	\$50.00
10/04/04	BJM	Letter to David Wert re: subpoena	0.25	\$200.00	\$50.00
10/04/04	BJM	Letter to K. Myers re: Lindgren witnesses at trial	0.25	\$200.00	\$50.00
10/04/04	BJM	Prepare subpoenas/Notices to Attend/Prepare cover letters to Trial Witnesses	2.50	\$35.00	\$87.50
10/05/04	BJM	Letter to Todd Heyman re: Tom Campuzano	0.25	\$200.00	\$50.00
10/05/04	BJM	Letter to Tom Campuzano re: subpoena	0.25	\$200.00	\$50.00
10/05/04	BJM	Letter to Lisa Buenzle re: subpoena	0.25	\$200.00	\$50.00
10/05/04	BJM	Letter to David Cole re: subpoena	0.25	\$200.00	\$50.00
10/05/04	BJM	Letter to George Moore re: subpoena	0.25	\$200.00	\$50.00
10/05/04	BJM	Letter to Steve Polosnak re: subpoena	0.25	\$200.00	\$50.00
10/05/04	BJM	Letter to Kristofer Snader re: subpoena	0.25	\$200.00	\$50.00
10/05/04	BJM	Letter to Ron Stitzel re: subpoena	0.25	\$200.00	\$50.00
10/05/04	BJM	Letter to Matthew Stool, Esq., re: subpoena	0.25	\$200.00	\$50.00
10/05/04	BJM	Letter to Doug Witmer re: subpoena	0.25	\$200.00	\$50.00
10/05/04	BJM	Email to JA re: subpoenas	0.10	\$200.00	\$20.00
10/05/04	BJM	Email to JA re: CCC	0.10	\$200.00	\$20.00
10/05/04	BJM	Prepare subpoenas/copy and mail subpoenas	3.00	\$35.00	\$105.00
10/05/04	BJM	Email BJM re: subpoenas	0.10	\$35.00	\$3.50
10/05/04	BJM	Email BJM re: CCC (2)	0.25	\$35.00	\$8.75
10/05/04	BJM	Letter to Counsel re: subpoenas to trial witnesses	0.25	\$200.00	\$50.00
10/06/04	BJM	Letter to Bergs	0.25	\$200.00	\$50.00
10/06/04	BJM	Email to JA re: Lisa Buenzle (2)	0.25	\$200.00	\$50.00
10/06/04	BJM	Email BJM re: Lisa Buenzle	0.10	\$35.00	\$3.50
10/12/04	BJM	Email BJM re: Lindgren witnesses	0.10	\$35.00	\$3.50
10/13/04	BJM	Email to JA re: Lindgren witnesses	0.10	\$200.00	\$20.00
10/15/04	BJM	Email to JA re: insurance dept documents	0.10	\$200.00	\$20.00
10/15/04	BJM	Email to JA re: insurance dept documents	0.10	\$200.00	\$20.00
10/15/04	BJM	Email to Counsel re: Dept of Insurance witness (2)	0.10	\$200.00	\$20.00
10/15/04	BJM	Review Email from Cohen re: Dept of Insurance witness	0.10	\$200.00	\$20.00
10/15/04	BJM	Review Email from K. Myers re: Dept of Insurance witness	0.10	\$200.00	\$20.00
10/15/04	BJM	Email to K. Myers re: Lindgren employees	0.10	\$200.00	\$20.00
10/18/04	BJM	Letter to Counsel re: Stipulation re: records of Legislative Reference Bureau	0.25	\$200.00	\$50.00
10/18/04	BJM	Letter to CCC re: subpoena	0.25	\$200.00	\$50.00
10/18/04	BJM	Letter to BS re: subpoena	0.25	\$200.00	\$50.00
10/18/04	BJM	Email to K. Myers re: Lindgren witnesses at trial	0.10	\$200.00	\$20.00
10/18/04	BJM	Email to JA re: Kristofer Snader	0.10	\$200.00	\$20.00
10/18/04	BJM	Letter to Counsel re: stipulation; numbering pages to exhibits; prep subpoenas; letter to K. Myers re: Witnesses; letters to witnesses re: subpoenas; discussion with BJM re: Trial and file review	2.50	\$35.00	\$87.50
10/18/04	BJM	Email BJM re: Kristofer Snader	0.10	\$35.00	\$3.50

Berg; Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
10/20/04	BJM	Letter to Counsel re: subpoenas to CCC, BS and Bruce Wunsch	0.25	\$200.00	\$50.00
10/20/04	BJM	Letter to Postmaster re: Tom Campuzano	0.25	\$200.00	\$50.00
10/20/04	BJM	Re-organization of Trial materials, letter to counsel re: subpoenas	4.00	\$35.00	\$140.00
10/21/04	BJM	Re-organization of Trial materials; Billing	7.00	\$35.00	\$245.00
10/22/04	BJM	Billing Summary	4.00	\$35.00	\$140.00
10/26/04	BJM	Review letter from K. Myers re: Legislative Reference Bureau records stipulation	0.10	\$200.00	\$20.00
10/27/04	BJM	Billing Summary	8.00	\$35.00	\$280.00
10/28/04	BJM	Billing Summary	4.00	\$35.00	\$140.00
10/29/04	BJM	Letter to Prothy re: Legislative Reference Bureau records stipulation	0.25	\$200.00	\$50.00
10/29/04	BJM	Billing Summary; letter to Prothy re: Stipulation of Counsel; letter to Tom Campuzano	9.00	\$35.00	\$315.00
10/31/04	BJM	Email BJM re: Lindgren witnesses	0.10	\$35.00	\$3.50
10/31/04	BJM	Email BJM re: Doug Witmer	0.10	\$35.00	\$3.50
11/01/04	BJM	Email to JA re: Lindgren witnesses	0.10	\$200.00	\$20.00
11/01/04	BJM	Billing Summary	3.50	\$35.00	\$122.50
11/01/04	BJM	Email BJM re: Doug Witmer	0.10	\$35.00	\$3.50
11/02/04	BJM	Letter to Tom Campuzano re: subpoena	0.25	\$200.00	\$50.00
11/02/04	BJM	Letter to K. Myers re: witnesses at trial	0.25	\$200.00	\$50.00
11/02/04	BJM	Billing Summary; letter to Tom Campuzano	8.00	\$35.00	\$280.00
11/03/04	BJM	Billing Summary	2.00	\$35.00	\$70.00
11/04/04	BJM	Email to JA re: Tom Campuzano	0.10	\$200.00	\$20.00
11/04/04	BJM	Email BJM re: Tom Campuzano	0.10	\$35.00	\$3.50
11/05/04	BJM	Review letter from C. Cohen to the Bergs/BJM re: Notices to Attend	0.10	\$200.00	\$20.00
11/05/04	BJM	Email to JA re: Bonenberger witnesses	0.10	\$200.00	\$20.00
11/08/04	BJM	Response to Stool's Motion to Quash Subpoena	0.50	\$200.00	\$100.00
11/08/04	BJM	Letter to Bergs re: Notices to Attend	0.25	\$200.00	\$50.00
11/08/04	BJM	Letter to Patrick Loughren re: testimony of Holben, Gall and Gooderhan	0.25	\$200.00	\$50.00
11/08/04	BJM	Letter to Todd Heyman re: Tom Campuzano	0.25	\$200.00	\$50.00
11/08/04	BJM	Email to JA re: Bonenberger witnesses (4)	0.50	\$200.00	\$100.00
11/08/04	BJM	Email to JA re: notice to attend	0.10	\$200.00	\$20.00
11/08/04	BJM	Response to Motion to Quash Subpoena by Matthew Stool; Order accompanying paperwork to Court; check request for Matthew Stool; draft letter to Matthew Stool	2.00	\$35.00	\$70.00
11/08/04	BJM	Email BJM re: Notices to Attend	0.10	\$35.00	\$3.50
11/08/04	BJM	Email BJM re: Bonenberger witnesses (4)	0.25	\$35.00	\$8.75
11/09/04	BJM	Brief in Support of Reply to Motion to Quash	4.00	\$200.00	\$800.00
11/09/04	BJM	Letter to Matthew Stool re: witness/mileage fee	0.25	\$200.00	\$50.00
11/09/04	BJM	Email to JA re: Bonenberger witnesses	0.10	\$200.00	\$20.00
11/09/04	BJM	Draft Memo of Law to Response to Motion to Quash Subpoena by Matthew Stool; locate and copy exhibits	2.00	\$35.00	\$70.00
11/10/04	BJM	Letter to Prothy re: Bergs' Response to Motion to Quash Subpoena by Matthew Stool	0.25	\$200.00	\$50.00
11/11/04	BJM	Finalize Reply and Supporting Brief	1.00	\$200.00	\$200.00
11/11/04	BJM	Review letter from Consultant	0.10	\$200.00	\$20.00
11/12/04	BJM	Letter to Consultant	0.10	\$25.00	\$2.50
11/12/04	BJM	Billing Summary	1.00	\$35.00	\$35.00
11/12/04	BJM	Email BJM re: Lindgren witnesses	0.10	\$35.00	\$3.50

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
11/15/04	BJM	Email to JA re: Lindgren witnesses	0.10	\$200.00	\$20.00
11/15/04	BJM	Email to JA re: Bergs	0.10	\$200.00	\$20.00
11/15/04	BJM	Review Email from C. Cohen (2)	0.25	\$200.00	\$50.00
11/15/04	BJM	Email to C. Cohen re: Best Claims Practice and Bonenberg witnesses (5)	0.50	\$200.00	\$100.00
11/15/04	BJM	Review Email from C. Cohen re: Best Claims Practice and Bonenberger witnesses	0.10	\$200.00	\$20.00
11/15/04	BJM	Email to JA re: Best Claims Practice and Bonenberger witnesses	0.10	\$200.00	\$20.00
11/15/04	BJM	Email to JA re: Dean Jones (2)	0.25	\$200.00	\$50.00
11/15/04	BJM	Telephone call/Email with Cohen on Best Claims Practices	1.00	\$200.00	\$200.00
11/15/04	BJM	Email BJM re: Bergs	0.10	\$35.00	\$3.50
11/16/04	BJM	Response to Nationwide Motion in Limine - Irrelevant Insurance Practices	6.25	\$200.00	\$1,250.00
11/16/04	BJM	Email to JA re: Doug Witmer	0.10	\$200.00	\$20.00
11/16/04	BJM	Email to JA re: Ron Stitzel	0.10	\$200.00	\$20.00
11/16/04	BJM	Email to JA re: Stephen Potosnak	0.10	\$200.00	\$20.00
11/16/04	BJM	Telephone call with Tom Campuzano	0.25	\$200.00	\$50.00
11/16/04	BJM	Trial Prep; subpoenas and cover letters	8.00	\$35.00	\$280.00
11/16/04	BJM	Email BJM re: Doug Witmer	0.00	\$35.00	\$0.00
11/16/04	BJM	Email BJM re: Ron Stitzel	0.00	\$35.00	\$0.00
11/16/04	BJM	Email BJM re: Stephen Potosnak	0.00	\$35.00	\$0.00
11/17/04	BJM	Responsive Brief to Motion in Limine - Irrelevant Insurance Practices	6.00	\$200.00	\$1,200.00
11/17/04	BJM	Letter to Doug Witmer re: dep transcript	0.25	\$200.00	\$50.00
11/17/04	BJM	Letter to Ron Stitzel re: subpoena, witness and mileage fee	0.25	\$200.00	\$50.00
11/17/04	BJM	Email to JA re: Stephen Potosnak	0.10	\$200.00	\$20.00
11/17/04	BJM	Email to JA re: Doug Witmer (4)	0.25	\$200.00	\$50.00
11/17/04	BJM	Trial Prep	8.00	\$35.00	\$280.00
11/17/04	BJM	Email BJM re: Nationwide witnesses	0.00	\$35.00	\$0.00
11/17/04	BJM	Email BJM re: Doug Witmer	0.00	\$35.00	\$0.00
11/17/04	BJM	Email BJM re: Kristofer Snader	0.00	\$35.00	\$0.00
11/18/04	BJM	Responsive Brief to Motion in Limine - Irrelevant Insurance Practices	3.50	\$200.00	\$700.00
11/18/04	BJM	Letter to Lisa Buenzle re: subpoena, witness and mileage fee	0.25	\$200.00	\$50.00
11/18/04	BJM	Letter to Kristofer Snader re: subpoena, witness and mileage fee	0.25	\$200.00	\$50.00
11/18/04	BJM	Letter to Steve Potosnak re: subpoena	0.25	\$200.00	\$50.00
11/18/04	BJM	Letter to Bruce Wunsch re: subpoena	0.25	\$200.00	\$50.00
11/18/04	BJM	Email to JA re: Kristofer Snader	0.10	\$200.00	\$20.00
11/18/04	BJM	Email to JA re: Bruce Wunsch	0.10	\$200.00	\$20.00
11/18/04	BJM	Review Bonenberger Transcript	2.00	\$200.00	\$400.00
11/18/04	BJM	Trial Prep; photocopies; organization; Emails to BJM	4.00	\$35.00	\$140.00
11/18/04	BJM	Email BJM re: Bruce Wunsch	0.10	\$35.00	\$3.50
11/19/04	BJM	Letter to B&R re: subpoena to Lisa Buenzle	0.25	\$200.00	\$50.00
11/19/04	BJM	Letter to Tom Campuzano re: witness and mileage fee	0.25	\$200.00	\$50.00
11/19/04	BJM	Letter to Michael Nelson re: subpoena, witness and mileage fee	0.25	\$200.00	\$50.00
11/19/04	BJM	Letter to Berks County Sheriff re: subpoena to R. Stitzel	0.25	\$200.00	\$50.00

Page 64 of 110

COPY OF EXHIBIT NO. 44 (Page 64 of 110)

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
11/19/04	BJM	Letter to Doug Witmer re: subpoena/testimony	0.25	\$200.00	\$50.00
11/19/04	BJM	Letter to Doug Witmer re: subpoena, witness and mileage fee	0.25	\$200.00	\$50.00
11/19/04	BJM	Email to JA re: Holben	0.10	\$200.00	\$20.00
11/19/04	BJM	Review Bonenberger Transcript	6.25	\$200.00	\$1,250.00
11/19/04	BJM	Email BJM re: Holben (2)	0.25	\$35.00	\$8.75
11/19/04	BJM	Email BJM re: witnesses	1.00	\$35.00	\$35.00
11/22/04	BJM	Letter to Steve Potosnak re: trial testimony	0.25	\$200.00	\$50.00
11/22/04	BJM	Letter to C. Cohen re: Holben, Gall, Gooderhan	0.25	\$200.00	\$50.00
11/22/04	BJM	Letter to Counsel re: Summit Bank records slip	0.25	\$200.00	\$50.00
11/22/04	BJM	Email to C. Cohen re: Dean Jones	0.10	\$200.00	\$20.00
11/22/04	BJM	Review Email from C. Cohen re: Dean Jones' vacation	0.10	\$200.00	\$20.00
11/22/04	BJM	Review Email from C. Cohen re: address for Dean Jones	0.10	\$200.00	\$20.00
11/22/04	BJM	Review Email from C. Cohen re: Gooderhan	0.10	\$200.00	\$20.00
11/22/04	BJM	Email to C. Cohen re: Bonenberger witnesses	0.10	\$200.00	\$20.00
11/22/04	BJM	Email to JA re: Timothy Gall	0.10	\$200.00	\$20.00
11/22/04	BJM	Email to JA re: Gooderhan	0.10	\$200.00	\$20.00
11/22/04	BJM	Email to JA re: Dean Jones	0.10	\$200.00	\$20.00
11/22/04	BJM	Telephone call with Stephen Potosnak	0.25	\$200.00	\$50.00
11/22/04	BJM	Telephone call to Dean Jones re: trial testimony	0.25	\$200.00	\$50.00
11/22/04	BJM	Prepare for direct exam of trial witness	5.00	\$200.00	\$1,000.00
11/22/04	BJM	Prepare for direct exam of Best Claims Witnesses	5.25	\$200.00	\$1,050.00
11/23/04	BJM	Letter to Dean Jones re: subpoena	0.25	\$200.00	\$50.00
11/23/04	BJM	Letter to David Cole re: subpoena	0.25	\$200.00	\$50.00
11/23/04	BJM	Prepare direct/evidence on Best Claims Practices	5.00	\$200.00	\$1,000.00
11/23/04	BJM	Prepare for Dean Jones	3.75	\$200.00	\$750.00
11/23/04	BJM	Billing Summary	8.00	\$35.00	\$280.00
11/23/04	BJM	Letter to Counsel w/ attachments	0.75	\$200.00	\$150.00
11/24/04	BJM	Email to JA re: Consultant	0.10	\$200.00	\$20.00
11/24/04	BJM	Email to JA re: motion in limine	0.10	\$200.00	\$20.00
11/24/04	BJM	Review of recent Email from C. Cohen re: scheduling	1.00	\$200.00	\$200.00
11/24/04	BJM	Email to C. Cohen re: Bonenberger witnesses	0.10	\$200.00	\$20.00
11/24/04	BJM	Email to C. Cohen re: Dean Jones	0.10	\$200.00	\$20.00
11/24/04	BJM	Telephone call with Consultant	0.25	\$200.00	\$50.00
11/24/04	BJM	File organization	1.00	\$200.00	\$200.00
11/24/04	BJM	Staff conference and retaining PI Kane to serve Jones	0.25	\$200.00	\$50.00
11/24/04	BJM	Prepare for Dean Jones	5.50	\$200.00	\$1,100.00
11/24/04	BJM	Opening	1.25	\$200.00	\$250.00
11/24/04	BJM	Billing Summary; subpoena to D. Jones	7.00	\$35.00	\$245.00
11/24/04	BJM	Email BJM re: Consultant (2)	0.25	\$35.00	\$8.75
11/26/04	BJM	Email to JA re: motion to cross-examine	0.10	\$200.00	\$20.00
11/26/04	BJM	Email to JA re: Dean Jones	0.10	\$200.00	\$20.00
11/26/04	BJM	Case law package and Memo of Law	4.50	\$200.00	\$900.00
11/26/04	BJM	Prepare for Jones and Corporate Designee	2.50	\$200.00	\$500.00
11/26/04	BJM	Prepare Notices to Attend; review Email from BJM re: Motion to Cross-Examine D. Jones; Billing Summary	5.00	\$35.00	\$175.00
11/27/04	BJM	Email to JA re: Bergs (5)	0.50	\$200.00	\$100.00
11/27/04	BJM	Email to JA re: To-Do List	0.10	\$200.00	\$20.00
11/27/04	BJM	Email to JA re: questions	0.10	\$200.00	\$20.00
11/27/04	BJM	Email to JA re: Bonenberg witnesses	0.10	\$200.00	\$20.00

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
11/27/04	BJM	Email to JA re: letter to Bergs	0.10	\$200.00	\$20.00
11/27/04	BJM	Email to JA re: questions/comments	0.10	\$200.00	\$20.00
11/27/04	BJM	Telephone call with Dan Berg re: Reprehensibility	0.50	\$200.00	\$100.00
11/27/04	BJM	Filing out case law: BMW v. Gore	2.00	\$200.00	\$400.00
11/27/04	BJM	Prepare for Bergs' direct	0.50	\$200.00	\$100.00
11/27/04	BJM	Billing Summary; review Emails from BJM; draft "To-Do" list; draft MIL re: 12/3/97 Activity Log entry by R. Stitzel; draft letter re: Notices to Attend; organize Emails from BJM; organize and review Notices to Attend	5.00	\$35.00	\$175.00
11/27/04	BJM	Email BJM re: to-do list	0.10	\$35.00	\$3.50
11/27/04	BJM	Email BJM re: questions	0.10	\$35.00	\$3.50
11/27/04	BJM	Email BJM re: Bonenberger witnesses	0.10	\$35.00	\$3.50
11/27/04	BJM	Email BJM re: questions/comments	0.10	\$35.00	\$3.50
11/28/04	BJM	Reply to Buenzle Motion to Quash Subpoena	2.00	\$200.00	\$400.00
11/28/04	BJM	Email to JA re: questions/comments	0.10	\$200.00	\$20.00
11/28/04	BJM	Email to JA re: Trial Brief Notebook	0.10	\$200.00	\$20.00
11/28/04	BJM	Email to JA re: Appraiser Act and Regs	0.10	\$200.00	\$20.00
11/28/04	BJM	Email to JA re: Bonenberger witnesses (2)	0.25	\$200.00	\$50.00
11/28/04	BJM	Case law package	2.00	\$200.00	\$400.00
11/28/04	BJM	Review of Trial Brief	0.75	\$200.00	\$150.00
11/28/04	BJM	Trial Prep	3.75	\$200.00	\$750.00
11/28/04	BJM	Case law review	2.00	\$200.00	\$400.00
11/28/04	BJM	Send Email to BJM re: "To-Do" list; Email BJM re: Bonenberger witnesses; Email BJM re: questions; locate letter from K. Myers; filing of docs into witness books; type letter to Bergs; locate exhibit to response to Motion to Quash by Lisa Buenzle; Email BJM re: additional questions/comments; draft 3 letters to Counsel re: Notices to Attend; Email MRC re: legal research; re-do Notices to Attend; editing to response to Motion to Quash by L. Buenzle; draft letter to Prothy; draft letter to Bergs	3.50	\$35.00	\$122.50
11/29/04	BJM	Supplemental Trial Brief and conversation with Cohen	0.75	\$200.00	\$150.00
11/29/04	BJM	Letter to John Gaspich re: service of subpoena	0.25	\$200.00	\$50.00
11/29/04	BJM	Letter to K. Myers re: Notices to Attend	0.25	\$200.00	\$50.00
11/29/04	BJM	Letter to B. Huckabee re: Notices to Attend	0.25	\$200.00	\$50.00
11/29/04	BJM	Letter to Prothy re: Supplement to Trial Brief	0.25	\$200.00	\$50.00
11/29/04	BJM	Letter to Bergs	0.25	\$200.00	\$50.00
11/29/04	BJM	Letter to C. Cohen re: Notices to Attend	0.25	\$200.00	\$50.00
11/29/04	BJM	Email to JA re: O'Leary Notice to Attend	0.10	\$200.00	\$20.00
11/29/04	BJM	Email to JA and SF re: Sheriff check requests	0.10	\$200.00	\$20.00
11/29/04	BJM	Email to JA re: witness books	0.10	\$200.00	\$20.00
11/29/04	BJM	Email to JA re: Appraiser Act and Regs	0.10	\$200.00	\$20.00
11/29/04	BJM	Email to JA re: Dean Jones (2)	0.25	\$200.00	\$50.00
11/29/04	BJM	Email to JA re: Dept of Insurance (2)	0.25	\$200.00	\$50.00
11/29/04	BJM	Email to C. Cohen and Loughren	0.50	\$200.00	\$100.00
11/29/04	BJM	Email to JA re: check requests	0.10	\$200.00	\$20.00
11/29/04	BJM	Review Email from C. Cohen re: witnesses at trial	0.10	\$200.00	\$20.00
11/29/04	BJM	Email to C. Cohen re: Moore/Burke	0.10	\$200.00	\$20.00
11/29/04	BJM	Email to C. Cohen re: witnesses at trial	0.10	\$200.00	\$20.00
11/29/04	BJM	Telephone call with Bruce Wunsch	0.25	\$200.00	\$50.00

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
11/29/04	BJM	Preparing and conducting phone conference with Carmen	0.50	\$200.00	\$100.00
11/29/04	BJM	Organizing	2.00	\$200.00	\$400.00
11/29/04	BJM	Finalizing Notices to Attend and Replies to Motions	0.75	\$200.00	\$150.00
11/29/04	BJM	Additional work on Best Claims Practices	1.00	\$200.00	\$200.00
11/29/04	BJM	Review file material	5.25	\$200.00	\$1,050.00
11/29/04	BJM	Revisions to Notices to Attend; revisions to cover letter to C. Cohen; revisions to letter to Bergs; discuss changes with BJM to Notices to Attend; locate original Nationwide doc production; move exhibit boxes to BJM's office; review Email from BJM re: O'Leary Notice to Attend; create separate witness binders; file re-organization; copy Appraiser Act and regs; create new trial books; photocopies; mail; file organization	11.50	\$35.00	\$402.50
11/29/04	BJM	Email SF re: sheriff check requests	0.00	\$35.00	\$0.00
11/29/04	BJM	Email BJM re: witness books	0.00	\$35.00	\$0.00
11/29/04	BJM	Email BJM re: Dean Jones (2)	0.00	\$35.00	\$0.00
11/29/04	BJM	Email BJM re: Dept of Insurance	0.00	\$35.00	\$0.00
11/29/04	BJM	Email BJM and SF re: check requests	0.00	\$35.00	\$0.00
11/30/04	BJM	Letter to Counsel re: supp. Exhibit/Witness List	1.25	\$200.00	\$250.00
11/30/04	BJM	Additional letters to Counsel	1.00	\$200.00	\$200.00
11/30/04	BJM	Letter to Nationwide/Cohen re: litigation expenses	0.25	\$200.00	\$50.00
11/30/04	BJM	Email to JA re: deposition list	0.10	\$200.00	\$20.00
11/30/04	BJM	Email to JA re: Ron Stitzel	0.10	\$200.00	\$20.00
11/30/04	BJM	Email to JA re: Closing	0.10	\$200.00	\$20.00
11/30/04	BJM	Email to JA re: BS (2)	0.25	\$200.00	\$50.00
11/30/04	BJM	Email to JA and SF re: witness/mileage fee checks (2)	0.25	\$200.00	\$50.00
11/30/04	BJM	Email to JA re: deposition list	0.10	\$200.00	\$20.00
11/30/04	BJM	Email to JA re: Material Damage Standards Form	0.10	\$200.00	\$20.00
11/30/04	BJM	Email to C. Cohen re: Ron Stitzel and Dean Jones	0.10	\$200.00	\$20.00
11/30/04	BJM	Email to JA re: Blue Ribbon Book (2)	0.25	\$200.00	\$50.00
11/30/04	BJM	Email to JA re: Motion to Quash	0.10	\$200.00	\$20.00
11/30/04	BJM	Email to JA re: Important on RTPs	0.10	\$200.00	\$20.00
11/30/04	BJM	Email to JA re: Dean Jones subpoena	0.10	\$200.00	\$20.00
11/30/04	BJM	Email to JA re: Ruoss/Evaluation of Material Damage Loss	0.10	\$200.00	\$20.00
11/30/04	BJM	Telephone call from Ron Stitzel	0.25	\$200.00	\$50.00
11/30/04	BJM	Telephone call from Cohen's office re: fax (2)	0.25	\$200.00	\$50.00
11/30/04	BJM	Trial Prep for Exhibits/Chronology	1.75	\$200.00	\$350.00
11/30/04	BJM	Research on fact v. expert testimony	2.00	\$200.00	\$400.00
11/30/04	BJM	Exhibit work	0.50	\$200.00	\$100.00
11/30/04	BJM	Witness books for each witness	3.75	\$200.00	\$750.00
11/30/04	BJM	Locate release	0.25	\$200.00	\$50.00
11/30/04	BJM	Email BJM and JA re: Berg subpoenas	0.00	\$25.00	\$0.00
11/30/04	BJM	Email JA re: Berg subpoena	0.00	\$25.00	\$0.00
11/30/04	BJM	Billing Summary; create and organize witness books and witness appearance book; Email to BJM re: Material Damage Standard form; locate release; fax and mail letters to Counsel; Trial organization	11.50	\$35.00	\$402.50
11/30/04	BJM	Billing Summary - at home	1.00	\$35.00	\$35.00
11/30/04	BJM	Email BJM re: deposition list	0.00	\$35.00	\$0.00

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
11/30/04	BJM	Email BJM re: closing	0.00	\$35.00	\$0.00
11/30/04	BJM	Email BJM re: BS	0.00	\$35.00	\$0.00
11/30/04	BJM	Email BJM and SF re: witness/mileage fee checks	0.00	\$35.00	\$0.00
11/30/04	BJM	Email SF re: costs	0.00	\$35.00	\$0.00
11/30/04	BJM	Email BJM re: deposition list	0.00	\$35.00	\$0.00
11/30/04	BJM	Email DH re: B&R	0.00	\$35.00	\$0.00
11/30/04	BJM	Email BJM re: Material Damage Standards form	0.00	\$35.00	\$0.00
11/30/04	BJM	Email BJM re: Jury Instructions	0.00	\$35.00	\$0.00
11/30/04	BJM	Email BJM re: witness books	0.00	\$35.00	\$0.00
11/30/04	BJM	Email BJM re: Ruoss/Evaluation of Material Damage Loss	0.00	\$25.00	\$0.00
11/30/04	BJM	Email BJM and JA re: witness/mileage fee checks	0.00	\$25.00	\$0.00
11/30/04	BJM	Email JA re: costs	0.25	\$200.00	\$50.00
12/01/04	BJM	Letter to Ron Sitzel re: trial	0.10	\$200.00	\$20.00
12/01/04	BJM	Review letter from C. Cohen to Judge Stallone re: Motions to Quash	0.10	\$200.00	\$20.00
12/01/04	BJM	Review letter from C. Cohen to Prothy re: Motions to Quash	0.25	\$200.00	\$50.00
12/01/04	BJM	Letter to BS	0.10	\$200.00	\$20.00
12/01/04	BJM	Email to JA re: VanGorder Appt.	0.10	\$200.00	\$20.00
12/01/04	BJM	Email to JA re: Findings of Fact	0.10	\$200.00	\$20.00
12/01/04	BJM	Email to JA re: 12/1/04 letter to counsel re: witnesses	0.10	\$200.00	\$20.00
12/01/04	BJM	Email to JA re: 2/27/98 letter to Bergs	0.10	\$200.00	\$20.00
12/01/04	BJM	Email to JA re: Dean Jones	0.10	\$200.00	\$20.00
12/01/04	BJM	Email to JA re: David Cole folder	0.10	\$200.00	\$20.00
12/01/04	BJM	Email to JA re: Summit Bank	0.10	\$200.00	\$20.00
12/01/04	BJM	Prepare for Bashore	4.50	\$200.00	\$900.00
12/01/04	BJM	Proposed Findings of Fact and Conclusions of Law	3.25	\$200.00	\$650.00
12/01/04	BJM	Draft letter to Stitzel; 3 hole punch witness book documents; draft Findings of Fact and Conclusions of Law; sort, copy and file docs into witness books; trial organization; update dep list; letter to BS; letter to Counsel re: Bruce Wunsch; letter to CCC; letter to B. Whittel	4.50	\$35.00	\$157.50
12/01/04	BJM	Email BJM re: VanGorder appt.	0.10	\$35.00	\$3.50
12/01/04	BJM	Email BJM re: Findings of Fact	0.10	\$35.00	\$3.50
12/01/04	BJM	Email BJM re: 12/1/04 letter to Counsel	0.10	\$35.00	\$3.50
12/01/04	BJM	Email BJM re: 2/27/98 letter to Bergs	0.10	\$35.00	\$3.50
12/01/04	BJM	Email BJM re: Dean Jones	0.10	\$35.00	\$3.50
12/01/04	BJM	Email BJM re: witness books	0.10	\$35.00	\$3.50
12/01/04	BJM	Email BJM re: Dan Ruoss	0.10	\$35.00	\$3.50
12/01/04	BJM	Email SF re: John Gaspich (served Cole subpoena)	0.10	\$35.00	\$3.50
12/01/04	BJM	Email BJM re: Summit Bank	0.10	\$35.00	\$3.50
12/02/04	BJM	Review Nationwide's Most Recent Motions to Quash	1.00	\$200.00	\$200.00
12/02/04	BJM	Letter to BS	0.25	\$200.00	\$50.00
12/02/04	BJM	Review letter from K. Myers re: Greg Miller	0.25	\$200.00	\$50.00
12/02/04	BJM	Fax to Consultant	0.25	\$200.00	\$50.40
12/02/04	BJM	Email to JA re: Dan Ruoss	0.10	\$200.00	\$20.00
12/02/04	BJM	Email to JA re: witness books	0.10	\$200.00	\$20.00
12/02/04	BJM	Email to JA re: Important - we need motion for RFA	0.10	\$200.00	\$20.00
12/02/04	BJM	Email to JA re: BS	0.10	\$200.00	\$20.00
12/02/04	BJM	Conversation with Consultant	0.50	\$200.00	\$100.00
12/02/04	BJM	Closing argument	2.50	\$200.00	\$500.00

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
12/02/04	BJM	Opening remarks - revisions	1.00	\$200.00	\$200.00
12/02/04	BJM	Exhibit work	2.25	\$200.00	\$450.00
12/02/04	BJM	Reworking opening, closing and RFAs	3.50	\$200.00	\$700.00
12/02/04	BJM	Discuss RFAs with BJM and notice to court; Billing Summary; type subpoena to D. Cole; draft letter to Gaspich; trial prep; file re-organization; jury instructions; draft notice of intent to use RFAs; RFAs book; Email to BJM re: Ruoss/BS	12.00	\$35.00	\$420.00
12/02/04	BJM	Email MRC and BJM re: research	0.00	\$35.00	\$0.00
12/02/04	BJM	Email BJM re: Nationwide 12/1/04 letter to Judge Stallone	0.00	\$35.00	\$0.00
12/02/04	BJM	Email BJM re: BS	0.00	\$35.00	\$0.00
12/02/04	BJM	Email BJM re: Ruoss/BS	0.75	\$200.00	\$150.00
12/03/04	BJM	Response to 2nd Motion to Quash on Nelson	0.25	\$200.00	\$50.00
12/03/04	BJM	Letter to BS	0.25	\$200.00	\$50.00
12/03/04	BJM	Letter to Matt Stool re: trial testimony	0.25	\$200.00	\$50.00
12/03/04	BJM	Letter to Counsel	0.25	\$200.00	\$50.00
12/03/04	BJM	Letter to Charlie Barone	0.25	\$200.00	\$50.00
12/03/04	BJM	Letter to Don Phillips, P.E.	0.00	\$200.00	\$0.00
12/03/04	BJM	Email to JA re: Foster witness book	0.00	\$200.00	\$0.00
12/03/04	BJM	Email to JA re: Trial Brief and Pretrial Brief (2)	0.00	\$200.00	\$0.00
12/03/04	BJM	Email to JA re: Matt Stool	0.00	\$200.00	\$0.00
12/03/04	BJM	Email to JA re: David Cole	0.00	\$200.00	\$0.00
12/03/04	BJM	Review Email from C. Cohen re: witnesses at trial (8)	0.00	\$200.00	\$0.00
12/03/04	BJM	Email to C. Cohen re: witnesses at trial (9)	0.00	\$200.00	\$0.00
12/03/04	BJM	Email to JA re: Joffred's Appraisal License	0.00	\$200.00	\$0.00
12/03/04	BJM	Email to JA re: Ruoss, BS, D. Fatkin	0.00	\$200.00	\$0.00
12/03/04	BJM	Email to JA re: 2nd Motion to Quash-Nelson (2)	1.50	\$200.00	\$300.00
12/03/04	BJM	Practice opening to narrow down to 5 mins	2.25	\$200.00	\$450.00
12/03/04	BJM	Prepare closing remarks	0.50	\$200.00	\$100.00
12/03/04	BJM	Prepare for conference with Barone	4.00	\$200.00	\$800.00
12/03/04	BJM	Conference with Barone	1.25	\$200.00	\$250.00
12/03/04	BJM	Exhibit work	1.25	\$200.00	\$250.00
12/03/04	BJM	Closing argument	7.50	\$35.00	\$262.50
12/03/04	BJM	RFAs book; Email from BJM re: Foster witness book; Email BJM re: stipulations; Email BJM re: RFAs; jury instructions; file organization	0.10	\$35.00	\$3.50
12/03/04	BJM	Email BJM re: trial brief/pretrial brief	0.25	\$200.00	\$50.00
12/04/04	BJM	Fax to Counsel	0.10	\$200.00	\$20.00
12/04/04	BJM	Email to JA re: 5/12/03 A. Levy letter	0.10	\$200.00	\$20.00
12/04/04	BJM	Email to JA re: Motion to Quash - Nelson	3.00	\$200.00	\$600.00
12/04/04	BJM	Prepare for Schwartzman	1.00	\$200.00	\$200.00
12/04/04	BJM	Prepare for Foster	5.25	\$200.00	\$1,050.00
12/04/04	BJM	Exhibit work	9.00	\$35.00	\$315.00
12/04/04	BJM	Trial Book index; type response to Motion to Quash Nelson subpoenas; draft Orders and documents for filing; gather exhibits; copy 5/12/03 Levy letter; Trial Prep; Jury Instructions	0.00	\$35.00	\$0.00
12/04/04	BJM	Email BJM re: Bergs	0.10	\$200.00	\$20.00
12/05/04	BJM	Email to JA re: Judge Lash Order	0.10	\$200.00	\$20.00
12/05/04	BJM	Email to JA re: Greg Miller	0.10	\$200.00	\$20.00
12/05/04	BJM	Email to JA re: Dick Fatkin	0.10	\$200.00	\$20.00
12/05/04	BJM	Email to JA re: deposition list	0.10	\$200.00	\$20.00
12/05/04	BJM	Email to JA re: Moore/Burke	0.10	\$200.00	\$20.00

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
12/05/04	BJM	Email to JA re: Joffred's License	0.10	\$200.00	\$20.00
12/05/04	BJM	Email to JA re: Bergs	0.10	\$200.00	\$20.00
12/05/04	BJM	Email to JA, EW and MAG re: Claims Environment	0.10	\$200.00	\$20.00
12/05/04	BJM	Email to JA re: book for Appraiser Act/Regs	0.10	\$200.00	\$20.00
12/05/04	BJM	Finalize and practice Opening remarks-timing	2.50	\$200.00	\$500.00
12/05/04	BJM	Presentation of Opening to Non-Interested Person	0.25	\$200.00	\$50.00
12/05/04	BJM	Draft universal questions	1.75	\$200.00	\$350.00
12/05/04	BJM	Review Appraiser Act	0.75	\$200.00	\$150.00
12/05/04	BJM	Prepare questions for Jones	2.00	\$200.00	\$400.00
12/05/04	BJM	Conference with HM	1.00	\$200.00	\$200.00
12/05/04	BJM	Conference with BJM	1.00	\$350.00	\$350.00
12/05/04	BJM	Trial Prep	2.00	\$35.00	\$70.00
12/05/04	BJM	Email BJM re: Greg Miller	0.10	\$35.00	\$3.50
12/05/04	BJM	Email BJM re: Dick Fatkin	0.10	\$35.00	\$3.50
12/05/04	BJM	Email BJM re: deposition list	0.10	\$35.00	\$3.50
12/05/04	BJM	Email BJM re: Moore/Burke	0.10	\$35.00	\$3.50
12/05/04	BJM	Email BJM re: trial motions	0.10	\$35.00	\$3.50
12/05/04	BJM	Email BJM re: important documents	0.10	\$35.00	\$3.50
12/05/04	BJM	Email BJM re: Greg Miller	0.10	\$35.00	\$3.50
12/05/04	BJM	Email BJM re: PA Dept of Insurance	0.10	\$35.00	\$3.50
12/06/04	BJM	Letter to K. Myers re: Greg Miller	0.00	\$200.00	\$0.00
12/06/04	BJM	Letter to Consultant	0.00	\$200.00	\$0.00
12/06/04	BJM	Review letter from C. Cohen to Prothy re: Motions to Quash	0.00	\$200.00	\$0.00
12/06/04	BJM	Email to JA re: Gaspich	0.00	\$200.00	\$0.00
12/06/04	BJM	Email to JA re: Greg Miller	0.00	\$200.00	\$0.00
12/06/04	BJM	Telephone call with Mary Beth Perko	0.00	\$200.00	\$0.00
12/06/04	BJM	Exhibit work and prepare for Phillips	3.00	\$200.00	\$600.00
12/06/04	BJM	Conference with Phillips	3.00	\$200.00	\$600.00
12/06/04	BJM	Exhibit work and prepare for Bergs	2.50	\$200.00	\$500.00
12/06/04	BJM	Conference with Bergs	2.50	\$200.00	\$500.00
12/06/04	BJM	Conference with HM re: Closing argument	1.00	\$200.00	\$200.00
12/06/04	BJM	Conference with BJM re: Closing argument	1.00	\$350.00	\$350.00
12/06/04	BJM	Telephone call to Allegheny County Courthouse	0.10	\$35.00	\$3.50
12/06/04	BJM	Telephone call to Mary Beth Perko	0.10	\$35.00	\$3.50
12/06/04	BJM	Trial Prep	12.00	\$35.00	\$420.00
12/06/04	BJM	Email BJM re: Gaspich	0.00	\$35.00	\$0.00
12/06/04	BJM	Email BJM re: Greg Miller	0.00	\$35.00	\$0.00
12/06/04	BJM	Email BJM re: motions to quash	0.00	\$35.00	\$0.00
12/06/04	BJM	Email BJM re: trial motions	0.00	\$35.00	\$0.00
12/06/04	BJM	Evidentiary Issues	6.00	\$225.00	\$1,350.00
12/07/04	BJM	Letter to Counsel	0.00	\$200.00	\$0.00
12/07/04	BJM	Letter to Greg Miller	0.00	\$200.00	\$0.00
12/07/04	BJM	Letter to BS re: witness/mileage fee	0.00	\$200.00	\$0.00
12/07/04	BJM	Letter to John Gaspich re: service of subpoena	0.00	\$200.00	\$0.00
12/07/04	BJM	Letter to Donna Sherrick/Dept of Insurance	0.00	\$200.00	\$0.00
12/07/04	BJM	Letter to Schwartzman	0.00	\$200.00	\$0.00
12/07/04	BJM	Letter to Prothy re: Greg Miller subpoena	0.00	\$200.00	\$0.00
12/07/04	BJM	Email to JA re: Greg Miller	0.00	\$200.00	\$0.00
12/07/04	BJM	Email to JA re: PA Dept of Insurance	0.00	\$200.00	\$0.00
12/07/04	BJM	Email to JA re: cell phone for Don Phillips	0.00	\$200.00	\$0.00
12/07/04	BJM	Email to JA re: John Gaspich	0.00	\$200.00	\$0.00
12/07/04	BJM	Email to JA re: trial motions	0.00	\$200.00	\$0.00
12/07/04	BJM	Email to JA re: repair documents	0.00	\$200.00	\$0.00
12/07/04	BJM	Prepare for Grumbein	0.50	\$200.00	\$100.00

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
12/07/04	BJM	File organization	1.00	\$200.00	\$200.00
12/07/04	BJM	Prepare for Grumbein/Stitzel	0.25	\$200.00	\$50.00
12/07/04	BJM	Prepare for Schwartzman	1.00	\$200.00	\$200.00
12/07/04	BJM	Arrange service of subpoena on Dept of Ins.	0.25	\$200.00	\$50.00
12/07/04	BJM	Locating exhibits/organizing witness books	2.75	\$200.00	\$550.00
12/07/04	BJM	Prepare for Foster	1.50	\$200.00	\$300.00
12/07/04	BJM	Prepare for Grumbein	1.00	\$200.00	\$200.00
12/07/04	BJM	Reviewing evidence with independents	0.50	\$200.00	\$100.00
12/07/04	BJM	Findings of Fact	2.50	\$200.00	\$500.00
12/07/04	BJM	Telephone call with Mary Beth Perko	0.25	\$35.00	\$8.75
12/07/04	BJM	Type subpoenas to G. Miller and PA Ins. Dept; locate G. Miller/Salvage Hyundai including phone calls to local Savage Hyundais; phone call with Gaspich; letter to G. Miller; Trial Prep; letter to Counsel re: subpoena to PA Ins. Dept; Email BJM re: Mary Beth Perko	12.00	\$35.00	\$420.00
12/07/04	BJM	Email BJM re: repair documents	0.00	\$35.00	\$0.00
12/07/04	BJM	Email BJM re: Greg Miller served	0.00	\$35.00	\$0.00
12/08/04	BJM	Reply to Nationwide's Motion to Quash	0.50	\$200.00	\$100.00
12/08/04	BJM	Letter to C. Cohen re: BJM Current Hrs Log	0.25	\$200.00	\$50.00
12/08/04	BJM	Email to JA and DH re: Berg	0.00	\$200.00	\$0.00
12/08/04	BJM	Email to JA re: Exhibits (2)	0.00	\$200.00	\$0.00
12/08/04	BJM	Email to JA re: Ruoss	0.00	\$200.00	\$0.00
12/08/04	BJM	Email to JA re: Dan Ruoss phone number	0.00	\$200.00	\$0.00
12/08/04	BJM	Email to JA re: Berg dep costs (2)	0.00	\$200.00	\$0.00
12/08/04	BJM	Narrowing evidence (difficult to strip down case)	6.00	\$200.00	\$1,200.00
12/08/04	BJM	Organizing exhibits for the Court	3.50	\$200.00	\$700.00
12/08/04	BJM	Prepare for conference with Schwartzman	1.25	\$200.00	\$250.00
12/08/04	BJM	Narrowing evidence and preparing exhibit book	1.50	\$200.00	\$300.00
12/08/04	BJM	Draft Orders re: responses to Motions to Quash Cole and O'Leary; draft response to Motion to Quash Cole subpoena; draft supporting docs for filing; draft supp. Response to Motions to Quash Subpoenas by Stool, Cole and Nelson and supporting docs to file; locate and copy Ruoss dep exhibits; letter to Counsel re: Ben's hours log; Email to BJM re: trial; copy Judge Stallone's rules of court; jury instructions; letter to Prothy	8.50	\$35.00	\$297.50
12/08/04	BJM	Email BJM re: Gaspich	0.10	\$35.00	\$3.50
12/08/04	BJM	Email BJM re: Berg dep costs (2)	0.25	\$35.00	\$8.75
12/08/04	BJM	Email BJM re: Ruoss	0.10	\$35.00	\$3.50
12/08/04	BJM	Evidentiary Issues	4.50	\$225.00	\$1,012.50
12/09/04	BJM	Letter to Counsel re: Schwartzman CV and Mary Beth Perko bill	0.00	\$200.00	\$0.00
12/09/04	BJM	Letter to Schwartzman	0.00	\$200.00	\$0.00
12/09/04	BJM	Letter to Tom Campuzano	0.00	\$200.00	\$0.00
12/09/04	BJM	Fax to Counsel re: Schwartzman CV	0.00	\$200.00	\$0.00
12/09/04	BJM	Email to DH and SF re: Phillips bill	0.00	\$200.00	\$0.00
12/09/04	BJM	Email to JA re: things for Judge Stallone	0.00	\$200.00	\$0.00
12/09/04	BJM	Email to JA re: MSJ	0.00	\$200.00	\$0.00
12/09/04	BJM	Email to JA re: Court Notice on Intent to use RFAs	0.00	\$200.00	\$0.00
12/09/04	BJM	Travel to conference with Schwartzman	1.25	\$200.00	\$250.00
12/09/04	BJM	Conference with Schwartzman	1.50	\$200.00	\$300.00
12/09/04	BJM	Travel from conference with Schwartzman	1.00	\$200.00	\$200.00
12/09/04	BJM	Preparing for Campuzano examination	1.00	\$200.00	\$200.00

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
12/09/04	BJM	Packing file	1.50	\$200.00	\$300.00
12/09/04	BJM	Finalize exhibits and index	3.00	\$200.00	\$600.00
12/09/04	BJM	Summarize costs incurred since pretrial conference	1.50	\$200.00	\$300.00
12/09/04	BJM	Identify intended witnesses to authenticate exhibits	0.75	\$200.00	\$150.00
12/09/04	BJM	Email BJM and SF re: Phillips bill	0.00	\$25.00	\$0.00
12/09/04	BJM	Trial prep; letter to Schwartzman; letter to Campuzano; Billing Summary	8.00	\$35.00	\$280.00
12/09/04	BJM	Email BJM re: MSJ	0.00	\$35.00	\$0.00
12/09/04	BJM	Email BJM re: things for Judge Stallone	0.00	\$35.00	\$0.00
12/09/04	BJM	Email BJM and JA re: Tom Campuzano	0.10	\$25.00	\$2.50
12/10/04	BJM	Letter to James Schwartzman, Esquire	0.00	\$200.00	\$0.00
12/10/04	BJM	Fax to Counsel re: bill from Mary Beth Perko	0.00	\$200.00	\$0.00
12/10/04	BJM	Letter to Counsel re: Phillips CV	0.00	\$200.00	\$0.00
12/10/04	BJM	Letter to Lisa Buenzle re: trial testimony	0.00	\$200.00	\$0.00
12/10/04	BJM	Review fax from Donald Phillips' office	0.00	\$200.00	\$0.00
12/10/04	BJM	Email to JA re: lease	0.00	\$200.00	\$0.00
12/10/04	BJM	Email to JA re: Witness Contact Sheet (3)	0.00	\$200.00	\$0.00
12/10/04	BJM	Email to JA re: Bergs Lease	0.00	\$200.00	\$0.00
12/10/04	BJM	Email to JA and DH re: Court Room Assignment	0.00	\$200.00	\$0.00
12/10/04	BJM	Organize documents and indexes	3.25	\$200.00	\$650.00
12/10/04	BJM	Finalize Findings of Fact and Conclusions of Law	4.75	\$200.00	\$950.00
12/10/04	BJM	Draft suggested Standard Jury Instructions	2.00	\$200.00	\$400.00
12/10/04	BJM	Trial Prep	9.00	\$35.00	\$315.00
12/10/04	BJM	Evidentiary Issues	4.00	\$225.00	\$900.00
12/11/04	BJM	Fax to Schwartzman	0.10	\$200.00	\$20.00
12/11/04	BJM	Email to JA re: Exhibits (2)	0.25	\$200.00	\$50.00
12/11/04	BJM	Email to JA re: VW Jetta document (2)	0.25	\$200.00	\$50.00
12/11/04	BJM	Email to JA re: Writ of Summons	0.10	\$200.00	\$20.00
12/11/04	BJM	Finalize suggested Standard Jury Instructions and copies for counsel	1.00	\$200.00	\$200.00
12/11/04	BJM	Prepare sticker labels for chronology exhibit	3.50	\$200.00	\$700.00
12/11/04	BJM	Finalize Proposed Findings of Fact and Conclusions of Law	1.75	\$200.00	\$350.00
12/11/04	BJM	Prepare sticker labels	0.25	\$200.00	\$50.00
12/11/04	BJM	Packing and printing file/documents	1.00	\$200.00	\$200.00
12/11/04	BJM	Moving to Reading Inn, unpacking and organizing file	2.50	\$200.00	\$500.00
12/11/04	BJM	Trial Prep; travel to Reading Inn; Billing Summary	9.00	\$35.00	\$315.00
12/11/04	BJM	Email BJM re: exhibits	0.00	\$35.00	\$0.00
12/11/04	BJM	Move file to Reading Inn, unpack; travel home	8.00	\$25.00	\$200.00
12/12/04	BJM	Review letter from K. Myers re: receipt as trial exhibit	0.10	\$200.00	\$20.00
12/12/04	BJM	Review old notes and legal pads (useful!)	3.50	\$200.00	\$700.00
12/12/04	BJM	Draft examination questions	9.25	\$200.00	\$1,850.00
12/13/04	BJM	Prepare Notice to Court of Intent to use INTs and polish Grumbein's examination	1.50	\$200.00	\$300.00
12/13/04	BJM	Organize Jones' file	0.50	\$200.00	\$100.00
12/13/04	BJM	Travel to and from Trial	1.00	\$200.00	\$200.00
12/13/04	BJM	Trial	9.00	\$200.00	\$1,800.00
12/13/04	BJM	Travel to and from Trial	1.00	\$350.00	\$350.00
12/13/04	BJM	Trial	9.00	\$350.00	\$3,150.00
12/13/04	BJM	Travel to and from Trial	1.00	\$35.00	\$35.00
12/13/04	BJM	Trial	10.50	\$35.00	\$367.50
12/13/04	BJM	Travel to and from Trial	2.00	\$225.00	\$450.00

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
12/13/04	BJM	Trial	9.00	\$225.00	\$2,025.00
12/14/04	BJM	Travel to and from Trial	1.00	\$200.00	\$200.00
12/14/04	BJM	Trial and clean-up in courtroom	10.50	\$200.00	\$2,100.00
12/14/04	BJM	Travel to and from Trial	1.00	\$350.00	\$350.00
12/14/04	BJM	Trial and clean-up in courtroom	10.50	\$350.00	\$3,675.00
12/14/04	BJM	Travel to and from Trial	1.00	\$35.00	\$35.00
12/14/04	BJM	Trial	10.00	\$35.00	\$350.00
12/14/04	BJM	Travel to and from Trial	2.00	\$225.00	\$450.00
12/14/04	BJM	Trial	9.00	\$225.00	\$2,025.00
12/14/04	BJM	Trial	1.00	\$200.00	\$200.00
12/15/04	BJM	Travel to and from Trial	12.00	\$200.00	\$2,400.00
12/15/04	BJM	Trial and clean-up in courtroom	1.00	\$350.00	\$350.00
12/15/04	BJM	Travel to and from Trial	12.00	\$350.00	\$4,200.00
12/15/04	BJM	Trial	1.00	\$35.00	\$35.00
12/15/04	BJM	Travel to and from Trial	10.00	\$35.00	\$350.00
12/15/04	BJM	Trial	2.00	\$225.00	\$450.00
12/15/04	BJM	Travel to and from Trial	9.00	\$225.00	\$2,025.00
12/15/04	BJM	Trial	1.00	\$200.00	\$200.00
12/16/04	BJM	Travel to and from Trial	11.50	\$200.00	\$2,300.00
12/16/04	BJM	Trial and clean-up in courtroom	1.00	\$350.00	\$350.00
12/16/04	BJM	Travel to and from Trial	11.50	\$350.00	\$4,025.00
12/16/04	BJM	Trial	1.00	\$35.00	\$35.00
12/16/04	BJM	Travel to and from Trial	7.00	\$35.00	\$245.00
12/16/04	BJM	Trial	2.00	\$225.00	\$450.00
12/16/04	BJM	Travel to and from Trial	9.00	\$225.00	\$2,025.00
12/16/04	BJM	Trial	0.10	\$200.00	\$20.00
12/17/04	BJM	Review letter from C. Cohen re: settlement	0.10	\$200.00	\$20.00
12/17/04	BJM	Review Email from K. Myers re: verdict, check and Lindgren's not filing post-trial motions	1.00	\$200.00	\$200.00
12/17/04	BJM	Travel to and from Trial	11.00	\$200.00	\$2,200.00
12/17/04	BJM	Trial with Closing Arguments	0.10	\$200.00	\$20.00
12/17/04	BJM	Email to Staff re: Verdict	1.00	\$350.00	\$350.00
12/17/04	BJM	Travel to and from Trial	11.00	\$350.00	\$3,850.00
12/17/04	BJM	Trial	0.10	\$200.00	\$20.00
12/20/04	BJM	Email to DES and Staff re: Verdict	1.00	\$200.00	\$200.00
12/20/04	BJM	Conference with Attorneys	0.25	\$225.00	\$56.25
12/20/04	BJM	Letter to Angela Rotkiske re: trial transcript	1.00	\$350.00	\$350.00
12/20/04	BJM	Conference with Attorneys	1.00	\$225.00	\$225.00
12/20/04	BJM	Conference with Attorneys	0.10	\$200.00	\$20.00
12/21/04	BJM	Email to JA re: Certificate of Trial Readiness	0.10	\$200.00	\$20.00
12/21/04	BJM	Email to K. Myers re: response to K. Myers 12/17/04 Email	0.10	\$35.00	\$3.50
12/21/04	BJM	Email BJM re: Certificate of Trial Readiness	0.25	\$200.00	\$50.00
12/22/04	BJM	Review Molded Verdict	0.25	\$200.00	\$50.00
12/22/04	BJM	Review Order of Bifurcation	0.10	\$200.00	\$20.00
12/23/04	BJM	Review letter from C. Cohen to Prothy re: Nationwide's Motion for Post-Trial Relief	0.10	\$200.00	\$20.00
12/28/04	BJM	Review letter from K. Myers re: Lindgren's Motion for Post-Trial Relief	1.00	\$200.00	\$200.00
12/30/04	BJM	Email to Counsel for PCGA	0.50	\$200.00	\$100.00
12/30/04	BJM	Telephone call with Steve of Crawford's	1.50	\$200.00	\$300.00
12/30/04	BJM	Research and review Appraiser Act	1.00	\$200.00	\$200.00
12/30/04	BJM	Review Principato and conference with HM	1.50	\$350.00	\$525.00
12/30/04	BJM	Review Principato and conference with BJM	0.10	\$200.00	\$20.00
01/03/05	BJM	Review letter from K. Myers re: Judge Stallone's 12/28/04 Order			

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
01/03/05	BJM	Research Appraiser Act - Principato v. Ins. Dept	2.00	\$200.00	\$400.00
01/05/05	BJM	Email to BJM re: Order Notes of Testimony	0.10	\$350.00	\$35.00
01/06/05	BJM	Email to JA and EW re: file	0.10	\$200.00	\$20.00
01/06/05	BJM	Email to JA and DH re: Order Notes of Testimony	0.10	\$200.00	\$20.00
01/06/05	BJM	Telephone call to Prothonotary	0.10	\$25.00	\$2.50
01/06/05	BJM	Email BJM and JA re: Order Notes of Testimony	0.10	\$25.00	\$2.50
01/10/05	BJM	Email to SF, HM and JA re: costs	0.10	\$200.00	\$20.00
01/10/05	BJM	Post-Trial Motions	4.00	\$225.00	\$900.00
01/10/05	BJM	Email BJM, HM and JA re: Berg costs	0.10	\$25.00	\$2.50
01/11/05	BJM	Conference with HM to discuss Mr. Cohen as an expert	1.00	\$200.00	\$200.00
01/11/05	BJM	Prepare package and letter for Walter Cohen	0.25	\$200.00	\$50.00
01/11/05	BJM	Letter to Walter Cohen re: Principato	0.25	\$225.00	\$56.25
01/11/05	BJM	Conference with BJM to discuss Mr. Cohen as an expert	1.00	\$350.00	\$350.00
01/11/05	BJM	Post-Trial Motions	4.00	\$225.00	\$900.00
01/12/05	BJM	Email to EW and JA re: file	0.10	\$200.00	\$20.00
01/12/05	BJM	File review	2.50	\$350.00	\$875.00
01/13/05	BJM	Email to JA re: discovery/Certificate of Trial Readiness	0.10	\$200.00	\$20.00
01/13/05	BJM	Conference with HM to draft reply to Post-Trial Motions	2.00	\$200.00	\$400.00
01/13/05	BJM	Conference with BJM to draft reply to Post-Trial Motions	2.00	\$350.00	\$700.00
01/13/05	BJM	Draft discovery	0.50	\$35.00	\$17.50
01/13/05	BJM	Email BJM re: discovery and Certificate of Trial Readiness	0.10	\$35.00	\$3.50
01/13/05	BJM	Post-Trial Motions	3.00	\$225.00	\$675.00
01/14/05	BJM	Finalize reply to Post-Trial Motions	3.00	\$200.00	\$600.00
01/14/05	BJM	Email to HM re: time	0.10	\$200.00	\$20.00
01/14/05	BJM	Conference with HM	0.50	\$200.00	\$100.00
01/14/05	BJM	Conference with HM	0.50	\$200.00	\$100.00
01/14/05	BJM	Review Trial Transcript with HM	1.00	\$200.00	\$200.00
01/14/05	BJM	Letter to Prothy re: responses to motions for post-trial relief	0.25	\$225.00	\$56.25
01/14/05	BJM	Email JA re: HM's time	0.10	\$35.00	\$3.50
01/14/05	BJM	Changes to responses to Post-Trial Motions	4.00	\$350.00	\$1,400.00
01/14/05	BJM	Conference with BJM	0.50	\$350.00	\$175.00
01/14/05	BJM	Conference with BJM	0.50	\$350.00	\$175.00
01/14/05	BJM	Review Trial Transcript with BJM	1.00	\$350.00	\$350.00
01/14/05	BJM	Changes to responses to Nationwide's and Lindgren's Motions for Post-Trial Relief	4.00	\$350.00	\$1,400.00
01/16/05	BJM	Post-Trial Motions	0.75	\$225.00	\$168.75
01/17/05	BJM	Post-Trial Motions	3.00	\$225.00	\$675.00
01/18/05	BJM	Review Trial Transcript	2.00	\$200.00	\$400.00
01/18/05	BJM	Locate and copy docs	1.00	\$35.00	\$35.00
01/18/05	BJM	Post-Trial Motions	3.00	\$225.00	\$675.00
01/19/05	BS	Review Trial Transcript	2.00	\$200.00	\$400.00
01/20/05	BS	Review Trial Transcript	4.75	\$200.00	\$950.00
01/20/05	BS	Post-Trial Motions	0.50	\$225.00	\$112.50
01/25/05	BS	Re-drafting responsive Brief to Defs' Post-Trial Motions	1.50	\$200.00	\$300.00
01/25/05	BS	Email to MRC, HM, JA re: memoranda	0.10	\$200.00	\$20.00
01/25/05	BS	Email to MRC, BJM, JA re: memoranda	0.10	\$350.00	\$35.00
01/25/05	BS	Post-Trial Motions	0.50	\$225.00	\$112.50

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
01/25/05	BS	Email HM, BJM, JA re: memoranda due date	0.10	\$225.00	\$22.50
01/26/05	BS	Finalize Responsive Brief	3.25	\$200.00	\$650.00
01/26/05	BS	Letter to Prothy re: Memos of Law in Support of Response to Post-Trial Motions	0.25	\$200.00	\$50.00
01/26/05	BJM	Email to JA re: footnote	0.10	\$200.00	\$20.00
01/26/05	JA	Make changes to Memos of Law	1.50	\$35.00	\$52.50
01/26/05	JA	Email BJM re: footnote	0.10	\$35.00	\$3.50
02/01/05	BJM	Review letter from C. Cohen to Prothy re: Nationwide's Reply Brief in Support of Motion for Post-Trial Relief	0.10	\$200.00	\$20.00
02/02/05	BJM	Letter to Prothy re: RFAs to Nationwide	0.25	\$200.00	\$50.00
02/02/05	BJM	Letter to C. Cohen re: RFAs to Nationwide	0.25	\$200.00	\$50.00
02/04/05	BJM	Review letter from C. Cohen re: objections to RFAs	0.10	\$200.00	\$20.00
02/04/05	HM	Letter to Consultant	0.25	\$350.00	\$87.50
02/10/05	HM	File review and memo	1.50	\$350.00	\$525.00
02/22/05	BJM	Email to JA and DH re: hearing	0.10	\$200.00	\$20.00
02/22/05	BJM	Email to JA and DH re: hearing	0.10	\$200.00	\$20.00
02/22/05	BJM	Email to JA and DH re: proposed order	0.10	\$200.00	\$20.00
02/22/05	JA	Email BJM re: Berg hearing	0.10	\$35.00	\$3.50
02/22/05	JA	Email BJM re: proposed Order	0.10	\$35.00	\$3.50
02/23/05	BJM	Review Email from C. Cohen re: resolving underlying claims	0.10	\$200.00	\$20.00
02/24/05	BJM	Email to C. Cohen in response to 2/23/05 Email	0.10	\$200.00	\$20.00
02/25/05	HM	Letter to Prothy re: Bergs' 2/25/05 Supp. Memo of Law in Support of Response to Nationwide's Motion for Post-Trial Relief	0.25	\$350.00	\$87.50
02/28/05	BJM	Review letter and attachments from C. Cohen re: Plaintiffs' attorneys' time sheets, request BJM dep and Berg fee agreement	0.25	\$200.00	\$50.00
02/28/05	BJM	Review letter from C. Cohen to Prothy re: Nationwide's Supp. Brief in Support of Motion for Post-Trial Relief	0.10	\$200.00	\$20.00
03/02/05	BJM	Letter to C. Cohen re: fee documentation	0.25	\$225.00	\$56.25
03/02/05	BJM	Letter to Prothy re: Bergs' Response to Nationwide's Supplemental Brief	0.25	\$225.00	\$56.25
03/04/05	BJM	Review letter from K. Myers re: Lindgren's Supplemental Brief re: Motion for Post-Trial Relief	0.10	\$225.00	\$22.50
03/07/05	BJM	Letter to Prothy re: response to Lindgren's Motion for Post-Trial Relief	0.25	\$225.00	\$56.25
04/11/05	BJM	Review Judge Stallone's Opinion dated 4/7/05	0.50	\$200.00	\$100.00
04/11/05	BJM	Letter to Bergs	0.25	\$225.00	\$56.25
04/14/05	BJM	Email to JA re: time (2)	0.25	\$200.00	\$50.00
04/15/05	JA	Email BJM re: time	0.10	\$35.00	\$3.50
05/18/05	BJM	Review letter from C. Cohen re: discovery requests	0.10	\$200.00	\$20.00
05/19/05	BJM	Letter to Lee Roberts, Esquire re: Opinion/Order by Stallone	0.25	\$200.00	\$50.00
05/19/05	BJM	Review letter from Cohen re: depositions of attorneys/staff	0.10	\$200.00	\$20.00
05/20/05	BJM	Review letter from Cohen re: reply to BJM 5/12/05 letter re: Certificate of Readiness for Trial	0.10	\$200.00	\$20.00
05/25/05	BJM	Review Nationwide's discovery requests	0.50	\$200.00	\$100.00
05/25/05	BJM	Draft RFAs	0.50	\$200.00	\$100.00
05/25/05	BJM	Letter to Prothy re: Certificate of Service of Bergs' 5/25/05 RFAs	0.25	\$200.00	\$50.00
05/25/05	BJM	Letter to C. Cohen re: Bergs' 5/25/05 RFAs	0.25	\$200.00	\$50.00

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
05/27/05	BJM	Review letter from K. Myers re: Lindgren's check	0.10	\$200.00	\$20.00
05/27/05	HM	Review letter from K. Myers re: Lindgren's check	0.10	\$350.00	\$35.00
06/01/05	BJM	Review Nationwide's discovery requests	0.50	\$225.00	\$112.50
06/01/05	BJM	Responsive letter to Nationwide	0.50	\$225.00	\$112.50
06/14/05	BJM	Review letter from C. Cohen re: Objections to Bergs' 5/25/05 RFAs	0.10	\$225.00	\$22.50
06/16/05	BJM	Draft Motion to Compel Reply to RFAs	2.50	\$225.00	\$562.50
06/16/05	BJM	Letter to K. Myers re: Lindgren's check	0.25	\$225.00	\$56.25
06/16/05	BJM	Review letter from K. Myers re: check and Praecept	0.10	\$225.00	\$22.50
06/18/05	BJM	Letter to Prothy re: Bergs' Motion to Overrule and to Compel against Nationwide	0.25	\$225.00	\$56.25
06/17/05	BJM	Legal research for Brief	2.00	\$225.00	\$450.00
06/20/05	BJM	Draft Brief in Support of Motion to Compel Reply to RFAs	2.50	\$225.00	\$562.50
06/20/05	BJM	Letter to Prothy re: Brief in Support of Motion to Overrule and to Compel against Nationwide	0.25	\$225.00	\$56.25
06/27/05	DL	Review letter from K. Myers re: inquiries of 5/7/05 and 6/16/05	0.10	\$225.00	\$22.50
06/29/05	DL	Review letter from Cohen to Prothy re: MTC	0.10	\$225.00	\$22.50
07/01/05	DL	Review Nationwide's Motion to Compel	1.00	\$225.00	\$225.00
07/01/05	DL	Letter to Counsel	0.10	\$225.00	\$22.50
07/01/05	DL	Letter to Cohen re: dates for deposition	0.25	\$225.00	\$56.25
07/05/05	DL	Review letter from K. Myers re: reminder to letters of 5/7/05, 6/16/05 and 6/27/05	0.10	\$225.00	\$22.50
07/06/05	DL	Letter to K. Myers re: reply to Myers' 7/5/05 letter	0.25	\$225.00	\$56.25
07/07/05	DL	Letter to Counsel	0.10	\$225.00	\$22.50
07/07/05	DL	Telephone call to Nationwide	0.10	\$225.00	\$22.50
07/07/05	DL	Conference with HM on Nationwide's refusal to comply w/ Order	0.20	\$225.00	\$45.00
07/07/05	DL	Conference with BJM on Nationwide's refusal to comply w/ Order	0.20	\$350.00	\$70.00
07/08/05	DL	Requests for Production of Documents	0.25	\$225.00	\$56.25
07/08/05	DL	Review and sign letter to Counsel	0.10	\$225.00	\$22.50
07/08/05	DL	Review and sign letter to Court	0.10	\$225.00	\$22.50
07/08/05	DL	Conference with HM	0.20	\$225.00	\$45.00
07/08/05	DL	Conference with BJM	0.20	\$350.00	\$70.00
07/08/05	DL	Draft letter to Counsel re: supp. RTPs to Nationwide	0.10	\$35.00	\$3.50
07/08/05	DL	Draft letter to Counsel re: supp. RTPs to Nationwide	0.10	\$35.00	\$3.50
07/08/05	DL	Draft supp. RTPs to Nationwide	0.50	\$35.00	\$17.50
07/08/05	DL	Draft COS re: supp RTPs	0.25	\$35.00	\$8.75
07/08/05	DL	Draft letter to Counsel	0.10	\$35.00	\$3.50
07/08/05	DL	Draft letter to Court	0.10	\$35.00	\$3.50
07/08/05	DL	Review letter from Cohen to Prothy re: response to Motion to Overrule and to Compel	0.10	\$225.00	\$22.50
07/14/05	DL	Review letter from Cohen to Prothy re: Praecept for Argument	0.10	\$225.00	\$22.50
07/14/05	DL	Review letter from K. Myers re: additional damages and check	0.10	\$225.00	\$22.50
07/18/05	DL	Finalize Argument Praecept	0.10	\$225.00	\$22.50
07/18/05	DL	Draft deposition notice to Nationwide	0.10	\$225.00	\$22.50
07/18/05	DL	Reply letter to K. Myers	0.10	\$225.00	\$22.50
07/18/05	DL	Letter to Prothy re: Praecept for Argument	0.25	\$225.00	\$56.25

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
07/18/05	DL	Letter to Cohen re: designated witness deposition notice	0.25	\$225.00	\$56.25
07/18/05	DL	Telephone call to Ken Myers in reply to his letter	0.10	\$225.00	\$22.50
07/20/05	DL	Review letter from Cohen	0.10	\$225.00	\$22.50
07/20/05	DL	Reply letter to Cohen	0.20	\$225.00	\$45.00
07/26/05	DL	Draft reply to Nationwide's Motion to Compel	1.00	\$225.00	\$225.00
07/26/05	DL	Letter to Cohen re: Nationwide's refusal to produce witness	0.25	\$225.00	\$56.25
07/26/05	DL	Email to DH re: Berg depositions tomorrow	0.10	\$225.00	\$22.50
07/26/05	DL	Email DH re: depositions	0.10	\$225.00	\$22.50
07/27/05	DL	Draft reply to Nationwide's Motion to Compel	5.25	\$225.00	\$1,181.25
07/27/05	DL	Email to DH and JA re: trial praecipe	0.10	\$225.00	\$22.50
07/28/05	DL	Draft Brief in Support of Responsive Motion	1.50	\$225.00	\$337.50
07/28/05	DL	Review letter from K. Myers re: Lindgren's discovery requests	0.10	\$225.00	\$22.50
07/28/05	DL	Letter to Cohen re: Bergs' 7/28/05 Reply to MTC	0.10	\$225.00	\$22.50
07/29/05	DL	Draft Brief in Support of Responsive Motion	1.50	\$225.00	\$337.50
07/29/05	DL	Draft supplement to Response	0.50	\$225.00	\$112.50
07/29/05	DL	Letter to Prothy re: supp. Reply and Brief to Nationwide's Motion to Compel	0.25	\$350.00	\$87.50
08/01/05	DL	Review letter from K. Myers re: removing Lindgren	0.10	\$225.00	\$22.50
08/04/05	DL	Letter to K. Myers confirming discussion of issues	0.10	\$225.00	\$22.50
08/05/05	DL	Review letter from Cohen re: Nationwide's Objections to Plaintiffs' 7/8/05 Supp. RTPs	0.10	\$225.00	\$22.50
08/09/05	DL	Email to JA re: hourly rate	0.10	\$225.00	\$22.50
08/09/05	DL	Email BJM re: hourly rate	0.10	\$35.00	\$3.50
08/13/05	DL	Prepare for Argument on Motions to Compel	1.25	\$225.00	\$281.25
08/15/05	DL	Prepare for Argument on Motions to Compel (review Nationwide's cited cases)	2.00	\$225.00	\$450.00
08/15/05	DL	Travel to Argument with HM	1.00	\$225.00	\$225.00
08/15/05	DL	Argument	0.50	\$225.00	\$112.50
08/15/05	DL	Travel from Argument with HM	0.75	\$225.00	\$168.75
08/15/05	DL	Conference with HM and MRC	0.50	\$225.00	\$112.50
08/15/05	DL	Travel to Argument with BJM	1.00	\$350.00	\$350.00
08/15/05	DL	Argument	0.50	\$350.00	\$175.00
08/15/05	DL	Travel from Argument with BJM	0.75	\$350.00	\$262.50
08/15/05	DL	Conference with BJM and MRC	0.50	\$350.00	\$175.00
08/15/05	DL	Conference with BJM and HM	0.50	\$225.00	\$112.50
08/17/05	DL	Review file; honing in on Potosnak's deposition with specific references of the April 30 log not of his April 28 inspection, the statements therein, gathering only those deposition pages applicable to and cross referencing those deposition pages, specifically being pages 44-48,98-102	6.00	\$350.00	\$2,100.00
08/18/05	DL	Redraft Minimizing the Essentials Memo	1.50	\$350.00	\$525.00
08/19/05	DL	Review HM summary	0.10	\$225.00	\$22.50
08/19/05	DL	Conference with HM to discuss summary and Potosnak dep	0.10	\$225.00	\$22.50
08/19/05	DL	Conference with HM re: Claim Log spreadsheet	0.10	\$225.00	\$22.50
08/19/05	DL	Conference with HM re: Minimizing the Essentials Memo	0.10	\$225.00	\$22.50
08/19/05	DL	Conference with BJM to discuss summary and Potosnak dep	0.10	\$350.00	\$35.00
08/19/05	DL	Conference with BJM re: Claim Log spreadsheet	0.10	\$350.00	\$35.00

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
08/19/05	DL	Conference with BJM re: Minimizing the Essentials Memo	0.10	\$350.00	\$35.00
08/22/05	DL	Changes to Minimizing the Essentials Memo	1.00	\$350.00	\$350.00
08/23/05	DL	Re-organize file	0.50	\$35.00	\$17.50
08/23/05	DL	Draft discovery responses; locate and copy docs to be produced	1.00	\$35.00	\$35.00
08/24/05	DL	Conference with HM	0.10	\$225.00	\$22.50
08/24/05	DL	Conference with HM	0.10	\$225.00	\$22.50
08/24/05	DL	Conference with HM	0.10	\$225.00	\$22.50
08/24/05	DL	Review Birth Center and Hollock	0.25	\$225.00	\$56.25
08/24/05	DL	Various copying and redoing the cost file	4.00	\$18.00	\$72.00
08/24/05	DL	Conference with BJM	0.10	\$350.00	\$35.00
08/24/05	DL	Conference with BJM	0.10	\$350.00	\$35.00
08/24/05	DL	Conference with BJM	0.10	\$350.00	\$35.00
08/24/05	DL	Working on Minimizing the Essentials Memo; review letter to Consultant; reviewed Nationwide's document production; review of Claim Logs	6.70	\$350.00	\$2,345.00
08/24/05	DL	Gathering docs responsive to NW INTs/RTPs; locating and copying docs for HM; re-organization of Billing Summary; additions to time sheets; changes to Timeslips worksheet; update/review Billing Summary to ensure no "double billing"	5.50	\$35.00	\$192.50
08/25/05	DL	Draft response to Lindgren's discovery requests	1.00	\$225.00	\$225.00
08/25/05	DL	Redraft Minimizing the Essentials Memo	2.00	\$350.00	\$700.00
08/25/05	DL	Conference with MAG re: Claim Log spreadsheet	0.25	\$350.00	\$87.50
08/25/05	DL	Organize docs to be produced to Nationwide; update Billing Summary; organize costs file and prepare index; calculate hours responsive to Nationwide INT #10; create to-do list; review/update Billing Summary to ensure no "double billing"; Email MRC re: CV; make changes to Timeslips worksheet; update/review Billing Summary to ensure no "double billing"	7.50	\$35.00	\$262.50
08/25/05	DL	Email MRC re: CV	0.10	\$35.00	\$3.50
08/25/05	DL	Discuss spreadsheets re: Claim Log with HM	0.25	\$25.00	\$6.25
08/26/05	DL	Draft response to Lindgren's discovery requests	1.00	\$225.00	\$225.00
08/26/05	DL	Letter to Prothy re: Certificate of Service of Answers to Lindgren's discovery requests	0.25	\$225.00	\$56.25
08/26/05	DL	Fax to K. Myers re: Answers to Lindgren's discovery	0.25	\$225.00	\$56.25
08/26/05	DL	Email to JA re: Margaret's time (2)	0.25	\$225.00	\$56.25
08/26/05	DL	Email BJM re: DL hourly rate; type Costs index; update time sheets; update draft answers to Nationwide's INTs; organize computer files; record MRC time; review Email from BJM re: MRC time; update/review Billing Summary	10.00	\$35.00	\$350.00
08/26/05	DL	Email BJM re: MRC time	0.10	\$35.00	\$3.50
08/27/05	DL	Update/review Billing Summary to ensure no "double billing"	4.50	\$35.00	\$157.50
08/28/05	DL	Update/review Billing Summary	4.50	\$35.00	\$157.50
08/29/05	DL	Email MRC re: Berg Trial; update time sheets; review/update Billing Summary	6.00	\$35.00	\$210.00
08/30/05	DL	Update/review Billing Summary; file review	9.00	\$35.00	\$315.00

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
08/31/05	DL	Update/review Billing Summary; changes to time sheets; draft Motion to Strike and to Compel, Memo of Law, Order, COS, COA	8.00	\$35.00	\$280.00
09/01/05	DL	Draft Motion to Compel Redacted Log Entries	3.00	\$225.00	\$675.00
09/01/05	DL	Revise Motion to Compel Redacted Log Entries	1.00	\$225.00	\$225.00
09/01/05	DL	Review Nationwide's fax	0.10	\$225.00	\$22.50
09/01/05	DL	Adding to red folder re: itemizing the repeated entries and editing prior detailing	0.25	\$350.00	\$87.50
09/01/05	DL	Review discovery files for additional time; update/review Billing Summary	8.00	\$35.00	\$280.00
09/02/05	DL	Finalize Motion	1.00	\$225.00	\$225.00
09/02/05	DL	Draft Order to Motion	0.25	\$225.00	\$56.25
09/02/05	DL	Prepare Supporting Brief	1.00	\$225.00	\$225.00
09/02/05	DL	Letter to Prothy re: Motion to Strike	0.25	\$225.00	\$56.25
09/02/05	DL	Copying Motion	0.25	\$18.00	\$4.50
09/02/05	DL	Hand-file Motion in Reading	1.50	\$18.00	\$27.00
09/02/05	DL	Update/review Billing Summary; review files for any additional time; changes to time sheets	8.00	\$35.00	\$280.00
09/06/05	DL	Prepare Supporting Brief	1.00	\$225.00	\$225.00
09/06/05	DL	Review letter from K. Myers dated 9/1/05	0.10	\$225.00	\$22.50
09/06/05	DL	Review Birth Center again	0.50	\$225.00	\$112.50
09/06/05	DL	Update/review Billing Summary to ensure no "double billing"; review discovery books; locate documents for HM	6.50	\$35.00	\$227.50
09/06/05	DL	Email BJM re: Pleadings	0.10	\$35.00	\$3.50
09/07/05	DL	Draft Brief to Support Motion	3.50	\$225.00	\$787.50
09/07/05	DL	Sorting HM Berg file; organization of HM Berg file	4.50	\$350.00	\$1,575.00
09/07/05	DL	Update/review Billing Summary	7.00	\$35.00	\$245.00
09/08/05	DL	Draft Brief to Support Motion	2.00	\$225.00	\$450.00
09/08/05	DL	Update/review Billing Summary; locate docs for HM; copy docs; conference with HM	7.00	\$35.00	\$245.00
09/09/05	DL	Finalize Brief	3.50	\$225.00	\$787.50
09/09/05	DL	Reviewing records; making notes on billing hours	5.00	\$350.00	\$1,750.00
09/09/05	EW	Update/review Billing Summary	7.00	\$35.00	\$245.00
09/10/05	EW	Telephone call from HM to discuss Nationwide's discovery reply	0.50	\$225.00	\$112.50
09/10/05	EW	Telephone call to BJM to discuss Nationwide's discovery reply	0.50	\$350.00	\$175.00
09/10/05	EW	Dictating billing hours; making notes preparatory to the dictation; reviewing books on Joffred, Phillips, Barone; chronology file in Lindgren's and Nationwide's letter to Miller	3.50	\$350.00	\$1,225.00
09/11/05	EW	Telephone call from HM to discuss Brief and Nationwide's discovery	0.50	\$225.00	\$112.50
09/11/05	EW	Telephone call to BJM to discuss Brief and Nationwide's discovery	0.50	\$350.00	\$175.00
09/12/05	EW	Reply to Nationwide's discovery	6.00	\$225.00	\$1,350.00
09/13/05	EW	Reviewing Emails prior to production	1.50	\$225.00	\$337.50
09/13/05	EW	Reply to Nationwide's discovery	1.50	\$225.00	\$337.50
09/13/05	EW	Letter to C. Cohen re: extension of time to respond to Nationwide's discovery requests	0.25	\$225.00	\$56.25
09/13/05	EW	Changes to Nationwide's discovery	0.25	\$35.00	\$8.75
09/13/05	EW	Update/review Billing Summary	5.00	\$35.00	\$175.00
09/13/05	EW	Email BJM re: attorneys' rates	0.10	\$35.00	\$3.50
09/14/05	EW	Reply to Nationwide's discovery	2.00	\$225.00	\$450.00

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
09/14/05	EW	Final review of Billing Summary, time sheets and adding hours	8.00	\$35.00	\$280.00
09/15/05	EW	Reply to Nationwide's discovery	2.50	\$225.00	\$562.50
09/15/05	EW	Reviewing Nationwide's Motion for Reconsideration	0.50	\$225.00	\$112.50
09/15/05	EW	Letter to Counsel re: death in family	0.10	\$225.00	\$22.50
09/15/05	EW	Letter to Counsel confirming extension	0.00	\$225.00	\$0.00
09/15/05	EW	Conversation with C. Cohen	0.00	\$225.00	\$0.00
09/15/05	EW	Billing Summary	8.00	\$35.00	\$280.00
09/15/05	EW	Email SF re: costs	0.10	\$35.00	\$3.50
09/15/05	EW	Email JA re: costs	0.10	\$25.00	\$2.50
09/16/05	EW	Reply to Nationwide's discovery	3.00	\$225.00	\$675.00
09/16/05	EW	Billing Summary	8.00	\$35.00	\$280.00
09/20/05	EW	Reply to Nationwide's discovery	3.00	\$225.00	\$675.00
09/20/05	EW	Billing Summary	1.50	\$35.00	\$52.50
09/21/05	EW	Reply to Nationwide's discovery	8.00	\$225.00	\$1,800.00
09/21/05	EW	Billing Summary; file review; compile lists of costs/fees; Emails to BJM re: L. Sklar and Writ of Summons filing fee; line-up dates/times on Billing Summary	5.50	\$35.00	\$192.50
09/22/05	EW	Reviewing Emails prior to production	1.00	\$225.00	\$225.00
09/22/05	EW	Reviewing answer to Nationwide's INTs re: fees	1.50	\$225.00	\$337.50
09/22/05	EW	Reply to Nationwide INTs re: Billing Summary	5.00	\$225.00	\$1,125.00
09/22/05	HM	Letter to C. Cohen re: INTs nos 7 and 8	0.25	\$225.00	\$56.25
09/22/05	HM	Billing Summary	8.00	\$35.00	\$280.00
09/22/05	HM	Reviewing Billing Summary - final time	2.00	\$225.00	\$450.00
09/23/05	HM	Reviewing reply to Nationwide INTs/RTPs	2.00	\$225.00	\$450.00
09/23/05	HM	Review document production prior to copying	1.00	\$225.00	\$225.00
09/23/05	HM	Reviewing written reply to RTPs prior to copying	0.50	\$225.00	\$112.50
09/23/05	HM	Email C. Cohen w/ Billing Summary	0.10	\$225.00	\$22.50
09/23/05	HM	Reviewing Willow Inn v. PSM	0.50	\$225.00	\$112.50
09/23/05	HM	Reviewing Hensley release and meeting with DES	0.30	\$225.00	\$67.50
09/23/05	HM	Conference with HM re: Hensley release	0.25	\$225.00	\$56.25
09/23/05	HM	Review of Trial Transcript on waiver of privilege	0.75	\$225.00	\$168.75
09/23/05	HM	Reviewing Hensley release and meeting with BJM	0.30	\$200.00	\$60.00
09/23/05	HM	Conference with BJM re: Hensley release	0.25	\$350.00	\$87.50
09/23/05	HM	Billing Summary - checking costs	7.00	\$35.00	\$245.00
09/24/05	HM	Review of Trial Transcript - Wert Testimony	1.00	\$225.00	\$225.00
09/24/05	HM	Calculating hours/fees	7.00	\$35.00	\$245.00
09/25/05	HM	Phone call with HM re: Wert testimony	0.25	\$225.00	\$56.25
09/25/05	HM	Phone call with BJM re: Wert testimony	0.25	\$350.00	\$87.50
09/25/05	HM	Calculating hours/fees	4.00	\$35.00	\$140.00
09/25/05	HM	Reviewing reply to Nationwide's May 2005 INTs	0.75	\$225.00	\$168.75
09/26/05	HM	Brief in Support of Motion to Compel Claim Log	2.00	\$225.00	\$450.00
09/26/05	HM	Signing cover letters and final review	0.50	\$225.00	\$112.50
09/26/05	HM	Emails with C. Cohen	0.25	\$225.00	\$56.25
09/26/05	HM	Review of Trial Transcript - Joffred Testimony	0.30	\$225.00	\$67.50
09/26/05	HM	Reviewing Pre-Trial while attending DME on other matter	0.50	\$225.00	\$112.50
09/26/05	HM	Locating Adam Levy with attorney ID number	0.25	\$225.00	\$56.25
09/26/05	HM	Copying and organizing documents re: cost file	1.50	\$18.00	\$27.00
09/26/05	HM	Calculating BJM attorney's fee; making additions to answers to Nationwide's INTS	3.00	\$35.00	\$105.00
09/27/05	HM	Editing Brief on Defense of Counsel Defense/Waiver	1.00	\$225.00	\$225.00
09/27/05	HM	Brief research: reading Wettick's Mueller	0.50	\$225.00	\$112.50

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
09/27/05	HM	Adding Waiver section of Brief	1.00	\$225.00	\$225.00
09/27/05	HM	Drafting INTs of 9/27/05 on identity of decision makers	0.25	\$225.00	\$56.25
09/27/05	HM	Adding Exhibit "3" to Brief	0.30	\$225.00	\$67.50
09/27/05	HM	Review K. Myers' letter of 9/1/05	0.10	\$225.00	\$22.50
09/27/05	HM	Letter to Counsel re: supp. INTs to Nationwide	0.25	\$225.00	\$56.25
09/27/05	HM	Letter to Prothy re: supp. INTs to Nationwide	0.25	\$225.00	\$56.25
09/27/05	HM	Letter to Prothy re: Motion to Strike	0.25	\$225.00	\$56.25
09/27/05	HM	Researching identity of Milan K. Mrkobrad, Esquire	0.25	\$225.00	\$56.25
09/27/05	HM	Cleaning desk/office after completion of Brief, etc.	0.25	\$225.00	\$56.25
09/27/05	HM	Reviewing Trial Transcript on K. Holben (135-176)	0.50	\$225.00	\$112.50
09/27/05	HM	Moved to correct defect to Verification per Myers' request	0.10	\$225.00	\$22.50
09/27/05	HM	Draft supplemental INTs to Nationwide	0.25	\$35.00	\$8.75
09/27/05	HM	Draft COS of supplemental INTs to Nationwide	0.10	\$35.00	\$3.50
09/27/05	HM	Draft letter to Counsel re: supp. INTs	0.00	\$35.00	\$0.00
09/27/05	HM	Draft letter to Prothy re: supp. INTs	0.00	\$35.00	\$0.00
09/28/05	HM	Drafting RTPs re: Best Claims Practice Manual	0.25	\$225.00	\$56.25
09/28/05	HM	Drafting INTs re: Best Claims Practice Manual	0.50	\$225.00	\$112.50
09/28/05	HM	Email C. Cohen attaching Brief at Cohen's request	0.10	\$225.00	\$22.50
09/28/05	HM	Reply Email to HM re: offers of settlement	0.10	\$225.00	\$22.50
09/28/05	HM	Email JA re: time accrued	0.10	\$225.00	\$22.50
09/28/05	HM	Email JA re: RTP employee notice following Bonenberger	0.10	\$225.00	\$22.50
09/28/05	HM	Meeting with HM re: oral settlement negotiations	0.25	\$225.00	\$56.25
09/28/05	HM	Meeting with DJD re: research issue	0.25	\$225.00	\$56.25
09/28/05	HM	Reviewing with HM our reply to Nationwide's RTPs	0.25	\$225.00	\$56.25
09/28/05	HM	Reviewing with HM our reply to Nationwide's INTs	0.25	\$225.00	\$56.25
09/28/05	HM	Meeting with BJM re: research issue	0.25	\$100.00	\$25.00
09/28/05	HM	Email BJM re: offers of settlement	0.10	\$350.00	\$35.00
09/28/05	HM	Meeting with BJM re: oral settlement negotiations	0.25	\$350.00	\$87.50
09/28/05	HM	Reviewing with BJM our reply to Nationwide's RTPs	0.25	\$350.00	\$87.50
09/28/05	HM	Reviewing with BJM our reply to Nationwide's INTs	0.25	\$350.00	\$87.50
09/28/05	HM	Draft INTs/RTPs to Nationwide per BJM Email	0.50	\$35.00	\$17.50
09/28/05	HM	Review Email from BJM re: billable hrs for today	0.10	\$35.00	\$3.50
09/28/05	HM	Review Email from BJM re: RTP Employee Notice Following Bonenberger	0.10	\$35.00	\$3.50
09/28/05	HM	Meeting with BJM re: oral settlement negotiations	0.25	\$225.00	\$56.25
09/29/05	HM	Email JA with directions to draft proposed Order on log	0.25	\$225.00	\$56.25
09/29/05	HM	Email Loughren with proposed INTs	0.00	\$225.00	\$0.00
09/29/05	HM	Review litigation log for entries by D. Cole	0.25	\$225.00	\$56.25
09/29/05	HM	Review litigation log with HM	0.25	\$225.00	\$56.25
09/29/05	HM	Review proposed INTs on Best Claims w/ HM	0.00	\$225.00	\$0.00
09/29/05	HM	Review litigation log with BJM	0.25	\$350.00	\$87.50
09/29/05	HM	Review proposed INTs on Best Claims w/ BJM	0.00	\$350.00	\$0.00
10/03/05	HM	Review fax of 9/30/05 on Nationwide's estimated fee for billing records	0.25	\$225.00	\$56.25
10/03/05	HM	Meeting with HM re: \$3900 bill	0.25	\$225.00	\$56.25
10/03/05	HM	Meeting with SF re: bill	0.10	\$225.00	\$22.50
10/03/05	HM	Meeting with BJM re: \$3900 bill	0.25	\$350.00	\$87.50
10/03/05	HM	Meeting with BJM re: bill	0.10	\$25.00	\$2.50
10/04/05	HM	Review Nationwide's reply on Motion to Compel Redacted Log	0.50	\$225.00	\$112.50

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
10/04/05	HM	Receive and review letter from C. Cohen to Prothy re: Response in Opposition to Plaintiffs' Motion to Strike	0.10	\$225.00	\$22.50
10/04/05	HM	Email Staff to secure unsigned trial certification of 5/05	0.10	\$225.00	\$22.50
10/04/05	HM	Meeting with HM re: Nationwide's reply	0.25	\$225.00	\$56.25
10/04/05	HM	Securing and reviewing Nationwide's 2/1/99 Motion for Protective Order	0.30	\$225.00	\$67.50
10/04/05	HM	Meeting with BJM re: Nationwide's reply	0.25	\$350.00	\$87.50
10/05/05	HM	Review pending motion and footnote 1 to Nationwide's reply	0.25	\$225.00	\$56.25
10/05/05	HM	Review Plaintiffs' motion and supporting Brief	0.25	\$225.00	\$56.25
10/05/05	HM	Confirming Email to file	0.10	\$225.00	\$22.50
10/05/05	HM	Email C. Cohen	0.10	\$225.00	\$22.50
10/05/05	HM	Phone call to C. Cohen re: Nationwide's Certificate of Service	0.10	\$225.00	\$22.50
10/05/05	HM	Receive call from C. Cohen re: Nationwide's \$3900 bill for producing records	0.10	\$225.00	\$22.50
10/05/05	HM	Meeting with HM re: scope of oral argument	0.25	\$225.00	\$56.25
10/05/05	HM	Meeting with JA re: Nationwide's Certificate of Service	0.10	\$225.00	\$22.50
10/05/05	HM	Review J. Lash's Order of 8/9/04	0.25	\$225.00	\$56.25
10/05/05	HM	Meeting with BJM re: scope of oral argument	0.25	\$350.00	\$87.50
10/05/05	HM	Meeting with BJM re: Nationwide's Certificate of Service	0.10	\$35.00	-\$3.50
10/06/05	HM	Receive and review letter from C. Cohen to Prothy re: Amended Certificate of Service	0.10	\$225.00	\$22.50
10/06/05	HM	Letter to C. Cohen enclosing payment	0.25	\$225.00	\$56.25
10/06/05	HM	Email JA re: copy of proposed Order on S.J. motion	0.10	\$225.00	\$22.50
10/06/05	HM	Review 2/05 signed Release and Nationwide's request for extension	0.25	\$225.00	\$56.25
10/06/05	HM	Searching for opinion that discovery permitted after S.J.	0.25	\$225.00	\$56.25
10/06/05	HM	Review 813 A.2d 778 on discovery deadline coordinate jurisdiction rule	0.75	\$225.00	\$168.75
10/06/05	HM	Writing outline for argument	1.50	\$225.00	\$337.50
10/06/05	HM	Securing documentation to do check request	0.10	\$225.00	\$22.50
10/06/05	HM	Preparing oral argument notes	1.00	\$225.00	\$225.00
10/06/05	HM	Late night review of argument material	0.50	\$225.00	\$112.50
10/07/05	HM	Travel to oral argument through rush hr traffic	1.50	\$225.00	\$337.50
10/07/05	HM	Oral argument with HM	0.50	\$225.00	\$112.50
10/07/05	HM	Travel from oral argument	1.00	\$225.00	\$225.00
10/07/05	HM	Travel to oral argument	0.50	\$350.00	\$175.00
10/07/05	HM	Oral argument with BJM	0.50	\$350.00	\$175.00
10/07/05	HM	Travel from oral argument	1.00	\$350.00	\$350.00
10/10/05	HM	Letter to Prothy re: Praeipe to Substitute Verification	0.25	\$225.00	\$56.25
10/10/05	HM	Prepare Praeipe to Substitute Verification	0.25	\$35.00	\$8.75
10/10/05	HM	Draft letter to Prothy re: Praeipe to Substitute Verification	0.00	\$35.00	\$0.00
10/11/05	HM	Emails to BJM, MRC, JA re: Berg, Anderton & Judge Lash	0.10	\$350.00	\$35.00
10/12/05	HM	Received Order denying redacted claim log entries	0.10	\$225.00	\$22.50

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
10/13/05	HM	Letter to C. Cohen re: \$1,540.00 payment to Nationwide	0.25	\$225.00	\$56.25
10/13/05	HM	Receive and review letter from C. Cohen re: request for payment	0.10	\$225.00	\$22.50
10/14/05	HM	Drafting/finalizing INTs/RTPs re: Best Claims Practice	1.00	\$225.00	\$225.00
10/14/05	HM	Drafting Certificate of Service of Payment of \$5k for bills	0.25	\$225.00	\$56.25
10/14/05	HM	Letter to Counsel re: Certificate of Readiness for Trial	0.25	\$225.00	\$56.25
10/14/05	HM	Letter to Prothy re: Certificate of Service of Bergs' payment to Nationwide for billing records	0.25	\$225.00	\$56.25
10/14/05	HM	Email JA re: Nationwide's bills	0.10	\$225.00	\$22.50
10/14/05	HM	Email JA re: Nationwide's billable records and David Cole	0.10	\$225.00	\$22.50
10/14/05	HM	Reply to JA Email re: request to inspect	0.10	\$225.00	\$22.50
10/14/05	HM	Received and reviewed Nationwide's billing records	0.50	\$225.00	\$112.50
10/14/05	HM	Directing DH to prepare Trial Certification	0.25	\$225.00	\$56.25
10/14/05	HM	Review of Nationwide's bills for entries of D. Cole	1.50	\$225.00	\$337.50
10/14/05	HM	Meeting with HM re: further discovery v. certification	0.25	\$225.00	\$56.25
10/14/05	HM	Review of Nationwide's time logs: 6/00 billed \$17.5K (total >100K)	2.00	\$225.00	\$450.00
10/14/05	HM	Meeting with HM re: billing records and Bonenberger expert	1.00	\$225.00	\$225.00
10/14/05	HM	Direction from BJM to prepare Trial Cert	0.25	\$25.00	\$6.25
10/14/05	HM	Reply to JA Email re: request to inspect	0.10	\$350.00	\$35.00
10/14/05	HM	Meeting with BJM re: further discovery v. certification	0.25	\$350.00	\$87.50
10/14/05	HM	Meeting with BJM re: billing records and Bonenberger expert	1.00	\$350.00	\$350.00
10/14/05	HM	Revise Certificate of Service of \$ paid to Nationwide for billing records with BJM	0.75	\$35.00	\$26.25
10/14/05	HM	Review Email from BJM re: Nationwide's bills	0.10	\$35.00	\$3.50
10/14/05	HM	Review and attach Email from BJM re: Nationwide's billable records and David Cole	0.10	\$35.00	\$3.50
10/14/05	HM	Email BJM and HM re: Request to Inspect	0.10	\$35.00	\$3.50
10/15/05	HM	Calculating Nationwide's billing records	5.75	\$35.00	\$201.25
10/16/05	HM	Calculating Nationwide's billing records	11.25	\$35.00	\$393.75
10/17/05	HM	Reply to HM re: request to inspect	0.10	\$225.00	\$22.50
10/17/05	HM	Reply to JA Email re: Nationwide's Billing Records/Total Fees	0.10	\$225.00	\$22.50
10/17/05	HM	Meeting with HM re: Nationwide's total in excess of \$900K	0.10	\$225.00	\$22.50
10/17/05	HM	One hour skimming the Nationwide production and meeting with BJM the \$900K plus fees that Nationwide paid plus the missing months as compared to what was done in the missing months	1.00	\$350.00	\$350.00
10/17/05	HM	Email BJM and HM re: Nationwide's billing records/total fees	0.25	\$35.00	\$8.75
10/18/05	HM	Email JA re: Motion in Limine	0.25	\$225.00	\$56.25
10/18/05	HM	Meeting with HM and MRC re: Nationwide's expert fees	0.10	\$225.00	\$22.50
10/18/05	HM	Direction to JA re: legal brief on coordinate juris. Rule	0.30	\$225.00	\$67.50

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
10/18/05	HM	Meeting with JA explaining legal memo	0.10	\$225.00	\$22.50
10/18/05	HM	Meeting with BJM and MRC re: Nationwide's expert fees	0.10	\$350.00	\$35.00
10/18/05	HM	Meeting with BJM explaining legal memo	0.10	\$35.00	\$3.50
10/18/05	HM	Direction from BJM re: legal brief on Coordinate Jurisdiction Rule	0.30	\$35.00	\$10.50
10/18/05	HM	Review Email from BJM re: Motion in Limine	0.10	\$35.00	\$3.50
10/18/05	HM	Meeting with BJM and HM re: Nationwide's expert fees	0.10	\$225.00	\$22.50
10/19/05	HM	Review Nationwide's letter requesting deposition dates	0.10	\$225.00	\$22.50
10/19/05	HM	Responsive letter to Nationwide and discussion with Staff	0.50	\$225.00	\$112.50
10/20/05	HM	Review Nationwide's objections to further discovery	0.25	\$225.00	\$56.25
10/20/05	HM	Review letter from C. Cohen re: Objections to 9/27/05 INTs	0.10	\$225.00	\$22.50
10/20/05	HM	Email HM re: Package to Fye	0.10	\$225.00	\$22.50
10/20/05	HM	Phone call with HM and Fye	0.50	\$225.00	\$112.50
10/20/05	HM	Meeting with HM re: scanning Nationwide's billing records	0.25	\$225.00	\$56.25
10/20/05	HM	Meeting with JA to discuss package to Fye	0.25	\$225.00	\$56.25
10/20/05	HM	Review of Pre-Trial Memo	0.50	\$225.00	\$112.50
10/20/05	HM	Review of Trial Transcript for Bonenberger discussions	1.50	\$225.00	\$337.50
10/20/05	HM	Copying and organizing Nationwide's billing records	4.00	\$18.00	\$72.00
10/20/05	HM	Phone call with BJM and Fye	0.50	\$350.00	\$175.00
10/20/05	HM	Meeting with BJM re: scanning Nationwide's billing records	0.25	\$350.00	\$87.50
10/20/05	HM	Meeting with BJM to discuss package to Fye	0.25	\$35.00	\$8.75
10/24/05	HM	Letter to Nationwide re: missing records	0.25	\$225.00	\$56.25
10/24/05	HM	Review Nationwide's bills for missing months	1.00	\$225.00	\$225.00
10/25/05	HM	Review and reply to MRC's thoughts on Fye	0.30	\$225.00	\$67.50
10/26/05	HM	Receive and review Nationwide's dep notices to counsel	0.10	\$225.00	\$22.50
10/26/05	HM	Receive and review letter from C. Cohen re: Deposition Notices	0.10	\$225.00	\$22.50
10/26/05	HM	Reply letter to Datamatics Technologies re: billing records	0.10	\$225.00	\$22.50
10/26/05	HM	Email Staff re: Packaging Nationwide's billing records	0.10	\$225.00	\$22.50
10/26/05	HM	Meeting with HM re: date of dep, etc.	0.10	\$225.00	\$22.50
10/26/05	HM	Meeting with BJM re: date of dep, etc.	0.10	\$350.00	\$35.00
10/26/05	HM	Review letter to Counsel re: Certificate of Trial Readiness, Email BJM re: same	0.10	\$35.00	\$3.50
10/27/05	HM	Letter to Datamatics Technologies re: billing records	0.25	\$225.00	\$56.25
10/28/05	HM	Receive and review Nationwide's reply re: missing billing records	0.10	\$225.00	\$22.50
10/28/05	HM	Letter to Gary Fye	0.75	\$225.00	\$168.75
10/28/05	HM	Phone call returned from Fye from home (6:30 pm)	0.25	\$225.00	\$56.25
10/28/05	HM	Meeting with Staff re: missing billing records	0.10	\$225.00	\$22.50
10/29/05	HM	Phone call to HM re: Fye	0.25	\$225.00	\$56.25
10/29/05	HM	Phone call to Fye re: case	0.75	\$225.00	\$168.75
10/29/05	HM	Stop at office Sat. to secure documents to discuss with Fye	0.50	\$225.00	\$112.50

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
10/29/05	HM	Phone call from BJM re: Fye	0.25	\$350.00	\$87.50
10/30/05	HM	Phone call to HM re: call to Fye	0.25	\$225.00	\$56.25
10/30/05	HM	Phone call from BJM re: call to Fye	0.25	\$350.00	\$87.50
10/31/05	HM	Letter to C. Cohen re: Cole subpoena	0.25	\$225.00	\$56.25
10/31/05	HM	Email JA re: Trial Prep Assignment	0.10	\$225.00	\$22.50
10/31/05	HM	Email DJD and JA re: subpoena to D. Cole	0.10	\$225.00	\$22.50
10/31/05	HM	Review Email from DJD on subpoena to out-of-state witness	0.10	\$225.00	\$22.50
10/31/05	HM	Phone call with J. Chett	0.50	\$225.00	\$112.75
10/31/05	HM	Trial: locating and speaking with David Cole	1.00	\$225.00	\$225.00
10/31/05	HM	Meeting with Staff to organize future trial motions	0.50	\$225.00	\$112.50
10/31/05	HM	Review Joffred's testimony for Fye	0.50	\$225.00	\$112.50
10/31/05	HM	Trial: meet with HM to consider Jim Chett as trial expert	0.50	\$225.00	\$112.50
10/31/05	HM	Meeting with DJD and Email request	0.25	\$225.00	\$56.25
10/31/05	HM	Review Joffred's exam by Cohen (Order of 12/15/04)	0.50	\$225.00	\$112.50
10/31/05	HM	Meeting with DJD re: Stanziola's comment on Cole sub	0.10	\$225.00	\$22.50
10/31/05	HM	Meeting with BJM and Email request	0.25	\$100.00	\$25.00
10/31/05	HM	Meeting with BJM re: Stanziola's comment on Cole subpoena	0.10	\$100.00	\$10.00
10/31/05	HM	Research subpoenas for out-of-state defendants re: David Cole	1.00	\$100.00	\$100.00
10/31/05	HM	Email BJM re: subpoena to out-of-state witness	0.10	\$100.00	\$10.00
10/31/05	HM	Trial: meet with BJM to consider Jim Chett as trial expert	0.50	\$350.00	\$175.00
10/31/05	HM	File review (boxes of Berg from trial; searching for pre-trial Order)	1.00	\$35.00	\$35.00
11/01/05	HM	Receive and reply to HM Email	0.30	\$225.00	\$68.18
11/02/05	HM	Letter to J. Chett with enclosures	1.00	\$225.00	\$225.00
11/02/05	HM	Meeting with HM on costs, office stability and expert fees	0.50	\$225.00	\$112.50
11/02/05	HM	Meeting with HM on letter and enclosures to J. Chett	0.60	\$225.00	\$135.00
11/02/05	HM	Assignment to JA to compile package for J. Chett	0.10	\$225.00	\$22.50
11/02/05	HM	Meeting with BJM on costs, office stability and expert fees	0.50	\$350.00	\$175.00
11/02/05	HM	Meeting with BJM on letter and enclosures to J. Chett	0.60	\$350.00	\$210.00
11/02/05	HM	Assignment from BJM to compile package to J. Chett	0.10	\$35.00	\$3.50
11/03/05	HM	Redrafting letter to J. Chett with additional documents	0.50	\$225.00	\$112.50
11/03/05	HM	Emails with India re: Billing Summary record	0.20	\$225.00	\$45.00
11/03/05	HM	Emails with JA re: package to J. Chett	0.20	\$225.00	\$45.00
11/03/05	HM	Email HM re: supplying J. Chett the Foster report	0.25	\$225.00	\$56.25
11/03/05	HM	Phone call to J. Chett (left message w/ wife)	0.10	\$225.00	\$22.50
11/03/05	HM	Phone call to JA re: Nationwide's monthly billing numbers	0.10	\$225.00	\$22.50
11/03/05	HM	Meeting with JA re: package to J. Chett	0.25	\$225.00	\$56.25
11/03/05	HM	Review Foster and Schwartzman reports for J. Chett	0.75	\$225.00	\$168.75
11/03/05	JA	Phone call with BJM re: Nationwide monthly billing numbers	0.10	\$35.00	\$3.50

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
11/03/05	JA	Copy and organize documents for package to J. Chett; prepare index	2.25	\$35.00	\$78.75
11/03/05	JA	Meeting with BJM re: package to J. Chett	0.25	\$35.00	\$8.75
11/03/05	JA	Adding up Nationwide's monthly billing records	0.50	\$35.00	\$17.50
11/03/05	HM	Review and respond to Emails from BJM re: package to J. Chett	0.10	\$35.00	\$3.50
11/04/05	HM	Letter to J. Chett with Policy/dec sheets	0.25	\$225.00	\$56.25
11/04/05	HM	Replies to HM Emails	0.25	\$225.00	\$56.25
11/04/05	HM	Email India re: Nationwide' billing record summary	0.10	\$225.00	\$22.50
11/04/05	HM	Email JA re: supplying policy to J. Chett	0.10	\$225.00	\$22.50
11/04/05	HM	Email JA re: monthly figures so far	0.10	\$225.00	\$22.50
11/04/05	HM	Phone call from J. Chett re: file	0.25	\$225.00	\$56.25
11/04/05	HM	Meeting with HM re: Foster and Schwartzman	0.50	\$225.00	\$112.50
11/04/05	HM	Meeting with HM re: Claim Log	0.25	\$225.00	\$56.25
11/04/05	HM	Meeting with JA re: chronologies	0.10	\$225.00	\$22.50
11/04/05	HM	Reviewed claim logs, reviewed Connie Foster's report, talked with BJM, talked with MAG re: duplicate entries on claim logs to determine why they occurred and what they meant	8.00	\$350.00	\$2,800.00
11/04/05	HM	Draft letter to J. Chett enclosing Nationwide policy	0.00	\$35.00	\$0.00
11/04/05	HM	Copy Nationwide policy/dec sheets for J. Chett	0.25	\$35.00	\$8.75
11/04/05	HM	Copy documents for HM	0.25	\$35.00	\$8.75
11/04/05	HM	Meeting with BJM re: chronologies	0.10	\$35.00	\$3.50
11/04/05	HM	Adding up Nationwide's monthly billing records	1.25	\$35.00	\$43.75
11/04/05	HM	Review Bergs' dep transcripts re: policy for HM	0.25	\$35.00	\$8.75
11/04/05	HM	Locate and print Time Lines/Chronologies for HM and BJM	1.00	\$35.00	\$35.00
11/04/05	HM	Review, copy and organize chronologies	0.50	\$35.00	\$17.50
11/04/05	HM	Email BJM re: monthly figures so far	0.10	\$35.00	\$3.50
11/07/05	HM	File Review	5.00	\$350.00	\$1,750.00
11/10/05	HM	Letter to C. Cohen re: David Cole	0.25	\$225.00	\$56.25
11/10/05	HM	Letter to C. Cohen re: trial costs	0.25	\$225.00	\$56.25
11/10/05	HM	Email JA re: Motion to Subpoena Cole	0.10	\$225.00	\$22.50
11/10/05	HM	Locate and copy documents for HM	0.25	\$35.00	\$8.75
11/10/05	HM	Email BJM re: subpoena procedure to out-of-state, witness	0.10	\$35.00	\$3.50
11/10/05	HM	Email DJD re: subpoena procedure to out-of-state witness	0.10	\$35.00	\$3.50
11/11/05	HM	Print out answers to 5/18/05 INTs of Nationwide for HM	0.10	\$35.00	\$3.50
11/14/05	HM	Email JA re: retroactive application of Bonenberger	0.10	\$225.00	\$22.50
11/14/05	HM	Research re: retroactive application of Bonenberger	0.25	\$225.00	\$56.25
11/14/05	HM	Meeting with JA re: Davis, 775 A.2d 871	0.25	\$225.00	\$56.25
11/14/05	HM	Meeting with HM re: "16 page fax"	0.30	\$225.00	\$67.50
11/14/05	HM	Looking for documents, assembling time line	3.00	\$350.00	\$1,050.00
11/14/05	HM	Meeting with BJM re: "16 page fax"	0.30	\$350.00	\$105.00
11/14/05	HM	Meeting with BJM re: Davis, 775 A.2d 871	0.25	\$35.00	\$8.75
11/14/05	HM	Review Email from BJM re: Retroactive Application of Bonenberger	0.10	\$35.00	\$3.50
11/15/05	HM	Meeting with HM re: tomorrow's meeting with Jim Chett	0.25	\$225.00	\$56.25
11/15/05	HM	Reviewing our reply to Nationwide's discovery requests re: fees	0.75	\$225.00	\$168.75

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
11/15/05	HM	Reviewing exhibits re: repair estimates, billing, supplements, checks, check registers and their interplay	1.00	\$350.00	\$350.00
11/15/05	HM	Meeting with BJM re: tomorrow's meeting with Jim Chett	0.25	\$350.00	\$87.50
11/16/05	HM	Preparing for meeting with J. Chett	1.00	\$225.00	\$225.00
11/16/05	HM	Meeting with J. Chett and HM	4.00	\$225.00	\$900.00
11/16/05	HM	Copy documents sent to Schwartzman for HM	2.50	\$35.00	\$87.50
11/16/05	HM	Meeting with J. Chett and BJM	4.00	\$350.00	\$1,400.00
11/16/05	HM	Copy documents sent to Schwartzman for HM	2.50	\$35.00	\$87.50
11/16/05	HM	Review file for Joint Tortfeasor Release language	1.00	\$35.00	\$35.00
11/17/05	HM	Email JA re: tomorrow's dep	0.10	\$225.00	\$22.50
11/17/05	HM	Meeting with HM re: letter to Nationwide	0.25	\$225.00	\$56.25
11/17/05	HM	Request to JA for records for dep tomorrow	0.25	\$225.00	\$56.25
11/17/05	HM	Meeting with DJD re: David Cole	0.25	\$225.00	\$56.25
11/17/05	HM	Meeting with BJM re: David Cole	0.25	\$100.00	\$25.00
11/17/05	HM	Letter to J. Chett	0.25	\$350.00	\$87.50
11/17/05	HM	Review of Nationwide's billing records, letters to counsel re: billing records, letter to expert, deposition prep, call to C. Cohen, discussion with BJM, meeting with JA	2.00	\$350.00	\$700.00
11/17/05	HM	Locate and copy documents for J. Chett	0.25	\$35.00	\$8.75
11/17/05	HM	Locate and copy documents for BJM	0.25	\$35.00	\$8.75
11/17/05	HM	Locate and copy letters to D. Cole for BJM	0.10	\$35.00	\$3.50
11/17/05	HM	Request from BJM for records for dep tomorrow	0.25	\$35.00	\$8.75
11/17/05	HM	Computer file re-organization	2.00	\$35.00	\$70.00
11/17/05	HM	Conference with HM and BJM re: billing records	0.10	\$35.00	\$3.50
11/18/05	HM	Dep prep time	0.25	\$225.00	\$56.25
11/18/05	HM	Depositions of Plaintiffs' Counsel	6.00	\$225.00	\$1,350.00
11/18/05	HM	Post dep meeting with HM and MRC	0.25	\$225.00	\$56.25
11/22/04	JA	Emails to BJM re witnesses; conference with BJM re: Trial organization; letter to Counsel re: Summit Bank stipulation; letter to C. Cohen re: Bonenberger witnesses; letter to S. Potosnak re: trial date and time; update witness information list; draft response to Motion to Quash Subpoena by Lisa Buenzle; draft Order; type subpoena to T. Gall; type subpoena to D. Jones; draft letter to D. Jones; Billing Summary; Email to DH re: 7th Amended Complaint exhibits; type subpoena to D. Cole; draft letter to D. Cole; check requests to D. Jones and D. Cole; prepare Notices to Attend to KC Auto Body and Lindgren	9.00	\$35.00	\$315.00
11/18/05	JA	Meeting with DJD re: Cole subpoena	0.25	\$225.00	\$56.25
11/18/05	JA	Meeting with BJM re: Cole subpoena	0.25	\$100.00	\$25.00
11/18/05	JA	Copies for J. Chett	0.75	\$18.00	\$13.50
11/18/05	JA	Preparation for deposition, depositions of BJM, HM and MRC	8.00	\$350.00	\$2,800.00
11/18/05	JA	Post dep meeting with BJM and MRC	0.25	\$350.00	\$87.50
11/18/05	JA	Locate and copy documents for HM re: today's deps	1.50	\$35.00	\$52.50
11/18/05	JA	Discussion with BJM re: Nationwide's billings for 2004, locate and print Emails	0.10	\$35.00	\$3.50
11/18/05	JA	Depositions of Plaintiffs' Counsel	6.00	\$225.00	\$1,350.00
11/18/05	JA	Post dep meeting with HM and BJM	0.25	\$225.00	\$56.25

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
11/19/05	JA	Phone call with HM	0.25	\$225.00	\$56.25
11/19/05	JA	Reviewed Trial Testimony of Grumbein and D. Jones	3.00	\$225.00	\$675.00
11/19/05	JA	Phone call with BJM	0.25	\$350.00	\$87.50
11/21/05	JA	Reply to JA Email re: DJD	0.10	\$225.00	\$22.50
11/21/05	JA	Post to PaTLA on subpoena to David Cole	0.25	\$225.00	\$56.25
11/21/05	JA	Reply to PaTLA members on reply to Cole subpoena	0.25	\$225.00	\$56.25
11/21/05	JA	Draft letter to J. Chett	0.25	\$35.00	\$8.75
11/21/05	JA	Locate and copy correspondence for HM	0.10	\$35.00	\$3.50
11/21/05	JA	Conference with MAG re: Nationwide's billing records excel spreadsheet	0.50	\$35.00	\$17.50
11/21/05	JA	Set up Supplemental Billing Summary	0.25	\$35.00	\$8.75
11/21/05	JA	Organize file	0.10	\$35.00	\$3.50
11/21/05	JA	Billing Summary	2.00	\$35.00	\$70.00
11/21/05	JA	Email BJM re: DJD	0.10	\$35.00	\$3.50
11/21/05	JA	Conference with JA re: Nationwide's billing records excel spreadsheet	0.50	\$25.00	\$12.50
11/22/05	JA	Letter to David Cole	0.25	\$225.00	\$56.25
11/22/05	JA	2nd Letter to David Cole confirming trial attendance	0.25	\$225.00	\$56.25
11/22/05	JA	Review and reply to HM Email w/ attached Trial excerpt	0.30	\$225.00	\$67.50
11/22/05	JA	Email JA re: Questions to D. Cole	0.50	\$225.00	\$112.50
11/22/05	JA	Reply to JA Email re: chronologies	0.10	\$225.00	\$22.50
11/22/05	JA	Email JA re: documents to Chett	0.10	\$225.00	\$22.50
11/22/05	JA	Email JA re: letter to Cole	0.10	\$225.00	\$22.50
11/22/05	JA	Email JA re: 2nd letter to Cole	0.10	\$225.00	\$22.50
11/22/05	JA	Email HM and JA re: PA Defense Institute	0.10	\$225.00	\$22.50
11/22/05	JA	Phone call with M. Burke on status and W. Cohen	0.50	\$225.00	\$112.50
11/22/05	JA	Phone call with J. Chett and HM	0.30	\$225.00	\$67.50
11/22/05	JA	Phone call from D. Cole	0.25	\$225.00	\$56.25
11/22/05	JA	2nd phone call from D. Cole	0.25	\$225.00	\$56.25
11/22/05	JA	Meeting with HM re: deps, W. Cohen and Principato	0.50	\$225.00	\$112.50
11/22/05	JA	Meeting with JA re: Cole subpoena	0.10	\$225.00	\$22.50
11/22/05	JA	Post on PaTLA on Cole at PDI	0.10	\$225.00	\$22.50
11/22/05	JA	Review documents on purchase of vehicle for Chett	0.10	\$225.00	\$22.50
11/22/05	JA	Direction to JA to gather additional documents	0.10	\$225.00	\$22.50
11/22/05	JA	Meeting with HM re: Bonenberger findings of fact	0.25	\$225.00	\$56.25
11/22/05	JA	Review and reply to PaTLA posts on Cole	0.25	\$225.00	\$56.25
11/22/05	JA	Message/question to Patrick Loughren on Best Claims	0.10	\$225.00	\$22.50
11/22/05	JA	Meeting with HM re: phone call from Cole	0.10	\$225.00	\$22.50
11/22/05	JA	Letter to Allegheny County Prothy re: Opinion	0.25	\$350.00	\$87.50
11/22/05	JA	Letter to Allegheny County Prothy re: certified copy	0.25	\$350.00	\$87.50
11/22/05	JA	Phone call with J. Chett and BJM	0.30	\$350.00	\$105.00
11/22/05	JA	Meeting with BJM re: deps, W. Cohen and Principato	0.50	\$350.00	\$175.00
11/22/05	JA	Meeting with BJM re: phone call from Cole	0.10	\$350.00	\$35.00
11/22/05	JA	File Review	4.00	\$350.00	\$1,400.00
11/22/05	JA	Type 2 letters to D. Cole; locate zip code	0.00	\$35.00	\$0.00
11/22/05	JA	Copy 6/12/00 Order for HM	0.10	\$35.00	\$3.50
11/22/05	JA	Copy documents for J. Chett	0.10	\$35.00	\$3.50
11/22/05	JA	Locate and copy documents for J. Chett	0.10	\$35.00	\$3.50

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
11/22/05	JA	Billing Summary	2.00	\$35.00	\$70.00
11/22/05	JA	File organization	0.50	\$35.00	\$17.50
11/22/05	JA	Meeting with BJM re: Cole subpoena	0.10	\$35.00	\$3.50
11/22/05	JA	Direction from BJM to gather additional documents	0.10	\$35.00	\$3.50
11/22/05	JA	Email BJM re: chronologies	0.10	\$35.00	\$3.50
11/22/05	JA	Email BJM re: David Cole	0.10	\$35.00	\$3.50
11/22/05	JA	Email BJM and HM re: HM's billing	0.10	\$35.00	\$3.50
11/22/05	JA	Review Email from BJM re: letter to Cole	0.10	\$35.00	\$3.50
11/22/05	JA	Review Email from BJM re: 2nd letter to Cole	0.10	\$35.00	\$3.50
11/22/05	JA	Review Email from BJM re: PA Defense Institute	0.10	\$35.00	\$3.50
11/23/05	JA	Finalize letters to Cole and cover letter	0.25	\$225.00	\$56.25
11/23/05	JA	Finalizing cover letter to J. Chett	0.25	\$225.00	\$56.25
11/23/05	JA	Change to cover letter to J. Chett	0.10	\$225.00	\$22.50
11/23/05	JA	2nd letter to J. Chett with enclosures	0.50	\$225.00	\$112.50
11/23/05	JA	Email JA requesting more documents for J. Chett	0.10	\$225.00	\$22.50
11/23/05	JA	Several phone calls from home with HM re: billing summary	1.00	\$225.00	\$225.00
11/23/05	JA	Reviewing documents for J. Chett on Nationwide's purchase of Jeep	0.25	\$225.00	\$56.25
11/23/05	JA	Finalizing supplemental package to J. Chett	0.25	\$225.00	\$56.25
11/23/05	JA	Meeting with HM re: HM spread sheet	0.10	\$225.00	\$22.50
11/23/05	JA	Meeting with MAG on billing summary	0.10	\$225.00	\$22.50
11/23/05	JA	Review HM chronology and enclosures to J. Chett	0.25	\$225.00	\$56.25
11/23/05	JA	Add BJM chronology to J. Chett package	0.25	\$225.00	\$56.25
11/23/05	JA	Delivery of documents to J. Chett (office closed for holiday)(charged mileage only)	0.00	\$225.00	\$0.00
11/23/05	JA	Receive and review letter from C. Cohen re: billing records	0.10	\$350.00	\$35.00
11/23/05	JA	Several phone calls from home with BJM re: billing summary	0.00	\$350.00	\$0.00
11/23/05	JA	File Review	5.50	\$350.00	\$1,925.00
11/23/05	JA	Meeting with BJM re: HM spread sheet	0.10	\$350.00	\$35.00
11/23/05	JA	Draft letter to D. Cole re: 11/22/05 letters	0.00	\$35.00	\$0.00
11/23/05	JA	Copy documents for J. Chett	0.50	\$35.00	\$17.50
11/23/05	JA	Locate chronologies in computer file; move to Bad Faith	0.25	\$35.00	\$8.75
11/23/05	JA	Locate documents for J. Chett	0.50	\$35.00	\$17.50
11/27/05	JA	Email from Consultant	0.50	\$225.00	\$112.50
11/27/05	JA	Email with HM	0.20	\$225.00	\$45.00
11/27/05	JA	Email with BJM	0.20	\$350.00	\$70.00
11/27/05	JA	Email with HM	0.20	\$225.00	\$45.00
11/28/05	JA	Telephone call with J. Chett	0.10	\$225.00	\$22.50
11/28/05	JA	Preparing for 2nd meeting with J. Chett	3.50	\$225.00	\$787.50
11/28/05	JA	Meeting with HM to discuss meeting with J. Chett	0.25	\$225.00	\$56.25
11/28/05	JA	Meeting with BJM to discuss meeting with J. Chett	0.25	\$225.00	\$56.25
11/28/05	JA	Review Bonenberger Conclusions of Law and Fact	0.25	\$225.00	\$56.25
11/28/05	JA	Email with BJM	0.20	\$350.00	\$70.00
11/28/05	JA	Review J. Chett's report	0.50	\$350.00	\$175.00
11/28/05	JA	File Review	2.00	\$350.00	\$700.00
11/28/05	JA	Copy documents for HM	0.10	\$35.00	\$3.50
11/28/05	JA	Read J. Chett's report	0.10	\$35.00	\$3.50
11/28/05	JA	Meeting with BJM on Billing Summary	0.10	\$25.00	\$2.50
11/29/05	JA	Prepare for conference with J. Chett	0.50	\$225.00	\$112.50
11/29/05	JA	Conference with J. Chett	2.50	\$225.00	\$562.50
11/29/05	JA	Reviewing law on punitive damages	0.75	\$225.00	\$168.75

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
11/29/05	JA	Telephone call with J. Chett and BJM	0.50	\$350.00	\$175.00
11/29/05	JA	File Review	0.50	\$350.00	\$175.00
11/29/05	JA	Meeting with BJM and J. Chett	2.25	\$350.00	\$787.50
11/29/05	JA	Redrafting spread sheets	0.75	\$350.00	\$262.50
11/29/05	JA	Reviewing redrafted spread sheets	0.50	\$350.00	\$175.00
11/29/05	JA	Copy documents for HM and BJM	0.25	\$35.00	\$8.75
11/29/05	JA	Billing Summary	1.50	\$35.00	\$52.50
11/29/05	JA	Email SF re: costs	0.10	\$35.00	\$3.50
11/30/05	JA	Letter to C. Cohen re: phone call (2nd Summary Judgment)	0.25	\$225.00	\$56.25
11/30/05	JA	Letter to C. Cohen enclosing one page billing summary	0.25	\$225.00	\$56.70
11/30/05	JA	Letter to Counsel enclosing J. Chett's report	0.25	\$225.00	\$56.25
11/30/05	JA	Letter to Counsel re: Certificate of Readiness for Trial	0.25	\$225.00	\$56.25
11/30/05	JA	Receive and review fax from J. Chett	0.10	\$225.00	\$22.50
11/30/05	JA	Phone call with HM and J. Chett	0.30	\$225.00	\$67.50
11/30/05	JA	Phone call from C. Cohen	0.10	\$225.00	\$22.50
11/30/05	JA	Review J. Chett's report	0.50	\$225.00	\$112.50
11/30/05	JA	Conference with HM	0.50	\$225.00	\$112.50
11/30/05	JA	Phone call with BJM and J. Chett	0.30	\$350.00	\$105.00
11/30/05	JA	Phone call with BJM	0.50	\$350.00	\$175.00
11/30/05	JA	Conference with BJM	0.50	\$350.00	\$175.00
11/30/05	JA	Draft letter to Counsel re: Certificate of Trial Readiness	0.00	\$35.00	\$0.00
11/30/05	JA	Copy documents	0.25	\$35.00	\$8.75
11/30/05	JA	Prepare Certificate of Trial Readiness	0.10	\$35.00	\$3.50
11/30/05	JA	Locate and print out chronologies	0.10	\$35.00	\$3.50
11/30/05	JA	File organization	0.25	\$35.00	\$8.75
11/30/05	JA	Type up questions to David Cole	0.10	\$35.00	\$3.50
12/01/05	JA	Receive and review letter from Harleysville Insurance re: David Cole	0.10	\$225.00	\$22.50
12/01/05	JA	Email JA with directions for Motion for Trial Cert	0.25	\$225.00	\$56.25
12/01/05	JA	Discussion with staff re: Cole subpoena	0.10	\$225.00	\$22.50
12/01/05	JA	Meeting with HM on claim log redactions	0.20	\$225.00	\$45.00
12/01/05	JA	Meeting with HM on claim log redactions	2.00	\$225.00	\$450.00
12/01/05	JA	Preparing for Foster	0.10	\$225.00	\$22.50
12/01/05	JA	Subpoena re: Cole	0.50	\$35.00	\$17.50
12/01/05	JA	Discussing with HM a project of Nationwide Claim Logs	1.50	\$35.00	\$52.50
12/01/05	JA	Comparing the whited out and blacked out versions of Nationwide's claim logs and preparing a memo of the three differences	0.50	\$350.00	\$175.00
12/01/05	JA	Discussing with DAT a project with Nationwide claim logs	0.20	\$350.00	\$70.00
12/01/05	JA	Meeting with BJM on claim log redactions	1.00	\$35.00	\$35.00
12/01/05	JA	Billing Summary	3.50	\$35.00	\$122.50
12/01/05	JA	Filing/file organization	0.10	\$35.00	\$3.50
12/01/05	JA	Email BJM and HM re: billing	0.25	\$225.00	\$56.25
12/02/05	JA	Letter to Bergs	0.10	\$225.00	\$22.50
12/02/05	JA	Email JA re: Witness List	2.00	\$350.00	\$700.00
12/02/05	JA	Redrafted spread sheets re: Natinwide's claim logs/drafted letter to J. Chett	1.50	\$35.00	\$52.50
12/02/05	JA	Draft motion re: trial readiness; copy exhibits	0.00	\$35.00	\$0.00
12/02/05	JA	Draft letter to Bergs	0.10	\$35.00	\$3.50
12/02/05	JA	Set up binders	0.10	\$35.00	\$3.50
12/02/05	JA	Billing Summary	0.10	\$35.00	\$3.50

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
12/02/05	JA	File organization	2.00	\$35.00	\$70.00
12/02/05	JA	Draft Trial: Witness List	0.10	\$35.00	\$3.50
12/02/05	JA	Review Email from HM/BJM re: hours and J. Chett	0.10	\$35.00	\$3.50
12/02/05	JA	Email BJM re: Motion re: Certificate of Trial Readiness	0.10	\$35.00	\$3.50
12/02/05	JA	Email BJM re: Witness List	0.10	\$35.00	\$3.50
12/03/05	JA	Email with HM	0.25	\$225.00	\$56.25
12/03/05	JA	Email JA re: Witness List	0.10	\$225.00	\$22.50
12/03/05	JA	Email JA re: naming Nationwide's counsel as witness	0.10	\$225.00	\$22.50
12/03/05	JA	Saturday morning: review testimony of Grumbein	1.50	\$225.00	\$337.50
12/03/05	JA	Email with BJM	0.25	\$350.00	\$87.50
12/04/05	JA	Email J. Chett and HM re: Testimony of Scierter	0.25	\$225.00	\$56.25
12/05/05	JA	Receive and review Cohen's 12/1/05 letter with missing billing records	0.30	\$225.00	\$67.50
12/05/05	JA	Letter to James Schwartzman with enclosures	0.50	\$225.00	\$112.50
12/05/05	JA	Phone call to Schwartzman's office	0.10	\$225.00	\$22.50
12/05/05	JA	2nd phone call to Schwartzman's office	0.10	\$225.00	\$22.50
12/05/05	JA	Meeting with HM re: missing billing records	0.25	\$225.00	\$56.25
12/05/05	JA	Meeting with JA re: billing summary	0.25	\$225.00	\$56.25
12/05/05	JA	Meeting with MAG re: billing summary spread sheet	0.25	\$225.00	\$56.25
12/05/05	JA	Organizing materials into categories, discussions with BJM, discussions with JA re: Nationwide's billing figures	8.00	\$350.00	\$2,800.00
12/05/05	JA	Meeting with BJM re: Billing Summary	0.25	\$35.00	\$8.75
12/05/05	JA	Billing Summary	0.75	\$35.00	\$26.25
12/05/05	JA	Update/organize Witness List	0.10	\$35.00	\$3.50
12/05/05	JA	Review missing billing records rec'd today by Nationwide	0.10	\$35.00	\$3.50
12/05/05	JA	Calculating missing billing records from Nationwide	0.50	\$35.00	\$17.50
12/05/05	JA	Review Nationwide's prior billing records	0.10	\$35.00	\$3.50
12/05/05	JA	Discussion with HM re: missing billing records and prior Nationwide billing records spreadsheet	0.50	\$35.00	\$17.50
12/05/05	JA	Review 3 Emails from BJM	0.10	\$35.00	\$3.50
12/05/05	JA	Email BJM and HM re: missing billing records totals	0.10	\$35.00	\$3.50
12/05/05	JA	Meeting with BJM re: Billing Summary spreadsheet	0.25	\$25.00	\$6.25
12/06/05	JA	Organizing materials, draft proposed letters to C. Cohen, revise drafted letters to Cohen, telephone conversations with BJM, discussion with MRC, contacted court reporter re: depositions, file review	8.00	\$350.00	\$2,800.00
12/06/05	JA	Draft letter to M. Nelson	0.25	\$35.00	\$8.75
12/06/05	JA	Locate and copy letter for HM	0.10	\$35.00	\$3.50
12/06/05	JA	Billing Summary	1.00	\$35.00	\$35.00
12/06/05	JA	Review Nationwide's billing records for Nelson's hourly rate	2.00	\$35.00	\$70.00
12/06/05	JA	Calculate, recalculate and prepare chart of Nationwide's monthly billing records	0.50	\$35.00	\$17.50
12/06/05	JA	Email BJM and HM re: Nelson's monthly billing	0.10	\$35.00	\$3.50
12/07/05	JA	Receive and review fax from C. Cohen re: written objection to Certificate of Readiness for Trial	0.10	\$225.00	\$22.50
12/07/05	JA	Review JA's Motion to Certify Matter for Trial	0.20	\$225.00	\$45.00
12/07/05	JA	Review B.R.C.P. 212.1	0.20	\$225.00	\$45.00

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
12/07/05	JA	Conference with HM: no affidavit from Nationwide on billing records	0.10	\$225.00	\$22.50
12/07/05	JA	Conference with DH re: B.R.C.P. 212	0.10	\$225.00	\$22.50
12/07/05	JA	Conference with HM re: 11/19/03 Order on Trial Cert	0.10	\$225.00	\$22.50
12/07/05	JA	Conference with HM and MRC re: Rule 11 motion	0.30	\$225.00	\$67.50
12/07/05	JA	Conference with HM re: letter to Cohen	0.10	\$225.00	\$22.50
12/07/05	JA	Conference with BJM re: B.R.C.P. 212	0.10	\$25.00	\$2.50
12/07/05	JA	Work on notice of presenting Certificate of Readiness for Trial with JA	0.25	\$25.00	\$6.25
12/07/05	JA	Conference with BJM: no affidavit from Nationwide on billing records	0.10	\$350.00	\$35.00
12/07/05	JA	Conference with BJM re: 11/19/03 Order on Trial Cert	0.10	\$350.00	\$35.00
12/07/05	JA	Conference with BJM and MRC re: Rule 11 motion	0.30	\$350.00	\$105.00
12/07/05	JA	Discussion with BJM and MRC re: proposed letters to Cohen re: Nationwide's MSJ, 6 re-drafts of proposed letter to Cohen which was finalized and sent to Counsel	4.00	\$350.00	\$1,400.00
12/07/05	JA	Billing Summary	1.25	\$35.00	\$43.75
12/07/05	JA	Discussion with HM re: Nationwide's monthly figures	0.10	\$35.00	\$3.50
12/07/05	JA	Discussion with HM re: Nationwide's monthly figures	0.10	\$35.00	\$3.50
12/07/05	JA	Work on notice of presenting Certificate of Readiness for Trial with DH	0.25	\$35.00	\$8.75
12/07/05	JA	Consolidating various chronologies	0.50	\$35.00	\$17.50
12/07/05	JA	Conference with BJM and HM re: Rule 11 motion	0.30	\$225.00	\$67.50
12/08/05	JA	Letter to C. Cohen re: Certificate of Readiness for Trial	0.25	\$225.00	\$56.25
12/08/05	JA	Email JA and MAG re: testifying (billing summary)	0.10	\$225.00	\$22.50
12/08/05	JA	Hand-file Argument Praecept in Reading	2.00	\$18.00	\$36.00
12/08/05	JA	4 re-drafts of a proposed letter to Cohen which was then finalized and sent to Counsel, 2 re-drafts of another proposed letter to Cohen which was finalized and sent, discussion with MRC, needles note re-drafted	2.00	\$350.00	\$700.00
12/08/05	JA	Consolidating various chronologies	1.00	\$35.00	\$35.00
12/08/05	JA	Email BJM re: 16 page fax as exhibit	0.10	\$35.00	\$3.50
12/08/05	JA	Email BJM re: suggestion	0.10	\$35.00	\$3.50
12/08/05	JA	Email BJM re: hours and J. Chett	0.10	\$35.00	\$3.50
12/08/05	JA	Email BJM and HM re: HM's 12/8/05 letter to Nationwide	0.10	\$35.00	\$3.50
12/12/05	JA	Letter to James Schwartzman, Esquire	0.25	\$225.00	\$56.25
12/12/05	JA	Letter to C. Barone	0.25	\$225.00	\$56.25
12/12/05	JA	Letter to J. Chett	0.25	\$225.00	\$56.25
12/12/05	JA	Letter to K. VanGorder	0.25	\$225.00	\$56.25
12/12/05	JA	Reply Email to JA re: Potosnak and Nelson	0.10	\$225.00	\$22.50
12/12/05	JA	Conference with HM re: Cole's supervisor per J. Chett	0.25	\$225.00	\$56.25
12/12/05	JA	Review Cole's 12/21/99 dep re: Hensley	0.10	\$225.00	\$22.50
12/12/05	JA	Conference with BJM re: Cole's supervisor per J. Chett	0.25	\$350.00	\$87.50
12/12/05	JA	Draft letter to J. Schwartzman	0.00	\$35.00	\$0.00
12/12/05	JA	Draft letter to C. Barone	0.00	\$35.00	\$0.00

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
12/12/05	JA	Draft letter to J. Chett	0.00	\$35.00	\$0.00
12/12/05	JA	Draft letter to K. VanGorder	0.00	\$35.00	\$0.00
12/12/05	JA	Review Email from BJM re: experts' availability	0.10	\$35.00	\$3.50
12/12/05	JA	Review Email from BJM re: witnesses	0.10	\$35.00	\$3.50
12/12/05	JA	Email MAG re: spreadsheet	0.10	\$35.00	\$3.50
12/12/05	JA	Email BJM re: Potosnak and Nelson	0.10	\$35.00	\$3.50
12/13/05	JA	Email JA re: Trial Prep	0.25	\$225.00	\$56.25
12/13/05	JA	Review Cole's 12/21/99 dep re: Hensley	0.25	\$225.00	\$56.25
12/13/05	JA	Consolidating various chronologies	2.00	\$35.00	\$70.00
12/13/05	JA	Update Trial Witness List	0.10	\$35.00	\$3.50
12/13/05	JA	Review and print Email from BJM re: Cole	0.10	\$35.00	\$3.50
12/14/05	JA	Letter to C. Cohen enclosing First Services, Ltd., invoice	0.25	\$225.00	\$56.25
12/14/05	JA	Receive and review letter from K. Myers	0.10	\$225.00	\$22.50
12/14/05	JA	Email JA re: send Jim report of Chett	0.10	\$225.00	\$22.50
12/14/05	JA	Email JA re: Jim's conflicts	0.10	\$225.00	\$22.50
12/14/05	JA	Phone call from J. Schwartzman	0.10	\$225.00	\$22.50
12/14/05	JA	Draft letter to C. Cohen enclosing First Services, Ltd., invoice	0.00	\$35.00	\$0.00
12/14/05	JA	Update Trial Witness List	0.10	\$35.00	\$3.50
12/14/05	JA	Billing Summary	1.00	\$35.00	\$35.00
12/14/05	JA	Email BJM re: trial transcript and exhibits	0.10	\$35.00	\$3.50
12/14/05	JA	Review Email from BJM re: J. Schwartzman (2)	0.10	\$35.00	\$3.50
12/15/05	JA	Letter to J. Schwartzman w/ enclosures	0.25	\$225.00	\$56.25
12/15/05	JA	Draft letter to J. Schwartzman	0.00	\$35.00	\$0.00
12/15/05	JA	Copy J. Chett's report	0.10	\$35.00	\$3.50
12/16/05	JA	Receive and review Nationwide's late production of billing records	0.30	\$225.00	\$67.50
12/16/05	JA	Meeting with HM re: billing records	0.25	\$225.00	\$56.25
12/16/05	JA	Reviewing Nationwide's additional billing records, drafted several versions of a letter to Cohen, discussion with JA re: Nationwide's figures, discussion with BJM re: letter to Cohen	3.00	\$350.00	\$1,050.00
12/16/05	JA	Meeting with BJM re: billing records	0.25	\$350.00	\$87.50
12/16/05	JA	Calculating our monthly billing	4.00	\$35.00	\$140.00
12/19/05	JA	Meeting with HM re: BJM dep transcript	0.25	\$225.00	\$56.25
12/19/05	JA	Direction to JA to copy discovery on redacted log entry	0.25	\$225.00	\$56.25
12/19/05	JA	Copy deposition miniscripts	0.25	\$18.00	\$4.50
12/19/05	JA	Fax to C. Cohen re: depositions	0.25	\$350.00	\$87.50
12/19/05	JA	Meeting with BJM re: BJM dep transcript	0.25	\$350.00	\$87.50
12/19/05	JA	Calculating our monthly billing	4.50	\$35.00	\$157.50
12/19/05	JA	Locate prior discovery requests to Nationwide	0.10	\$35.00	\$3.50
12/19/05	JA	Direction from BJM to copy discovery on redacted log entry	0.25	\$35.00	\$8.75
12/19/05	JA	Review and respond to Email from HM re: dep mini	0.10	\$35.00	\$3.50
12/20/05	JA	Copy 12/17/03 discovery	0.25	\$18.00	\$4.50
12/20/05	JA	Calculate our monthly billing	3.00	\$35.00	\$105.00
12/21/05	JA	Draft memo re: monthly billing	0.25	\$35.00	\$8.75
12/23/05	JA	Draft and revise memo re: monthly billing	1.00	\$35.00	\$35.00
12/28/05	JA	Locating documents for hearing on 1/3/05	0.25	\$225.00	\$56.25
12/28/05	JA	Direction to JA re: prep summary of documents for hearing	0.10	\$225.00	\$22.50
12/28/05	JA	Direction to JA re: call court for hearing time and courtroom	0.10	\$225.00	\$22.50

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
12/28/05	JA	Reviewing Nationwide's April 30 log and dictating memo to BJM	3.00	\$350.00	\$1,050.00
12/28/05	JA	Prepare itemization of Plaintiffs' efforts to certify case for trial	0.25	\$35.00	\$8.75
12/28/05	JA	Calculating totals from Bergs' monthly billing amounts	0.10	\$35.00	\$3.50
12/28/05	JA	Direction from BJM re: prep summary of documents for hearing	0.10	\$35.00	\$3.50
12/28/05	JA	Direction from BJM re: call court for hearing time and courtroom	0.10	\$35.00	\$3.50
12/29/05	JA	Phone call to Court (Carmen said must be argued with Stallone)	0.10	\$225.00	\$22.50
12/29/05	JA	Meeting with JA re: oral argument being off list	0.10	\$225.00	\$22.50
12/29/05	JA	Meeting with JA re: procedure	0.10	\$225.00	\$22.50
12/29/05	JA	Meeting with HM	0.10	\$225.00	\$22.50
12/29/05	JA	Meeting with BJM	0.10	\$350.00	\$35.00
12/29/05	JA	Phone call to Prothy	0.10	\$35.00	\$3.50
12/29/05	JA	Phone call to Prothy and Court Administration re: argument of Certificate of Trial Readiness	0.25	\$35.00	\$8.75
12/29/05	JA	Meeting with BJM re: oral argument being off list	0.10	\$35.00	\$3.50
12/29/05	JA	Meeting with BJM re: procedure	0.10	\$35.00	\$3.50
12/29/05	JA	Email BJM re: discussion with Kathy at Court Administration re: argument of Certificate of Trial Readiness	0.10	\$35.00	\$3.50
12/29/05	JA	Email BJM re: letter to counsel	0.10	\$35.00	\$3.50
12/30/05	JA	Letter to C. Cohen re: argument	0.25	\$225.00	\$56.25
01/03/06	JA	Letter to Counsel re: hearing date on trial certification	0.25	\$225.00	\$56.25
01/03/06	JA	Staff meetings to discuss new hearing date of 2/3/06	0.10	\$225.00	\$22.50
01/03/06	JA	Draft letter to Counsel re: hearing date on trial certification	0.00	\$35.00	\$0.00
01/03/06	JA	Phone calls with Beverly of Judge Stallone's chambers	0.25	\$35.00	\$8.75
01/04/06	JA	Draft letter to Prothy re: docket entries	0.25	\$35.00	\$8.75
01/10/06	JA	Receive and review letter from M. Nelson re: billing records	0.10	\$350.00	\$35.00
01/11/06	JA	Receive and review Nationwide's Motion for Summary Judgment	0.50	\$225.00	\$112.50
01/11/06	JA	Meeting with HM re: motion	0.25	\$225.00	\$56.25
01/11/06	JA	Meeting with MRC re: motion	0.20	\$225.00	\$45.00
01/11/06	JA	Copying MSJ for HM	1.50	\$18.00	\$27.00
01/11/06	JA	Meeting with BJM re: motion	0.25	\$350.00	\$87.50
01/11/06	JA	File Review	10.00	\$350.00	\$3,500.00
01/11/06	JA	Locate and copy documents for HM	0.25	\$35.00	\$8.75
01/11/06	JA	Meeting with BJM re: motion	0.20	\$225.00	\$45.00
01/12/06	JA	Reply to HM Emails re: index and KC bill	0.25	\$225.00	\$56.25
01/12/06	JA	Reply to J. Chett re: scheduling	0.10	\$225.00	\$22.50
01/13/06	JA	Copying exhibits	0.25	\$35.00	\$8.75
01/13/06	JA	Set up caption for reply to Nationwide's MSJ	0.10	\$35.00	\$3.50
01/16/06	JA	Reviewing Nationwide's 16 page fax, revising review of Nationwide's 16 page fax, discussion with MRC re: Nationwide's 16 page fax	4.00	\$350.00	\$1,400.00
01/17/06	JA	Billing Summary	0.50	\$35.00	\$17.50

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
01/18/06	JA	Reviewing Nationwide's claim logs re: 16 page fax being all of the BRRP portion of the file	2.00	\$350.00	\$700.00
01/18/06	JA	Billing Summary	0.25	\$35.00	\$8.75
01/19/06	JA	Letter to J. Schwartzman	0.25	\$225.00	\$56.25
01/19/06	JA	Meeting with HM re: 16 page fax	0.50	\$225.00	\$112.50
01/19/06	JA	Meeting with BJM re: 16 page fax	0.50	\$350.00	\$175.00
01/19/06	JA	Draft letter to J. Schwartzman	0.00	\$35.00	\$0.00
01/19/06	JA	Locate and copy Order re: 16 page fax	0.50	\$35.00	\$17.50
01/20/06	JA	Copying	0.75	\$18.00	\$13.50
01/24/06	JA	Email BJM re: meeting with J. Chett	0.10	\$35.00	\$3.50
01/25/06	JA	Meeting with HM re: Bashore testimony on Potosnak report	0.20	\$225.00	\$45.00
01/25/06	JA	Prepare for meeting with J. Chett	0.50	\$225.00	\$112.50
01/25/06	JA	Meeting with J. Chett and HM	4.00	\$225.00	\$900.00
01/25/06	JA	Meeting with BJM re: Bashore testimony on Potosnak report	0.20	\$350.00	\$70.00
01/25/06	JA	Meeting with J. Chett and BJM	4.00	\$350.00	\$1,400.00
01/25/06	JA	Locate and copy documents for BJM for meeting with J. Chett	0.20	\$35.00	\$7.00
01/26/06	JA	Letter to Nationwide re: Chett invoice and check	0.25	\$225.00	\$56.25
01/26/06	JA	Letter to J. Chett	0.25	\$225.00	\$56.25
01/26/06	JA	Phone Consultation JA	0.25	\$225.00	\$56.25
01/26/06	JA	Meeting with HM re: JA	0.10	\$225.00	\$22.50
01/26/06	JA	Meeting with BJM re: JA	0.10	\$350.00	\$35.00
01/26/06	JA	Draft letter to Nationwide re: J. Chett invoice and check	0.00	\$35.00	\$0.00
01/26/06	JA	Draft letter to J. Chett	0.00	\$35.00	\$0.00
01/26/06	JA	Copy Chett invoice	0.10	\$35.00	\$3.50
01/26/06	JA	Discussion with BJM re: Chett check	0.10	\$35.00	\$3.50
01/26/06	JA	Email SF re: Chett invoice	0.10	\$35.00	\$3.50
01/31/06	JA	Reply to Nationwide's Motion for Summary Judgment	3.25	\$225.00	\$731.25
02/01/06	JA	Reply to Nationwide's Motion for Summary Judgment	1.25	\$225.00	\$281.25
02/02/06	JA	Reply to Nationwide's Motion for Summary Judgment	4.25	\$225.00	\$956.25
02/02/06	JA	Reply to Nationwide's motion: Argument Brief	3.00	\$225.00	\$675.00
02/02/06	JA	Meeting with HM on content of Reply	0.25	\$225.00	\$56.25
02/02/06	JA	Meeting with BJM on content of Reply	0.25	\$350.00	\$87.50
02/02/06	JA	Court prep with BJM, drafting various responses to Nationwide's MSJ	6.00	\$350.00	\$2,100.00
02/02/06	JA	Draft letters to Counsel and Court re: reply to MSJ	0.00	\$35.00	\$0.00
02/02/06	JA	Make HM changes to Reply to Summary Judgment motion	1.00	\$35.00	\$35.00
02/02/06	JA	Provide information to BJM for reply to MSJ, make changes to response, review local rules, prepare Order, prepare Certificate of Addresses, prepare Certificate of Service	3.50	\$35.00	\$122.50
02/03/06	JA	Hearing: Motion to Certify for Trial (travel and wait)	1.50	\$225.00	\$337.50
02/03/06	JA	Hearing	0.20	\$225.00	\$45.00
02/03/06	JA	Travel back from hearing	1.00	\$225.00	\$225.00
02/03/06	JA	Conference with HM	0.30	\$225.00	\$67.50
02/03/06	JA	Hearing: Motion to Certify for Trial (travel and wait)	1.50	\$350.00	\$525.00
02/03/06	JA	Hearing	0.20	\$350.00	\$70.00
02/03/06	JA	Travel back from hearing	1.00	\$350.00	\$350.00

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
02/03/06	JA	Conference with BJM	0.30	\$350.00	\$105.00
02/06/06	JA	Improving reply to Nationwide's Summary Judgment motion	4.80	\$225.00	\$1,080.00
02/06/06	JA	Reviewing testimony from Bonenberger	1.00	\$225.00	\$225.00
02/06/06	JA	Finalizing Reply	1.25	\$225.00	\$281.25
02/06/06	JA	Reviewing file, discussion with MRC	4.00	\$350.00	\$1,400.00
02/07/06	JA	Finalizing Reply	4.30	\$225.00	\$967.50
02/07/06	JA	Reviewing Opinion of Stallone dated 4/7/05	0.20	\$225.00	\$45.00
02/07/06	JA	Editing supporting Brief	2.00	\$225.00	\$450.00
02/07/06	JA	Letter to Nationwide re: Cole dep and Confidentiality	0.20	\$225.00	\$45.00
02/07/06	JA	Letter to Prothy re: reply to Summary Judgment motion	0.25	\$225.00	\$56.25
02/07/06	JA	Letter to Counsel re: reply to Summary Judgment motion	0.25	\$225.00	\$56.25
02/07/06	JA	Copying exhibits	0.50	\$18.00	\$9.00
02/07/06	JA	Discussion with BJM re: exhibits to reply to MSJ	0.10	\$35.00	\$3.50
02/07/06	JA	Make changes to Monthly Billing one-page summary; copies	0.25	\$35.00	\$8.75
02/07/06	JA	Re-organize exhibits to reply to MSJ	0.10	\$35.00	\$3.50
02/07/06	JA	Prepare package (reply to MSJ) for mailing to court	0.75	\$35.00	\$26.25
02/08/06	JA	Responsive Brief	5.00	\$225.00	\$1,125.00
02/08/06	JA	Discussion with BJM as to filing Reply to NW MSJ, review BJM's Reply to NW MSJ	2.00	\$350.00	\$700.00
02/09/06	JA	Responsive Brief	7.50	\$225.00	\$1,687.50
02/09/06	JA	Review and revisions to BJM's reply to Nationwide's MSJ, legal research	6.00	\$350.00	\$2,100.00
02/09/06	JA	Copy J. Chett report for HM	0.10	\$35.00	\$3.50
02/09/06	JA	Filing	0.10	\$35.00	\$3.50
02/09/06	JA	File organization	0.25	\$35.00	\$8.75
02/09/06	JA	Billing Summary	1.00	\$35.00	\$35.00
02/10/06	JA	Letter to Prothy re: Praeipse for Argument	0.25	\$225.00	\$56.25
02/10/06	JA	Responsive Brief	2.00	\$225.00	\$450.00
02/10/06	JA	Copying and putting together Argumen Brief for mailing	0.50	\$18.00	\$9.00
02/10/06	JA	Drafting, finalizing and hand delivering Brief to BJM's Reply to Nationwide's MSJ	10.00	\$350.00	\$3,500.00
02/13/06	JA	Review (2) Emails from BJM re: S. Berg and D. Cole	0.10	\$35.00	\$3.50
02/14/06	JA	Receive and review letter from B. Huckabee to Counsel re: releasing KC Auto Body	0.10	\$225.00	\$22.50
02/14/06	JA	Compare Nationwide billing records to Excel spreadsheet	8.00	\$35.00	\$280.00
02/15/06	JA	Letter to J. Chett re: Brief of Argument	0.25	\$225.00	\$56.25
02/15/06	JA	Copying Argumen Brief	0.25	\$18.00	\$4.50
02/15/06	JA	Draft letter to J. Chett re: Brief of Argument	0.00	\$35.00	\$0.00
02/15/06	JA	Billing Summary	0.10	\$35.00	\$3.50
02/17/06	JA	Receive and review Nationwide's Motion for Leave to File Brief	0.10	\$225.00	\$22.50
02/17/06	JA	Receive and review letter from C. Cohen to Prothy re: Motion for Leave to File Reply Brief	0.10	\$225.00	\$22.50
02/17/06	JA	Letter to Walter Cohen	0.30	\$225.00	\$67.50
02/17/06	JA	Letter to C. Cohen re: Walter Cohen	0.10	\$225.00	\$22.50
02/17/06	JA	Meeting with MRC re: Nationwide's motion	0.10	\$225.00	\$22.50
02/17/06	JA	Letter to C. Cohen re: request for continuance	0.25	\$350.00	\$87.50

Page 96 of 110

COPY OF EXHIBIT NO. 44 (Page 96 of 110)

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
02/17/06	JA	Begin Motion in Limine on Coordinate Jurisdiction Rule	0.25	\$35.00	\$8.75
02/17/06	JA	Draft letter to C. Cohen re: W. Cohen	0.00	\$35.00	\$0.00
02/17/06	JA	Draft letter to W. Cohen re: witness at trial	0.00	\$35.00	\$0.00
02/17/06	JA	Copy BJM letter to W. Cohen for Cole witness book	0.10	\$35.00	\$3.50
02/17/06	JA	Filing	0.25	\$35.00	\$8.75
02/17/06	JA	Prepare Index for Trial Book; review Trial Book documents	0.50	\$35.00	\$17.50
02/17/06	JA	Email MAG re: Nationwide billing records spreadsheet	0.10	\$35.00	\$3.50
02/17/06	JA	Meeting with BJM re: Nationwide's motion	0.10	\$225.00	\$22.50
02/20/06	JA	Receive and review letter from Mr. Huckabee	0.10	\$225.00	\$22.50
02/21/06	JA	Letter to J. Chett re: Argument Brief	0.25	\$225.00	\$56.25
02/21/06	JA	Phone call with J. Chett	0.10	\$225.00	\$22.50
02/27/06	JA	Conversation with HM re: Nationwide's request for cont.	0.30	\$225.00	\$67.50
02/27/06	JA	Conversation with BJM re: Nationwide's request for cont.	0.30	\$350.00	\$105.00
02/27/06	JA	File Review	3.50	\$350.00	\$1,225.00
02/27/06	JA	Give HM a copy of D. Berg's deposition transcript and search for a copy of S. Berg's deposition transcript	0.10	\$35.00	\$3.50
02/27/06	JA	Locate documents for HM	0.10	\$35.00	\$3.50
02/28/06	JA	Review of Nationwide's letter to Court confirming extension	0.10	\$225.00	\$22.50
02/28/06	JA	Conversation with HM re: Nationwide's request for cont.	0.30	\$225.00	\$67.50
02/28/06	JA	Conversation with BJM re: Nationwide's request for cont.	0.30	\$350.00	\$105.00
02/28/06	JA	File Review	6.00	\$350.00	\$2,100.00
02/28/06	JA	Phone call to Mrs. Berg	0.10	\$35.00	\$3.50
02/28/06	JA	Locate and copy Nationwide's Motion for Protective Order re: Anderton for HM	0.25	\$35.00	\$8.75
02/28/06	JA	Locate and copy Nationwide's Motion for Protective Order (3/15/99 Court Order) for HM	0.10	\$35.00	\$3.50
02/28/06	JA	Email BJM and HM re: B.R.C.P. 211.5	0.10	\$35.00	\$3.50
03/01/06	JA	Meeting with HM	0.25	\$225.00	\$56.25
03/01/06	JA	Letter to C. Cohen, discussions with BJM, outline of Nationwide's bad faith, creating Nationwide's bad faith outline	6.00	\$350.00	\$2,100.00
03/01/06	JA	Draft written objection to Nationwide's application for continuance of the MSJ argument date of 3/6/06	0.50	\$35.00	\$17.50
03/01/06	JA	Review (2) Emails from BJM re: B.R.C.P. 211.5	0.10	\$35.00	\$3.50
03/02/06	JA	Phone call to S. Berg	0.30	\$225.00	\$67.50
03/02/06	JA	Drafting versions of an outline of Nationwide's bad faith 50 month redaction, letter to C. Cohen	5.00	\$350.00	\$1,750.00
03/03/06	JA	Read Nationwide's Brief	0.50	\$225.00	\$112.50
03/03/06	JA	Fax to C. Cohen re: request for leave of court	0.25	\$225.00	\$56.25
03/03/06	JA	Receive and review fax from C. Cohen re: Reply Memo of Law	0.10	\$225.00	\$22.50
03/03/06	JA	Receive and review Email from C. Cohen	0.10	\$225.00	\$22.50
03/03/06	JA	Phone call to Cohen's staff	0.10	\$225.00	\$22.50
03/03/06	JA	Meeting with HM re: non-receipt of supplemental brief	0.20	\$225.00	\$45.00

Page 97 of 110

COPY OF EXHIBIT NO. 44 (Page 97 of 110)

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
03/03/06	JA	Read Nationwide's Brief	0.40	\$225.00	\$90.00
03/03/06	JA	Drafting issues and theories re: Nationwide's bad faith, telephone calls to C. Cohen's office, discussions with BJM, drafted versions of letters to C. Cohen, review of Nationwide's Reply Memo, proposed letter to Judge Lash	5.00	\$350.00	\$1,750.00
03/06/06	JA	In-depth reading and review of Nationwide's Reply Memo, outlining key phrases, outlining fiduciary obligation	10.00	\$350.00	\$3,500.00
03/06/06	JA	Locating various documents for HM	1.00	\$35.00	\$35.00
03/07/06	JA	Supplemental Memorandum of Law	3.50	\$225.00	\$787.50
03/07/06	JA	Review of dockets and prepared outline of Complaints and outline of Pos, discussions with BJM, discussions with MRC, index important material, review Schafer v. Nationwide	4.00	\$350.00	\$1,400.00
03/08/06	JA	Supplemental Memorandum of Law	4.50	\$225.00	\$1,012.50
03/08/06	JA	Letter to Judge Lash re: Supp. Memo of Law	0.25	\$225.00	\$56.25
03/08/06	JA	Letter to Prothy re: Supplemental Memo of Law	0.25	\$225.00	\$56.25
03/08/06	JA	Fax to C. Cohen re: Supp. Memo of Law	0.25	\$225.00	\$56.25
03/08/06	JA	Receive Email from C. Cohen (forward to HM)	0.10	\$225.00	\$22.50
03/08/06	JA	Review of BJM's Supp. Memo to Nationwide's Supp. Memo re: Nationwide's MSJ	2.00	\$350.00	\$700.00
03/08/06	JA	Cut and paste 4/30/98 Potosnak claim log entry	0.10	\$35.00	\$3.50
03/08/06	JA	Review and reply to Email from BJM re: jury verdict against Lindgren	0.10	\$35.00	\$3.50
03/09/06	JA	Review fax from C. Cohen	0.10	\$225.00	\$22.50
03/09/06	JA	Email with C. Cohen	0.30	\$225.00	\$67.50
03/09/06	JA	Meeting with HM re: Cohen's fax	0.20	\$225.00	\$45.00
03/09/06	JA	Meeting with BJM re: Cohen's fax	0.20	\$350.00	\$70.00
03/10/06	JA	Draft Motion for Leave of Court	1.00	\$225.00	\$225.00
03/10/06	JA	Finalize Motion for Leave of Court with HM	0.30	\$225.00	\$68.18
03/10/06	JA	Finalize Motion for Leave of Court without HM	0.20	\$225.00	\$45.00
03/10/06	JA	Letter to Court with copies to Counsel	0.25	\$225.00	\$56.25
03/10/06	JA	Email with C. Cohen	0.20	\$225.00	\$45.00
03/10/06	JA	Phone call to C. Cohen	0.10	\$225.00	\$22.50
03/10/06	JA	Meeting with HM re: strategy for oral argument	1.50	\$225.00	\$337.50
03/10/06	JA	Case discussion with BJM	1.50	\$350.00	\$525.00
03/10/06	JA	Draft letter to Prothy re: Motion for Leave	0.00	\$35.00	\$0.00
03/10/06	JA	Locate and make 3 copies of the Stipulation re: Appraiser Act	0.25	\$35.00	\$8.75
03/10/06	JA	Copy recently filed memos of law for prep for BJM for argument on MSJ	0.25	\$35.00	\$8.75
03/10/06	JA	Copying Motion for Leave	0.10	\$35.00	\$3.50
03/10/06	JA	Update Pleadings books	0.25	\$35.00	\$8.75
03/10/06	JA	Set up caption for Motion for Leave	0.10	\$35.00	\$3.50
03/10/06	JA	Billing Summary	1.00	\$35.00	\$35.00
03/10/06	JA	Get BJM dates needed	0.10	\$35.00	\$3.50
03/13/06	JA	Drafting Excessive Dubious Contentions by Nationwide	3.00	\$350.00	\$1,050.00
03/13/06	JA	Locate Motion to Stay Rule to File Complaint for HM	0.10	\$35.00	\$3.50
03/14/06	JA	Receive and review letter from K. Myers re: releasing KC and Lindgren	0.10	\$225.00	\$22.50
03/14/06	JA	Prepare for oral argument: Conclusive Facts	1.30	\$225.00	\$292.50
03/14/06	JA	Meeting with HM to edit Conclusive Facts	0.20	\$225.00	\$45.00

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
03/14/06	JA	Meeting with BJM to edit Conclusive Facts	0.20	\$350.00	\$70.00
03/15/06	JA	Prepare for Oral Argument: Factual Argument	2.00	\$225.00	\$450.00
03/15/06	JA	Letter to K. Myers responsive to 3/13/06 letter	0.25	\$350.00	\$87.50
03/16/06	JA	Prepare for Oral Argument: Legal Argument	3.20	\$225.00	\$720.00
03/16/06	JA	Prepare for Oral Argument: Factual and Legal Argument	4.30	\$225.00	\$967.50
03/17/06	JA	Prepare for Oral Argument	3.30	\$225.00	\$742.50
03/17/06	JA	Prepare for Oral Argument with HM	0.50	\$225.00	\$112.50
03/17/06	JA	Pack up for Oral Argument	0.20	\$225.00	\$45.00
03/17/06	JA	Prepare for Oral Argument with BJM	0.50	\$350.00	\$175.00
03/18/06	JA	Saturday: practice Oral Argument	0.50	\$225.00	\$112.50
03/19/06	JA	Sunday: review motions and documents for argument	2.00	\$225.00	\$450.00
03/20/06	JA	Letter to Nelson with 16 Conclusive Set of Facts	0.25	\$225.00	\$56.25
03/20/06	JA	Email copy of 16 Conclusive Set of Facts	0.10	\$225.00	\$22.50
03/20/06	JA	Conversation with HM about the events during argument	0.20	\$225.00	\$45.00
03/20/06	JA	2nd conversation with HM about the events during argument	0.20	\$225.00	\$45.00
03/20/06	JA	Travel to Argument	1.50	\$225.00	\$337.50
03/20/06	JA	Argument	0.60	\$225.00	\$135.00
03/20/06	JA	Travel from Argument	1.00	\$225.00	\$225.00
03/20/06	JA	Meeting with Staff and letter to Court with supplemental Memo of Law	0.30	\$225.00	\$67.50
03/20/06	JA	Organizing file, moving folders from desk to file	0.20	\$225.00	\$45.00
03/20/06	JA	Copying and mailing supplemental memo	0.50	\$18.00	\$9.00
03/20/06	JA	Conversation with BJM about the events during argument	0.20	\$350.00	\$70.00
03/20/06	JA	2nd conversation with BJM about the events during argument	0.20	\$350.00	\$70.00
03/21/06	JA	Putting together Supplemental Memo for filing	0.25	\$35.00	\$8.75
03/24/06	JA	Receive and rejoice Order denying Nationwide's MSJ	0.10	\$225.00	\$22.50
03/24/06	JA	Prepare correspondence to parties for Trial Cert	0.25	\$225.00	\$56.25
03/24/06	JA	Email JA to schedule conference	0.10	\$225.00	\$22.50
03/24/06	JA	Conference with HM	0.10	\$225.00	\$22.50
03/24/06	JA	Conference with BJM	0.10	\$350.00	\$35.00
03/27/06	JA	Receive and review fax from C. Cohen	0.10	\$225.00	\$22.50
03/27/06	JA	Copy of Order to C. Cohen	0.25	\$225.00	\$56.25
03/27/06	JA	Receive and review letter from C. Cohen to Judge Lash re: Nationwide's response to Plaintiffs' Conclusive Facts for Oral Argument	0.10	\$225.00	\$22.50
03/27/06	JA	Email HM	0.10	\$225.00	\$22.50
03/28/06	JA	Letter to C. Cohen seeking clarification of objection	0.25	\$225.00	\$56.25
03/28/06	JA	Receive and review letter of Lash to Cohen	0.10	\$225.00	\$22.50
03/28/06	JA	Receive and review letter from B. Huckabee	0.10	\$225.00	\$22.50
03/28/06	JA	Letter to B. Huckabee (not sent due to call from Brett)	0.25	\$225.00	\$56.25
03/28/06	JA	Letter to K. Myers and B. Huckabee re: copies of prior letters	0.25	\$225.00	\$56.25
03/28/06	JA	Email discussion with HM	0.20	\$225.00	\$45.00
03/28/06	JA	Phone call and voice mail to B. Huckabee	0.10	\$225.00	\$22.50
03/28/06	JA	Phone call from B. Huckabee (will sign Cert of Trial)	0.10	\$225.00	\$22.50
03/28/06	JA	Email discussion with BJM	0.20	\$350.00	\$70.00

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
03/29/06	JA	Receive and review letter from K. Myers	0.10	\$225.00	\$22.50
03/29/06	JA	Letter and fax to B. Huckabee with signed Cert.	0.25	\$225.00	\$56.25
03/29/06	JA	Letter and fax to C. Cohen with signed Cert.	0.25	\$225.00	\$56.25
03/29/06	JA	Email HM addressing above	0.10	\$225.00	\$22.50
03/29/06	JA	Email Staff to contact experts for schedule conflicts	0.10	\$225.00	\$22.50
03/30/06	JA	Receive and review letters from B. Huckabee	0.10	\$225.00	\$22.50
03/30/06	JA	Letters to 3 experts on schedule conflicts (via staff)	0.25	\$225.00	\$56.25
03/30/06	JA	Letter to C. Cohen enclosing original Certs	0.25	\$225.00	\$56.25
03/30/06	JA	Letter to Court with copies to Counsel with Trial Certs	0.25	\$225.00	\$56.25
03/30/06	JA	Phone call with HM on Certs for Trial	0.10	\$225.00	\$22.50
03/30/06	JA	Phone call with BJM on Certs for Trial	0.10	\$350.00	\$35.00
03/31/06	JA	Letter to C. Cohen re: Certificate of Readiness for Trial	0.25	\$225.00	\$56.25
03/31/06	JA	Receive and review letter from C. Cohen re: Certificate of Readiness	0.10	\$225.00	\$22.50
04/03/06	JA	Receive and review letter from K. Myers re: KC Auto Body	0.10	\$225.00	\$22.50
04/05/06	JA	Receive and review letter from J. Schwartzman	0.10	\$225.00	\$22.50
04/06/06	JA	Receive and review 2 letters from B. Huckabee of 3/29/06	0.10	\$225.00	\$22.50
04/06/06	JA	Receive and review 1 letter from K. Myers of 3/30/06	0.10	\$225.00	\$22.50
04/06/06	JA	Receive and review 1 letter from C. Cohen of 3/30/06	0.10	\$225.00	\$22.50
04/13/06	JA	Review fax from Huckabee of 4/6/06	0.10	\$225.00	\$22.50
04/13/06	JA	Letter to B. Huckabee re: proposed Stipulation	0.25	\$225.00	\$56.25
04/13/06	JA	Receive voice mail from Vicky of B. Huckabee's office	0.10	\$225.00	\$22.50
04/13/06	JA	Phone call with Huckabee	0.20	\$225.00	\$45.00
04/13/06	JA	Review Email from BJM re: J. Chett	0.10	\$35.00	\$3.50
04/18/06	JA	Contact Supreme Court on status of Hollock	0.10	\$225.00	\$22.50
04/18/06	JA	Research on status of Hollock v. Erie	0.30	\$225.00	\$67.50
04/18/06	JA	Print and read Stallone's opinion Donegal v. Cipolla	0.50	\$225.00	\$112.50
04/18/06	JA	Discuss Donegal v. Cipolla with HM	0.20	\$225.00	\$45.00
04/18/06	JA	Meeting with HM on whether to address Hollock with Court	0.10	\$225.00	\$22.50
04/18/06	JA	Discuss Donegal v. Cipolla with BJM	0.20	\$350.00	\$70.00
04/18/06	JA	Meeting with BJM on whether to address Hollock with Court	0.10	\$350.00	\$35.00
04/19/06	JA	Receive and review KC Motion to Remove	0.20	\$225.00	\$45.00
04/19/06	JA	Meeting with HM on KC Motion	0.10	\$225.00	\$22.50
04/19/06	JA	Meeting with BJM on KC Motion	0.10	\$350.00	\$35.00
04/19/06	JA	Billing Summary	1.75	\$35.00	\$61.25
04/20/06	JA	Receive and inspect Nationwide documents from District Court	0.20	\$225.00	\$45.00
04/20/06	JA	Meet with Staff to mark \$1700 bill from DC as trial exhibit	0.10	\$225.00	\$22.50
04/20/06	JA	Meet with HM to produce bill and records to Nationwide	0.10	\$225.00	\$22.50
04/20/06	JA	Meet with HM and MAG; discuss how to copy and save records	0.10	\$225.00	\$22.50
04/20/06	JA	Meet with EW to copy and number records x2	0.10	\$225.00	\$22.50
04/20/06	JA	Meet with BJM to copy and number records x2	0.10	\$18.00	\$1.80

Page 100 of 110

COPY OF EXHIBIT NO. 44 (Page 100 of 110)

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
04/20/06	JA	Meet with BJM to produce bill and records to Nationwide	0.10	\$350.00	\$35.00
04/20/06	JA	Meet with BJM and MAG; discuss how to copy and save records	0.10	\$350.00	\$35.00
04/20/06	JA	Meet with BJM and HM; discuss how to copy and save records	0.10	\$25.00	\$2.50
04/21/06	JA	Review Schafter v. Nationwide docs 1-655	2.50	\$225.00	\$562.50
04/21/06	JA	Copying and organizing documents	3.00	\$18.00	\$54.00
04/24/06	JA	Review of Craley; discussion with Scott Cooper	0.20	\$225.00	\$45.00
04/25/06	JA	Receive and review Order of Stallone re: KC Auto	0.10	\$225.00	\$22.50
04/25/06	JA	File review on Trial Cert and timing of 1st pre-trial conference	0.20	\$225.00	\$45.00
04/26/06	JA	Draft letter to J. Chett	0.25	\$35.00	\$8.75
05/10/06	JA	Email JA on local procedure: Trial Cert	0.10	\$225.00	\$22.50
05/12/06	JA	Billing Summary	0.50	\$35.00	\$17.50
05/26/06	JA	Letter to J. Chett re: Foster report	0.25	\$225.00	\$56.25
05/26/06	JA	Email JA re: Foster report	0.10	\$225.00	\$22.50
05/26/06	JA	Draft letter to J. Chett	0.00	\$35.00	\$0.00
05/26/06	JA	Email BJM re: Foster report	0.10	\$35.00	\$3.50
05/30/06	JA	Letter to J. Schwartzman re: Foster report	0.25	\$225.00	\$56.25
05/30/06	JA	Letter to J. Chett re: 1st Foster report	0.25	\$225.00	\$56.25
05/30/06	JA	Draft letter to J. Schwartzman	0.00	\$35.00	\$0.00
05/30/06	JA	Draft letter to J. Chett	0.00	\$35.00	\$0.00
05/30/06	JA	Review J. Schwartzman's report	0.10	\$35.00	\$3.50
05/30/06	JA	Email SF re: costs	0.10	\$35.00	\$3.50
05/30/06	JA	Email BJM re: J. Chett	0.10	\$35.00	\$3.50
05/31/06	JA	Receive and review letter from K. Myers re: Lindgren's involvement	0.10	\$225.00	\$22.50
05/31/06	JA	Receive and review letter from B. Huckabee to C. Cohen re: not receiving correspondence	0.10	\$225.00	\$22.50
06/05/06	JA	Locate and copy Nationwide's PO's to Complaint and 1st Amended Complaint for HM	0.25	\$35.00	\$8.75
06/07/06	JA	Letter to Court regarding Bench Trial ILO of Jury Trial	0.10	\$225.00	\$22.50
06/07/06	JA	Draft letter to J. Stallone re: Orders	0.00	\$35.00	\$0.00
07/06/06	JA	Letter to Bergs	0.25	\$225.00	\$56.25
07/06/06	JA	Receive Email from J. Chett w/ invoice	0.10	\$225.00	\$22.50
07/06/06	JA	Reply to J. Chett: detailed summary of trial strategy	0.50	\$225.00	\$112.50
07/10/06	JA	Reminder letter to Steve Behrnt on W. Cohen	0.25	\$225.00	\$56.25
07/10/06	JA	Email JA re: David Cole	0.10	\$225.00	\$22.50
07/20/06	JA	Prepare spreadsheet re: Billing Summary	4.00	\$35.00	\$140.00
07/20/06	JA	Compare Nationwide billing records to Excel spreadsheet	4.00	\$35.00	\$140.00
07/21/06	JA	Email JA re: Berg Billing Summary	0.10	\$35.00	\$3.50
07/21/06	JA	Billing Summary	0.25	\$35.00	\$8.75
07/25/06	JA	Email BJM re: costs	0.10	\$35.00	\$3.50
07/28/06	JA	Email BJM re: pretrial memo and set up format for same	0.10	\$35.00	\$3.50
07/28/06	JA	Email BJM re: pretrial local rules	0.10	\$35.00	\$3.50
08/03/06	JA	Calculating Billing Summary	3.50	\$35.00	\$122.50
08/07/06	JA	Review and calculate costs	3.00	\$35.00	\$105.00
08/07/06	JA	Review and calculate costs	3.00	\$35.00	\$105.00
08/08/06	JA	Review and calculate costs	3.00	\$35.00	\$105.00
08/08/06	MAG	Email SF re: cost sheets	0.10	\$35.00	\$3.50
08/09/06	MAG	Billing Summary	1.50	\$35.00	\$52.50

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
08/09/06	MAG	Billing Summary	2.50	\$35.00	\$87.50
08/10/06	MAG	Billing Summary	0.50	\$35.00	\$17.50
08/15/06	MAG	Meeting with JA to prepare billing statement	0.10	\$225.00	\$22.50
08/15/06	MAG	Meeting with JA to prepare list of motions on claim log	0.10	\$225.00	\$22.50
08/15/06	MGT	Review prior briefs to incorporate into pre-trial memo	2.50	\$225.00	\$562.50
08/15/06	MRC	Retrive and review Order on pre-trial memo content	0.10	\$225.00	\$22.50
08/15/06	MRC	Review 9/2/05 Motion to secure redacted claim log entries	0.20	\$225.00	\$45.00
08/15/06	MRC	Review 9/2/05 Memo of Law	0.30	\$225.00	\$67.50
08/15/06	MRC	Copy 9/2/05 Motion to Strike and Brief for BJM	0.10	\$35.00	\$3.50
08/15/06	MRC	Meeting with BJM re: preparing billing statement	0.10	\$35.00	\$3.50
08/15/06	MRC	Meeting with BJM re: list of motions on claim log	0.10	\$35.00	\$3.50
08/15/06	MRC	Review file for Motions and Orders	0.50	\$35.00	\$17.50
08/15/06	MRC	Forward (2) Emails to BJM re: Pre-Trial Memo	0.10	\$35.00	\$3.50
08/15/06	MRC	Email BJM re: lost of motions, dates and Orders	0.10	\$35.00	\$3.50
08/16/06	MRC	Review exhibits to 9/2/05 Motion	0.20	\$225.00	\$45.00
08/16/06	MRC	Review prior Trial Brief	0.30	\$225.00	\$67.50
08/16/06	MRC	Begin drafting Pre-Trial Memo	3.00	\$225.00	\$675.00
08/16/06	MRC	Continue drafting Pre-Trial Memo	2.90	\$225.00	\$652.50
08/16/06	MRC	Billing Summary	0.10	\$35.00	\$3.50
08/16/06	MRC	Calculating Billing Summary	1.50	\$35.00	\$52.50
08/16/06	MRC	Continue drafting Pre-Trial Memo	5.50	\$225.00	\$1,237.50
08/17/06	MRC	Pre-Trial Memo	6.00	\$225.00	\$1,350.00
08/18/06	MRC	Locate and copy Nationwide's reply to Bergs' 3/21/03 RFAs	0.10	\$35.00	\$3.50
08/18/06	MRC	Locate and copy 8/15/05 Order and Memo	0.10	\$35.00	\$3.50
08/18/06	MRC	Calculating Billing Summary	4.00	\$35.00	\$140.00
08/18/06	MRC	Email BJM re: total fees/costs	0.10	\$35.00	\$3.50
08/24/06	MRC	Review Hollock and Mathias	0.30	\$225.00	\$67.50
08/24/06	MRC	Pre-Trial Memo	2.50	\$225.00	\$562.50
08/25/06	MRC	Letter to C. Cohen re: copies of Exhibits 24 and 28	0.25	\$225.00	\$56.25
08/25/06	MRC	Instruction to staff to retrieve specified exhibits	0.10	\$225.00	\$22.50
08/25/06	MRC	Receive and review Nationwide's Pre-Trial Memo	0.40	\$225.00	\$90.00
08/25/06	MRC	Pre-Trial Memo	4.00	\$225.00	\$900.00
08/25/06	MRC	Draft letter to C. Cohen re: copies of Exhibits 24 and 28	0.00	\$35.00	\$0.00
08/25/06	MRC	Locate and copy Nationwide's Pre-Trial Memo exhibits	2.00	\$35.00	\$70.00
08/25/06	MRC	Locate and copy Dave Cole's testimony on Best Claims Practices for BJM	0.10	\$35.00	\$3.50
08/25/06	MRC	Discuss project with BJM - locating/copying certain exhibits to Nationwide's Pre-Trial memo	0.10	\$35.00	\$3.50
08/25/06	MRC	Type index to Nationwide's exhibits	0.10	\$35.00	\$3.50
08/25/06	MRC	Email BJM re: Nationwide's Pre-Trial Memo exhibits	0.10	\$35.00	\$3.50
08/25/06	MRC	Email DH re: exhibit binders	0.10	\$35.00	\$3.50
08/28/06	MRC	Pre-Trial Memo	3.30	\$225.00	\$742.50
08/28/06	MRC	Locate and copy Bonenberger testimony	0.10	\$35.00	\$3.50
08/28/06	MRC	Locate and copy Nationwide's 2/1/99 Motion for Protective Order	0.10	\$35.00	\$3.50
08/28/06	MRC	Review 2/1/99 Motion for Protective Order for relevant language	0.10	\$35.00	\$3.50
08/28/06	MRC	Organizing Berg	1.00	\$35.00	\$35.00

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
08/28/06	MRC	Calculating 7/00 Nationwide billing records, calculating Nationwide's monthly billing summary to ensure accuracy	1.00	\$35.00	\$35.00
08/28/06	MRC	Trial Exhibits and index	0.25	\$35.00	\$8.75
08/28/06	MRC	Billing Summary	0.50	\$35.00	\$17.50
08/28/06	MRC	Bergs Billing Summary - Excel spreadsheet	1.00	\$35.00	\$35.00
08/28/06	MRC	Email BJM re: Nationwide billing records excel spreadsheet	0.10	\$35.00	\$3.50
08/28/06	MRC	Email BJM re: 16 set of facts	0.10	\$35.00	\$3.50
08/29/06	MRC	Receive and review Nationwide's letter of 8/28/06	0.10	\$225.00	\$22.50
08/29/06	MRC	Pre-Trial Memo	1.60	\$225.00	\$360.00
08/29/06	MRC	Bergs Billing Summary - Excel spreadsheet	5.50	\$35.00	\$192.50
08/29/06	MRC	Pre-Trial Memo	4.80	\$225.00	\$1,080.00
08/30/06	MRC	Bergs Billing Summary - Excel spreadsheet	6.00	\$35.00	\$210.00
08/30/06	SD	Prepare Witness List	0.25	\$35.00	\$8.75
08/30/06	SF	Prepare Exhibit List	0.50	\$35.00	\$17.50
08/30/06	SF	Email BJM re: Walter Cohen	0.10	\$35.00	\$3.50
08/30/06	SF	Emails to BJM attaching Witness and Exhibit lists	0.10	\$35.00	\$3.50
08/31/06	SF	Pre-Trial Memo	6.00	\$225.00	\$1,350.00
08/31/06	SF	Pre-Trial Memo	0.50	\$225.00	\$112.50
08/31/06	SF	Bergs Billing Summary - Excel spreadsheet	5.50	\$35.00	\$192.50
08/31/06	SF	Billing Summary	0.10	\$35.00	\$3.50
08/31/06	SS	Calculating Billing Summary thru today	1.00	\$35.00	\$35.00
09/01/06	BJM	Meeting with HM on Pre-Trial Memo	0.40	\$225.00	\$90.00
09/01/06	BJM	Pre-Trial Memo	0.60	\$225.00	\$135.00
09/01/06	BJM	Meeting with HM on Pre-Trial Memo	0.10	\$225.00	\$22.50
09/01/06	BJM	Meeting with HM on Pre-Trial Memo	0.70	\$225.00	\$157.50
09/01/06	BJM	Pre-Trial Memo (working w/ HM suggestions)	0.10	\$225.00	\$22.50
09/01/06	BJM	Meeting with HM on Pre-Trial Memo	0.10	\$225.00	\$22.50
09/01/06	BJM	Pre-Trial Memo (working w/ HM suggestions)	0.40	\$225.00	\$90.00
09/01/06	BJM	Pre-Trial Memo (working w/ HM suggestions)	0.30	\$225.00	\$67.50
09/01/06	BJM	Pre-Trial Memo (working w/ HM suggestions)	1.00	\$225.00	\$225.00
09/01/06	BJM	Meeting with HM on Pre-Trial Memo	0.10	\$225.00	\$22.50
09/01/06	BJM	Meeting with HM on Pre-Trial Memo	0.10	\$225.00	\$22.50
09/01/06	HM	Meeting with BJM on Pre-Trial Memo	0.40	\$350.00	\$140.00
09/01/06	HM	Meeting with BJM on Pre-Trial Memo	0.10	\$350.00	\$35.00
09/01/06	HM	Meeting with BJM on Pre-Trial Memo	0.10	\$350.00	\$35.00
09/01/06	HM	Meeting with BJM on Pre-Trial Memo	0.10	\$350.00	\$35.00
09/01/06	HM	Meeting with BJM on Pre-Trial Memo	0.10	\$350.00	\$35.00
09/01/06	HM	Reviewing and changes to Pre-Trial Memo	3.50	\$350.00	\$1,225.00
09/01/06	HM	Reviewing and changes to Pre-Trial Memo	4.25	\$35.00	\$148.75
09/01/06	JA	Bergs Billing Summary - Excel spreadsheet	4.25	\$35.00	\$148.75
09/01/06	JA	Locate Joinder Complaint of KC for HM	0.25	\$35.00	\$8.75
09/01/06	JA	Locate Nationwide Motion for Reconsideration/Anderton and Order for BJM	0.10	\$35.00	\$3.50
09/01/06	JA	Email BJM re: full title of Nationwide Motion for Reconsideration re: Anderton and date of Order	0.10	\$35.00	\$3.50
09/05/06	BJM	Letter to Judge Stallone re: Pre-Trial Memo	0.25	\$225.00	\$56.25
09/05/06	JA	Draft letter to J. Stallone re: Pre-Trial Memo	0.00	\$35.00	\$0.00
09/05/06	JA	Phone call with Mrs. Berg	0.25	\$35.00	\$8.75
09/05/06	JA	Locate and copy Nationwide's Pre-Trial Memo for BJM	0.10	\$35.00	\$3.50
09/06/06	BJM	Phone call to Court to confirm whether Bergs required to attend	0.10	\$225.00	\$22.50
09/06/06	BJM	Phone call to Dan Berg	0.10	\$225.00	\$22.50
09/07/06	BJM	Letter to Bergs	0.25	\$225.00	\$56.25

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
09/07/06	BJM	Conference with Staff to make binder for pre-trial conference	0.10	\$225.00	\$22.50
09/07/06	BJM	Letter to Bergs	0.25	\$225.00	\$56.25
09/07/06	JA	Draft letter to Bergs	0.00	\$35.00	\$0.00
09/07/06	JA	Billing Summary	0.25	\$35.00	\$8.75
09/07/06	JA	Draft letter to Bergs	0.00	\$35.00	\$0.00
09/07/06	JA	Bergs Billing Summary - Excel spreadsheet	4.50	\$35.00	\$157.50
09/08/06	JA	Bergs Billing Summary - Excel spreadsheet	3.50	\$35.00	\$122.50
09/08/06	JA	Email BJM re: questions	0.10	\$35.00	\$3.50
09/11/06	BJM	Preparing for Pre-Trial (mostly on David Cole issue)	3.00	\$225.00	\$675.00
09/11/06	BJM	Call from Court cancelling Pre-Trial	0.10	\$225.00	\$22.50
09/11/06	BJM	Call to Bergs (spoke with Sherry at length)	0.30	\$225.00	\$67.50
09/11/06	BJM	Conference with HM	0.10	\$225.00	\$22.50
09/11/06	HM	Conference with BJM	0.10	\$350.00	\$35.00
09/11/06	JA	Copy documents for BJM for conference tomorrow	0.25	\$35.00	\$8.75
09/11/06	JA	Email BJM re: Plaintiffs' Total Fees/Costs	0.10	\$35.00	\$3.50
09/11/06	JA	Email BJM re: PA Defense Institute	0.10	\$35.00	\$3.50
09/11/06	JA	Prepare Notice to Attend to David Cole/Nationwide	0.10	\$35.00	\$3.50
09/11/06	JA	Bergs Billing Summary - Excel spreadsheet	1.00	\$35.00	\$35.00
09/11/06	JA	Email MAG re: spreadsheet/time	0.10	\$35.00	\$3.50
09/11/06	JA	Filing	0.25	\$35.00	\$8.75
09/11/06	JA	Work on Motion in Limine re: Coordinate Jurisdiction Rule	0.50	\$35.00	\$17.50
09/12/06	BJM	Conference with MRC	0.10	\$225.00	\$22.50
09/12/06	BJM	Review Defendant Lindgren's Pre-Trial	0.30	\$225.00	\$67.50
09/12/06	JA	Work on Motion in Limine re: Coordinate Jurisdiction Rule	0.25	\$35.00	\$8.75
09/12/06	MRC	Conference with BJM	0.10	\$225.00	\$22.50
09/13/06	BJM	Receive and review fax from Nationwide	0.10	\$225.00	\$22.50
09/14/06	BJM	Research Mrkobrad and reply to Nationwide's fax of 9/13	0.30	\$225.00	\$67.50
09/14/06	BJM	Conference with JA	0.10	\$225.00	\$22.50
09/14/06	BJM	Conference with MAG	0.10	\$225.00	\$22.50
09/14/06	BJM	Sending inquiry on Mrkobrad's departure from Nationwide	0.20	\$225.00	\$45.00
09/14/06	JA	Locate Milan Mrkobrad, Esquire, on the internet	0.10	\$35.00	\$3.50
09/14/06	JA	Update Pre-Trial Conference Book Index	0.10	\$35.00	\$3.50
09/14/06	JA	Filing	0.10	\$35.00	\$3.50
09/14/06	BJM	Receive and review fax of 9/14/06 from Nationwide	0.10	\$225.00	\$22.50
09/15/06	BJM	Reply to contact in collision repair industry on Mrkobrad	0.10	\$225.00	\$22.50
09/15/06	BJM	Discuss Nationwide's continued query on Mrkobrad with HM	0.10	\$225.00	\$22.50
09/15/06	BJM	Review motions cited in Special Problem section of Pre-Trial	1.50	\$225.00	\$337.50
09/15/06	BJM	Conference with HM on Nationwide's corporate designee	0.40	\$225.00	\$90.00
09/15/06	BJM	Conference with staff on trial witness books and trial motions	0.20	\$225.00	\$45.00
09/15/06	BJM	Review of Grumbein's dep for untruthful testimony	0.50	\$225.00	\$112.50
09/15/06	BJM	Receive and review fax from Nationwide of 9/15/06	0.10	\$225.00	\$22.50
09/15/06	BJM	Review Nationwide's Billing Records per request of Nationwide	2.50	\$225.00	\$562.50
09/15/06	BJM	Internet research on Mrkobrad and Cole	0.30	\$225.00	\$67.50

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
09/15/06	HM	Discuss Nationwide's continued query on Mrkobrad with BJM	0.10	\$350.00	\$35.00
09/15/06	HM	Conference with BJM on Nationwide's corporate designee	0.40	\$350.00	\$140.00
09/15/06	JA	Receive Email from BJM; give him RFAs book	0.10	\$35.00	\$3.50
09/15/06	JA	Conference with BJM re: his witness book	0.10	\$35.00	\$3.50
09/15/06	JA	Locate work copy of Nationwide's billing records	0.10	\$35.00	\$3.50
09/15/06	JA	Locate and copy correspondence for BJM	0.10	\$35.00	\$3.50
09/15/06	JA	Email EW re: bankers box	0.10	\$35.00	\$3.50
09/18/06	BJM	Receive Order from Court re-scheduling pre-trial to 11/1	0.10	\$225.00	\$22.50
09/18/06	BJM	Letter to Nationwide on Cole, other witnesses. (made offer)	0.30	\$225.00	\$67.50
09/18/06	BJM	Discussed offer and witnesses with HM	0.10	\$225.00	\$22.50
09/18/06	BJM	Review Trial Testimony of Dean Jones with direction to staff	0.50	\$225.00	\$112.50
09/18/06	BJM	Review Testimony of Ron Stitzel w/ direction to staff	0.50	\$225.00	\$112.50
09/18/06	BJM	Review Issues with Exhibits	0.50	\$225.00	\$112.50
09/18/06	BJM	Conference with HM	0.30	\$225.00	\$67.50
09/18/06	BJM	E-mail to MRC on Issues with Exhibits	0.50	\$225.00	\$112.50
09/18/06	HM	Discussed offer and witnesses with BJM	0.10	\$350.00	\$35.00
09/18/06	HM	Conference with BJM	0.30	\$350.00	\$105.00
09/18/06	JA	Receive and review Email from BJM; calculate figures	0.10	\$35.00	\$3.50
09/19/06	JA	Discussion with BJM re: Ben's witness book	0.10	\$35.00	\$3.50
09/19/06	JA	Email BJM re: costs	0.10	\$35.00	\$3.50
09/19/06	JA	Putting together Ben's witness book	1.00	\$35.00	\$35.00
09/19/06	JA	Set up Motion in Limine on Nationwide's purchase of vehicle	0.25	\$35.00	\$8.75
09/19/06	JA	Organize computer file	0.10	\$35.00	\$3.50
09/20/06	JA	Email BJM re: Carmen's direct number	0.10	\$35.00	\$3.50
09/28/06	JA	Email BJM re: monthly figures	0.10	\$35.00	\$3.50
09/28/06	JA	Setting up 2nd Updated Billing Summary	0.50	\$35.00	\$17.50
09/29/06	BJM	Receive and review Nationwide's Motion for Protective Order	0.40	\$225.00	\$90.00
09/29/06	BJM	Receive and review Nationwide's Memo of Law	0.20	\$225.00	\$45.00
09/29/06	BJM	Voice mail to C. Cohen to discuss issue raised in motion	0.10	\$225.00	\$22.50
09/29/06	BJM	Letter to Cohen confirming voice mail	0.30	\$225.00	\$67.50
10/05/06	BJM	Receive responsive letter from Cohen	0.10	\$225.00	\$22.50
10/10/06	BJM	Draft reply to Nationwide's Motion for Protective Order	3.20	\$225.00	\$720.00
10/11/06	BJM	Re-draft reply	0.70	\$225.00	\$157.50
10/12/06	BJM	Finalize and sign Responsive Motion	0.20	\$225.00	\$45.00
10/16/06	BJM	Draft Memo of Law on Responsive Motion	1.00	\$225.00	\$225.00
10/17/06	BJM	Finalize Responsive Motion	2.00	\$225.00	\$450.00
10/18/06	BJM	Receive, review and reply to Nationwide's Motion for supp brief	0.30	\$225.00	\$67.50
10/26/06	BJM	Receive and review letter from Schwartzman	0.10	\$225.00	\$22.50
10/26/06	BJM	Direction to staff for pre-trial on witnesses availability	0.10	\$225.00	\$22.50
10/26/06	BJM	Receive and review Nationwide's supplemental brief	0.20	\$225.00	\$45.00
10/28/06	BJM	Prepare for Pre-Trial over weekend	1.20	\$225.00	\$270.00
10/29/06	BJM	Electronic message to HM on Settlement Value	0.20	\$225.00	\$45.00

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
10/29/06	BJM	Conference with HM over the weekend	1.00	\$225.00	\$225.00
10/30/06	BJM	Conference with HM Monday morning	0.20	\$225.00	\$45.00
10/30/06	BJM	Receive and review Lindgren's letter from Myers	0.10	\$225.00	\$22.50
10/30/06	BJM	Conference with HM	0.20	\$225.00	\$45.00
10/30/06	HM	Preparing for Pre-Trial over weekend	10.8	\$350.00	\$3,780.00
10/31/06	BJM	Receive call from Court to confirm hearing	0.10	\$225.00	\$22.50
10/31/06	BJM	Review HM's e-mail Red Flag Document	0.20	\$225.00	\$45.00
10/31/06	BJM	Direction to staff to type Red Flag Document	0.10	\$225.00	\$22.50
10/31/06	BJM	Edit and/or add to Red Flag Document	0.30	\$225.00	\$67.50
10/31/06	BJM	Review and print copy for pre-trial of Conclusive Facts	0.30	\$225.00	\$67.50
10/31/06	BJM	Conference with HM on Red Flag citation in O'Donnell v. Allstate	0.10	\$225.00	\$22.50
10/29/06	HM	Conference with BJM over the weekend	1.00	\$350.00	\$350.00
10/30/06	HM	Conference with BJM Monday morning	0.20	\$350.00	\$70.00
10/30/06	HM	Conference with BJM	0.20	\$350.00	\$70.00
10/30/06	HM	Preparing for Pre-Trial over weekend	10.80	\$350.00	\$3,780.00
11/01/06	BJM	Pre-Trial Conference	2.00	\$225.00	\$450.00
11/01/06	BJM	Travel from Pre-Trial	1.00	\$225.00	\$225.00
11/01/06	BJM	Travel to Pre-Trial	1.10	\$225.00	\$247.50
11/01/06	BJM	Reviewing documents and client meeting prior to hearing	0.90	\$225.00	\$202.50
11/02/06	BJM	Conference with MRC and HM	0.40	\$225.00	\$90.00
11/02/06	BJM	E-mail to JA	0.20	\$225.00	\$45.00
11/02/06	BJM	Receive reply from JA	0.10	\$225.00	\$22.50
11/02/06	BJM	Reply to reply of JA	0.20	\$225.00	\$45.00
11/02/06	BJM	Receive reply from JA	0.10	\$225.00	\$22.50
11/02/06	BJM	Reply to JA	0.10	\$225.00	\$22.50
11/02/06	BJM	Send package to JA for review with retainer fee	0.10	\$225.00	\$22.50
11/02/06	HM	Conference with MRC and BJM	0.40	\$350.00	\$140.00
11/02/06	MRC	Conference with BJM and HM	0.40	\$225.00	\$90.00
11/06/06	BJM	Prepare Proposed Findings of Fact and Law	6.00	\$225.00	\$1,350.00
11/06/06	HM	Review file, records and memos regarding Nationwide's 16 page fax; dictating memo; dictating memo re: Nationwide's claims log	6.00	\$350.00	\$2,100.00
11/07/06	BJM	Prepare Trial Brief w/ Facts and Law	3.20	\$225.00	\$720.00
11/07/06	BJM	Prepare Trial Brief w/ Facts and Law	1.90	\$225.00	\$427.50
11/07/06	BJM	Prepare Trial Brief w/ Facts and Law	3.00	\$225.00	\$675.00
11/09/06	BJM	Receive Nationwide's Proposed Stip to drop UTPA and Lindgren	0.10	\$225.00	\$22.50
11/09/06	BJM	Discuss Stip with HM	0.10	\$225.00	\$22.50
11/09/06	BJM	E-mail with J. Abramowich	0.30	\$225.00	\$67.50
11/09/06	BJM	Call from Anthony Sciarrino	0.40	\$225.00	\$90.00
11/09/06	BJM	E-mail with J. Abramowich	0.30	\$225.00	\$67.50
11/09/06	BJM	Conference with HM on JA's feedback	0.30	\$225.00	\$67.50
11/09/06	BJM	Prepare Trial Brief w/ Facts and Law	1.90	\$225.00	\$427.50
11/09/06	HM	Discuss Stip with BJM	0.10	\$350.00	\$35.00
11/10/06	BJM	Receive and review Court's Order of 11/8/06	0.40	\$225.00	\$90.00
11/10/06	BJM	Conference with HM on Order	0.20	\$225.00	\$45.00
11/10/06	BJM	Networking on what constitutes "court costs"	0.10	\$225.00	\$22.50
11/10/06	BJM	Receive and reply to e-mail of Mark Tanner	0.30	\$225.00	\$67.50
11/10/06	BJM	Review Tanner's Brief on fees and costs	0.50	\$225.00	\$112.50
11/10/06	BJM	Prepare Trial Brief w/ Facts and Law	1.20	\$225.00	\$270.00
11/10/06	BJM	Prepare Trial Brief w/ Facts and Law	3.60	\$225.00	\$810.00
11/10/06	HM	Conference with BJM on Order	0.20	\$350.00	\$70.00

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
11/11/06	BJM	Reviewing Trial Transcript from home on weekend	1.00	\$225.00	\$225.00
11/13/06	BJM	Prepare Trial Brief w/ Facts and Law	4.10	\$225.00	\$922.50
11/13/06	BJM	Prepare Trial Brief w/ Facts and Law	3.20	\$225.00	\$720.00
11/13/06	BJM	Electronic communication to J. Abramowich	0.10	\$225.00	\$22.50
11/14/06	BJM	Finalize Stipulation	0.20	\$225.00	\$45.00
11/14/06	BJM	Reply to J. Abramowich	0.10	\$225.00	\$22.50
11/14/06	BJM	Prepare Trial Brief w/ Facts and Law	3.60	\$225.00	\$810.00
11/14/06	BJM	Prepare Trial Brief w/ Facts and Law	0.40	\$225.00	\$90.00
11/14/06	BJM	Prepare Trial Brief w/ Facts and Law	1.80	\$225.00	\$405.00
11/14/06	BJM	Prepare Trial Brief w/ Facts and Law	0.10	\$225.00	\$22.50
11/14/06	BJM	E-mail with Counsel on Stipulation	0.30	\$225.00	\$67.50
11/14/06	BJM	Prepare Trial Brief w/ Facts and Law	4.40	\$225.00	\$990.00
11/15/06	BJM	Prepare Trial Brief w/ Facts and Law	3.00	\$225.00	\$675.00
11/15/06	BJM	Prepare Trial Brief w/ Facts and Law	1.20	\$225.00	\$270.00
11/16/06	BJM	Prepare Trial Brief w/ Facts and Law	0.70	\$225.00	\$157.50
11/16/06	BJM	Prepare Trial Brief w/ Facts and Law	0.10	\$225.00	\$22.50
11/16/06	BJM	Receive and review new Stipulation	4.10	\$225.00	\$922.50
11/16/06	BJM	Prepare Trial Brief w/ Facts and Law	0.10	\$225.00	\$22.50
11/17/06	BJM	Finalize Stipulation	0.10	\$225.00	\$22.50
11/17/06	BJM	E-mail with Ken Myers on check	0.10	\$225.00	\$22.50
11/17/06	BJM	Prepare Trial Brief w/ Facts and Law	2.10	\$225.00	\$472.50
11/18/06	BJM	Weekend: work at home and conf with HM	2.50	\$225.00	\$562.50
11/18/06	BJM	Prepare Trial Brief w/ Facts and Law	4.70	\$225.00	\$1,057.50
11/20/06	BJM	Prepare Trial Brief w/ Facts and Law	2.20	\$225.00	\$495.00
11/21/06	BJM	Prepare Trial Brief w/ Facts and Law	0.80	\$225.00	\$180.00
11/21/06	BJM	Prepare Trial Brief w/ Facts and Law	4.00	\$225.00	\$900.00
11/22/06	BJM	Prepare Trial Brief w/ Facts and Law	3.80	\$225.00	\$855.00
11/22/06	BJM	Prepare Trial Brief w/ Facts and Law	3.70	\$225.00	\$832.50
11/27/06	BJM	Prepare Trial Brief w/ Facts and Law	2.10	\$225.00	\$472.50
11/28/06	BJM	Prepare Trial Brief w/ Facts and Law	2.90	\$225.00	\$652.50
11/28/06	BJM	Prepare Trial Brief w/ Facts and Law	2.00	\$225.00	\$450.00
11/28/06	BJM	Prepare Trial Brief w/ Facts and Law	4.00	\$225.00	\$900.00
11/29/06	BJM	Prepare Trial Brief w/ Facts and Law	4.00	\$225.00	\$900.00
11/30/06	BJM	Prepare Trial Brief w/ Facts and Law	4.80	\$225.00	\$1,080.00
11/30/06	BJM	Prepare Trial Brief w/ Facts and Law	5.50	\$225.00	\$1,237.50
12/01/06	BJM	Prepare Trial Brief w/ Facts and Law	1.00	\$225.00	\$225.00
12/01/06	HM	Reading, annotating Findings of Fact and meeting with BJM and agreeing as to what changes should be made	4.50	\$350.00	\$1,575.00
12/02/06	HM	Work on Findings of Fact	4.00	\$350.00	\$1,400.00
12/03/06	BJM	Prepare Trial Brief w/ Facts and Law	5.00	\$225.00	\$1,125.00
12/04/06	BJM	Prepare Trial Brief w/ Facts and Law	5.00	\$225.00	\$1,125.00
12/04/06	BJM	Prepare Trial Brief w/ Facts and Law	3.00	\$225.00	\$675.00
12/04/06	HM	Copying, cutting and recopying to fit on one page the 4/30/98 log section; discussion with BJM re: adding to Findings of Fact and this memo	1.75	\$350.00	\$612.50
12/05/06	BJM	Prepare Trial Brief w/ Facts and Law	4.50	\$225.00	\$1,012.50
12/05/06	BJM	Prepare Trial Brief w/ Facts and Law	4.50	\$225.00	\$1,012.50
12/06/06	JA	Updating Excel Spreadsheet	2.25	\$35.00	\$78.75
12/07/06	BJM	Prepare Trial Brief w/ Facts and Law	9.00	\$225.00	\$2,025.00
12/07/06	HM	Red Flags, discussion with BJM and MRC, sent e-mail to DH	4.50	\$350.00	\$1,575.00
12/07/06	JA	Working on fees and costs	4.00	\$35.00	\$140.00
12/22/06	BJM	Prepare Package for JA	0.20	\$225.00	\$45.00
12/22/06	BJM	Direction to staff to prepare package for JA	0.10	\$225.00	\$22.50
12/22/06	BJM	Electronic communication w/ JA	0.30	\$225.00	\$67.50

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
12/22/06	BJM	meeting w/ Hy on claim log inspection report	0.30	\$225.00	\$67.50
12/22/06	BJM	meeting w/ Hy on fiduciary	0.10	\$225.00	\$22.50
12/22/06	BJM	Letter to JA	0.20	\$225.00	\$45.00
01/03/07	BJM	Prepare documents for Meeting w/ JA	0.5	\$225.00	\$112.50
01/04/07	BJM	Meeting w/ JA	3	\$225.00	\$675.00
01/04/07	BJM	Meeting w/ Hy to discuss JA's recommendations	0.2	\$225.00	\$45.00
01/04/07	BJM	Per JA, read Kierka v. Bic	0.5	\$225.00	\$112.50
01/04/07	BJM	Per JA, General Refractories; Grefco v. Fireman's Fun	0.2	\$225.00	\$45.00
01/04/07	BJM	E-mail to JA on issue of Court Costs	0.3	\$225.00	\$67.50
01/04/07	BJM	E-mail to JA on Fireman's Fund case	0.5	\$225.00	\$112.50
01/04/07	BJM	E-mail to JA attaching Lash's Order	0.1	\$225.00	\$22.50
01/05/07	BJM	Receive and review JA's reply	0.1	\$225.00	\$22.50
01/05/07	BJM	Conference with Hy	0.2	\$225.00	\$45.00
01/05/07	BJM	Reply to JA	0.5	\$225.00	\$112.50
01/05/07	BJM	Conference w/ Hy on Attorney Client Privilege	0.1	\$225.00	\$22.50
01/05/07	BJM	Create File Folder for privileged documents	0.1	\$225.00	\$22.50
01/05/07	BJM	Telephone call to JA (left VM)	0.1	\$225.00	\$22.50
01/05/07	BJM	E-mail to JA	0.1	\$225.00	\$22.50
01/05/07	BJM	Call from JA (JA will not enter his appearance, yet)	0.1	\$225.00	\$22.50
01/05/07	BJM	E-mail to JA confirming his role is personal counsel	0.1	\$225.00	\$22.50
01/08/07	BJM	Receive and review N.'s Trial Brief	1.3	\$225.00	\$292.50
01/08/07	BJM	Meeting w/ Hy on N.'s Trial Brief	0.1	\$225.00	\$22.50
01/09/07	BJM	Call to Craig Cohen (need Foster report and meeting)	0.1	\$225.00	\$22.50
01/09/07	BJM	Confirming letter to C. Cohen	0.2	\$225.00	\$45.00
01/15/07	BJM	Received fax from JA enclosing sample complaint	0.1	\$225.00	\$22.50
01/15/07	BJM	Reply to JA via e-mail summarizing N.'s Trial Brief	0.3	\$225.00	\$67.50
01/15/07	BJM	Review amended Complaint in GRC action	0.5	\$225.00	\$112.50
01/15/07	BJM	Receive and review reply from JA	0.1	\$225.00	\$22.50
01/15/07	BJM	Reply to JA summarizing GRC Complaint & our eviden	0.3	\$225.00	\$67.50
01/15/07	BJM	Finish reading amended Complaint in GRC action	0.1	\$225.00	\$22.50
01/15/07	BJM	Receive and reply to e-mail from JA	0.2	\$225.00	\$45.00
01/16/07	BJM	Receive and reply to E-mail from Hy	0.4	\$225.00	\$90.00
01/17/07	BJM	Drafting a Supplemental Trial Brief on Abuse of Process - includes re-reading GRC, GRC Complaint, & N.'s Brief	5	\$225.00	\$1,125.00
01/17/07	BJM	Meeting w/ Hy on supplement	0.1	\$225.00	\$22.50
01/17/07	BJM	E-mail to JA on supplement	0.1	\$225.00	\$22.50
01/18/07	BJM	Entire Day on Supplemental Brief, then discussions w/ JA - then meeting w/ Hy and Margaret, then JA again	0	\$225.00	\$0.00
01/23/07	BJM	Receive N.'s uncontested facts with suggested change	0.1	\$225.00	\$22.50
01/23/07	BJM	Reply to Cohen w/ request that he identify uncontested	0.2	\$225.00	\$45.00
01/23/07	BJM	Close review and adoption of some suggested change	2	\$225.00	\$450.00
01/23/07	BJM	Written reply with suggested changes to suggested ch	1.5	\$225.00	\$337.50
01/23/07	BJM	Receive fax from Cohen on caption and conclusions of	0.1	\$225.00	\$22.50
01/23/07	BJM	Letter and Stip to remove Lindgren	0.2	\$225.00	\$45.00
01/24/07	BJM	Receive and reply to e-mail from Craig Cohen on Stip	0.1	\$225.00	\$22.50
01/26/07	BJM	Receive signed Stip to Amend Caption from C. Cohen	0.1	\$225.00	\$22.50
01/26/07	BJM	File Amended Stip w/ Court	0.2	\$225.00	\$45.00
01/26/07	BJM	Receive VM from C. Stanzola on possible trial date	0.1	\$225.00	\$22.50
01/26/07	BJM	Meeting w/ Hy and return VM to Court on trial date	0.1	\$225.00	\$22.50
01/26/07	BJM	Call witnesses	0.1	\$225.00	\$22.50
01/26/07	BJM	Call client	0.2	\$225.00	\$45.00
01/26/07	BJM	Place Trial Brief into 3 ring binder	0.1	\$225.00	\$22.50
01/26/07	BJM	Review Notes to Prepare for Trial, i.e. expert files	1.2	\$225.00	\$270.00

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
01/29/07	BJM	Left VM w/ Schwartzman explaining trial listing cancell	0.1	\$225.00	\$22.50
01/29/07	BJM	Called client to explain same	0.2	\$225.00	\$45.00
01/31/07	BJM	Electronic Communications w/ Erin McNulty, N.'s coun	0.1	\$225.00	\$22.50
01/15/07	HM	Review Nationwide's Trial Brief	3	\$350.00	\$1,050.00
02/01/07	BJM	Receive Stipulation on Caption signed by J. Stallone	0.1	\$225.00	\$22.50
02/01/07	BJM	Receive letter to Judge Stallone from C. Cohen	0.1	\$225.00	\$22.50
02/01/07	BJM	File Stipulation with Prothy		\$225.00	\$225.00
02/08/07	BJM	Prepare for phone conference w/ N.'s counsels	1	\$225.00	\$225.00
02/08/07	BJM	Phone Conference w/ counsel Cohen and McNulty	1.2	\$225.00	\$270.00
02/08/07	BJM	Draft Uncontested Facts for submission	1.2	\$225.00	\$270.00
02/08/07	BJM	Draft Uncontested Facts for submission	0.5	\$225.00	\$112.50
02/08/07	BJM	Two cover letters to counsel	0.2	\$225.00	\$45.00
02/08/07	BJM	Adding letter of 11/3/97 to Facts	0.1	\$225.00	\$22.50
02/08/07	BJM	E-mail to Cohen on letter of 11/3/97	0.1	\$225.00	\$22.50
02/08/07	BJM	Receive and reply to e-mail from Cohen	0.1	\$225.00	\$22.50
02/15/07	BJM	Call to N.'s Counsel (Nulty)	0.1	\$225.00	\$22.50
02/15/07	BJM	Confirming letter to N.'s Counsel	0.2	\$225.00	\$45.00
02/15/07	BJM	Amend Uncontested Facts	0.2	\$225.00	\$45.00
02/16/07	BJM	Receive e-mail and 2 phone messages from McNulty	0.1	\$225.00	\$22.50
02/16/07	BJM	Telephone Carmen Stanzola on family vacation in Apr	0.1	\$225.00	\$22.50
02/16/07	BJM	Tel. Conf. N.'s counsel on Amended T. Brief and St. F	0.1	\$225.00	\$22.50
02/16/07	BJM	Confirming letter to N.'s Counsel	0.2	\$225.00	\$45.00
02/16/07	BJM	Call to Court Reporter for Word copy of Transcript	0.1	\$225.00	\$22.50
02/16/07	BJM	Meeting w/ office tech support to convert Transcript	0.2	\$225.00	\$45.00
02/16/07	BJM	Meeting w/ office tech support to convert Transcript	2	\$225.00	\$450.00
02/16/07	BJM	Isolating Trial Testimony to be converted for Trial Brief		\$225.00	\$225.00
02/16/07	BJM	Amended Trial Brief: Intro	1	\$225.00	\$225.00
02/17/07	BJM	Saturday: Editing Trial Brief for Amended Brief	2	\$225.00	\$450.00
02/19/07	BJM	Amended Trial Brief	2.1	\$225.00	\$472.50
02/19/07	BJM	Amended Trial Brief		\$225.00	\$22.50
02/20/07	BJM	Finalize Uncontested Facts (number sequentially)	0.1	\$225.00	\$22.50
02/20/07	BJM	Send electronic version to N.'s counsel	0.1	\$225.00	\$22.50
02/20/07	BJM	Amended Trial Brief	2	\$225.00	\$450.00
02/20/07	BJM	Amended Trial Brief (Material Witnesses - experts)	1	\$225.00	\$225.00
02/20/07	BJM	Amended Trial Brief (adding testimony)	1.5	\$225.00	\$337.50
02/21/07	BJM	Amended Trial Brief	3	\$225.00	\$675.00
02/21/07	BJM	Amended Trial Brief	1	\$225.00	\$225.00
02/22/07	BJM	Amended Trial Brief (Material Witnesses)	4	\$225.00	\$900.00
02/22/07	BJM	Amended Trial Brief (adding testimony)	3	\$225.00	\$675.00
02/23/07	BJM	Amended Trial Brief (editing down & adding testimony)	5	\$225.00	\$1,125.00
02/23/07	BJM	Amended Trial Brief (editing down & adding testimony)	3	\$225.00	\$675.00
02/27/07	BJM	Amended Trial Brief (finalize Appendix C)	2.5	\$225.00	\$562.50
02/27/07	BJM	Amended Trial Brief (finalize Appendix D)	0.1	\$225.00	\$22.50
02/27/07	BJM	Amended Trial Brief (separate findings of fact of phase	0.1	\$225.00	\$22.50
02/27/07	BJM	Amended Trial Brief (finalize Appendix B)	1.1	\$225.00	\$247.50
02/28/07	BJM	Amended Trial Brief (finalize Appendix A)	0.9	\$225.00	\$202.50
02/28/07	BJM	Amended Trial Brief (finalize Appendix A)	2	\$225.00	\$450.00
02/28/07	BJM	Amended Trial Brief (finalize Appendix A)	0.5	\$225.00	\$112.50
03/01/07	BJM	Editing Trial Brief	4	\$225.00	\$900.00
03/01/07	BJM	Amended Trial Brief (finalize Appendix A)	4	\$225.00	\$900.00
03/02/07	BJM	Amended Trial Brief (finalize Appendix A)	4	\$225.00	\$900.00
03/04/07	BJM	Work at home late at night	2	\$225.00	\$450.00
03/05/07	BJM	Amended Trial Brief (finalize Appendix 2)	4	\$225.00	\$900.00
03/05/07	BJM	Amended Trial Brief (finalize Appendix 2)	4	\$225.00	\$900.00
03/06/07	BJM	Amended Trial Brief (Finalize Appendix 2-3)	4	\$225.00	\$900.00
03/06/07	BJM	Research on Cole subpoena and Rule 4020	0.5	\$225.00	\$112.50
03/06/07	BJM	Letter to Nationwide on Rule 4020	0.2	\$225.00	\$45.00
03/06/07	BJM	Conference w/ Hy and Margaret on issue	0.2	\$225.00	\$45.00

Berg: Mayerson Billing Summary

DATE	TIMEKEEPER	COMMENTS	HOURS	RATE	VALUE
03/06/07	BJM	Amended Trial Brief (Finalize Appendix 3-4)	4	\$225.00	\$900.00
03/07/07	BJM	Much improved Appendix 3	5.5	\$225.00	\$1,237.50
03/07/07	BJM	Conference w/ Hy on Cole	0.1	\$225.00	\$22.50
03/08/07	BJM	Still working of Fee Petition	4	\$225.00	\$900.00
03/08/07	BJM	Conference w/ Hy on Fee Petition	0.3	\$225.00	\$67.50
03/08/07	BJM	Fee Petition	1	\$225.00	\$225.00
03/09/07	BJM	Incorporate Hy's suggested changes to Appendix 2	2.5	\$225.00	\$562.50
03/09/07	BJM	Finalize Appendix 3 - Fee Petition	3	\$225.00	\$675.00
03/09/07	HM	See blue folder - e-mails of 3/8-9 Amended Trial Brief	3	\$350.00	\$1,050.00
03/11/07	HM	Sun. 5:30 to 10 - Appendix One: Proposed Findings of Fact		\$350.00	\$350.00
03/12/07	BJM	Review and edit Appendix 1	1	\$225.00	\$225.00
03/12/07	BJM	Review and edit Appendix 4	0.3	\$225.00	\$67.50
03/12/07	BJM	Review and edit all Appendices	5	\$225.00	\$1,125.00
03/12/07	BJM	Create Index of all Findings of Fact	0.9	\$225.00	\$202.50
03/12/07	HM	Continued above and into "jerry-rig" of repairs; put 3 ring binders for my work together, tabbed; began Appendix Two: Proposed Findings of Fact & Law, Liability for Punitive Damages 42 Pa.C.S.A. § 8371	3.5	\$350.00	\$1,225.00
03/13/07	BJM	Organizing and Finalizing All Appendices	4	\$225.00	\$900.00
03/13/07	BJM	Organizing and Finalizing All Appendices	2	\$225.00	\$450.00
03/13/07	HM	Amended Trial Brief especially: (1) Brief statement of case...the First Time Period of Nationwide's Bad Faith (2) concentration on trial testimony of D. Joffred Nationwide claims log, Anderton Report and trial testimony; change from early AM e-mail to Margaret's first edit through several more edits to inserting into Pre Trial Memo while at Donna's desk - again revised Anderton report and memo	4	\$350.00	\$1,400.00
03/14/07	BJM	Trial Phase 2	6	\$225.00	\$1,350.00
03/14/07	HM	Revised Amended Trial Brief - same as 3/13/07	7	\$350.00	\$2,450.00
03/15/07	HM	Revised Amended Trial Brief	0.5	\$350.00	\$175.00
03/15/07	HM	& Law; Liability for Insurance Bad Faith	4.5	\$350.00	\$1,575.00
03/15/07	BJM	Council	5	\$225.00	\$1,125.00
					\$767,070.50

Trial Exhibit 45

DECLARATION AND ITEMIZATION OF PLAINTIFFS' LITIGATION EXPENSES
TOTAL BILLED THRU 03/15/07: \$85,441.06

EXPENSES FROM 1997 - 1999:

Donald R. Phillips, PE - Retainer fee.	\$2,000.00
Donald R. Phillips, PE	\$410.84
Donald R. Phillips, PE-	\$1,048.84
Charlie Barone	\$125.00
Charlie Barone	\$125.00
Karasch & Associates	\$348.40
Sheriff's Office	\$64.62
Charlie Barone	\$200.00
Charlie Barone	\$450.00
Donald Litman, Esquire	\$400.00
Charlie Barone	\$410.00
MCS	\$2,584.17
Post & Schell	\$79.50
Charlie Barone	\$80.00
 SUB-TOTAL:	 \$8,326.37

EXPENSES THROUGH 7/29/05:

MCS	\$2,584.17
Smith Stevens	\$2,410.20
Auto Claims Solutions	\$4,888.25
Don Litman, Esquire	\$400.00
Dan West	\$162.00
Reading Eagle	\$467.00
Post & Schell	\$79.50
Filing Fees	\$82.38
Berks County Bar Association	\$200.00
Karasch & Associates	\$6,478.20
Veritex Reporting	\$105.50
James DeCrescenzo Reporting	\$25.00
Kimberly Bursner	\$1,188.60
Commonwealth of PA	\$191.00
Gary Fye	\$2,648.10
Phillip Rack	\$48.00
Chief Clerk, House of Reps	\$131.00
Office of the Commonwealth	\$3.90
Clerk of Courts	\$35.00
Circuit Court Clerk	\$15.00



COPY OF EXHIBIT NO. 45 (Page 1 of 3)

Center for Professionals	\$9.00
Blue Ball National Bank	\$37.50
James Schwartzman	\$15,980.00
National Forensic Engineers	\$4,695.24
Katherine Van Gorder	\$440.50
Lori Skylar	\$3,535.00
John Gaspich	\$150.00
Lacheen & Dixon	\$979.20
Michael Lamb	\$13.50
Michael P. Kane	\$165.00
Ronald Stitzel	\$75.00
Kristofer Snader	\$75.00
Stephen Potosnak	\$75.00
Doug Witmer	\$75.00
Tom Campuzano	\$75.00
Michael Nelson, Esq.	\$75.00
Dean Jones	\$75.00
David Cole	\$150.00
Michael Burke	\$75.00
David Wert	\$75.00
Barbara Shuttleworth	\$75.00
Greg Miller	\$75.00
Donna Sherrick	\$75.00
Prothonotary of Berks	\$1,563.50
Sheriff of Berks	\$125.00
Sheriff of York Co.	\$100.00
National Legal Research	\$819.00
Gaston County Courthouse	\$5.00
Matthew Stool	\$65.49
Lisa Buenzel	\$66.08
B & R Services	\$48.00
Mary Beth Perco	\$360.50
P & F	\$317.19
Mail Boxes, Etc.	\$28.97
UPS	\$31.05
Mileage	\$411.30
Subpoenas	\$135.00
Postage	\$810.42
Copies	\$3,495.60
SUB-TOTAL:	\$57,579.84

EXPENSES THROUGH 9/10/06:

Nelson, Levine, DeLuca & Horst	\$5,455.00
Prothonotary - Allegheny	\$13.75
Prothonotary - Berks County	\$35.00
First Services, Ltd.	\$896.80
United States District Court	\$1,742.00
Jim Chett, CPCU	\$6,773.92
James Schwartzman, Esquire	\$320.00
Mileage	\$71.79
Parking	\$2.00
Postage	\$0.00
Copies	\$1,361.25
SUB-TOTAL:	\$16,671.51

EXPENSES THROUGH 12/07/06:

Mileage - JA	\$12.59
Prothonotary - Berks Co.	\$29.60
Mileage - BJM	\$27.25
Katherine Van Gorder	\$240.00
B&R Services	\$15.00
Prothonotary - Allegheny Co.	\$32.00
Postage	\$6.90
SUB-TOTAL:	\$363.34

ADDITIONAL EXPENSES: BJM's personal checking account:

12/13/06	Jen Arenschiold	300.00
12/26/06	Jay Abramowitch, Esq.	\$2,200.00
	TOTAL EXPENSES:	\$85,441.06

Trial Exhibit 46

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0001

Date Time Creator Assignee Cov Claimant

[REDACTED]

Date: 07/22/1998 Time: 10:56AM
To: LEGAL1 - Legal LEAP Clerk
cc: COLED1 - David Cole

From: David Cole
Subject: Berg v. Nationwide
New suit opening.

07/22/1998 10:28AM COLED1 COLED1 COLL Daniel G & Sharon E Berg
Attorney opened for COLL on Daniel G & Sharon E Berg assigned to
COLED1

[REDACTED]

05/20/1998 07:35AM BASHORB SUSEMIP
0200 ADVISORY COMMENTS: CTC - Berg, Daniel G & Sharon E Rec'd call
from Automotive Legal Services. TT Terry Shaw. Terry had appt. to
meet ph to inspect his vehicle on Sat. (5-16-98). Terry went to the
ph's home but ph was not there. Terry will call ph and set up another
appt.

05/19/1998 08:16AM BASHORB SUSEMIP
DOC sent to: The Mayerson Law Offices, P.C. from BRUCE BASHORE (Re:)
Free Form (not used yet) (Comments:) none (Print Instr:) none; no
Separator printed

EXHIBIT
46
DMC 6/7/02

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0002

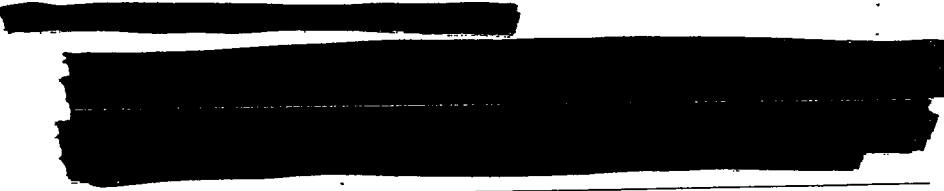
Date Time Creator Assignee Cov Claimant

05/12/1998 05:20PM BASHORB WITMERD COLL Daniel G & Sharon E Berg

Check for \$250.00 payable to Automotive Legal Services P O Box 626
Dresher PA 19025 - -011525 - Manual

05/12/1998 05:16PM BASHORB WITMERD

0200 ADVISORY COMMENTS: CTC - Berg, Daniel G & Sharon E called
automotive legal services to inspect ph vehicle and take photos. I
will send a \$250 retainer to Automotive Legal Services. They will
check vehicle for quality of repairs and if any problems what needs
to be done to correct the problem.



Date: 05/07/1998 Time: 07:21AM

To: GRAYV - Vickie Gray
cc: OBETZ1 - OBETZ FILE CENTER

From: OBETZ FILE CENTER

Subject: FILE NEEDED

Good morning. I have tried several different ways to locate this file
and nothing is coming up on my system. If you have any questions,
please feel free to give me a call. Thank you, Crystal

Date: 05/05/1998 Time: 12:21PM

To: OBETZ1 - OBETZ FILE CENTER
cc: GRAYV - Vickie Gray

From: Vickie Gray

Subject: FILE NEEDED

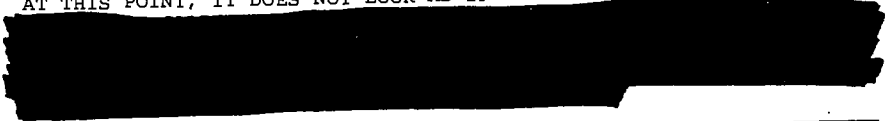
PLEASE SEND THE FOLLOWING FILE TO VICKIE GRAY, PO BOX 2655, HARRISBURG,
PA 17105. FILE NUMBER IS 58 37 C 132421 09049601. THANKS.

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0003

Date Time Creator Assignee Cov Claimant

05/06/1998 08:05AM POTOSNS UNASSIGN

MET WITH LINDGREN'S ATTY AND DOUG AT SHOP AS PER DOUG'S REQUEST. ATTY IS FREDERICK MCGAVIN, PHONE 610-376-9742 (KEN MEYERS ALSO ATTY AT THAT FIRM INVOLVED). ATTY ASKED ME WHAT I SAW AND I TOLD HIM AS PER MY PRIOR LOG NOTES. HE STATED THAT DID NOT COINCIDE WITH WHAT THEIR INDEPENDENT FOUND IN FEB 98, HE SAW ONLY MINOR PROBLEMS APPARENTLY. I TOLD HIM I CAN ONLY TELL HIM WHAT I SAW LAST WEEK, AS THIS WAS THE FIRST TIME I SAW THE TRUCK. CALLED BRUCE FROM SHOP, HE WILL HAVE COPIES OF LEGAL PAPERWORK MAILED TO SHOP, AS SHOP'S ATTY DID NOT REC. AT THIS POINT, IT DOES NOT LOOK AS IF SHOP IS WILLING TO BUY BACK



Date: 05/07/1998 Time: 07:21AM
To: GRAYV - Vickie Gray
cc: OBETZ1 - OBETZ FILE CENTER
From: OBETZ FILE CENTER
Subject: FILE NEEDED

Good morning. I have tried several different ways to locate this file and nothing is coming up on my system. If you have any questions, please feel free to give me a call. Thank you, Crystal

Date: 05/05/1998 Time: 12:21PM
To: OBETZ1 - OBETZ FILE CENTER
cc: GRAYV - Vickie Gray
From: Vickie Gray
Subject: FILE NEEDED

PLEASE SEND THE FOLLOWING FILE TO VICKIE GRAY, PO BOX 2655, HARRISBURG, PA 17105. FILE NUMBER IS 58 37 C 132421 09049601. THANKS.

Date: 05/05/1998 Time: 11:26AM
To: FOSTERL1 - Leah Foster
cc: BASHORB - Bruce Bashore
From: Bruce Bashore
Subject: Atty for BRRP
<..MORE..>

***** ACTIVITY LOG *****
 Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
 PH: Berg, Daniel G & Sharon E Time: 14:18:10
 Requester: David Cole Page # 0004

 Date Time Creator Assignee Cov Claimant
 <...CONTINUED...>
 The Attorney for Lindgren Chrysler is Fredrick McGavin and Kenneth
 Myers. Phone # 610-376-9742.

05/04/1998 11:04AM BASHORB SUSEMIP

0200 ADVISORY COMMENTS: CTC - Berg, Daniel G & Sharon E rec'd papers from ph's atty. Ph filed a civil action in Berks Co. against Lendgren Chrysler which is a Blue Ribbon Shop and Nationwide. Gave all paper work to Leah in legal at 10 am today.

Date: 04/30/1998 Time: 08:02AM
 To: CARLSOB - Bev Carlson
 To: BASHORB - Bruce Bashore
 cc: POTOSNS - STEPHEN J. POTOSNAK

From: STEPHEN J. POTOSNAK

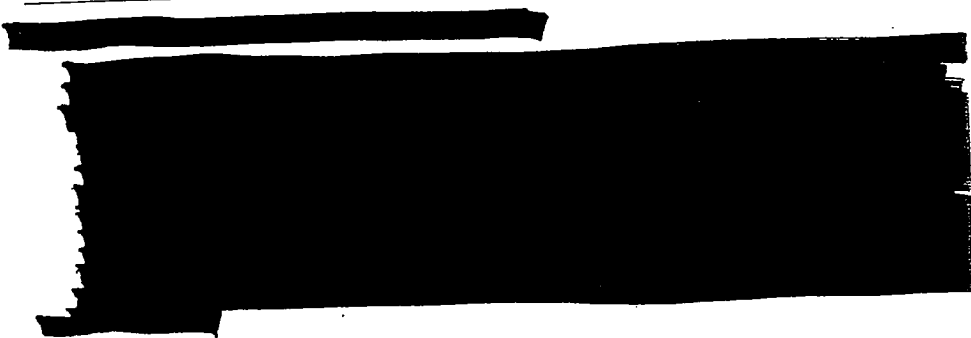
Subject: BERG JEEP

FYI, SEE LOG. BRUCE, I HAVE NOT HEARD BACK FROM SHOP AS OF THIS AM. STEVE.

Date: 04/30/1998 Time: 08:01AM
 To: BASHORB - Bruce Bashore
 cc: POTOSNS - STEPHEN J. POTOSNAK

From: STEPHEN J. POTOSNAK

Subject:



***** ACTIVITY LOG *****
 Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
 PH: Berg, Daniel G & Sharon E Time: 14:18:10
 Requester: David Cole Page # 0005

 Date Time Creator Assignee Cov Claimant

[REDACTED]

[REDACTED]

04/23/1998 09:11AM CARLSOB UNASSIGN

0614 COMPLAINTRECV'D FAX FROM DOUG WITMER FROM THE MAYERSON LAW OFFICES,PC.....THE LETTER WAS ADDRESSED TO RON STITZEL.....I FAXED THE LETTER TO RON....ALSO CALLED HIM AND LEFT A VOICE MAIL MESSAGE.....

03/12/1998 10:10AM CARLSOB BLACKA1

DOC sent to: unknown from BEV CARLSON (Re:) Free Form (AUTO & RENTAL PAYMENT) (Comments:) none (Print Instr:) Mail

Date: 03/12/1998 Time: 09:48AM

To: STITZER - Ronald Stitzel
 cc: CARLSOB - Bev Carlson

From: Bev Carlson

Subject: COMPLAINT

RON, SENT LETTER.....BEV

03/12/1998 09:37AM CARLSOB BLACKA1

DOC sent to: unknown from BEV CARLSON (Re:) Free Form (not used yet) (Comments:) none (Print Instr:) Mail

<..MORE..>

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0006

Date Time Creator Assignee Cov Claimant
<...CONTINUED...> Date: 03/12/1998 Time: 09:12AM

To: CARLSOB - Bev Carlson
cc: STITZER - Ronald Stitzel

From: Ronald Stitzel
Subject: COMPLAINT

Please read COMPLAINT log note from 3/12.

Date: 03/12/1998 Time: 08:36AM
To: STITZER - Ronald Stitzel
cc: CARLSOB - Bev Carlson

From: Bev Carlson
Subject: COMPLAINT

RON, YOUR FAX ON THIS IS ON THE WAY.....SEE LOG NOTE FROM TODAY ON
THIS.....CAN YOU PLEASE SEND HIM A LETTER.....THANKS BEV

03/12/1998 09:11AM STITZER UNASSIGN

COMPLAINT: spoke to Ben Mayerson and told him the total dollar amount
that we paid out. He wants a copy of all the paperwork on the
damages and rental. Called Bev and advised her to send all paperwork
pertaining to rental and estimates to document payments made.

Date: 03/12/1998 Time: 09:12AM
To: CARLSOB - Bev Carlson
cc: STITZER - Ronald Stitzel

From: Ronald Stitzel
Subject: COMPLAINT

Please read COMPLAINT log note from 3/12.

Date: 03/12/1998 Time: 08:36AM
To: STITZER - Ronald Stitzel
cc: CARLSOB - Bev Carlson

From: Bev Carlson
Subject: COMPLAINT

RON, YOUR FAX ON THIS IS ON THE WAY.....SEE LOG NOTE FROM TODAY ON
THIS.....CAN YOU PLEASE SEND HIM A LETTER.....THANKS BEV

NW 49

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0007

Date Time Creator Assignee Cov Claimant

03/12/1998 08:33AM CARLSOB UNASSIGN

0614 COMPLAINT ...REC'D FAX INFO FROM DOUG WITMER.....CALLED THE ATTORNEY AND TOLD HIM I WAS THE CONTACT PERSON....HE SAID HE FORGOT...HE WANTED ANYTHING IN THE FILE WE PAID OUT ON THIS CLAIM.....I TOLD HIM THE ONLY THING WE HAD WAS THE FAXED EST FROM LINDGREN AND A COPY OF THE RENTAL BILL DOUG PAID'....HE SAID HE HAD A COPY OF THE EST BUT WOULD I FAX HIM A COPY OF THE RENTAL BILL WE PAID....I TOLD HIM YES AND FAXED IT YESTERDAY AFTERNOON.....HE SAID HE HAD DELAT WITH RON STITZEL ON THIS AS WELL.....I SAID YES I KNEW....HE ASKED ME IF I WOULD HAVE RON SEND HIM A LETTER STATING THIS WAS ALL THAT WE HAD IN THE FILE PERTAINING TO THE FILE....I SAID I WOULD CONTACT RON.....I FAXED A COPY OF THE INFO I RECEIVED YESTERDAY AS WELL AS THE RENTAL BILL....I WILL CALL RON AND SEND A CRM AS WELL....

03/11/1998 03:13PM WITMERD WITMERD

<>0025 CONTACT CARLSOB CALLED CARLSOB WILL FAX LETTER TO HER
657.6835

To: STITZER - Ronald Stitzel Date: 01/07/1998 Time: 08:16AM
cc: CARLSOB - Bev Carlson
From: Bev Carlson
Subject: COMPLAINT
SEE LOG NOTE.....THANKS FOR YOUR HELP.....BEV

01/07/1998 08:15AM CARLSOB UNASSIGN

0614 COMPLAINTCALLED DOUG AT LINDGREN PER RON'S INSTRUCTIONS AND TOLD HIM HE NEEDS TO CONTACT THE ATTORNEY HIMSELF....NW IS NOT INVOLVED AT THIS POINT...THE ATTORNEY WANTS TO DEAL DIRECTLY WITH THE BRRP SHOP TO RESOLVE...CRM TO RON...

To: CARLSOB - Bev Carlson Date: 01/06/1998 Time: 07:57PM
cc: STITZER - Ronald Stitzel
From: Ronald Stitzel
Subject: COMPLAINT
<..MORE...>

NW 50

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0008

Date Time Creator Assignee Cov Claimant

<...CONTINUED...>

The attorney does not want us to contact the shop unless he calls us.
He wants to handle the problem per my original log note. Call Doug at
Lindgren and let him know that he has to call the attorney as we are not
getting involved at this time.

Date: 01/06/1998 Time: 03:32PM

To: STITZER - Ronald Stitzel
cc: CARLSOB - Bev Carlson

From: Bev Carlson

Subject: COMPLAINT

RON.....SEE MY LOG NOTE.....I HAVE HEARD NOTHING FROM THE
ATTORNEY....DO YOU WANT ME TO DO ANYTHING....I LEFT A PAGE MESSAGE FOR
YOU TO CONTACT DOUG....LET ME KNOW WHAT YOU WANT.....THANKS BEV

Date: 01/06/1998 Time: 07:57PM

To: CARLSOB - Bev Carlson
cc: STITZER - Ronald Stitzel

From: Ronald Stitzel

Subject: COMPLAINT

The attorney does not want us to contact the shop unless he calls us.
He wants to handle the problem per my original log note. Call Doug at
Lindgren and let him know that he has to call the attorney as we are not
getting involved at this time.

Date: 01/06/1998 Time: 03:32PM

To: STITZER - Ronald Stitzel
cc: CARLSOB - Bev Carlson

From: Bev Carlson

Subject: COMPLAINT

RON.....SEE MY LOG NOTE.....I HAVE HEARD NOTHING FROM THE
ATTORNEY....DO YOU WANT ME TO DO ANYTHING....I LEFT A PAGE MESSAGE FOR
YOU TO CONTACT DOUG....LET ME KNOW WHAT YOU WANT.....THANKS BEV

01/06/1998 03:30PM CARLSOB UNASSIGN

0614 COMPLAINT...RECV'D CALL FROM DOUG AT LINDGREN...HE RECEIVED INFO
ON THIS VEH FROM THE ATTORNEY...I TOLD HIM RON STITZEL WAS INVOLVED
IN THIS...I GAVE HIM RON'S # AND I PAGED RON TO HAVE HIM CONTACT DOUG
ASAP...ALSO SENT A GRM TO RON....

NW 51

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0009

Date Time Creator Assignee Cov Claimant

12/04/1997 12:17PM CARLSOB UNASSIGN

0614 COMPLAINT...RECV'D PAPER FILE FROM DOUG WITMER...THE ONLY THING IN IT THAT IS DIFFERENT IS THE INFO ON THE INJURIES AND THE APPLICATION FOR BENEFITS...THE 16 PAGES THAT WERE FAXED TO ME IS ALL THAT PERTAINS TO THE BRRP PORTION OF THE CLAIM...I CALLED RON AND GAVE HIM THIS INFO AND HE WANTS ME TO KEEP THE PAPER FILE AT MY DESK SO WE KNOW WHERE EVERYTHING IS....

12/04/1997 07:04AM POTOSNS UNASSIGN

SPOKE TO RON STITZEL ON THIS FILE. AS PER HIS INSTRUCTIONS, I REVIEWED FAXED INFO AND WILL AWAIT CONTACT FROM RON FOR FURTHER INSTRUCTIONS. RON STATED HE MAY NEED ME TO REINSP VEHICLE.

[REDACTED]

Date: 12/03/1997 Time: 09:14PM
To: POTOSNS - STEPHEN J. POTOSNAK
cc: STITZER - Ronald Stitzel

From: Ronald Stitzel

Subject: Complaint

Please see log note for additional informtion.

12/03/1997 09:12PM STITZER UNASSIGN

0200 ADVISORY COMMENTS: PDS - Berg, Daniel G & Sharon E Spoke to Atty Mayerson today concerning representation letter. I made him aware of Nationwide's committment to help resolve Mr. Berg's problem in a timely manner and the Blue Ribbon Program procedures. I told him that Steve Potosnak would be the Blue Ribbon field inspector and Bev Carlson would be the contact person for all inquiries and requests. We agreed that it would not be necessary to have PDS Potosnak inspect PH vehicle at this time. He will gather information from PH and inspecting shop and forward to us if necessary. He is attempting to resolve problem with Lindgren direct under the repair warranty. I explained that I was the acting Blue Ribbon Manager
<..MORE..>

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0010

Date Time Creator Assignee Cov Claimant

<...CONTINUED:-->
while Mike O'Leary is on vacation and gave him Bev Carlson's phone
number and address. [REDACTED]
[REDACTED] Atty Mayerson will contact Bev
for any additional inquiries and keep her abreast of proceedings.
His phone number is 610-489-800 and fax is 610-489-2366.

Date: 12/03/1997 Time: 09:01PM

To: CARLSOB - Bev Carlson
cc: OLEARYM - Mike O'leary
cc: STITZER - Ronald Stitzel

From: Ronald Stitzel

Subject: BERG COMPLAINT

Please see log note.

Date: 12/03/1997 Time: 12:08PM

To: OLEARYM - Mike O'leary
cc: CARLSOB - Bev Carlson
cc: STITZER - Ronald Stitzel

From: Bev Carlson

Subject: BERG COMPLAINT

MIKE, SINCE YOU WERE OUT AND I RECEIVED A 16 PAGE FAX TODAY 12/3 ON THIS
AND SINCE RON IS IN CHARGE I CONTACTED RON AND HE INSTRUCTED ME TO SEND
HIM THE FAX.I ALSO SENT A COPY TO STEVE PER RON'S INSTRUCTIONS...DOUG
SAID HE SENT A FAX TO ME ON 11/3 AND HAS A FAX CONFIRMATION TO THAT
EFFECT...NO ONE HERE RECEIVED IT INCLUDING MYSELF...THIS IS THE FIRST
INFO ON PAPER THAT I RECEIVED...THE ONLY CONTACT I HAD WITH DOUG ON
THIS MATTER WAS ON 11/3 WHEN WE SPOKE ON THE PHONE...

12/03/1997 01:46PM CARLSOB UNASSIGN

0614 COMPLAINT ...RECV'D CALL FROM RON THAT HE HAS SPOKE WITH
ATTORNEY...THE ATTORNEY IS WILLING TO HAVE LINDGREN HANDLE THE
REPAIRS...HE ALSO WANTS A RENTAL FOR THE PH...THE ATTORNEY IS ALSO
GETTING ADDITIONAL INFO...RON TOLD HIM THAT STEVE WOULD HANDLE FOR
THE INSPECTION OF THE VEH..RON GAVE HIM STEVES NAME AND #...RON ALSO
GAVE HIM MY NAME AND # AS THE CONTACT PERSON...IF I RECEIVE ANYTHING
ON THIS I'M TO MAKE SURE THAT RON AND STEVE BOTH GET A COPY OF IT
IMMEDIATELY...RON WILL PUT HIS OWN LOG NOTE IN AS SOON AS HE IS
ABLE....

Date: 12/03/1997 Time: 09:01PM

<...MORE...>

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0011

Date Time Creator Assignee Cov Claimant
<...CONTINUED...>
To: CARLSOB - Bev Carlson
cc: OLEARYM - Mike O'leary
cc: STITZER - Ronald Stitzel

From: Ronald Stitzel
Subject: BERG COMPLAINT

Please see log note.

Date: 12/03/1997 Time: 12:08PM

To: OLEARYM - Mike O'leary
cc: CARLSOB - Bev Carlson
cc: STITZER - Ronald Stitzel

From: Bev Carlson
Subject: BERG COMPLAINT

MIKE, SINCE YOU WERE OUT AND I RECEIVED A 16 PAGE FAX TODAY 12/3 ON THIS AND SINCE RON IS IN CHARGE I CONTACTED RON AND HE INSTRUCTED ME TO SEND HIM THE FAX. I ALSO SENT A COPY TO STEVE PER RON'S INSTRUCTIONS....DOUG SAID HE SENT A FAX TO ME ON 11/3 AND HAS A FAX CONFIRMATION TO THAT EFFECT...NO ONE HERE RECEIVED IT INCLUDING MYSELF....THIS IS THE FIRST INFO ON PAPER THAT I RECEIVED....THE ONLY CONTACT I HAD WITH DOUG ON THIS MATTER WAS ON 11/3 WHEN WE SPOKE ON THE PHONE...

Date: 12/03/1997 Time: 09:01PM

To: CARLSOB - Bev Carlson
cc: OLEARYM - Mike O'leary
cc: STITZER - Ronald Stitzel

From: Ronald Stitzel
Subject: BERG COMPLAINT

Please see log note.

Date: 12/03/1997 Time: 12:08PM

To: OLEARYM - Mike O'leary
cc: CARLSOB - Bev Carlson
cc: STITZER - Ronald Stitzel

From: Bev Carlson
Subject: BERG COMPLAINT

MIKE, SINCE YOU WERE OUT AND I RECEIVED A 16 PAGE FAX TODAY 12/3 ON THIS AND SINCE RON IS IN CHARGE I CONTACTED RON AND HE INSTRUCTED ME TO SEND
<...MORE...>

NW54

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0012

Date Time Creator Assignee Cov Claimant

<...CONTINUED...>
HIM THE FAX.I ALSO SENT A COPY TO STEVE PER RON'S INSTRUCTIONS...DOUG SAID HE SENT A FAX TO ME ON 11/3 AND HAS A FAX CONFIRMATION TO THAT EFFECT...NO ONE HERE RECEIVED IT INCLUDING MYSELF...THIS IS THE FIRST INFO ON PAPER THAT I RECEIVED...THE ONLY CONTACT I HAD WITH DOUG ON THIS MATTER WAS ON 11/3 WHEN WE SPOKE ON THE PHONE...

Date: 12/03/1997 Time: 09:01PM

To: CARLSOB - Bev Carlson
cc: OLEARYM - Mike O'leary
cc: STITZER - Ronald Stitzel

From: Ronald Stitzel

Subject: BERG COMPLAINT

Please see log note.

Date: 12/03/1997 Time: 12:08PM

To: OLEARYM - Mike O'leary
cc: CARLSOB - Bev Carlson
cc: STITZER - Ronald Stitzel

From: Bev Carlson

Subject: BERG COMPLAINT

MIKE, SINCE YOU WERE OUT AND I RECEIVED A 16 PAGE FAX TODAY 12/3 ON THIS AND SINCE RON IS IN CHARGE I CONTACTED RON AND HE INSTRUCTED ME TO SEND HIM THE FAX.I ALSO SENT A COPY TO STEVE PER RON'S INSTRUCTIONS...DOUG SAID HE SENT A FAX TO ME ON 11/3 AND HAS A FAX CONFIRMATION TO THAT EFFECT...NO ONE HERE RECEIVED IT INCLUDING MYSELF...THIS IS THE FIRST INFO ON PAPER THAT I RECEIVED...THE ONLY CONTACT I HAD WITH DOUG ON THIS MATTER WAS ON 11/3 WHEN WE SPOKE ON THE PHONE...

12/03/1997 09:52AM WITMERD WITMERD

<>0025 CONTACT RON STITZEL VIA FAX I AM IN RECEIPT OF A CONFIRMATION REPORT WITH AN "OK" STATIS FAXED TO 235.0304 ON DEC 3 9:41 AM-- 2 PAGES--TO RON STITZEL

12/03/1997 09:43AM WITMERD WITMERD

<>0025 CONTACT RON STITZEL RECEIVED CALL FROM RON WANTS ME TO FAX CONFIRMATION REPORT OF 11/3 TO HIM AT 235-0304 WILL FAX NOW

NW 55

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0014

Date Time Creator Assignee Cov Claimant

12/02/1997 04:18PM WITMERD WITMERD

DOC sent to: Daniel G & Sharon E Berg from DOUG WITMER (Re:) Free
Form (not used yet) (Comments:) none (Print Instr:) Mail

12/02/1997 04:07PM WITMERD WITMERD

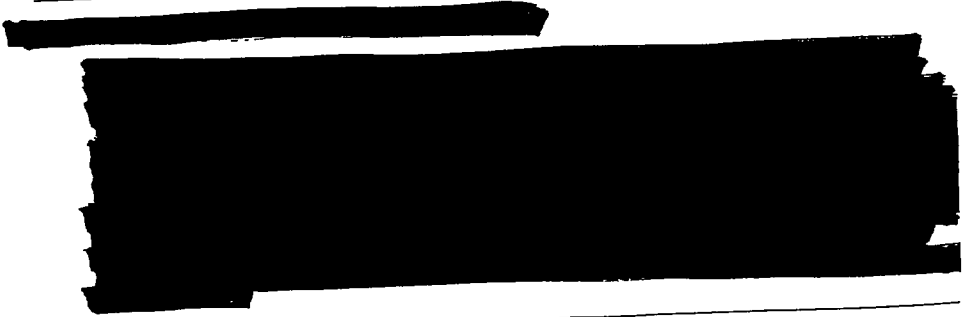
<>0025 CONTACT RON STITZEL RECEIVED VM MESS FRON RETURN CALL THAT :
PAGED TO RON MY PHONE CLOCK SAYS IT WAS 3:37 PM THE TIMES ARE
SLIGHTLY OFF FROM CLASS TIME--WILL CALL HIM NOW AT NUMBER HE PROVIDEI
TO ME---877.9555--TALKED TO RON STITZEL- HE INFORMED ME TO CALL BEV
AND HAVE HER FAX THE 16 PAGES I FAXED TO HER -TO STEVE POTOSNAK-
STEVE WILL CONTACT RON AND THEY WILL HANDLE AS PER RON IT IS OK TO
FAX ESTIMATE TO LAWYER

12/02/1997 03:45PM WITMERD WITMERD

DOC sent to: Daniel G & Sharon E Berg from DOUG WITMER (Re:) Free
Form (not used yet) (Comments:) none (Print Instr:) Mail

12/02/1997 03:42PM WITMERD WITMERD

<>0025 CONTACT ATTY RECEIVED MESS FROM ATTY FOR BERG HE WANTS
ESTIMATES AND ECT FROM FILE I TOLD HIM I WILL CHECK WITH PERSON IN
CHARGE OF CLAIM AND RESPOND BACK TO HIM CALLED BEV CARLSON AT
657.6895--SHE NEVER RECEIVED FAXED LETTER TO HER ATTENTION ON 11/3 I
AM IN RECEIPT OF A CONFERMATION REPORT ON 11/3 WITH A "OK" STSTIS T
HER WILL RE FAX TO HER--CALLED AND LEFT MESS ON VM THAT A FAX OF
EVERYTHING IS IN ROUTE



<..MORE..>

***** ACTIVITY LOG *****
 Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
 PH: Berg, Daniel G & Sharon E Time: 14:18:10
 Requester: David Cole Page # 0015

 Date Time Creator Assignee Cov Claimant
 <...CONTINUED:7.> Date: 11/03/1997 Time: 12:20PM

To: CARLSOB - Bev Carlson
 cc: OLEARYM - Mike O'leary
 From: Mike O'leary

Subject: SEE LOG--THANKS DOUG

Please get all the details and follow up with me. Thanks

Date: 11/03/1997 Time: 11:58AM

To: WITMERD - Doug Witmer
 cc: NIEVESE - Ed Nieves
 cc: OLEARYM - Mike O'leary
 cc: STITZER - Ronald Stitzel
 cc: POTOSNS - STEPHEN J. POTOSNAK

From: Ronald Stitzel

Subject: SEE LOG--THANKS DOUG

This is no longer my shop. Steve Potosnak is now handling Lindgren. I am unaware of any problems with this claim. Steve's phone number is 610-682-4814 and his fax is 610-682-7270. Mike - I cc'd you in case you want you or Bev involved.

Date: 11/03/1997 Time: 11:11AM

To: STITZER - Ronald Stitzel
 cc: WITMERD - Doug Witmer
 cc: NIEVESE - Ed Nieves

From: Doug Witmer

Subject: SEE LOG--THANKS DOUG

PLEASE CRM WITH FAX NUMBER SO I CAN FORWARD TO YOU THE LETTER OF REP.--LET ME KNOW OF WHAT ASSISTANCE I CAN BE--THANKS DOUG

Date: 11/03/1997 Time: 11:07AM

To: WITMERD - Doug Witmer
 cc: NIEVESE - Ed Nieves
 cc: JONESD6 - E. Dean Jones

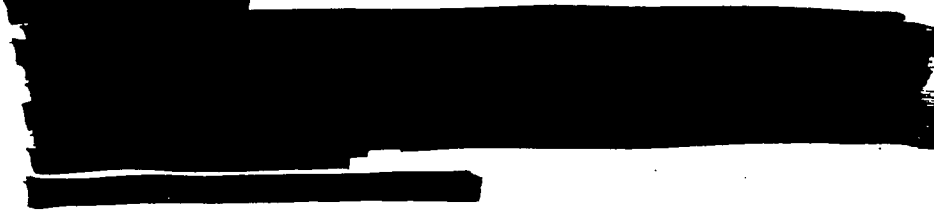
From: Ed Nieves

Subject: SEE LOG--THANKS DOUG

DOUG:) LINDGREN IS ONE OF OUR BLUE RIBBON SHOPS AND AS FAR AS I CAN TELL FROM THE LOG THIS WAS HANDLED AS A BLUE RIBBON ASSIGNMENT. [REDACTED]
 <..MORE..>

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0016

Date Time Creator Assignee Cov Claimant



Date: 11/03/1997 Time: 10:13AM
To: NIEVESE - Ed Nieves
To: JONESD6 - E. Dean Jones
cc: WITMERD - Doug Witmer
From: Doug Witmer
Subject: SEE LOG--THANKS DOUG
PLEASE READ MY LOG AND CRM WITH DIRECTION THANKS DOUG

Date: 11/03/1997 Time: 12:20PM
To: CARLSOB - Bev Carlson
cc: OLEARYM - Mike O'leary
From: Mike O'leary
Subject: SEE LOG--THANKS DOUG
Please get all the details and follow up with me. Thanks

Date: 11/03/1997 Time: 11:58AM
To: WITMERD - Doug Witmer
cc: NIEVESE - Ed Nieves
cc: OLEARYM - Mike O'leary
cc: STITZER - Ronald Stitzel
cc: POTOSNS - STEPHEN J. POTOSNAK
From: Ronald Stitzel
Subject: SEE LOG--THANKS DOUG

This is no longer my shop. Steve Potosnak is now handling Lindgren. I am unaware of any problems with this claim. Steve's phone number is 610-682-4814 and his fax is 610-682-7270.
Mike - I cc'd you in case you want you or Bev involved.

Date: 11/03/1997 Time: 11:11AM
To: STITZER - Ronald Stitzel
<..MORE..>

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0017

Date Time Creator Assignee Cov Claimant
<...CONTINUED:..>
cc: WITMERD - Doug Witmer
cc: NIEVESE - Ed Nieves

From: Doug Witmer

Subject: SEE LOG--THANKS DOUG

PLEASE CRM WITH FAX NUMBER SO I CAN FORWARD TO YOU THE LETTER OF
REP.--LET ME KNOW OF WHAT ASSISTANCE I CAN BE--THANKS DOUG

Date: 11/03/1997 Time: 11:07AM

To: WITMERD - Doug Witmer
cc: NIEVESE - Ed Nieves
cc: JONESD6 - E. Dean Jones

From: Ed Nieves

Subject: SEE LOG--THANKS DOUG

DOUG:
LINDGREN IS ONE OF OUR BLUE RIBBON SHOPS AND AS FAR AS I CAN TELL FROM
THE LOG THIS WAS HANDLED AS A BLUE RIBBON ASSIGNMENT



Date: 11/03/1997 Time: 10:13AM

To: NIEVESE - Ed Nieves
To: JONESD6 - E. Dean Jones
cc: WITMERD - Doug Witmer

From: Doug Witmer

Subject: SEE LOG--THANKS DOUG

PLEASE READ MY LOG AND CRM WITH DIRECTION THANKS DOUG

Date: 11/03/1997 Time: 12:20PM

To: CARLSOB - Bev Carlson
cc: OLEARYM - Mike O'leary

From: Mike O'leary

<..MORE..>

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0018

Date Time Creator Assignee Cov Claimant
<...CONTINUED:-->
Subject: SEE LOG--THANKS DOUG

Please get all the details and follow up with me. Thanks

Date: 11/03/1997 Time: 11:58AM

To: WITMERD - Doug Witmer
cc: NIEVESE - Ed Nieves
cc: OLEARYM - Mike O'leary
cc: STITZER - Ronald Stitzel
cc: POTOSNS - STEPHEN J. POTOSNAK

From: Ronald Stitzel

Subject: SEE LOG--THANKS DOUG

This is no longer my shop. Steve Potosnak is now handling Lindgren. I am unaware of any problems with this claim. Steve's phone number is 610-682-4814 and his fax is 610-682-7270. Mike - I cc'd you in case you want you or Bev involved.

Date: 11/03/1997 Time: 11:11AM

To: STITZER - Ronald Stitzel
cc: WITMERD - Doug Witmer
cc: NIEVESE - Ed Nieves

From: Doug Witmer

Subject: SEE LOG--THANKS DOUG

PLEASE CRM WITH FAX NUMBER SO I CAN FORWARD TO YOU THE LETTER OF REP.--LET ME KNOW OF WHAT ASSISTANCE I CAN BE--THANKS DOUG

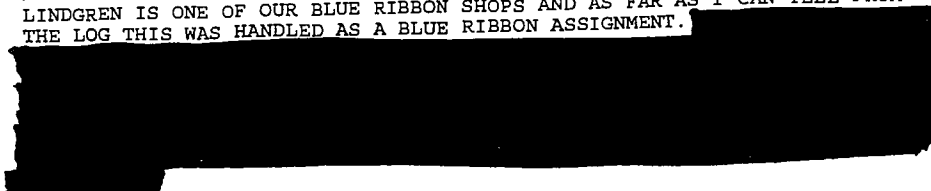
Date: 11/03/1997 Time: 11:07AM

To: WITMERD - Doug Witmer
cc: NIEVESE - Ed Nieves
cc: JONESD6 - E. Dean Jones

From: Ed Nieves

Subject: SEE LOG--THANKS DOUG

DOUG:
LINDGREN IS ONE OF OUR BLUE RIBBON SHOPS AND AS FAR AS I CAN TELL FROM THE LOG THIS WAS HANDLED AS A BLUE RIBBON ASSIGNMENT.



***** ACTIVITY LOG *****
 Claim Key: 5837C.137421 09041996 01 Print Date: 07/29/1998
 PH: Berg, Daniel G & Sharon E Time: 14:18:10
 Requester: David Cole Page # 0019

 Date Time Creator Assignee Cov Claimant
 <...CONTINUED...>
 IN POSSESSION OF ASAP.

ANY FURHTER QUESTIONS LET ME KNOW.

Date: 11/03/1997 Time: 10:13AM

To: NIEVESE - Ed Nieves
 To: JONESD6 - E. Dean Jones
 cc: WITMERD - Doug Witmer

From: Doug Witmer

Subject: SEE LOG--THANKS DOUG

PLEASE READ MY LOG AND CRM WITH DIRECTION THANKS DOUG

Date: 11/03/1997 Time: 12:20PM

To: CARLSOB - Bev Carlson
 cc: OLEARYM - Mike O'leary

From: Mike O'leary

Subject: SEE LOG--THANKS DOUG

Please get all the details and follow up with me. Thanks

Date: 11/03/1997 Time: 11:58AM

To: WITMERD - Doug Witmer
 cc: NIEVESE - Ed Nieves
 cc: OLEARYM - Mike O'leary
 cc: STITZER - Ronald Stitzel
 cc: POTOSNS - STEPHEN J. POTOSNAK

From: Ronald Stitzel

Subject: SEE LOG--THANKS DOUG

This is no longer my shop. Steve Potosnak is now handling Lindgren. I
 am unaware of any problems with this claim. Steve's phone number is
 610-682-4814 and his fax is 610-682-7270.
 Mike - I cc'd you in case you want you or Bev involved.

Date: 11/03/1997 Time: 11:11AM

To: STITZER - Ronald Stitzel
 cc: WITMERD - Doug Witmer
 cc: NIEVESE - Ed Nieves

From: Doug Witmer

Subject: SEE LOG--THANKS DOUG
 <..MORE..>

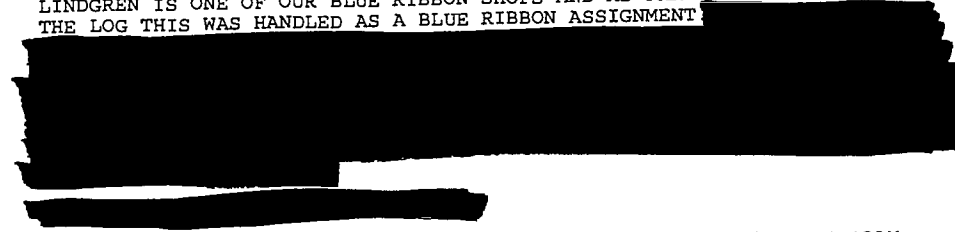
NW: kj

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0020

Date Time Creator Assignee Cov Claimant
<...CONTINUED...>
PLEASE CRM WITH FAX NUMBER SO I CAN FORWARD TO YOU THE LETTER OF
REP.--LET ME KNOW OF WHAT ASSISTANCE I CAN BE--THANKS DOUG

Date: 11/03/1997 Time: 11:07AM
To: WITMERD - Doug Witmer
cc: NIEVESE - Ed Nieves
cc: JONESD6 - E. Dean Jones

From: Ed Nieves
Subject: SEE LOG--THANKS DOUG

DOUG:
LINDGREN IS ONE OF OUR BLUE RIBBON SHOPS AND AS FAR AS I CAN TELL FROM
THE LOG THIS WAS HANDLED AS A BLUE RIBBON ASSIGNMENT


Date: 11/03/1997 Time: 10:13AM
To: NIEVESE - Ed Nieves
To: JONESD6 - E. Dean Jones
cc: WITMERD - Doug Witmer

From: Doug Witmer
Subject: SEE LOG--THANKS DOUG

PLEASE READ MY LOG AND CRM WITH DIRECTION THANKS DOUG

Date: 11/03/1997 Time: 12:20PM
To: CARLSOB - Bev Carlson
cc: OLEARYM - Mike O'leary
From: Mike O'leary

Subject: SEE LOG--THANKS DOUG
Please get all the details and follow up with me. Thanks

Date: 11/03/1997 Time: 11:58AM
To: WITMERD - Doug Witmer
cc: NIEVESE - Ed Nieves
<..MORE..>

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0021

Date Time Creator Assignee Cov Claimant
<...CONTINUED...>
cc: OLEARYM - Mike O'leary
cc: STITZER - Ronald Stitzel
cc: POTOSNS - STEPHEN J. POTOSNAK

From: Ronald Stitzel

Subject: SEE LOG--THANKS DOUG

This is no longer my shop. Steve Potosnak is now handling Lindgren. I am unaware of any problems with this claim. Steve's phone number is 610-682-4814 and his fax is 610-682-7270.
Mike - I cc'd you in case you want you or Bev involved.

Date: 11/03/1997 Time: 11:11AM

To: STITZER - Ronald Stitzel
cc: WITMERD - Doug Witmer
cc: NIEVESE - Ed Nieves

From: Doug Witmer

Subject: SEE LOG--THANKS DOUG

PLEASE CRM WITH FAX NUMBER SO I CAN FORWARD TO YOU THE LETTER OF REP.--LET ME KNOW OF WHAT ASSISTANCE I CAN BE--THANKS DOUG

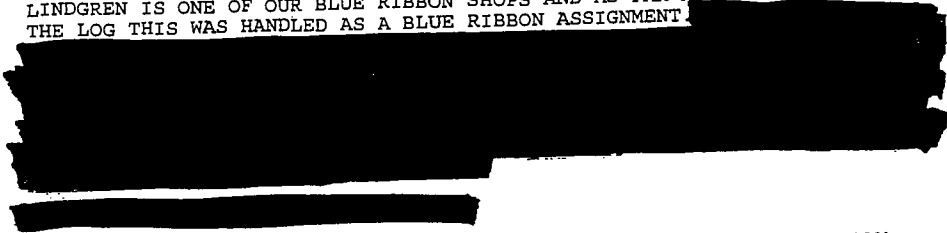
Date: 11/03/1997 Time: 11:07AM

To: WITMERD - Doug Witmer
cc: NIEVESE - Ed Nieves
cc: JONESD6 - E. Dean Jones

From: Ed Nieves

Subject: SEE LOG--THANKS DOUG

DOUG:
LINDGREN IS ONE OF OUR BLUE RIBBON SHOPS AND AS FAR AS I CAN TELL FROM THE LOG THIS WAS HANDLED AS A BLUE RIBBON ASSIGNMENT.



Date: 11/03/1997 Time: 10:13AM

To: NIEVESE - Ed Nieves
To: JONESD6 - E. Dean Jones
<..MORE..>

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0022

Date Time Creator Assignee Cov Claimant
<...CONTINUED...>
cc: WITMERD - Doug Witmer

From: Doug Witmer

Subject: SEE LOG--THANKS DOUG

PLEASE READ MY LOG AND CRM WITH DIRECTION THANKS DOUG

Date: 11/03/1997 Time: 12:20PM

To: CARLSOB - Bev Carlson
cc: OLEARYM - Mike O'leary

From: Mike O'leary

Subject: SEE LOG--THANKS DOUG

Please get all the details and follow up with me. Thanks

Date: 11/03/1997 Time: 11:58AM

To: WITMERD - Doug Witmer
cc: NIEVESE - Ed Nieves
cc: OLEARYM - Mike O'leary
cc: STITZER - Ronald Stitzel
cc: POTOSNS - STEPHEN J. POTOSNAK

From: Ronald Stitzel

Subject: SEE LOG--THANKS DOUG

This is no longer my shop. Steve Potosnak is now handling Lindgren. I
am unaware of any problems with this claim. Steve's phone number is
610-682-4814 and his fax is 610-682-7270.
Mike - I cc'd you in case you want you or Bev involved.

Date: 11/03/1997 Time: 11:11AM

To: STITZER - Ronald Stitzel
cc: WITMERD - Doug Witmer
cc: NIEVESE - Ed Nieves

From: Doug Witmer

Subject: SEE LOG--THANKS DOUG

PLEASE CRM WITH FAX NUMBER SO I CAN FORWARD TO YOU THE LETTER OF
REP.--LET ME KNOW OF WHAT ASSISTANCE I CAN BE--THANKS DOUG

Date: 11/03/1997 Time: 11:07AM

To: WITMERD - Doug Witmer
cc: NIEVESE - Ed Nieves
<..MORE..>

NW/S

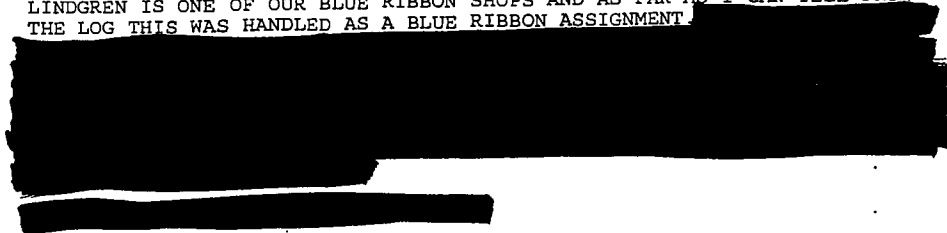
COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0023

Date Time Creator Assignee Cov Claimant
<...CONTINUED:7.>
cc: JONESD6 - E. Dean Jones

From: Ed Nieves
Subject: SEE LOG--THANKS DOUG

DOUG:
LINDGREN IS ONE OF OUR BLUE RIBBON SHOPS AND AS FAR AS I CAN TELL FROM
THE LOG THIS WAS HANDLED AS A BLUE RIBBON ASSIGNMENT



Date: 11/03/1997 Time: 10:13AM

To: NIEVESE - Ed Nieves
To: JONESD6 - E. Dean Jones
cc: WITMERD - Doug Witmer

From: Doug Witmer
Subject: SEE LOG--THANKS DOUG

PLEASE READ MY LOG AND CRM WITH DIRECTION THANKS DOUG

Date: 11/03/1997 Time: 12:20PM

To: CARLSOB - Bev Carlson
cc: OLEARYM - Mike O'leary

From: Mike O'leary
Subject: SEE LOG--THANKS DOUG

Please get all the details and follow up with me. Thanks

Date: 11/03/1997 Time: 11:58AM

To: WITMERD - Doug Witmer
cc: NIEVESE - Ed Nieves
cc: OLEARYM - Mike O'leary
cc: STITZER - Ronald Stitzel
cc: POTOSNS - STEPHEN J. POTOSNAK

From: Ronald Stitzel
<..MORE..>

***** ACTIVITY LOG *****
 Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
 PH: Berg, Daniel G & Sharon E Time: 14:18:10
 Requester: David Cole Page # 0024

 Date Time Creator Assignee Cov Claimant
 <...CONTINUED...>
 Subject: SEE LOG--THANKS DOUG

This is no longer my shop. Steve Potosnak is now handling Lindgren. I am unaware of any problems with this claim. Steve's phone number is 610-682-4814 and his fax is 610-682-7270.
 Mike - I cc'd you in case you want you or Bev involved.

Date: 11/03/1997 Time: 11:11AM

To: STITZER - Ronald Stitzel
 cc: WITMERD - Doug Witmer
 cc: NIEVESE - Ed Nieves

From: Doug Witmer

Subject: SEE LOG--THANKS DOUG

PLEASE CRM WITH FAX NUMBER SO I CAN FORWARD TO YOU THE LETTER OF REP.--LET ME KNOW OF WHAT ASSISTANCE I CAN BE--THANKS DOUG

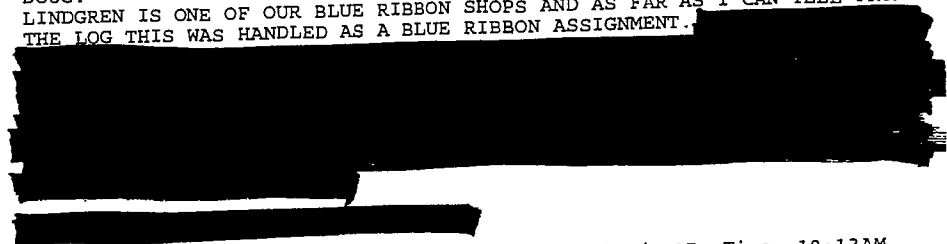
Date: 11/03/1997 Time: 11:07AM

To: WITMERD - Doug Witmer
 cc: NIEVESE - Ed Nieves
 cc: JONESD6 - E. Dean Jones

From: Ed Nieves

Subject: SEE LOG--THANKS DOUG

DOUG:
 LINDGREN IS ONE OF OUR BLUE RIBBON SHOPS AND AS FAR AS I CAN TELL FROM THE LOG THIS WAS HANDLED AS A BLUE RIBBON ASSIGNMENT.



Date: 11/03/1997 Time: 10:13AM

To: NIEVESE - Ed Nieves
 To: JONESD6 - E. Dean Jones
 cc: WITMERD - Doug Witmer

From: Doug Witmer

Subject: SEE LOG--THANKS DOUG

<..MORE..>

***** ACTIVITY LOG *****
 Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
 PH: Berg, Daniel G & Sharon E Time: 14:18:10
 Requester: David Cole Page # 0025

 Date Time Creator Assignee Cov Claimant
 <...CONTINUED...>
 PLEASE READ MY LOG AND CRM WITH DIRECTION THANKS DOUG

Date: 11/03/1997 Time: 12:20PM
 To: CARLSOB - Bev Carlson
 cc: OLEARYM - Mike O'leary
 From: Mike O'leary
 Subject: SEE LOG--THANKS DOUG
 Please get all the details and follow up with me. Thanks

Date: 11/03/1997 Time: 11:58AM
 To: WITMERD - Doug Witmer
 cc: NIEVESE - Ed Nieves
 cc: OLEARYM - Mike O'leary
 cc: STITZER - Ronald Stitzel
 cc: POTOSNS - STEPHEN J. POTOSNAK

From: Ronald Stitzel

Subject: SEE LOG--THANKS DOUG

This is no longer my shop. Steve Potosnak is now handling Lindgren. I
 am unaware of any problems with this claim. Steve's phone number is
 610-682-4814 and his fax is 610-682-7270.
 Mike - I cc'd you in case you want you or Bev involved.

Date: 11/03/1997 Time: 11:11AM
 To: STITZER - Ronald Stitzel
 cc: WITMERD - Doug Witmer
 cc: NIEVESE - Ed Nieves

From: Doug Witmer

Subject: SEE LOG--THANKS DOUG

PLEASE CRM WITH FAX NUMBER SO I CAN FORWARD TO YOU THE LETTER OF
 REP.--LET ME KNOW OF WHAT ASSISTANCE I CAN BE--THANKS DOUG

Date: 11/03/1997 Time: 11:07AM
 To: WITMERD - Doug Witmer
 cc: NIEVESE - Ed Nieves
 cc: JONESD6 - E. Dean Jones

From: Ed Nieves

Subject: SEE LOG--THANKS DOUG

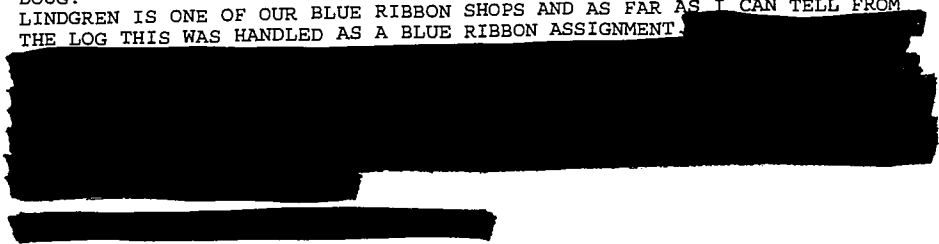
<..MORE..>

NW 68

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0026

Date Time Creator Assignee Cov Claimant
<...CONTINUED...>

DOUG:
LINDGREN IS ONE OF OUR BLUE RIBBON SHOPS AND AS FAR AS I CAN TELL FROM
THE LOG THIS WAS HANDLED AS A BLUE RIBBON ASSIGNMENT.



Date: 11/03/1997 Time: 10:13AM

To: NIEVESE - Ed Nieves
To: JONESD6 - E. Dean Jones
cc: WITMERD - Doug Witmer

From: Doug Witmer

Subject: SEE LOG--THANKS DOUG

PLEASE READ MY LOG AND CRM WITH DIRECTION THANKS DOUG

Date: 11/03/1997 Time: 12:20PM

To: CARLSOB - Bev Carlson
cc: OLEARYM - Mike O'leary

From: Mike O'leary

Subject: SEE LOG--THANKS DOUG

Please get all the details and follow up with me. Thanks

Date: 11/03/1997 Time: 11:58AM

To: WITMERD - Doug Witmer
cc: NIEVESE - Ed Nieves
cc: OLEARYM - Mike O'leary
cc: STITZER - Ronald Stitzel
cc: POTOSNS - STEPHEN J. POTOSNAK

From: Ronald Stitzel

Subject: SEE LOG--THANKS DOUG

This is no longer my shop. Steve Potosnak is now handling Lindgren. I
am unaware of any problems with this claim. Steve's phone number is
610-682-4814 and his fax is 610-682-7270.
Mike - I cc'd you in case you want you or Bev involved.
<..MORE..>

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0027

Date Time Creator Assignee Cov Claimant
<...CONTINUED:..> Date: 11/03/1997 Time: 11:11AM

To: STITZER - Ronald Stitzel
cc: WITMERD - Doug Witmer
cc: NIEVESE - Ed Nieves

From: Doug Witmer
Subject: SEE LOG--THANKS DOUG

PLEASE CRM WITH FAX NUMBER SO I CAN FORWARD TO YOU THE LETTER OF
REP.--LET ME KNOW OF WHAT ASSISTANCE I CAN BE--THANKS DOUG

Date: 11/03/1997 Time: 11:07AM

To: WITMERD - Doug Witmer
cc: NIEVESE - Ed Nieves
cc: JONESD6 - E. Dean Jones

From: Ed Nieves
Subject: SEE LOG--THANKS DOUG

DOUG:
LINDGREN IS ONE OF OUR BLUE RIBBON SHOPS AND AS FAR AS I CAN TELL FROM
THE LOG THIS WAS HANDLED AS A BLUE RIBBON ASSIGNMENT.



Date: 11/03/1997 Time: 10:13AM

To: NIEVESE - Ed Nieves
To: JONESD6 - E. Dean Jones
cc: WITMERD - Doug Witmer

From: Doug Witmer
Subject: SEE LOG--THANKS DOUG

PLEASE READ MY LOG AND CRM WITH DIRECTION THANKS DOUG

Date: 11/03/1997 Time: 12:20PM

To: CARLSOB - Bev Carlson
cc: OLEARYM - Mike O'leary

<..MORE..>

***** ACTIVITY LOG *****
 Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
 PH: Berg, Daniel G & Sharon E Time: 14:18:10
 Requester: David Cole Page # 0028

 Date Time Creator Assignee Cov Claimant
 <...CONTINUED...>
 From: Mike O'leary

Subject: SEE LOG--THANKS DOUG

Please get all the details and follow up with me. Thanks

Date: 11/03/1997 Time: 11:58AM

To: WITMERD - Doug Witmer
 cc: NIEVESE - Ed Nieves
 cc: OLEARYM - Mike O'leary
 cc: STITZER - Ronald Stitzel
 cc: POTOSNS - STEPHEN J. POTOSNAK

From: Ronald Stitzel

Subject: SEE LOG--THANKS DOUG

This is no longer my shop. Steve Potosnak is now handling Lindgren. I am unaware of any problems with this claim. Steve's phone number is 610-682-4814 and his fax is 610-682-7270.
 Mike - I cc'd you in case you want you or Bev involved.

Date: 11/03/1997 Time: 11:11AM

To: STITZER - Ronald Stitzel
 cc: WITMERD - Doug Witmer
 cc: NIEVESE - Ed Nieves

From: Doug Witmer

Subject: SEE LOG--THANKS DOUG

PLEASE CRM WITH FAX NUMBER SO I CAN FORWARD TO YOU THE LETTER OF REP.--LET ME KNOW OF WHAT ASSISTANCE I CAN BE--THANKS DOUG

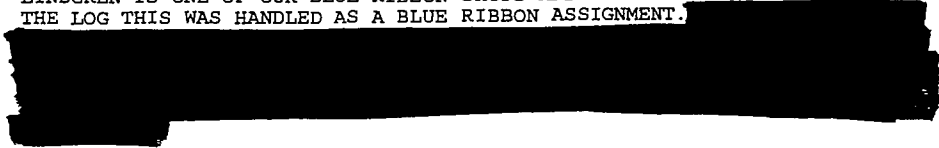
Date: 11/03/1997 Time: 11:07AM

To: WITMERD - Doug Witmer
 cc: NIEVESE - Ed Nieves
 cc: JONESD6 - E. Dean Jones

From: Ed Nieves

Subject: SEE LOG--THANKS DOUG

DOUG:
 LINDGREN IS ONE OF OUR BLUE RIBBON SHOPS AND AS FAR AS I CAN TELL FROM THE LOG THIS WAS HANDLED AS A BLUE RIBBON ASSIGNMENT.



***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0029

Date Time Creator Assignee Cov Claimant

[REDACTED]

Date: 11/03/1997 Time: 10:13AM

To: NIEVESE - Ed Nieves
To: JONESD6 - E. Dean Jones
cc: WITMERD - Doug Witmer

From: Doug Witmer

Subject: SEE LOG--THANKS DOUG

PLEASE READ MY LOG AND CRM WITH DIRECTION THANKS DOUG

Date: 11/03/1997 Time: 12:20PM

To: CARLSOB - Bev Carlson
cc: OLEARYM - Mike O'leary

From: Mike O'leary

Subject: SEE LOG--THANKS DOUG

Please get all the details and follow up with me. Thanks

Date: 11/03/1997 Time: 11:58AM

To: WITMERD - Doug Witmer
cc: NIEVESE - Ed Nieves
cc: OLEARYM - Mike O'leary
cc: STITZER - Ronald Stitzel
cc: POTOSNS - STEPHEN J. POTOSNAK

From: Ronald Stitzel

Subject: SEE LOG--THANKS DOUG

This is no longer my shop. Steve Potosnak is now handling Lindgren. I am unaware of any problems with this claim. Steve's phone number is 610-682-4814 and his fax is 610-682-7270.
Mike - I cc'd you in case you want you or Bev involved.

Date: 11/03/1997 Time: 11:11AM

To: STITZER - Ronald Stitzel
cc: WITMERD - Doug Witmer
cc: NIEVESE - Ed Nieves

From: Doug Witmer
<..MORE..>

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0030

Date Time Creator Assignee Cov Claimant
<...CONTINUED...>
Subject: SEE LOG--THANKS DOUG

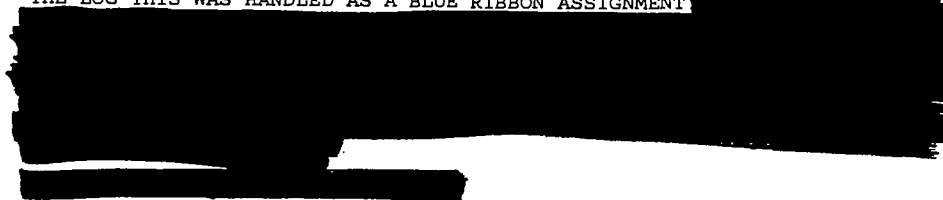
PLEASE CRM WITH FAX NUMBER SO I CAN FORWARD TO YOU THE LETTER OF
REP.--LET ME KNOW OF WHAT ASSISTANCE I CAN BE--THANKS DOUG

Date: 11/03/1997 Time: 11:07AM
To: WITMERD - Doug Witmer
cc: NIEVESE - Ed Nieves
cc: JONESD6 - E. Dean Jones

From: Ed Nieves

Subject: SEE LOG--THANKS DOUG

DOUG:
LINDGREN IS ONE OF OUR BLUE RIBBON SHOPS AND AS FAR AS I CAN TELL FROM
THE LOG THIS WAS HANDLED AS A BLUE RIBBON ASSIGNMENT



Date: 11/03/1997 Time: 10:13AM
To: NIEVESE - Ed Nieves
To: JONESD6 - E. Dean Jones
cc: WITMERD - Doug Witmer

From: Doug Witmer

Subject: SEE LOG--THANKS DOUG

PLEASE READ MY LOG AND CRM WITH DIRECTION THANKS DOUG

Date: 11/03/1997 Time: 12:20PM
To: CARLSOB - Bev Carlson
cc: OLEARYM - Mike O'leary

From: Mike O'leary

Subject: SEE LOG--THANKS DOUG

Please get all the details and follow up with me. Thanks

Date: 11/03/1997 Time: 11:58AM
<..MORE..>

*****ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0031

Date Time Creator Assignee Cov Claimant
<...CONTINUED...>
To: WITMERD - Doug Witmer
cc: NIEVESE - Ed Nieves
cc: OLEARYM - Mike O'leary
cc: STITZER - Ronald Stitzel
cc: POTOSNS - STEPHEN J. POTOSNAK

From: Ronald Stitzel

Subject: SEE LOG--THANKS DOUG

This is no longer my shop. Steve Potosnak is now handling Lindgren. I am unaware of any problems with this claim. Steve's phone number is 610-682-4814 and his fax is 610-682-7270.
Mike - I cc'd you in case you want you or Bev involved.

Date: 11/03/1997 Time: 11:11AM

To: STITZER - Ronald Stitzel
cc: WITMERD - Doug Witmer
cc: NIEVESE - Ed Nieves

From: Doug Witmer

Subject: SEE LOG--THANKS DOUG

PLEASE CRM WITH FAX NUMBER SO I CAN FORWARD TO YOU THE LETTER OF REP.--LET ME KNOW OF WHAT ASSISTANCE I CAN BE--THANKS DOUG

Date: 11/03/1997 Time: 11:07AM

To: WITMERD - Doug Witmer
cc: NIEVESE - Ed Nieves
cc: JONESD6 - E. Dean Jones

From: Ed Nieves

Subject: SEE LOG--THANKS DOUG

DOUG:
LINDGREN IS ONE OF OUR BLUE RIBBON SHOPS AND AS FAR AS I CAN TELL FROM THE LOG THIS WAS HANDLED AS A BLUE RIBBON ASSIGNMENT.



Date: 11/03/1997 Time: 10:13AM

<...MORE...>

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0032

Date Time Creator Assignee Cov Claimant
<...CONTINUED...>
To: NIEVESE - Ed Nieves
To: JONESD6 - E. Dean Jones
cc: WITMERD - Doug Witmer

From: Doug Witmer

Subject: SEE LOG--THANKS DOUG

PLEASE READ MY LOG AND CRM WITH DIRECTION THANKS DOUG

Date: 11/03/1997 Time: 12:20PM

To: CARLSOB - Bev Carlson
cc: OLEARYM - Mike O'leary

From: Mike O'leary

Subject: SEE LOG--THANKS DOUG

Please get all the details and follow up with me. Thanks

Date: 11/03/1997 Time: 11:58AM

To: WITMERD - Doug Witmer
cc: NIEVESE - Ed Nieves
cc: OLEARYM - Mike O'leary
cc: STITZER - Ronald Stitzel
cc: POTOSNS - STEPHEN J. POTOSNAK

From: Ronald Stitzel

Subject: SEE LOG--THANKS DOUG

This is no longer my shop. Steve Potosnak is now handling Lindgren. I
am unaware of any problems with this claim. Steve's phone number is
610-682-4814 and his fax is 610-682-7270.
Mike - I cc'd you in case you want you or Bev involved.

Date: 11/03/1997 Time: 11:11AM

To: STITZER - Ronald Stitzel
cc: WITMERD - Doug Witmer
cc: NIEVESE - Ed Nieves

From: Doug Witmer

Subject: SEE LOG--THANKS DOUG

PLEASE CRM WITH FAX NUMBER SO I CAN FORWARD TO YOU THE LETTER OF
REP.--LET ME KNOW OF WHAT ASSISTANCE I CAN BE--THANKS DOUG

Date: 11/03/1997 Time: 11:07AM

<..MORE..>

NW75

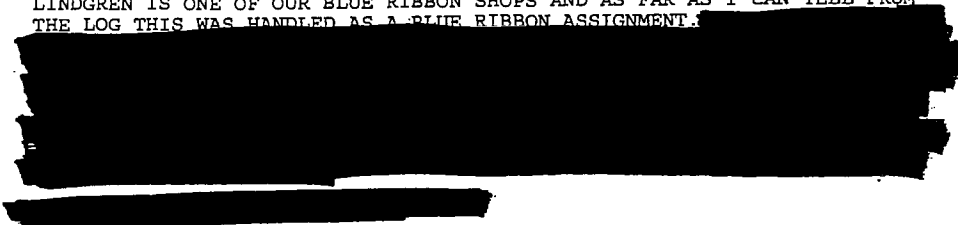
***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0033

Date Time Creator Assignee Cov Claimant
<...CONTINUED:r.>
To: WITMERD - Doug Witmer
cc: NIEVESE - Ed Nieves
cc: JONESD6 - E. Dean Jones

From: Ed Nieves

Subject: SEE LOG--THANKS DOUG

DOUG:
LINDGREN IS ONE OF OUR BLUE RIBBON SHOPS AND AS FAR AS I CAN TELL FROM
THE LOG THIS WAS HANDLED AS A BLUE RIBBON ASSIGNMENT.



Date: 11/03/1997 Time: 10:13AM

To: NIEVESE - Ed Nieves
To: JONESD6 - E. Dean Jones
cc: WITMERD - Doug Witmer

From: Doug Witmer

Subject: SEE LOG--THANKS DOUG

PLEASE READ MY LOG AND CRM WITH DIRECTION THANKS DOUG

Date: 11/03/1997 Time: 10:19AM

To: YOTTEYG - Gael Yottey
cc: WITMERD - Doug Witmer

From: Doug Witmer

Subject: RETRIEVE FILE FROM OBETZ-THANKS DOUG

Date: 11/03/1997 Time: 10:19AM

To: YOTTEYG - Gael Yottey
cc: WITMERD - Doug Witmer

From: Doug Witmer

<..MORE..>

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0034

Date Time Creator Assignee Cov Claimant
<...CONTINUED...>
Subject: RETRIEVE FILE FROM OBETZ-THANKS DOUG

Date: 11/03/1997 Time: 12:20PM
To: CARLSOB - Bev Carlson
cc: OLEARYM - Mike O'leary
From: Mike O'leary
Subject: SEE LOG--THANKS DOUG
Please get all the details and follow up with me. Thanks

Date: 11/03/1997 Time: 11:58AM
To: WITMERD - Doug Witmer
cc: NIEVESE - Ed Nieves
cc: OLEARYM - Mike O'leary
cc: STITZER - Ronald Stitzel
cc: POTOSNS - STEPHEN J. POTOSNAK
From: Ronald Stitzel
Subject: SEE LOG--THANKS DOUG

This is no longer my shop. Steve Potosnak is now handling Lindgren. I
am unaware of any problems with this claim. Steve's phone number is
610-682-4814 and his fax is 610-682-7270.
Mike - I cc'd you in case you want you or Bev involved.

Date: 11/03/1997 Time: 11:11AM
To: STITZER - Ronald Stitzel
cc: WITMERD - Doug Witmer
cc: NIEVESE - Ed Nieves
From: Doug Witmer
Subject: SEE LOG--THANKS DOUG

PLEASE CRM WITH FAX NUMBER SO I CAN FORWARD TO YOU THE LETTER OF
REP.--LET ME KNOW OF WHAT ASSISTANCE I CAN BE--THANKS DOUG

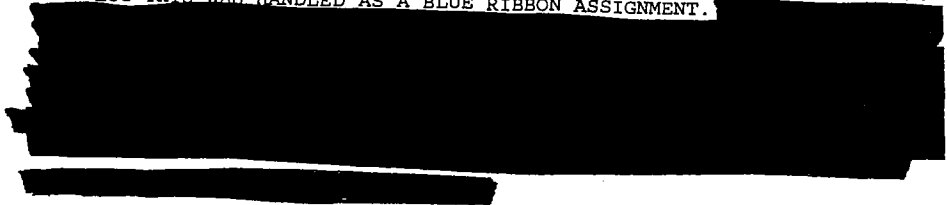
Date: 11/03/1997 Time: 11:07AM
To: WITMERD - Doug Witmer
cc: NIEVESE - Ed Nieves
cc: JONESD6 - E. Dean Jones
From: Ed Nieves
<..MORE..>

NW 77

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0035

Date Time Creator Assignee Cov Claimant
<...CONTINUED...>
Subject: SEE LOG--THANKS DOUG

DOUG:
LINDGREN IS ONE OF OUR BLUE RIBBON SHOPS AND AS FAR AS I CAN TELL FROM
THE LOG THIS WAS HANDLED AS A BLUE RIBBON ASSIGNMENT.



To: NIEVESE - Ed Nieves Date: 11/03/1997 Time: 10:13AM
To: JONESD6 - E. Dean Jones
cc: WITMERD - Doug Witmer

From: Doug Witmer
Subject: SEE LOG--THANKS DOUG

PLEASE READ MY LOG AND CRM WITH DIRECTION THANKS DOUG

To: CARLSOB - Bev Carlson Date: 11/03/1997 Time: 12:20PM
cc: OLEARYM - Mike O'leary

From: Mike O'leary
Subject: SEE LOG--THANKS DOUG

Please get all the details and follow up with me. Thanks

To: WITMERD - Doug Witmer Date: 11/03/1997 Time: 11:58AM
cc: NIEVESE - Ed Nieves
cc: OLEARYM - Mike O'leary
cc: STITZER - Ronald Stitzel
cc: POTOSNS - STEPHEN J. POTOSNAK

From: Ronald Stitzel
Subject: SEE LOG--THANKS DOUG

This is no longer my shop. Steve Potosnak is now handling Lindgren. I
am unaware of any problems with this claim. Steve's phone number is
<...MORE...>

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0036

Date Time Creator Assignee Cov Claimant

<...CONTINUED...>
610-682-4814 and his fax is 610-682-7270.
Mike - I cc'd you in case you want you or Bev involved.

Date: 11/03/1997 Time: 11:11AM

To: STITZER - Ronald Stitzel
cc: WITMERD - Doug Witmer
cc: NIEVESE - Ed Nieves

From: Doug Witmer

Subject: SEE LOG--THANKS DOUG

PLEASE CRM WITH FAX NUMBER SO I CAN FORWARD TO YOU THE LETTER OF
REP.--LET ME KNOW OF WHAT ASSISTANCE I CAN BE--THANKS DOUG

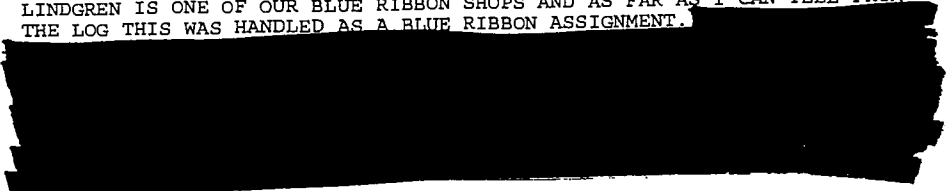
Date: 11/03/1997 Time: 11:07AM

To: WITMERD - Doug Witmer
cc: NIEVESE - Ed Nieves
cc: JONESD6 - E. Dean Jones

From: Ed Nieves

Subject: SEE LOG--THANKS DOUG

DOUG:
LINDGREN IS ONE OF OUR BLUE RIBBON SHOPS AND AS FAR AS I CAN TELL FROM
THE LOG THIS WAS HANDLED AS A BLUE RIBBON ASSIGNMENT.



Date: 11/03/1997 Time: 10:13AM

To: NIEVESE - Ed Nieves
To: JONESD6 - E. Dean Jones
cc: WITMERD - Doug Witmer

From: Doug Witmer

Subject: SEE LOG--THANKS DOUG

PLEASE READ MY LOG AND CRM WITH DIRECTION THANKS DOUG

Date: 11/03/1997 Time: 12:20PM

<...MORE...>

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0037

Date Time Creator Assignee Cov Claimant
<...CONTINUED...>
To: CARLSOB - Bev Carlson
cc: OLEARYM - Mike O'leary

From: Mike O'leary

Subject: SEE LOG--THANKS DOUG

Please get all the details and follow up with me. Thanks

Date: 11/03/1997 Time: 11:58AM

To: WITMERD - Doug Witmer
cc: NIEVESE - Ed Nieves
cc: OLEARYM - Mike O'leary
cc: STITZER - Ronald Stitzel
cc: POTOSNS - STEPHEN J. POTOSNAK

From: Ronald Stitzel

Subject: SEE LOG--THANKS DOUG

This is no longer my shop. Steve Potosnak is now handling Lindgren. I am unaware of any problems with this claim. Steve's phone number is 610-682-4814 and his fax is 610-682-7270. Mike - I cc'd you in case you want you or Bev involved.

Date: 11/03/1997 Time: 11:11AM

To: STITZER - Ronald Stitzel
cc: WITMERD - Doug Witmer
cc: NIEVESE - Ed Nieves

From: Doug Witmer

Subject: SEE LOG--THANKS DOUG

PLEASE CRM WITH FAX NUMBER SO I CAN FORWARD TO YOU THE LETTER OF REP.--LET ME KNOW OF WHAT ASSISTANCE I CAN BE--THANKS DOUG

Date: 11/03/1997 Time: 11:07AM

To: WITMERD - Doug Witmer
cc: NIEVESE - Ed Nieves
cc: JONESD6 - E. Dean Jones

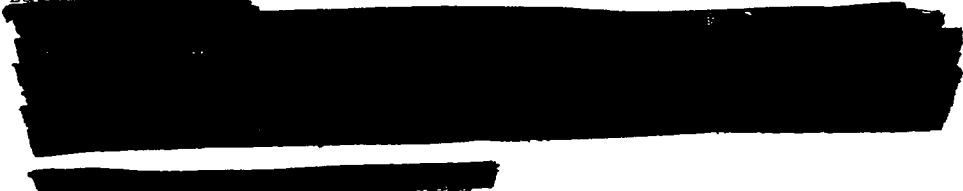
From: Ed Nieves

Subject: SEE LOG--THANKS DOUG

DOUG:
LINDGREN IS ONE OF OUR BLUE RIBBON SHOPS AND AS FAR AS I CAN TELL FROM THE LOG THIS WAS HANDLED AS A BLUE RIBBON ASSIGNMENT

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0038

Date Time Creator Assignee Cov Claimant



Date: 11/03/1997 Time: 10:13AM

To: NIEVESE - Ed Nieves
To: JONESD6 - E. Dean Jones
cc: WITMERD - Doug Witmer

From: Doug Witmer

Subject: SEE LOG--THANKS DOUG

PLEASE READ MY LOG AND CRM WITH DIRECTION THANKS DOUG

11/03/1997 10:12AM WITMERD WITMERD

<>0025 CONTACT RECEIVED CALL FROM BEN MAYERSON ATTY FOR PH-THYE
ARE PREPARING A COMPLAINT AGAINST LINDGREN CHRY/PLY FOR WORK NOT DONE
PROPERLY RECEIVED A LETTER OF REPRESENTATION FROM ATTY VIA FAX-ATTY
WANTS COPY OF FILE SENT TO HIM AND A RETURN CALL TO HIM WITH THE EST
AND AMOUNT NATIONWIDE PAID TO LINDGREN-TOLD ATTY I WILL CHECK WITH
MANAGEMENT AND RETURN CALL ASAP

05/01/1997 07:59AM STITZER WITMERD COLL Daniel G & Sharon E Berg

Check for \$160.33 payable to LINDGREN CHRYSLER PLYMOUTH INC 1600
LANCASTER AVE READING PA 19607 - Mechanical Check

05/01/1997 07:59AM JONESD6 WITMERD

NOA for Check Authorization approved by JONESD6 for STITZER

04/30/1997 10:17AM STITZER WITMERD

NOA for Check Authorization sent to JONESD6 from WITMERD

***** ACTIVITY LOG *****
 Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
 PH: Berg, Daniel G & Sharon E Time: 14:18:10
 Requester: David Cole Page # 0039

 Date Time Creator Assignee Cov Claimant

04/30/1997 10:15AM STITZER UNASSIGN
 PROVIDER LINDGREN CHRYSLER PLYMOUTH INC CONTRACTOR added

04/30/1997 10:13AM STITZER UNASSIGN
 0200 ADVISORY COMMENTS: PDS - Berg, Daniel G & Sharon E Error in
 check issued. Was short by \$160.33. Issued another check.

04/14/1997 08:05AM STITZER WITMERD COLL Daniel G & Sharon E Berg
 Check for \$11975.66 payable to LINDGREN CHRYSLER PLYMOUTH INC 1600
 LANCASTER AVE READING PA 19607 - Mechanical Check

04/14/1997 08:04AM JONESD6 WITMERD
 NOA for Check Authorization approved by JONESD6 for STITZER

04/12/1997 06:56PM STITZER WITMERD
 NOA for Check Authorization sent to JONESD6 from WITMERD

04/12/1997 06:54PM STITZER UNASSIGN
 PROVIDER LINDGREN CHRYSLER PLYMOUTH INC CONTRACTOR added

04/12/1997 06:50PM STITZER UNASSIGN
 0200 ADVISORY COMMENTS: PDS - Berg, Daniel G & Sharon E Reviewed
 file after shop sked me about payment. Appears that WITMERD did not
 follow up on FAX. Paid loss to shop.

04/12/1997 06:49PM STITZER WITMERD COLL Daniel G & Sharon E Berg
 RESERVE HOLD for COLL on Daniel G & Sharon E Berg assigned to
 WITMERD

NW 82

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0040

Date Time Creator Assignee Cov Claimant

03/10/1997 02:28PM WELKERK BLACKAL MEDBEN SHARON BERG
RESERVE closed for MEDBEN on SHARON BERG

03/10/1997 02:28PM WELKERK BLACKAL MEDBEN BERG, SHARON
0100 ADVISORY COMMENTS: TECH MGR - BERG, SHARON CASE BASE FILE
REVIEW....CLOSING ON CASE. BILLING PROCESSED.

03/10/1997 02:22PM BLACKAL BLACKAL MEDBEN SHARON BERG
Check for \$126.67 payable to READING HOSPITAL & MEDICAL CENTER PO BOX
16051 READING PA 19612 - Mechanical Check

03/10/1997 09:12AM WELKERK BLACKAL MEDBEN BERG, SHARON
0100 ADVISORY COMMENTS: TECH MGR - BERG, SHARON CASE BASE FILE
REVIEW....CLOSING AFTER ER BILLING PROCESSED. RECORDS REQUESTED BUT
NOT HERE YET. NO FURTHER CARE ANTICIPATED.

03/07/1997 01:49PM BLACKAL BLACKAL
REVIEWED FOR CASE. ONLY ONE BILL IN FILE - AWAITING RECORDS. AMOUNT
\$126.67. PAY AND CLOSE OR CASE AT \$500.00.

03/07/1997 01:48PM BLACKAL BLACKAL
PC TO READING HOSPITAL. BILLING OFFICE VERIFIED THAT BILL IS FOR
HOSPITAL AND ER DOCTOR CHARGE. THIS IS ONLY BILL.

03/07/1997 01:44PM BLACKAL BLACKAL
PC TO SHARON BERG. SPOKE TO HUSBAND. HE INDICATED THE ONLY TX WAS
DAY OF ACCIDENT TO BE CHECKED OUT. SHE IS FINE.

Date: 02/14/1997 Time: 10:03AM

To: WITMERD - Doug Witmer
cc: BIXLERT - Troy Bixler

From: Troy Bixler

<..MORE..>

NW 83

***** ACTIVITY LOG *****
 Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
 PH: Berg, Daniel G & Sharon E Time: 14:18:10
 Requester: David Cole Page # 0041

 Date Time Creator Assignee Cov Claimant
 <...CONTINUED...>
 Subject: COLL COV

Spoke with shop , they will fax total bill to your fax #
 THANK YOU!!

Date: 02/14/1997 Time: 09:17AM

To: BIXLERT - Troy Bixler
 cc: WITMERD - Doug Witmer

From: Doug Witmer

Subject: COLL COV

I DID NOT RECEIVE ANY BILL FOR THIS-IF YOU HAVE IT PLEASE CRM/FAX TO ME
 717 399-5679---THANKS DOUG

Date: 02/06/1997 Time: 02:17PM

To: WITMERD - Doug Witmer
 To: BIXLERT - Troy Bixler
 cc: LANED1 - DOUGLAS T. LANE

From: DOUGLAS T. LANE

Subject: COLL COV

FELLA'S THE SHOP NEEDS THEIR MONEY. THEY BUMPED ME ON A REINSPECTION. WE
 PAID THE PD?

Date: 02/14/1997 Time: 10:03AM

To: WITMERD - Doug Witmer
 cc: BIXLERT - Troy Bixler

From: Troy Bixler

Subject: COLL COV

Spoke with shop , they will fax total bill to your fax #
 THANK YOU!!

Date: 02/14/1997 Time: 09:17AM

To: BIXLERT - Troy Bixler
 cc: WITMERD - Doug Witmer

From: Doug Witmer

Subject: COLL COV

I DID NOT RECEIVE ANY BILL FOR THIS-IF YOU HAVE IT PLEASE CRM/FAX TO ME
 717 399-5679---THANKS DOUG
 <..MORE..>

NW 84

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

*****ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0042

Date Time Creator Assignee Cov Claimant
<...CONTINUED...> Date: 02/06/1997 Time: 02:17PM

To: WITMERD - Doug Witmer
To: BIXLERT - Troy Bixler
cc: LANED1 - DOUGLAS T. LANE

From: DOUGLAS T. LANE

Subject: COLL COV

FELLA'S THE SHOP NEEDS THEIR MONEY. THEY BUMPED ME ON A REINSPECTION. WE PAID THE PD?

To: WITMERD - Doug Witmer
cc: BIXLERT - Troy Bixler
Date: 02/14/1997 Time: 10:03AM

From: Troy Bixler

Subject: COLL COV

Spoke with shop , they will fax total bill to your fax #
THANK YOU!!

To: BIXLERT - Troy Bixler
cc: WITMERD - Doug Witmer
Date: 02/14/1997 Time: 09:17AM

From: Doug Witmer

Subject: COLL COV

I DID NOT RECEIVE ANY BILL FOR THIS-IF YOU HAVE IT PLEASE CRM/FAX TO ME
717 399-5679---THANKS DOUG

To: WITMERD - Doug Witmer
To: BIXLERT - Troy Bixler
cc: LANED1 - DOUGLAS T. LANE
Date: 02/06/1997 Time: 02:17PM

From: DOUGLAS T. LANE

Subject: COLL COV

FELLA'S THE SHOP NEEDS THEIR MONEY. THEY BUMPED ME ON A REINSPECTION. WE PAID THE PD?

To: WITMERD - Doug Witmer
<..MORE...> Date: 02/14/1997 Time: 10:03AM
NW 85

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0043

Date Time Creator Assignee Cov Claimant
<...CONTINUED...>
cc: BIXLERT - Troy Bixler

From: Troy Bixler

Subject: COLL COV

Spoke with shop , they will fax total bill to your fax #
THANK YOU!!

Date: 02/14/1997 Time: 09:17AM

To: BIXLERT - Troy Bixler
cc: WITMERD - Doug Witmer

From: Doug Witmer

Subject: COLL COV

I DID NOT RECEIVE ANY BILL FOR THIS-IF YOU HAVE IT PLEASE CRM/FAX TO ME
717 399-5679---THANKS DOUG

Date: 02/06/1997 Time: 02:17PM

To: WITMERD - Doug Witmer
To: BIXLERT - Troy Bixler
cc: LANED1 - DOUGLAS T. LANE

From: DOUGLAS T. LANE

Subject: COLL COV

FELLA'S THE SHOP NEEDS THEIR MONEY. THEY BUMPED ME ON A REINSPECTION. WE
PAID THE PD?

02/11/1997 02:48PM BLACKA1 BLACKA1

DOC sent to: READING HOSPITAL & MEDICAL CENTER from ANNE BLACK (Re:)
Request for Medical Documentation - Hospital/Dr. (Comments:) RQST
RCDS (Print Instr:) Mail

Date: 02/14/1997 Time: 10:03AM

To: WITMERD - Doug Witmer
cc: BIXLERT - Troy Bixler

From: Troy Bixler

Subject: COLL COV

Spoke with shop , they will fax total bill to your fax #
THANK YOU!!
<...MORE...>

NWBK

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0044

Date Time Creator Assignee Cov Claimant
<...CONTINUED...> Date: 02/14/1997 Time: 09:17AM

To: BIXLERT - Troy Bixler
cc: WITMERD - Doug Witmer

From: Doug Witmer

Subject: COLL COV

I DID NOT RECEIVE ANY BILL FOR THIS-IF YOU HAVE IT PLEASE CRM/FAX TO ME
717 399-5679---THANKS DOUG

Date: 02/06/1997 Time: 02:17PM

To: WITMERD - Doug Witmer
To: BIXLERT - Troy Bixler
cc: LANED1 - DOUGLAS T. LANE

From: DOUGLAS T. LANE

Subject: COLL COV

FELLA'S THE SHOP NEEDS THEIR MONEY. THEY BUMPED ME ON A REINSPECTION. WE
PAID THE PD?

Date: 02/14/1997 Time: 10:03AM

To: WITMERD - Doug Witmer
cc: BIXLERT - Troy Bixler

From: Troy Bixler

Subject: COLL COV

Spoke with shop , they will fax total bill to your fax #
THANK YOU!!

Date: 02/14/1997 Time: 09:17AM

To: BIXLERT - Troy Bixler
cc: WITMERD - Doug Witmer

From: Doug Witmer

Subject: COLL COV

I DID NOT RECEIVE ANY BILL FOR THIS-IF YOU HAVE IT PLEASE CRM/FAX TO ME
717 399-5679---THANKS DOUG

Date: 02/06/1997 Time: 02:17PM

To: WITMERD - Doug Witmer
To: BIXLERT - Troy Bixler
cc: LANED1 - DOUGLAS T. LANE
<..MORE..>

NW 87

***** ACTIVITY LOG *****
 Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
 PH: Berg, Daniel G & Sharon E Time: 14:18:10
 Requester: David Cole Page # 0045

 Date Time Creator Assignee Cov Claimant
 <...CONTINUED...>
 From: DOUGLAS T. LANE

Subject: COLL COV

FELLA'S THE SHOP NEEDS THEIR MONEY. THEY BUMPED ME ON A REINSPECTION. WE PAID THE PD?

Date: 02/14/1997 Time: 10:03AM

To: WITMERD - Doug Witmer
 cc: BIXLERT - Troy Bixler

From: Troy Bixler

Subject: COLL COV

Spoke with shop , they will fax total bill to your fax #
THANK YOU!!

Date: 02/14/1997 Time: 09:17AM

To: BIXLERT - Troy Bixler
 cc: WITMERD - Doug Witmer

From: Doug Witmer

Subject: COLL COV

I DID NOT RECEIVE ANY BILL FOR THIS-IF YOU HAVE IT PLEASE CRM/FAX TO ME
717 399-5679---THANKS DOUG

Date: 02/06/1997 Time: 02:17PM

To: WITMERD - Doug Witmer
 To: BIXLERT - Troy Bixler
 cc: LANEDI - DOUGLAS T. LANE

From: DOUGLAS T. LANE

Subject: COLL COV

FELLA'S THE SHOP NEEDS THEIR MONEY. THEY BUMPED ME ON A REINSPECTION. WE PAID THE PD?

Date: 02/04/1997 Time: 00:01AM

To: BLACKAI - Anne Black

From: CLASS

Subject: Continuous Claims Rep FWP

<..MORE...>

NW 88

***** ACTIVITY LOG *****
 Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
 PH: Berg, Daniel G & Sharon E Time: 14:18:10
 Requester: David Cole Page # 0046

 Date Time Creator Assignee Cov Claimant
 <...CONTINUED...>
 Continuous Claims Rep FWP

01/29/1997 01:35PM BLACKA1 BLACKA1

<<<FPB FORMS RECEIVED, INJURIES DESCRIBED AS NECK SPRAIN. SEEN AT
 READING HOSPITAL. PREVIOUS HX: BROKEN NECK. NOTHING ELSE
 DOCUMENTED ON FORMS.

Date: 01/21/1997 Time: 03:39PM

To: WITMERD - Doug Witmer
 cc: BIXLERT - Troy Bixler

From: Troy Bixler

Subject: Why did you close coll covg?

Date: 01/21/1997 Time: 03:39PM

To: WITMERD - Doug Witmer
 cc: BIXLERT - Troy Bixler

From: Troy Bixler

Subject: Why did you close coll covg?

01/16/1997 08:13AM WITMERD WITMERD COLL Daniel G & Sharon E Berg

RESERVE closed for COLL on Daniel G & Sharon E Berg

01/15/1997 03:47PM CARLSOB UNASSIGN

REC'D AUTHORIZATION TO PAY DIRECT"FROM LINDGEN

01/07/1997 01:56PM BLACKA1 BLACKA1

DOC sent to: unknown from ANNE BLACK (Re:) PIP Package for - PA
 (Comments:) SHARON (Print Instr:) Mail

NW 89

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0047

Date Time Creator Assignee Cov Claimant

01/07/1997 01:54PM BLACKA1 BLACKA1

PC TO S/B. SHE STATED SHE COMPLETED AND RETURNED FORMS AWHILE AGO. I EXPLAINED THAT I WOULD MAIL OUT ANOTHER SET AND SHE WOULD NEED TO RETURN TO ME. SHE SAID SHE IS DOING OK MEDICALLY. SHE JUST REINJURED AN OLD NECK INJURY.

12/30/1996 08:58AM BLACKA1 BLACKA1

PC TO PH. LEFT MESSAGE WITH MAN FOR S/B TO CALLBACK. NEED TO VERIFY IF FORMS RETURNED.

12/30/1996 08:55AM BLACKA1 BLACKA1

DOC sent to: READING HOSPITAL & MEDICAL CENTER from ANNE BLACK (Re:) Free Form (FPB FORMS NOT REC'D-PARTY) (Comments:) ack bill, no aob (Print Instr:) Mail cc: Daniel G & Sharon E Berg RD 3658 MOHNTON PA 19540-9804

Date: 12/24/1996 Time: 00:01AM
To: BLACKA1 - Anne Black
From: CLASS
Subject: Continuous Claims Rep FWP
Continuous Claims Rep FWP

Date: 12/20/1996 Time: 12:22PM
To: WITMERD - Doug Witmer
cc: JONESD6 - E. Dean Jones
From: E. Dean Jones
Subject: Continuous Manager FWP

WHAT IS STATUS OF THIS COLL ASSIGNMENT TO YOU?

Date: 12/20/1996 Time: 00:01AM
To: JONESD6 - E. Dean Jones
From: Doug Witmer
Subject: Continuous Manager FWP
<..MORE..>

NW 90

***** ACTIVITY LOG *****
 Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
 PH: Berg, Daniel G & Sharon E Time: 14:18:10
 Requester: David Cole Page # 0048

 Date Time Creator Assignee Cov Claimant
 <...CONTINUED...>
 Continuous Manager FWP

Date: 12/20/1996 Time: 12:22PM

To: WITMERD - Doug Witmer
 cc: JONESD6 - E. Dean Jones

From: E. Dean Jones

Subject: Continuous Manager FWP

WHAT IS STATUS OF THIS COLL ASSIGNMENT TO YOU?

Date: 12/20/1996 Time: 00:01AM

To: JONESD6 - E. Dean Jones

From: Doug Witmer

Subject: Continuous Manager FWP

Continuous Manager FWP

Date: 12/20/1996 Time: 12:22PM

To: WITMERD - Doug Witmer
 cc: JONESD6 - E. Dean Jones

From: E. Dean Jones

Subject: Continuous Manager FWP

WHAT IS STATUS OF THIS COLL ASSIGNMENT TO YOU?

Date: 12/20/1996 Time: 00:01AM

To: JONESD6 - E. Dean Jones

From: Doug Witmer

Subject: Continuous Manager FWP

Continuous Manager FWP

Date: 12/10/1996 Time: 00:01AM

To: WITMERD - Doug Witmer

From: CLASS

Subject: Continuous Claims Rep FWP

<..MORE..>

NW91

***** ACTIVITY LOG *****
 Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
 PH: Berg, Daniel G & Sharon E Time: 14:18:10
 Requester: David Cole Page # 0049

 Date Time Creator Assignee Cov Claimant
 <...CONTINUED...>
 Continuous Claims Rep FWP

11/26/1996 12:03PM BLACKA1 BLACKA1

PC TO PH. LEFT MESSAGE FOR SHARON TO CALL ME BACK. LEFT MESSAGE WITH DANIEL.

Date: 11/26/1996 Time: 00:01AM

To: BLACKA1 - Anne Black

From: CLASS

Subject: Continuous Claims Rep FWP

Continuous Claims Rep FWP

11/20/1996 10:30AM WELKERK BLACKA1 MEDBEN BERG, SHARON

0100 ADVISORY COMMENTS: TECH MGR - BERG, SHARON FILE REVIEW...MEDBEN ON FORMULA. WAITING FOR F.P.FORMS. READING HOSP. BILLING HERE...SPRAIN UPPER ARM/SHOULDER. FOLLOWUP TO OBTAIN FORMS.

11/20/1996 10:28AM WELKERK BLACKA1 MEDBEN Daniel G & Sharon E Berg

RESERVE closed for MEDBEN on Daniel G & Sharon E Berg

11/11/1996 10:53AM BLACKA1 BLACKA1

REVIEWED FILE. AWAITING AOBs. ONE BILL REC'D TO DATE.

11/11/1996 10:52AM BLACKA1 BLACKA1

DOC sent to: READING HOSPITAL & MEDICAL CENTER from ANNE BLACK (Re:) Free Form (FPB FORMS NOT REC'D-PARTY) (Comments:) ack bill, no aob (Print Instr:) Mail cc: Daniel G & Sharon E Berg RD 3658 MOHNTON PA 19540-9804

11/11/1996 10:50AM BLACKA1 UNASSIGN

PROVIDER READING HOSPITAL & MEDICAL CENTER HOSPITAL added

<...MORE...>

NW92

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0050

Date Time Creator Assignee Cov Claimant
<...CONTINUED...>

Date: 11/11/1996 Time: 00:01AM
To: BLACKAI - Anne Black
From: CLASS
Subject: Continuous Claims Rep FWP
Continuous Claims Rep FWP

Date: 11/08/1996 Time: 04:12PM
To: BLACKAI - Anne Black
From: Index Bureau
Subject: Injury Index Hit

The Injury Index bureau has returned the following information:
===== Initiating Claim =====
Initiating Control #: 9630612787
Return Reason Code: Initial
Case File #: 5837C 137421090496
Claim Report Date: 110196
Customer: NATIONWIDE INSURANCE
Customer Address: PO BOX 2655 *
HARRISBURG PA 171050000
Claimant Name: SHARON BERG
Claimant Address: RD 3658 MOHNTON PA 195400000
Claimant SSN: 194423929
Claimant DOB or AGE: 031652
Claim Type: AUTO
Accident Date: 090496
Accident Injuries: NECK PA 000000000
Accident Address:
Insured Name: BERG, DANIEL G & SHARON E
===== Matching Claim =====
Document Control #: 9528229694
Reason for match: CLAIMANT ADDRESS IS SIMILAR
Return Reason Code: Initial
Case File #: 00373703
Claim Report Date: 100995
Customer: INFINITY GROUP
Customer Address: PO BOX 830695
BIRMINGHAM AL 352830695
Claimant Name: NICOLE L BERG
Claimant Address: RD 3658 MOHNTON PA 195400000
<..MORE...>

NW 93

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0051

Date Time Creator Assignee Cov Claimant
<...CONTINUED...>
Claimant SSN: 000000000
Claimant DOB or AGE: 061773
Claim Type: AUTO
Accident Date: 071195
Accident Injuries: UNKKNOWN PA 000000000
Accident Address:
Insured Name: BERG, NICOLE L
Insured Address: UNKNOWN PA000000000 000000000

10/29/1996 03:08PM BLACKA1 BLACKA1
DOC sent to: unknown from ANNE BLACK (Re:) PIP Package for - PA
(Comments:) SHARON BERG (Print Instr:) SASE Mail

10/29/1996 03:06PM BLACKA1 UNASSIGN BERG, SHARON
INDEX - INITIAL INDEX SENT FOR CLMT: BERG, SHARON CURRENT
INFORMATION WITH INDEX BUREAU: *CLAIM KEY: 5837C
137421090496
*POLICYHOLDER: BERG, DANIEL G & SHARON E
*TYPE OF CLAIM: AUTO
*LOSS STATE: PA
*CLAIMANT NAME:
SHARON BERG
*CLAIMANT ADDRESS: RD 3658 PA 19540
MOHNTON
*CLAIMANT DOB: 19520316
*CLAIMANT SSN:
194423929
*CLAIMANT OCCUPATION:
*CLAIMANT INJURIES: NECK
*FACILITY INFO:
ADDRESS: *LAW FIRM
INFO:
ADDRESS:
* INDICATES NEW OR CHANGED INFORMATION.

10/29/1996 03:06PM BLACKA1 BLACKA1
PC TO SHARON BERG. SHE WAS TREATED AT READING HOSPITAL THE NIGHT OF
THE ACCIDENT. NO XRAY OR AMBULANCE. SHE DOES NOT NEED ANY FURTHER
TX. SHE HAS RETURNED TO HER PRE-ACCIDENT CONDITION. SHE DID HAVE
NECK PROBLEMS FROM YEARS AGO. SHE MISSED ONE DAY OF WORK.

NW94

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0052

Date Time Creator Assignee Cov Claimant

10/29/1996 03:02PM BLACKA1 BLACKA1 MEDBEN SHARON BER



10/29/1996 03:02PM BLACKA1 UNASSIGN

CLAIMANT SHARON<BERG added

10/25/1996 09:17AM BLACKA1 BLACKA1

PC TO PH. LEFT MESSAGE FOR SHARON TO CALL ME BACK. SHE WILL BE HOME AFTER 12:30PM TODAY.

Date: 10/16/1996 Time: 07:44AM

To: BLACKA1 - Anne Black
cc: DETWEIJ - Julie Detweiler

From: Julie Detweiler

Subject: medben

Sharon Berg sought treatment-check if more than the one bill I think I gave to you-and if not attempt to process under the MEDBEN I opened. See me if questions Thanks.

Date: 10/15/1996 Time: 04:04PM

To: DETWEIJ - Julie Detweiler
cc: BLACKA1 - Anne Black

From: Anne Black

Subject: medben

julie, this medben is closed but the log states you opened it, should I reopen or do I need to do something else (add clmt, etc.).

Date: 10/16/1996 Time: 07:44AM

To: BLACKA1 - Anne Black
cc: DETWEIJ - Julie Detweiler

From: Julie Detweiler

Subject: medben
<..MORE..>

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0053

Date Time Creator Assignee Cov Claimant

<...CONTINUED...>

Sharon Berg sought treatment-check if more than the one bill I think I gave to you-and if not attempt to process under the MEDBEN I opened. See me if questions Thanks.

Date: 10/15/1996 Time: 04:04PM

To: DETWEIJ - Julie Detweiler
cc: BLACKA1 - Anne Black

From: Anne Black

Subject: medben

julie, this medben is closed but the log states you opened it, should I reopen or do I need to do something else (add clmt, etc.).

Date: 10/16/1996 Time: 07:44AM

To: BLACKA1 - Anne Black
cc: DETWEIJ - Julie Detweiler

From: Julie Detweiler

Subject: medben

Sharon Berg sought treatment-check if more than the one bill I think I gave to you-and if not attempt to process under the MEDBEN I opened. See me if questions Thanks.

Date: 10/15/1996 Time: 04:04PM

To: DETWEIJ - Julie Detweiler
cc: BLACKA1 - Anne Black

From: Anne Black

Subject: medben

julie, this medben is closed but the log states you opened it, should I reopen or do I need to do something else (add clmt, etc.).

Date: 10/16/1996 Time: 07:44AM

To: BLACKA1 - Anne Black
cc: DETWEIJ - Julie Detweiler

From: Julie Detweiler

Subject: medben

Sharon Berg sought treatment-check if more than the one bill I think I gave to you-and if not attempt to process under the MEDBEN I opened. See
<..MORE..>

NWAK

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
Print Date: 07/29/1998
Claim Key: 5837C 137421 09041996 01 Time: 14:18:10
PH: Berg, Daniel G & Sharon E Page # 0054
Requester: David Cole

Date Time Creator Assignee Cov Claimant
<...CONTINUED...>
me if questions Thanks.

Date: 10/15/1996 Time: 04:04PM
To: DETWEIJ - Julie Detweiler
cc: BLACKA1 - Anne Black
From: Anne Black
Subject: medben

julie, this medben is closed but the log states you opened it, should I reopen or do I need to do something else (add clmt, etc.).

10/15/1996 12:36PM NOCEB NOCEB BI Shawn Seisler
Check for \$93.21 payable to Shawn Seisler 40 Joshua Circle Reinholds PA 17569 - Manual Check

10/15/1996 12:35PM NOCEB NOCEB BI Shawn Seisler
Check for \$600.94 payable to Shawn Seisler 40 Joshua Circle Reinholds PA 17569 - Manual Check

10/14/1996 02:31PM NOCEB NOCEB PD Shawn Seisler
Check for \$12731.02 payable to ERIE INSURANCE EXCHANGE A/S/O JENNIFER L SEISLER & SHAWN R SEISLER P. O. BOX 2013 MECHANICSBURG PA 170550710 - Mechanical Check

10/14/1996 02:31PM BURRISS NOCEB
NOA for Check Authorization approved by BURRISS for NOCEB

10/14/1996 01:32PM NOCEB NOCEB
NOA for Check Authorization sent to BURRISS from NOCEB

10/14/1996 01:22PM NOCEB NOCEB
0120 INVESTIGATION: POLICE RPT - PH PULLED FROM S/S TO TURN LEFT ONTO ALLEGHENY RD INTO THE PATH OF CLT WHO WAS TRAV ON ALLEGHENYVILLE RD WITH ROW. PH PULLED IN THE RF OF CLT VEH. POI ARE PH LF TO CLTS
<..MORE..>

nin 97

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0055

Date Time Creator Assignee Cov Claimant

<...CONTINUED:~.>
RF. SCENE INSPECTION REVEALED A WINDING ROAD BUT NO VIEW
OBSTRUCTIONS FROM S/S LOOKING ONTO ALLEGHENYVILLE RD. POSTED SPEED
IN THE VICINITY OF THE ACC IS 40MPH. DON'T SEE MUCH IN THE WAY OF
COMP NEG. WITH POI'S.



10/14/1996 08:48AM DETWEIJ UNASSIGN COLL Berg, Daniel G & Sharon E
0100 ADVISORY COMMENTS: FILE SPEC - Berg, Daniel G & Sharon E Recd
medical bill for S/B inFP3-no coverage opened.Assigned to HAML for
contact and forms.

Date: 10/14/1996 Time: 07:06AM
To: NOCEB - Barb Noce
cc: GUMMOD - DONNA GUMMO
From: DONNA GUMMO
Subject: TORT
BARB, THIS TORT WAS INPUT ON 9-30-96. YOU SHOULD HAVE RECEIVED A
MESSAGE FROM DEAN ARGOT ON THIS SUBJECT. THERE WAS A PROBLEM WITH CPS
PASSING THRU TO CLASS. HOME OFFICE WAS WORKING ON IT. YOU MAY WANT TO
CHECK WITH DEAN. THANKS, DONNA

Date: 10/11/1996 Time: 03:03PM
To: GUMMOD - DONNA GUMMO
cc: NOCEB - Barb Noce
From: Barb Noce
Subject: TORT
THE CLT SUMMARY SCREEN STILL SHOWS TORT "U" I HAVE A DRAFT TO POST, I
CANNOT POST IT UNTIL TORT IS CHANGED TO LIMITED.

Date: 10/14/1996 Time: 07:06AM
To: NOCEB - Barb Noce
cc: GUMMOD - DONNA GUMMO
From: DONNA GUMMO
<..MORE..>

***** ACTIVITY LOG *****
 Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
 PH: Berg, Daniel G & Sharon E Time: 14:18:10
 Requester: David Cole Page # 0056

 Date Time Creator Assignee Cov Claimant
 <...CONTINUED...>
 Subject: TORT

BARB, THIS TORT WAS INPUT ON 9-30-96. YOU SHOULD HAVE RECEIVED A MESSAGE FROM DEAN ARGOT ON THIS SUBJECT. THERE WAS A PROBLEM WITH CPS PASSING THRU TO CLASS. HOME OFFICE WAS WORKING ON IT. YOU MAY WANT TO CHECK WITH DEAN. THANKS, DONNA

Date: 10/11/1996 Time: 03:03PM

To: GUMMOD - DONNA GUMMO
 cc: NOCEB - Barb Noce

From: Barb Noce

Subject: TORT

THE CLT SUMMARY SCREEN STILL SHOWS TORT "U" I HAVE A DRAFT TO POST, I CANNOT POST IT UNTIL TORT IS CHANGED TO LIMITED.

Date: 10/14/1996 Time: 07:06AM

To: NOCEB - Barb Noce
 cc: GUMMOD - DONNA GUMMO

From: DONNA GUMMO

Subject: TORT

BARB, THIS TORT WAS INPUT ON 9-30-96. YOU SHOULD HAVE RECEIVED A MESSAGE FROM DEAN ARGOT ON THIS SUBJECT. THERE WAS A PROBLEM WITH CPS PASSING THRU TO CLASS. HOME OFFICE WAS WORKING ON IT. YOU MAY WANT TO CHECK WITH DEAN. THANKS, DONNA

Date: 10/11/1996 Time: 03:03PM

To: GUMMOD - DONNA GUMMO
 cc: NOCEB - Barb Noce

From: Barb Noce

Subject: TORT

THE CLT SUMMARY SCREEN STILL SHOWS TORT "U" I HAVE A DRAFT TO POST, I CANNOT POST IT UNTIL TORT IS CHANGED TO LIMITED.

Date: 10/14/1996 Time: 07:06AM

To: NOCEB - Barb Noce
 cc: GUMMOD - DONNA GUMMO

From: DONNA GUMMO

<..MORE..>

NW 99

***** ACTIVITY LOG *****
 Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
 PH: Berg, Daniel G & Sharon E Time: 14:18:10
 Requester: David Cole Page # 0057

 Date Time Creator Assignee Cov Claimant
 <...CONTINUED...>
 Subject: TORT

BARB, THIS TORT WAS INPUT ON 9-30-96. YOU SHOULD HAVE RECEIVED A MESSAGE FROM DEAN ARGOT ON THIS SUBJECT. THERE WAS A PROBLEM WITH CPS PASSING THRU TO CLASS. HOME OFFICE WAS WORKING ON IT. YOU MAY WANT TO CHECK WITH DEAN. THANKS, DONNA

Date: 10/11/1996 Time: 03:03PM

To: GUMMOD - DONNA GUMMO
 cc: NOCEB - Barb Noce

From: Barb Noce

Subject: TORT

THE CLT SUMMARY SCREEN STILL SHOWS TORT "U" I HAVE A DRAFT TO POST, I CANNOT POST IT UNTIL TORT IS CHANGED TO LIMITED.

10/11/1996 11:52AM WITMERD WITMERD

0140 EVALUATION OF DAMAGES: VEHICLE DAMAGE - Berg, Daniel G & Sharon E ENTERPRISE RENTAL CALLED AND LEFT MESS AS WELL AS AGENT LEFT MESS IF NATIONWIDE CAN EXTEND RENTAL TO PH-RETURNED CALL TO AGENT AND PH THAT I WILL ASK ED NIEVES AND REPORT BACK TO THEM

Date: 10/11/1996 Time: 11:08AM

To: NOCEB - Barb Noce
 cc: GUMMOD - DONNA GUMMO

From: DONNA GUMMO

Subject: TORT

ALREADY DONE ON 9-30-96. THANKS, PASER

Date: 10/11/1996 Time: 10:26AM

To: PASER - PA Claims Services
 cc: NOCEB - Barb Noce

From: Barb Noce

Subject: TORT

LIMITED TORT APPLIES TO CLT ID S/S1.

Date: 10/11/1996 Time: 11:08AM

To: NOCEB - Barb Noce
 <..MORE..>

NW 100

***** ACTIVITY LOG *****
 Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
 PH: Berg, Daniel G & Sharon E Time: 14:18:10
 Requester: David Cole Page # 0058

 Date Time Creator Assignee Cov Claimant
 <...CONTINUED...>
 cc: GUMMOD - DONNA GUMMO

From: DONNA GUMMO

Subject: TORT

ALREADY DONE ON 9-30-96. THANKS, PASER

Date: 10/11/1996 Time: 10:26AM

To: PASER - PA Claims Services
 cc: NOCEB - Barb Noce

From: Barb Noce

Subject: TORT

LIMITED TORT APPLIES TO CLT ID S/S1.

Date: 10/11/1996 Time: 11:08AM

To: NOCEB - Barb Noce
 cc: GUMMOD - DONNA GUMMO

From: DONNA GUMMO

Subject: TORT

ALREADY DONE ON 9-30-96. THANKS, PASER

Date: 10/11/1996 Time: 10:26AM

To: PASER - PA Claims Services
 cc: NOCEB - Barb Noce

From: Barb Noce

Subject: TORT

LIMITED TORT APPLIES TO CLT ID S/S1.

Date: 10/11/1996 Time: 11:08AM

To: NOCEB - Barb Noce
 cc: GUMMOD - DONNA GUMMO

From: DONNA GUMMO

Subject: TORT

ALREADY DONE ON 9-30-96. THANKS, PASER

<..MORE..>

NW 101

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0059

Date Time Creator Assignee Cov Claimant
<...CONTINUED...>

Date: 10/11/1996 Time: 10:26AM

To: PASER - PA Claims Services
cc: NOCEB - Barb Noce

From: Barb Noce

Subject: TORT

LIMITED TORT APPLIES TO CLT ID S/S1.

10/11/1996 10:25AM NOCEB UNASSIGN BI Shawn<Seifler

CLAIMANT Shawn<Seisler changed from Prev Name Shawn<Seifler 40
Joshua Circle Reinholds PA 17569 717 3360445 610 8567550

Date: 10/11/1996 Time: 00:01AM

To: NOCEB - Barb Noce

From: CLASS

Subject: First Claims Rep FWP

First Claims Rep FWP

10/07/1996 12:00PM WITMERD WITMERD LOU Daniel G & Sharon E Berg

Check for \$740.08 payable to ENTERPRISE RENT A CAR 125 MORGANTOWN
ROAD READING PA 196111947 - Mechanical Check

10/07/1996 11:58AM WITMERD UNASSIGN

PROVIDER ENTERPRISE RENT A CAR RENTAL AGENCIES added

Date: 09/30/1996 Time: 10:53AM

To: PASER - PA Claims Services
cc: NOCEB - Barb Noce

From: Barb Noce

Subject: TORT

LIMITED TORT APPLIES TO CLT ID S/S1. THANKS.

<..MORE...>

NW 108

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0060

Date Time Creator Assignee Cov Claimant
<...CONTINUED...> Date: 09/30/1996 Time: 10:53AM
To: PASER - PA Claims Services
cc: NOCEB - Barb Noce

From: Barb Noce

Subject: TORT

LIMITED TORT APPLIES TO CLT ID S/S1. THANKS.



09/30/1996 10:19AM NOCEB NOCEB

SUBSEQUENT CONTACT TT S/S THIS AM, HE IS DOING FINE, NO SIGNIFICANT
INJ TO THE WRIST. NEG FOR FX, JUST DIAG AS A SPRIAN, NO BRACES, ETC.
TOOK IT EASY WITH THE WRIST, DID SOME LIGHT DUTY WORK. ONLY MISSED
9 HOURS. THE PERSONNEL OFF WILL FAX ME WAGE INFO. OOP ARE 9 HOURS
WAGE, 5 DAYS RENTAL & ADV DED OF \$250. I WILL DELIVER SETTLEMENT
CHECK THIS WEEK IN PERSON.

09/27/1996 12:52PM NOCEB NOCEB BI Seifler, Shawn

Called Clmt: Seifler, Shawn Left Msg on Ans Mchn

09/27/1996 06:58AM STAMBAL NOCEB

Sent PR, RI from Ph and CC letter to Barb Noce.

Date: 09/26/1996 Time: 01:58PM
To: STAMBAL - Linda Stanbaugh
cc: NOCEB - Barb Noce

From: Barb Noce

Subject: PH RI/POLICE REPORT

PLEASE SEND ME PH RI AND THE POLICE REPORT.

<..MORE..>

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0061

Date Time Creator Assignee Cov Claimant
<...CONTINUED...>

Date: 09/26/1996 Time: 01:58PM

To: STAMBAL - Linda Stambaugh
cc: NOCEB - Barb Noce

From: Barb Noce

Subject: PH RI/POLICE REPORT

PLEASE SEND ME PH RI AND THE POLICE REPORT.

09/26/1996 01:05PM BURRISS NOCEB



09/26/1996 01:02PM BURRISS UNASSIGN PD Shawn<Seifler
LOSS Reassigned for PD on Shawn<Seifler to NOCEB

09/26/1996 01:02PM BURRISS NOCEB PD Shawn<Seifler
LOSS Reassigned for PD on Shawn<Seifler from 58BERK-BI

09/26/1996 01:02PM BURRISS UNASSIGN BI Shawn<Seifler
LOSS Reassigned for BI on Shawn<Seifler to NOCEB

09/26/1996 01:02PM BURRISS NOCEB BI Shawn<Seifler
LOSS Reassigned for BI on Shawn<Seifler from 58BERK-BI

09/26/1996 10:43AM STAMBAL STAMBAL PD Shawn<Seifler
LOSS Reassigned for PD on Shawn<Seifler to 58BERK-BI

***** ACTIVITY LOG *****
 Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
 PH: Berg, Daniel G & Sharon E Time: 14:18:10
 Requester: David Cole Page # 0062

Date Time Creator Assignee Cov Claimant

09/26/1996 10:43AM STAMBAL UNASSIGN PD Shawn<Seifler
 LOSS Reassigned for PD on Shawn<Seifler from STAMBAL

09/26/1996 10:43AM STAMBAL UNASSIGN BI Shawn Seifler
 RESERVE OPEN for BI on Shawn Seifler assigned to 58BERK-BI

09/26/1996 10:41AM STAMBAL STAMBAL
 0150 RESOLUTION STRATEGY: - CC adj advised their insured looking for 8 to 9 hours of loss work due to his wrist injury. They are going to be sending their subro papers in. Advised we will open BI for their insured. Proximate cause of accident is ph pulling out but ph feels clmts traveling too fast. This intersection is difficult to see because of a large barn on the corner.

09/26/1996 10:37AM STAMBAL STAMBAL
 Rec'd call from Erie Ins advising they are going to be subrogating but wanted to tell us their insured Shawn lost 8 to 9 hrs of work because of his injury. All she knows it was a wrist injury. He carries LIMITED TORT. They paid 1 medical bill for him.

09/26/1996 10:35AM STAMBAL UNASSIGN PD Shawn<Seifler
 CLAIMANT Shawn<Seifler changed from Shawn<Seifler 40 Joshua Circle Reinholds PA 17569 Prev Home Ph UNKNOWN Prev Bus Ph UNKNOWN

09/26/1996 10:33AM STAMBAL UNASSIGN PD Shawn<Seifler
 CLAIMANT Shawn<Seifler changed from Shawn<Seifler Prev Addr Unknown Prev City/State/Zip BLANK UNKNOWN UNKNOWN

09/25/1996 09:20AM COFFMAJ1 COFFMAJ1
 TALKED TO SHOP TOLD THEM THAT I GAVE BACK TO THE FIELD DUE TO THE AMOUNT OF THE ESTIMATE, NEEDS FIELD ASSIGNMENT. TOLD SHOP TO CALL ME IF THEY DO NOT HEAR ANYTHING.

<..MORE..>

NW 107

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0063

Date Time Creator Assignee Cov Claimant
<...CONTINUED...> Date: 09/25/1996 Time: 08:59AM

To: WITMERD - Doug Witmer
cc: COFFMAJ1 - Jennifer Coffman

From: Jennifer Coffman

Subject:

DOUG, BRRP STANDARDS ANY ESTIMATE OVER \$10,000 NEEDS FIELD ASSIGNMENT.
ANY QUESTIONS CALL ME 717-657-6463. THANKS.

Date: 09/24/1996 Time: 03:24PM

To: COFFMAJ1 - Jennifer Coffman
cc: WITMERD - Doug Witmer

From: Doug Witmer

Subject:

VEH IS NOT A TOTAL LOSS- I INSPECTED VEH AND TOLD B/S THAT I WOULD
ADVISE TO YOU TO HAVE VEH TAKEN TO A SHOP TO HAVE FRAME REPAIRED SINCE
THEY OBVIOUSLY CAN NOT DO THE JOB WITH THE EQUIPMENT THEY HAVE-THE
REPAIRS ARE APPROX 50% OF ACV NATIONWIDE WILL NEVER RECOVER THE
DIFFERENCE IN SALVAGE VALUE--THANKS DOUG

Date: 09/25/1996 Time: 08:59AM

To: WITMERD - Doug Witmer
cc: COFFMAJ1 - Jennifer Coffman

From: Jennifer Coffman

Subject:

DOUG, BRRP STANDARDS ANY ESTIMATE OVER \$10,000 NEEDS FIELD ASSIGNMENT.
ANY QUESTIONS CALL ME 717-657-6463. THANKS.

Date: 09/24/1996 Time: 03:24PM

To: COFFMAJ1 - Jennifer Coffman
cc: WITMERD - Doug Witmer

From: Doug Witmer

Subject:

VEH IS NOT A TOTAL LOSS- I INSPECTED VEH AND TOLD B/S THAT I WOULD
ADVISE TO YOU TO HAVE VEH TAKEN TO A SHOP TO HAVE FRAME REPAIRED SINCE
THEY OBVIOUSLY CAN NOT DO THE JOB WITH THE EQUIPMENT THEY HAVE-THE
REPAIRS ARE APPROX 50% OF ACV NATIONWIDE WILL NEVER RECOVER THE
DIFFERENCE IN SALVAGE VALUE--THANKS DOUG

<...MORE...>

NW 105

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0064

Date Time Creator Assignee Cov Claimant
<...CONTINUED...>

Date: 09/25/1996 Time: 08:59AM
To: WITMERD - Doug Witmer
cc: COFFMAJ1 - Jennifer Coffman
From: Jennifer Coffman
Subject:

DOUG, BRRP STANDARDS ANY ESTIMATE OVER \$10,000 NEEDS FIELD ASSIGNMENT.
ANY QUESTIONS CALL ME 717-657-6463. THANKS.

Date: 09/24/1996 Time: 03:24PM
To: COFFMAJ1 - Jennifer Coffman
cc: WITMERD - Doug Witmer
From: Doug Witmer
Subject:

VEH IS NOT A TOTAL LOSS- I INSPECTED VEH AND TOLD B/S THAT I WOULD
ADVISE TO YOU TO HAVE VEH TAKEN TO A SHOP TO HAVE FRAME REPAIRED SINCE
THEY OBVIOUSLY CAN NOT DO THE JOB WITH THE EQUIPMENT THEY HAVE-THE
REPAIRS ARE APPROX 50% OF ACV NATIONWIDE WILL NEVER RECOVER THE
DIFFERENCE IN SALVAGE VALUE--THANKS DOUG

Date: 09/25/1996 Time: 08:59AM
To: WITMERD - Doug Witmer
cc: COFFMAJ1 - Jennifer Coffman
From: Jennifer Coffman
Subject:

DOUG, BRRP STANDARDS ANY ESTIMATE OVER \$10,000 NEEDS FIELD ASSIGNMENT.
ANY QUESTIONS CALL ME 717-657-6463. THANKS.

Date: 09/24/1996 Time: 03:24PM
To: COFFMAJ1 - Jennifer Coffman
cc: WITMERD - Doug Witmer
From: Doug Witmer
Subject:

VEH IS NOT A TOTAL LOSS- I INSPECTED VEH AND TOLD B/S THAT I WOULD
ADVISE TO YOU TO HAVE VEH TAKEN TO A SHOP TO HAVE FRAME REPAIRED SINCE
THEY OBVIOUSLY CAN NOT DO THE JOB WITH THE EQUIPMENT THEY HAVE-THE
<...MORE...>

NW 106

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0065

Date Time Creator Assignee Cov Claimant
<...CONTINUED...>
REPAIRS ARE APPROX 50% OF ACV NATIONWIDE WILL NEVER RECOVER THE
DIFFERENCE IN SALVAGE VALUE--THANKS DOUG



09/23/1996 11:47AM STAMBAL STAMBAL

0120 INVESTIGATION: POLICE RPT - Reviewed PR, No charges against anyone. Ph did stop for stop sign then began to make a left turn onto Alleghenyville Rd. Clmt on Alleghenyville Rd to left of ph struck ph on the l/f. Impact occurred 3'11" from the center lane. clmt contends to traveling 40mph. speed limit on the road is 40mph.

09/16/1996 01:46PM STAMBAL STAMBAL

Rec'd letter from Erie that they will be subrogating once they settle with their insured.

09/16/1996 01:46PM STAMBAL UNASSIGN ***** ERIE INS CO.

PARTY CLMT CARRIER ERIE INS CO. ATTN: KATHLEEN RITCHEY
CL#010170259389 changed from Prev Name ERIE INS CO. CL #010170259389
Prev Addr BLANK Prev City/State/Zip BLANK

09/11/1996 03:46PM WITMERD WITMERD

0140 EVALUATION OF DAMAGES: VEHICLE DAMAGE - Berg, Daniel G & Sharon E called b/s they have est of 12k but feel veh should be a total loss since unibody is twisted told wil insp-called ph at home told of assignment

09/11/1996 02:13PM STAMBAL UNASSIGN ***** Unknown

PARTY CLMT CARRIER ERIE INS CO. CL #010170259389 changed from Prev Name Unknown

09/11/1996 02:12PM STAMBAL UNASSIGN PD Unknown

CLAIMANT Shawn<Seifler changed from Prev Name Unknown Unknown
UNKNOWN UNKNOWN

***** ACTIVITY LOG *****
 Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
 PH: Berg, Daniel G & Sharon E Time: 14:18:10
 Requester: David Cole Page # 0066

 Date Time Creator Assignee Cov Claimant

09/11/1996 02:11PM STAMBAL STAMBAL

0120 INVESTIGATION: RI SUMMARY - Berg, Daniel G & Sharon E Spoke to Sharon she was SB on Gehard Rd at a stop sign. There is a large barn and bushes on the corner to her left. She checked left then right then left again and saw nothing and started to come out to make a left onto Alleghenynville Rd. As she started out clmt to her left on Alleghenynville was approaching very fast. The speed limit is 40MPH and she knows he was going faster than that. Clmt impacted the left front and front side spun ph around 4 times and she hit a pole. police did investigate. No witnesses. Ph did go to hospital to have neck checked out as she had broken her neck back in the early 80's. she is fine is not seeking any other tx. No injury to clmt. Clmt has no passengers. Ph had no passengers.

09/11/1996 12:16PM STAMBAL STAMBAL

DOC sent to: BRECKNOCK TWP POLICE DEPT from LINDA STAMBAUGH (Re:)
 Request for Police Report (Comments:) none (Print Instr:) Mail
 Check Attachment

09/11/1996 12:13PM STAMBAL STAMBAL PD Unk

Check for \$5.00 payable to BRECKNOCK TWP POLICE DEPT BOX 3286
 BERKS CO RD 3 MOHNTON PA 19540 - Mechanical
 Check

09/11/1996 12:12PM STAMBAL UNASSIGN

PROVIDER BRECKNOCK TWP POLICE DEPT POLICE added

09/11/1996 12:11PM STAMBAL STAMBAL

Called ph spoke to Mr. He will have his wife call to give stmt. He is not sure of name of street his wife was on.

09/11/1996 09:35AM GRAYV WITMERD COLL Daniel G & Sharon E <Berg

LOSS Reassigned for COLL on Daniel G & Sharon E <Berg from
 58LANC-MD

NW 109

***** ACTIVITY LOG *****
 Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
 PH: Berg, Daniel G & Sharon E Time: 14:18:10
 Requester: David Cole Page # 0067

Date Time Creator Assignee Cov Claimant
 09/11/1996 09:35AM GRAYV UNASSIGN COLL Daniel G & Sharon E <Berg
 LOSS Reassigned for COLL on Daniel G & Sharon E <Berg to WITMERD

09/10/1996 01:50PM COFFMAJ1 COFFMAJ1
 SHOP ASKED FOR TEAR DOWN TIME TALKED TO RON GAVE OKAY IF
 TOTAL...SHOP WILL FORWARD ESTIMATE AND PHOTOS.

09/10/1996 01:49PM COFFMAJ1 UNASSIGN COLL Daniel G & Sharon E <Berg
 LOSS Reassigned for COLL on Daniel G & Sharon E <Berg to 58LANC-MD
 - TOTAL LOSS...CAR IS AT LINDGREN.....THEY HAVE ESTIMATE.

09/10/1996 01:49PM COFFMAJ1 UNASSIGN COLL Daniel G & Sharon E <Berg
 LOSS Reassigned for COLL on Daniel G & Sharon E <Berg from
 58HARRBR26LIND - TOTAL LOSS...CAR IS AT LINDGREN.....THEY HAVE
 ESTIMATE.

09/05/1996 03:18PM STAMBAL STAMBAL
 Called PH: Berg, Daniel G & Sharon E No Answer

09/04/1996 02:41PM SHOMPEJ STAMBAL PD Unknown
 LOSS Reassigned for PD on Unknown from 58HBGAL

09/04/1996 02:41PM SHOMPEJ UNASSIGN PD Unknown
 LOSS Reassigned for PD on Unknown to STAMBAL

09/04/1996 01:17PM OOR UNASSIGN PD UNK
 RESERVE HOLD for PD on UNK assigned to 58HBGAL - 91 Claims Services

NW 110

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
PH: Berg, Daniel G & Sharon E Time: 14:18:10
Requester: David Cole Page # 0068

Date Time Creator Assignee Cov Claimant

09/04/1996 01:17PM OOR UNASSIGN COLL Daniel G & Sharon E Berg

RESERVE HOLD for COLL on Daniel G & Sharon E Berg assigned to
58HARRBR26LIND - 91 Claims Services

***** END OF REPORT *****

NW 111

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
 Claim Key: 5837C 137421 09041996 01 Print Date: 09/26/1996
 PH: Berg, Daniel G & Sharon E Time: 13:50:09
 Requester: Barb Noce Page # 0001

 Date Time Creator Assignee.Cov Claimant
 09/26/1996 01:05PM BURRISS NOCEB

0100 ADVISORY COMMENTS: - LOOKS LIKE THE MAJORITY IS ON US. CALL
 REP 1 AND ASK SHE FAX YOU THE PR AND SEND THE RI. CLMT IS USING COLL
 COV [REDACTED] PHOTOS OF THE SCENE MAY
 BE NEEDED. IN ANY CASE, IF WE CAN MEET WITH BI CLMT AND CONCLUDE BI
 FOR ECONOMIC LOSS OR SLIGHTLY MORE, [REDACTED]

09/26/1996 01:02PM BURRISS UNASSIGN PD Shawn<Seifler
 LOSS Reassigned for PD on Shawn<Seifler to NOCEB

09/26/1996 01:02PM BURRISS NOCEB PD Shawn<Seifler
 LOSS Reassigned for PD on Shawn<Seifler from 58BERK-BI

09/26/1996 01:02PM BURRISS UNASSIGN BI Shawn<Seifler
 LOSS Reassigned for BI on Shawn<Seifler to NOCEB

09/26/1996 01:02PM BURRISS NOCEB BI Shawn<Seifler
 LOSS Reassigned for BI on Shawn<Seifler from 58BERK-BI

09/26/1996 10:43AM STAMBAL STAMBAL PD Shawn<Seifler
 LOSS Reassigned for PD on Shawn<Seifler to 58BERK-BI

09/26/1996 10:43AM STAMBAL UNASSIGN PD Shawn<Seifler
 LOSS Reassigned for PD on Shawn<Seifler from STAMBAL

09/26/1996 10:43AM STAMBAL UNASSIGN BI Shawn Seifler
 RESERVE OPEN for BI on Shawn Seifler assigned to 58BERK-BI

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 09/26/1996
PH: Berg, Daniel G & Sharon E Time: 13:50:09
Requester: Barb Noce Page # 0002

Date Time Creator Assignee Cov Claimant

09/26/1996 10:41AM STAMBAL STAMBAL

0150 RESOLUTION STRATEGY: - CC adj advised their insured looking for 8 to 9 hours of loss work due to his wrist injury. They are going to be sending their subro papers in. Advised we will open BI for their insured. Proximate cause of accident is ph pulling out but ph feels clmts traveling too fast. This intersection is difficult to see because of a large barn on the corner.

09/26/1996 10:37AM STAMBAL STAMBAL

Rec'd call from Erie Ins advising they are going to be subrogating but wanted to tell us their insured Shawn lost 8 to 9 hrs of work because of his injury. All she knows it was a wrist injury. He carries LIMITED TORT. They paid 1 medical bill for him.

09/26/1996 10:35AM STAMBAL UNASSIGN PD Shawn<Seifler

CLAIMANT Shawn<Seifler changed from Shawn<Seifler 40 Joshua Circle Reinholds PA 17569 Prev Home Ph UNKNOWN Prev Bus Ph UNKNOWN

09/26/1996 10:33AM STAMBAL UNASSIGN PD Shawn<Seifler

CLAIMANT Shawn<Seifler changed from Shawn<Seifler Prev Addr Unknown Prev City/State/Zip BLANK UNKNOWN UNKNOWN

09/25/1996 09:20AM COFFMAJ1 COFFMAJ1

TALKED TO SHOP TOLD THEM THAT I GAVE BACK TO THE FIELD DUE TO THE AMOUNT OF THE ESTIMATE, NEEDS FIELD ASSIGNMENT. TOLD SHOP TO CALL ME IF THEY DO NOT HEAR ANYTHING.

To: WITMERD - Doug Witmer Date: 09/25/1996 Time: 08:59AM
cc: COFFMAJ1 - Jennifer Coffman

From: Jennifer Coffman

Subject:

[REDACTED]
ANY QUESTIONS CALL ME 717-657-6463. THANKS.

Date: 09/24/1996 Time: 03:24PM

<..MORE..>

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 09/26/1996
PH: Berg, Daniel G & Sharon E Time: 13:50:09
Requester: Barb Noce Page # 0003

Date Time Creator Assignee Cov Claimant
<...CONTINUED...>
To: COFFMAJ1 - Jennifer Coffman
cc: WITMERD - Doug Witmer

From: Doug Witmer
Subject:

VEH IS NOT A TOTAL LOSS- I INSPECTED VEH AND TOLD B/S THAT I WOULD
ADVISE TO YOU TO HAVE VEH TAKEN TO A SHOP TO HAVE FRAME REPAIRED
[REDACTED]
[REDACTED] THANKS DOUG

Date: 09/25/1996 Time: 08:59AM
To: WITMERD - Doug Witmer
cc: COFFMAJ1 - Jennifer Coffman

From: Jennifer Coffman
Subject:

[REDACTED]
ANY QUESTIONS CALL ME 717-657-6463. THANKS.

Date: 09/24/1996 Time: 03:24PM
To: COFFMAJ1 - Jennifer Coffman
cc: WITMERD - Doug Witmer

From: Doug Witmer
Subject:

VEH IS NOT A TOTAL LOSS- I INSPECTED VEH AND TOLD B/S THAT I WOULD
ADVISE TO YOU TO HAVE VEH TAKEN TO A SHOP TO HAVE FRAME REPAIRED
[REDACTED]
[REDACTED] THANKS DOUG

09/23/1996 11:48AM STAMBAL STAMBAL

0150 [REDACTED]

09/23/1996 11:47AM STAMBAL STAMBAL

0120 INVESTIGATION: POLICE RPT - Reviewed PR, No charges against
anyone. Ph did stop for stop sign then began to make a left turn
<..MORE..>

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 09/26/1996
PH: Berg, Daniel G & Sharon E Time: 13:50:09
Requester: Barb Noce Page # 0004

Date Time Creator Assignee Cov Claimant

<...CONTINUED...>
onto Alleghenyvilled Rd. Clmt on Alleghenyville Rd to left of ph
struck ph on the l/f. Impact occurred 3'11" from the center lane.
clmt contends to traveling 40mph. speed limit on the road is 40mph.

09/16/1996 01:46PM STAMBAL STAMBAL

Rec'd letter from Erie that they will be subrogating once they settle
with their insured.

09/16/1996 01:46PM STAMBAL UNASSIGN ***** ERIE INS CO.

PARTY CLMT CARRIER ERIE INS CO. ATTN: KATHLEEN RITCHEY
CL#010170259389 changed from Prev Name ERIE INS CO. CL #010170259389
Prev Addr BLANK Prev City/State/Zip BLANK

09/11/1996 03:46PM WITMERD WITMERD

0140 EVALUATION OF DAMAGES: VEHICLE DAMAGE - Berg, Daniel G & Sharon
E called b/s they have est of 12k but feel veh should be a total
loss since nobody is twisted told wil insp-called ph at home told of
assignment

09/11/1996 02:13PM STAMBAL UNASSIGN ***** Unknown

PARTY CLMT CARRIER ERIE INS CO. CL #010170259389 changed from Prev
Name Unknown

09/11/1996 02:12PM STAMBAL UNASSIGN PD Unknown

CLAIMANT Shawn<Seifler changed from Prev Name Unknown Unknown
UNKNOWN UNKNOWN

09/11/1996 02:11PM STAMBAL STAMBAL

0120 INVESTIGATION: RI SUMMARY - Berg, Daniel G & Sharon E Spoke to
Sharon she was SB on Gehard Rd at a stop sign. There is a large
barn and bushes on the corner to her left. She checked left then
right then left again and saw nothing and started to come out to make
a left onto Alleghenyville Rd. As she started out clmt to her left
on Alleghenville was approaching very fast. The speed limit is
40MPH and she knows he was going faster than that. Clmt impacted the
left front and front side spun ph around 4 times and she hit a pole.
police did investigate. No witnesses. Ph did go to hospital to have
neck checked out as she had broken her neck back in the early 80's.
<...MORE...>

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 09/26/1996
PH: Berg, Daniel G & Sharon E Time: 13:50:09
Requester: Barb Noce Page # 0005

Date Time Creator Assignee Cov Claimant
<...CONTINUED...>
she is fine is not seeking any other tx. No injury to clmt. Clmt
has no passengers. Ph had no passengers.

09/11/1996 12:16PM STAMBAL STAMBAL
DOC sent to: BRECKNOCK TWP POLICE DEPT from LINDA STAMBAUGH (Re:)
Request for Police Report (Comments:) none (Print Instr:) Mail
Check Attachment

09/11/1996 12:13PM STAMBAL STAMBAL PD Unk
Check for \$5.00 payable to BRECKNOCK TWP POLICE DEPT BOX 3286
BERKS CO RD 3 MOHNTON PA 19540 - Mechanical
Check

09/11/1996 12:12PM STAMBAL UNASSIGN
PROVIDER BRECKNOCK TWP POLICE DEPT POLICE added

09/11/1996 12:11PM STAMBAL STAMBAL
Called ph spoke to Mr. He will have his wife call to give stmt. He
is not sure of name of street his wife was on.

09/11/1996 09:35AM GRAYV UNASSIGN COLL Daniel G & Sharon E <Berg
LOSS Reassigned for COLL on Daniel G & Sharon E <Berg to WITMERD

09/11/1996 09:35AM GRAYV WITMERD COLL Daniel G & Sharon E <Berg
LOSS Reassigned for COLL on Daniel G & Sharon E <Berg from
58LANC-MD

09/10/1996 01:50PM COFFMAJ1 COFFMAJ1
SHOP ASKED FOR TEAR DOWN TIME TALKED TO RON GAVE OKAY IF
TOTAL....SHOP WILL FORWARD ESTIMATE AND PHOTOS.

09/10/1996 01:49PM COFFMAJ1 UNASSIGN COLL Daniel G & Sharon E <Berg
<..MORE..>

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 09/26/1996
PH: Berg, Daniel G & Sharon E Time: 13:50:09
Requester: Barb Noce Page # 0006

Date Time Creator Assignee Cov Claimant
<...CONTINUED...>
LOSS Reassigned for COLL on Daniel G & Sharon E <Berg to 58LANC-MD
- TOTAL LOSS...CAR IS AT LINDGREN....THEY HAVE ESTIMATE.

09/10/1996 01:49PM COFFMAJ1 UNASSIGN COLL Daniel G & Sharon E <Berg
LOSS Reassigned for COLL on Daniel G & Sharon E <Berg from
58HARRBR26LIND - TOTAL LOSS...CAR IS AT LINDGREN....THEY HAVE
ESTIMATE.

09/05/1996 03:18PM STAMBAL STAMBAL
Called PH: Berg, Daniel G & Sharon E No Answer

09/04/1996 02:41PM SHOMPEJ UNASSIGN PD Unknown
LOSS Reassigned for PD on Unknown to STAMBAL

09/04/1996 02:41PM SHOMPEJ STAMBAL PD Unknown
LOSS Reassigned for PD on Unknown from 58HBGAL

09/04/1996 01:17PM OOR UNASSIGN PD UNK
RESERVE HOLD for PD on UNK assigned to 58HBGAL - 91 Claims Services

09/04/1996 01:17PM OOR UNASSIGN COLL Daniel G & Sharon E Berg
RESERVE HOLD for COLL on Daniel G & Sharon E Berg assigned to
58HARRBR26LIND - 91 Claims Services

***** END OF REPORT *****

Trial Exhibit 47

BOX 2655 • HARRISBURG, PA 17105-2655
HOME OFFICE: COLUMBUS, OHIO



Based upon information and belief, this is a true and correct
copy of the policy for policy number 5837-C-137421
as of 9-4-96 (accident date).

[Signature] 3/31/99
Signature and Date
CSR
Title
1-800-1013-5059
Telephone Number

PENNRO 1076 7/93

NATIONWIDE MUTUAL INSURANCE COMPANY
NATIONWIDE MUTUAL FIRE INSURANCE COMPANY
NATIONWIDE LIFE INSURANCE COMPANY
NATIONWIDE GENERAL INSURANCE COMPANY

FRAME: J 04



CENTURY II AUTO POLICY DECLARATIONS

Page 1 of 3

These Declarations are a part of the policy named above and identified by policy number below. They supersede any Declarations issued earlier. Your policy provides the coverages and limits shown in the schedule of coverages. They apply to each insured vehicle as indicated. Your policy complies with the "motorists" financial responsibility laws of your state only for vehicles for which Property Damage and Bodily Injury Liability coverages are provided.

Policy Number: CPP Account Number
58 37 C 137421 732626

Policyholder:
(Named Insured)
DANIEL G & SHARON E
BERG
RD 3658
MOHNTON, PA
19540-5804

Issued:
JUN 18, 1996

Policy Period From:
MAY 10, 1996 to NOV 10, 1996 but only if the required premium for this period has been paid, and for six month renewal periods if renewal premiums are paid as required. Each period begins and ends at 12:01 A.M. standard time at the address of the policyholder.

IMPORTANT MESSAGES:
THE FOLLOWING CHANGE(S) HAVE BEEN MADE TO YOUR POLICY:

EFFECTIVE MAY 10, 1996
-CHANGED TO CLIENT PAY PLAN
SEE ENCLOSED NOTICE FOR PREMIUM DETAIL

INSURED VEHICLE(S) & SCHEDULE OF COVERAGES

1.	1996 JEEP OR CHERO	ID #1J4QZ58Y7TC227842	Six Month Premium
	Coverages	Limits Of Liability	
	COMPREHENSIVE	ACTUAL CASH VALUE	\$ 65.10
	COLLISION	ACTUAL CASH VALUE LESS \$ 500	\$ 119.60
	PROPERTY DAMAGE LIABILITY	\$ 100,000 EACH OCCURRENCE	\$ 39.70
	BODILY INJURY LIABILITY	\$ 100,000 EACH PERSON OCCURRENCE	\$ 55.70
		\$ 300,000 EACH OCCURRENCE ENDORSEMENT 2327	
	UNINSURED MOTORISTS-BODILY INJURY	\$ 50,000 EACH PERSON OCCURRENCE	\$ 9.40
		\$ 100,000 EACH OCCURRENCE ENDORSEMENT 2358	
	UNDERINSURED MOTORISTS-BODILY INJURY	\$ 50,000 EACH PERSON OCCURRENCE	\$ 23.50
		\$ 100,000 EACH OCCURRENCE ENDORSEMENT 2311	\$ 11.10
	LOSS OF USE BROAD FORM	\$ 25 PER DAY	
		\$ 750 PER ACCIDENT	\$ 1.70
		\$ 50 EACH DISABLEMENT	
	TOWING AND LABOR		\$ 21.30
	FIRST PARTY BENEFITS	\$ 100,000	
	OPTION 1-MEDICAL BENEFIT	\$ 50,000 TOTAL	\$ 7.00
	OPTION 2-INCOME LOSS BENEFIT	\$ 2,500 MONTHLY	\$.20
	OPTION 4-FUNERAL BENEFIT LIMITED TORT	\$ 1,500	
		TOTAL	\$ 354.30
	VEHICLE ENDORSEMENTS 1729		
	LEASEHOLDER-	FIRST VALLEY BANK	

Auto-7100

FRAME: K 04

CENTURY II AUTO POLICY DECLARATIONS

Page 2 of 3

2. 1996 DODG 8180 RAM
Coverages

ID #2B70811X88K533781
Limits Of Liability

Six Month Premium

COPY OF EXHIBIT NO. 47 (Page 2 of 36)

1031

R. 2434a

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

FRAME: K 04

CENTURY II AUTO POLICY DECLARATIONS

Coverages	Limit Of Liability	Six Month Premium
2. 1996 DODG B150 RAM	ID #2870811X88K53791	
COMPREHENSIVE	ACTUAL CASH VALUE	\$ 40.60
COLLISION	ACTUAL CASH VALUE LESS \$ 500	\$ 76.10
PROPERTY DAMAGE LIABILITY	100,000 EACH OCCURRENCE	\$ 56.40
BODILY INJURY LIABILITY	100,000 EACH PERSON	
	300,000 EACH OCCURRENCE	\$ 49.80
UNINSURED MOTORISTS-BODILY INJURY	50,000 EACH PERSON 100,000 EACH OCCURRENCE	2357 \$ 9.40
UNDERINSURED MOTORISTS-BODILY INJURY	50,000 EACH PERSON 100,000 EACH OCCURRENCE	2358 \$ 23.50
LOSS OF USE BROAD FORM	25 PER DAY 750 PER ACCIDENT 60 EACH DISABLEMENT	2311 \$ 1.70
TOWING AND LABOR		\$ 22.80
FIRST PARTY BENEFITS		\$ 8.40
OPTION 1-MEDICAL BENEFIT	100,000 TOTAL	\$ 1.20
OPTION 2-INCOME LOSS BENEFIT	50,000 TOTAL 2,500 MONTHLY	
OPTION 4-FUNERAL BENEFIT	1,500	
LIMITED TORT		TOTAL \$ 278.90

LIENHOLDER-BANK OF PA LIEN EXPIRES ON JAN 14, 1998

VEHICLE CLASSIFICATIONS

Premium is Based On: 1996 JEEP 1996 DODG
USE OF VEHICLE WEEKLY COMMUTE PLEASURE
100 MILES

RATED DRIVER ADULT ADULT
PRINCIPAL PRINCIPAL
MARRIED MARRIED

APPLIED DISCOUNTS PASSIVE RESTRAINT PASSIVE RESTRAINT
ANTI THEFT DEVICE MULTI CAR
MULTI CAR LONG TERM
LONG TERM HOME & CAR
HOME & CAR

SPECIAL RATING LIMITED TORT LIMITED TORT

Policy Form & Endorsements: AUTD 6000D 2248 2264; 2391

Office Use: APR 16, 1996 \$ 0.00

Issued By: NATIONWIDE MUTUAL INSURANCE COMPANY 23787 Home Office - Columbus, Ohio
Countersigned At: HARRISBURG, PA. By: M. FISCHER

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

FRAME: L 04

FRAME: L 04



CENTURY II AUTO POLICY DECLARATIONS

Page 3 of 3

Policy Number:
58 37 C 137421

Policyholder:
(Named Insured)
DANIEL G & SHARON E
Policy Period From:
MAY 10, 1996 TO NOV. 10, 1996

Issued:
JUN 18, 1996

LOSS PAYABLE CLAUSE ENDORSEMENT

This endorsement applies to the Comprehensive and Collision coverages provided by this policy. It protects the Insurer named in the policy Declarations.

Payment for loss will be made according to the interest of the policyholder and Insurer. Payment may be made to both jointly, or to either separately. Either way, the company will protect the interests of both.

The Insurer's interest will be protected, except from fraud or omissions by the policyholder or the policyholder's representative.

If the company cancels or refuses to renew the policy, the Insurer will receive notice at least 10 days before protection of its interest will end.

The Insurer shall notify the company upon learning any change in ownership of the vehicle.

To the extent of payment to the Insurer, the company will be entitled to the Insurer's rights of recovery.

This endorsement is issued by the Nationwide Mutual Insurance Company or Nationwide Mutual Fire Insurance Company, whichever has issued the policy to which it is attached.

NATIONWIDE MUTUAL INSURANCE COMPANY
NATIONWIDE MUTUAL FIRE INSURANCE COMPANY

John C. McCann
Secretary

Michael McFarlane
President

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

FRAME: M 04

COPY OF EXHIBIT NO. 47 (Page 4 of 36)

1033

R. 2436a

Policy Number SPC13742R

Named Insured Daniel Berg

County Berks



Agent 7484

TORT OPTIONS NOTICE TO INSUREDS

NOTICE TO NAMED INSUREDS

A. "Limited Tort" Option - The laws of the Commonwealth of Pennsylvania give you the right to choose a form of insurance that limits your right and the rights of members of your household to seek financial compensation for injuries caused by other drivers. Under this form of insurance, you and other household members covered under this policy may seek recovery for all medical and other out-of-pocket expenses, but not for pain and suffering or other nonmonetary damages unless the injuries suffered fall within the definition of "serious injury" as set forth in the policy, or unless one of several other exceptions noted in the policy applies.

Additional coverages under this option are available at additional cost.

If you wish to choose the "limited tort" option described in paragraph A, you must sign this notice where indicated below and return it. If you do not sign and return this notice, you will be considered to have chosen the "full tort" coverage as described in paragraph B and you will be charged the "full tort" premium.

I wish to choose the "limited tort" option described in Paragraph A:

X Daniel Berg 9/1/90
Named Insured Date

B. "Full Tort" Option - The laws of the Commonwealth of Pennsylvania also give you the right to choose a form of insurance under which you maintain an unrestricted right for you and the members of your household to seek financial compensation for injuries caused by other drivers. Under this form of insurance, you and other household members covered under this policy may seek recovery for all medical and other out-of-pocket expenses and may also seek financial compensation for pain and suffering and other nonmonetary damages as a result of injuries caused by other drivers.

Additional coverages under this option are available at additional cost.

If you wish to choose the "full tort" option described in paragraph B, you may sign this notice where indicated below and return it. However, if you do not sign and return this notice, you will be considered to have chosen the "full tort" coverage as described in paragraph B and you will be charged "full tort" premium.

I wish to choose the "full tort" option described in paragraph B:

Named Insured Date

C. You may contact your insurance agent, broker or company to discuss the cost of other coverages.

10005 (7/90)

More On Other Side ->

UNINSURED MOTORISTS COVERAGE AUTHORIZATION FORM **UM-2**

Please renew my policy with Uninsured Motorists Coverage limits of: (Cannot exceed your Liability Coverage Limits or be less than Financial Responsibility Limits.)

Bodily Injury
per person/per occurrence

<input type="checkbox"/> \$15,000/\$30,000 *	<input type="checkbox"/> \$250,000/\$500,000
<input type="checkbox"/> \$25,000/\$50,000	<input type="checkbox"/> \$300,000/\$300,000
<input checked="" type="checkbox"/> \$50,000/\$100,000	<input type="checkbox"/> \$500,000/\$500,000
<input type="checkbox"/> \$100,000/\$300,000	* minimum limit

X David B. Berg
Signature of First Named Insured

Policy Number 58C137421 Date 9/1/90

V-6042-2

UNDERINSURED MOTORISTS COVERAGE AUTHORIZATION FORM **UIM-2**

Please renew my policy with Underinsured Motorists Coverage limits of: (Cannot exceed your Liability Coverage Limits or be less than Financial Responsibility Limits.)

Bodily Injury
per person/per occurrence

<input type="checkbox"/> \$15,000/\$30,000 *	<input type="checkbox"/> \$250,000/\$500,000
<input type="checkbox"/> \$25,000/\$50,000	<input type="checkbox"/> \$300,000/\$300,000
<input checked="" type="checkbox"/> \$50,000/\$100,000	<input type="checkbox"/> \$500,000/\$500,000
<input type="checkbox"/> \$100,000/\$300,000	* minimum limit

X David B. Berg
Signature of First Named Insured

Policy Number 58C137421 Date 9/1/90

V-6043-2



Nationwide's Century II Auto Policy

Auto insurance protection you can count on in a policy you can understand

This is a different kind of insurance policy—one that's readable, understandable, straightforward. We believe you have purchased the best auto insurance protection—backed by the best in policyholder service. We intend to keep it that way.

Please take a few minutes to read and see what's inside your new Century II policy.

Should you have an accident or loss—and we hope you don't—just call us at once. Our claims service starts then. The telephone number to call is listed on your Nationwide identification card, or you may get in touch with any local claims office.

If you have any questions about this policy, or any part of your insurance program, your sales representative will welcome your call any time.

Thank you for relying on Nationwide.

YOUR GUIDE TO PROTECTION

DEFINITIONS		
Key Policy Words		2
TERRITORY		
Where Your Protection Applies		3
COVERAGES		
Comprehensive		3
Collision		4
Towing and Labor		4
Auto Liability		6
First Party Benefits		9
Uninsured Motorists		13
Underinsured Motorists		17
GENERAL CONDITIONS		
Your Duties After an Accident or Loss		20
Use of Other Motor Vehicles		21
How Your Policy May Be Changed		21
Our Right to Recover from Others (Subrogation)		21
Policy Renewal/Nonrenewal		22
Your Right and Our Right to Cancel		23
Our Installment Premium Plan		23
MUTUAL POLICY CONDITIONS — Nationwide Mutual Insurance Company— Nationwide Mutual Fire Insurance Company.....		23

RENTED AUTO NOTICE
THE DECLARATIONS ATTACHED TO THIS POLICY SHOW THAT COLLISION COVERAGE APPLIES TO YOUR AUTO, THERE IS ALSO COLLISION COVERAGE FOR DAMAGE TO A RENTED AUTO. COVERAGE IS SUBJECT TO CONDITIONS AND LIMITATIONS LISTED ON PAGE 5 AND SEWHERE IN THE POLICY OR ATTACHED ENDORSEMENTS.

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

Nationwide Mutual Insurance Company • Nationwide Mutual Fire Insurance Company
• Nationwide Property and Casualty Insurance Company/Home Office: Columbus, Ohio 43215-2220
Auto 6000-D (5-96)

Nationwide's Century II Auto Policy

INSURING AGREEMENT

For the policyholder's payment of premiums in amounts we require and subject to all of the terms and conditions of this policy, we agree to provide the coverages the policyholder has selected. These selections are shown in the Declarations, which are a part of this policy contract. Subsequent premiums for renewal terms of six months each must be paid in advance.

DEFINITIONS

This policy uses certain common words for easy reading. They are defined as follows:

1. "YOU" and "YOUR" mean or refer to the policyholder as defined, and include the policyholder's spouse if living in the same household.
2. "WE," "US," "OUR," and "THE COMPANY" mean or refer to the company issuing the policy—Nationwide Mutual Insurance Company, Nationwide Mutual Fire Insurance Company or Nationwide Property and Casualty Insurance Company.
3. "INSURED" means one who is described as entitled to protection under each coverage.
4. "YOUR AUTO" means the vehicle(s) described in the Declarations.
5. "DEDUCTIBLE" means the amount of loss to be paid by the insured. We pay for covered loss above the deductible amount.
6. "MOTOR VEHICLE" means a land motor vehicle designed primarily to be driven on public roads. This does not include vehicles operated on rails or crawler treads. Other motor vehicles designed for use mainly off public roads shall be included within the definition of motor vehicle when used on public roads.
7. "PRIVATE PASSENGER AUTO" means a four-wheel:

a) private passenger auto;	d) jeep type vehicle; or
b) station wagon;	e) pickup truck.
c) van;	
8. "OCCUPYING" means in, upon, entering, or alighting from.
9. "RELATIVE" means one who regularly lives in your household, related to you by blood, marriage or adoption (including a ward or foster child). A relative may live temporarily outside your household.
10. "BODILY INJURY" means:

a) bodily injury;	c) disease; or
b) sickness;	d) death;

 of any person.
11. "PROPERTY DAMAGE" means:

a) destruction of property;
b) damage or injury to it; or
c) loss of its use.

(Attach Declarations and Endorsements Here)

definitions
(continued)

- 12. "POLICYHOLDER" means the first person named in the Declarations. The policyholder is the named insured under this policy and does not include the policyholder's spouse. If the first named insured is an organization, that organization is the policyholder.
- 13. "NONECONOMIC LOSS" means pain and suffering and other nonmonetary detriment.

Other words are also defined. All defined words are in bold print.

TERRITORY

All coverages in this policy apply only to occurrences while the policy is in force. All coverages apply in Canada, the United States of America and its territories or possessions, or between their ports. All coverages except Uninsured Motorists and Underinsured Motorists apply to occurrences in Mexico, if within 50 miles of the United States boundary. We will base the amount of any Comprehensive or Collision loss in Mexico on cost at the nearest United States point.

NOTE: You will need to buy auto insurance from a Mexican insurance company—regardless of coverage provided by this policy—before driving in Mexico. Otherwise, you may be subject to jail detention, auto impoundment, and other legal complications in case of an accident.

**physical
damage
coverages**
(damage to your auto)

Additional Definitions Applicable to These Coverages

- 1. "LOSS" means direct and accidental loss or damage to your auto. Your auto includes its equipment.
- 2. "EQUIPMENT" means anything usual and incidental to the use of a motor vehicle as a motor vehicle. A trailer is not equipment.

COVERAGE AGREEMENT

COMPREHENSIVE COVERAGE

- 1. We will pay for loss to your auto not caused by collision or upset. We will pay for the loss less your deductible. Coverage is included for:

a) damage from contact with:

- (1) animals; or
- (2) falling or flying objects;

b) broken glass:

- (1) even if caused by collision or upset; and
- (2) if you do not have Collision coverage.

If your Comprehensive and Collision coverages have different deductibles, the smaller deductible will apply to broken glass.

- 2. Also, if your auto has a loss under this coverage we will:

- a) pay for resulting damage to your clothing and luggage or that of any relative. Maximum payment is \$200. We will pay for stolen clothing or luggage only if your auto is stolen.
- b) repay your travel costs after your auto is stolen. Maximum payment is \$15 per day—not to exceed \$450 per occurrence. These costs must be incurred within a certain time. It starts 48 hours after you report the theft to us and the police. It ends when your auto is returned to you or we pay for its loss.
- c) repay you for the cost of travel from where your auto was disabled to where you were going. Maximum payment is \$10.



COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

physical damage COLLISION COVERAGE

(continued)

1. We will pay for loss to your auto caused by collision or upset. This includes broken glass. We will pay for the loss less your deductible. However, we will not subtract the deductible amount:
 - a) if your auto collides with another motor vehicle insured by us; or
 - b) for broken glass if you have full (no deductible) Comprehensive coverage in force.
2. Also if your auto has a loss under this coverage, we will:
 - a) pay for resulting damage to your clothing and luggage or that of any relative. Maximum payment is \$200.
 - b) repay you for the travel cost to where you were going. Maximum payment is \$10.

TOWING AND LABOR COSTS COVERAGE

We will pay towing and labor costs if your auto is disabled. We will pay only for labor costs at the place where your auto is disabled. Our maximum payment per disablement is shown in the Declarations.

COVERAGE EXTENSIONS

USE OF TRAILERS

The insurance on your auto covers a trailer used by you or a relative.

1. The trailer must be:
 - a) designed for use with a private passenger auto; and
 - b) used with a vehicle that is insured under these coverages.
2. The trailer must not be:
 - a) otherwise insured;
 - b) owned by you or a relative; or
 - c) used for business purposes with a vehicle that's not a private passenger auto.
3. The maximum amount payable is \$500.

USE OF OTHER MOTOR VEHICLES

The insurance on your auto also covers other motor vehicles as follows:

1. a motor vehicle you do not own, while it is used in place of your auto for a short time.
Your auto must be out of use because of:
 - a) breakdown;
 - b) repair;
 - c) servicing; or
 - d) loss.
2. a four-wheel motor vehicle newly acquired by you. The coverage applies only during the first 30 days you own the vehicle, unless it replaces your auto. We provide this coverage only if you do not have other collectible insurance. You must pay any added premium resulting from this coverage extension.
3. a private passenger auto owned by a non-member of your household and not covered in item 1. of this section.
 - a) This applies only:
 - (1) to policies issued to persons (not organizations).
 - (2) while such auto is being used by you or a relative.
 - b) We will not pay for loss:
 - (1) that results from the operation of an auto:
 - (a) repair shop;
 - (b) public garage or parking place;
 - (c) sales agency; or
 - (d) service or maintenance facility.

physical damage
(continued)

- (2) involving a private passenger auto owned by an employer of an insured.
- (3) involving a private passenger auto furnished to you or a relative for regular use.
- (4) to any rented motor vehicle.
- 4. a rented private passenger auto; including its loss of income.
 - a) This applies only:
 - (1) while such auto is rented by you or a relative;
 - (2) to policies issued to persons (not organizations);
 - (3) if such auto is rented from a rental company for less than 28 days; and
 - (4) for loss of income that is:
 - (a) verifiable by us; and
 - (b) owed to a rental company because:
 - (1) the rental company had a customer willing to rent a private passenger auto; and
 - (2) there was no other vehicle available for rental in place of the damaged rented auto.
 - b) We will not pay for loss involving a private passenger auto rented or leased by anyone for or on behalf of the employer of an insured.

COVERAGE EXCLUSIONS

We will not pay for loss:

- 1. to more than one:
 - a) stereo tape;
 - b) cassette; or
 - c) cartridge.
- 2. to a container to be used for storing or carrying:
 - a) stereo tapes;
 - b) cassettes; or
 - c) cartridges.
- 3. to any:
 - a) citizens band radio;
 - b) two-way mobile radio;
 - c) telephone; or
 - d) other device which receives and transmits sound.

This exclusion (3) does not apply if the device is a permanent part of your auto. Permanent part means installed in a location planned by the auto maker for a radio. If the device is not covered, its antenna and other parts are not covered.

- 4. to a camper or living quarters unit which can be mounted on or attached to a vehicle. We will pay the loss if:
 - a) the unit is reported to us; and
 - b) the required premium is paid;before the loss.
- 5. due to:
 - a) wear and tear;
 - b) freezing;
 - c) mechanical or electrical breakdown or failure.

This exclusion (5) does not apply to damage which is the result of other loss covered by this policy. This exclusion does not apply to Towing and Labor coverage.

physical damage
(continued)

- 6. while any motor vehicle is used to carry persons or property for a fee. Motor vehicles used in shared-expense car pools are not considered as carrying persons for a fee.
- 7. to any auto due to an act of war.
- 8. to scanning monitor receivers used for radar detection.

LIMITS OF PAYMENT

ACTUAL CASH VALUE

The limit of our coverage is the cash value of your auto or its damaged parts at the time of loss. To determine cash value, we will consider:

- 1. fair market value;
 - 2. age; and
 - 3. condition of the property;
- at the time of loss.

We may:

- 1. pay you directly for a loss;
- 2. repair or replace your auto or its damaged parts;
- 3. return stolen property at our expense and pay for any damage.

OTHER INSURANCE

If you have other insurance that covers any loss, we will pay only our share of the loss. Our share is our proportion of the total insurance collectible for the loss. For loss to motor vehicles other than your auto, we will pay only the insured loss not covered by other insurance.

COVERAGE CONDITION

AUTO RECOVERY

When an insured auto which has been stolen or abandoned is located, we have the right to take it into our care to keep it safe.

ASSIGNABILITY

No interest in these coverages can be transferred without our written consent. However, if the policyholder dies, they will stay in force for the rest of the policy period. They will apply for anyone having proper temporary custody of your auto.

auto liability

COVERAGE AGREEMENT

PROPERTY DAMAGE AND BODILY INJURY LIABILITY COVERAGE

- 1. We will pay for damages for which you are legally liable as a result of an accident arising out of the:
 - a) ownership;
 - b) maintenance or use; or
 - c) loading or unloading;
 of your auto. A relative also has this protection. So does any person or organization who is liable for the use of your auto while used with your permission.
- 2. Damages must involve:
 - a) property damage; or
 - b) bodily injury.

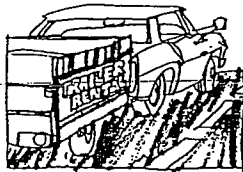
auto liability
(continued)



3. We will pay such liability losses up to the limits stated in the Declarations. In addition to these limits and as to any covered damages, we will:
 - a) defend at our expense, with attorneys of our choice, any suit against the insured. We may settle or defend any claim or suit as we think proper.
 - b) pay:
 - (1) all expense incurred by us; and
 - (2) all costs levied against the insured; in any such suit.
 - c) pay:
 - (1) all premiums on appeal bonds in defended suits.
 - (2) a premium of not more than \$250 for bail bond required because of an accident or traffic violation. Although paying such premiums, we are not required to apply for or furnish such bonds.
 - (3) all premiums on bonds to release attached property.
 - d) pay post-judgment interest on all damages awarded. We will not pay interest that accrues after such time as we have:
 - (1) paid;
 - (2) formally offered; or
 - (3) deposited in court
 the amount for which we are liable under this policy.
 - e) pay expenses incurred by an insured for emergency medical aid to others at the time of accident.
 - f) pay all reasonable expenses incurred by an insured at our request, but not more than \$50 per day for loss of earnings.
4. After the limits of this coverage have been paid, we will not defend any suit or pay any claim or judgment.

COVERAGE EXTENSIONS

USE OF TRAILERS



1. This coverage applies to the use of a trailer by:
 - a) you;
 - b) a relative; or
 - c) someone else with your permission.
2. The trailer must be:
 - a) designed for use with a private passenger auto; and
 - b) used with a vehicle that is insured under this coverage.
3. The trailer must not be used for business purposes with a vehicle that's not a private passenger auto.

USE OF OTHER MOTOR VEHICLES

This insurance also applies to certain other motor vehicles as follows:

1. a motor vehicle you do not own, while it is used in place of your auto for a short time. Your auto must be out of use because of:
 - a) breakdown;
 - b) repair;
 - c) servicing; or
 - d) loss.
2. a four-wheel motor vehicle newly acquired by you. It applies only:
 - a) during the first 30 days you own the vehicle unless it replaces your auto; and
 - b) if you do not have other insurance. You must pay any premiums resulting from this coverage.

- auto liability** 3. a motor vehicle owned by a non-member of your household and not covered in item 1. of
(continued) this section.
- a) This applies only to policies issued to individual persons (not organizations) and while the vehicle is being used by you or a relative. It protects the user, and any person or organization, except as noted below in b), who does not own the vehicle but is legally responsible for its use.
 - b) This does not apply to losses involving a motor vehicle:
 - (1) used in the business or occupation of you or a relative except a private passenger auto used by you, your chauffeur, or your household employee;
 - (2) owned, rented or leased by an employer of an insured;
 - (3) rented or leased by anyone for or on behalf of an employer of an insured; or
 - (4) furnished to you or a relative for regular use. Furnished for regular use does not include a motor vehicle rented from a rental company for less than 28 days.

FINANCIAL RESPONSIBILITY

We will adjust this policy to comply:

1. with the financial responsibility law of any state or province which requires higher liability limits than those provided by this policy.
2. with the kinds and limits of coverage required of non-residents by any compulsory motor vehicle insurance law, or similar law.

However, any loss payment under this extension of limits or coverage will be made only over and above any other collectible motor vehicle insurance. In no case will anyone be entitled to duplicate payments for the same loss.

COVERAGE EXCLUSIONS

This coverage does not apply to:

1. property damage or bodily injury caused intentionally by or at the direction of an insured.
2. any motor vehicle while used to carry persons or property for a fee. Motor vehicles used in shared-expense car pools are not considered as carrying persons for a fee.
3. any person for any occurrence arising out of the operation of an auto:
 - a) repair shop;
 - b) public garage or parking place;
 - c) sales agency; or
 - d) service or maintenance facility.

However, this exclusion does not apply to:

- a) you;
 - b) a relative; or
 - c) a partner, employee or agent of you or a relative;
- with regard to the use of your auto.

4. damage to any property you own or have in your care, except a rented home or rented private garage. The same applies to any insured.
5. bodily injury to others for which any insured may be liable under a:
 - a) workers' compensation;
 - b) unemployment compensation;
 - c) disability benefits; or
 - d) similar law.
6. bodily injury to an employee of any insured, while engaged in his employment.

However, it does cover an employee at your home who is not, or is not required to be, covered by any workers' compensation law.

7. any obligation for which the government may be held liable under the Federal Tort Claims Act.
8. any person protected under nuclear energy liability insurance. This exclusion applies even if the liability benefit of that insurance has been exhausted.

auto liability
(continued)

9. nonconform loss of or for any person who has elected "Limited Tort" in accordance with the Pennsylvania Motor Vehicle Financial Responsibility Law.

LIMITS OF PAYMENT

AMOUNTS PAYABLE FOR LIABILITY LOSSES

Our obligation to pay Liability losses is limited to the amount per occurrence stated in the Declarations. The following conditions apply to this limit:

1. This limit will first be applied to provide the separate bodily injury and property damage limits required to satisfy the financial responsibility law. Any amount remaining within the total limit will then be used as needed.
2. Limits apply as stated in the Declarations. Insuring more than one person or vehicle under this policy does not increase our limits.
3. In any loss covered under items (2) and (3) of "USE OF OTHER MOTOR VEHICLES," the highest liability limit applicable to any one vehicle in this policy will apply.
4. A motor vehicle and attached trailer are considered one vehicle for Auto Liability coverage.

OTHER INSURANCE

In any loss involving the use of your auto, we will be liable for only our share of the loss if there is other collectible liability insurance. Our share is our proportion of the total insurance limits for the loss. For losses involving the use of other motor vehicles, we will pay the insured loss not covered by other insurance. You may have more than one Nationwide policy; we will pay only up to the highest limit of any one of them.

ASSIGNABILITY

No interest in this coverage can be transferred without our written consent. However, if the policyholder dies, the Liability coverage will continue in force for the rest of the policy period for:

1. Anyone having proper temporary custody of your auto until a legal representative is appointed; and
2. The appointed legal representative.

first party benefits



COVERAGE AGREEMENT

This coverage provides First Party Benefit options in accordance with the Pennsylvania Motor Vehicle Financial Responsibility Law. The options and limits which the policyholder has selected are shown on the Declarations.

We will pay First Party Benefits for bodily injury of an insured as a result of an accident that arises out of the maintenance or use of a motor vehicle as a motor vehicle. We will pay these benefits regardless of who is at fault in the accident.

Additional Definitions Applicable to This Coverage

For purposes of this coverage:

1. "RELATIVE" means the following residents of the policyholder's household:
 - a) spouse;
 - b) anyone related to the policyholder or spouse by blood, marriage or adoption; and

**first party
benefits**
(continued)

- c) a minor in the legal custody of the policyholder or such relative.
A relative may live temporarily outside the household.
2. "MOTOR VEHICLE" means any vehicle which is self-propelled, except one which is propelled:
- a) solely by human power;
 - b) by electric power obtained from overhead trolley wires; or
 - c) upon rails.
3. "NECESSARY MEDICAL TREATMENT AND REHABILITATIVE SERVICES" means treatment, accommodations, products or services which are determined to be necessary by a licensed health care provider unless they shall have been found or determined to be unnecessary by a State-approved Peer Review Organization (PRO).
4. "CATASTROPHIC LOSS TRUST FUND" means the fund established by the Pennsylvania Motor Vehicle Financial Responsibility Law in 1984 and repealed in 1988.

INSUREDS

The policyholder and relatives are covered while occupying or injured by any motor vehicle.
Persons other than the policyholder and relatives are covered:

- 1. while occupying your auto.
- 2. as non-occupants of a motor vehicle if injured as the result of an accident in Pennsylvania involving your auto.

OPTIONS

OPTION 1—MEDICAL BENEFIT

We will pay all reasonable expenses for necessary medical treatment and rehabilitative services. We will pay such expenses up to the limit shown on the Declarations.

Applicable Medical Benefit limits greater than \$100,000 shall be excess over any sums paid or payable by the Catastrophic Loss Trust Fund. We will not pay any medical benefit expenses described which are paid or payable by the Catastrophic Loss Trust Fund.

There is no time limitation for this benefit, provided that, within 18 months after the date of the accident, it is determined with reasonable medical probability that further expenses may be incurred as a result of the injury.

OPTION 2—INCOME LOSS BENEFIT

If this option is selected by payment of premium, we will pay for loss of income from work the insured was unable to do because of bodily injury. We will not pay under this benefit until five working days have been lost. We will not pay for these five days of lost income.

"LOSS OF INCOME" means:

- a) 80 percent of actual loss of gross income. Gross income is income received from work performed while normally employed in gainful activity.
- b) reasonable expenses actually incurred for hiring a substitute to perform self-employment services in order to reduce loss of gross income or for hiring special help which permits a person to-work and reduce loss of gross income.

We will pay such benefits up to the limit shown on the Declarations. However, the total limit of this benefit is subject to the monthly maximum shown on the Declarations.

Income loss benefits do not continue after a person dies.

**first party
benefits**
(continued)



OPTION 3—ACCIDENTAL DEATH BENEFIT

If this option is selected by payment of premium, we will pay the Accidental Death Benefit for the policyholder or a relative who suffers accidental bodily injury causing death from a covered accident. We will pay the Accidental Death Benefit limit shown on the Declarations. We will increase this limit \$10,000 for an insured using an approved motor vehicle seat belt or child restraint system at the time of the accident. Death must occur within two years of, and as a direct result of, the accident. Payment will be made to the executor or administrator of the estate.

OPTION 4—FUNERAL BENEFIT

If this option is selected by payment of premium, we will pay reasonable expenses directly related to the funeral, burial, cremation, or other form of disposition of the remains of a deceased insured. These expenses must be the direct result of death from a covered accident within two years of the date of the accident. Payment will be made to any person presenting bills for qualified expenses incurred. We will pay such expenses up to the limit shown on the Declarations.

OPTION 5—COMBINED LOSS BENEFITS

If this option is selected by payment of premium, we will pay the benefits described in Options 1, 2, 3 and 4 above. However, total benefits payable under this option are limited to:

- a) the aggregate limit shown on the Declarations for this option; or
- b) three years from the date of the accident;

whichever occurs first.

Option 5 is subject to the following conditions:

- a) Except for the 18 month determination of further expenses to be paid under the Medical Benefit, the "no time limitation" provision does not apply.
- b) There is no monthly dollar maximum for Income Loss Benefits.
- c) The maximum Accidental Death Benefit payable is \$25,000.
- d) The maximum Funeral Benefit payable is \$2,500.
- e) Benefits under c) and d) are payable if death occurs within two years of the date of the accident.

OPTION 6—EXCESS MEDICAL BENEFITS

If this option is selected by payment of premium, we will pay Excess Medical Benefits for an insured who suffers accidental bodily injury from a covered accident. Excess Medical Benefits are all reasonable expenses for necessary medical treatment and rehabilitative services. We will pay such expenses in excess of \$100,000 but not to exceed one million dollars. We will not pay Excess Medical Benefits to an insured who is not eligible for Option 1—Medical Benefits under this policy.

Our liability to one person in one accident is \$50,000 per year. Subject to this limit for any one person in any one year, our aggregate limit for any one person is one million dollars for any one accident. During the first 18 months of eligibility, we shall approve payments for an insured without regard to the \$50,000 per year limit. For purposes of this option, the first 18 months of eligibility begins when the insured has incurred \$100,000 of eligible necessary medical treatment and rehabilitative services expenses.

If the insured is covered by Option 5—Combined Loss Benefits package (or a similar auto benefits package with another insurer), applicable Medical Benefit limits greater than \$100,000 in such package shall be excess over any sums paid or payable under Excess Medical Benefits.

**first party
benefits**
(continued)

COVERAGE EXCLUSIONS

We will not pay First Party Benefits in certain circumstances, as follows:

1. The policyholder and relatives are not covered for bodily injury arising out of the maintenance or use of a motor vehicle that the policyholder owns that is not an insured motor vehicle. An insured motor vehicle is one on which there are First Party Benefits, and to which the auto Bodily Injury Liability coverage in this policy applies.
2. There is no coverage for bodily injury to a relative arising out of the maintenance or use of a motor vehicle owned by such relative which is not insured for First Party Benefits and auto Bodily Injury Liability coverage under this or any other policy.
3. There is no coverage for anyone while occupying a motorcycle, motor-driven cycle, motorized pedalcycle, or similar type vehicles or a recreational vehicle not intended for highway use.
4. There is no coverage for anyone, other than the policyholder or a relative, who knowingly converts a motor vehicle if the injury arises out of the maintenance or use of the converted vehicle.
5. There is no coverage for anyone injured by your auto while it is unoccupied and parked so as not to cause unreasonable risk of injury.
6. There is no coverage for use by any insured of any vehicle to carry persons or property for a fee. However, shared-expense car pools will not be considered carrying persons for a fee.
7. There is no coverage for anyone, other than the policyholder, who is the owner of a currently registered motor vehicle and who does not have Financial Responsibility. Financial Responsibility means the type of financial responsibility that was self-certified to the Department of Transportation to obtain the registration.
8. We will not pay any benefits to or for anyone who injures themselves:
 - a) or another intentionally, including an attempt to intentionally injure themselves or another;
 - b) while committing a felony; or
 - c) while seeking to elude lawful apprehension or arrest by a law enforcement official.
9. There is no coverage for any person for any occurrence arising out of the operation of a motor vehicle:
 - a) repair shop;
 - b) public garage or parking place;
 - c) sales agency; or
 - d) service or maintenance facility.However, this exclusion does not apply with regard to the use of your auto to:
 - a) the policyholder; or
 - b) a relative.
10. There is no coverage for any loss sustained by any person as a direct result of loading or unloading any motor vehicle, except while occupying the motor vehicle.
11. There is no coverage for bodily injury arising out of any act of war, or as a result of any hazardous quality of nuclear material.

LIMITS AND CONDITIONS OF PAYMENT

Limits apply as stated in the attached Declarations. However, the insuring of more than one person or vehicle under this First Party Benefits coverage does not increase the limit of coverage to any one person in any one accident. In no event will any insured be entitled to more than the highest limit applicable to any one motor vehicle under this or any other policy. The following conditions apply to the relationship of this coverage to other insurance or benefits that may be available:

PRIORITIES OF POLICIES

We will pay First Party Benefits in accordance with the order of priorities set forth by law. We will not pay if there is other insurance at a higher level of priority, even if the limits of that insurance have been paid. The highest priority level listed below is the FIRST level which provides benefits for a named insured. The priority order is:

- first party benefits**
(continued)
- FIRST** — For a named insured on any policy, the policy on which that person is the named insured.
 - SECOND** — For a relative, the policy covering the relative as an insured.
 - THIRD** — For the occupants of an insured motor vehicle, the policy on that motor vehicle.
 - FOURTH** — For a person who is not the occupant of a motor vehicle, the policy on any motor vehicle involved in the accident.

NO DUPLICATION OF BENEFITS; OTHER INSURANCE

In any occurrence where other similar auto insurance or self-insurance of equal priority to that provided in this coverage is available and the claim is first presented to us, we will process and pay the claim as if wholly responsible up to the limits of our policy. The total limits available from all such insurance will be considered not to exceed the highest limits available from any one source of coverage.

In no instance may an insured or legal representative recover duplicate benefits from the same elements of loss under this and other similar auto insurance or self-insurance.

WORKERS' COMPENSATION REDUCTION

We will reduce any amount payable to anyone under this coverage by any benefits received or available under workers' compensation. No reduction will be made if such benefits have not been paid by the time benefits under this coverage are due. However, we will be entitled to reimbursement from whomever is obligated to pay the benefits, or from anyone who ultimately receives them.

INSURED PERSONS' DUTIES

The insured, or someone on the insured's behalf, will report any accident to us in writing as soon as practicable. This report will identify the injured and give reasonably obtainable information about the time, place and circumstances of the accident.

As soon as practicable, the insured or someone on the insured's behalf will submit written proof of claim to us, under oath if required. This proof will include detailed information about the nature and extent of bodily injury, treatment and rehabilitation received and contemplated, and anything else that may help us determine what benefits are payable in what amounts.

The injured person must grant us authorization, if we request it, to obtain copies of medical, income and income tax reports and records.

Injured persons must submit to examinations by company-selected physicians as often as the company reasonably requires.

uninsured motorists

(for bodily injury caused by uninsured motorists)

Additional Definitions Applicable To This Coverage

"Arbitration" means resolving questions in dispute.

"Arbitrator" means the party conducting the arbitration.

"Uninsured motor vehicle"—See definition in "COVERAGE AGREEMENT" section.

COVERAGE AGREEMENT

YOU AND A RELATIVE

We will pay compensatory damages as a result of bodily injury suffered by you or a relative and due by law from the owner or driver of an uninsured motor vehicle. Damages must result from an accident arising out of the:

1. ownership;
2. maintenance; or
3. use;

of the uninsured motor vehicle.

uninsured motorists
(continued)



OTHER PERSONS

Anyone else is protected who suffers bodily injury while occupying:

1. Your auto.
2. A motor vehicle you do not own, while it is used in place of your auto for a short time. Your auto must be out of use because of:
 - a) breakdown;
 - b) repair;
 - c) servicing; or
 - d) loss.
3. A four wheel motor vehicle newly acquired by you. This applies only during the first 30 days you own the vehicle, unless it replaces your auto.
4. Any other motor vehicle while it is being driven by you or a relative. This extension applies only in policies issued to persons (not organizations). However, the vehicle must not be:
 - a) owned by you or a relative; or
 - b) furnished to you or a relative for regular use.

DERIVATIVE CLAIMS

This coverage also protects others for compensatory damages due them, as a derivative claim, by law because of bodily injury to you or a relative. A derivative claim is included within the limit payable per person and per occurrence as described in the Limits of Payment section.

RECOVERY

1. We will jointly determine with the insured whether:
 - a) there is legal right to recover damages; and
 - b) if so, the amount of such damages.
 If you and we can't agree, the matter will go to arbitration.
2. The limits of coverage as shown in the Declarations are not subject to arbitration.
3. Any judgment against the uninsured will be binding on us only if it has our written consent.

DEFINITION

1. An uninsured motor vehicle is:
 - a) one for which there is no bodily injury liability bond or insurance or self-insurance at the time of the accident.
 - b) one for which the insuring company denies coverage or becomes insolvent.
 - c) an unidentified motor vehicle which causes bodily injury to an insured by physical contact with:
 - (1) such person; or
 - (2) a vehicle the insured is occupying.
 The driver and the owner of the unidentified vehicle must be unknown. A report must be made to the police as soon as practicable. We must have a sworn statement within 30 days. It must state that the insured has a legal action due to the accident. It must include facts to support the action. We may inspect any vehicle the insured was occupying.
2. We will not consider as an uninsured motor vehicle:
 - a) a motor vehicle that is "self-insured" under any law;
 - b) any motor vehicle owned by a government unit or agency;
 - c) any vehicle in use as a residence or premises;
 - d) any equipment or vehicle designed for use mainly off public roads except while on public roads;

uninsured
motorists
(continued)

- c) any motor vehicle insured under the liability coverage of this or any other policy; nor
- f) any motor vehicle furnished for the regular use of you or a relative.

COVERAGE EXCLUSIONS

This coverage does not apply to:

1. Use of any motor vehicle by an insured to carry persons or property for a fee. Shared-expense car pools are not considered carrying persons for a fee.
2. Use of any motor vehicle by an insured without the owner's permission.
3. Bodily injury of any insured if the insured settles, without our written consent, with a liable party.
4. Bodily injury suffered while occupying a motor vehicle owned by you or a relative but not insured for Uninsured Motorists coverage under this policy; nor to bodily injury from being hit by any such motor vehicle.
5. Punitive or exemplary damages.
6. Non-economic loss of any insured who has elected "Limited Tort" in accordance with the Pennsylvania Motor Vehicle Financial Responsibility Law.
7. Directly or indirectly benefit any workers' compensation carrier or any person qualified as a self-insurer under any workers' compensation law.

INSURED PERSONS' DUTIES

1. The insured must:
 - a) submit written proof of the claim to us. It must be under oath, if required. It must include:
 - (1) the nature and extent of injuries;
 - (2) treatment; and
 - (3) any other details which could affect the amount of payment.
 - b) provide all facts of the accident and the name of all witnesses.
 - c) answer questions under oath as often as we require with good reason.
 - d) be examined by doctors chosen by us as often as we require with good reason. At our request, the injured person must promptly authorize us to:
 - (1) speak with any doctor who has treated him;
 - (2) read all medical history and reports of the injury;
 - (3) obtain copies of wage and medical reports and records; and
 - (4) obtain copies of all medical bills as they are incurred.
2. After notice of claim, we require the insured to take legal action against any liable party.
3. An insured may bring legal action against the other party for bodily injury. A copy of any paper served in this action must be sent to us at once.
4. The insured must:
 - a) obtain our written consent to:
 - (1) settle any legal action brought against any liable party; or
 - (2) release any liable party.
 - b) preserve and protect our right to subrogate against any liable party.

ARBITRATION

- If we and the insured disagree about the right to recover damages, or the amount of such damages:
1. After written demand for arbitration by either party, each will select a competent arbitrator. The two so selected will select a third.

uninsured motorists
(continued)

2. If the third arbitrator is not agreed upon within 30 days, the insured or we may judge of a court of record to name one. The court must be in the county and state where arbitration is pending.
3. Each party will pay its chosen arbitrator. Each will pay half of all other expenses.
4. Arbitration shall be conducted in accordance with the provisions of the Pennsylvania Arbitration Act of 1927.
5. Unless the insured and we agree otherwise, arbitration will take place in the county and state where the insured lives. The insured will submit to examination under oath as often as reasonably requested by us. The insured must grant us authority, at our request, to obtain copies of wage and medical records. The arbitrators will resolve the issues. Questions in dispute will be decided when two arbitrators agree.
6. Any demand for arbitration must be made within two years after the date of the accident.

TRUST AGREEMENT

This applies to the extent of any payment we make under this coverage. We will have first right to any amount the insured receives from any liable party. The insured will:

1. Hold in trust for us his right to recover against any such party; and
2. Furnish us all papers in any suit the insured files.

Our payment of a claim may result from the insolvency of an insurer. If so, we have the right to recover from the insurer, but not its insured.

LIMITS OF PAYMENT

AMOUNTS PAYABLE FOR UNINSURED MOTORISTS LOSSES

We agree to pay losses up to the limits stated in the attached Declarations. Any change to those limits must be requested by the policyholder in writing. The following applies to these limits:

1. Bodily injury limits shown for any one person are for all legal damages, including all derivative claims, claimed by anyone for bodily injury to one person as a result of one occurrence. Subject to this limit for any one person, the total limit of our liability shown for each occurrence is for all damages, including all derivative claims, due to bodily injury to two or more persons in any one occurrence.
2. Limits apply as stated in the Declarations. The insuring of more than one person or vehicle under this policy does not increase our payment limits for this coverage. In no event will any insured be entitled to more than the highest per person limit applicable to any one motor vehicle under this policy or any other policy issued by us. However, with regards to you (not organizations) or a relative, the sum of limits of your autos apply as stated in the Declarations.
3. Any damages payable, under this coverage, will be reduced by any sums paid by or for any liable parties. This includes all sums paid under the Auto Liability coverage of this policy.
4. Any payment under this coverage to or for an insured will reduce the amount of damages the insured may be entitled to recover under the Auto Liability coverage of this policy.
5. No payment will be made until the limits of all other liability insurance and bonds that apply have been exhausted by payments.

OTHER INSURANCE

If there is other insurance:

1. For bodily injury suffered by an insured while occupying a motor vehicle you do not own, we will pay the insured loss not covered by other insurance.

uninsured motorists
(continued)

2. Except as stated above, if you have other insurance similar to this coverage under another policy, we will be liable for only our share of the loss. Our share is our proportion of the total insurance limits for the loss.
3. In any event, if more than one policy applies to an insured other than you or a relative, total limits applicable will be considered not to exceed the highest limits of any one of them.

DUPLICATE PAYMENT

We will make no duplicate payment to or for any insured for the same element of loss.

ASSIGNABILITY

No interest in this coverage can be transferred without our written consent. However, if the policyholder dies, this coverage will continue in force for the rest of the policy period. It will apply to anyone having proper custody of your auto.

under-insured motorists

(for bodily injury caused by underinsured motorists)



Additional Definitions Applicable To This Coverage

"Arbitration" means resolving questions in dispute.

"Arbitrator" means the party conducting the arbitration.

"Underinsured motor vehicle"—See definition in "COVERAGE AGREEMENT" section.

COVERAGE AGREEMENT

YOU AND A RELATIVE

We will pay compensatory damages as a result of bodily injury suffered by you or a relative and due by law from the owner or driver of an underinsured motor vehicle. Damages must result from an accident arising out of the:

1. ownership;
 2. maintenance; or
 3. use;
- of the underinsured motor vehicle.

OTHER PERSONS

Anyone else is protected who suffers bodily injury while occupying:

1. Your auto.
2. A motor vehicle you do not own, while it is used in place of your auto for a short-time. Your auto must be out of use because of:
 - a) breakdown;
 - b) repair;
 - c) servicing; or
 - d) loss.
3. A four-wheel motor vehicle newly acquired by you. This applies only during the first 30 days you own the vehicle, unless it replaces your auto.
4. Any other motor vehicle while it is being driven by you or a relative. This extension applies only in policies issued to persons (not organizations). However, the vehicle must not be:
 - a) owned by you or a relative; or
 - b) furnished to you or a relative for regular use.

DERIVATIVE CLAIMS

This coverage also protects others for compensatory damages due them, as a derivative claim, by law because of bodily injury to you or a relative. A derivative claim is included within the limit payable per person and per occurrence as described in the Limits of Payment section.

**underinsured
motorists**
(continued)

RECOVERY

1. We will jointly determine with the insured whether:
 - a) there is legal right to recover damages; and
 - b) if so, the amount of such damages.If you and we can't agree, the matter will go to arbitration.
2. The limits of coverage as shown in the Declarations are not subject to arbitration.
3. Any judgment against the underinsured will be binding on us only if it has our written consent.

DEFINITION

1. An underinsured motor vehicle is:
a motor vehicle for which bodily injury liability coverage, bonds or self-insurance are in effect. However, their total amount is insufficient to pay the damages an insured is entitled to recover. We will pay damages that exceed such total amount.
2. We will not consider as an underinsured motor vehicle:
 - a) a motor vehicle that is "self-insured" under any law;
 - b) any motor vehicle owned by a government unit or agency;
 - c) any vehicle in use as a residence or premises;
 - d) any equipment or vehicle designed for use mainly off public roads except while on public roads;
 - e) any motor vehicle insured under the liability coverage of this policy; nor
 - f) any motor vehicle furnished for the regular use of you or a relative.

COVERAGE EXCLUSIONS

This coverage does not apply to:

1. Use of any motor vehicle by an insured to carry persons or property for a fee. Shared-expense car pools are not considered carrying persons for a fee.
2. Use of any motor vehicle by an insured without the owner's permission.
3. Bodily injury of any insured if the insured settles, without our written consent, with a liable party.
4. Bodily injury suffered while occupying a motor vehicle owned by you or a relative but not insured for Underinsured Motorists coverage under this policy; nor to bodily injury from being hit by any such motor vehicle.
5. Punitive or exemplary damages.
6. Noneconomic loss of any insured who has elected "Limited Tort" in accordance with the Pennsylvania Motor Vehicle Financial Responsibility Law.

INSURED PERSONS' DUTIES

1. The insured must:
 - a) submit written proof of the claim to us. It must be under oath, if required. It must include:
 - (1) the nature and extent of injuries;
 - (2) treatment; and
 - (3) any other details which could affect the amount of payment.
 - b) provide all facts of the accident and the name of all witnesses.
 - c) answer questions under oath as often as we require with good reason.
 - d) be examined by doctors chosen by us as often as we require with good reason. At our request, the injured person must promptly authorize us to:
 - (1) speak with any doctor who has treated him;

underinsured motorists
(continued)

- (2) read all medical history and reports of the injury;
 - (3) obtain copies of wage and medical reports and records; and
 - (4) obtain copies of all medical bills as they are incurred.
2. After notice of claim, we require the insured to take legal action against any liable party.
 3. An insured may bring legal action against the other party for bodily injury. A copy of any paper served in this action must be sent to us at once.
 4. The insured must:
 - a) obtain our written consent to:
 - (1) settle any legal action brought against any liable party; or
 - (2) release any liable party.
 - b) preserve and protect our right to subrogate against any liable party.

ARBITRATION

If we and the insured disagree about the right to recover damages, or the amount of such damages:

1. After written demand for arbitration by either party, each will select a competent arbitrator. The two so selected will select a third.
2. If the third arbitrator is not agreed upon within 30 days, the insured or we may request a judge of a court of record to name one. The court must be in the county and state where arbitration is pending.
3. Each party will pay its chosen arbitrator. Each will pay half of all other expenses.
4. Arbitration shall be conducted in accordance with the provisions of the Pennsylvania Arbitration Act of 1927.
5. Unless the insured and we agree otherwise, arbitration will take place in the county and state where the insured lives. The insured will submit to examination under oath as often as reasonably requested by us. The insured must grant us authority, at our request, to obtain copies of wage and medical records. The arbitrators will resolve the issues. Questions in dispute will be decided when two arbitrators agree.
6. Any demand for arbitration must be made within two years after the date of the accident.

TRUST AGREEMENT

This applies to the extent of any payment we make under this coverage. We will have first right to any amount the insured receives from any liable party. The insured will:

1. Hold in trust for us his right to recover against any such party; and
2. Furnish us all papers in any suit the insured files.

Our payment of a claim may result from the insolvency of an insurer. If so, we have the right to recover from the insurer, but not its insured.

LIMITS OF PAYMENT

AMOUNTS PAYABLE FOR UNDERINSURED MOTORISTS LOSSES

We agree to pay losses up to the limits stated in the attached Declarations. Any change to those limits must be requested by the policyholder in writing. The following applies to these limits:

1. Bodily injury limits shown for any one person are for all legal damages, including all derivative claims, claimed by anyone for bodily injury to one person as a result of one occurrence. Subject to this limit for any one person, the total limit of our liability shown for each occurrence is for all damages, including all derivative claims, due to bodily injury to two or more persons in any one occurrence.

underinsured motorists
(continued)

2. Limits apply as stated in the Declarations. The insuring of more than one person or vehicle under this policy does not increase our payment limits for this coverage. In no event will any insured be entitled to more than the highest per person limit applicable to any one motor vehicle under this policy or any other policy issued by us. However, with regards to you (not organizations) or a relative, the sum of limits of your autos apply as stated in the Declarations.
3. Any damages payable, under this coverage, will be reduced by any sums paid by or for any liable parties.
4. Any payment under this coverage to or for an insured will reduce the amount of damages the insured may be entitled to recover under the Auto Liability coverage of this policy.
5. No payment will be made until the limits of all other liability insurance and bonds that apply have been exhausted by payments.
6. An insured who recovers damages for an uninsured motorists claim cannot recover damages for an underinsured motorists claim for the same accident.

OTHER INSURANCE

If there is other insurance:

1. For bodily injury suffered by an insured while occupying a motor vehicle you do not own, we will pay the insured loss not covered by other insurance.
2. Except as stated above, if you have other insurance similar to this coverage under another policy, we will be liable for only our share of the loss. Our share is our proportion of the total insurance limits for the loss.
3. In any event, if more than one policy applies to an insured other than you or a relative, total limits applicable will be considered not to exceed the highest limits of any one of them.

DUPLICATE PAYMENT

We will make no duplicate payment to or for any insured for the same element of loss.

ASSIGNABILITY

No interest in this coverage can be transferred without our written consent. However, if the policyholder dies, this coverage will continue in force for the rest of the policy period. It will apply to anyone having proper custody of your auto.

general policy conditions

We, you, and anyone insured by this policy must do certain things in order for the provisions of the policy to apply. The following are policy conditions:

1. INSURED PERSONS' DUTIES

The insured will:

- a) give us or our agent prompt notice of all losses and provide written proof of claim if required.
- b) notify the police of all theft losses as soon as practicable.
- c) promptly deliver to us all papers dealing with any claims or suits.
- d) submit to examination under oath as often as reasonably requested by us.
- e) assist us with any claim or suit.
- f) if injured, submit to examinations by company-selected physicians as often as the company reasonably requires. The injured person must grant us authority, at our request, to obtain copies of wage and medical records.
- g) protect damaged property insured under this policy and make it available to us for inspection before its repair or disposal.

general policy conditions
(continued)



2. UNAUTHORIZED USE OF OTHER MOTOR VEHICLES

Protection in this policy does not apply to any motor vehicle any insured:

- a) uses without a reasonable belief that the insured is entitled to do so.
- b) has stolen.
- c) knows to have been stolen.

3. HOW YOUR POLICY MAY BE CHANGED

- a) Any terms of this policy which may be in conflict with statutes of the state in which the policy is issued are hereby amended to conform.
- b) Any insured will automatically have the benefit of any extension or broadening of coverage in this policy, as of the effective date of the change, provided it does not require more premium.
- c) No other changes may be made in the terms of this policy except by policy endorsement.
- d) The premium for each coverage is based on information in our possession. Any change(s) in this information will allow us to make an adjustment of the premium on a pro rata basis.

4. IF YOU BECOME BANKRUPT

Bankruptcy or insolvency of any insured will not relieve us of any obligation under the terms of this policy.

5. SUBROGATION

We have the right of subrogation under the:

- a) Physical Damage;
- b) Auto Liability; and
- c) Medical Payments;

coverages in this policy. This means that after paying a loss to you or others under this policy, we will have the insured's right to sue for or otherwise recover such loss from anyone else who may be liable. Also, we may require reimbursement from the insured out of any settlement or judgment that duplicates our payments.

6. RENEWAL/NONRENEWAL

This policy is written for a six-month policy period. We will renew it for successive policy periods, subject to the following conditions:

- a) renewal will be in accordance with policy forms, rules, rates and rating plans in use by us at the time.
- b) prior to the expiration date of a policy term for which premium has been paid, we will mail a notice to the policyholder for the premium required to renew or maintain the policy in effect. We will mail this notice to the address last known to us.
- c) all premiums or premium installment payments must be paid when due, whether payable directly to us or through any premium finance plan.
- d) at the end of each 12-month period after the first effective date of the policy or any coverage, we will have the right to refuse to renew any coverage or the entire policy.

If we elect not to renew, we will mail notice to the policyholder 60 days in advance of the date when coverage will terminate. Such mailing to the last known address will be considered proof of notice.

general policy conditions
(continued)

7. CANCELLATION DURING POLICY PERIOD

The policyholder may cancel this policy or any of its coverages by mailing notice to us of the future date of cancellation desired. Premium refund, if any due, will be made as soon as practicable after the date of cancellation. Based on our "short-rate table," we will retain premium for the days covered, plus a percentage-figured charge for cancelling at the policyholder's request during the policy period.

If this policy or any coverage has been in effect less than 60 days, we have unlimited right of cancellation. We may cancel by mailing notice to the policyholder:

- a) 15 days in advance of termination for nonpayment of premium.
- b) 10 days in advance of termination for all other reasons. Except for nonpayment, the date of termination must be within the first 60 days of coverage.

After any coverage of this policy has been in force 60 days, our right to cancel such coverage during the policy period is limited. We may cancel during an annual policy period:

- a) if premiums or premium installment payments are not paid when due, whether payable directly to us or through any premium finance plan.
- b) if the driver's license or motor vehicle registration of any named insured has been suspended or revoked during the policy term.
- c) if it is determined that any insured has concealed a material fact, has made a material allegation contrary to fact, or has made a misrepresentation of a material fact and that such concealment, allegation or misrepresentation was material to the acceptance of the risk by us.

We must mail notice to the policyholder:

- a) 15 days in advance of termination for nonpayment of premium.
- b) 15 days in advance of termination for loss of license or of motor vehicle registration.
- c) 60 days in advance of termination for concealment or misrepresentation.

In any case of cancellation by us, our mailing of notice to the policyholder's last known address or delivery of it to the policyholder will be considered proof of notice. We will retain premium for days covered during the policy period. Premium refund, if any due, will be made as soon as practicable. Mailing or delivery of our check will constitute tender of refund.

8. LEGAL ACTION LIMITATIONS

No legal action may be brought against us concerning this policy until the insured has fully complied with all its terms.

Under the liability coverages of this policy, no legal action may be brought against us until judgment against the insured has been finally determined after trial. This policy does not give anyone the right to make us a party to any liability action against an insured.

9. PREMIUM RECOMPUTATION

Premiums and coverages of this policy conform to the Motor Vehicle Financial Responsibility Law.

If a court of jurisdiction effectively renders any or all provisions of the act invalid or unenforceable, we may recompute premiums payable and revise the coverage. Changes, however, will be made—as required by law—only upon approval by the Pennsylvania Insurance Commissioner. If we fail to act within a reasonable time, the Commissioner may direct fair and reasonable adjustments.

general policy conditions
(continued)



10. OPTIONAL PAYMENT OF PREMIUM IN INSTALLMENTS

The policyholder may pay the premium for this policy in installments, under terms and conditions approved where required by the Department of Insurance. For each separate installment payment there is an installment service charge. Your agent can provide more information about installment payment.

Mutual Policy Conditions (Applicable only to policies issued by Nationwide Mutual Insurance Company—Nationwide Mutual Fire Insurance Company.)

If this policy is issued by Nationwide Mutual Insurance Company or Nationwide Mutual Fire Insurance Company, the policyholder is a member of the company issuing the policy while this, or any other policy issued by one of these companies is in force. While a member, the policyholder is entitled to one vote only—regardless of the number of policies issued to the policyholder—either in person or by proxy at meetings of members, of said company. The policyholder is entitled to any dividends which are declared by the Board of Directors and are applicable to coverages in this policy.

The annual meeting of members of the Nationwide Mutual Insurance Company will be held at the Home Office at Columbus, Ohio, at 10 a.m. on the first Thursday of April. The annual meeting of members of the Nationwide Mutual Fire Insurance Company will be held at the Home Office at Columbus, Ohio, at 9:30 a.m. on the first Thursday of April. If the Board of Directors of either of the above companies should elect to change the time or place of meeting, that company will mail notice at least 10 days in advance of the meeting date.

This policy is non-assessable, meaning that the policyholder is not subject to any assessment beyond the premiums the above companies require for each policy term.

IN WITNESS WHEREOF: Nationwide Mutual Insurance Company, Nationwide Mutual Fire Insurance Company or Nationwide Property and Casualty Insurance Company, whichever is the issuing company as shown in the Declarations, has caused this policy to be signed by its President and Secretary at Columbus, Ohio, and countersigned as may be required by a duly authorized representative of the company.

John C. McCallister
Secretary

Richard D. Cradler
President



Nationwide Mutual Insurance Company • Nationwide Mutual Fire Insurance Company
Nationwide Property and Casualty Insurance Company/Home Office: Columbus, Ohio 43215-2220



Endorsement 2357 uninsured motorists coverage (Pennsylvania)

Please attach this important addition to your auto policy.

This endorsement replaces the policy's Uninsured Motorists coverage section. Coverage is subject to all terms and conditions of the policy, except as changed by this endorsement.

ADDITIONAL DEFINITIONS APPLICABLE TO THIS COVERAGE

1. "ARBITRATION" means a forum for resolving questions subject to arbitration.
2. "ARBITRATOR" means the person conducting the arbitration.
3. An "UNINSURED MOTOR VEHICLE" is:
 - a) one for which there is no bodily injury liability bond or insurance at the time of the accident.
 - b) one for which the insuring company denies coverage or becomes insolvent.
 - c) an unidentified motor vehicle which causes bodily injury to an insured by physical contact with:
 - (1) such insured; or
 - (2) a vehicle the insured is occupying.

The driver and the owner of the unidentified vehicle must be unknown. A report must be made to the police and us within 30 days, or as soon as practicable. It must state that the insured has a legal action due to the accident. It must include facts to support the action. If there was no physical contact with the unidentified vehicle, there must be corroborating evidence from a source other than any insured. We may inspect any vehicle the insured was occupying.

We will not consider as an uninsured motor vehicle:

- a) a motor vehicle that is "self-insured" under any law;
- b) any motor vehicle owned by any government unit or agency;
- c) any vehicle in use as a residence or premises;
- d) any equipment or vehicle designed for use mainly off public roads except while on public roads;
- e) any motor vehicle insured under the Auto Liability coverage of this policy or any other policy; nor
- f) any motor vehicle furnished for the regular use of you or a relative.

COVERAGE AGREEMENT

YOU AND A RELATIVE

We will pay compensatory damages, including derivative claims, which are due by law to you or a relative from the owner or driver of an uninsured motor vehicle because of bodily injury suffered by you or a relative. Damages must result from an accident arising out of the:

1. ownership;
2. maintenance; or
3. use;

of the uninsured motor vehicle.

OTHER PERSONS

We will also pay compensatory damages, including derivative claims, which are due by law to other persons who:

1. Are not a named insured or an insured household member for similar coverage under another policy; and
2. Suffer bodily injury while occupying:
 - a) your auto.

V-2357 (10-92)

- b) a motor vehicle you do not own, while it is used in place of your auto for a short time. Your auto must be out of use because of:
 - (1) breakdown;
 - (2) repair;
 - (3) servicing; or
 - (4) loss.
- c) a four-wheel motor vehicle newly acquired by you. This applies only during the first 30 days you own the vehicle, unless it replaces your auto.
- d) any other motor vehicle while it is being driven by you or a relative. This extension applies only in policies issued to persons (not organizations). However, the vehicle must not be:
 - (1) owned by you or a relative; or
 - (2) furnished to you or a relative for regular use.

RECOVERY

- 1. Before recovery, we and any injured party seeking protection under this coverage must agree on two points:
 - a) whether there is legal right to recover damages from the owner or driver of an uninsured motor vehicle; and if so,
 - b) the amount of such damages.If agreement can't be reached, the matter will go to arbitration.
- 2. Questions between the injured party and us regarding whether the injured party is an insured under this coverage, or the limits of such coverage, are not subject to arbitration and shall be decided by a court of law.
- 3. Any judgment against the uninsured will be binding on us only if it has our written consent.
- 4. Any demand for Uninsured Motorists Coverage benefits must be made within two years after the date of the accident.

COVERAGE EXCLUSIONS

This coverage does not apply to:

- 1. Use of any motor vehicle by an insured to carry persons or property for a fee. Motor vehicles used in shared-expense car pools are not considered as carrying persons for a fee.
- 2. Use of any motor vehicle by an insured without the owner's permission.
- 3. Punitive or exemplary damages.
- 4. Directly or indirectly benefit any workers' compensation or disability benefits carrier, or any person or organization qualifying as a "self-insurer" under a workers' compensation, disability benefits, or similar law.
- 5. Bodily injury suffered while occupying or struck by a motor vehicle owned by you or a relative, but not insured for auto liability coverage under this or any other policy.
- 6. Bodily injury suffered while occupying a motor vehicle owned by you or a relative but not insured for Uninsured Motorists coverage under this policy; nor to bodily injury from being hit by any such motor vehicle.
- 7. Noneconomic loss of any insured who has elected "Limited Tort" in accordance with the Pennsylvania Motor Vehicle Financial Responsibility Law.
- 8. Bodily injury of any insured if the insured settles, without our written consent, with a liable party.

INSURED PERSONS' DUTIES

- 1. The insured must:
 - a) submit written proof of the claim to us. It must be under oath, if required. It must include details of:
 - (1) the nature and extent of injuries;
 - (2) treatment; and
 - (3) any other facts which could affect the amount of payment.
 - b) provide all facts of the accident and the name of all witnesses.
 - c) submit to oral examination under oath as often as we require.

- d) be examined by doctors, including doctors examining the insured for rehabilitation purposes, chosen by us as often as we require. At our request, the injured person must promptly authorize us to:
 - (1) speak with any doctor who has treated him;
 - (2) read all medical history and reports of the injury;
 - (3) obtain copies of wage and medical reports and records; and
 - (4) obtain copies of all medical bills as they are incurred.
2. We require the insured to file suit against any and all liable parties to preserve and protect our subrogation rights. Failure to do so precludes recovery under this coverage.
3. The insured must obtain our written consent to:
 - a) settle any legal action brought against any liable party; or
 - b) release any party.

ARBITRATION

If we and the insured disagree about the right to recover damages from the owner or driver of an uninsured motor vehicle or the amount of such damages:

1. After written demand for arbitration by either party, each will select a competent arbitrator. The two so selected will select a third competent arbitrator. Unless the insured and we agree otherwise, arbitration will take place in the county and state where the insured lived at the time of the accident.
2. If the third arbitrator is not selected within 30 days, the insured or we may request a judge of a court of record to name one. The court must be in the county and state in which arbitration is pending.
3. Each party will pay its chosen arbitrator. Each will pay half of the neutral arbitrator's expenses. Fees to lawyers and expert witnesses are to be paid by the party hiring them.
4. Arbitration shall be conducted in accordance with the provisions of the Pennsylvania Arbitration Act of 1927.

OUR RIGHT TO RECOVERY

This applies to the extent of any payment we make under this coverage. We will have first right to any amount the insured receives from any liable party. The insured will:

1. Hold in trust for us his right to recover against any such party; and
2. Furnish us all papers in any suit the insured files.

Our payment of a claim may result from the insolvency of an insurer. If so, we have the right to recover from the insurer, but not its insured.

LIMITS OF PAYMENT

AMOUNTS PAYABLE FOR UNINSURED MOTORISTS LOSSES

We agree to pay losses up to the limits stated in the policy Declarations. The following applies to these limits:

1. The Uninsured Motorists bodily injury limit shown for any one person is for all legal damages, including all derivative claims, claimed by anyone due to bodily injury to one person as a result of one occurrence.

The per-person limit is the total amount available when one person sustains bodily injury, including death, as a result of one occurrence. No separate limits are available to anyone for derivative claims, statutory claims, or any other claims made by anyone arising out of bodily injury, including death, to one person as a result of one occurrence.

The total limit of our liability shown for each occurrence is the total amount available when two or more persons sustain bodily injury, including death, as a result of one occurrence. In no event shall any one person recover more than the per-person limit shown.

2. Coverage applies as stated in the Declarations. The insuring of more than one person or vehicle under this policy does not increase our Uninsured Motorists payment limits. In no event will any insured be entitled to more than the highest per person limit applicable to any one motor vehicle under this policy or any other policy issued by us. However, with regards to you (not organizations) or a relative, the sum of limits of your autos apply as stated in the Declarations.

3. Damages payable under this coverage shall be reduced by any amount paid by or for any liable parties.
4. The insured may recover for bodily injury under the Auto Liability coverage or the Uninsured Motorists coverage of this policy, but not under both coverages.

OTHER INSURANCE

If there is other insurance:

1. For bodily injury suffered by an insured while occupying a motor vehicle you do not own, we will pay the insured loss not covered by other insurance.
2. Except as stated above, if there is other insurance similar to this coverage under any other policy, we will be liable for only our share of the loss. Our share is our proportion of the total insurance limits for the loss.
3. In any event, if more than one policy applies to an insured other than you or a relative, total limits applicable will be considered not to exceed the highest limits amount of any one of them.

DUPLICATE PAYMENT

We will make no duplicate payment to or for any insured for the same element of loss.

ASSIGNABILITY

No interest in this coverage can be transferred without our written consent. However, if the policyholder dies, this coverage will continue in force for the rest of the policy period. It will apply to the following having proper custody of your auto:

1. your relatives;
2. your heirs;
3. an appointed legal representative; or
4. anyone else using your auto with the express permission of the legal representative.

This endorsement applies as stated in the policy Declarations.

This endorsement is issued by the company shown in the Declarations as the issuing company.

NATIONWIDE INSURANCE COMPANIES
Home Office: Columbus, Ohio 43216



Endorsement 2311
loss of use — broad form
comprehensive or collision coverages
(auto rental — travel expense)

Please attach this important addition to your auto policy.

Loss of Use — Broad Form coverage is subject to the provisions of the policy that apply to the Comprehensive and/or Collision coverages. The most we will pay under this coverage for all Covered Expenses incurred by all persons as a result of one accident is shown in the Declarations. Coverage applies only if this endorsement was in effect at the time of a covered Comprehensive or Collision loss.

Any expense payable under this coverage shall be reduced to the extent it is payable under the Comprehensive or Collision coverages of the policy.

COVERED EXPENSES are:

AUTO RENTAL EXPENSE

We will repay you for auto rental expense incurred by you or a relative if unable to use your auto because of a covered Comprehensive or Collision loss.

Auto rental expense is the cost of renting one vehicle from a rental agency or garage. Subject to the coverage limit, reimbursement is limited to a maximum daily payment. The coverage limit and daily payment amounts are shown in the Declarations. This expense must be incurred within a certain time period. It begins when your auto cannot run due to a covered loss; or if your auto can run, when left at a shop for agreed repairs. It continues:

- a) for 30 consecutive days; or
- b) until your auto is repaired; or
- c) until a total settlement is agreed to;

whichever comes first.

Also included is the expense of any deductible you are required to pay the owner of a rental auto as the result of damage to it under any Comprehensive or Collision coverage in effect on an auto rented from an auto rental agency or garage.

TRAVEL EXPENSE

We will also repay you for certain expenses incurred by you or a relative if unable to use your auto because of a covered Comprehensive or Collision loss. This loss must occur more than 50 miles from your home residence. The expenses covered are:

1. Commercial transportation fares for an Insured to continue to his/her destination or home residence.
2. Extra meals and lodging needed when the covered loss to your auto causes a delay en route. The expenses must be incurred between the time of loss and the arrival of the insured at your residence or destination or by the end of the fifth day, whichever occurs first.
3. Extra meals, lodging, and commercial transportation costs incurred by you or a person you choose to drive your auto from the place of repair to your destination or home residence.

This endorsement applies as stated in the policy Declarations.

This endorsement is issued by the company shown in the Declarations as the issuing company.

NATIONWIDE INSURANCE COMPANIES
Home Office: Columbus, Ohio 43215-2220

V-2311 (12-94)



Endorsement 2391
**amendatory endorsement—
uninsured/underinsured motorists
(Pennsylvania)**

Please attach this important addition to your auto policy.

This endorsement amends any Uninsured/Underinsured Motorists Coverage endorsements attached to the policy.

RECOVERY

Item 4. of Recovery is replaced to read:

4. The injured party shall provide notice of an uninsured/underinsured motorists claim within two years after the date of the accident. If the injured party fails to provide such notice, and this failure precludes our ability to subrogate against liable parties, coverage may be denied as provided in Insured Persons' Duties No. 2 below.

INSURED PERSONS' DUTIES

Items 1. c) and 1. d) are replaced to read:

1. The Insured must:
 - c) submit to oral examination under oath as often as we require with good reason.
 - d) be examined by doctors, including doctors examining the insured for rehabilitation purposes, chosen by us as often as we require with good reason. At our request, the injured person must promptly authorize us to:
 - (1) speak with any doctor who has treated him;
 - (2) read all medical history and reports of the injury;
 - (3) obtain copies of wage and medical reports and records; and
 - (4) obtain copies of all medical bills as they are incurred.

This endorsement applies as stated in the policy Declarations.

This endorsement is issued by the company shown in the Declarations as the issuing company.

NATIONWIDE INSURANCE COMPANIES
Home Office: Columbus, Ohio 43215-2220

V-2391

COPY OF EXHIBIT NO. 47 (Page 35 of 36)



**Endorsement 2248
limited tort option election
(Pennsylvania)**

Please attach this important addition to your auto policy.

ADDITIONAL DEFINITIONS APPLICABLE TO THIS ENDORSEMENT

"NAMED INSURED" means an individual identified by name as an insured in a policy of private passenger motor vehicle insurance.

"PRIVATE PASSENGER MOTOR VEHICLE" means a four-wheel motor vehicle, except recreational vehicles not intended for highway use, which is insured by a natural person and:

- (1) is a private passenger auto neither used as a public or livery conveyance nor rented to others; or
- (2) has a gross weight not exceeding 9,000 pounds and is not principally used for commercial purposes other than farming.

The term does not include any motor vehicle insured exclusively under a policy covering garage, automobile sales agency repair shop, service station or public parking place operation hazards.

"SERIOUS INJURY" means a personal injury resulting in death, serious impairment of body function or permanent serious disfigurement.

ELECTION AGREEMENT

A named insured has elected to limit the right to seek financial compensation for injuries caused by other drivers as follows:

LIMITED TORT

Any named insured and relative is limited from seeking recovery for noneconomic loss resulting from an accident involving the operation, maintenance or use of a motor vehicle as a motor vehicle.

This tort limitation applies to a named insured for all policies issued by us to such named insured, even if not so endorsed. It continues on all renewal, replacement and any other policies under which a named insured is listed as a named insured, until we or our agent receive a properly executed form electing another tort option.

The tort limitation applies to a relative unless such relative is:

- 1) a named insured on another policy under which the relative has not elected a tort limitation; or
- 2) is an insured under more than one private passenger motor vehicle policy and the policies have conflicting tort options; in which case the relative is bound by the tort option of the policy insuring the motor vehicle the relative is occupying at the time of an accident.

EXCEPTIONS

A named insured or relative remains eligible to seek noneconomic loss if the sustained injury:

- 1. is a serious injury.
- 2. results as the consequence of the fault of another person who:
 - a. is convicted, or accepts Accelerated Rehabilitative Disposition (ARD) for driving under the influence of alcohol or a controlled substance in an accident;
 - b. is operating a motor vehicle registered in another state;
 - c. intends to injure himself or another person, provided that an individual does not intentionally injure himself or another person merely because his act or failure to act is intentional or done with his realization that it creates a grave risk of causing injury or the act or omission causing the injury is for the purpose of averting bodily harm to himself or another person; or

(Continued on other side)

V-2248 (7-90)

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

Trial Exhibit 48

EXHIBIT
48
Dmc 6/8/01

Material Damage Best Practices

COPY OF EXHIBIT NO. 48 (Page 1 of 13)

NOTIFICATION

CRITICAL ISSUES

- ◆ *How is a claim reported – toll-free number, call to agent, etc.*
- ◆ *From whom is a Notice of Loss accepted?*
- ◆ *What level of detail is required on the Notice of Loss?*
- ◆ *What level of accuracy is required on the Notice of Loss?*
- ◆ *What information must be obtained before the claim can be assigned to a claims representative?*
- ◆ *What level of expertise is required of the person recording the Notice of Loss?*
- ◆ *What level of productivity is conducive to good customer service?*

BEST PRACTICES

- ◆ Nationwide policyholders report claims to their agent or to the report unit.
- ◆ The Notice of Loss receives the same setup priority whether received by telephone, mail or fax.
- ◆ Customer identification cards include telephone numbers for agents (555-5555) and for the report center (1-800-421-3535).
- ◆ Policyholders and agents are fully informed regarding the information needed for the loss report and the importance of prompt reporting.
- ◆ A Notice of Loss is accepted from a policyholder, claimant or others with knowledge of the loss.
- ◆ Customers are treated with concern and empathy when they report claims.
- ◆ The Notice of Loss contains location and telephone number information so that the claims representative can contact the customer promptly.
- ◆ Sufficient time is devoted to answering a policyholder questions and addressing concerns.

ASSIGNMENT

CRITICAL ISSUES

- ◆ *How soon should the file be assigned to the claims representative after the loss report is received?*
- ◆ *What is the assurance that proper coverages are opened and proper reserves are set?*
- ◆ *What is the customer's preference regarding the method of assignment?*

BEST PRACTICES

- ◆ Reported claims are forwarded to claims manager or claims representative as soon as the Notice of Loss is completed.
- ◆ Assignments are made to the appropriate claims representative, Blue Ribbon Repair Service or agent based on severity, geography and expertise.
- ◆ Guidance is provided when reviewing claims for assignment.
- ◆ Coverages and recovery possibilities are opened as appropriate.
- ◆ Applicable reserves are set during the assignment process.
- ◆ The need for reassignment is recognized through a review of the Notice of Loss or when the file circumstances warrant, and the reassignment is made immediately.
- ◆ Reassignments between claims personnel are minimized.

CONTACTS

CRITICAL ISSUES

- ◆ *How will contact be made?*
- ◆ *Who should be contacted?*
- ◆ *How promptly should contact be made with various parties?*
- ◆ *How will contact be made?*
- ◆ *How often should contact be made?*
- ◆ *Are contacts action-oriented?*
- ◆ *How frequently should managers follow up?*

BEST PRACTICES

- ◆ **Initial Contacts**
Contact with the insureds and the claimants is initiated immediately upon receipt of the assignment.

Essential information regarding the claim is obtained during initial contacts.

The claims handling process and claims forms are discussed with all parties.

Completed claim documents are secured.

Advance payments are made when appropriate.
- ◆ **Subsequent Contacts**
Subsequent contacts are planned to maintain control and expedite settlements.

Subsequent contacts are scheduled according to the facts of the case.
- ◆ **Face-To-Face Contacts**
Parties are contacted face-to-face, as appropriate.

INVESTIGATION

CRITICAL ISSUES

- ◆ *What constitutes an adequate investigation?*
- ◆ *Who conducts the investigation?*
- ◆ *Are coverage issues identified and resolved?*
- ◆ *Are interpretations of coverage consistent?*
- ◆ *What documentation is required for the material damage investigation?*
- ◆ *Is there coordination between all claims representatives assigned to the file?*
- ◆ *How do we inform the insured of available coverages?*

BEST PRACTICES

◆ **Coverage Investigation**

Policy information is verified.

Claims are reviewed to identify all potential exposures.

The application of coverage is consistent with the reported loss description.

Insureds are apprised of all coverages available and excess exposure potential.

Coverage conferences are held to discuss questions and share expertise.

Reservation of Rights letters are discussed with claims managers and with legal personnel, and sent immediately upon recognition of a coverage question.

Coverage denials are communicated to the agent, the insured and third parties as soon as possible and in compliance with statutory requirements.

◆ **Liability Investigation**

Essential elements are investigated and documented during initial contacts.

Information about prior claims and damage is obtained and utilized.

Photographs and photographic technology are utilized, as appropriate.

5

WE WILL MANAGE AS A FINANCIALLY STRONG ENTERPRISE, REWARDING RESULTS, TEAMWORK AND CREATIVITY

OFFICE OF CLAIMS

JANUARY 1996

BEST CLAIMS PRACTICES

INVESTIGATION

BEST PRACTICES

◆ **Liability Investigation**

Experts who are knowledgeable regarding case facts are utilized as appropriate.

The versions of all parties are investigated.

Comparative or contributory negligence issues are addressed.

Potential exaggeration or fraud are recognized and investigated.

Agent Support and Errors and Omissions claims and suits against the company are investigated.

6

WE WILL MANAGE AS A FINANCIALLY STRONG ENTERPRISE, REWARDING RESULTS, TEAMWORK AND CREATIVITY

OFFICE OF CLAIMS

JANUARY 1996

BEST CLAIMS PRACTICES

COPY OF EXHIBIT NO. 48 (Page 6 of 13)

1071

R. 2475a

EVALUATION

CRITICAL ISSUES

- ◆ *What impact do mitigating factors have on the evaluation of claims?*
- ◆ *Are claims manager's sufficiently involved in the file?*
- ◆ *Is there coordination between all claims representatives assigned to the file?*
- ◆ *Are internal and external sources of information and technology utilized effectively?*

BEST PRACTICES

◆ **Repairable Vehicle Evaluation**

The evaluation process includes:
complete appraisal of damages during the initial inspection;

tear-down if all damage is not visible;

an agreed price with the repair facility; the price is consistent with prevailing rates and practices;

Reinspection of all supplements, other than documented price increases;

verification of all bills and/or receipts.

Automated estimating is utilized effectively to achieve maximum benefit.

Depreciation, wear-and-tear, betterment, prior damage, and appearance allowances are considered in the evaluation of repairable damages.

Discounts are negotiated when appropriate.

Like-Kind-and-Quality, CAPA certified, and other aftermarket parts are used when appropriate.

Technology is utilized effectively to achieve maximum benefits.

Managers are actively involved in the evaluation of repairable vehicle claims.

Procedure Page logic and industry safety standards and practices are followed.

The evaluation of repairable vehicle claims conforms to statutory and regulatory requirements.

7

WE WILL MANAGE AS A FINANCIALLY STRONG ENTERPRISE, REWARDING RESULTS, TEAMWORK AND CREATIVITY

OFFICE OF CLAIMS

JANUARY 1996

BEST CLAIMS PRACTICES

EVALUATION

BEST PRACTICES

◆ **Total Loss Vehicle Evaluation**

Depreciation, wear-and-tear, betterment, prior damage, and appearance allowances are considered in the valuation of total loss damage.

The Total Loss appraisal is consistent with the damage to the vehicle.

Technology is utilized effectively to achieve maximum benefits.

Managers are actively involved in the valuation of total loss claims.

The valuation of Total Loss claims conforms to statutory and regulatory requirements.

NEGOTIATION AND SETTLEMENT

CRITICAL ISSUES

- ◆ *How soon does the claims representative enter into negotiations?*
- ◆ *How does the claims representative utilize creative negotiating techniques?*
- ◆ *Is the claims representative a skilled negotiator?*
- ◆ *Are offers and demands documented?*
- ◆ *Are proper releases secured?*
- ◆ *Are final documents and checks delivered in a timely manner?*
- ◆ *Are appropriate parties notified of the settlement?*
- ◆ *Are liens recognized and protected?*

BEST PRACTICES

- ◆ Strategy is developed so that an accurate settlement value can be negotiated.
- ◆ Documentation is sufficient to support the settlement value.
- ◆ Contractual provisions are recognized and applied.
- ◆ Comparative or contributory negligence issues are utilized during negotiations.
- ◆ Liens are recognized and protected.
- ◆ The settlement effort is coordinated with all claims representatives assigned to the claim.
- ◆ The settlement is documented, communicated and concluded in a timely manner.
- ◆ NICB reporting requirements are met.

SUBROGATION AND SALVAGE

CRITICAL ISSUES

- ◆ *Are all subrogation opportunities identified?*
- ◆ *Are salvage recoveries maximized?*
- ◆ *Are third party providers properly utilized in order to maximize recoveries?*

BEST PRACTICES

- ◆ All subrogation opportunities are recognized, identified and documented.
- ◆ All salvage opportunities are recognized, identified and documented.
- ◆ Salvage recovery is maximized.

CUSTOMER SERVICE

CRITICAL ISSUES

- ◆ *Are customer satisfaction levels adequately addressed?*
- ◆ *Do customers have a positive attitude at the conclusion of their claims?*

BEST PRACTICES

- ◆ Customer retention is tracked and communicated by geographic area.
- ◆ Direct, internal and external customer satisfaction surveys are conducted.
- ◆ Results of customer opinion polls are analyzed and communicated.
- ◆ Persons making complaints are contacted promptly upon receipt of the complaint.
- ◆ Insureds and agents are apprised of claims status at regular intervals.

TEAMWORK AND INTERPERSONAL SKILLS

CRITICAL ISSUES

- ◆ *How are oral communication skills defined?*
- ◆ *How are oral communication skills measured?*
- ◆ *How are written communication skills defined?*
- ◆ *How are written communication skills measured?*
- ◆ *How are time management and organizational skills measured?*
- ◆ *How is teamwork defined?*
- ◆ *How is teamwork measured?*
- ◆ *How is leadership defined?*
- ◆ *How is an employee's contribution to the district defined?*

TEAMWORK AND CONTRIBUTION TO THE DISTRICT

BEST PRACTICES

- ◆ Active participation in district file conferences.
- ◆ Active participation on Breakthrough teams.
- ◆ Expertise is shared willingly with colleagues.
- ◆ Leadership abilities are recognized within the district.

COMMUNICATION

BEST PRACTICES

- ◆ Rapport is established with customers — few complaints, positive survey results, etc.
- ◆ Number of customer inquiries is at an acceptable level.
- ◆ Essential information is obtained during interviews.

12

WE WILL MANAGE AS A FINANCIALLY STRONG ENTERPRISE, REWARDING RESULTS, TEAMWORK AND CREATIVITY

OFFICE OF CLAIMS

JANUARY 1996

BEST CLAIMS PRACTICES

COPY OF EXHIBIT NO. 48 (Page 12 of 13)

1077

R. 2481a

TEAMWORK AND INTERPERSONAL SKILLS

COMMUNICATION

BEST PRACTICES

- ◆ Memos, letters and other documents are clear, concise and appropriate for the audience.
- ◆ Handwriting is legible, and grammar and spelling are correct.
- ◆ Voice is clear and well modulated.
- ◆ Active listening skills are utilized.

ORGANIZATION & TIME MANAGEMENT

BEST PRACTICES

- ◆ Files are well-organized.
- ◆ Files are easily accessible.
- ◆ Telephone calls are returned promptly.
- ◆ Calendar or planner is utilized for daily and long-term time management.
- ◆ Daily schedule is organized to maximize time.
- ◆ Appointments are kept promptly.
- ◆ CPS systems are utilized properly.
- ◆ Demeanor is calm and professional.
- ◆ Work area is neat and well-organized.

Trial Exhibit 49

1596

Comparative or contributory negligence issues are addressed in the investigation. Potential fraud or exaggeration is recognized and investigated.

Agent Support claims, Errors and Omissions claims, and suits against the company are investigated.

EVALUATION

CRITICAL ISSUES

- What impact do mitigating factors have on the evaluation of claims?
- Are claimants sufficiently involved in the file?
- Is the communication between all claim representatives defined in the file?
- Are internal and external sources of information and technology utilized effectively?

BEST PRACTICES

- Repairable Vehicle Evaluation

The evaluation process includes:

complete appraisal of damages during the initial inspection. If all damage is not visible, an agreed price with repair facility, the price is consistent with prevailing rates and practices; related price increases; other than documented price increases; verification of all bills and/or receipts.

Automated estimating is utilized effectively to achieve maximum benefit.

Depreciation, wear and tear, betterment, prior damage, and appearance allowances are considered in the evaluation of the damage.

Discounts are requested where appropriate.

The Total Loss and Quality (TLQ) CAR certified fair market price as well as economically reasonable non-OBV paid will be sought where appropriate.

Technology is utilized effectively to achieve maximum benefit.

Managers are actively involved in the evaluation of repairable vehicle claims.

Procedure Page logic and industry safety standards and practices are followed.

The evaluation of repairable vehicle damage conforms to statutory and regulatory requirements.

Total Loss Vehicle Evaluation

Depreciation, wear-and-tear, betterment, prior damage, and appearance allowances are considered in the evaluation of total loss damage.

The Total Loss appraisal is consistent with the damage to the vehicle.

Managers are actively involved in the valuation of total loss claims.

The valuation of Total Loss claims conforms to statutory and regulatory requirements.

NEGOTIATION AND SETTLEMENT

CRITICAL ISSUES

- How soon does the claim representative enter his negotiations?
- How does the claim representative utilize creative negotiating techniques?
- Is the claim representative a skilled negotiator?
- Are offers and demands documented?
- Are proof of payments and checks delivered in a timely manner?

Are appropriate parties notified of the settlement?

Are liens recognized and protected?

BEST PRACTICES

A strategy is developed for an accurate settlement value.

Documentation is sufficient to support the settlement value.

Consensual provisions are recognized and applied as necessary.

Comparative or contributory negligence issues are utilized during negotiations.

Liens are recognized and protected.

Subrogation and Salvage

The settlement is coordinated with all claim representatives assigned to the claim.

The settlement is documented, communicated and concluded in a timely manner.

NCB reporting requirements are met.

SUBROGATION AND SALVAGE

CRITICAL ISSUES

- Do we recognize and identify all subrogation opportunities?
- Do we identify salvage recovery?
- Are third party providers properly utilized to maximize recovery?

BEST PRACTICES

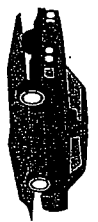
All subrogation opportunities are recognized, identified and documented.

All salvage opportunities are identified and documented.

Salvage recovery is maximized.

Material Damage

Best Claims Practices



NATIONWIDE INSURANCE
 Nationwide is on your side

EXHIBIT
 49
 JMC 6/2/17
 PHCID-Byones, M. J.

NOTIFICATION

CRITICAL ISSUES

- How is a claim reported?
- From whom is a Notice of Loss accepted?
- What level of detail is required on the Notice of Loss?
- What level of accuracy of the information recorded is required?
- What information must be obtained before the claim can be assigned to a claims representative?
- What level of expertise is required of a person reporting the Notice of Loss?
- What level of responsibility is considered a good customer practice?

BEST PRACTICES

Nationwide policyholders report claims to their agent or to the report unit.

The Notice of Loss reaches the same setup priority whether received by telephone, mail or fax.

Customer identification cards include telephone numbers for Agents (535-5535) and for the report center (1-800-421-3333).

Policyholders and Agents are fully informed about the steps needed for the loss report and the importance of prompt reporting.

A Notice of Loss is accepted from policyholders, claimants or others with knowledge of the loss.

Customers are treated with concern and empathy when they report claims.

The Notice of Loss contains location and telephone number information so that the claims representative can contact the customer promptly.

Sufficient time is allowed to answer policyholders' questions and addressing their concerns.

ASSIGNMENT

CRITICAL ISSUES

- How soon should the claims representative receive the Notice of Loss from the insured?
- How long does it take to complete the assignment and proper coverage set?
- What is the customer's preference in method of assignment?

BEST PRACTICES

Reported claims are forwarded to claims manager or claims representative as soon as the Notice of Loss is completed.

Assignments are made to the appropriate claims representative, Blue Ribbon Repair Service or Agent, based on severity, geography and expertise.

Guidance is provided when reviewing claims for assignment.

Coverages and recovery possibilities are opened as appropriate.

Applicable reserves are set during the assignment process.

The need for reassignment is recognized through a review of the Notice of Loss or when the file circumstances warrant, and the reassignment is made immediately.

Reassignments between claims personnel are minimized.

CONTACTS

CRITICAL ISSUES

- How well contact is made?
- How promptly should contact be made with various parties?
- Are contact action-oriented?

- How often should contact be made?
- How frequently should managers follow up?

BEST PRACTICES

• Initial Contacts

Contact with the insured and the claimant is initiated immediately upon receipt of a legitimate. Essential information of the investigation is obtained during initial contact.

The claims handling process and claim forms are discussed with all parties.

Completed claim documents are secured.

Advance payments are made when appropriate.

Subsequent contacts are planned to maintain control and expedite settlement.

Subsequent contacts are scheduled according to the facts of the case.

Face-to-Face Contacts

Parties are contacted face-to-face, as appropriate.

INVESTIGATION

CRITICAL ISSUES

- What constitutes an adequate investigation?
- Who conducts the investigation?
- Are coverage and policy limits identified?
- What documentation is required for the material damage investigation?
- Is there coordination between all claims representatives assigned to the file?

- How do we inform the insured of available coverages?

BEST PRACTICES

• Coverage Investigation

Policy information is verified. Claims are reviewed to identify all potential exposures.

The application of coverage is consistent with the reported loss description.

Insureds are notified of all coverages available and the potential for excess exposure.

Coverage conferences are held to discuss questions and share expertise.

Reservation of Rights letters are discussed with the insured and third parties as soon as possible.

Coverage details are communicated to the agent, the insured and third parties as soon as possible, in compliance with statutory requirements.

Liability Investigation

Essential elements of the investigation are completed and documented during initial contacts.

Information about prior claims and damage is obtained and utilized.

Photographic and photographic technology are utilized throughout the life of the file, as appropriate.

Experts who are knowledgeable regarding the facts of the case are utilized as appropriate.

The versions of all parties are investigated.

6/12/07 Motion for Directed Verdict

13/2008

DANIEL BERG and SHERYL BERG
Plaintiffs,

v.

NATIONWIDE MUTUAL INSURANCE CO.
Defendants,

COURT OF COMMON PLEAS
BERKS COUNTY

NO. 98-813

ORDER

AND NOW, this day of , 2007, upon consideration of Defendant Nationwide Mutual Insurance Company's Motion for Directed Verdict on the Statutory Insurance Bad Faith Claim, it is ORDERED and DECREED that said Motion is GRANTED.

A verdict is hereby entered in favor of Defendant Nationwide Mutual Insurance Company and Against Plaintiffs Berg with regard to Plaintiffs' insurance bad faith claim brought under 42 Pa. C.S.A. § 8371 and Plaintiffs' Eighth Amended Complaint is dismissed with prejudice. The verdict against Plaintiffs Berg precludes any recovery for attorneys' fees and costs or punitive damages under 42 Pa. C.S.A. § 8371. In addition, since Plaintiffs voluntarily waived their right to any award of attorneys' fees and costs under their Unfair Trade Practices and Consumer Protection Law claim, 73 P.S. § 201-1 *et seq.*, via Stipulation approved and filed with this Court on December 3, 2006, Plaintiff is not entitled to an award of attorneys' fees and costs under the jury's verdict of December 17, 2004 and, thus, none will be awarded.

J.

1/3/2008

NELSON LEVINE de LUCA & HORST, LLC
By: Craig A. Cohen, Esquire
Attorney I.D. No. 55887
Four Sentry Parkway, Suite 300
Blue Bell, PA 19422
(610) 862-6500
Attorneys for Defendant,
Nationwide Mutual Insurance Company

DANIEL BERG and SHERYL BERG
Plaintiffs,

v.

NATIONWIDE MUTUAL INSURANCE CO.
Defendants,

COURT OF COMMON PLEAS
BERKS COUNTY

NO. 98-813

BERKS COUNTY, PA
MARIANNE R. SUTTON
PROTHONOTARY

2007 JUN 12 A 9: 09

RECEIVED
PROTHONOTARY'S OFFICE

**DEFENDANT NATIONWIDE MUTUAL
INSURANCE COMPANY'S MOTION FOR DIRECTED
VERDICT ON THE STATUTORY BAD FAITH CLAIM**

Defendant, Nationwide Mutual Insurance Company ("Nationwide"), by and through counsel, files this Motion for Directed Verdict with regard to Plaintiffs' claim for violation of the Pennsylvania insurance bad faith statute, 42 Pa. C.S.A. § 8371. In support thereof, Nationwide avers as follows:

1. Pursuant to Pennsylvania Rule of Civil Procedure 226(b), "[a]t the close of all the evidence, the trial judge may direct a verdict upon the oral or written motion of any party."
2. In deciding a motion for a directed verdict, "the trial court must consider the facts in the light most favorable to the nonmoving party and must accept as true all evidence which

1/3/2008

supports that party's contention and reject all adverse testimony." *Perkins v. Desipio*, 736 A.2d 608, 609 (Pa.Super. 1999)(citations omitted). In addition, "a directed verdict may only be granted where the facts are clear and there is no room for doubt." *Id.*

3. Pennsylvania's bad faith statute provides policyholders with certain legal remedies "[i]n an action arising under an insurance policy, if the court finds the insurer has acted in bad faith toward the insured." 42 Pa. C.S.A. §8371.

4. Bad faith is established if an insurer lacked a reasonable basis for denying coverage and knew of or recklessly disregarded its lack of a reasonable basis during its handling of a claim. *Terletsky v. Prudential Prop. and Cas. Ins. Co.*, 649 A.2d 680, 688 (Pa. Super. Ct. 1994), appeal denied, 659 A.2d 560 (Pa. 1995).

5. A bad faith claim must be proven by clear and convincing evidence. *Ridgeway v. U.S. Life Credit Life Ins. Co.*, 793 A.2d 972, 976 (Pa. Super. Ct. 2002) (citing *Hall v. Brown*, 363 Pa. Super. 415, 526 A.2d 413 (1987), and *Cowden v. Aetna_Cas. & Sur. Co.*, 389 Pa. 459, 134 A.2d 223 (1957)).

6. Considering the facts of this case in the light most favorable to Plaintiffs and accepting as true all evidence that supports Plaintiffs' bad faith allegations, Plaintiffs have failed to present any evidence—let alone any clear and convincing evidence—that would satisfy the most basic requirement of the *Terletsky* standard; namely, that Nationwide denied any benefits to Plaintiffs under the Policy.

7. The uncontradicted evidence in this case conclusively demonstrates that as a matter of law, Nationwide fulfilled all of its obligations under the Policy and at all times acted reasonably.

1/3/2008

8. As Plaintiffs failed to demonstrate that Nationwide denied any benefits to Plaintiffs under the Policy, the evidence presented by Plaintiffs is insufficient to establish a cause of action for bad faith. Since Plaintiffs have failed to meet their burden of proof in establishing the basic elements of a bad faith claim, a verdict must be entered in Nationwide's favor as a matter of law.

WHEREFORE, for the reasons set forth in this motion and the accompanying memorandum of law, Defendant Nationwide Mutual Insurance Company respectfully requests that this Court enter a verdict in its favor and against Plaintiffs and dismiss Plaintiffs' Eighth Amended Complaint with prejudice.

Respectfully submitted,

NELSON LEVINE de LUCA & HORST, LLC

By: Erin Nulty
Craig A. Cohen, Esquire
Erin Nulty, Esquire
Attorneys for Defendant
Nationwide Mutual Insurance Company

Date: 6/11/07

1/3/2008

NELSON LEVINE de LUCA & HORST, LLC
By: Craig A. Cohen, Esquire
Attorney I.D. No. 55887
Four Sentry Parkway, Suite 300
Blue Bell, PA 19422
(610) 862-6500
Attorneys for Defendant,
Nationwide Mutual Insurance Company

RECEIVED
PROTHONOTARY'S OFFICE
2007 JUN 12 A 9:09
BERKS COUNTY, PA
MARIANNE R. SUTTON
PROTHONOTARY

DANIEL BERG and SHERYL BERG
Plaintiffs,

v.

NATIONWIDE MUTUAL INSURANCE CO.
Defendants,

COURT OF COMMON PLEAS
BERKS COUNTY

NO. 98-813

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT
NATIONWIDE MUTUAL INSURANCE COMPANY'S MOTION FOR
DIRECTED VERDICT ON THE STATUTORY BAD FAITH CLAIM**

I. Legal Standard for Entry of Directed Verdict

Pursuant to Pennsylvania Rule of Civil Procedure 226(b), "[a]t the close of all the evidence, the trial judge may direct a verdict upon the oral or written motion of any party." In deciding a motion for a directed verdict, "the trial court must consider the facts in the light most favorable to the nonmoving party and must accept as true all evidence which supports that party's contention and reject all adverse testimony." *Perkins v. Desipio*, 736 A.2d 608, 609 (Pa.Super. 1999)(citations omitted); *see also Correll v. Werner*, 293 Pa. Super. 88, 437 A.2d 1004 (1981); *Cox v. Equitable Gas Co.*, 227 Pa. Super. 153, 155, 324 A.2d 516, 518 (1974). In addition, "a directed verdict may only be granted where the facts are clear and there is no room for doubt." *Id.*

II. Legal Standard for Bad Faith

Pennsylvania's bad faith statute provides policyholders with certain legal remedies "[i]n an action arising under an insurance policy, if the court finds the insurer has acted in bad faith toward the insured." 42 Pa. C.S.A. §8371. Bad faith is established if an insurer lacked a reasonable basis for denying coverage and knew of or recklessly disregarded its lack of a reasonable basis during its handling of a claim. *Terletsky v. Prudential Prop. and Cas. Ins. Co.*, 649 A.2d 680, 688 (Pa. Super. Ct. 1994), appeal denied, 659 A.2d 560 (Pa. 1995). The court in *Terletsky* created a two-part standard for evaluating bad faith claims: "to recover under a claim of bad faith, the plaintiff must show (1) that the defendant did not have a reasonable basis for denying benefits under the policy, and (2) that defendant knew or recklessly disregarded its lack of reasonable basis in denying the claim." *Id.*; see also, *Klinger v. State Farm Mut. Auto. Ins. Co.*, 115 F.3d 230, 233 (3d Cir.1997).

Further, the *Terletsky* court defined "bad faith" in the insurance context as "'any frivolous or unfounded refusal to pay proceeds of a policy,'" and observed that bad faith conduct "'imports a dishonest purpose and means a breach of a known duty through some motive of self-interest or ill-will; mere negligence or bad judgment is not bad faith.'" *Id.* (quoting Black's Law Dictionary 139 (6th ed. 1990)). A cause of action under the Pennsylvania bad faith statute "must originate from a writing setting forth an agreement between the insured and the insurer that the insurer would pay the insured upon the happening of certain circumstances." *Ridgeway v. U.S. Life Credit Life Ins. Co.*, 793 A.2d 972, 976 (Pa. Super. Ct. 2002).

When a plaintiff's bad faith allegations are not premised on an action "arising under an insurance policy," a bad faith claim will not lie. *Ridgeway v. U.S. Life Credit Life Ins. Co.*, 793 A.2d 972, 976 (Pa. Super. Ct. 2002) (holding that the post-settlement or post-judgment conduct

13-2883

of an insurer is not bad faith because it is not an action arising under the policy). The decision in *Ridgeway* is consistent with other Pennsylvania cases holding that a policyholder action against an insurer that does not have its roots directly in a claim arising under the policy is not cognizable under the Bad Faith Statute. See, e.g., *Kurtz v. Am. Motorists Ins. Co.*, 1997 U.S. Dist. LEXIS 2671 (E.D. Pa. Mar. 10, 1997) (Section 8371 does not apply to an insurance carrier's decision not to renew); *Belmont Holdings Corp. v. Unicare Life & Health Ins. Co.*, 1999 U.S. Dist. LEXIS 1802 (E.D. Pa. Feb. 5, 1999) (Section 8371 does not apply to a dispute over a premium increase); *The Brickman Group, Ltd., v. CGU Ins. Co.*, 53 Pa. D. & C.4th 71 (Ct. Com. Pl. 2001) (denying motion to amend a complaint insofar as it sought to bring an action for non-renewal of an insurance policy arising under a bad faith claim).

A bad faith claim must be proven by clear and convincing evidence. *Id.* (citing *Hall v. Brown*, 363 Pa. Super. 415, 526 A.2d 413 (1987), and *Cowden v. Aetna Cas. & Sur. Co.*, 389 Pa. 459, 134 A.2d 223 (1957)). This requires a showing by the plaintiffs that the evidence "is so clear, direct, weighty and convincing as to enable a clear conviction, *without hesitation*, about whether or not the defendants acted in bad faith." *Bostick v. ITT Hartford Group*, 56 F.Supp. 2d 580, 587 (E.D. Pa. 1999) (citing *Stafford v. Reed*, 363 Pa. 405, 70 A.2d 345, 348 (Pa. 1950)); Packel, Pennsylvania Evidence § 303.2 (1987)) (emphasis added). See also *Polselli v. Nationwide Mut. Ins. Co.*, 126 F.3d 524, 528 (3d Cir. 1997); *Collins v. Allstate Ins. Co.*, No. Civ. A. 95-592, 1997 WL 700495, at *6 (E.D. Pa. October 31, 1997) (recognizing that "the clear and convincing standard is a stringent one, surpassed in the law only by proof beyond a reasonable doubt.") Therefore, in the absence of any proof to the contrary, there is a presumption that the actions of insurance company representatives have been taken fairly, honestly, properly, in good

faith and without fraud. *Cowden v. Aetna Cas. & Sur. Co.*, 389 Pa. 459, 476, 134 A.2d 223, 231 (1957).

As set forth below, the evidence during trial established that Nationwide fully satisfied its contractual obligations to Plaintiffs, and at all times acted reasonably in the handling of Plaintiffs' claim. Nationwide did not deny any benefits under the Policy to Plaintiffs. Plaintiffs failed to present any evidence that Nationwide violated any statute to Plaintiffs in its handling of their claim. Rather, the record clearly establishes that Nationwide made every effort to satisfy Plaintiffs' concerns regarding the purportedly improper repairs, and ultimately went beyond its obligations under the insurance policy to assist Plaintiffs in their claim.

III. Directed Verdict Should Be Entered in Nationwide's Favor Because Plaintiffs' Evidence Is Insufficient to Establish a Cause of Action for Statutory Bad Faith

A. Plaintiffs Were Not Denied Any Benefits Under the Insurance Policy

The evidence presented at trial established that at no time did Nationwide ever deny or delay payment on Plaintiffs' collision claim under the Policy. As set forth in the policy language and testified to by Bruce Bashore and Constance Foster, Nationwide's only obligation under the Policy was "to pay for loss to your auto caused by collision or upset." In other words, Nationwide was contractually obligated to reimburse Plaintiffs or a third party repair shop for the costs associated in returning the vehicle to its pre-accident function and appearance. The extent of Nationwide's contractual obligation was confirmed by Plaintiffs' own expert James Chett, who testified that Nationwide's obligation under the policy was to pay to have the car repaired.

The uncontraverted evidence shows that Nationwide at all times acknowledged its contractual obligations under the Policy to pay for necessary repairs. As admitted by Plaintiff Daniel Berg during the first phase of trial, Plaintiffs were at no time "out of pocket" for any

1/3/2008

expenses covered under the Policy because Nationwide directly paid all collision and car rental costs. Furthermore, as Nationwide's expert Constance Foster testified, Nationwide had no obligation under the Policy to ensure the quality of the resulting repairs or to declare the vehicle a "total loss" as suggested by Plaintiffs. Nationwide only had a contractual obligation to pay for necessary repairs.

Plaintiffs failed to present any evidence at trial that Plaintiffs were denied benefits under the insurance policy. Without evidence of Nationwide's denial of benefits, Plaintiffs have failed to establish the basic element necessary to prove bad faith. Thus, as a matter of law, Plaintiffs' claim of bad faith fails and verdict should be entered in Nationwide's favor.

B. Plaintiffs Do Not Have a Cognizable Bad Faith Claim Under the Blue Ribbon Repair Service Program

During trial, Plaintiffs attempted, but failed, to present any evidence that the Blue Ribbon Repair Service ("BRRS") Program and Blue Ribbon Guaranty were a part of the insurance policy, such that either satisfied the "arising under" language of the bad faith statute and comprised the basis of a bad faith claim. As both Bruce Bashore and Constance Foster testified, the Blue Ribbon Repair Program is separate and distinct from the policy of insurance. Both Mr. Bashore and Ms. Foster testified that the BRRS is an optional program available to first-party policyholders and third-party claimants. In the uncontraverted testimony of Ms. Foster, it was established that Nationwide's BRRS Program was neither part of the Policy nor part of any endorsement to the Policy, but rather a separate service that Nationwide provided to its customers. Ms. Foster testified that the BRRS Program provided customers with a repair guaranty—it was not insurance coverage arising under a policy. Even Plaintiffs' own expert witness, James Chett, testified that the BRRS Program was not a part of the insurance Policy.

13/288

As explained by Ms. Foster during her testimony, under Pennsylvania law a bad faith claim meets the "arising under" criteria of Section 8371 when the claim originates directly from the policy. Where a bad faith action is not premised directly on the terms of the policy, such a claim is not recognizable as bad faith. According to Ms. Foster's testimony, Plaintiffs' claims related to Nationwide's BRRS Program are not claims arising under the Policy, and are therefore not claims that can be made under the Bad Faith Statute. Plaintiffs failed to introduce any evidence that refuted Ms. Foster's testimony. Thus, the uncontraverted evidence shows that Plaintiffs have failed to establish any claim of bad faith related to the BRRS Program and, as a matter of law, Plaintiffs' claim for bad faith fails.

In addition, as Ms. Foster testified, Plaintiffs had the opportunity to present evidence regarding their tort claims and of breach of contract claim under the Blue Ribbon Guaranty during the first phase of trial. The jury considered the issues during the first phase and determined the amount of damages that the Bergs were entitled to under their tort claims and/or Nationwide's Blue Ribbon Guaranty. The jury deliberated and fully compensated Plaintiffs for their damages under the Unfair Clams Practices and Consumer Protection Law. The types of evidence offered in this second phase of trial by Plaintiffs do not support their claim for bad faith; instead, the evidence offered goes to Plaintiffs' tort claims and breach of contract claim under the BRRS Program. Those issues have already been decided by the jury. Plaintiffs have not offered any evidence to establish that the jury's verdict for an action sounding in tort or arising from a breach of warranty has any relevance to the bad faith portion of this trial.

IV. Conclusion

The facts are clear in this case and there is no room for doubt. Considering the facts of this case in the light most favorable to Plaintiffs and accepting as true all evidence that supports Plaintiffs' bad faith allegations, Plaintiffs have failed to present any evidence—let alone any clear and convincing evidence—that would satisfy the most basic requirement of the *Terletsky* standard; namely, that Nationwide denied any benefits to Plaintiffs under the Policy. The clear and convincing burden of proof is a weighty one, surpassed in the law only by proof beyond a reasonable doubt. The record is devoid of any evidence that could satisfy Plaintiffs' burden of proof because Plaintiffs have failed to produce a scintilla of evidence in support of their bad faith allegations.

Without evidence of Nationwide's denial of benefits under the Policy, Plaintiffs' claim for bad faith fails. For all the reasons set forth above and in Nationwide's Motion for Directed Verdict, Nationwide respectfully requests that this Honorable Court enter a verdict in favor of Nationwide and dismiss Plaintiffs' Eighth Amended Complaint with prejudice.

Respectfully submitted,

NELSON LEVINE de LUCA & HORST, LLC

By: Erin Nulty
Craig A. Cohen, Esquire
Erin Nulty, Esquire
Attorney for Defendant
Nationwide Mutual Insurance Company

Date: 6/11/07

PROTHONOTARY	BY	TO	DATE
Order sent to Judge			
Copies Sent			
Forwarded for Processing			
Order for Processing			
Book	<i>Jmy</i>		
Form			
Completed	<i>[Signature]</i>		<i>6/12/07</i>
Number for Env:	Att. Cort:	Copies:	
Number of Books:			

ENTERED
6/12/07

✓

FILE RECEIVED

JUN 12 2007

COMPLETED BY: CW

DATED: 6/12/07

7/10/07 Verdict on UTPCPL Treble
Damages

DAN BERG and SHERRY BERG,
H/W,
Plaintiffs

vs.

NATIONWIDE INSURANCE COMPANY,
Defendant

: IN THE COURT OF COMMON PLEAS OF
: BERKS COUNTY, PENNSYLVANIA

: CIVIL ACTION - LAW

: No. 98-813

:
:

BERKS COUNTY, PA
MARIAINE R. SUTTON
PROTHONOTARY

2007 JUL 10 P 12:19

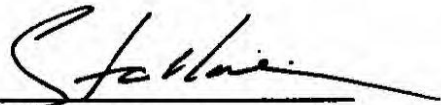
RECEIVED
PROTHONOTARY'S OFFICE

Dee
10/18/07

VERDICT

AND NOW, this 10th day of July, 2007, following a non-jury trial, a verdict is hereby entered in favor of the Defendant, Nationwide Insurance Company, and against the Plaintiffs, Dan Berg and Sherry Berg, on their claim for treble damages under the Pennsylvania Unfair Trade Practices and Consumer Protection Law, Title 73, 73 P.S. Section 2-201 (Supp. 2007), in Phase II of this litigation.

BY THE COURT:



ALBERT A. STALLONE, J.

INSTRUCTIONS TO THE PROTHONOTARY:

**Please file the original order and
distribute certified copies as follows:**

Computer

Benjamin J. Mayerson, Esquire

Craig A. Cohen, Esquire

Judge Albert A. Stallone

PROTHONOTARY	BY	TO	DATE
Order sent to Judge			
Copies Sent	<i>SPD</i>		<i>7/11/07</i>
Forwarded for Processing	<i>RMS</i>	<i>AF</i>	<i>7/11/07</i>
Forwarded for Processing			
Entered in Hearing Book			ENTERED
Forwarded to Comp. Room	<i>ARF</i>		0016
Forwarded to File Room			
File Located			
Work Completed	<i>MTC</i>		<i>7-13-07</i>
Request for Env:	Add. Cert:	Copies:	
Request Recd:			

A Certified Copy of this Verdict
 was issued to B. Mayerson, Esq &
C. Cohen, Esq.

by first class mail by A. Shuey
 Deputy Prothonotary on 7/11/07
 and to _____

by Inter Office Mail. Comp. Rm.

RECEIVED
 7/12/07
 COMPLETED BY: *(Signature)*
 JUL 12 2007
 RECEIVED

7/10/07 Verdict on Bad Faith

DAN BERG and SHERRY BERG,
H/W,
Plaintiffs

vs.

NATIONWIDE INSURANCE COMPANY,
Defendant

: IN THE COURT OF COMMON PLEAS OF
: BERKS COUNTY, PENNSYLVANIA

: CIVIL ACTION - LAW

: No. 98-813 #7

BERKS COUNTY, PA
MARIANNE R. SUTTON
PROTHONOTARY

2007 JUL 10 P 12:11

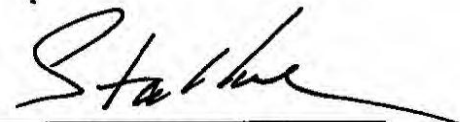
RECEIVED
PROTHONOTARY'S OFFICE

VERDICT

AND NOW, this 10th day of July, 2007, following a non-jury trial, and after hearing oral argument on the Defendant's Motion for Directed Verdict on the Plaintiffs' Bad Faith Claim in Phase II of this litigation, pursuant to Title 42, 42 Pa.C.S.A. Section 8371 (Supp. 2007), the same is hereby GRANTED.

Accordingly, a directed verdict is hereby entered in favor of the Defendant, Nationwide Insurance Company, and against the Plaintiffs, Dan Berg and Sherry Berg, on the Plaintiffs' Bad Faith Claim.

BY THE COURT:



ALBERT A. STALLONE, J.

PROTHONOTARY	BY	TO	DATE
Order sent to Judge			
Copies Sent	<i>LMS</i>		
Forwarded for Processing	<i>LMS</i>	<i>AF</i>	<i>7/11/07</i>
Forwarded for Processing			<i>7/11/07</i>
Entered in Hearing Book			
Forwarded to Comp. Room	<i>ALF</i>		
Forwarded to File Room			
File Located			
Filing Completed	<i>GC</i>		<i>7-12-07</i>
Request for Envs:	Azd. Ccrt:	Copies:	
Request Rec'd:			

ENTERED
7/12/07

A Certified Copy of this *Verdict*
 was issued to *B. Mayerson, Esq. &*
C. Cohen, Esq.

by first class mail by *L. Shutt*
 Deputy Prothonotary on *7/11/07*
 and to _____

by Inter Office Mail. *Comp. Rm.*

RECEIVED
 JUL 12 2007
 COMPLETED BY: *GC*
 7/12/07

10/29/07 Order

DANIEL BERG and SHERYL BERG
Plaintiffs,

v.

NATIONWIDE MUTUAL INSURANCE CO.
Defendants,

PENNSYLVANIA COURT
OF COMMON PLEAS
FOR BERKS COUNTY

NO. 98-813

ORDER

AND NOW, this *29th* day of *Oct*, 2007, upon consideration of the Stipulation of Counsel and Order of February 11, 1999, regarding the storage of Plaintiffs' vehicle and the payment of storage fees associated therewith, it is hereby ORDERED as follows:

1. As set forth in the Stipulation of Counsel and Order of February 11, 1999, Plaintiffs agreed to share equally in the payment of monthly storage fees for storing the Bergs' vehicle during the course of this litigation;

2. To date, the storage fees, which have been paid solely by Nationwide, amount to \$6,566.70 (*See* attached journal listing entries of Nelson Levine de Luca & Horst LLC indicating payments of storage fees);

3. Plaintiffs shall remit half of the total amount of monthly storage fees, totaling \$3,283.35, which shall be made payable to Nelson Levine de Luca & Horst, LLC, counsel for Nationwide, *no later than twenty (20)* ~~within seven (7)~~ days of the date of this Order;
Don

4. Plaintiffs shall forward Plaintiffs' key to the padlock at the storage facility to Craig A. Cohen at Nelson Levine de Luca & Horst, LLC, *no later than twenty (20)* ~~within seven (7)~~ days of the date of this Order; *and*
Don

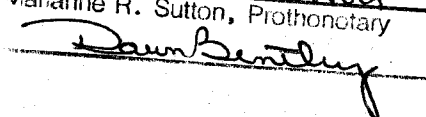
5. Nationwide, as legal owner of the vehicle, shall be entitled to unencumbered procession of the vehicle and is hereby given leave to dispose of the vehicle in any manner it deems fit; and

Any failure by the Plaintiff to comply with the
6. ~~Plaintiffs will be sanctioned \$100.00 per day for each day they fail to comply with the~~ *forementioned terms of this Order. will result in the imposition of appropriate sanctions, as a further note filed by the Defendant.*

BY THE COURT:


ALBERT A. STALLONE, J.

NOTICE IS HEREBY GIVEN OF THE ENTRY OF THIS ORDER OR DECREE PURSUANT TO RULE P.C.P. 230. YOU ARE NOTIFIED THAT THIS ORDER/DOCUMENT HAS BEEN FILED IN THE PROTHONOTARY'S OFFICE OF BERKS COUNTY AND THIS IS AN EXTRACT FROM THE RECORD OF SAID COURT CERTIFIED THIS 31 DAY OF October 2007

Marianne R. Sutton, Prothonotary
 Deputy

BERKS COUNTY, PA
MARIANNE R. SUTTON
PROTHONOTARY

2007 OCT 30 P 12:47

RECEIVED
PROTHONOTARY'S OFFICE

DATE	CHECK #	AMOUNT
11/28/2000	1366	\$190.80
1/2/2001	1491	\$174.90
3/27/2001	1889	\$238.50
10/23/2001	1161	\$238.50
1/24/2002	1675	\$238.50
4/24/2002	5460	\$238.50
8/19/2002	1807	\$238.50
10/29/2002	6683	\$238.50
1/24/2003	7277	\$238.50
4/24/2003	7646	\$238.50
7/24/2003	8573	\$238.50
10/27/2003	9305	\$238.50
1/23/2004	9979	\$238.50
4/22/2004	10758	\$238.50
7/22/2004	11547	\$238.50
10/21/2004	12333	\$238.50
1/27/2005	13190	\$238.50
4/26/2005	13869	\$238.50
7/22/2005	14707	\$238.50
10/27/2005	15652	\$238.50
2/23/2006	16877	\$238.50
4/20/2006	17467	\$238.50
7/28/2006	18538	\$238.50
10/26/2006	19536	\$238.50
1/25/2007	20634	\$238.50
4/19/2007	21543	\$238.50
7/26/2007	22615	\$238.50
10/25/2007		\$238.50
		\$6,566.70

12/28/07 Notice of Appeal

80

The Mayerson Law Offices, P.C.
By: Hy Mayerson, Esquire
Attorney I.D.#03062
Benjamin J. Mayerson, Esquire
Attorney I.D.#73742
3540 Schuylkill Road
Spring City, PA 19475
(610) 948-4800

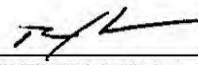
RECEIVED
PROTHONOTARY'S OFFICE
Attorneys For Plaintiffs
2007 DEC 28 P 12:05
BERKS COUNTY, PA
MARIANNE R. SUTTON, J.
PROTHONOTARY

Daniel Berg and Sheryl Berg : Court of Common Pleas
H/W : Berks County, PA
:
vs. :
:
Nationwide Mutual Insurance : No. 98-813
Company, Inc. : Civil Action - Law

NOTICE OF APPEAL

Notice is hereby given that Daniel Berg and Sheryl Berg, Plaintiffs above-named, hereby appeal to the Superior Court of Pennsylvania from the order entered in this matter on the 7th day of December, 2007. This order has been entered in the docket as evidenced by the attached copy of the docket entry.

Respectfully submitted,
THE MAYERSON LAW OFFICES, P.C.

By: 
BENJAMIN J. MAYERSON
Attorney for Plaintiffs Bergs

1/2/2008
The Mayerson Law Offices, P.C.
By: Hy Mayerson, Esquire
Attorney I.D.#03062
Benjamin J. Mayerson, Esquire
Attorney I.D.#73742
3540 Schuylkill Road
Spring City, PA 19475
(610) 948-4800

Attorneys For Plaintiffs

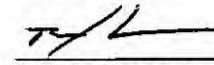
RECEIVED
PROTHONOTARY'S OFFICE
2007 DEC 28 P 12:06
BERKS COUNTY, PA
MARIANNE R. SUTTON
PROTHONOTARY

Daniel Berg and Sheryl Berg : Court of Common Pleas
H/W : Berks County, PA
: :
vs. :
: : No. 98-813
Nationwide Mutual Insurance :
Company, Inc. : Civil Action - Law

PENNSYLVANIA RULE OF APPELLATE PROCEDURE 904(d)
STATEMENT

I, Benjamin J. Mayerson, attorney for Plaintiffs, hereby affirm that the verdict being appealed from, in favor of Defendant Nationwide Mutual Insurance Company on insurer bad faith, was entered on the docket as a final Order, on December 7, 2007. A copy of the docket entry showing the entry of the order appealed from is attached to this Notice of Appeal.

THE MAYERSON LAW OFFICES, P.C.

By: 
BENJAMIN J. MAYERSON
Attorney for Plaintiffs Bergs

98-813

12/28/07

DATE	DOCKET SUMMARY
9/04/2007	to 10/15/07. Copies/Notice sent 8/28/07 Transcriptions of Bench Trial - Volumes I & II - 6/5/07 through 6/11/07 - LODGED
9/04/2007	Transcriptions of Bench Trial - Volumes I & II of 6/5/07 thru 6/11/07 - FILED
9/05/2007	Pltfs' Amended Post-Trial Motion, Legal Brief in SUPPORT of their Motion w/prop Order and Cert of Srvc
9/05/2007	Pltfs' Amended Post-Trial Motion, Legal Brief in SUPPORT of their Motion w/prop Order and Cert of Srvc
9/10/2007	Order of 9/6/07 Pltfs' Amended Motion for Post-Trial Relief DENIED, in view of Ct's Order of 8/27/07. Copies and notice sent 9/12/07
9/10/2007	Order of 9/6/07 Pltfs' Amended Motion for Post-Trial Relief DENIED, in view of Ct's Order of 8/27/07. Copies and notice sent 9/12/07
9/14/2007	Pltf Bergs' Legal Brief in SUPPORT of Post-Trial Motion with Cert of Srvc
9/14/2007	Pltf Bergs' Legal Brief in SUPPORT of Post-Trial Motion with Cert of Srvc
10/04/2007	Deft Nationwide Mutual Insurance Company's Answer to Pltfs' Motion for Post Trail Relief with Brief and Svcs
10/30/2007	Order of 10/29/07 Re: Arg 10/15/07 Pltf's Motion for Post- Trial Relief DENIED. Copies and notice sent 10/31/07
10/30/2007	Order of 10/29/07 Re: Arg 10/15/07 Pltf's Motion for Post- Trial Relief DENIED. Copies and notice sent 10/31/07
10/30/2007	Order of 10/29/07 - Re: Stip of Councel and Order of 2/11/99 Copies and Notice sent 10/31/07
10/31/2007	Molded Verdict SATISFIED by praecipe
11/20/2007	Pltfs' Order for Transcription w/ prop. Court Order for Authorization of Hearing of 10/15/07
11/20/2007	Pltfs' Order for Transcription w/ prop. Court Order for Authorization of Hearing of 10/15/07
11/26/2007	Order of 11/26/07 Authorizing transcription of proceedings of 10/15/07. Copies & Notice sent 11/26/07
11/26/2007	Order of 11/26/07 Authorizing transcription of proceedings of 10/15/07. Copies & Notice sent 11/26/07
12/05/2007	Notice of Lodging Transcript of Record of Oral Argument on 10/15/07 - LODGED
12/05/2007	Notice of Lodging Transcript of Record of Oral Argument on 10/15/07 - LODGED
12/07/2007	12:29PM Judgment on Verdict against Daniel Berg & Sheryl Berg consistent with Court's Order of 10/29/07 denying Bergs' Post Trial Motion. Copies and notice sent 12/7/07
12/12/2007	Deft's Request for Copy of Transcript of Oral Argument on 10/15/07
12/12/2007	Deft's Request for Copy of Transcript of Oral Argument on 10/15/07
12/21/2007	Transcription of Oral Argument on 10/15/07 - FILED
12/21/2007	Transcription of Oral Argument on 10/15/07 - FILED

PLAINTIFF(S) :
BERG, DANIEL

ATTORNEY:

Mayerson, Hy
01 06 07 08

R. 2513a

The Mayerson Law Offices, P.C.
By: Hy Mayerson, Esquire
Attorney I.D.#03062
Benjamin J. Mayerson, Esquire
Attorney I.D.#73742
3540 Schuylkill Road
Spring City, PA 19475
(610) 948-4800

Attorneys For Plaintiffs

RECEIVED
PROTHONOTARY'S OFFICE
2007 DEC 28 P 12:06
BERKS COUNTY, PA
KRISTINE R. SUTTON
PROTHONOTARY

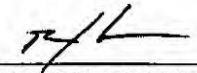
Daniel Berg and Sheryl Berg : Court of Common Pleas
H/W : Berks County, PA
vs. :
No. 98-813
Nationwide Mutual Insurance :
Company, Inc. : Civil Action - Law

PENNSYLVANIA RULE OF APPELLATE PROCEDURE 904(c)
STATEMENT

I, Benjamin J. Mayerson, attorney for Plaintiffs, hereby affirm that the complete transcript of both trial phases were lodged of record on the dates indicated, copies attached, as follows:

1. Trial Phase I (jury trial on fraud), lodged January 14, 2005;
2. Post Trial Motion of Defendant Nationwide (denied), lodged March 21, 2005;
3. Trial Phase II (bench trial on insurer bad faith), also containing oral argument on Defendant Nationwide's Motion for Directed Verdict (granted), at Trial Phase II, 672 - 744, lodged September 4, 2007; and,
4. Post Trial Motion of Plaintiffs (denied), lodged December 5, 2007.

THE MAYERSON LAW OFFICES, P.C.

By: 
BENJAMIN J. MAYERSON
Attorney for Plaintiffs Bergs

1/2/2005

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

DANIEL BERG and : In the Court of Common Pleas
SHERYL BERG, : of Berks County, Pennsylvania
Plaintiffs : Civil Action - Law

vs.

LINDGREN CHRYSLER-PLYMOUTH, :
INC., and LINDGREN and :
MANSKE, INC., and :
NATIONWIDE MUTUAL :
INSURANCE COMPANY, :
Defendants :

vs.

K.C. AUTO BODY, INC., :
Additional Defendant : No. 98-813

NOTICE OF LODGING TRANSCRIPT OF RECORD

TO: THE HONORABLE ALBERT A. STALLONE, SENIOR JUDGE

For the Plaintiffs,
Daniel Berg and
Sheryl Berg:

BENJAMIN J. MAYERSON, ESQUIRE
HY MAYERSON, ESQUIRE
MARGARET R. CONNORS, ESQUIRE
3540 Schuylkill Road, Route 724
Spring City, Pennsylvania 19475

For the Defendant,
Lindgren Chrysler-
Plymouth:

KENNETH C. MYERS, ESQUIRE
534 Elm Street, 1st Floor
Reading, Pennsylvania 19601

For the Defendant,
K.C. Auto Body Shop:

BRETT A. HUCKABEE, ESQUIRE
1136 Penn Avenue
P.O. Box 6895
Reading, Pennsylvania 19610

Notice is hereby given that on Friday, January 14, 2005, the transcript of the record as ordered to be transcribed in the above-captioned case will be lodged in the office of the Prothonotary - Civil Court Division. If no objection is made to said transcript within 5 days from said date, it will be duly certified by the undersigned and filed of record in the case, in accordance with Pa.R.A.P. 1922(a).

Date: January 14, 2005

Angela Rotkiske
ANGELA ROTKISKE
Official Court Reporter

JAN 12 2005

1/2/2005
1/2/2005

DANIEL BERG and SHERYL : In the Court of Common Pleas
BERG, husband and wife, : of Berks County, Pennsylvania
Plaintiffs : Civil Action -- Law

vs. :

LINDGREN CHRYSLER-PLYMOUTH, :
INC., and LINDGREN AND :
MANSKE, INC., and :
NATIONWIDE MUTUAL :
INSURANCE COMPANY, :
Defendants :

and :

K. C. AUTO BODY, INC., :
Additional Defendant : No. 98-813

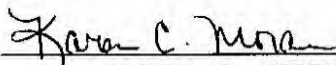
NOTICE OF LODGING TRANSCRIPT OF RECORD

TO:

BENJAMIN J. MAYERSON, ESQUIRE
3540 Schuylkill Road
Spring City, Pennsylvania 19475

Notice is hereby given that on Monday, March 21, 2005, the transcript of the Argument - Motion for Post-trial Relief as ordered to be transcribed in the above-captioned case will be lodged in the Office of the Prothonotary of Berks County. A copy of the within transcript may be obtained from the Prothonotary upon payment to the Prothonotary of the total amount due, being \$76.50, less payment of estimated one-half cost of transcript already paid of \$40.00, for a balance due in the amount of \$36.50.

Dated: March 21, 2005


KAREN C. MORAN
Official Court Reporter

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

DANIEL AND SHERYL BERG : In the Court of Common Pleas
: of Berks County, Pennsylvania
: Civil Action - Law
vs. :
: :
: :
NATIONWIDE MUTUAL :
INSURANCE COMPANY : No. 98-813

BENCH TRIAL
Tuesday, June 5, 2007
through
Monday, June 11, 2007
Reading, Pennsylvania

Before THE HONORABLE ALBERT A. STALLONE, Senior Judge,
Specially Presiding

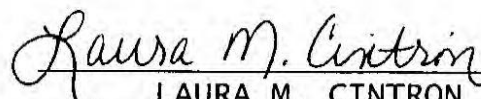
NOTICE OF LODGING TRANSCRIPT OF RECORD

TO: THE HONORABLE ALBERT A. STALLONE, Senior Judge
3rd Floor, Courthouse
633 Court Street
Reading, Pennsylvania 19601

BEN MAYERSON, ESQUIRE
HY MAYERSON, ESQUIRE
3540 Schuylkill Road
Route 724
Spring City, Pennsylvania 19475

Notice is hereby given that on Tuesday, September 4, 2007, the transcript of the record as ordered to be transcribed in the above-captioned case will be lodged in the Prothonotary's Office. A copy of the within transcript may be obtained from the Prothonotary's Office upon payment to the Prothonotary's Office with a refund due in the amount of being \$45.00. If no objection is made to said transcript within 5 days from said date, it will be duly certified by the undersigned and filed of record in the case, in accordance with Pa.R.A.P. 1922(a).

Date: September 4, 2007


LAURA M. CINTRON
Official Court Reporter

COPY

DANIEL BERG and	:	In the Court of Common Pleas
SHERYL BERG,	:	of Berks County, Pennsylvania
Plaintiffs	:	Civil Action - Law
vs.	:	
	:	
NATIONWIDE MUTUAL	:	
INSURANCE CO.,	:	
Defendant	:	No. 98-813

ORAL ARGUMENT
 Monday, October 15, 2007
 Reading, Pennsylvania

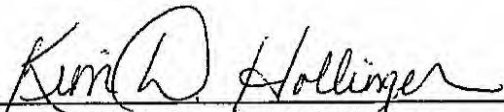
Before THE HONORABLE ALBERT A. STALLONE, Senior Judge
 Specially Presiding

NOTICE OF LODGING TRANSCRIPT OF RECORD

TO: BENJAMIN J. MAYERSON, ESQUIRE
 3540 Schuylkill Road (Route 724)
 Spring City, PA 19475

Notice is hereby given that on December 5, 2007, the transcript of the record as ordered to be transcribed in the above-captioned case will be lodged in the office of the Prothonotary of Berks County. A copy of the within transcript may be obtained from the Prothonotary upon payment to the Prothonotary of the amount due, being \$29.25. If no objection is made to said transcript within 5 days from said date, it will be duly certified by the undersigned and filed of record in the case, in accordance with Pa.R.A.P. 1922(a).

Date: December 5, 2007


 KIM D. HOLLINGER
 Official Court Reporter

DEC 13 2007

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

1/2/2007

The Mayerson Law Offices, P.C.
By: Hy Mayerson, Esquire
Attorney I.D.#03062
Benjamin J. Mayerson, Esquire
Attorney I.D.#73742
3540 Schuylkill Road
Spring City, PA 19475
(610) 948-4800

Attorneys For Plaintiffs

Daniel Berg and Sheryl Berg
H/W

Court of Common
Berks County, PA

vs.

No. 98-813

Nationwide Mutual Insurance
Company, Inc.

Civil Action - Law

RECEIVED
PROTHONOTARY'S OFFICE
2007 DEC 28 P 12: 06
BERKS COUNTY, PA
HARRIET R. SUTTON
PROTHONOTARY

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of December, 2007, a true and correct copy of Plaintiffs' Notice of Appeal was sent via first class mail, postage prepaid, to the following:

Craig A. Cohen, Esquire
Nelson, Levine, de Luca & Horst
Four Sentry Parkway, Suite 300
Blue Bell, PA 19422

Kenneth C. Myers, Esquire
534 Elm Street
Reading, PA 19601


Brett A. Huckabee, Esquire
Hoffert, Huckabee & Weiler, P.C.
1136 Penn Avenue
P. O. Box 6895
Wyomissing, PA 19610

The Honorable Albert A. Stallone, Judge
Berks County Courthouse
633 Court Street
Reading, PA 19601

Official Court Reporters
Laura M. Cintron
Kim Hollinger
Karen C. Moran
Angela Rotkiske
Berks County Courthouse
633 Court Street
Reading, PA 19601

Steven Weber
Court Administrator
Berks County Courthouse
633 Court Street
Reading, PA 19601

THE MAYERSON LAW OFFICES, P.C.

By: 
Benjamin J. Mayerson, Esquire
Attorney for Plaintiffs Bergs

Date: 12/28/07

9544 0RET 4000 DTTE E002

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$ X	Postmark Here 98-813 12/31/07
Certified Fee	X	
Return Receipt Fee (Endorsement Required)	X	
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Sent: SUPERIOR COURT OF PENNSYLVANIA
 Street or PO: PROTHONOTARY OFFICE
 City: 100 PINE STREET - Suite 400
 HARRISBURG PA 17101

Berks County
Marianne Sutton, Prothonotary

Received: 12/28/2007 12:11:27 PM ptaaneil

Docket Number: 98 00813 ActionID: 008

Appeals: To Higher Courts	\$61.00
Prathy Fee	\$61.00
Total:	\$61.00
Check	\$61.00
Total Payments:	\$61.00
Change Due:	\$0.00

PROTHONOTARY	BY	TO	DATE
File sent to judge			
Copies sent			
Forwarded to Prothonotary	AD	U-Box	12/31/07
Forwarded to Clerk			12-31-07
Entered in electronic clock			
Forwarded to Court			
Forwarded to File room			
File Located			
Filing Completed			
Request for Env:	Add.Cert:	Copies:	
Request Rec'd:			

U.S. CLAIM RECEIVED
 DEC 31 2007
 COMPLETED BY: *CSW*
 DATED: 1/2/08

1/17/08 Bergs' Concise Statement of Errors
to Be Complained of on Appeal

54

Mayerson Schreiber McDevitt, P.C.
By: Benjamin J. Mayerson, Esquire
Attorney I.D.#73742
3540 Schuylkill Road
Spring City, PA 19475
(610) 948-4800

Attorneys For Plaintiffs

Daniel Berg and Sheryl Berg :
H/W :
vs. :
Nationwide Mutual Insurance :
Company, Inc. :

Court of Common Pleas
Berks County, PA
No. 98-813
Civil Action - Law

RECEIVED
PROTHONOTARY'S OFFICE
2008 JAN 17 P 4: 14
BERKS COUNTY, PA
MARIANNE R. SUTTON
PROTHONOTARY

**PLAINTIFFS' CONCISE STATEMENT OF
ERRORS TO BE COMPLAINED OF ON APPEAL**

Plaintiff Bergs, by and through their attorney, Benjamin J. Mayerson, respectfully file this Concise Statement of Errors To Be Complained Of On Appeal, pursuant to Order of January 3, 2008. This Statement is prefaced with a cautionary note that the Trial Court offered little indication of its reasoning, leaving Plaintiffs guessing at how the Court reached a directed verdict in favor of Defendant Nationwide, after the jury found a violation of the catch-all fraud provision of the Unfair Trade Practices and Consumer Protection Law, 73 P.S. §201-2 (4) (xxi). Plaintiffs have thus identified six errors in a good faith effort to avoid waiver of what may be a highly nuanced Trial Court opinion, while at the same time attempting to avoid redundancy.

1. In this bifurcated bench trial, it was against the weight of the evidence, an abuse of discretion, and an error of law to enter a directed verdict on the issue of insurer bad faith, in favor of Defendant Nationwide, after the jury, in the first trial phase, found Nationwide liable for fraud and/or deceit under the catch-all provision of the Unfair Trade Practices and Consumer Protection Law, 73 P.S. §201-2 (4) (xxi). A fully adjudicated violation of the catch-all fraud provision is itself evidence to support a finding of bad faith. See Romano v. Nationwide Mutual Fire Insurance Company, 646 A.2d 1228, 1231-32 (Pa. Super. 1994)(statutory and regulatory

1/19/2008

violations may support a finding of insurer bad faith). Although fraud, deceit and bad faith are often defined synonymously, an insured can succeed in a bad faith action without proving any fraudulent conduct whatsoever. See Terletsky v. Prudential Property and Casualty Insurance Company, 649 A.2d 680, 689 (Pa. Super. 1994), and Adamski v. Allstate Ins. Co., 738 A.2d 1033, 1036 (Pa. Super. 1999). Thus, a directed verdict in Nationwide's favor is manifestly erroneous, arbitrary, capricious, and flagrantly contrary to the evidence.

2. An error of law controlled the outcome of the case. Specifically, the Trial Court did not correctly apply controlling appellate law interpreting the "arising under an insurance policy" language of the bad faith statute, 42 Pa. C.S.A. §8371. Appellate authority holds that a broad range of conduct satisfies the language above, provided the conduct takes place in relation to an insurance claim. See O'Donnell v. Allstate Ins. Co., 734 A.2d 901 (Pa. Super. 1999); Polselli v. Nationwide Mut. Fire Ins. Co., 126 F.3d 524 (3d Cir. 1997); Wintersberg v. Trans. Ins. Co., 72 F.3d 318 (3d Cir. 1995); and Hollock v. Erie Ins. Exch., 842 A.2d 409 (Pa. Super. 2004).

Defendant Nationwide's breach of fiduciary duties and other bad conduct took place between the time the claim was triggered and the date it was paid, placing the conduct squarely within the context of an insurance claim. The conduct included, but is not limited to, violations of state law and insurance regulations pertaining to the appraisal and repair of collision claims, specifically the Motor Vehicle Physical Damage Appraisers Act, 63 P.S. §§ 861-63, and the insurance regulations annexed thereto.

3. It is an error of law and abuse of discretion for the trial court to rely upon erroneous legal opinions advanced by the Defendant insurer's trial expert, former Insurance Commissioner Constance Foster, when Plaintiffs alerted the Trial Court to the erroneous legal opinions before, during, and after trial. See *eg.*, Motion In Limine filed May 29, 2007; Oral

Argument on Nationwide's Motion for Directed Verdict at Bench Trial Transcript 705 [6] - 719 [16], 728 [23] - 729 [23], 740 [11] -744 [21]; and, Oral Argument for Post Trial Motion, Lodged December 5, 2007. *See also* Plaintiffs' Motion for Post-Trial Relief at paragraphs 46-84, and Plaintiffs' Brief In Support of Post-Trial Motion, filed September 14, 2007, at 9-16.

4. A directed verdict in Nationwide's favor, premised upon a finding that the insurance claim was superseded by Plaintiffs' agreement to participate in Nationwide's collision repair program, is an abuse of discretion, an error law, and against the weight of the evidence. The conduct of both parties confirms the repair program was part of Nationwide's claim service, not a separate contract extinguishing the rights, duties, and remedies of the insurance contract.

5. The Trial Court abused its discretion by precluding Defendant Nationwide's Attorney Billing Summary and billing records, revealing that Nationwide paid \$922,654.25 defending this lawsuit through the first trial phase. The evidence is relevant to disputed issues of fact, the preclusion of which creates unfair prejudice if this Court does not award Plaintiffs reasonable counsel fees. The evidence is relevant to a reprehensibility analysis and supports Plaintiffs' contention that Nationwide implemented its *Pennro Litigation Strategy*. The documented goal of the *Strategy* is to deter plaintiff lawyers from undertaking representation of claimants on a contingency fee basis in low-value-claims, by making it known the cost of representation would exceed the value of the claim. *See Hollock v. Erie Ins. Exch.*, 842 A.2d 409, 421 (2004), *citing Mathias v. Accor Econ. Lodging, Inc.*, 347 F.3d 672, 677 (7th Circuit Ill. Oct. 21, 2003) (discussing the heightened reprehensibility of such a strategy). *See also Bonenberger v. Nationwide Mut. Ins. Co.*, 791 A.2d 378 (Pa. Super. 2002).

6. It was an abuse of discretion, to find as a matter of law, that Plaintiffs failed to prove insurer bad faith by clear and convincing evidence, while at the same time refusing to

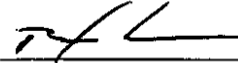
1 / 18 / 2009

require Nationwide to produce relevant evidence. Nationwide removed numerous entries from its claim file pursuant to a spurious assertion of attorney-client privilege. The Trial Court did not require production, a privilege log, or even *in camera* review, despite Plaintiffs' repeated motions. It was confirmed at trial, via admissions of Nationwide management, that the redacted entries were written *before* counsel was retained, thereby confirming that Nationwide had no basis to assert the privilege in the first place.

The materiality of the missing evidence, and unfair prejudice presented thereby, was confirmed at trial when Nationwide used the attorney-client privilege as a sword, while knowing it had no basis to use it as a shield. Specifically, Nationwide relied upon the apparent absence of any entry in the redacted claim file to support the contention that it was unaware of the repair failures until it received Plaintiffs' letter of legal representation. The claim file, riddled with blackened redactions, is at Trial Exhibit "46," Bench Trial Transcript, 956-1029

WHEREFORE, Plaintiff Bergs prayer for relief includes a new trial and appellate opinion finding the directed verdict in favor of Defendant Nationwide to be manifestly erroneous, arbitrary, capricious, flagrantly contrary to the evidence, and/or stemming from a failure to apply controlling precedent. It will be requested that the opinion address the abuse of discretionary powers in refusing to require production of the improperly redacted claim file entries, and for preclusion of Defendant Nationwide's Attorney Billing Summary and billing records which are relevant to a proper reprehensibility analysis, and to Plaintiffs' petition for an award of reasonable counsel fees pursuant to 42 Pa. C.S.A. §8371.

Respectfully submitted,
MAYERSON SCHREIBER McDEVITT, P.C.

By: 
BENJAMIN J. MAYERSON
Attorney for Plaintiff Bergs

Mayerson, Schreiber McDevitt, P.C.
By: Benjamin J. Mayerson, Esquire
Attorney I.D.#73742
3540 Schuylkill Road
Spring City, PA 19475
(610) 948-4800

Attorney For Plaintiffs

Daniel Berg and Sheryl Berg
H/W

vs.

Nationwide Mutual Insurance
Company, Inc.

:
:
:
:
:
:
:

Court of Common Pleas
Berks County, PA

No. 98-813

Civil Action - La

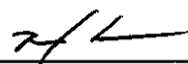
RECEIVED
PROthonotary's OFFICE
2008 JAN 17 P 4: 14
BERKS COUNTY, PA
CLERK OF COURT
JANET R. SUTTON
PROthonotary

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 16th day of January, 2008, a true and correct copy of Plaintiff Bergs' Concise Statement of Errors to be Complained of on Appeal was sent via U.S. first class mail, postage prepaid, to the following:

Craig A. Cohen, Esquire
Nelson, Levine, de Luca & Horst
Four Sentry Parkway, Suite 300
Blue Bell, PA 19422

Mayerson Schreiber McDevitt, P.C.

BY: 
Benjamin J. Mayerson
Attorney for Plaintiffs Berg

1/18/2008

PROTHONOTARY	BY	TO	DATE
Order sent to Judge			
Copies Sent			
Forwarded for Processing			
Forwarded for Processing			
Entered in Mapping Book			
Forwarded to Comp. Room	<i>Lry</i>		ENTERED 1/18/08
Forwarded to File Room			
File Located			
Filing Completed			
Request for Env:	Adm. Cost:	Cost:	
Request Rec'd:			

RECEIVED

JAN 18 2008

COMPLETED BY: *AD*
 DATED: *1/18/08*

3/14/08 Statement in Lieu of Memorandum
Opinion

3/18/2008

DAN BERG and SHERRY BERG,
Appellants

vs.

NATIONWIDE INSURANCE COMPANY,
Appellee

: IN THE COURT OF COMMON PLEAS OF
: BERKS COUNTY, PENNSYLVANIA

: CIVIL ACTION - EQUITY

: NO. 98-813

BERKS COUNTY, PA
MARIANNE R. SUTTOR
PROTHONOTARY

2008 MAR 14 P 3:33

RECEIVED
PROTHONOTARY'S OFFICE

STATEMENT IN LIEU OF MEMORANDUM OPINION

AND NOW, this 14th day of March, 2008, this Court files the
within Statement In Lieu of Memorandum Opinion:

1. This action arises out of certain repairs which were
made by Lindgren Chrysler-Plymouth, Inc. to a 1996 Jeep Cherokee
insured under an automobile liability policy issued by the
Appellee, Nationwide Insurance Company, to the Appellants, Dan
Berg and Sherry Berg;

2. These repairs were made pursuant to Nationwide
Insurance Company's "Blue Ribbon Repair Service Program," which
is offered by Nationwide as an option to its policyholders;

3. This case was certified as ready for trial on April 5,
2004;

4. A jury trial was scheduled to begin on December 13,
2004;

5. On the morning of the first day of trial, the parties agreed to bifurcate this case;

6. "Phase I" would consist of the jury trial, to be limited to claims by the Bergs for compensatory damages under the Pennsylvania Unfair Trade Practices and Consumer Protection Law, Title 73, 73 P.S. Section 201-2(4)(xxi) (Supp. 2007), as well as for fraud and civil conspiracy, against both Lindgren Chrysler-Plymouth, Inc. and the Appellee, Nationwide Insurance Company;

7. And, in the event that the jury returned a verdict in favor of the Bergs on any of these three separate claims, the case would proceed to "Phase II," which would consist of a non-jury trial on their claims for up to treble compensatory damages,¹ punitive damages, attorney's fees and costs;²

¹ Their claim for treble compensatory damages is based on Section 201-9.2(a) of the Consumer Protection Law, which provides in pertinent part that:

The court may, in its discretion, award up to three times the actual damages sustained, but not less than one hundred dollars (\$100).

² Their claim for punitive damages, attorney's fees and costs is based on Pennsylvania's "Bad Faith" statute, which appears at Title 42, 42 Pa.C.S.A. Section 8371 (Supp. 2007) and reads as follows:

In an action arising under an insurance policy, if the court finds that the insurer has acted in bad faith toward the insured, the court may take all of the following actions:

(1) Award interest on the amount of the claim from the date the claim was made by the insured in an amount equal to the prime rate of interest plus 3%.

(2) Award punitive damages against the insurer.

3/18/2008

8. Within Phase II, this Court was to decide what appeared at that point to be an issue of first impression and, therefore, one which may have statewide, or perhaps even national significance - that being whether the Bergs' claims for punitive damages, attorney's fees and costs, as they related to the Blue Ribbon Repair Service Program, "arose under" the insurance policy issued to them by Nationwide - for if they did, those claims could proceed but, if they did not, then those claims would not be cognizable pursuant to the "Bad Faith" statute;

9. After a five day trial held on Phase I, the jury returned verdicts in favor of the Bergs and against Lindgren for compensatory damages totalling \$1,925.00; in favor of the Bergs and against Nationwide for compensatory damages totalling \$295.00; and against the Bergs and in favor of Lindgren and Nationwide on the fraud and civil conspiracy claims;

10. Thereafter, Lindgren and Nationwide each filed a Motion for Post-Trial Relief seeking the entry of judgment notwithstanding the jury's verdicts against them;

11. This Court denied both motions by way of a fifteen (15) page Opinion and Order filed on April 7, 2005. A time-

(3) Assess court costs and attorney fees against the insurer.

3/18/2008
stamped, certified copy of our Opinion and Order is attached hereto as Exhibit A;

12. With no appeal having been filed either by Lindgren or Nationwide from this Court's April 7, 2005 Opinion and Order, and by agreement of all of the parties, this Court scheduled the non-jury trial on Phase II to begin on Tuesday, June 5, 2007;

13. After all of the evidence had been presented in Phase II, over the course of six days, Nationwide filed a written Motion for Directed Verdict;

14. Nationwide contended that, when considering all of the evidence presented in the light most favorable to the Bergs, they failed to present sufficient credible evidence which would support a finding that their claims for punitive damages, attorney's fees and costs "arose under" the automobile liability policy issued by Nationwide and, therefore, the Bergs did not have any cognizable claims for them under the "Bad Faith" statute;

15. Nationwide further contended in its motion that, even assuming, arguendo, that the Bergs' claims did arise under the automobile liability policy, the Bergs had failed to present sufficient credible evidence of deceitful conduct, which is the key to any verdict under the "Bad Faith" statute such as what

3/18/2008

would support a finding by this Court that Nationwide had denied any benefits to the Bergs under the policy;

16. The Bergs filed a written response to Nationwide's Motion for Directed Verdict, contending that they had presented "clear and convincing evidence" that a fiduciary relationship was created between Nationwide and the Bergs by virtue of the issuance of the automobile liability policy, that Nationwide had breached its fiduciary obligation to the Bergs in paying for the repairs to their vehicle, as opposed to declaring it a "total loss," and that Nationwide had made certain redactions to their claim file which were improper, all of which the Bergs said warranted an award of punitive damages, attorney's fees and costs;³

17. After reviewing the evidence in its totality, this Court concluded and, therefore, entered verdicts in favor of Nationwide and against the Bergs on July 10, 2007 on their claims for up to treble compensatory damages, punitive damages, attorney's fees and costs;

18. The Bergs filed a timely Motion for Post-Trial Relief, seeking the entry of judgment notwithstanding the directed non-

³ In their response to Nationwide's Motion for Directed Verdict, the Bergs acknowledged that they had the burden of proof by "clear and convincing" evidence. See *Polselli v. Nationwide Mutual Fire Ins. Co.*, 23 F.3d 747, 782 (3rd Cir. 1994).

jury verdict, which this Court denied by Order dated October 29, 2007;

19. On December 7, 2007, the Bergs filed a praecipe with the Prothonotary for the entry of judgment pursuant to Pa.R.C.P. 227.4(2) consistent with that Order;

20. Following the entry of judgment, the Bergs filed a timely "Notice of Appeal" on December 28, 2007 to the Superior Court of Pennsylvania;

21. Upon being served by the Bergs with a copy of their Notice of Appeal, this Court entered an Order on January 3, 2008, in accordance with Pa.R.A.P. 1925(b)(1), directing them to file a Concise Statement of Errors Complained of On Appeal ... with the Court and a copy with the trial judge within twenty-one (21) days from the date of its Order. The full text of that Order reads as follows:

AND NOW, this 3rd day of January, 2008, it is hereby ORDERED and DECREED that the Appellants shall file with the Court, and a copy with the trial judge, a Concise Statement of Errors Complained of on Appeal pursuant to Pa.R.A.P. Rule 1925(b) within twenty-one days of the issuance of this Order.

22. Attached to that Order was a set of written instructions prepared by this Court, directing the Prothonotary to serve certified copies of the Order upon the Computer Division of the Berks County Court Administrator's Office,

3/18/2008

3/18/2008
Benjamin J. Mayerson, Esquire, counsel for the Bergs, and Craig A. Cohen, Esquire, counsel for Nationwide. These instructions read as follows:

INSTRUCTIONS TO THE PROTHONOTARY:

Please file the original order and distribute certified copies as follows:

Computer

Benjamin J. Mayerson, Esquire

Craig A. Cohen, Esquire

Judge Albert A. Stallone

23. In accordance with these instructions, the Prothonotary served certified copies of that Order upon the Court Administrator's Computer Division, Attorney Mayerson and Attorney Cohen on January 4, 2008. A time-stamped, certified copy of the Prothonotary's Certificate of Service is attached hereto as Exhibit "B";

24. The Bergs filed their original Concise Statement with the Prothonotary on January 17, 2008. A time-stamped, certified copy of their Concise Statement is attached hereto as Exhibit "C";

25. Along with their Concise Statement, as filed with the Prothonotary on January 17, 2008, the Bergs included their own Certificate of Service, which reads as follows:

I HEREBY CERTIFY that on the 16th of January, 2008, a true and correct copy of Plaintiff Bergs' Concise Statement of Errors to be Complained of on Appeal was sent via U.S. first class mail, postage prepaid, to the following:

Craig A. Cohen, Esquire
Nelson, Levine, de Luca & Horst
Four Sentry Parkway, Suite 300
Blue Bell, PA 19422

Mayerson, Schreiber
McDevitt, P.C.

BY: /s/ Benjamin J. Mayerson
Benjamin J. Mayerson
Attorney for Plaintiffs
Berg

26. Although the original Concise Statement was filed with the Prothonotary and a copy was served upon counsel for Nationwide, the Bergs did not serve a copy of their Concise Statement upon the trial judge as required by its January 3, 2008 Order;⁴

27. To date, the trial judge has not been served with a copy of the Bergs' Concise Statement as required by its January 3, 2008 Order; and

28. As a result of the Bergs' failure to serve a copy of their Concise Statement upon the trial judge, any issues which the Bergs may now seek to raise on this direct appeal to the

⁴ It should be noted that Lindgren, as well as K.C. Auto Body, Inc., which had been joined by Nationwide following commencement of this action as an Additional Defendant, have since been dismissed as parties.

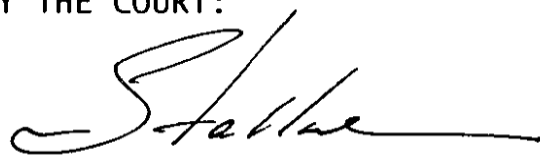
3/18/2008

3/18/2008

Superior Court of Pennsylvania must be deemed waived. See Forest Highlands Cemetery Association v. Hammer, 879 A.2d 223 (Pa. Super. 2005) and Egan v. Stroudsburg School District, 928 A.2d 400 (Pa. Cmwlth. 2007) (where the trial judge, by Order, directs the appellant to file a Concise Statement and to also serve a copy upon the trial judge, and where the trial judge's Order is in fact received by the appellant, the Court ruled that it is not enough for the appellant to simply file the original Concise Statement with the prothonotary and expect the trial judge to find it; rather, the appellant's failure to serve a copy of the Concise Statement upon the trial judge, results in the waiver on appeal of any issues raised in that Concise Statement).

WHEREFORE, this Court respectfully requests the Superior Court to quash the within appeal.

BY THE COURT:



ALBERT A. STALLONE,
BERKS COUNTY, PA
MARIANNE R. SUTTON
PROTHONOTARY

2008 MAR 14 P 3:33

RECEIVED
PROTHONOTARY'S OFFICE

DAN BERG and SHERRY BERG, H/W,
Plaintiffs

vs.

LINDGREN CHRYSLER-PLYMOUTH, INC., a/k/a LINDGREN CHRYSLER PLYMOUTH MAZDA, INC., and LINDGREN AND MANSKE, INC., a/k/a LINDGREN CHRYSLER PLYMOUTH MAZDA, INC., and NATIONWIDE MUTUAL INSURANCE COMPANY,
Defendants

and

K.C. AUTO BODY, INC.,
Additional Defendant

: IN THE COURT OF COMMON PLEAS OF
: BERKS COUNTY, PENNSYLVANIA

: CIVIL ACTION - LAW

: No. 98-813

: JURY TRIAL

: ACTION FOR BREACH OF CONTRACT,
: NEGLIGENCE, BREACH OF WARRANTY
: FRAUD, CIVIL CONSPIRACY,
: VIOLATION OF THE PENNSYLVANIA
: UNFAIR TRADE PRACTICES AND
: CONSUMER PROTECTION LAW AND
: BAD FAITH

BERKS COUNTY, PA
MARIANNE R. SUTTC
PROTHONOTARY

2005 APR -7 P 4:55

RECEIVED
PROTHONOTARY'S OFFICE

Benjamin J. Mayerson, Esquire, and Hy Mayerson, Esquire
Attorneys for the Plaintiffs

Kenneth C. Myers, Esquire, Attorney for Defendants Lindgren Chrysler-Plymouth, Inc., a/k/a Lindgren Chrysler Plymouth Mazda, Inc., and Lindgren & Manske, Inc., a/k/a Lindgren Chrysler Plymouth Mazda, Inc.

Craig A. Cohen, Esquire
Attorney for Defendant Nationwide Insurance Company

Brett A. Huckabee, Esquire
Attorney for the Additional Defendant, K.C. Auto Body, Inc.

OPINION, STALLONE, ALBERT A., JUDGE, APRIL 7th, 2005

This is an action for damages involving claims of fraud, civil conspiracy and violation of the Pennsylvania Unfair Trade

3/18/2008
1/2/2008

3/18/2008
1/2/2008
8882/2/1

Practices and Consumer Protection Law¹ (the Unfair Trade Practices and Consumer Protection claim), arising out of the repair of body damage to a 1996 Jeep Grand Cherokee by Defendants Lindgren Chrysler-Plymouth, Inc., a/k/a Lindgren Chrysler Plymouth Mazda, Inc., and Lindgren & Manske, Inc., a/k/a Lindgren Chrysler-Plymouth-Mazda, Inc., (Lindgren)² and by the Additional Defendant, K.C. Auto Body, Inc. (K.C. Auto Body).³ At the time, the vehicle was being leased by the Plaintiffs, Dan Berg and Sherry Berg (the Bergs), and was insured by Defendant Nationwide Insurance Company (Nationwide).

Prior to the close of the evidence and the submission of the case to the jury, this Court directed the parties to prepare proposed Special Interrogatories for the jury to answer concerning each of the Bergs' claims. Nationwide prepared Special Interrogatories, which instructed the jury that it could find Nationwide and/or Lindgren liable either on any, all, or

¹ Title 73, 73 P.S. Section 201-2(xxi) (Supp. 2005).

² Prior to trial, the Plaintiffs agreed to withdraw claims for breach of contract, breach of warranty and negligence and agreed to bifurcate other claims of bad faith, punitive damages, attorney's fees and costs for hearing before this Court at a later time, if necessary.

³ On September 7, 1999, Defendant Nationwide Insurance Company joined K.C. Auto Body as an Additional Defendant solely for purposes of a claim for contribution.

none of the claims, and circulated them to the other parties, who did not object to their submission to the jury by the Court.

Thereafter, this Court instructed the jury concerning the elements of common law fraud, not only with respect to the underlying common law fraud claim but also at the request of Nationwide, which was not objected to, a second time relative to the Unfair Trade Practices and Consumer Protection claim.

And when it came to damages, we instructed the jury that the Bergs were seeking (in this part of the bifurcated trial) to recover their lease payments made during the repair period, along with the insurance premiums which they paid while the vehicle was not available for their use.

After deliberating for more than four hours, the jury found in favor of Lindgren and Nationwide on the common law fraud and civil conspiracy claims, but against Lindgren and Nationwide on the Unfair Trade Practices and Consumer Protection claim.

After the jury announced its verdicts, and before it was discharged, but returned to the deliberation room, counsel for Nationwide and Lindgren made oral motions for judgment notwithstanding the verdict on the basis that the jury's verdicts on the common law fraud and Unfair Trade Practices and

3/10/2008 1/2/2008

Consumer Protection claims were "inconsistent", which we denied after articulating on the record our reasons for doing so.

Nationwide and Lindgren have now each filed a Motion for Post-Trial Relief, in which they are once again seeking the entry of judgment notwithstanding the verdict on the Unfair Trade Practices and Consumer Protection claim.⁴ We are filing this Opinion in disposition of these motions.

Initially, Nationwide and Lindgren contend that they are entitled to the entry of a judgment on the basis that the jury's verdicts were inconsistent because, in order for the jury to have found in favor of the Bergs on their Unfair Trade Practices and Consumer Protection claim, the jury would have necessarily had to first find in favor of the Bergs on their common law fraud claim. We strenuously disagree.

In deciding a motion for entry of judgment notwithstanding the verdict, the reviewing court must keep in mind that it should only be entered in a clear case, with any doubt resolved in favor of the verdict winner. *Reading Radio, Inc. v. Fink*, 833 A.2d 199 (Pa. Super. 2003); *City of New Castle v. Uzamere*, 829 A.2d 763 (Pa. Commw. 2003); *Education Resources Institute, Inc. v. Cole*, 821 A.2d 493 (Pa. Super. 2003). Moreover, in

⁴ And not simply a new trial which is not before us.

Pennsylvania, there is a presumption of consistency with respect to a jury's findings which can be rebutted only by a showing that there is no reasonable theory to support the jury's verdict. *Giovanetti v. Johns-Manville Corporation*, 539 A.2d 871, 875 (Pa. Super. 1988); see also, *Curran v. Greate Bay Hotel and Casino*, 643 A.2d 687, 688 (Pa. Super. 1994); *Goldmas v. Acme Markets, Inc.*, 574 A.2d 100, 103 (Pa. Super. 1990).

Therefore, strict form is not required to sustain a verdict; rather, all that is essential is that a jury's intention be clearly understood. *James v. Nolan*, 614 A.2d 709 (Pa. Super. 1992). As the *James* court noted at pp. 714-715 of its Opinion:

We cannot become so enmeshed in language that we ignore the clear expression of a conscientious lay jury. The record demonstrates without question that they exerted every effort to perform their duties in accordance with the instructions given and to convey to the court and litigants with all the clarity they could summon the results of their deliberations. No more can be reasonably required (from) those not trained in the law. Nor can we discard their diligent effort because of an asserted lack of precision in legal expression of a conscientious lay jury.

In looking to Section 201-2(4)(xxi) of the Unfair Trade Practices and Consumer Protection Act,⁵ which serves as the legal basis for the Bergs' Unfair Trade Practices and Consumer

⁵ Title 73, 73 P.S. Section 201-2 (Supp. 2005).

1/2/2008
 1/10/2008

Protection claim, we see that the term "fraud" is used but not defined ... but that an "unfair or deceptive act or practice" is defined as follows:

*engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.*⁶

Although the courts have interpreted this catch-all provision of the Unfair Trade Practices and Consumer Protection Act to require a finding of common law fraud,⁷ the statute goes much further to provide that the fraudulent or deceptive conduct must create a likelihood of confusion or misunderstanding in the course of a consumer transaction, which the jury could have easily concluded is quite different in its application from a common law fraud claim, which makes no mention whatsoever of its relationship to a consumer or business transaction and certainly does not require the creation of a likelihood of confusion or misunderstanding.

Simply put, the jury was presented with two separate and distinct claims of common law fraud and a violation of the Unfair Trade Practices and Consumer Protection Act. Therefore, this Court instructed the jury relative to both the common law

⁶ All scripted or otherwise highlighted language appearing in this Opinion are for emphasis only.

⁷ See *Booze v. Allstate*, 750 A.2d 877 (Pa. Super. 2000).

3-18-2008 11/2/2008

fraud and the Unfair Trade Practices and Consumer Protection Act
claims as follows (N.T., Trial, pp. 974-975):

Okay, we will start off with fraud. This is fraud - the fraud claim as to Defendant's, Nationwide Insurance Company and/or Lindgren Chrysler-Plymouth, Inc. The law says that a person who makes a fraudulent misrepresentation of a material fact to another is responsible for all the harm resulting from that other person's reliance on the fraudulent misrepresentation.

In order for parties in the position of Mr. and Mrs. Berg to recover for fraud against Nationwide and/or Lindgren, they must prove by clear and convincing evidence the following elements of the claim.

The first element is that Nationwide and/or Lindgren made a misrepresentation to the Bergs. The second is that this misrepresentation was fraudulent. The third element is that the misrepresentation was of a material fact, and the fourth, that Nationwide and/or Lindgren intended that Mr. and Mrs. Berg rely on that fraudulent misrepresentation, and five, that Mr. and Mrs. Berg did justifiably rely on that fraudulent misrepresentation, and that Mr. and Mrs. Berg's reliance on that representation was a factual cause of the harm allegedly suffered by them.

Now, let's go to the first element, misrepresentation. A misrepresentation is any certification by words or conduct which is not in accordance with the facts. Fraudulent -- a misrepresentation is fraudulent when the person making the misrepresentation knows that it is untrue or does not believe it is true or is indifferent as to whether it is true or by reason of special circumstance has a duty to know whether it is true.

As to the element of materiality, a fact is material if it is one which would be of importance to a reasonable person in determining a choice of action.

8
1/2/2008
118/2008

A material fact need not be the sole or even a substantial factor in inducing or influencing a reasonable person's decision. A fact is material if the maker of the misrepresentation knows that the person to whom it is made is likely to regard it as important even though a reasonable person would not regard it as important.

And then with regard to reliance and justifiable reliance, the law says that reliance means that a person would not have acted or failed to act as he or she did unless he or she considered the misrepresentation to be true.

Now, the second claim of Unfair Trade Practices, and this is as against the Defendants, Nationwide Insurance Company and/or Lindgren Chrysler-Plymouth, Inc., the general purpose of the Unfair Trade Practices and Consumer Protection Law is to protect the public from fraud and unfair or deceptive business practices.

This act provides that it shall be unlawful for any person, be it a natural person or a corporation, to use any unfair or deceptive act or practices in the conduct of any trade or commercial transaction. Now as you know Mr. and Mrs. Berg claim that Nationwide and/or Lindgren violated the statute by engaging in fraudulent or deceptive conduct that created a likelihood of confusion or misunderstanding.

It is your responsibility to determine whether or not Nationwide and/or Lindgren engaged in any unfair or deceptive act or practice. You must determine after carefully considering all of the evidence whether or not the conduct of Nationwide and/or Lindgren or Mr. and Mrs. Berg constituted an unfair or deceptive business practice that created a likelihood of confusion or misunderstanding.

In applying the evidence to these two separate instructions given by this Court, the jury could very well have determined,

3/18/2008 1/2/2008

based on the evidence in the case, that it would be more appropriate to find that Nationwide and Lindgren engaged in fraudulent or deceptive conduct in a consumer or business transaction which created a likelihood of confusion or misunderstanding, rather than simply common law fraud. And when we consider that the law requires a presumption of consistency, we believe that it was reasonable for this lay jury, after making a diligent effort, to have found Nationwide and Lindgren liable on the Unfair Trade Practices and Consumer Protection claim, but not liable on the common law fraud claim.

Moreover, it must be noted here that Nationwide did not include any wording within the Special Interrogatories document to the effect that only if the jury first found Nationwide and/or Lindgren liable on the common law fraud claim that it could then find them liable on the Unfair Trade Practices and Consumer Protection claim. Accordingly, having found that there is a reasonable and understandable theory to support the jury's verdicts, we cannot agree that Nationwide and Lindgren should be entitled to take away the jury verdict in favor of the Bergs on the grounds of inconsistency.

3-18-2008 11:22:08

However, even assuming arguendo that we were to find such an inconsistency, Nationwide and Lindgren have clearly waived⁸ this argument inasmuch as, prior to the jury's discharge and while the jury was sequestered in a separate room waiting for further instructions, this Court invited counsel for Nationwide and/or Lindgren to request that the jurors be brought back into the courtroom and either questioned as to how they arrived at these two verdicts or to otherwise correct any inconsistency which they alleged. They, of course, chose not to do so (N.T., Oral Colloquy Following Jury Verdict, pp. 5-7):

THE COURT: ... maybe we could bring the jury in here and you could question them as to how they arrived at the verdict, unfair trade practices, without a separate verdict with regard to fraud.

MR. MYERS: Your Honor, while Mr. Cohen ponders that, I would simply state for the record we would join in the motion for or we make a separate motion on behalf of Lindgren for a judgment notwithstanding a verdict and I understand your ruling.

THE COURT: The same applies in your situation as well. I think that the case for the Court's interpretation is stronger in view of the fact that I repeated those elements of fraud under unfair trade practices and emphasized that those elements had to be in addition to those elements of just common law fraud. I mean we do not have unintelligent people here. The foreman of this jury is a very intelligent individual. He works for the Reading Eagle/Times. I still believe that he does, and I think that not only

⁸ *City of Philadelphia v. Gray*, 534 Pa. 467, 633 A.2d 1090, 1094 (1993).

him but I think several of the jurors were very attentive.

And I also want to note for the record, not that I have to at this particular point, but this jury gave serious consideration to this case. They were out for four hours. They didn't come back and ask one question, which is an indication to the Court that the instructions and the arguments were clear on the subject.

And the instructions that went to the jury, as you also know, went to the jury without any exception being taken by any of the attorneys. The verdict slip went out to the jury as prepared by counsel and as stipulated to.

Anything further?

MR. MAYERSON: No, Your Honor.

THE COURT: Anything further?

MR. MYERS: No, Your Honor.

MR. COHEN: No, Your Honor.

As an afterthought, Nationwide now goes on to suggest for the first time in its supporting brief that this Court should have brought the jurors back into the courtroom, sua sponte, provided them with additional instructions and directed them to engage in further deliberations. In doing so, Nationwide relies upon the following "footnote" which appears at page 691 of the court's opinion in *Curran v. Greate Bay Hotel & Casino*, 643 A.2d 687 (Pa. Super. 1994):

3/18/2008
8002/2/1

3/18/2008 1/2/2008

We note that the trial court was apparently well aware of the problems presented in the jury's answers to the interrogatories. Immediately after discharging the jury the court asked counsel to offer their opinions interpreting the verdict. While we reiterate that the type of inconsistency which resulted in this case demonstrates the "impracticability of interrogatories", Ferrick v. Senger, supra, we caution trial courts not to discharge juries where there are obvious problems with a jury verdict which might be resolved with more instruction and further deliberations. Had such occurred in the instant case, the problems which necessitated this appeal may well have been avoided.

In *Curran*, the jury found that one of the defendants, Greate Bay Hotel & Casino, t/a Sands Hotel & Casino (the Hotel) was negligent but that its negligence was not a substantial factor in causing the plaintiff's injuries. Nevertheless, the jury assigned thirty percent of the total causal negligence to the Hotel, which was obviously inconsistent with its finding on causation.

However, we believe that *Curran* is clearly distinguishable in that not only is it a footnote and certainly not the holding or dicta in the case, but that there is no such *obvious problem* or inconsistency in the jury's verdicts in the case before us. Furthermore, both Nationwide and Lindgren declined the opportunity to request this clarification from the jury or to ask the Court to give additional instructions and/or direct

3/18/2008 1/2/2008
 8888/2/1

further deliberations by the jury as the Court offered it would do. Had they done so, the issue could very well have been cleared up then and there; but, for reasons known only to them, such as perhaps strategy, they chose not to. Nor was there any suggestion by Nationwide or Lindgren, before the jury was discharged, that this Court should have brought the jurors back into the courtroom, sua sponte. Therefore, they must now accept the consequences of choosing the strategy they did at the time of trial as well as the rejection of this argument as being without merit.

Secondly, Nationwide challenges the jury's award of damages against it in the amount of \$295.00, which it represents in their brief is the amount which the Bergs paid for automobile insurance premiums for five out of the six month time period during which their vehicle was being repaired.⁹ We disagree, since Nationwide has no factual basis for knowing how the jury calculated this amount of damages and, therefore, its argument is based only on its assumption as to how the jury arrived at that figure. As our Superior Court of Pennsylvania said in *Bestwick v. Maguire*, 748 A.2d 701, 702 (Pa. Super. 2000):

⁹ Lindgren has not joined in this argument. See, N.T., Argument on Motions for Post-Trial Relief, p. 21.

Since under our system of jurisprudence our courts in most cases have no way of knowing how or why a jury reached their verdict in a given case, the presence of passion, prejudice, partiality or corruption on the part of the jury, or whether they disregarded instructions, acted under misapprehension or mistake can only be a matter of surmise by a reviewing court.

Furthermore, Nationwide has waived any objection to the damage part of the award, as well, inasmuch as it did not place any objection on the record to the charge given by this Court on damages¹⁰ (N.T., Trial, pp. 978-979; 1060).

For these reasons, we enter the following attached Order.

¹⁰ *Mazlo v. Kaufman*, 793 A.2d 968 (Pa. Super. 2002); Pa.R.C.P. 227.1(b)(1).

3/18/2008
1/2/2008

DAN BERG and SHERRY
BERG, H/W,
Plaintiffs

vs.

LINDGREN CHRYSLER-PLYMOUTH,
INC., a/k/a LINDGREN
CHRYSLER PLYMOUTH MAZDA
INC., and LINDGREN AND
MANSKE, INC., a/k/a LINDGREN
CHRYSLER PLYMOUTH MAZDA,
INC., and NATIONWIDE MUTUAL
INSURANCE COMPANY,
Defendants

and

K.C. AUTO BODY, INC.,
Additional Defendant

: IN THE COURT OF COMMON PLEAS OF
: BERKS COUNTY, PENNSYLVANIA

: CIVIL ACTION - LAW

: No. 98-813

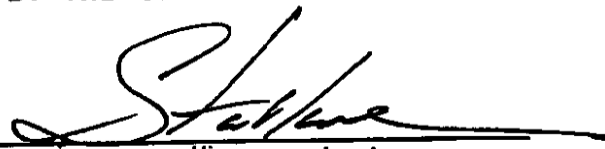
: JURY TRIAL

: ACTION FOR BREACH OF CONTRACT,
: NEGLIGENCE, BREACH OF WARRANTY
: FRAUD, CIVIL CONSPIRACY,
: VIOLATION OF THE PENNSYLVANIA
: UNFAIR TRADE PRACTICES AND
: CONSUMER PROTECTION LAW AND
: BAD FAITH

ORDER

AND NOW, this 7th day of April, 2005, the Defendants'
Motions for Post-Trial Relief are hereby DENIED.

BY THE COURT:


ALBERT A. STALLONE, J.

BERKS COUNTY, PA
MARIANNE R. SUTTON
PROTHONOTARY

RECEIVED
PROTHONOTARY'S OFFICE
2005 APR - 7 P. 4: 51

8002/81/E

PROTHONOTARY	BY	TO	DATE
Order sent to Judge			
Copies Sent	DB		1/4/08
Forwarded for Processing	DB	AR	1/4/08
Forwarded for Processing			
Entered in Hearing Book			
Forwarded to Comp. Room	AR		1/4/08
Forwarded to File Room			
			1-9-08
Number of Copies:	Ad. Cert:	Copies:	
Request Recd:			

A Certified Copy of this order - notice
 was issued to Benjamin J. Meyerstein Esq.
Craig A. Cohen Esq.

by first class mail by DB
 Deputy Prothonotary on 1/4/08
 and to Comp
 by Inter Office Mail.

FILE RECEIVED

JAN -4 2008

COMPLETED BY: CW

DATE: 1/4/08

5

Mayerson Schreiber McDevitt, P.C.
By: Benjamin J. Mayerson, Esquire
Attorney I.D.#73742
3540 Schuylkill Road
Spring City, PA 19475
(610) 948-4800

Attorneys For Plaintiffs

Daniel Berg and Sheryl Berg
H/W

Court of Common Pleas
Berks County, PA

vs.

No. 98-813

Nationwide Mutual Insurance
Company, Inc.

Civil Action - Equity

RECEIVED
PROTHONOTARY'S OFFICE
2008 JAN 17 P 4: 14
BERKS COUNTY, PA
MARIANNE R. SUTTON
PROTHONOTARY

**PLAINTIFFS' CONCISE STATEMENT OF
ERRORS TO BE COMPLAINED OF ON APPEAL**

Plaintiff Bergs, by and through their attorney, Benjamin J. Mayerson, respectfully file this Concise Statement of Errors To Be Complained Of On Appeal, pursuant to Order of January 3, 2008. This Statement is prefaced with a cautionary note that the Trial Court offered little indication of its reasoning, leaving Plaintiffs guessing at how the Court reached a directed verdict in favor of Defendant Nationwide, after the jury found a violation of the catch-all fraud provision of the Unfair Trade Practices and Consumer Protection Law, 73 P.S. §201-2 (4) (xxi). Plaintiffs have thus identified six errors in a good faith effort to avoid waiver of what may be a highly nuanced Trial Court opinion, while at the same time attempting to avoid redundancy.

1. In this bifurcated bench trial, it was against the weight of the evidence, an abuse of discretion, and an error of law to enter a directed verdict on the issue of insurer bad faith, in favor of Defendant Nationwide, after the jury, in the first trial phase, found Nationwide liable for fraud and/or deceit under the catch-all provision of the Unfair Trade Practices and Consumer Protection Law, 73 P.S. §201-2 (4) (xxi). A fully adjudicated violation of the catch-all fraud provision is itself evidence to support a finding of bad faith. *See Romano v. Nationwide Mutual Fire Insurance Company*, 646 A.2d 1228, 1231-32 (Pa. Super. 1994)(statutory and regulatory

1/18/2008
3:18:20PM

1/18/2008
3/18/2008

violations may support a finding of insurer bad faith). Although fraud, deceit and bad faith are often defined synonymously, an insured can succeed in a bad faith action without proving any fraudulent conduct whatsoever. See Terletsky v. Prudential Property and Casualty Insurance Company, 649 A.2d 680, 689 (Pa. Super. 1994), and Adamski v. Allstate Ins. Co., 738 A.2d 1033, 1036 (Pa.Super. 1999). Thus, a directed verdict in Nationwide’s favor is manifestly erroneous, arbitrary, capricious, and flagrantly contrary to the evidence.

2. An error of law controlled the outcome of the case. Specifically, the Trial Court did not correctly apply controlling appellate law interpreting the “arising under an insurance policy” language of the bad faith statute, 42 Pa. C.S.A. §8371. Appellate authority holds that a broad range of conduct satisfies the language above, provided the conduct takes place in relation to an insurance claim. See O’Donnell v. Allstate Ins. Co., 734 A.2d 901 (Pa.Super. 1999); Polselli v. Nationwide Mut. Fire Ins. Co., 126 F.3d 524 (3d Cir. 1997); Wintersberg v. Trans. Ins. Co., 72 F.3d 318 (3d. Cir. 1995); and Hollock v. Erie Ins. Exch., 842 A.2d 409 (Pa. Super. 2004).

Defendant Nationwide’s breach of fiduciary duties and other bad conduct took place between the time the claim was triggered and the date it was paid, placing the conduct squarely within the context of an insurance claim. The conduct included, but is not limited to, violations of state law and insurance regulations pertaining to the appraisal and repair of collision claims, specifically the Motor Vehicle Physical Damage Appraisers Act, 63 P.S. §§ 861-63, and the insurance regulations annexed thereto.

3. It is an error of law and abuse of discretion for the trial court to rely upon erroneous legal opinions advanced by the Defendant insurer’s trial expert, former Insurance Commissioner Constance Foster, when Plaintiffs alerted the Trial Court to the erroneous legal opinions before, during, and after trial. See *eg.*, Motion In Limine filed May 29, 2007; Oral

3/18/2008 4/19/2008

Argument on Nationwide's Motion for Directed Verdict at Bench Trial Transcript 705 [6] - 719 [16], 728 [23] - 729 [23], 740 [11] -744 [21]; and, Oral Argument for Post Trial Motion, Lodged December 5, 2007. See also Plaintiffs' Motion for Post-Trial Relief at paragraphs 46-84, and Plaintiffs' Brief In Support of Post-Trial Motion, filed September 14, 2007, at 9-16.

4. A directed verdict in Nationwide's favor, premised upon a finding that the insurance claim was superseded by Plaintiffs' agreement to participate in Nationwide's collision repair program, is an abuse of discretion, an error law, and against the weight of the evidence. The conduct of both parties confirms the repair program was part of Nationwide's claim service, not a separate contract extinguishing the rights, duties, and remedies of the insurance contract.

5. The Trial Court abused its discretion by precluding Defendant Nationwide's Attorney Billing Summary and billing records, revealing that Nationwide paid \$922,654.25 defending this lawsuit through the first trial phase. The evidence is relevant to disputed issues of fact, the preclusion of which creates unfair prejudice if this Court does not award Plaintiffs reasonable counsel fees. The evidence is relevant to a reprehensibility analysis and supports Plaintiffs' contention that Nationwide implemented its *Pennro Litigation Strategy*. The documented goal of the *Strategy* is to deter plaintiff lawyers from undertaking representation of claimants on a contingency fee basis in low-value-claims, by making it known the cost of representation would exceed the value of the claim. See Hollock v. Erie Ins. Exch., 842 A.2d 409, 421 (2004), citing Mathias v. Accor Econ. Lodging. Inc., 347 F.3d 672, 677 (7th Circuit Ill. Oct. 21, 2003) (discussing the heightened reprehensibility of such a strategy). See also Bonenberger v. Nationwide Mut. Ins. Co., 791 A.2d 378 (Pa. Super. 2002).

6. It was an abuse of discretion, to find as a matter of law, that Plaintiffs failed to prove insurer bad faith by clear and convincing evidence, while at the same time refusing to

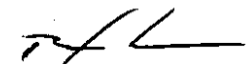
314842888
3/18/2008

require Nationwide to produce relevant evidence. Nationwide removed numerous entries from its claim file pursuant to a spurious assertion of attorney-client privilege. The Trial Court did not require production, a privilege log, or even *in camera* review, despite Plaintiffs' repeated motions. It was confirmed at trial, via admissions of Nationwide management, that the redacted entries were written *before* counsel was retained, thereby confirming that Nationwide had no basis to assert the privilege in the first place.

The materiality of the missing evidence, and unfair prejudice presented thereby, was confirmed at trial when Nationwide used the attorney-client privilege as a sword, while knowing it had no basis to use it as a shield. Specifically, Nationwide relied upon the apparent absence of any entry in the redacted claim file to support the contention that it was unaware of the repair failures until it received Plaintiffs' letter of legal representation. The claim file, riddled with blackened redactions, is at Trial Exhibit "46," Bench Trial Transcript, 956-1029

WHEREFORE, Plaintiff Bergs prayer for relief includes a new trial and appellate opinion finding the directed verdict in favor of Defendant Nationwide to be manifestly erroneous, arbitrary, capricious, flagrantly contrary to the evidence, and/or stemming from a failure to apply controlling precedent. It will be requested that the opinion address the abuse of discretionary powers in refusing to require production of the improperly redacted claim file entries, and for preclusion of Defendant Nationwide's Attorney Billing Summary and billing records which are relevant to a proper reprehensibility analysis, and to Plaintiffs' petition for an award of reasonable counsel fees pursuant to 42 Pa. C.S.A. §8371.

Respectfully submitted,
MAYERSON SCHREIBER McDEVITT, P.C.

By: 
BENJAMIN J. MAYERSON
Attorney for Plaintiff Bergs

PROTHONOTARY	BY	TO	DATE
Order sent to Judge			
Copies Sent	<i>AMS</i>		<i>3/17/08</i>
Ordered for Processing			
Ordered for Processing			
in Hearing Book			
Ordered to Comp. Room			
Ordered to File Room			

A Certified Copy of this Statement
 was issued to C. Cohen, Esq. &
B. Mayerson, Esq.

by first class mail by L. Shuff
 Deputy Prothonotary on 3/17/08
 and to _____

by Inter Office Mail. Comp. Rm.

INSTRUCTIONS TO THE PROTHONOTARY:
 Please file the original order and
 distribute certified copies as follows:

- Computer
- Benjamin J. Mayerson, Esquire
- Craig A. Cohen, Esquire

3/17/08
AMS
 8:00 AM

6/3/11 Memorandum Opinion

6/6/2011

DAN BERG and SHERRY BERG, : IN THE COURT OF COMMON PLEAS OF
 Appellants : BERKS COUNTY, PENNSYLVANIA
 vs. : CIVIL ACTION - LAW
 NATIONWIDE INSURANCE COMPANY, : No. 98-813
 Appellee :

RECEIVED
 PROTHONOTARY'S OFFICE
 2011 JUN -3 P 4:21
 BERKS COUNTY, PA
 RICHANNE R. SUTHERLAND
 PROTHONOTARY

Benjamin J. Mayerson, Esquire, Attorney for the Appellants, Dan Berg and Sherry Berg

Michael R. Nelson, Esquire, and G. Franklin McKnight, IV, Esquire, Attorneys for the Appellee, Nationwide Insurance Company

MEMORANDUM OPINION, STALLONE, ALBERT A., JUDGE, JUNE 3, 2011

This is a civil action which arises out of repairs that were made to a 1996 Jeep Grand Cherokee being leased by the Appellants, Dan Berg and Sherry Berg, which was insured by the Defendant, Nationwide Insurance Company. The repairs were made following a collision which occurred on September 4, 1996, between the Berg vehicle and a second vehicle being driven by an unidentified third party.

Immediately following the collision, the 1996 Jeep Grand Cherokee was taken to Lindgren Chrysler-Plymouth, Inc. for repairs, inasmuch as Lindgren was a participant in Nationwide's "Blue Ribbon Repair Service Program", which allowed Mr. and Mrs. Berg to deal directly with Lindgren and thereby obviated the need for a Nationwide field claims representative to participate in the repair process¹.

¹ There is no dispute that the Bergs elected to participate in the Blue Ribbon Repair Service Program by taking their vehicle to Lindgren, which was itself a participant in the program, for the repairs.

6/6/2011

Lindgren first sent the vehicle to K.C. Auto Body, Inc., which straightened the frame and then returned the vehicle to Lindgren for the performance of body work. All of the repair work that was done was paid for by Nationwide and the vehicle was returned to the Bergs on December 30, 1996. However, they were not satisfied with the repairs and filed this lawsuit against both Lindgren and Nationwide on January 23, 1998.

As evidenced by the docket, the pleading and discovery stages of this case took an inordinate amount of time to complete, driven in large part by the multiple, ill-advised attempts by counsel for the Bergs to turn this case into a class action lawsuit. As a result, a Certificate of Readiness for Trial was not filed until March 29, 2004, more than six years after the commencement of this lawsuit.

A pretrial settlement conference was held by this Court with counsel for the parties on August 13, 2004, at which time the parties agreed to bifurcate this case into two separate phases.

Phase I would consist of a jury trial on the Bergs' claims for compensatory damages² for (1) fraud, (2) civil conspiracy and (3) alleged violations of the Pennsylvania Unfair Trade Practices and Consumer Protection Law³. The parties further agreed that, in the event that the jury would return a verdict in favor of the Bergs on one or more of these three claims, then the case would proceed to Phase II.

² All underlined or otherwise highlighted language in this Memorandum Opinion is for emphasis only.

³ Title 73, 73, 73 P.S. Section 201-1 et seq. (Supp. 2011).

6/6/2011

Phase II would consist of a non-jury trial before this Court on the Bergs' claim for (a) treble damages under the Pennsylvania Unfair Trade Practices and Consumer Protection Law, and their separate claims for (b) attorney's fees, (c) costs and (d) punitive damages under Pennsylvania's "bad faith" statute.⁴

Jury selection was held on December 13, 2004, with the trial scheduled to immediately follow, as to claims being asserted against both Lindgren and Nationwide.⁵ After a five day trial held in Phase I, the jury returned a verdict in favor of the Bergs and against both Lindgren and Nationwide on the Bergs' claim for alleged violations of the Pennsylvania Unfair Trade Practices and Consumer Protection Law and awarded damages totaling \$1,925.00 and \$295.00, respectively, but in doing so rejected the Bergs' claims for fraud and civil conspiracy. Lindgren satisfied the jury's verdict and, as a result of that settlement, was dismissed as a party Defendant⁶, which meant that Lindgren would not participate in Phase II of the litigation. However, Nationwide filed a Motion for Post-Trial Relief with this Court, which we denied by Opinion and Order filed on April 7, 2005. Nationwide did not appeal our decision.

⁴ Title 42, 42 Pa. C.S.A. Section 8371 (Supp. 2011).

⁵ KC Auto Body also appeared and participated at the trial, having been joined as an Additional Defendant by Lindgren for purposes of contribution and indemnity. However, it was dismissed as a party, by Court Order, following trial.

⁶ A stipulation for Lindgren's dismissal was approved by Order entered by this Court on, December 4, 2006.

6/6/2011

Over the succeeding 16 month period, the Bergs and Nationwide filed a series of additional discovery motions, all of which were argued and decided by Judge Scott Lash.⁷

They filed a Certificate of Readiness for Trial on Phase II on April 3, 2006. Thereafter, a second pretrial settlement conference was held by this Court with counsel and a non-jury trial on Phase II was scheduled for June 5, 2007. Following six days of trial, at which this Court heard testimony from witnesses for both parties, Nationwide filed a Motion for Directed Verdict. After taking the matter under advisement, we entered separate verdicts in favor of Nationwide and against the Bergs, as to their claims for treble damages under the Pennsylvania Unfair Trade Practices and Consumer Protection Law, as well as their claims for attorneys' fees, costs and punitive damages under Pennsylvania's "bad faith" statute.⁸ For ease of reference, we will hereafter refer to this latter claim as their "bad faith" claim.

7 Judge Lash has heard oral arguments on all pretrial motions filed in cases assigned to this Court since the year 2000, when the undersigned began his term as the President Judge of the Court of Common Pleas of Berks County. That procedure has continued since the undersigned became a senior judge, effective January 1, 2004, and will terminate on December 31, 2011, at the latest.

8 The text of our verdict on the Bergs' claim for "treble damages" under the Pennsylvania Unfair Trade Practices and Consumer Protection Law reads as follows:

AND NOW, this 10th day of July, 2007, following a non-jury trial, a verdict is hereby entered in favor of the Defendant, Nationwide Insurance Company, and against the Plaintiffs, Dan Berg and Sherry Berg, on their claim for treble damages under the Pennsylvania Unfair Trade Practices and Consumer Protection Law, Title 73, 73 P.S. Section 2-201 (Supp. 2007), in Phase II of this litigation.

The text of our verdict on the their "bad faith" claim reads as follows:

6/6/2011

The Bergs filed a Motion for Post-Trial Relief, which was denied. Following the entry of judgment, they filed a timely appeal to the Superior Court from our entry of the directed verdict on their "bad faith" claim, in which they raise several issues for appellate review.⁹ However, they did not appeal our entry of the directed verdict on their claim for treble damages under the Pennsylvania Unfair Trade Practices and Consumer Protection Law.

The Bergs' initial argument on appeal is that this Court erred in granting a directed verdict in favor of Nationwide on their "bad faith" claim, inasmuch as the jury's verdict in their favor and against Nationwide in Phase I, for violations of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, was sufficient in and of itself to support a finding of "bad faith" on Nationwide's part.¹⁰

In making that argument, the Bergs rely solely upon the case of Romano vs. Nationwide Fire Insurance Company, 646 A.2d 1228 (Pa. Super. 1994). There, the parties were involved in a dispute over the amount of damages to

AND NOW, this 10th day of July, 2007, following a non-jury trial, and after hearing oral argument on the Defendant's Motion for Directed Verdict on the Plaintiffs' Bad Faith Claim in Phase II of this litigation, pursuant to Title 42, 42 Pa.C.S.A. Section 8371 (Supp. 2007), the same is hereby GRANTED.

Accordingly, a directed verdict is hereby entered in favor of the Defendant, Nationwide Insurance Company, and against the Plaintiffs, Dan Berg and Sherry Berg.

⁹ The procedural history of this case since this appeal was filed is a matter of record and, because it is not relevant to the merits of the issues in this case and we will not recite it here.

¹⁰ The Bergs were proceeding under subparagraph (xxi) of the Law, which defines an "unfair or deceptive act or practice" as ... engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.

6/6/2011

be paid under an insurance policy issued by Nationwide Fire Insurance Company, for fire damage to a building. When the parties could not agree, the matter proceeded to an appraisal of the property that was conducted under the terms of the insurance policy. Two appraisers were appointed, one by each side, and the two appraisers then proceeded to appoint a neutral third party umpire. Upon reviewing the matter, the umpire made an award of damages.

Nationwide initially refused to pay the amount awarded by the umpire, but ultimately did so after the appellants filed a petition with the trial court to confirm the umpire's award. The appellants then filed a separate petition with the trial court for an award of counsel fees under the "bad faith" statute, §8371 of the Judicial Code, on the basis that Nationwide's initial refusal to pay the umpire's damage award was in violation of the Pennsylvania Unfair Insurance Practices Act and, therefore, amounted to "bad faith". The trial court denied the appellants' petition for counsel fees, stating that it did not have subject matter jurisdiction to entertain any alleged violations of the Act.

In support of the Bergs' argument, they refer us to page 1233 of this Superior Court Opinion, wherein the Court said that:

Although the trial court lacks the requisite jurisdiction to impose sanctions under the various provisions of the UIPA and insurance regulations, we find that the rules of statutory construction permit a trial court to consider, either sua sponte or upon the request of a party, the alleged conduct constituting violations of the UIPA or the regulations in determining whether an insurer, like Nationwide, acted in "bad faith."

6/6/2011

In doing so, however, the Bergs conveniently overlooked what the Superior Court said earlier, at page 1231, and that was that:

...[appellants] did not initiate the underlying action via petition for counsel fees pursuant to 42 Pa.C.S.A. §8371, but rather, commenced the trial court's proceedings via [their] petition to confirm the umpire's arbitration award.

And so, we are of the opinion that the Bergs' reliance upon Romano is either carelessly or intentionally misplaced, because the Superior Court made it very clear that it was not deciding the case under the "bad faith" statute, §8371 of the Judicial Code. With that being said, our only additional response is that we have not been provided, nor has our research uncovered any caselaw or statutory authority which would form a legal basis for the Bergs' contention that the jury's verdict in Phase I, relative to the Pennsylvania Unfair Trade Practices and Consumer Protection Law, is sufficient to support a finding of "bad faith", based upon the holding of Romano vs. Nationwide Fire Insurance Company.

The Bergs next contend that this Court erred in granting the directed verdict, for a wholly different reason, and that is that their "bad faith" claim arises under the automobile insurance policy that was issued to them by Nationwide and is, therefore, controlled by §8371 of the Judicial Code.

On that matter, we note that a "bad faith" claim is statutory in nature, as opposed to having its origin in common law. Twenty years ago, our General Assembly adopted §8371 of the Judicial Code, which authorizes a common pleas court to impose sanctions for "bad faith" conduct on the part

6/6/2011

of an insurance company. This statute, which became effective July 1, 1990, provides that:

In an action arising under an insurance policy, if the court finds that the insurer has acted in *bad faith* toward the insured, the court may take all the following actions:

(1) Award interest on the amount of the claim from the date the claim was made by the insured in an amount equal to the prime rate of interest plus 3%.

(2) Award *punitive damages* against the insurer.

(3) Assess *court costs* and *attorneys' fees* against the insurer.

It appears that the first real opportunity for our appellate courts to interpret this "bad faith" statute came in Terletsky vs. Prudential Property and Casualty Insurance Company, 649 A.2d 680 (Pa. Super. 1994), appeal denied 659 A.2d 560 (Pa. 1995). In that case, the Pennsylvania Superior Court not only took the opportunity to define the term "bad faith", but to also set forth a two-part standard for establishing a "bad faith" claim.

The Superior Court said that the term "bad faith" had acquired the meaning, in an insurance context, as:

any frivolous or unfounded refusal to pay proceeds of a policy; it is not necessary that such refusal be fraudulent. For purposes of an action against an insurer for failure to pay a claim, such conduct imports a dishonest purpose and means a breach of a known duty (*i.e.*, good faith and fair dealing), through some motive of self-interest or ill will; mere negligence or bad judgment is not bad faith.

5/6/2011

And the two-part standard for the evaluation of a "bad faith" claim was that:

The plaintiff must show that the defendant did not have a reasonable basis for denying benefits under the policy and that the defendant knew or recklessly disregarded its lack of reasonable basis in denying the claim (citations omitted).

Accordingly, we could not help but note that the Bergs' claim for "bad faith" is premised upon Nationwide's failure to guarantee the repairs that were made to their vehicle under the Blue Ribbon Repair Service Program, which they allege is a part of their automobile insurance policy. We disagree. On the contrary, the record shows that the Blue Ribbon Repair Service Program is not a part of Nationwide's automobile insurance policy. Rather, it is merely a repair program that is available as an "option" to both policyholders and to third-party claimants who are not policyholders, at their specific request, and as explained by Bruce Bashore, who was Nationwide's Blue Ribbon Claims Manager at the time (N.T., Phase II Non-Jury Trial, pp. 522-528):

BY MR. COHEN:

Q Mr. Bashore, I'm going to ask you to keep your voice up so everybody can hear you. What is your current title at Nationwide?

A I am currently the Property Damage Subrogation Manager at Nationwide.

Q All right. And is that a different position than you held when we were in trial the first time in this case?

A Yes, it is.

Q And what was the position that you held at that time?

6/6/2011

A I was the Blue Ribbon Claims Manager.

Q Okay. And you attended the first phase of trial?

A Yes, I did.

Q And you heard all of the testimony during that phase?

A Yes, I did...

Q Now, there's been a lot of discussion during this trial as to the Blue Ribbon Program and the guarantee. And not to rehash what we've gone over a million times already, but very briefly, what is the Blue Ribbon Program?

A The Blue Ribbon Program is Nationwide's direct repair program. And simply - -

THE COURT: Is what?

THE WITNESS: The direct repair program. And a direct repair program is something that numerous insurance companies have. In its simplest terms is you send the policyholder or claimant directly to a repair shop and they appraise the vehicle and do the repairs. It eliminates the need for a Nationwide appraiser to go out and look at the vehicle. It actually speeds up the process.

BY MR. COHEN:

Q Would you - - is this something that other insurance companies have?

A Yes.

Q And this is - - is this something that's offered to not only Nationwide policyholders but to third-party claimants as well?

A Yes, it is offered to first and third-party claims.

Q *Okay. Is the Blue Ribbon Program contained in the policy of insurance for any insureds?*

A *Not Nationwide's policy.*

Q *Okay. So it's a separate program completely?*

6/6/2011

A Yes, it's separate from the policy...

THE COURT: How does the policy come about then as far as the relationship with someone who purchases the insurance from Nationwide Insurance Company? How does it come about?

MR. COHEN: Nationwide has a contract. It is - - it's a contract that is approved by the Department of Insurance. It's governed by the insurance regulations. That is the sum and substance of the contractual obligation as it concerns coverage between Nationwide and the policyholder. The Blue Ribbon Program is a customer service program that's offered not only to policyholders but to third-party claimants as well...

Q Mr. Bashore, can you identify what I've just handed you as Exhibit Number 47?

A Yes, this is a Century 2 auto policy.

THE COURT: A what?

THE WITNESS: A Century 2 Nationwide auto policy.

BY MR. COHEN:

Q And if you turn to Page 2, is this what they call in the insurance industry the dec sheet or the declaration sheet?

A It's a declaration page, yes.

Q Can you tell looking at that whether or not this is the policy that was issued to the Bergs?

A Yes, Daniel and Sharon Berg.

Q Okay. Now, this is - - is this the contract of insurance that was entered into between Nationwide and the Bergs?

A Yes. Yes, it is.

Q Okay. And this is not and has nothing to do with the Blue Ribbon Program or the Blue Ribbon guarantee?

A No, it does not.

6/6/2011

Q Okay. The judge asked when would somebody elect to participate in the Blue Ribbon Program. When would somebody make that election?

A When the customer reports the claim to Nationwide, they are given the option of using the direct repair program, having a claim rep come out and look at their vehicle. Or if it's drivable, they can take it to a drive-in claims location that is staffed by a Nationwide appraiser.

Q Okay. Would the decision to participate in the Blue Ribbon Program occur at the time when they're buying the policy?

A No, it's each time you have a claim.

Q So it wouldn't make sense to elect to participate in the Blue Ribbon Program at the time they buy the policy because they haven't had a claim yet?

A That's correct.

And perhaps most importantly, the Bergs' own expert, James Chett, agreed with Mr. Bashore, as evidenced by the following testimony given by Mr. Chett on cross-examination (N.T., Phase II Non-Jury Trial, pp. 202-203):

BY MR. COHEN:

Q Let's take one thing at a time. First of all, you as an insurance expert know what an insurance policy is; correct?

A Yes.

Q And you know what the Blue Ribbon Program is; correct?

A Yes.

Q And you know that the policy - - the Bergs' insurance policy is not the same thing as the Blue Ribbon Program?

A Yes.

Q You know that; right?

6/5/2011
A Yes.

Thirdly, the Bergs contend that we erred in preventing their counsel from submitting Nationwide's billing summary and billing records for this case into evidence during Phase II of the trial, on the theory that it was not relevant. Again, we must disagree.

Evidence is relevant only where it has a tendency to make the existence of any fact that is of consequence or material to the outcome of the action more or less probable than it would be without the evidence. Pa. R.E. 401. According to the Bergs, Nationwide's billing summary and billing records were relevant to show "the depth of Nationwide's reprehensible conduct." However, not only were the Bergs unable to show that their "bad faith" claim arises under their automobile insurance policy, they were likewise unable to establish that they were denied any benefits under that policy.

As support for that conclusion, we again refer to the record, beginning with the following testimony by Bruce Bashore during Phase I (N.T., Phase I Jury Trial, pp. 916-918):

BY MR. COHEN:

Q On page 2 of this document there is a grand total, and once again there is one digit that is cut off but what's that number?

A \$160.3 something cents.

Q Okay. Between this document and Exhibit 19 that we just looked at that would be the total cost of repairs that Lindgren billed to Nationwide?

8/6/2011

A Yes, it would.
(Photocopy of check - marked for identification as Exhibit No. 30.)

BY MR. COHEN:

Q Looking at Exhibit number 31. Does that appear to be a check to Lindgren Chrysler-Plymouth from Nationwide?

A Yes, it is a copy of a check to Lindgren.

Q And is that in the amount of \$11,975.66?

A Yes, it is.
(photocopy of check - marked for identification as Exhibit No. 31.)

BY MR. COHEN:

Q Looking at Exhibit number 31. Does that appear to be a check to Lindgren Chrysler-Plymouth from Nationwide?

A Yes, it is. The amount appears to match the supplement amount of \$460.33.

(Rental Bill - marked for identification as Exhibit No. 32.)...

BY MR. COHEN:

Q Asking you to take a look at Exhibit number 32. Tell me what that document is?

A It is a rental bill from Enterprise Rental Car for \$740.08.

Q Is this from Sharon Berg?

A Yes, it is.

Q Was that paid?

A There is a notation on here that it was paid on 10/7 of '96.

Q By who?

A Paid by Doug Witmer.

6/6/2011

Q And he is with Nationwide?

A Yes, he is - - he was...

We have also taken into account the following testimony given by Mrs. Berg during Phase I (N.T., Phase I Jury Trial, p. 431):

BY MR. COHEN:

Q With regard to the lease you said you had testified that you paid your lease payments. Isn't it true it was a \$18,000 buyout that Nationwide paid to buy out your vehicle at the end of the lease?

A That's correct.

Q And in addition to \$18,000 Nationwide paid over \$12,000 for the repair to Lindgren for the repair to your car?

A That's correct.

Q \$750 which was the maximum rental coverage under your policy, wasn't that correct?

A That's correct.

MR. COHEN: Thank you. Nothing further.

As a result, Nationwide's billing summary and billing records were not relevant to show "the depth of Nationwide's reprehensible conduct" and, therefore, it was not error for this Court to preclude their submission into evidence during Phase II of these lengthy proceedings.

The Bergs also claim that we erred in not requiring Nationwide to produce certain "redacted" entries from Nationwide's claim file. During Phase II, counsel for the Bergs interposed a series of objections to a number of redacted entries appearing in the claim file, in response to

6/6/2011

which counsel for Nationwide indicated that the redactions had been made on the basis of the attorney-client and "work product" privileges. N.T., Phase II, Non-Jury Trial, pp. 272-278, 598-602, 722. Counsel for Nationwide also advised this Court that the Bergs had made two prior applications for disclosure of these redacted entries. The first application was made to the undersigned judge, which was ruled upon pursuant to an Order entered on March 25, 1999, while the second was made to Judge Scott Lash, which he denied pursuant to a written Opinion and Order filed more than six years later, on September 8, 2004. N.T., Phase II Non-Jury Trial, pp. 598-602." Upon reviewing the March 15, 1999 Order, as well as Judge Lash's September 8, 2004 Opinion and Order, the undersigned judge determined that this issue was finally and conclusively disposed of by Judge Lash when he "passed judgment on the underlying issue and made reference to [the March 15, 1999] Order." N.T., Phase II Non-Jury Trial, p. 602.

Not only have the Bergs failed to provide either Judge Lash or the undersigned judge with any authority to support their argument, they have once again chosen to overlook their inability to show that their claim for "bad faith" arises under the terms of their automobile insurance policy with Nationwide and that, even assuming arguendo that it did arise under the policy itself and not the option that was provided to policyholders or non-policyholders, that they were denied any benefits by Nationwide.

¹¹ The application to this Court was made in the form of a Motion for Protective Order filed by Nationwide, while the application made to Judge Lash was in the form of a Motion for Sanctions and In Camera Review filed by the Bergs.

6/5/2014

Accordingly, they are not entitled to any relief on this claim as well.

Finally, the Bergs' claim that we erred in sustaining Nationwide's objection to disclosure of these redacted entries from Nationwide's claim file, on the basis of attorney-client privilege. Again, we must disagree.

During Phase II, David Cole, Esquire, a former in-house attorney for Nationwide, was called as a witness by the Bergs, as on cross-examination. N.T., Phase II Non-Jury Trial, p. 457. In response to a particular question, Attorney Cole invoked the attorney-client privilege. N.T., Phase II Non-Jury Trial, pp. 473-474. Counsel for the Bergs responded by arguing that the attorney-client privilege did not apply because Attorney Cole was acting in a management capacity at the time that the Bergs filed their claim with Nationwide. N.T., Phase II Non-Jury Trial, pp. 474-475. Over objection by Nationwide's counsel, this Court then allowed counsel for the Bergs to present argument. N.T., Phase II Non-Jury Trial, pp. 476-480. Following argument, and at the request of counsel for Nationwide, Attorney Cole's testimony resumed, by way of redirect examination. Nationwide's counsel was able to establish that Attorney Cole was working as an attorney while handling the Bergs' claim. For that reason, we found that the attorney-client privilege did in fact exist with respect to Attorney Cole. N.T., Phase II Non-Jury Trial, pp. 481-483.

Although the Bergs' counsel was then given an opportunity to present further caselaw and argument to this Court, he did not do so at that time. N.T., Phase II Non-Jury Trial, pp. 483-484. Nor did he do so either at any

6/6/2011

point thereafter during the remaining portion of the trial or at the time of oral argument on the Bergs' Motion for Post-Trial Relief. And again, the Bergs are unable to show that their claim arises under their automobile insurance policy and, even assuming arguendo that it did, that they were denied any benefits under that policy by Nationwide. As a result, they are not entitled to relief on this claim.

And so, for all of the foregoing reasons, we affirm our entry of the directed verdict in favor of Nationwide and against the Bergs on their "bad faith" claim and respectfully urge the Superior Court of Pennsylvania to deny this appeal.

BY THE COURT:


ALBERT A. STALLONE, JUDGE

RECEIVED
PROTHONOTARY'S OFFICE
2011 JUN - 3 P 4: 21
BERKS COUNTY, PA
MARIANNE R. SUTTON
PROTHONOTARY

6/6/2011

INSTRUCTIONS TO THE PROTHONOTARY:

Please file the original order and
distribute certified copies as follows:

- ✓ Computer
- ✓ Benjamin J. Mayerson, Esquire
- ✓ Michael R. Nelson, Esquire
- ✓ G. Franklin McKnight, IV, Esquire

Judge Albert A. Stallone

Z:\CJBKEHL\Z Bev\BEVERLY\OPINION 98-813 6 11.doc

PROTHONOTARY	BY	TO	DATE
to the Judge			
to Sent	<i>See</i>		<i>6/6/11</i>
for Processing			
of Processing			
to Book			
to Court Room	<i>See</i>		<i>6/6/11</i>
to this Room			
Request No.:			

A Certified Copy of this Memorandum was issued to Benjamin Mayes,
Michael R. Kelly,
Franklin McKnight

by first class mail by See
Deputy Prothonotary on 6/6/11
and to _____

by Inter Office Mail. _____

JUL - 6 2011
INDEXED BY: CW
6/6/2011

12/17/13 Trial Transcript

1 DANIEL BERG AND SHERYL BERG, : In the Court of Common Pleas
Plaintiffs : of Berks County, Pennsylvania
2 : Civil Action - Law
3 vs. :
4 :
NATIONWIDE MUTUAL INSURANCE :
5 COMPANY, :
Defendant : No. 98-813
6

7
BENCH TRIAL
8 Tuesday, December 17, 2013
Wednesday, December 18, 2013
9 Thursday, December 19, 2013
Reading, Pennsylvania
10

11 Before THE HONORABLE JEFFREY K. SPRECHER, Judge
12

13 APPEARANCES:

14 For the Plaintiffs: BENJAMIN J. MAYERSON, ESQUIRE
MARGARET R. CONNORS, ESQUIRE
15 1800 East High Street
Suite 150
16 Pottstown, Pennsylvania 19464
17 HY MAYERSON, ESQUIRE
3545 Schuylkill Road
18 Spring City, Pennsylvania 19475
19 For the Defendant: WILLIAM O. KREKSTEIN, ESQUIRE
G. FRANKLIN McKNIGHT IV, ESQUIRE
20 518 Township Line Road
Suite 300
21 Blue Bell, Pennsylvania 19422
22

23 VOLUME I OF VIII
24

25 RACHELLE D. HIRNEISEN, RMR, CRR
Official Court Reporter

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX TO WITNESSES

<u>WITNESS:</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Jeanine Snyder	29	39	--	--
Jeffrey Silver	96	104	--	--
Sean Costello	112	--	--	--
Constance Foster, Qualifications	--	155	--	--
Constance Foster	162	207	312	318

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX TO EXHIBITS

<u>NUMBER</u>		<u>MARKED</u>	<u>ADMITTED</u>	<u>REFER.</u>
50 -	Attorney correspondence	49	52	334-349
51 -	Douglas Joffred Deposition	49	--	350-351
52 -	Nationwide Objections of 6/27/13	49	64	352-361
53 -	Order of 8/21/13	50	64	362-363
54 -	Nationwide Verified Answers to Interrogatories	50	64	364-376
55 -	Subpoena to Saul Ewing	50	64	377-378
56 -	Nationwide Motion to Quash Subpoena to Saul Ewing	50	64	379-416
57 -	Nationwide Second Supplemental Answers to Interrogatories	50	64	417-428
58 -	Two Orders of 12/4/13 Requiring Nationwide Witness to Appear at Trial	50	64	429-430
59 -	Letter of 12/11/13	50	64	431-432
60 -	Amended Notice to Attend to Nationwide	51	64	433-435
61 -	Electronic Communication to Nationwide Counsel	50	65	436-437
62 -	Order of 12/4/13; memo of Tom Dietrich; Nationwide vs. Fleming	50	66	438-448
63 -	Bergs' Request of Admissions	50	67	449-509

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX TO EXHIBITS

<u>NUMBER</u>		<u>MARKED</u>	<u>ADMITTED</u>	<u>REFER.</u>
64 -	Nationwide Reply to Request for Admissions	50	67	510-591
65 -	Nationwide Motion in Limine Pertaining to Post-Payment Conduct	51	67	592-628
66 -	Bergs' Reply to Nationwide Motion in Limine	51	67	629-660
67 -	Nationwide Answer of 5/3/13 to Bergs' Request for Admissions	51	67	661-676
68 -	Nationwide Answer to Request for Admissions of 10/4/13	51	67	677-692
69 -	One-Page Synopsis	29	69	693-693
70 -	Letter Dated 10/13/05 With Attached Billing Records	51	69	694-1556
71 -	Photocopy of Two Photographs	325	--	1557-1557
72 -	(Exhibit Not Marked)	--	--	--
73 -	(Exhibit Not Marked)	--	--	--
74 -	2004 Jury Trial Transcript	10	71	--
75 -	2007 Bench Trial Transcript	10	71	--
76 -	One-Page Billing Record	44	71	1558-1558
77 -	Plaintiffs' Amended Notice to Attend	112	--	1559-1559

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX TO EXHIBITS

<u>NUMBER</u>		<u>MARKED</u>	<u>ADMITTED</u>	<u>REFER.</u>
78 -	Nationwide Blue Ribbon Repair Program Appraisal Guarantee and Repair Guarantee	238	--	1560-1568
79 -	Chapter 62, Motor Vehicle Physical Damage Appraisers	239	--	1569-1575
80 -	Appendix A to 11/25/03 Report of Constance Foster	276	--	1576-1576
<u>Defendant's</u>				
50 -	Letter from Benjamin Mayerson Dated 8/25/99	73	73	1577-1577
51 -	Letter From Matthew Stool Dated 6/1/98	73	73	1578-1578
52 -	Letter From Michael Nelson Dated 8/20/98	73	73	1579-1579
53 -	Letter From Michael Nelson Dated 9/16/98	73	73	1580-1581
54 -	Letter From Benjamin Mayerson Dated 10/13/98	73	73	1582-1583
55 -	Letter From Michael Nelson Dated 10/23/98	73	73	1584-1584
56 -	Letter From Benjamin Mayerson Dated 10/26/98	74	73	1585-1585

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX TO EXHIBITS

NUMBER

MARKED ADMITTED REFER.

Defendant's

57 - Letter From William Longo	74	73	1586-1586
Dated 10/27/98			
58 - Letter From Ben Mayerson	74	73	1587-1587
Dated 10/27/98			
59 - Letter From Michael Nelson	74	73	1588-1588
Dated 10/27/98			
60 - Letter From Michael Nelson	74	73	1589-1590
Dated 11/23/98			
61 - Letter From Julie A. Clark	74	73	1591-1591
Dated 12/24/98			
62 - Letter From Julia A. Clark	74	73	1592-1593
Dated 1/8/99			
63 - Letter From Craig A. Cohen	74	73	1594-1594
Dated 11/22/05			

1 (Reading, Pennsylvania, Tuesday, December 17, 2013, at 9:24
2 a.m.)

3 (Discussion off the record.)

4 THE COURT: Let's go on the record. We're ready. You
5 can make your motion, Mr. Krekstein.

6 MR. KREKSTEIN: Yes, Your Honor. Your Honor, I
7 believe that the parties in court have already discussed
8 this, but I would move just for the record to have both trial
9 transcripts from the -- what we call the jury trial and bad
10 faith trial --

11 (Discussion off the record.)

12 THE COURT: Okay. So we're back on the record. And
13 these two -- the trial transcripts, one would be from the
14 jury trial and one from the non-jury trial.

15 MR. KREKSTEIN: Yes, Your Honor. As well as trial
16 exhibits. I believe 1 through 49.

17 THE COURT: Okay. I guess we have those -- I hate to
18 say that I'd like to have you admit a copy of it when it's
19 probably so voluminous.

20 MR. KREKSTEIN: Actually Your Honor, we presented in
21 conjunction with our find -- proposed findings of fact and
22 conclusions of law, we provided the Court and plaintiffs'
23 counsel with full and complete copies of both transcripts and
24 full and complete copies of all the trial exhibits that were
25 entered into evidence.

1 THE COURT: All right. Maybe what we can do is,
2 either I'll take judicial notice of those -- that would be in
3 that big box that was delivered on Friday, I believe.

4 MR. KREKSTEIN: Yes, Your Honor.

5 THE COURT: Either I'll take judicial notice of that
6 -- I mean, that's certainly acceptable. We don't have to
7 have it marked and go back on the record. If that's
8 acceptable to counsel.

9 MR. MAYERSON: Yes, Your Honor.

10 THE COURT: Okay. So that would be -- well, it would
11 be the jury trial and the non-jury trial, along with all the
12 exhibits.

13 MR. KREKSTEIN: Yes. 1 through 49, Your Honor.

14 THE COURT: Do you want to just take a look at it?

15 MR. KREKSTEIN: Yes, Your Honor.

16 (Brief pause.)

17 MR. MAYERSON: Your Honor, if we may put on the record
18 that we've looked at the contents of the box. A copy was not
19 filed with the Court. So what we're going to do is opposing
20 counsel is going to file a verification that true and correct
21 copies were provided to the Court and to the parties.

22 THE COURT: That is a true and correct copy --

23 MR. KREKSTEIN: If I could, Your Honor. I mean, I'm
24 fine with what Mr. Mayerson is saying in principle. Rather
25 than filing a verification, I think making a representation

1 on the record at trial that we're providing the Court and Mr.
2 Mayerson identical copies of both transcripts from both
3 trials and all exhibits that were marked into evidence.

4 THE COURT: Yeah.

5 MR. MAYERSON: Acceptable.

6 THE COURT: And we don't have to have it marked and
7 I'll just take that and I'll certainly take judicial notice
8 of those two documents, and if you could just pass them up
9 here.

10 MR. KREKSTEIN: I would ask, Your Honor -- again, I
11 don't want to get into semantics but I would ask that these
12 be made part of the record.

13 THE COURT: All right. Then let's have them marked.

14 MR. MAYERSON: Your Honor, with one caveat. I'm about
15 to move my documents into evidence that are marked 50 through
16 70. So if we could mark this then as 74 and 75.

17 THE COURT: Those two documents?

18 MR. MAYERSON: Yes.

19 THE COURT: It's okay with me.

20 MR. KREKSTEIN: That's fine. Again, the numbering
21 does not matter. I just want to make sure that when we talk
22 about a document we're talking about the same document.

23 THE COURT: All right. Then we'll go off the record
24 to have them marked.

25 MR. KREKSTEIN: Can we go back for a second? There's

1 some issue because Mr. Mayerson started -- the trial exhibits
2 that were in the underlying trial were 1 through 49. They've
3 already been admitted. Starting with Exhibit 50, Mr.
4 Mayerson marked his own proposed exhibits and we marked our
5 own proposed exhibits. So before we get to those, I'd just
6 like to be consistent in what we're calling the exhibits that
7 were already part of the record. So if we could just call
8 the trial exhibits that were already part of the two previous
9 trials 1 through 49.

10 THE COURT: Sure.

11 MR. MAYERSON: That's a good idea.

12 THE COURT: All right. So now we have 1 through 49
13 already admitted. And we will have 74 and 75, go off --

14 MR. KREKSTEIN: We could call the transcripts 74 and
15 75, if that's acceptable.

16 MR. MAYERSON: All right. So the 2004 jury trial will
17 be Exhibit 74 and the 2007 bench trial will be Exhibit 75.

18 MR. KREKSTEIN: That's fine.

19 THE COURT: Okay.

20 (2004 Jury Trial Transcript - marked for
21 identification as EXHIBIT NO. 74.)

22 (2007 Bench Trial Transcript - marked for
23 identification as EXHIBIT NO. 75.)

24 (Discussion off the record.)

25 MR. MAYERSON: Plaintiff Bergs will call Jeanine

1 Snyder.

2 MR. KREKSTEIN: Your Honor, we got word of this
3 witness a few days ago. To be frank, I have no idea what
4 this witness is going to testify to. There was some document
5 submitted to us that had a lot of numbers on it. I'm still
6 not sure what this witness is going to testify to and I would
7 ask for an offer of proof.

8 MR. MAYERSON: We had requested a stipulation to this
9 one-page document.

10 THE COURT: Let me just get her name. Jeanine Snyder?

11 THE WITNESS: S-N-Y-D-E-R.

12 THE COURT: Snyder?

13 THE WITNESS: Yes.

14 MR. MAYERSON: May the witness take the witness stand
15 in the meantime?

16 THE COURT: Yeah. If you want to discuss this in
17 front of the witness, that's fine. Or we can do it without
18 the witness here. Whatever you prefer. We can swear her in.

19 JEANINE SNYDER, Sworn.

20 THE CLERK: State your name, spell your last name.

21 THE WITNESS: Jeanine Snyder, S-N-Y-D-E-R.

22 THE COURT: All right. Good morning. You may be
23 seated. And I think we'll be asking you a few questions in a
24 couple of moments.

25 First do you want to go over the offer of proof?

1 MR. MAYERSON: Yes. In between the first and second
2 trial phase, Nationwide was ordered to produce their attorney
3 billing records, which is what Ms. Snyder is holding in that
4 box.

5 THE COURT: And is she a CPA or something?

6 MR. MAYERSON: She is just a bookkeeper.

7 THE COURT: A bookkeeper. Okay.

8 MR. MAYERSON: From those records, the Bergs
9 tabulated, added up, Nationwide's attorney fees through 2004,
10 which at that time were the only records produced. And from
11 that there was a one-page summary summarizing Nationwide's
12 annual fees per year from 1998 through 2004.

13 THE COURT: That this witness created?

14 MR. MAYERSON: No. This witness did not create this
15 document.

16 THE COURT: So this witness is going to do what?

17 MR. MAYERSON: She went through the billing records to
18 see whether this was accurate and to authenticate it.

19 THE COURT: Okay. Is there anything else you need to
20 know?

21 MR. KREKSTEIN: Judge, I don't understand the
22 relevancy of this. I don't understand the relevancy of
23 Nationwide's attorney's fees. I've argued that strenuously.

24 THE COURT: I think that I have to allow them to come
25 in. Whether or not I put -- what kind of weight I put on it

1 remains to be seen. But I believe I -- didn't we decide that
2 -- I mean, I have to accept that at least as part of the
3 evidence. I think if I didn't allow it, we might be back
4 here again.

5 MR. KREKSTEIN: Your Honor, the Superior Court on
6 remand permitted the plaintiffs to introduce evidence of
7 Nationwide's litigation strategy. Instead of producing
8 evidence of Nationwide's litigation strategy, the plaintiffs
9 have instead, in this particular instance, tried to introduce
10 simply evidence of the fees paid by Nationwide to its
11 attorneys to defend the bad faith action.

12 On top of that, we have already provided Mr. Mayerson
13 with answers to the question how much in attorney's fees has
14 Nationwide paid its attorneys. Therefore, a witness to
15 testify about a document she didn't create, that has to do
16 with attorney's fees that go back to 2004, I believe Mr.
17 Mayerson said, when we have already provided that information
18 past 2004, I think is irrelevant. I think it's duplicative.
19 I don't understand how this witness can identify this exhibit
20 in order to get it admitted.

21 THE COURT: Do you dispute the numbers?

22 MR. MAYERSON: Your Honor, the breakdown is relevant
23 to several issues.

24 THE COURT: You don't dispute the numbers? You have a
25 different breakdown?

1 MR. MAYERSON: We have good reason to believe the
2 numbers are inaccurate.

3 THE COURT: So you do dispute the numbers?

4 MR. MAYERSON: Yes.

5 THE COURT: And you're bringing someone in who's able
6 to calculate through bookkeeping and through her experience,
7 someone to interpret that for this Court?

8 MR. MAYERSON: Two-fold. That is accurate. But
9 secondly, this shows you how much was spent each year of the
10 litigation. And there have been some attacks against me for
11 driving up the cost of this litigation in year one. And this
12 shows that the cost of this litigation in year one was de
13 minimis.

14 THE COURT: Well, am I going to be hearing those
15 attacks on you?

16 MR. MAYERSON: They are in Nationwide's proposed
17 findings of facts and conclusions of law.

18 THE COURT: So this is not rebuttal response to what
19 they're going to say. It's already of issue and you're
20 simply -- okay.

21 MR. KREKSTEIN: Your Honor, I have the same
22 objections. I don't know what this witness can testify to
23 regarding this calculation that wasn't even done by her.

24 THE COURT: Okay. Well, first of all, you moved on
25 from -- I probably shouldn't even raise this issue. But

1 you're not really arguing the relevance of legal fees from
2 Nationwide at this point. You're arguing --

3 MR. KREKSTEIN: I -- I'm sorry, Your Honor. I didn't
4 mean to cut you off.

5 THE COURT: No, go ahead.

6 MR. KREKSTEIN: I absolutely am, Your Honor.

7 THE COURT: Okay. But I think that I made a ruling on
8 that before, which I have to -- I don't know why I would
9 change that ruling.

10 MR. KREKSTEIN: You ruled that we were required to
11 provide the amount to the plaintiffs. That's correct, Your
12 Honor. However, simply being required to provide the amount
13 in discovery does not then make that amount admissible at
14 trial to prove bad faith.

15 THE COURT: Right.

16 MR. KREKSTEIN: And that's the issue that we have with
17 this line of questioning and with many others.

18 THE COURT: All right. Why is this relevant?

19 MR. MAYERSON: Well, the Superior Court has already
20 said it was relevant. And that was one of the issues we
21 raised on appeal. That was one issue raised on appeal that
22 the Superior Court reversed and remanded, finding that Judge
23 Stallone's preclusion of that evidence was an abuse of
24 discretion.

25 THE COURT: You disagree with that?

1 MR. KREKSTEIN: Yes. Here's what the Superior Court
2 said. And I'm quoting directly from the opinion.
3 THE COURT: What page?
4 MR. KREKSTEIN: The page of the Superior Court's
5 opinion is Page 1177. And what the Superior Court --
6 THE COURT: Do we need to have this on the record?
7 MR. KREKSTEIN: What's that?
8 THE COURT: Do we need to have this on the record?
9 MR. KREKSTEIN: I would ask that we do have it on the
10 record, Your Honor.
11 THE COURT: Where in this document right here, where
12 will I find it?
13 MR. KREKSTEIN: I don't know if that's the Atlantic
14 Reporter cite, Your Honor. I apologize.
15 THE COURT: It looks like it is. 44 A.3.
16 MR. KREKSTEIN: Yes. 1164.
17 THE COURT: So where do I --
18 MR. KREKSTEIN: Page 1177.
19 THE COURT: I don't have any 1177. How far back do I
20 go? How many pages?
21 MR. KREKSTEIN: Let me get my version. Well, on the
22 copy I have, it's page 11.
23 THE COURT: Okay.
24 MR. KREKSTEIN: But that might not jibe with yours.
25 Embedded in the text in bold is usually the numbers.

1 THE COURT: Okay. All right.

2 MR. KREKSTEIN: And speaking from experience,
3 sometimes it's incredibly difficult to find.

4 THE COURT: Okay. Go ahead.

5 MR. KREKSTEIN: The Superior Court said in regards to
6 this issue --

7 THE COURT: Now we'll go back on the record.

8 MR. KREKSTEIN: The Superior Court said in regards to
9 this issue, on retrial, the Bergs should be permitted,
10 subject to the laying of a proper foundation and
11 authentication of any related documents, to introduce
12 evidence regarding Nationwide's litigation strategy in an
13 effort to establish bad faith conduct. That's what the
14 Superior Court says. It doesn't say that the amount
15 Nationwide paid its attorneys is evidence of bad faith. It
16 doesn't say that the amount of -- that Nationwide paid its
17 attorneys is somehow, if you can authenticate it, then you've
18 proven bad faith. It specifically says that the plaintiffs
19 have to lay a proper foundation. And as we all know, laying
20 a proper foundation is establishing relevancy, establishing a
21 connection.

22 THE COURT: Excuse me just one moment. Which one of
23 the five issues that you raised on appeal would this be
24 applicable to?

25 MR. MAYERSON: I haven't looked at that in some time.

1 THE COURT: I'll look at it then. Just give me a
2 moment here.

3 MR. MAYERSON: But it goes to Nationwide's litigation
4 strategy.

5 THE COURT: Let me just see.

6 (Brief pause.)

7 THE COURT: It looks like it's number three, which
8 says was it reversible error to preclude evidence. Do you
9 want me to read the whole thing? You know what I'm speaking
10 of? Issue number three.

11 MR. KREKSTEIN: I understand, Your Honor.

12 THE COURT: Okay. Specifically, did the Trial Court
13 abuse its discretion when it precluded from evidence during
14 the non-jury trial phase the \$922,654 that the insurer paid
15 its attorneys to defend the lawsuit over a failed collision
16 claim. So let's --

17 MR. KREKSTEIN: That's what it says, Your Honor.

18 THE COURT: Let's go see what they say about that.

19 MR. KREKSTEIN: I think that's on the same page that I
20 referenced earlier, Your Honor. I think that's where that
21 discussion starts. I apologize. It actually starts at the
22 bottom of the page before, which would be Page 1176, and on
23 the copy of the West Law report, Page 10. And if that's
24 confusing, I apologize.

25 THE COURT: Page 10 talks about the concurring and

1 dissenting opinion. It's before that?

2 MR. KREKSTEIN: Yeah. It's keynote 16, if that helps.

3 MR. MAYERSON: I have it as 1177.

4 MR. KREKSTEIN: Well, it starts a little on 1176.

5 THE COURT: Keynote 16, though, is where you both
6 agree it starts?

7 MR. KREKSTEIN: Yes.

8 THE COURT: Okay. We can go off the record and I'll
9 read this.

10 (Discussion off the record.)

11 THE COURT: We'll go on the record. It says -- it
12 says, of course, that it deals -- it starts this whole
13 section with the \$922,000. And then it goes on from there
14 and they talk about the fact that the Bergs sought to
15 introduce evidence of Nationwide's litigation strategy and
16 practices, substantially identical to the Bonenberger case.
17 And then it goes on and from there they don't say the money
18 issue, but they say, based upon Bonenberger, we agree and
19 conclude that on retrial the Bergs should be permitted,
20 subject to the laying of a proper foundation and
21 authentication of any related documents, to introduce
22 evidence regarding Nationwide's alleged litigation strategy
23 in an effort to establish bad faith conduct.

24 MR. KREKSTEIN: That's the part I quoted, Your Honor.

25 THE COURT: Right. But that -- I know it doesn't say

1 money, it says litigation strategy. But the whole thing
2 they're talking about starts -- the whole issue is the money
3 issue.

4 MR. KREKSTEIN: The issue is the money issue because
5 the allegation on appeal was that the money was somehow
6 related to this Bonenberger strategy. And what the Superior
7 Court is saying, just based on the words -- and I'm not
8 trying to ascribe that I know what the Superior Court's
9 intent was --

10 THE COURT: Just tell me this. It says in
11 Bonenberger, we affirmed the Trial Court's decision to award
12 attorney's fees and punitive damages for Nationwide's bad
13 faith conduct. Now, that would be attorney's fees for them,
14 not the -- okay. So that --

15 MR. KREKSTEIN: That's in that case, Your Honor. The
16 Bonenberger case was an underinsured motorist case where
17 there was evidence presented that Nationwide employed a
18 strategy in that type of case to send a message to
19 plaintiffs' attorneys that Nationwide was defense minded.
20 And those were cases below \$25,000.

21 THE COURT: Do you see anything in here that you would
22 want -- Mr. Mayerson, anything in here that you want to call
23 to this Court's attention where we're talking about
24 Nationwide's alleged litigation strategy to include their
25 legal fees?

1 MR. MAYERSON: Your Honor, I think that the opinion
2 from the Superior Court speaks very clearly on the issue. I
3 think that Nationwide is arguing that magenta is not purple.

4 THE COURT: That what is not perfect?

5 MR. MAYERSON: Magenta is not purple. The
6 distinctions that we're going to draw today, if this is -- if
7 we're going to spend a half hour on this issue that's so
8 clearly addressed in the Superior Court opinion, then we're
9 going to be here forever.

10 THE COURT: Well, it's disputed as clearly addressed.
11 Where is it clearly addressed? I think that it's clearly
12 addressed, if we can move on from this issue, in your asking
13 for punitive damages. Doesn't -- isn't it relevant in
14 punitive damages?

15 MR. MAYERSON: What I read from the Superior Court,
16 and I quote, we agree and conclude that on retrial the Bergs
17 should be permitted, subject to a laying of a proper
18 foundation and authentication -- which is what I'm trying to
19 do -- of any related documents, to introduce evidence
20 regarding Nationwide's alleged litigation strategy. The
21 litigation strategy is what we're seeing right here today
22 now. This is to make this case so tedious and difficult that
23 you get irritated, we get irritated, everybody just gives up.

24 But the Superior Court opinion is clear and it says
25 above that, that not only should the Bergs be entitled to

1 introduce Nationwide's attorney fees but they should be able
2 to introduce any documents once they're authenticated. I
3 mean, I think that --

4 MR. KREKSTEIN: That's incorrect.

5 THE COURT: All right. Now let me ask you this. What
6 is the prejudice as opposed to the prejudicial -- the
7 prejudice as opposed to the probative value of having this,
8 whether or not this Court even gets to that issue? Who cares
9 if it's of record? What is the prejudice to you, if it is of
10 record?

11 MR. KREKSTEIN: The prejudice to us is the same
12 prejudice that the Superior Court jumped on. The fact that
13 Mr. Mayerson is attempting to make a connection between the
14 amount that Nationwide paid its attorneys to defend Mr.
15 Mayerson's bad faith lawsuit and this Bonenberger litigation
16 strategy. What we're contending is, you need a connection.
17 That's called laying a foundation. There is no connection.
18 Therefore, the --

19 THE COURT: My question is, what is the prejudice to
20 you if I get this evidence in? What's the problem with it?
21 And then you said this is exactly what the Superior Court
22 jumped on. So it's an issue that's relevant because the
23 Superior Court says it's relevant.

24 MR. KREKSTEIN: The Superior Court, by its opinion, is
25 saying that the plaintiffs should have an opportunity to make

1 a connection. The argument is that they have not, that
2 nothing has changed. Therefore, simply putting on the
3 attorney's fees and reverse engineering that and saying,
4 well, since they spent so much, they must have employed this
5 strategy, is not what the Superior Court says. Superior
6 Court said in order to get from A to B, you need to lay a
7 foundation and establish relevancy. They have not --

8 THE COURT: As --

9 MR. KREKSTEIN: And if I can address the prejudice
10 argument. Because that's what you did ask me, Your Honor.

11 THE COURT: I did. But frankly, this all goes to
12 damages if they win. It may go to damages if they win. So
13 do you want them to introduce this if they win and then come
14 in with that? I mean --

15 MR. KREKSTEIN: Well, Your Honor --

16 THE COURT: It's not prejudicial. It's not -- it's
17 not prejudicial to you just because you spent so much money.
18 I mean, I acknowledge that if you believe you're right and
19 you acted in good faith in defending this, you spent money to
20 defend it. You have the right to defend it. Just like
21 everybody has the right to spend a certain amount of money,
22 whatever it is, to defend it. There's no disputing that. So
23 what does it matter to me, unless we -- unless they win? And
24 then it's relevant. It's only relevant to that, isn't it?

25 MR. KREKSTEIN: I don't think it's relevant to either

1 because if things -- if they win --

2 THE COURT: It may not be relevant to that. But then
3 you'll argue that it's not relevant. Even if they win,
4 you'll argue it's not relevant. And that's fine. Then I
5 don't put -- I don't put the weight on it, if I agree with
6 you that it's not relevant. So I don't know why we don't
7 just get this in and then we'll go from there. I don't see
8 it as prejudice, but go ahead. Tell me why it's prejudice.

9 MR. KREKSTEIN: No, Your Honor. I'm just saying it's
10 not evidence. On top of everything, it's a very nice woman
11 who's going to get up there and talk about a document she
12 didn't prepare.

13 THE COURT: Well, now wait. We're talking two
14 different things. We're talking in concept, in general.
15 That's what you're objecting to. Then we can object to it
16 coming in through this witness.

17 MR. KREKSTEIN: You're right. You're right. As far
18 as prejudicial effect, Your Honor, this is a bench trial.
19 I'm not going to come up here and argue that somehow, you
20 know, them advancing an argument is somehow prejudicing my
21 case. Your Honor can sift through what's evidence and what's
22 not. That's not --

23 THE COURT: I already see what the numbers are.
24 Whether they come in or not. I see what the numbers are.

25 MR. KREKSTEIN: I agree. I agree wholeheartedly, Your

1 Honor. My point is, is that this is a fundamental issue in
2 this case, that the Superior Court gave specific requirements
3 to get this evidence in. And our position -- regardless of
4 what evidence Your Honor wants to hear, our position is he
5 has not laid a proper foundation to establish the connection
6 between what we spent and this Bonenberger litigation
7 strategy.

8 THE COURT: We have the jury finding of bad faith.

9 MR. KREKSTEIN: We do not.

10 MR. MAYERSON: Fraud.

11 THE COURT: Oh, fraud.

12 MR. KREKSTEIN: We do not have fraud.

13 THE COURT: Of fraud.

14 MR. KREKSTEIN: We do not. We have a jury finding of
15 a violation of the Unfair Trade Practices, Consumer
16 Protection Law.

17 THE COURT: Which is a violation of one of the claims
18 that the plaintiff has put forth in this.

19 MR. MAYERSON: It's the catchall fraud provision.

20 THE COURT: It's the only one that's being litigated.
21 It's the only one that has been litigated. That's the only
22 finding that's in favor of the plaintiff. Correct?

23 MR. KREKSTEIN: For \$295.

24 THE COURT: Well, I mean, did the jury do something
25 else?

1 MR. MAYERSON: No. That's -- so far that is the only
2 significant finding. And until you look at the findings of
3 fact, that's correct.

4 THE COURT: Okay. So I think -- I just think that we
5 need to move on from this. And I think that if it's -- this
6 Court will put the weight on that it needs to put on. So the
7 general issue of bringing this in, especially since the
8 Superior Court jumped on this issue -- they somehow magically
9 go from money to strategy, and it would seem to be this
10 Court's conclusion, in just reviewing it now, that that is
11 part of the strategy. So that -- that's relevant. We're
12 going to bring it in. If this Court doesn't consider it
13 because obviously -- because the plaintiff is not successful,
14 then this Court won't consider it, if the plaintiff is not
15 successful. If this was not a bad faith strategy. So that
16 takes care of the first issue.

17 Now with regard to this witness.

18 MR. MAYERSON: Your Honor, would it make sense for us
19 to give a five-minute overview of the case?

20 THE COURT: Sure.

21 MR. MAYERSON: All right.

22 THE COURT: If there's anything that will help me.
23 Because this case is 15 -- at least 15 years old. 16, 17.

24 MR. MAYERSON: Yes.

25 THE COURT: So there's a lot -- it's like an iceberg.

1 I see the tip of the iceberg. And I know there's a lot under
2 there. So if you -- and I don't know how much I can prepare
3 to be up to speed with you guys. I don't think that I can.
4 So I will do what I need to do to get up to speed with you
5 guys.

6 So if you think you can tell me what I need to know,
7 you can certainly make that argument. Do you want it on the
8 record?

9 MR. MAYERSON: I think what we should do is let this
10 witness testify since we've taken care of that issue, it's
11 fresh, so we don't go back and have to rehash this issue
12 again. Let's do that and then once that's taken care of --

13 THE COURT: Okay. I feel like I'm in some pinball
14 game, you know, bouncing back and forth.

15 Okay. So now we're back to this issue. So you're
16 objecting to this witness testifying. And tell us then why
17 you believe this witness is -- is she going -- are you going
18 to ask that she be qualified as an expert?

19 MR. MAYERSON: No. She's a fact witness who's simply
20 going to have reviewed this document against all the billing
21 records to say whether or not these figures are correct.

22 THE COURT: And that document is what?

23 MR. MAYERSON: This document was part of the appellate
24 record. Never made a part of the Trial Court record below.

25 THE COURT: Who submitted -- whose evidence is it?

1 MR. MAYERSON: This was prepared by our office.

2 THE COURT: So you want to present that now as an
3 accurate finding of the legal fees that were spent by the
4 defense in defending this case?

5 MR. MAYERSON: Through 2004 only, up to the jury
6 trial.

7 THE COURT: And if you're going to dispute it, then it
8 would seem to me that we would have to allow witnesses on
9 both sides if you want to tell this Court how you're wrong or
10 you're right or you're wrong and you're right. So this will
11 be the first witness. How do I not allow that? How is that
12 not useful to this Court?

13 MR. KREKSTEIN: I don't know how that document was
14 created. You cannot take a document under the rules --

15 THE COURT: You can do cross-examination.

16 MR. KREKSTEIN: All right. I mean, if that's the way
17 the Court wants to do it. I'm just trying to -- judge, we
18 provided the amount that our firm billed Nationwide --

19 THE COURT: Somehow there's a dispute. I don't know
20 what the dispute is. But I can hear you guys argue what the
21 dispute is. But you also have the right to bring somebody in
22 to show us what the dispute is. And I'd sure like to see you
23 cross-examine her if you think her figures are wrong. It
24 will be very beneficial to this Court to find out through one
25 witness, whether we get to another witness or not, what are

1 the exact numbers, since the two of you don't agree. So it's
2 an issue of fact, certainly.

3 Call this witness.

4 MR. MAYERSON: Jeanine Snyder, please.

5 THE COURT: We've already sworn you in. Come on up
6 and be seated.

7 (One-page synopsis - marked for identification as
8 EXHIBIT NO. 69.)

9 (Discussion off the record.)

10 DIRECT EXAMINATION BY MR. MAYERSON:

11 Q Could you, Ms. Snyder, please state your name
12 and address for the record and your occupation.

13 A Jeanine Snyder, 507 Centennial Street,
14 Schwenksville, Pennsylvania.

15 THE COURT: Can you speak up loudly, please. Do you
16 have difficulty hearing?

17 MR. McKNIGHT: A little louder would be helpful.

18 THE COURT: If you can. There's no microphone.

19 MR. KREKSTEIN: Would it help if I close the door,
20 Your Honor?

21 THE COURT: Thank you.

22 507?

23 THE WITNESS: Centennial Street, Schwenksville,
24 Pennsylvania, 19473. And I'm a bookkeeper.

25 BY MR. MAYERSON:

1 Q For how long have you been a bookkeeper?

2 A Approximately seven years.

3 Q Do you also do my books?

4 A I do.

5 Q And I've handed you a box of documents. Can
6 you identify those documents?

7 A They are billing records from 1998 through 2004
8 in a case called Berg versus Nationwide for attorney fees.

9 MR. MAYERSON: And Your Honor, these are the records
10 that were ruled upon by you as being admissible in lieu of
11 some attorneys from Nationwide who once handled the file. If
12 you recall, we had issued a subpoena upon some witnesses, and
13 Nationwide said in lieu of having those witnesses come in,
14 we'll stipulate that those are the billing records and are
15 authenticated. They're objecting to relevance, which I think
16 they've already done. So --

17 THE COURT: These are the billing records?

18 MR. KREKSTEIN: I haven't seen them, Your Honor. I
19 can only assume they are.

20 THE COURT: You can come up and certainly take as much
21 time as you need. We can go off the record.

22 (Discussion off the record.)

23 MR. KREKSTEIN: Your Honor, these appear to be the
24 billing records that were provided. There's handwriting on
25 them that is not ours.

1 THE COURT: Okay. So if you --

2 MR. MAYERSON: I have another copy.

3 THE COURT: If you think any of it is somehow going to

4 affect the accuracy, you can ask about it, of course.

5 MR. KREKSTEIN: Very well, Your Honor.

6 MR. MAYERSON: Your Honor, we have the original

7 documents that were produced by Nationwide.

8 THE COURT: Do you want to see those?

9 MR. KREKSTEIN: No, Your Honor. Are these just being

10 given to the witness? Or are these going to be attempted to

11 be marked into evidence?

12 THE COURT: I don't know. We've already marked this

13 in, right?

14 THE COURT REPORTER: 69 we marked.

15 MR. MAYERSON: 69.

16 THE COURT: That big box?

17 THE COURT REPORTER: No.

18 MR. MAYERSON: This is 69 (indicating).

19 THE COURT: All right.

20 MR. MAYERSON: Would you like to take a look at it?

21 THE COURT: So that's that one-page synopsis?

22 MR. MAYERSON: Yes.

23 THE COURT: And you've seen this?

24 MR. KREKSTEIN: I have, Your Honor. I'll reserve my

25 objections until the witness is done testifying.

1 THE COURT: All right. So then -- so anything that
2 she's going to be looking over, are you going to mark it and
3 have it admitted, try to have it admitted?

4 MR. MAYERSON: This is a large stack of documents.
5 One of the things that the Superior Court said is that they
6 have to be authenticated. I've done that because Nationwide
7 has stipulated to their authenticity. I don't want to over
8 burden the Court but it might make sense that we just mark
9 this as Exhibit 70.

10 THE COURT: Okay.

11 MR. MAYERSON: And it is marked on your sheet as
12 Exhibit 70 as well.

13 For the record, these are Bates stamped through 858.

14 BY MR. MAYERSON:

15 Q Ms. Snyder, you had a copy of these billing
16 records that were divided into annual years; is that correct?

17 A Correct.

18 Q Is each year in a three ring binder?

19 A It is.

20 Q And did you have an opportunity to go through
21 every page that I have here in front of me marked as Exhibit
22 Number 70?

23 A I did.

24 Q And have you had an opportunity to see the
25 document marked as Exhibit Number 69?

1 A I did.

2 Q And what is Exhibit Number 69?

3 MR. KREKSTEIN: Objection, Your Honor. Hearsay.

4 THE COURT: Where does this come from?

5 MR. MAYERSON: Your Honor, it is -- there is a rule of
6 evidence that permits a party to summarize a long list of
7 documents.

8 THE COURT: So where does it come from?

9 MR. MAYERSON: It's created by our office after
10 reviewing these documents, years ago.

11 THE COURT: Okay. Well, what's your question going to
12 be before there's an objection? You had a chance to review
13 Exhibit 69. Is that your question?

14 MR. MAYERSON: That's right.

15 THE COURT: What's your next question?

16 BY MR. MAYERSON:

17 Q Ms. Snyder, what is the total amount that's
18 reflected on that document for Nationwide's litigation
19 attorney fees through 2004, which is when the jury trial
20 began?

21 A \$922,654.25.

22 MR. MAYERSON: I think the Court can take judicial
23 notice that that's the number in the Berg opinion from the
24 Superior Court.

25 THE COURT: Yes. I'm aware of that.

1 MR. KREKSTEIN: Objection. Relevancy.

2 THE COURT: Okay. I don't know. But I assume this is
3 all going to be about numbers.

4 MR. MAYERSON: This is going to show that when the
5 Bonenberger decision, which was addressed in the Berg
6 opinion, was published in 2002 and instructed Nationwide to
7 stop using litigation to punish policyholders --

8 THE COURT: From Bonenberger. Bonenberger did that?

9 MR. MAYERSON: Yeah. Bonenberger told Nationwide in
10 2002 to stop it.

11 MR. KREKSTEIN: Your Honor, what does that have to do
12 with this witness?

13 THE COURT: I don't know.

14 MR. KREKSTEIN: This is argument.

15 THE COURT: In response to your objection, let's hear
16 the argument.

17 MR. MAYERSON: All right. Do you want me to ask
18 questions or tell you what the argument is?

19 THE COURT: I think you should have to tell us what
20 the argument is.

21 MR. MAYERSON: If you look at the annual amounts for
22 attorney's fees for 1998, 1999, 2000, 2001, 2002, that's when
23 Bonenberger was published. Then look at the figure for 2003
24 and 2004. So the argument is that what Nationwide did when
25 this --

1 THE COURT: All right. You're going to make this
2 argument at the conclusion of this whole thing. Your
3 objection is that it's hearsay.

4 MR. KREKSTEIN: My objection is that the document's
5 hearsay.

6 THE COURT: So you dispute what these figures are. I
7 mean, these are all from -- so then we need a foundation as
8 to whether she came up with the same figures, for instance,
9 or -- okay. Well --

10 MR. KREKSTEIN: Your Honor, we're going to get to the
11 same place, namely the \$922,000 number that's in the Superior
12 Court opinion.

13 THE COURT: Yeah.

14 MR. KREKSTEIN: What are we doing?

15 THE COURT: So the objection's overruled. Proceed.

16 BY MR. MAYERSON:

17 Q Aside from that one line item, Ms. Snyder, that
18 we discussed last night --

19 MR. KREKSTEIN: Objection, Your Honor.

20 MR. MAYERSON: I'm trying to get the witness --

21 THE COURT: What one line item?

22 MR. MAYERSON: We'll get to it. But I want -- we'll
23 get to the one line item for sure.

24 MR. KREKSTEIN: Then I'll object to leading question.

25 THE COURT: Sustained.

1 BY MR. MAYERSON:

2 Q Ms. Snyder, is that document correct other than
3 one major error on that document?

4 THE COURT: It's a leading question.

5 MR. MAYERSON: All right.

6 BY MR. MAYERSON:

7 Q Ms. Snyder, are the figures -- the annual
8 figures through 2003 accurate? Actually let me rephrase that
9 question. Are the annual figures through 2002 fairly
10 accurate?

11 MR. KREKSTEIN: Objection to fairly accurate, Your
12 Honor.

13 THE COURT: So do I understand you -- you went through
14 all these records, ma'am?

15 THE WITNESS: Every single one.

16 THE COURT: And you computed it by year?

17 THE WITNESS: Every single one.

18 THE COURT: What did you come up with per year?

19 THE WITNESS: Would you like me to read into the --

20 THE COURT: (Moves head up and down.)

21 THE WITNESS: So for 1998, the original document has
22 16,715.50. I came to 16,822.

23 For 1999, the original document has 67,628. I came to
24 67,607.

25 For 2000, the original document has 67,561.50. Which

1 is exactly the number that I came to. However, the July 2000
2 number of 7,417, which is listed on the document that I was
3 given, was not included in that total. But it was on the
4 actual sheet.

5 THE COURT: So -- meaning that it -- July was not
6 included in the 67,000?

7 THE WITNESS: Correct.

8 THE COURT: So you --

9 THE WITNESS: I did not have those documents in that
10 -- in my paperwork.

11 THE COURT: What documents? July?

12 THE WITNESS: July. There's nothing for July there.

13 THE COURT: Okay. So this 67,000 has to do with 11
14 months, not July?

15 THE WITNESS: Correct.

16 MR. MAYERSON: And Nationwide was supplementing these
17 records over time.

18 THE COURT: Okay.

19 THE WITNESS: For 2000 --

20 MR. KREKSTEIN: Objection. Is that a question?

21 THE COURT: I don't know.

22 MR. MAYERSON: Okay.

23 THE WITNESS: For 2001, the original document has
24 107,358. I came to 108,227.50.

25 For 2002, the document lists 66,765.50, which is

1 exactly the number that I got.

2 For 2003, the document lists \$244,686.75. I came to
3 \$245,382.75.

4 THE COURT: 245?

5 THE WITNESS: 382.75 dollars.

6 For 2004, the original document lists 344,522. The
7 number that I came up with was \$1,244,535.50, which is
8 largely due to one entry on the October 2004 billing records.

9 THE COURT: You're saying that the 2004 total is how
10 much?

11 THE WITNESS: \$1.2 million. 1,244,535.50.

12 THE COURT: So then we don't get to the 922,654?

13 THE WITNESS: We don't anymore.

14 THE COURT: We don't anymore. Okay.

15 BY MR. MAYERSON:

16 Q And what is the figure that we do reach now?

17 A \$1,816,991.75.

18 Q And the discrepancy that you identified is on
19 which page of the document?

20 A Can I get the book?

21 Q Yes.

22 A Page 258 of the 2004 billing.

23 Q And is there a Bates stamp follow-up in the
24 lower right-hand corner that Nationwide created?

25 A Is that the 831?

1 Q Is that 31? I'm sorry?

2 A 83 -- is this what he's talking about

3 (indicating)?

4 THE COURT: I don't know.

5 THE WITNESS: Is this the Bates stamp, this number?

6 BY MR. MAYERSON:

7 Q Yes.

8 A Oh, the number is 839.

9 MR. MAYERSON: Thank you. No further questions.

10 THE COURT: Cross-examine.

11 CROSS-EXAMINATION

12 BY MR. KREKSTEIN:

13 Q Good morning, ma'am.

14 A Good morning.

15 Q The document that you were provided with, that

16 was created by Mr. Mayerson?

17 A I was not given information as to who provided

18 that.

19 THE COURT: Exhibit 69 you're saying?

20 MR. KREKSTEIN: I apologize. Yes, Exhibit 69.

21 BY MR. KREKSTEIN:

22 Q You don't know who prepared that?

23 A I do not.

24 Q The total on that document is \$922,654.25?

25 A Yes.

1 Q Did you know that that's the number that Mr.
2 Mayerson presented to the Superior Court as part of his
3 appeal?

4 A No, I did not.

5 Q Okay. You're saying that number is wrong,
6 based on your calculations?

7 A I am.

8 Q Okay. The documents that are in front of you,
9 the Nationwide billing records, do you know why they were
10 produced to Mr. Mayerson?

11 A No, I do not.

12 Q Would it surprise you to know that they were
13 produced to Mr. Mayerson in response to his question about
14 how he could create his own time records?

15 MR. MAYERSON: Objection. Assuming facts not in
16 evidence.

17 MR. KREKSTEIN: I'm asking her a question.

18 THE COURT: I'm not sure, would it surprise her, is
19 that relevant, if it would surprise her if she --

20 MR. KREKSTEIN: It would, Your Honor. Those are the
21 documents that she's relying on to come up with a number
22 different from the number that Mr. Mayerson presented to the
23 Superior Court.

24 THE COURT: Well, you may work on her with that regard
25 if you want to with your questions. But I don't think it

1 matters whether it would surprise her. I think you can move
2 on to the next question. So I'll sustain the objection.

3 BY MR. KREKSTEIN:

4 Q Ma'am, what did you do to make these
5 calculations?

6 A I went through every single one of the books.
7 I used an Excel spreadsheet. I totaled them. When I was
8 given an invoice total in the book, I cross-checked my
9 invoice total. At the very, very end I had a list of total
10 invoices and a list of totals by year and I made sure that
11 they matched. I cross-examined them. So whenever possible,
12 I have at least two ways of checking the figures.

13 Q So you weren't doing it by entry, you were
14 doing it by invoice amount?

15 A I was doing it by single line item on every
16 single one of those documents.

17 Q Which would be a total of that particular page.
18 Not the individual entries. Is that correct?

19 A If you care to look at my worksheet I can show
20 you that I listed every single .1 hour at 14.50 an hour. You
21 know, 14.50 because it's \$85 an hour. I've listed every
22 single line item out and then totaled that to equal an
23 invoice amount when it was provided.

24 THE COURT: Are you saying that you did do what Mr.
25 Krekstein said you didn't do? Is that what your answer was?

1 THE WITNESS: I didn't just take a total invoice
2 amount and say, okay, this is an invoice for 1998. This goes
3 into the 1998 bucket. I actually listed out each individual
4 hour figure, the dollar amount charged, and then I was able
5 to calculate to check to the invoice total.

6 BY MR. KREKSTEIN:

7 Q So where did Mr. Mayerson get the math to
8 create that document marked as Exhibit 69?

9 A I have no knowledge of that information.

10 MR. KREKSTEIN: Okay. Nothing further, Your Honor.

11 MR. MAYERSON: One last question. The page that's
12 relevant I pulled out of here and put a sticky on. And it
13 seems to be missing. So if I could take the page from here
14 and have her authenticate it and put it in that trial
15 exhibit.

16 THE COURT: So we're talking about the one that has --
17 you said October? Was it October that you said?

18 THE WITNESS: October 6, 2004.

19 THE COURT: Okay.

20 MR. MAYERSON: And that is Page 839. Maybe -- is the
21 original over here?

22 Maybe what we should do, Your Honor --

23 THE COURT: You can make a copy if you'd like.

24 MR. MAYERSON: Yes. Thank you.

25 THE COURT: Do you want just one copy? Two copies?

1 MR. KREKSTEIN: I'd like to see a copy, Your Honor.

2 MR. MAYERSON: Why don't we make three copies and then
3 we'll mark that separately, so it's not buried in here, as
4 Exhibit 76.

5 MR. KREKSTEIN: Your Honor, may I ask the witness
6 additional questions?

7 THE COURT: Certainly.

8 BY MR. KREKSTEIN:

9 Q Ms. Snyder, did you take any notes during your
10 review?

11 A I wrote on here (indicating) some -- just
12 different figure calculations, but mostly in my Excel
13 spreadsheet. This is my working document.

14 MR. KREKSTEIN: Your Honor, we were never provided with
15 a copy of any Excel spreadsheet. This witness was given to
16 us within the last few days.

17 THE WITNESS: I have a copy right here if you'd like
18 to download it into your computer. I'd be more than happy to
19 give it to you.

20 THE COURT: We can take a recess so you could do that.

21 MR. KREKSTEIN: I would appreciate that, Your Honor.

22 THE COURT: Okay. All right. Well, we'll take a
23 10-minute recess. It's one document, I suppose?

24 THE WITNESS: It is.

25 THE COURT: Is that enough time for you to review it?

1 MR. KREKSTEIN: I don't know, Your Honor. I've never
2 seen it.

3 THE COURT: Let's take 15 minutes and we'll reconvene
4 and -- we're off the record.

5 (Discussion off the record.)

6 THE COURT: Ma'am, you understand that you're still
7 under oath and you cannot discuss your testimony with anyone
8 -- unless you want to discuss this testimony off the record.
9 Do you want to do this at all? Mr. Krekstein?

10 MR. KREKSTEIN: I would just like a copy of the
11 spreadsheet.

12 THE COURT: So you can't discuss your testimony with
13 anyone during this recess. Do you understand that?

14 THE WITNESS: I do, sir.

15 THE COURT: You may step down. We'll be back in 15
16 minutes.

17 (Recess declared from 10:40 a.m. until 10:55 a.m.)

18 (One-Page Billing Record - marked for identification
19 as EXHIBIT NO. 76.)

20 MR. MAYERSON: Before we begin, a clerical error may
21 have been made. We just want to clarify that that one page
22 was marked as Exhibit 70, erroneously marked as 70, but it's
23 actually 76.

24 THE COURT: That would be the 839?

25 MR. MAYERSON: Yes.

1 THE COURT: 76 is what I have here.

2 MR. MAYERSON: Good.

3 THE COURT: Photocopy of 839.

4 Mr. Krekstein.

5 MR. KREKSTEIN: Your Honor, if I may, just to clear up
6 some confusion on my part. Was this document marked as
7 Exhibit 69 created by Mr. Mayerson?

8 THE COURT: I think that's certainly what I understand
9 from what I've heard.

10 MR. KREKSTEIN: Rather than put Mr. Mayerson up, I
11 just want to find out who prepared it.

12 MR. MAYERSON: That document was prepared by our
13 staff. It's perfectly consistent with the Rules of Evidence.

14 MR. KREKSTEIN: Who's the person?

15 MR. MAYERSON: It was 10, 15 years ago. I'm not sure
16 who the person was at this point.

17 MR. KREKSTEIN: So we don't know who prepared it. And
18 we're submitting it to a witness to rely on. Between -- Your
19 Honor, I understand Your Honor's position. I understand Your
20 Honor's position on prejudicial effect. But this document is
21 clearly hearsay.

22 THE COURT: Well, this 69?

23 MR. KREKSTEIN: Yes.

24 THE COURT: The point is this witness went through all
25 your records that you submitted and came up with figures that

1 are 20, 30 dollars off everywhere except -- some right on.
2 Except for this thing in October. So what does it matter? I
3 don't know why I need to even rely on this except that it's
4 close to what she came up with.

5 MR. KREKSTEIN: Well, because that's the document that
6 was presented to the Superior Court that the Superior Court
7 referenced in its opinion.

8 THE COURT: It must be because it's --

9 MR. KREKSTEIN: And now Mr. Mayerson with this
10 witness, I think, is putting her testimony on to say that
11 figure is wrong.

12 THE COURT: Well, yeah. I mean, that's clearly what
13 we have.

14 MR. KREKSTEIN: Then, Your Honor, if I could, we were
15 just provided a copy with Ms. Snyder's Excel spreadsheet.
16 She was gracious enough to give it to us. It's a pretty
17 substantial document. We'd like an opportunity to review it.
18 I don't want to prolong this. I really don't. Would Your
19 Honor allow us to excuse Ms. Snyder but reserve the right to
20 bring her back to cross-examine her if we believe it's
21 necessary?

22 THE WITNESS: Can I say something?

23 THE COURT: Just a moment.

24 Mr. Mayerson.

25 MR. MAYERSON: I wasn't going to raise an objection,

1 but this is well beyond the scope of direct.

2 MR. KREKSTEIN: I asked her what she relied on in
3 making her analysis. She gave it to us. All I want to do is
4 have an opportunity to analyze it, see if I need to question
5 her on it.

6 THE COURT: Well, but you agree -- you agreed with
7 these figures of 922,00.

8 MR. KREKSTEIN: No. I agree that was what Mr.
9 Mayerson said and represented to the Superior Court and the
10 Superior Court referenced it in its opinion.

11 THE COURT: Okay. So -- now, would you have a problem
12 coming back if we needed you to come back?

13 THE WITNESS: I have 11 clients that I do bookkeeping
14 for. Mr. Mayerson's law firm is about five percent of my
15 client. So for you to call me back, I'll need advance notice
16 and I'll need a specific time and I'll need to be in and out.
17 And I'll have to tell you if I can get there. In other
18 words, if I have to be in another client's place -- Tuesday
19 is my normal day to be with Mr. Mayerson so this worked out
20 well.

21 MR. KREKSTEIN: Subject to the Court's availability I
22 have no problem working around Ms. Snyder's schedule.

23 THE COURT: All right. So you're finished with this
24 witness now. And Mr. Mayerson, you're finished with this
25 witness now?

1 MR. MAYERSON: Yes. And the arguments that are going
2 to follow may obviate the need for her to come back.

3 THE COURT: I don't know. We'll see. We'll cross
4 that bridge when you get to it. At any rate you can pack up
5 everything, and thank you for your testimony.

6 (Discussion off the record.)

7 THE COURT: Now we're going to deal with the argument
8 about these witnesses. Is that what we're going to do?

9 MR. KREKSTEIN: That's fine, Your Honor.

10 THE COURT: Okay. I guess this has to be on the
11 record. Now, who are the witnesses once again?

12 MR. MAYERSON: Actually, Your Honor, I know you feel
13 like a ping-pong ball and I don't want to do that again.

14 THE COURT: I enjoy it actually. Off the record.

15 (Discussion off the record.)

16 MR. MAYERSON: Before Mrs. Snyder came in we were
17 about to introduce records into evidence.

18 THE COURT: Records of what?

19 MR. MAYERSON: We were going to move into -- mark as
20 exhibits documents that Mr. Schwartzman had relied upon.

21 THE COURT: Right. Okay. So you want to do that now?

22 MR. MAYERSON: I want to make sure that gets done.

23 THE COURT: Let's do that then.

24 MR. MAYERSON: The first one is easy because there's
25 actually an agreement among counsel.

1 THE COURT: And this is 50 through 74?

2 MR. MAYERSON: That's right, Your Honor. Or 50 --
3 aside from what we've already covered, yes.

4 THE COURT: I'm sorry?

5 MR. MAYERSON: Yes. That's accurate.

6 THE COURT: Okay. So you're moving for their
7 admission?

8 MR. MAYERSON: Well, right now I'd like to mark them.
9 I think moving for their admission into evidence is going to
10 be a bigger fight.

11 THE COURT: Then we'll go off the record to have them
12 marked, all 50 through 74. Okay. So this is off the record.

13 MR. KREKSTEIN: Your Honor, if I could cut to the
14 chase.

15 THE COURT: This is off the record I hope.

16 MR. KREKSTEIN: That's fine.

17 (Discussion off the record.)

18 (Attorney Correspondence - marked for identification
19 as EXHIBIT NO. 50.)

20 (Douglas Joffred Deposition - marked for
21 identification as EXHIBIT NO. 51.)

22 (Nationwide Objections of 6/27/13 - marked for
23 identification as EXHIBIT NO. 52.)

24 (Order of 8/21/13 - marked for identification as
25 EXHIBIT NO. 53.)

1 (Nationwide Verified Answers to Interrogatories -
2 marked for identification as EXHIBIT NO. 54.)
3 (Subpoena to Saul Ewing - marked for identification as
4 EXHIBIT NO. 55.)
5 (Nationwide Motion to Quash Subpoena to Saul Ewing -
6 marked for identification as EXHIBIT NO. 56.)
7 (Nationwide Second Supplemental Answers to
8 Interrogatories - marked for identification as EXHIBIT NO.
9 57.)
10 (Two Orders of 12/4/13 requiring Nationwide Witness to
11 Appear at Trial - marked for identification as EXHIBIT NO.
12 58.)
13 (Letter of 12/11/13 - marked for identification as
14 EXHIBIT NO. 59.)
15 (Amended Notice to Attend to Nationwide - marked for
16 identification as EXHIBIT NO. 60.)
17 (Electronic Communication to Nationwide Counsel -
18 marked for identification as EXHIBIT NO. 61.)
19 (Order of 12/4/13; Memo of Tom Dietrich; Nationwide v.
20 Fleming - marked for identification as EXHIBIT NO. 62.)
21 (Bergs' Request for Admissions - marked for
22 identification as EXHIBIT NO. 63.)
23 (Nationwide Reply to Request for Admissions - marked
24 for identification as EXHIBIT NO. 64.)
25 (Nationwide Motion in Limine Pertaining to

1 Post-Payment conduct - marked for identification as EXHIBIT
2 NO. 65.)

3 (Bergs' Reply to Nationwide Motion in Limine - marked
4 for identification as EXHIBIT NO. 66.)

5 (Nationwide Answer of 5/3/03 to Bergs' Request for
6 Admissions - marked for identification as EXHIBIT NO. 67.)

7 (Nationwide Answer to Request for Admissions of
8 10/4/13 - marked for identification as EXHIBIT NO. 68.)

9 (Letter Dated 10/13/05 with Attached Billing Records -
10 marked for identification as EXHIBIT NO. 70.)

11 THE COURT: We're going to have argument on each one
12 of the exhibits. Shall we start with -- which ones don't you
13 argue?

14 MR. KREKSTEIN: We have no issue with what's
15 collectively marked as Exhibit 50, provided that we be
16 provided the same courtesy on our additional documents marked
17 51 -- 50 through 63, which is attached to our binder. Which
18 are all --

19 THE COURT: You mean these numbers here are yours too?

20 MR. KREKSTEIN: Here's the problem, Your Honor. We
21 both took the liberty of using those numbers, so Mr. McKnight
22 and I had a discussion as to how we can avoid confusion. And
23 if we can just call our Exhibits 50 through 63 Defense
24 Exhibits 50 through 63, I think that will clear up the
25 confusion, and we would just ask that those exhibits be

1 admitted into evidence as well.

2 THE COURT: 51 through 63?

3 MR. KREKSTEIN: Defense Exhibits 51 through 63 -- 50
4 through 63.

5 THE COURT: These are now going to be called defense
6 exhibits?

7 MR. KREKSTEIN: That's our suggestion, just to --

8 MR. MAYERSON: Why don't we mark them D?

9 THE COURT: Pardon?

10 MR. MAYERSON: Instead of defense, we can mark them D.
11 (Discussion off the record.)

12 THE COURT: Sequential Number 50, simply Number 50,
13 you're moving for its admission, Mr. Mayerson?

14 MR. MAYERSON: Yes.

15 THE COURT: And no objection, Mr. Krekstein?

16 MR. KREKSTEIN: Correct.

17 THE COURT: Number 50 is admitted. Can we do that
18 with any others?

19 MR. KREKSTEIN: Your Honor, the defendants have moved
20 for Defendant's Exhibit 50 through 63.

21 MR. MAYERSON: Can we first start with the plaintiffs'
22 exhibits? I mean, I don't understand what defendant is doing
23 here.

24 MR. KREKSTEIN: I'm just trying to get out of the way
25 the documents that we can stipulate to.

1 THE COURT: If you don't get what you want, then you
2 can, you know, object to this.

3 MR. KREKSTEIN: Fine, Your Honor.

4 THE COURT: Go ahead. You don't agree to any other
5 ones of plaintiffs'?

6 MR. KREKSTEIN: I may, Your Honor. I'd just like to
7 go through them because I have some difficulty with a couple
8 of them. The first one, Number 51 is a cover page from a
9 deposition of Douglas Joffred along with one page of his
10 deposition. Again, this is hearsay. Mr. Joffred is not
11 being called as a witness. This -- if Mr. Mayerson is trying
12 to get this into evidence, he can do so in order to rebut the
13 witness. A deposition still doesn't come in. There's no
14 witness to get it in with. Mr. Joffred has already been
15 subject to direct and cross-examination at the previous
16 trial.

17 THE COURT: How do you intend to get this in?

18 MR. MAYERSON: We're not offering it for the truth of
19 the matter asserted. We're offering it for course of
20 conduct. The one page is the pre --

21 THE COURT: Any objection to that?

22 MR. KREKSTEIN: Yeah. I don't even know what that
23 means, Your Honor. How do you establish a course of conduct
24 from Page 28 of somebody's deposition?

25 THE COURT: I don't know. But apparently that would

1 be one reason to get it in. And whether or not we put any
2 weight on it, it remains to be heard. I don't know, would it
3 be advantageous for us to argue now or do you want to wait
4 until later? I don't even know if this is going to come in.
5 That's something that's important in this case. If it does
6 --

7 MR. KREKSTEIN: I'm fine reserving the objection, Your
8 Honor.

9 THE COURT: All right. Well then, I'll admit Number
10 51. And then when we get to the argument, you can tell me
11 why I should put very little weight on it or no weight at
12 all.

13 MR. KREKSTEIN: Well, I believe from an evidence
14 standpoint, Your Honor, I don't believe it gets in. I do
15 believe it's hearsay. I do believe it's not relevant. I do
16 believe that they are trying to get in one page of a
17 deposition testimony without the witness here.

18 THE COURT: All right. Who's Mr. Joffred?

19 MR. MAYERSON: Here is the rest of his deposition.

20 THE COURT: Who is Mr. Joffred?

21 MR. MAYERSON: It's Nationwide's assigned appraiser.

22 THE COURT: So he was deposed. You want to get in one
23 page. Do you want to get in more to match that, Mr. --

24 MR. KREKSTEIN: We already have his trial testimony,
25 Your Honor. If Mr. Mayerson wanted to cross-examine him,

1 which he did, he did at a trial. Mr. Joffred was an employee
2 of the body shop, Lindgren. He was deposed, I think twice.
3 He testified at trial. Now Mr. Mayerson wants to put one
4 page of his deposition testimony into evidence in a vacuum
5 and make some argument about it.

6 THE COURT: That was never brought up in your
7 examination or cross-examination of him?

8 MR. MAYERSON: I'm not certain that it's not part of
9 the trial record. It may very well be part of the trial
10 record. But --

11 THE COURT: Well, if it's part of the trial record,
12 then certainly it's admitted.

13 MR. MAYERSON: The fact is. The underlying fact is.
14 Your Honor, if I may show you the course of conduct for which
15 we're offering it. It's one proposed finding of fact. And
16 it simply says that the first time the Bergs learned that
17 their vehicle was a structural total loss was on the date
18 that that gentleman said it on that deposition at that page.

19 MR. KREKSTEIN: Again, Your Honor, I'm not trying to
20 belabor the point. You cannot introduce a page of a
21 deposition to support an argument. That is not following the
22 Rules of Evidence.

23 THE COURT: I think what we're talking about is the
24 first time that the Bergs learned about their car was not
25 driveable. Is that what you're saying?

1 MR. MAYERSON: No. No. This is after they retained
2 counsel, and they were never told that their vehicle had been
3 appraised as a total loss at any time.

4 THE COURT: So that's the first time that they were
5 told that their vehicle was appraised as a total loss.

6 MR. MAYERSON: Originally. Yes.

7 THE COURT: So if you would stipulate to that, then
8 that's that. And that's all we have to get in without
9 getting into the whole page.

10 MR. KREKSTEIN: Judge, I don't even know where on this
11 page it says that. Why are we -- why are we talking about
12 Mr. Joffred's testimony as far as the Bergs are concerned?

13 THE COURT: I don't know. The Bergs are not going to
14 testify. So I guess this is one thing you want to get in.

15 MR. KREKSTEIN: The Bergs testified, Your Honor.

16 THE COURT: Right. I mean they're not going to
17 testify before us. Right?

18 MR. MAYERSON: Right.

19 THE COURT: So this is one thing you want to get in
20 rather than calling one of them as a witness to tell us what
21 you've just said.

22 MR. MAYERSON: Right.

23 THE COURT: So will you stipulate to that? And if you
24 won't stipulate to that, how can I prevent anybody from
25 calling a witness to get in what you want to get in if it's

1 relevant?

2 MR. KREKSTEIN: Because even if the Bergs were to
3 testify -- I'm certainly not suggesting that they do -- they
4 would be testifying as to what? What Mr. Joffred told them?
5 That's hearsay.

6 MR. MAYERSON: Your Honor --

7 THE COURT: Well, that's the first time that they --
8 the point is they never learned -- the point isn't what they
9 learned. But they never learned before that time that their
10 car was totaled. Now, do you agree to that? If you agree to
11 that, then we don't have to --

12 MR. KREKSTEIN: I don't know because I would need to
13 go back and see what the Bergs testified to at trial. That's
14 the --

15 MR. MAYERSON: Your Honor, here's a subpoena that we
16 served upon Nationwide's counsel --

17 THE COURT: If we're not going to get it in, are you
18 going to call one of your clients to say this?

19 MR. MAYERSON: To say that -- this is the simpler way
20 to do it, I believe. This is a subpoena to Nationwide's
21 counsel to bring the original -- if they're disputing the
22 authenticity of that document --

23 MR. KREKSTEIN: I'm not, Your Honor.

24 MR. MAYERSON: Then we're offering it for a course of
25 conduct --

1 MR. KREKSTEIN: I'm not disputing that this is what it
2 is. I've seen Mr. Joffred's deposition transcript. Mr.
3 Mayerson sent a Notice to Attend for us to bring our copy. I
4 assumed he had his own copy. I don't understand how
5 stipulating to something being what it is means it gets into
6 evidence. That's a fundamental --

7 THE COURT: If you stipulate it would.

8 MR. KREKSTEIN: No, I didn't, Your Honor.

9 THE COURT: I said if you would. If you stipulate.

10 MR. KREKSTEIN: Right. I don't even know what this
11 page has to do with anything.

12 THE COURT: Believe me, I'm the last to know. You
13 guys know. I don't know. But I'm trying to get through
14 this, and I said my first way of getting through it is if you
15 stipulated to it.

16 MR. KREKSTEIN: Right, Your Honor.

17 THE COURT: If you're not going to stipulate to it,
18 then I would have to allow for this witness to come in. I
19 mean --

20 MR. KREKSTEIN: I am happy to go back and review the
21 transcript. And if the Bergs testified to what Mr. Mayerson
22 is saying they testified to, I'll stipulate to that. That's
23 why we provided you with the transcript in its entirety.
24 There's no secrets. There's nothing to hide. If Mr.
25 Mayerson wants to put in a page from a deposition --

1 THE COURT: Do you two want to talk about all these
2 exhibits, the two of you? I mean, I'll gladly leave you
3 alone and see if you can resolve some of these things.

4 MR. MAYERSON: Your Honor, it will never be resolved.
5 It can't even be resolved with your assistance in an expedited
6 manner. It seems that this is --

7 THE COURT: Not in an expedited manner. It will be
8 resolved with my assistance. All right. So then it wouldn't
9 work to have you guys talking by yourselves and say this is
10 what I'm asking for and then you looking it up or agreeing or
11 disagreeing. All right.

12 MR. MAYERSON: I tried that.

13 THE COURT: So now where are we anyway? So we're
14 still -- Joffred deposition.

15 MR. MAYERSON: Yes.

16 THE COURT: Why don't -- so I'm asking you, will you
17 call a witness to get this in so you don't have to deal with
18 the Joffred deposition to get it in?

19 MR. MAYERSON: I don't know where Mr. Joffred is at
20 this point. It's been 15 years.

21 THE COURT: But what you want to establish is what
22 your client's impression -- what they learned up until that
23 time. We don't even need to have what -- what was told at
24 the deposition. If you want -- if somebody's going to
25 testify that up until such-and-such a date they didn't know

1 that this car was demolished, if you want to get that in --
2 if it was totaled rather, whatever the term is, if you want
3 to get that in, you can call a witness.

4 MR. MAYERSON: Your Honor, let me respond and then you
5 can make your ruling, and I'm not going to call a witness for
6 this one little fact that is really all that not material.

7 THE COURT: Okay.

8 MR. MAYERSON: The course of conduct for what we
9 wanted it for was because we're being attacked for having
10 strategized against Nationwide and filing a lawsuit too soon.
11 What this shows is our course of conduct that we took the
12 deposition of this guy and learned for the first time that
13 Nationwide had a hand in it. We --

14 THE COURT: Well, do you want to get it in or don't
15 you?

16 MR. MAYERSON: I do want to get it in. I don't --

17 THE COURT: Then you have to call a witness. I don't
18 care if you call a witness. This is what a trial is for.
19 But I'm not going to allow it in on a deposition unless
20 there's some stipulation for expediting this. And obviously
21 there isn't.

22 MR. KREKSTEIN: Can I -- and again, Your Honor, I'm
23 doing my best not to belabor this point. I'm really just
24 trying to do this in accordance with the rules.

25 THE COURT: I just gave you what you wanted.

1 MR. KREKSTEIN: No, no, no. I want to try and get him
2 what he wants.

3 THE COURT: Okay.

4 MR. KREKSTEIN: There's a letter from Mr. Mayerson in
5 April of 1998 talking about taking depositions and talking
6 about information uncovered during those depositions that in
7 Mr. Mayerson's opinion makes Nationwide culpable. If that's
8 the point he's trying to make, the letter's already into
9 evidence. It's an April 22, '98 letter. If that's the
10 point, which I'm not even sure it is, then that's already in.
11 I'm really not trying to do his work for him but --

12 THE COURT: If you guys can't be trusted to talk to
13 each other without the record being here, without the Court
14 being here and working out these things --

15 MR. MAYERSON: I'd be more than willing to try, Your
16 Honor. It's just that it hasn't worked this far and I have
17 tried.

18 THE COURT: It's really becoming burdensome. I'll
19 make a ruling, but you don't even want me to make the ruling
20 now.

21 MR. KREKSTEIN: No, no. I do, Your Honor. Again, I
22 think what Mr. Mayerson is trying to do is get in something
23 to prove something that is already into evidence. I'm just
24 trying to cut to the other thing that's in the evidence and
25 trying to --

1 THE COURT: Let's go off the record.

2 (Discussion off the record.)

3 THE COURT: So you haven't worked it out, I assume.
4 That's correct?

5 MR. KREKSTEIN: Yes, Your Honor.

6 THE COURT: What the ruling is, is we're not going to
7 let one page of a deposition come in. It could come in for
8 cross-examination or some other purpose perhaps, but I'm not
9 going to allow the deposition to come in. You either call
10 that witness or you call your witness. Whatever you want to
11 do.

12 MR. MAYERSON: All right. Thank you.

13 THE COURT: So that's Number 51. That will not be
14 admitted. Okay.

15 MR. KREKSTEIN: Your Honor, I apologize. I have the
16 original copies of 51.

17 MR. MAYERSON: You have all the original copies.

18 MR. KREKSTEIN: Yeah. I don't want them. I want to
19 give them to the court reporter.

20 THE COURT: The ones that are marked?

21 MR. KREKSTEIN: They were marked. Mr. Mayerson gave
22 them to me. I guess these were his only copies. So I don't
23 want to keep them from the Court.

24 MR. MAYERSON: I just gave them so --

25 MR. KREKSTEIN: That's fine. I'm happy to review

1 them. I just want to make sure that they get back to the
2 Court.

3 THE COURT: I hope that you'll do that.

4 MR. KREKSTEIN: So Number 51, does this get -- even
5 though Your Honor ruled on it, what happens to this exhibit
6 that's premarked?

7 THE COURT REPORTER: It still is with the record.

8 MR. KREKSTEIN: As we go through each one, with the
9 Court's permission, can I put it back on the table so the
10 court reporter has that?

11 THE COURT: Sure.

12 MR. KREKSTEIN: Thank you.

13 THE COURT: We go to 52.

14 MR. KREKSTEIN: 52, if I can, again, try to cut to the
15 chase, Your Honor. 52 through 60 are various discovery
16 exchanged by the parties and I believe a couple of Court
17 orders. Our objection is to the relevancy of them. But
18 obviously they are verified responses to discovery and they
19 are orders entered by the Court. So they are already a part
20 of the record. So my objection is simply to the relevancy of
21 them in regards to the Bergs' statutory bad faith argument.

22 THE COURT: So which ones, 52 through 60?

23 MR. KREKSTEIN: Well, if we can go 52, 53, 54, 55, 56,
24 57, 58, 59 is a letter from us to Your Honor, 60 amended
25 Notice to Attend.

1 THE COURT: I don't care what they are. Just do you
2 agree with it or don't you? That's all I need to know to get
3 through it. Then I'll hear what they are and you can argue,
4 make the argument.

5 MR. KREKSTEIN: I'm saying that I have no objection to
6 their authenticity. I have an objection to the relevance.

7 THE COURT: So you're still objecting to their being
8 admitted?

9 MR. KREKSTEIN: Yes, Your Honor.

10 THE COURT: Okay. Well, and again --

11 MR. MAYERSON: Doesn't relevance just go to the
12 weight?

13 THE COURT: I would think it does. That's what I
14 think we'll do, is just admit. I mean, I want to hear from
15 you as to -- when you make your argument, if you include any
16 of these, I want to know, Mr. Mayerson -- I want to know --
17 if you include any of these, then I want to hear obviously
18 from you, Mr. Krekstein, as to what -- that it's not
19 important. I want to hear that. But I don't know that I
20 want to hear it now.

21 MR. KREKSTEIN: That's fair, Your Honor.

22 THE COURT: So we're going to admit 52 through 60.

23 MR. KREKSTEIN: 61, Your Honor, is a electronic
24 communication from Mr. Mayerson to us. We previously agreed
25 to stipulate that communications between counsel we were not

1 going to object to. But again, objecting to the relevancy.

2 THE COURT: Okay. So 61 is admitted.

3 MR. KREKSTEIN: 62. This is -- Your Honor, we filed a
4 motion in limine on a -- on the reliance on an unrelated case
5 by Mr. Mayerson called Nationwide versus Fleming. If Your
6 Honor recalls, there was a case where Nationwide sued its
7 agents for agent defections.

8 THE COURT: Does this have to be on the record?

9 MR. KREKSTEIN: Well, Your Honor, it's regarding the
10 evidence. So --

11 THE COURT: Right. Just trying to save somebody
12 something, you know. Okay.

13 MR. MAYERSON: If you want to save it, there's an
14 order that already says it's admitted.

15 MR. KREKSTEIN: No, there's an order saying it's
16 authenticated. And Your Honor, the reason we agreed to that
17 was to preserve our right to object to its admissibility
18 based on relevancy.

19 THE COURT: I don't know if it -- I mean, do I really
20 want to spend this much time on these things at this point?
21 I don't know. Why do I -- and it has to do with relevancy.
22 So we'll admit it and you can tell me afterwards why I should
23 not -- if it comes up. I'm not going to consider these
24 unless either one of you bring them up as something that's
25 important in this case. Even a little bit important. Then

1 I'll consider it.

2 All right. So where are we? 62 --

3 MR. KREKSTEIN: 62, Your Honor, is that order --

4 THE COURT: 62 is admitted.

5 MR. KREKSTEIN: 63 and 64 are requests for admissions

6 and Nationwide's response to those request for admissions.

7 Again, these are discovery responses.

8 THE COURT: Well, it's already part of the record.

9 MR. KREKSTEIN: Very well.

10 THE COURT: Right? I mean, it's been filed.

11 MR. KREKSTEIN: Well, I don't think the discovery has
12 been filed, Your Honor, but...

13 THE COURT: Oh, it hasn't been?

14 MR. KREKSTEIN: Well, it may have been part of a
15 motion, so the answer is probably. Probably correct.

16 THE COURT: So you just give discovery back and forth.
17 You don't file it in with the Court?

18 MR. KREKSTEIN: That's correct, Your Honor.

19 THE COURT: Okay. So you may not have done that in
20 this case.

21 MR. KREKSTEIN: I think these were part of a motion
22 filed by Mr. Mayerson but I could be wrong.

23 THE COURT: In which case we would have that.

24 MR. KREKSTEIN: Yes.

25 THE COURT: Okay. So all right. Any objection to it?

1 MR. KREKSTEIN: Again, Your Honor, relevancy, but --

2 THE COURT: Okay. 63 and 64 are admitted.

3 MR. KREKSTEIN: 65 is a copy of our own motion in
4 limine pertaining to post-payment conduct. So certainly not
5 going to take issue with that.

6 THE COURT: All right. 65 is admitted.

7 MR. KREKSTEIN: 66 is the Bergs' reply. I'm not going
8 to take issue with that either.

9 THE COURT: All right. 66 is admitted.

10 MR. KREKSTEIN: 67 and 68 seem to be another batch of
11 requests for admissions. Again, with the question of
12 relevancy. We certainly have no problem that these are what
13 they are.

14 THE COURT: All right. Again, we'll admit them and
15 you tell me -- if one of you bring them up -- I won't even
16 look at these unless you bring them up as being important in
17 this case.

18 MR. KREKSTEIN: That's fair, Your Honor.

19 THE COURT: And then you'll have the opportunity to
20 tell me why it's not important, even though Mr. Mayerson is
21 bringing it up.

22 MR. MAYERSON: And Your Honor, by bringing it to your
23 attention, that is in our proposed findings of fact and
24 conclusions of law.

25 THE COURT: Well, then I have to -- then I have to

1 hear argument on it as to what it means. I guess, can you
2 collectively tell me what it means when we get to that point
3 when we have all the evidence and go through the findings of
4 fact and tell me -- I mean, is that how we're going to do it
5 then?

6 MR. MAYERSON: This is new territory, I believe. And
7 it was to accommodate and streamline this case that we would
8 submit it this way.

9 THE COURT: Right. That's okay. I don't have a
10 problem with the way it's been submitted. I want to hear
11 from you when it comes time for this Court to consider it.

12 MR. MAYERSON: Okay.

13 THE COURT: I really want to hear from you and then
14 you tell me -- and I'm not going to cut you off. You tell me
15 why I should not consider it, why it's not important in this
16 case.

17 MR. KREKSTEIN: That's fine, Your Honor.

18 THE COURT: All right.

19 MR. MAYERSON: And as a suggestion, maybe the way to
20 go is, in our proposed findings of fact we tell you right
21 there why we think it's significant and maybe -- you know,
22 maybe the thing to do is for us to go through them together,
23 Nationwide can tell you why it's not.

24 THE COURT: Yeah. Yeah. Absolutely. I'm going to be
25 really relying on the findings of fact, because, again, the

1 tip of the iceberg. Everything else is below the surface.

2 MR. MAYERSON: Maybe what we should do -- maybe this
3 should be off the record.

4 THE COURT: Let's go off the record.

5 (Discussion off the record.)

6 THE COURT: All right. So 67 and 68 are admitted.

7 MR. KREKSTEIN: 69, Your Honor, is the billing summary
8 that I think was already addressed with Ms. Snyder, as well
9 as Exhibit 70, I believe.

10 THE COURT: 69 and 70 are admitted.

11 MR. MAYERSON: 71 and 72 was part of a witness that
12 Nationwide was supposed to appear with today and I think
13 they've agreed to try to appear with that witness tomorrow.

14 MR. KREKSTEIN: No, I think what we agreed to was the
15 Notice to Attend said bring the originals of documents that
16 were already marked as trial exhibits in the first two
17 trials. We just got that. What I said was I don't even know
18 if we have the original. If we do, I'm happy to bring it.

19 THE COURT: Okay. So we're going to wait until
20 tomorrow on that one.

21 MR. MAYERSON: We don't have them yet.

22 THE COURT: So 71 and 72 you say?

23 MR. MAYERSON: And 73.

24 THE COURT: And 73. So we're going to leave those
25 open at this point.

1 MR. KREKSTEIN: Now, just for the record, those
2 exhibits, those items have already been marked as trial
3 exhibits during the first two trials. Mr. Mayerson is asking
4 for originals. Which after 15 years I don't even know if we
5 have them.

6 THE COURT: Do I have to deal with this now?

7 MR. KREKSTEIN: No, because we haven't even found out
8 if we have them.

9 THE COURT: Yeah. So I mean -- I'll deal with it now
10 if you want me to, but it sounds like you may, in fact,
11 supply this and then it's not even an issue.

12 MR. KREKSTEIN: That's correct, Your Honor.

13 THE COURT: Okay. So then let's wait until tomorrow.

14 MR. KREKSTEIN: I just don't want to be accused of
15 violating a Notice to Attend if I don't have them.

16 THE COURT: You have worked out something?

17 MR. KREKSTEIN: Yes.

18 THE COURT: And if you haven't worked it out, then
19 I'll work it out.

20 MR. KREKSTEIN: That's fine, Your Honor.

21 THE COURT: Okay.

22 MR. KREKSTEIN: 74 and 75 have already been admitted.
23 That's the jury trial transcript and the bad faith trial
24 transcript.

25 THE COURT: All right. And 76 is the photocopy of

1 Page 839.

2 MR. KREKSTEIN: Correct.

3 THE COURT: So that's admitted. So 74, 75 and 76 are
4 already admitted.

5 MR. MAYERSON: 51 is denied?

6 THE COURT: 51 is denied. Correct.

7 MR. KREKSTEIN: Moving to defendant's exhibits, I
8 would ask that --

9 THE COURT: I don't know that I have those.

10 MR. KREKSTEIN: They are in the binder, Your Honor, to
11 your left.

12 THE COURT: So I --

13 MR. KREKSTEIN: The exhibit binder. There's a binder
14 up there --

15 THE COURT: It's just these (indicating)?

16 MR. KREKSTEIN: That's it. One of those says exhibits
17 on it.

18 THE COURT: Oh, and additional exhibits.

19 MR. KREKSTEIN: Yes.

20 THE COURT: Okay.

21 MR. KREKSTEIN: The additional exhibits have been
22 premarked 50 to 63. They are various correspondence between
23 the parties and between the attorneys. We would ask
24 plaintiffs to stipulate to the admissibility of those letters
25 as we did for theirs.

1 MR. MAYERSON: We will stipulate to the admissibility
2 of all attorney records -- letters. If there's something
3 that's not an attorney letter, we should discuss it.

4 THE COURT: Let's do it number by number. Do you
5 agree with 50 through 63?

6 MR. KREKSTEIN: They're all letters from attorneys --

7 THE COURT: Off the record.

8 (Discussion off the record.)

9 MR. MAYERSON: Your Honor, the deposition of Doug
10 Joffred that was precluded from evidence is under our
11 proposed findings of fact 41. You should probably remove
12 that since it's not been admitted because -- it's in the
13 white book. Tab 41. There's actually a --

14 MR. KREKSTEIN: I have no problem if the Court just
15 wants to disregard it, Your Honor.

16 THE COURT: Okay. I'll write on here disregard it.

17 MR. MAYERSON: And in lieu of that, the testimony, you
18 could write over it and say, instead look at -- if I can have
19 you write on there, 2004 trial testimony -- or notes of
20 testimony, NT, 703, 18 through 23.

21 MR. KREKSTEIN: Your Honor, I think we've reached
22 agreement as to the admissibility of Defendant's Exhibits 50
23 through 63 with one exception.

24 THE COURT: Okay.

25 MR. KREKSTEIN: I'm not sure why, but --

1 MR. MAYERSON: You know what, I'll withdraw the
2 objection to the one document. They can all come in.

3 THE COURT: Okay.

4 MR. KREKSTEIN: Very well.

5 THE COURT: Then 50 through 63 are -- and that would
6 be defense exhibits?

7 MR. KREKSTEIN: Yeah. Defendant's Exhibits 50 through
8 63. Your Honor, may I approach with the stickers?

9 THE COURT: Sure.

10 MR. KREKSTEIN: Can we go off the record for a second?

11 THE COURT: Yes.

12 (Discussion off the record.)

13 (Letter from Benjamin Mayerson Dated 8/25/99 - marked
14 for identification as DEFENDANT'S EXHIBIT NO. 50.)

15 (Letter from Matthew Stool Dated 6/1/98 - marked for
16 identification as DEFENDANT'S EXHIBIT NO. 51.)

17 (Letter from Michael Nelson Dated 8/20/98 - marked for
18 identification as DEFENDANT'S EXHIBIT NO. 52.)

19 (Letter from Michael Nelson Dated 9/16/98 - marked for
20 identification as DEFENDANT'S EXHIBIT NO. 53.)

21 (Letter from Benjamin Mayerson Dated 10/13/98 - marked
22 for identification as DEFENDANT'S EXHIBIT NO. 54.)

23 (Letter from Michael Nelson Dated 10/23/98 - marked
24 for identification as DEFENDANT'S EXHIBIT NO. 55.)

25 (Letter from Benjamin Mayerson Dated 10/26/98 - marked

1 for identification as DEFENDANT' S EXHIBIT NO. 56.)

2 (Letter from William Longo Dated 10/27/98 - marked for
3 identification as DEFENDANT' S EXHIBIT NO. 57.)

4 (Letter from Ben Mayerson Dated 10/27/98 - marked for
5 identification as DEFENDANT' S EXHIBIT NO. 58.)

6 (Letter from Michael Nelson Dated 10/27/98 - marked
7 for identification as DEFENDANT' S EXHIBIT NO. 59.)

8 (Letter from Michael Nelson Dated 11/23/98 - marked
9 for identification as DEFENDANT' S EXHIBIT NO. 60.)

10 (Letter from Julie A. Clark Dated 12/24/98 - marked
11 for identification as DEFENDANT' S EXHIBIT NO. 61.)

12 (Letter from Julie A. Clark Dated 1/8/99 - marked for
13 identification as DEFENDANT' S EXHIBIT NO. 62.)

14 (Letter from Craig A. Cohen Dated 11/22/05 - marked
15 for identification as DEFENDANT' S EXHIBIT NO. 63.)

16 THE COURT: Now what?

17 MR. MAYERSON: Now I think we're to the point of
18 discussing the failure of Nationwide to produce witnesses.

19 THE COURT: Okay. You'd like that on the record as
20 well. So who are the witnesses?

21 MR. MAYERSON: The witnesses were to appear to be
22 cross-examined or questioned on their answers to
23 interrogatories.

24 THE COURT: Who are they?

25 MR. MAYERSON: They were designees of Nationwide. So

1 we told -- we suggested -- I can give you the Notice to
2 Appear if you'd like.

3 THE COURT: So we don't know who they are
4 specifically. That's up to Nationwide to provide whoever
5 they want to? Whoever did the interrogatories. Is that it?

6 MR. MAYERSON: The interrogatories were verified by
7 Richard Matsumoto and Sean Costello. And it was anticipated
8 that Sean Costello would be here today but it appears that
9 he's at a mediation.

10 THE COURT: Okay. So that's who the -- that's who you
11 wanted here.

12 MR. MAYERSON: Yeah.

13 THE COURT: And why are they not here? Because I
14 think -- isn't it Richard, isn't he on vacation or something?

15 MR. KREKSTEIN: He is, Your Honor. That was in our
16 letter to the Court. We've been advised that he is available
17 to testify beginning January 6th.

18 THE COURT: Okay.

19 MR. KREKSTEIN: So that's our response.

20 THE COURT: What about Sean?

21 MR. KREKSTEIN: Sean Costello, Your Honor, executed a
22 verification that the amount that our firm billed Nationwide
23 was the amount that our firm billed Nationwide. That's how
24 those answers to interrogatories were structured. So he's
25 already verified that that's the amount that he was billed

1 and he's doing it based on our billing records. So I don't
2 know what his testimony will add.

3 THE COURT: Okay. My question is whether he is
4 available.

5 MR. KREKSTEIN: He is here. He is supposed to be here
6 tomorrow, if the mediation does not extend.

7 THE COURT: Well, the mediation doesn't take
8 precedence over a trial.

9 MR. KREKSTEIN: I understand, Your Honor.

10 THE COURT: So is tomorrow acceptable to you?

11 MR. MAYERSON: Yes, Your Honor. If he's able to
12 answer the question -- the additional question. There's --
13 I'm sorry. The original Notice to Appear asked for a witness
14 to come and verify the amounts paid, because there's been a
15 lot of changes and discrepancies --

16 THE COURT: Why don't we just have him here tomorrow?
17 Find out what it is he can provide, and if you still need
18 Richard, then we'll just have to take him -- we'll have to do
19 something to consider getting his testimony in if it can't be
20 stipulated to.

21 MR. MAYERSON: The point is -- one of the features or
22 one of the points of the Notice to Attend was to bring with
23 them amounts that they paid their attorneys through -- after
24 2013 in April. I said that awkwardly. But to update their
25 fees and costs. And I think they're refusing to do that even

1 though we've had oral argument on it, you've ruled on it.
2 They're still saying that it's objectionable. So I'm not
3 sure if they're going to comply with the order or not.

4 MR. KREKSTEIN: I apologize, judge. I missed part of
5 that. What I gathered from that is that Mr. Mayerson is
6 asking for the amount that our firm has billed Nationwide.

7 THE COURT: You're going to have Sean here tomorrow.

8 MR. KREKSTEIN: He is supposed to be here. I will
9 confirm that with him today. I did not --

10 THE COURT: Yeah. I mean, do you want me to order him
11 to be here?

12 MR. KREKSTEIN: No, Your Honor. Your Honor, it was a
13 Notice to Attend to --

14 THE COURT: Okay. So he'll be here tomorrow.

15 MR. KREKSTEIN: I don't want to make that
16 representation to the Court.

17 THE COURT: Do you want me to order him to be here?

18 MR. KREKSTEIN: I don't, Your Honor. I want to find
19 out whether he was supposed to be here. He did not think he
20 would be needed here to testify.

21 THE COURT: I just don't -- I mean, the question is,
22 is he going to be here. And you're not sure. And then I say
23 I will order him to be here and you don't want me to do that.
24 I don't know what to say next.

25 MR. KREKSTEIN: What I ask is that I contact him and

1 to confirm that he is going to be here as he represented. My
2 --

3 THE COURT: What if he's not going to be here as he
4 represented? Then I should order him to be here.

5 MR. KREKSTEIN: I'm certainly not going to tell Your
6 Honor what to do or what not to do.

7 THE COURT: Well, I want to accomplish this. And I'm
8 not finding any other way to do it except to order him to be
9 here.

10 MR. KREKSTEIN: What I'm saying is that Sean Costello
11 cannot answer the question that Mr. Mayerson is asking, which
12 is why we have been trying to come up with somebody who can.
13 The problem being that the answer to the question requires
14 Nationwide to go back through three billing systems in order
15 to find the answer. And it is not easy.

16 What we did was we gave Mr. Mayerson what our firm
17 billed Nationwide. If Mr. Mayerson is asking for us to
18 update those figures, we could certainly go back and see if
19 we can do that. However, I don't know the last time we
20 billed Nationwide. So I'm just trying to accomplish what --
21 whatever the goal is in order to get that information.

22 THE COURT: Let's go off the record.

23 (Discussion off the record.)

24 THE COURT: I'll enter the following order: AND NOW,
25 this 17th day of December, 2013, after discussing this issue

1 of the appearance of either Richard Matsumoto and/or Sean
2 Costello appearing as per Plaintiff's amended Notice to
3 Attend that was prepared and served on Nationwide by counsel
4 for the Plaintiff, it is hereby ordered that Sean Costello
5 shall appear in the courtroom of the undersigned tomorrow,
6 which is December 18th, 2013, at a time to be discussed and,
7 if no time can be resolved, can be set, then he shall be here
8 at 9:30 a.m.

9 And I'll sign that order. I don't know when it will
10 be prepared. But you don't have any question about that?

11 MR. KREKSTEIN: I do, Your Honor, because the Notice
12 to Attend asked for one of those people or somebody with the
13 most knowledge. We have been trying to find that person.
14 Sean Costello, I represented, does not have the knowledge
15 that Mr. Mayerson is asking.

16 THE COURT: I asked Mr. Mayerson. Again, I don't want
17 to tell you who to call or you who to call. Do you want to
18 call Sean Costello? If you do, I will order him to be here.

19 MR. MAYERSON: Your Honor, I wanted somebody to answer
20 that question. So the answer is, I'd like somebody to comply
21 with that notice. I think the notice is clearly written. I
22 don't think it's that confusing. I think they're making
23 confusions that shouldn't exist.

24 THE COURT: You have two people, Richard Matsumoto and
25 you have Sean Costello. Richard Matsumoto won't be here

1 because he's on vacation. Sean Costello can be here. He's
2 assigned to some mediation, which does not take precedence,
3 it's not something that a person should be excused from
4 rather than coming to court. So we'll order him to be in
5 court tomorrow. And if he can't help you out and we can't
6 get to the next person, then we'll have to -- well, we'll
7 have to do whatever it is we're going to do after tomorrow.
8 But at this point, that's where we are.

9 MR. MAYERSON: Thank you, Your Honor.

10 THE COURT: Okay. Now, is there anything else?

11 MR. KREKSTEIN: Your Honor, I'd just like to hand
12 these exhibits back up, if I may.

13 THE COURT: Sure.

14 MR. KREKSTEIN: The binders that we have presented are
15 already marked into evidence and the additional Defendant's
16 Exhibits 50 through 64 [sic] have defendant's exhibit tabs on
17 them.

18 THE COURT: Right. Those are the ones that you have
19 marked now.

20 MR. KREKSTEIN: Yes.

21 THE COURT: And you'll get the original back. And I
22 have a copy of it?

23 MR. KREKSTEIN: You do.

24 THE COURT: Yeah. Anything further?

25 MR. MAYERSON: If your Court has the patience yet we

1 have a motion in limine pending on Connie Foster.

2 THE COURT: Okay.

3 MR. KREKSTEIN: Your Honor, may I have one minute?

4 THE COURT: Yes.

5 (Brief pause.)

6 MR. KREKSTEIN: Your Honor, would it be possible to
7 stay off the record for a second?

8 THE COURT: Sure.

9 (Discussion off the record.)

10 THE COURT: Where we are is Sean Costello will be here
11 on Thursday.

12 And you say there's interrogatories that this Court
13 ordered answered?

14 MR. MAYERSON: Yes, Your Honor.

15 THE COURT: And have they been answered as of yet?

16 MR. MAYERSON: Twice, with different answers. After
17 we subpoenaed billing records from Connie Foster, they
18 amended their answers to add another 125,000. And so --

19 THE COURT: So what are you asking for with regard to
20 that?

21 MR. MAYERSON: The gentleman who -- Mr. Costello who
22 verified these answers.

23 THE COURT: Both of them?

24 MR. MAYERSON: Both of them. His verification says
25 he's relying on advice of counsel. So it's -- it seems that

1 it's unverified. And we've shown that they're wrong and we
2 would like him to come in and explain why they're wrong. And
3 we don't think it's that complicated and we'd like to ask him
4 why he answered a different question.

5 THE COURT: That will be on Thursday.

6 MR. MAYERSON: Right.

7 THE COURT: Is there anything else that we can do at
8 this point?

9 MR. MAYERSON: Other than having Nationwide bring in
10 the other witness that's on there to answer what -- well,
11 yes, there is. And that is make it clear to Nationwide's
12 counsel that Mr. Costello is to come with updated amounts
13 too. And that's on our notice.

14 MR. KREKSTEIN: Judge, I already offered to provide
15 Mr. Mayerson with the amount that Nationwide -- that our firm
16 has billed Nationwide through whatever -- as up to date as is
17 humanly possible.

18 MR. MAYERSON: We're in agreement then. Mr. Costello
19 will be able to answer questions about that.

20 MR. KREKSTEIN: Well, Mr. Costello probably hasn't
21 seen them. I don't know when the last time we sent a bill
22 was.

23 THE COURT: So he's going to be asked those questions.
24 And hopefully he can somehow be prepared or you can be
25 prepared to stipulate or somehow we can get to the -- well,

1 the bottom line. The answer to it.

2 MR. KREKSTEIN: That's fine, Your Honor.

3 THE COURT: Okay. Now, what else are we doing?

4 MR. MAYERSON: Connie Foster is Nationwide's expert.
5 And she's offered eight opinions. And in going through the
6 eight opinions in the Superior Court opinion in Berg, it
7 appears that seven of the eight opinions were rejected by the
8 Superior Court. The eighth opinion that was not specifically
9 rejected by the Superior Court is the ultimate issue. And
10 that is that Nationwide was not in bad faith. But if she was
11 wrong on the basis for that opinion, then there is not much
12 point in her having -- telling you what she thinks the
13 ultimate issue is, which would probably be improper anyway
14 since you're the finder of fact, not her.

15 So our objection to her is that she is going to create
16 extreme confusion, and counsel has already told me that
17 they're going to have her repeat the same opinions that she
18 already gave that were already rejected by the Superior
19 Court. All seven of them. And we did file a formal motion
20 on this issue spelling out where in the opinion of Berg it
21 was rejected. This is a copy of it. It doesn't have the
22 Exhibit A and B, which are portions of her report, but the
23 opinions in her report are cited within the body of this
24 motion, which is seven pages.

25 THE COURT: Did you give us a copy of that?

1 MR. MAYERSON: I filed a copy. And I think a courtesy
2 copy probably went to you but at this point I may be --

3 THE COURT: Looks like about seven pages. Plaintiffs'
4 motion in limine to preclude opinion testimony of Attorney
5 Constance Foster.

6 MR. MAYERSON: That is it.

7 THE COURT: Okay. You're calling her for Thursday?

8 MR. KREKSTEIN: Yes, Your Honor.

9 THE COURT: Do you want to deal with this now?

10 MR. KREKSTEIN: I'm happy to, Your Honor. We actually
11 submitted a response that I'd like to hand up to the Court.
12 Mr. Mayerson got a copy.

13 THE COURT: Yeah, please.

14 MR. KREKSTEIN: Bottom line, this motion in limine was
15 filed recently. If Your Honor recalls -- and if Your Honor
16 doesn't recall, I understand. When we were discussing
17 witnesses months ago, or maybe a month ago, Mr. Mayerson
18 asked if we intended to present Ms. Foster live, to which we
19 replied yes. Mr. Mayerson asked the judge -- asked you to
20 enter an order compelling Ms. Foster to attend in person and
21 so that he could cross-examine her. There's an order.

22 THE COURT: The question was are you going to be
23 calling her.

24 MR. KREKSTEIN: Yes.

25 THE COURT: And the answer was yes. And then there

1 was a motion so that you would present her.

2 MR. KREKSTEIN: There was a motion that -- so we would
3 present her live so that Mr. Mayerson could cross-examine
4 her.

5 THE COURT: Okay.

6 MR. KREKSTEIN: And Your Honor entered an order.

7 THE COURT: She had not been cross-examined in the --

8 MR. KREKSTEIN: Well, actually, Your Honor, he told
9 you she wasn't. She was.

10 THE COURT: Okay.

11 MR. MAYERSON: She was -- we were not permitted to
12 really cross-examine her. I think that Judge Stallone had
13 really made up his mind in the case and he liked the opinion
14 she was giving and it gave him an easy resolution to the
15 case. And we weren't really permitted to cross-examine her
16 properly.

17 MR. KREKSTEIN: Either way, Your Honor --

18 THE COURT: If she's going to be here and you want her
19 here --

20 MR. MAYERSON: Your Honor --

21 THE COURT: Now we're talking about these opinions. I
22 don't know why we're talking about this. She's going to be
23 here, correct?

24 MR. KREKSTEIN: Yeah. He's filed a motion for her not
25 to be here now.

1 MR. MAYERSON: Your Honor, here's --

2 THE COURT: Motion in limine to limit her with regard
3 to her expert opinions, seven of which have been rejected, is
4 what you said, by the Superior Court?

5 MR. MAYERSON: That's correct.

6 THE COURT: So what is your position on that?

7 MR. KREKSTEIN: Ms. Foster's opinions have not been
8 rejected by the Superior Court. What the Superior Court has
9 ruled, that Judge Stallone's reliance on certain of the
10 opinions was improper. Ms. Foster is still permitted and was
11 permitted to testify concerning --

12 THE COURT: So this is something that I can take a
13 look at and have a ruling for tomorrow?

14 MR. KREKSTEIN: Sure.

15 THE COURT: Yeah. Okay. Is there anything else?

16 MR. KREKSTEIN: May I approach, Your Honor, with a
17 copy of the response that we filed?

18 THE COURT: Yes, please.

19 Anything further?

20 MR. MAYERSON: I don't know what was just handed up to
21 the Court.

22 MR. KREKSTEIN: It was a copy of our response to Ms.
23 Foster's --

24 MR. MAYERSON: Oh. The only other thing tomorrow,
25 we're hoping that Nationwide can give an offer of proof as to

1 which opinions it believes have not been overruled. I don't
2 know that that's in their response.

3 THE COURT: Of the seven?

4 MR. MAYERSON: Yeah. Well, there's actually eight.
5 One is the ultimate issue.

6 MR. KREKSTEIN: I believe it's in our response. If we
7 need to supplement it we're happy to.

8 THE COURT: In this response here?

9 MR. KREKSTEIN: Yeah.

10 THE COURT: And I can read it myself.

11 MR. KREKSTEIN: Yes.

12 THE COURT: Okay.

13 MR. MAYERSON: Thank you, Your Honor.

14 THE COURT: All right. Then we'll reconvene. Do you
15 think we're doing well? I mean, nobody's requesting that we
16 start earlier or anything like that?

17 MR. KREKSTEIN: No, Your Honor. Your Honor, there's
18 one more motion that Mr. Mayerson recently filed. I don't
19 know if he's pursuing it. I didn't hear it raised yet.

20 THE COURT: Is this this federal court opinion?

21 MR. KREKSTEIN: Yeah.

22 THE COURT: Are you pursuing that? Is that something
23 that we need to deal with today?

24 MR. MAYERSON: You don't need to rule on that. That's
25 to alert you to the divergence of law between state and

1 federal court.

2 THE COURT: There's a difference?

3 MR. MAYERSON: Yes, there is a difference.

4 THE COURT: So there's different people who make these
5 laws and different people who apply these laws.

6 MR. MAYERSON: For different reasons.

7 THE COURT: Okay. Glad to know that. Thank you.

8 Did you want to respond to that? You probably
9 disagree, I guess. Just kidding.

10 MR. KREKSTEIN: Well, Your Honor, this is a bit of a
11 head scratcher. I got the impression from the motion that he
12 was going to ask the Court to not allow us to rely on any
13 federal court opinions applying Pennsylvania law. I was
14 going to say that that's a first for me. If he just wants to
15 do it to alert the Court that there are state courts and
16 federal courts, I'm happy to agree to that.

17 THE COURT: Well, that's a good way to close, that we
18 have this agreement. Very good.

19 MR. KREKSTEIN: It's always good to close on
20 agreement, Your Honor.

21 MR. MAYERSON: Your Honor, since we're talking about
22 it and since Mr. McKnight -- or I'm sorry, Mr. Krekstein
23 thinks it's rather light, the difference is that in Hollock
24 versus Erie, which is the --

25 THE COURT: You're going to tell me all about this

1 when we get to the argument, right?

2 MR. MAYERSON: All right.

3 THE COURT: Yeah.

4 MR. MAYERSON: Your Honor, filed this morning were --
5 I don't want to overburden you. And it may be a lot but it
6 was filed this morning, I have courtesy copies for you, which
7 is a motion in limine on their conclusions of law and on
8 their findings of fact. And it spells out what the law is on
9 each of those issues, with some overlap on Connie Foster.
10 These are courtesy copies.

11 THE COURT: Have you seen this?

12 MR. KREKSTEIN: I just got it today, Your Honor. I
13 really haven't had an opportunity to look at it.

14 THE COURT: Let me put this on this pile over here for
15 now. Okay.

16 MR. MAYERSON: Thank you.

17 THE COURT: Anything further?

18 MR. KREKSTEIN: May we be excused, Your Honor?

19 THE COURT: Yes, please. Thank you, gentlemen.

20 MR. MAYERSON: Thank you, Your Honor.

21 THE COURT: So we'll see you tomorrow at 9:30.

22 MR. KREKSTEIN: Thank you, judge.

23 (Whereupon, at 12:37 p.m., the proceeding was
24 adjourned.)

25

* * *

12/18/13 Trial Transcript

1 (Reading, Pennsylvania, Wednesday, December 18, 2013, at 9:39
2 a.m.)

3 THE COURT: Call your witness.

4 MR. MAYERSON: Your Honor --

5 THE COURT: If you're ready.

6 MR. MAYERSON: Actually, what I would like to do for
7 starters is to lay a foundation for the witness by going
8 through the first 33 proposed findings of fact, which fairly
9 summarize plaintiffs' case in the first trial.

10 THE COURT: No objection?

11 MR. KREKSTEIN: My understanding is that this is Mr.
12 Silver, and Mr. Silver is an accountant.

13 Am I correct that this is Mr. Silver?

14 MR. MAYERSON: Yes.

15 MR. KREKSTEIN: Mr. Silver authored a report --

16 MR. MAYERSON: We're not ready to get to Mr. Silver
17 just yet.

18 MR. KREKSTEIN: He's saying he needs to lay a
19 foundation for Mr. Silver. I'm just trying to say I don't
20 think that's necessary.

21 THE COURT: It's sort of an argument in the middle of
22 the trial, I suppose.

23 MR. MAYERSON: Not exactly, Your Honor.

24 THE COURT: So this is somehow testimony?

25 MR. MAYERSON: This is the testimony that would have

1 preceded Mr. Silver.

2 THE COURT: Is there a stipulation to this?

3 MR. KREKSTEIN: No, Your Honor. Because I think that
4 Mr. Silver's testimony isn't necessary. In fact, if I just
5 be allowed to say my piece.

6 THE COURT: You may when we get to that. I mean, you
7 proposed to summarize 33 pages of your findings of fact and
8 I'm supposed to take it as testimony even though it's not
9 stipulated to? I'm not supposed to take it as argument?

10 MR. MAYERSON: Actually, Your Honor, it's ten pages.

11 THE COURT: Regardless.

12 MR. MAYERSON: Well, before we got here, you asked us
13 not to bring in witnesses to redo the testimony.

14 THE COURT: Right.

15 MR. MAYERSON: And it was requested --

16 THE COURT: Is it argument or testimony? Obviously I
17 have a great deal of difficulty with testimony because it's
18 not stipulated to, so it's not testimony. It's not evidence,
19 unless you're -- unless you're arguing that that's what the
20 evidence is, then I will see -- in other words, instead of at
21 the end of the trial, you're arguing what it was that -- what
22 the evidence was that I should consider, you're sort of
23 arguing now what the evidence was that I will -- that you
24 believe that I will find when I go through everything. And I
25 really don't have a problem with that, but let's make it

1 clear that it's argument. And then -- I don't know whether
2 you have an objection to argument. But I don't mind either
3 one of you arguing along the way. That's fine. But I want
4 to make it clear that this is argument, not testimony.
5 And then I'll get to you.

6 MR. MAYERSON: Your Honor, I think that you're correct
7 that it is my version of the evidence. My argument will be
8 much stronger than what this is.

9 THE COURT: I'm sure you're going to have plenty of
10 argument later on. But you want to give some sort of a
11 speech or some sort of rendition at this time, which I am
12 considering argument, not testimony, and I want to make sure
13 that's clear. Correct?

14 MR. MAYERSON: Fair enough. Yes, Your Honor.

15 THE COURT: Do you have any objection -- I know you
16 don't think it's even necessary. Does that mean that you're
17 going to object to this person, this witness testifying?

18 MR. KREKSTEIN: I am to an extent. I have no problem
19 with Mr. Mayerson making whatever argument he wants, Your
20 Honor.

21 THE COURT: You can do the same if you want to.

22 MR. KREKSTEIN: Sure. I think it's a little
23 disjointed when we haven't gotten through the testimony. I
24 assume -- and maybe I'm making an improper assumption -- that
25 the Court is going to provide the parties with adequate time

1 when all the testimony is complete to make their closings, to
2 the extent they're considered closings, make their argument,
3 direct the Court to those portions of the transcript they
4 believe are relevant.

5 THE COURT: Sure.

6 MR. KREKSTEIN: Mr. Silver is an accountant. We have
7 a report from Mr. Silver that is dated November 14th, 2013.
8 Mr. Silver makes two conclusions in his report. The
9 conclusions are, one, Nationwide has sufficient financial
10 assets to absorb a multi-million dollar punitive damage award
11 without impacting its financial ability to pay its
12 obligations to its customers, and a punitive damage amount
13 award of \$18 million would not have a negative effect on
14 Nationwide's financial stability.

15 We've told Mr. Mayerson that we are not going to
16 object to that or provide any contrary evidence. So we are
17 fine reading that into the record as Mr. Silver's testimony
18 and it's unopposed.

19 THE COURT: Great. I'm sure it's not great. There's
20 something else to this now. You're going to tell me why you
21 still want him to testify. So why not? We'll just keep on
22 going until we get to the bottom line.

23 MR. MAYERSON: It's half of the picture. The second
24 half, which I've drafted a stipulation in trying to work this
25 out with counsel, was objected to. But it's not agreed upon.

1 So --

2 THE COURT: With Mr. -- Silvers is it?

3 MR. MAYERSON: Let me clarify, Your Honor. Counsel
4 and I tried to work out a stipulation on this. And there was
5 a second half that I proposed be part of the stipulation, and
6 they would not agree to that second half. And the second
7 half is part of the requirement that we prove in order to
8 support such an award.

9 THE COURT: How are you going to prove it?

10 MR. MAYERSON: With our witness.

11 THE COURT: Okay. Well then how can I deny him the
12 opportunity to prove something that's required? If
13 apparently it's required.

14 MR. KREKSTEIN: I understand. What he wants is not
15 only for us to agree what Mr. Silver said in his report, he
16 wants us to agree that he has met some standard, some legal
17 standard for imposing punitive damages.

18 THE COURT: That's asking an awful lot of you.

19 MR. KREKSTEIN: I agree, Your Honor. And again, this
20 is not meant to thwart Mr. Mayerson's motives in putting up
21 Mr. Silver. I will not agree to a legal conclusion. I will
22 agree that Mr. Silver -- those are the two conclusions in his
23 report.

24 THE COURT: Okay. So we have that. And I don't know
25 what else Mr. Silvers is going to testify to, but if he

1 testifies to other things that you object to, I'll make a
2 ruling on the objection at that time. He's your witness.
3 You may call your witness and we'll proceed.

4 MR. MAYERSON: Thank you, Your Honor.

5 THE COURT: And apparently there's no objection to you
6 making this argument; and of course, you may make the same
7 thing, Mr. Krekstein, if you wish to afterwards. Or at any
8 time, let's put it this way.

9 Go ahead, Mr. Mayerson.

10 MR. MAYERSON: Thank you, Your Honor. This will be
11 the first half of our case.

12 THE COURT: Now this is going to be argument.

13 MR. MAYERSON: This is going to be argument.

14 THE COURT: So we're off the record for argument.

15 MR. MAYERSON: Fine.

16 (Discussion off the record.)

17 THE COURT: Let's call this witness and we can swear
18 Mr. Silvers. Is it Silvers?

19 THE WITNESS: Mr. Silver.

20 THE COURT: Silver. Come on up here.

21 THE CLERK: Place your left hand on the Bible, raise
22 your right hand.

23 JEFFREY SILVER, Sworn.

24 THE CLERK: State your name, spell your last name.

25 THE WITNESS: Jeffrey Silver, S-I-L-V-E-R.

1 THE COURT: Silver. All right. Be seated. And of
2 course, you'll speak loudly so we can hear your testimony.

3 THE WITNESS: Yes. I'll try.

4 THE COURT: Mr. Mayerson.

5 MR. MAYERSON: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 BY MR. MAYERSON:

8 Q Mr. Silver, could you please tell us about your
9 educational background?

10 A Sure. I have my undergraduate degree from
11 Emory University in Atlanta, Georgia, where I received a
12 business administrative certificate. And I also went to
13 Villanova University and received an MBA from there and I am
14 also a certified public accountant.

15 MR. KREKSTEIN: Your Honor, we stipulate to Mr.
16 Silver's qualifications as contained in his curriculum vitae.

17 THE COURT: Qualifications as an expert in the field
18 of -- I assume business or --

19 MR. MAYERSON: He's a CPA.

20 THE COURT: CPA.

21 MR. KREKSTEIN: Again, Your Honor, for the record, we
22 have already agreed that Mr. Silver's conclusions -- that
23 Nationwide has sufficient assets to absorb a multi-million
24 dollar punitive damage award without impacting its financial
25 ability to pay its obligations to customers, and in response

1 to a question from Mr. Mayerson, a punitive damage award of
2 18 million would not have a negative impact on Nationwide's
3 financial stability.

4 THE COURT: All right. Well, we'll accept that
5 stipulation. And I think you wanted to go into more. You
6 don't have any problem with that stipulation?

7 MR. MAYERSON: No, Your Honor.

8 THE COURT: Okay. And then this Court will qualify
9 this witness as an expert in financial -- is it financial CPA
10 or is it CPA?

11 MR. MAYERSON: He's a CPA and MBA.

12 THE COURT: So he's going to talk about -- he's done
13 an analysis of Nationwide and so he's -- he's an expert to go
14 out and value businesses?

15 MR. MAYERSON: He does forensic accounting. If I
16 could have the witness say what he does.

17 THE COURT: Well, that's good. How do you want him
18 qualified? As a forensic accountant?

19 MR. MAYERSON: Yes.

20 THE COURT: Any objection?

21 MR. KREKSTEIN: I would to the extent that Mr.
22 Mayerson is going to ask him any questions beyond the scope
23 of his opinion.

24 THE COURT: I just want to know if you have any
25 objection to this witness being qualified as an expert in the

1 field of forensic accounting.

2 MR. KREKSTEIN: I do. Because the witness has only
3 authored a report on whether or not Nationwide can absorb a
4 multi-million dollar damage award.

5 THE COURT: What expertise did he use to draw that
6 conclusion?

7 MR. KREKSTEIN: I think an accountant reviewing
8 financial statements, which Mr. Silver can make that
9 determination.

10 THE COURT: So how do you wish to have him qualified
11 as an expert?

12 MR. KREKSTEIN: As an accountant.

13 THE COURT: As a --

14 MR. KREKSTEIN: As an accountant qualified to value
15 companies.

16 THE COURT: Which is what I said. Do you have a
17 problem with that?

18 MR. MAYERSON: No, Your Honor.

19 THE COURT: So this witness is qualified as an expert
20 in the field of accounting, an expert in the area of valuing
21 businesses. And we'll continue.

22 MR. MAYERSON: Thank you, Your Honor.

23 BY MR. MAYERSON:

24 Q Mr. Silver, did you have an opportunity to
25 investigate Nationwide's financial background -- I'm sorry,

1 Nationwide Mutual Insurance Company's financial background?

2 A Yes, I did.

3 Q What did you find?

4 A That Nationwide Mutual Insurance Company has
5 vast wealth and they have an earned surplus of over \$14
6 billion.

7 Q And is that a statutory surplus?

8 A Statutory surplus of over \$14 billion, yes.

9 Q What's the significance of a statutory surplus?
10 Can you tell us what that is?

11 A Sure. According to its own publications,
12 statutory surplus is a measure of financial strength and
13 claims paying ability as evaluated by regulators and rating
14 agencies.

15 MR. KREKSTEIN: Objection, Your Honor. We already
16 stipulated to this.

17 THE COURT: Okay. You have no objection to it except
18 you think it's wasting time?

19 MR. KREKSTEIN: That's correct.

20 THE COURT: Or asked and answered.

21 MR. KREKSTEIN: Both.

22 BY MR. MAYERSON:

23 Q Mr. Silver, what is the amount that
24 Nationwide's required to maintain for financial stability
25 according to the regulators? The statutory surplus amount.

1 What is it?

2 A The -- again, according to its own
3 publications, it is -- the statutory surplus they do have of
4 14 billion is over three times what is required by the state
5 regulators.

6 Q So there's surplus on top of the surplus?

7 A That's correct.

8 Q What is that amount?

9 A It's about 4 and a half million dollars -- I'm
10 sorry, the amount the regulators require is about 4 and a
11 half million dollars. The extra is about \$9 billion.

12 Q And we talked about a figure of -- that 18
13 million would have no impact upon -- why do you believe that
14 \$18 million would have no impact upon Nationwide's financial
15 stability?

16 MR. KREKSTEIN: Objection. Relevance.

17 MR. MAYERSON: You have to have an opinion on that
18 first.

19 MR. KREKSTEIN: Objection. Asked and answered and
20 objection to relevance.

21 THE COURT: Well, it has been answered and agreed to
22 that it would not have -- it would not prevent Nationwide
23 from making its payments and so forth. I don't know what
24 exactly you want me to conclude in this stipulation or the
25 testimony. But now are you asking the same thing as to

1 whether -- in other words, whether to -- whether it can
2 absorb that kind of a penalty? Sounds like another way of
3 saying they would be in the financial position to pay that
4 without hurting other areas of their operation, I guess.

5 MR. MAYERSON: I think that's what's been stipulated
6 to. What I would like to do is develop the foundation for
7 that opinion and have it quantified and better understood.

8 THE COURT: Do you need a foundation for that?

9 MR. MAYERSON: If it's been stipulated to? Perhaps
10 not. But what I'd like to do is ask if he has an opinion as
11 to why \$18 million would be insignificant to Nationwide.

12 THE COURT: In other words, ask him the same question
13 a different way.

14 MR. MAYERSON: To draw out different information.
15 What I'd like to do is for -- if I may rephrase the question
16 and ask the question whether the witness is able to quantify
17 the relative difference with a visual aid of what 18 million
18 looks like to the excess of 9.4 billion.

19 THE COURT: All right.

20 BY MR. MAYERSON:

21 Q Would a visual aid help us understand this?

22 A I do believe so. The \$18 million out of the
23 \$9.4 billion of extra surplus is equivalent to .2 percent of
24 the entire additional surplus.

25 THE COURT: That's .2 percent of -- of one percent?

1 In other words .2 percent is less than 1 percent?

2 THE WITNESS: That's correct. And it's -- stating in
3 dollar terms, it's two-tenths of a penny relative to a
4 dollar.

5 MR. MAYERSON: Thank you. No further questions. Oh,
6 wait. I'm sorry. I do have another question. And I'm sure
7 there's going to be an objection to it. What I would like to
8 ask the witness is whether there's any excuse for Nationwide
9 to be unable to produce their -- to answer those six
10 interrogatories because of the tax requirements to file a
11 1099.

12 And I alerted opposing counsel that if we had a
13 problem with the witness coming in yesterday, that I would be
14 asking the witness this, and I told them that on December
15 13th.

16 THE COURT: So we're talking about six interrogatories
17 that were sent by plaintiff to defense and defense has taken
18 the position that they don't have the accounting expertise or
19 the swift ability to produce this in what period of time?

20 MR. MAYERSON: This is what we were talking about
21 yesterday where you entered an order for the witness to come
22 in.

23 THE COURT: In what period of time?

24 MR. MAYERSON: In the period of time from the time
25 this lawsuit started --

1 THE COURT: Well, when did you -- when did you submit
2 this question?

3 MR. MAYERSON: May of 2013.

4 THE COURT: Okay. So in a period of six months.
5 Whether they have the ability to find this information to
6 some degree of accounting ability, I guess, or something like
7 that. Is that pretty much what you're asking?

8 MR. MAYERSON: Yes. And whether there's any excuse
9 for not being able to print this out with relative ease. It
10 should take no more than an hour.

11 THE COURT: Mr. Krekstein, anything further on that?

12 MR. KREKSTEIN: Yes, Your Honor. Mr. Silver prepared
13 a report that was provided to us about a month ago. The
14 report has absolutely no information concerning Mr.
15 Mayerson's argument or this purported testimony. Mr.
16 Mayerson sent us an e-mail on December 13th saying he may ask
17 Mr. Silver to testify concerning -- he called them 1999
18 forms. I assume they're 1099 forms. I don't have the
19 expertise or the knowledge to even understand that, nor is it
20 appropriate to take an expert who you've issued a report for
21 one opinion and then try to use that expert at the last
22 minute for another opinion. Rule 4003. --

23 THE COURT: He hasn't provided that other opinion
24 ahead of time to you so you know whether you're going to
25 accept it or reject it and whether you need to bring somebody

1 in as an expert to respond to it.

2 MR. KREKSTEIN: That's absolutely correct, Your Honor.
3 We have a brief to that effect.

4 THE COURT: Well, the objection is sustained.

5 MR. MAYERSON: No further questions.

6 THE COURT: All right. Cross-examine.

7 CROSS-EXAMINATION

8 BY MR. KREKSTEIN:

9 Q Mr. Silver, did Mr. Mayerson or his law firm
10 pay you to appear today?

11 A Yes.

12 Q What's your hourly rate?

13 A \$375.

14 Q I'm sorry?

15 THE COURT: Say it again.

16 THE WITNESS: \$375 an hour.

17 BY MR. KREKSTEIN:

18 Q And he paid you not only to attend today but
19 also to issue your report?

20 A A retainer, yes.

21 Q There's a retainer against what you would end
22 up spending?

23 A Correct.

24 Q What was the retainer?

25 A \$5,000.

1 Q Have you gone through the retainer yet?

2 A Yes.

3 Q How far?

4 A I don't know for certain, to be honest.

5 MR. KREKSTEIN: I have nothing further, Your Honor.

6 THE COURT: What do you mean have you gone through the

7 retainer? You mean you spent it all or spent it -- doesn't

8 sound like you spent it all if you're saying you're not sure

9 how much he spent.

10 THE WITNESS: Right.

11 THE COURT: So some part of that has been spent and

12 some part will be sent back?

13 THE WITNESS: Or for current activities. Because, you

14 know, that was through the report date really.

15 MR. KREKSTEIN: I asked a bad question, Your Honor.

16 If I can rephrase.

17 BY MR. KREKSTEIN:

18 Q Mr. Silver, as you're sitting up here today, do

19 you anticipate charging Mr. Mayerson's firm in excess of

20 \$5,000?

21 A I do anticipate that, yes.

22 MR. KREKSTEIN: Okay. Nothing further.

23 THE COURT: Anything further of your witness?

24 MR. MAYERSON: No, Your Honor.

25 THE COURT: Thank you for your testimony. You may

1 step down.

2 THE WITNESS: Thank you.

3 THE COURT: And that's the only witness we're hearing
4 today; is that correct?

5 MR. KREKSTEIN: That's my understanding, Your Honor.

6 MR. MAYERSON: Yes, Your Honor.

7 THE COURT: Okay. So what are we going to do with the
8 rest of our time? We can go off the record.

9 (Discussion off the record.)

10 THE COURT: We'll go on the record with regard to the
11 motion in limine for Nationwide's witness tomorrow, Connie --
12 Constance --

13 MR. MAYERSON: Foster.

14 THE COURT: -- Foster. And your motion in limine --

15 MR. MAYERSON: Do you need a copy?

16 THE COURT: Well, I need some help as to where I could
17 find it. Do you have a copy handy? That would be the
18 easiest thing.

19 MR. MAYERSON: I don't have the exhibit attached to it
20 but they're just portions of her report.

21 (Document submitted to the Court.)

22 MR. MAYERSON: Your Honor, I will be comfortable if we
23 adjourned for 15 minutes while you read that.

24 THE COURT: Sure. That's fine.

25 MR. KREKSTEIN: Would you like to read our response

1 while you're doing that, Your Honor?

2 THE COURT: No.

3 MR. KREKSTEIN: Fair enough.

4 THE COURT: No, pass that up too.

5 MR. KREKSTEIN: It's a loaded question. I deserved
6 that.

7 THE COURT: I'm willing to read it. Pass it up. Why
8 don't we reconvene at 5 minutes to 11.

9 MR. MAYERSON: Your Honor, I'd also like to give you
10 something that I just recently came across, which is,
11 ironically, a federal court opinion. And it precludes Connie
12 Foster --

13 THE COURT: Is that one of the things that you wanted
14 to -- that's right. That's in your motion in limine that she
15 may be quoting federal law cases or something and you want
16 this Court to know that there's a difference between federal
17 law and state law.

18 MR. MAYERSON: Primarily because --

19 THE COURT: That we really are a country of states,
20 united states, but that states write their own laws and
21 federal writes their own laws and there's an executive at the
22 state level, there's an executive at the federal level,
23 there's executive -- are we on the record?

24 THE COURT REPORTER: Yes.

25 THE COURT: Let's go off the record.

1 (Discussion off the record.)

2 THE COURT: We'll reconvene at 11 o'clock.

3 (Recess declared from 10:40 a.m. until 11:06 a.m.)

4 THE COURT: We're going to have argument on the motion
5 in limine. I understand the concerns, but couldn't you also
6 -- as the question is asked which is in conflict with the
7 Superior Court decision, couldn't you object at that time and
8 I make a ruling on that and we move on to the next issue?

9 MR. MAYERSON: Yes, Your Honor.

10 THE COURT: So we wouldn't have to preclude this
11 testimony. We would just have to deal with objections like
12 anything else.

13 MR. MAYERSON: Yes. That's fine.

14 THE COURT: Okay. Well, that was easy.

15 MR. KREKSTEIN: May we be excused, Your Honor?

16 THE COURT: Yes, you may.

17 MR. KREKSTEIN: Thank you.

18 THE COURT: All right.

19 MR. KREKSTEIN: What time tomorrow, Your Honor?

20 THE COURT: I think we start at 9:30.

21 MR. KREKSTEIN: Very well.

22 MR. MAYERSON: Your Honor, if we may address one
23 issue. We're still wondering how we're going to proceed on
24 Friday.

25 THE COURT: We'll go off the record.

1 (Discussion off the record.)

2 (Whereupon, at 11:11 a.m., the proceeding was
3 adjourned.)

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

12/19/13 Trial Transcript

1 DANIEL BERG AND SHERYL BERG, : In the Court of Common Pleas
Plaintiffs : of Berks County, Pennsylvania
2 : Civil Action - Law
3 vs. :
4 :
NATIONWIDE MUTUAL INSURANCE :
5 COMPANY, :
Defendant : No. 98-813
6

7
BENCH TRIAL
8 Tuesday, December 17, 2013
Wednesday, December 18, 2013
9 Thursday, December 19, 2013
Reading, Pennsylvania
10

11 Before THE HONORABLE JEFFREY K. SPRECHER, Judge
12

13 APPEARANCES:

14 For the Plaintiffs: BENJAMIN J. MAYERSON, ESQUIRE
MARGARET R. CONNORS, ESQUIRE
15 1800 East High Street
Suite 150
16 Pottstown, Pennsylvania 19464
17 HY MAYERSON, ESQUIRE
3545 Schuylkill Road
18 Spring City, Pennsylvania 19475
19 For the Defendant: WILLIAM O. KREKSTEIN, ESQUIRE
G. FRANKLIN McKNIGHT IV, ESQUIRE
20 518 Township Line Road
Suite 300
21 Blue Bell, Pennsylvania 19422
22

23 VOLUME II OF VIII
24

25 RACHELLE D. HIRNEISEN, RMR, CRR
Official Court Reporter

1 (Reading, Pennsylvania, Thursday, December 19, 2013, at 9:33
2 a.m.)

3 THE COURT: We're ready to proceed with the next
4 witness?

5 MR. MAYERSON: Yes, Your Honor.

6 THE COURT: We have --

7 MR. KREKSTEIN: We have Mr. Costello here, Your Honor,
8 and after that we have Ms. Foster.

9 THE COURT: Okay. All right. So whatever order you
10 want to proceed in.

11 MR. KREKSTEIN: I assume the plaintiff would call Mr.
12 Costello first.

13 THE COURT: And you have no objection to that?

14 MR. KREKSTEIN: I don't.

15 MR. MAYERSON: We're going to call him as of cross.

16 MR. KREKSTEIN: Okay.

17 MR. MAYERSON: No objection.

18 THE COURT: Okay.

19 THE CLERK: Place your left hand on the Bible, raise
20 your right hand.

21 SEAN COSTELLO, Sworn.

22 THE CLERK: State your name, spell your last name.

23 THE WITNESS: Sean Costello. C-O-S-T-E-L-L-O.

24 THE COURT: Good morning.

25 THE WITNESS: Good morning.

1 (Plaintiffs' Amended Notice to Attend - marked for
2 identification as EXHIBIT NO. 77.)

3 DIRECT EXAMINATION, As of Cross

4 BY MR. MAYERSON:

5 Q Mr. Costello, thank you for coming. We've
6 handed you what's been marked as Exhibit 77. Can you
7 identify that for the Court?

8 A Yes. This is entitled Plaintiffs' Amended
9 Notice to Attend to Nationwide Mutual Insurance Company Inc.

10 Q Have you had an opportunity to review that?

11 A I have.

12 Q And have you seen this before today?

13 A I have.

14 Q Are you here to answer the questions, the items
15 identified in that Notice to Appear?

16 A I am here to answer the questions to the best
17 of my ability that pertain to my knowledge.

18 Q All right. May I see that?

19 I'm handing you a document that's previously been
20 marked as Exhibit 57.

21 MR. KREKSTEIN: Can I just take a look at it before it
22 goes up?

23 MR. MAYERSON: Would the Court like a copy?

24 THE COURT: They're answers to interrogatories?

25 MR. MAYERSON: Yes.

1 THE COURT: If you want me to, I'll look at it.

2 BY MR. MAYERSON:

3 Q Can you identify that document for the record?

4 A Yes. The document consists of an e-mail from
5 Frank McKnight to you, and attached to that are defendant
6 Nationwide Mutual Insurance Company's second supplemental
7 answers and objections to plaintiffs' interrogatories served
8 May 28th, 2013.

9 Q All right. And that is the second
10 supplemental. And that was served to us on what date?

11 A The title states it was served May 28th, 2013.

12 Q All right. What's the cover page date?

13 A Are you asking the date?

14 Q Yes.

15 A December 3rd, 2013.

16 Q All right. And then I'm handing you what's
17 been marked as Exhibit 54. Can you identify Exhibit 54?

18 A Yes. Exhibit 54 is a -- consists of a letter
19 dated September 23rd, 2013, from Frank McKnight at Nelson
20 Levine addressed to you, enclosing defendant Nationwide
21 Mutual Insurance Company's supplemental answers and
22 objections to plaintiffs' interrogatories served May 28th,
23 2013.

24 Q And are you the same individual who signed the
25 verification at the back of Exhibit 54?

1 A (No response.)

2 Q Namely Sean Costello?

3 A Yes. I signed the verification for responses 2
4 through 6.

5 Q Can you tell us what your position is in
6 Nationwide Mutual Insurance Company?

7 A My current position is managing counsel,
8 litigation and employment practice group, managing class
9 action and product related litigation.

10 THE COURT: So you're an attorney?

11 THE WITNESS: Yes, Your Honor.

12 THE COURT: Welcome to the courtroom.

13 THE WITNESS: Thank you.

14 THE COURT: You probably don't get here very often.

15 THE WITNESS: Not on this side very often.

16 THE COURT: We wouldn't even have to swear you in if I
17 would have known that.

18 BY MR. MAYERSON:

19 Q Sir, the verification that you signed, was
20 there anything unusual about that verification as an
21 attorney? As an attorney did you find anything unusual about
22 the verification?

23 MR. KREKSTEIN: Objection, Your Honor. I'm not sure,
24 is he asking Mr. Costello as an expert?

25 THE COURT: I don't know. Can you answer that

1 question?

2 THE WITNESS: My answer is no, except to the extent I
3 was verifying certain interrogatory responses and not others
4 that were within someone else's scope of review.

5 BY MR. MAYERSON:

6 Q And is it then normal for a party to sign a
7 verification that says that I have -- the matters are not
8 entirely within my personal knowledge and that I'm relying
9 upon assistance of employees and of counsel to answer them?

10 MR. KREKSTEIN: Objection, Your Honor. Mr. Costello,
11 while an excellent attorney, is not Pennsylvania barred. Is
12 Mr. Mayerson asking Mr. Costello what's normal in
13 Pennsylvania as opposed to other jurisdictions? I'm not sure
14 what the -- how the question pertains to this witness's
15 testimony.

16 MR. MAYERSON: Your Honor, I can withdraw the question
17 and rephrase it.

18 BY MR. MAYERSON:

19 Q Sir, are you able to answer now today with
20 personal knowledge and not upon advice of counsel?

21 MR. KREKSTEIN: Objection, Your Honor. Answer what?

22 MR. MAYERSON: The six interrogatories that are the
23 subject of the verification.

24 And actually you only answered five of the six
25 interrogatories. So to be clear, the second five of the six.

1 THE COURT: Found in Exhibit 57 or 54?

2 MR. MAYERSON: It's actually both, Your Honor. 57 is
3 an amended answer to 54.

4 THE COURT: So that's what supplements -- the answer
5 is supplemented.

6 MR. MAYERSON: That's correct.

7 THE COURT: To the same questions.

8 MR. MAYERSON: That's correct.

9 THE COURT: So I forget what the question was.

10 BY MR. MAYERSON:

11 Q Are you able to answer this as Nationwide
12 Insurance Company upon personal knowledge or are you merely
13 replying -- or relying upon what counsel has told you?

14 A My answer is neither. The questions go to fees
15 and cost incurred over the course of approximately 14 years.
16 I have been employed at Nationwide for four. I have personal
17 knowledge of fees and invoices submitted during the time I
18 have been there, of course, but have to rely on documents,
19 information and other materials provided by or supplied by
20 others through the course of that entire period. I don't
21 know if that answers your question.

22 Q All right. And will you agree with me that
23 essentially what the five interrogatories seek is the amount
24 Nationwide has paid to defend this case through certain
25 periods of time?

1 A I believe so, yes.

2 Q And so two of them have to do with amounts that
3 Nationwide paid their attorneys and amounts Nationwide paid
4 in costs like expert witness fees through the jury trial of
5 2004 and the post trial motions after the jury trial of 2004;
6 is that correct?

7 A Yes. I believe that's what the interrogatories
8 ask.

9 Q The other one is for the attorney fees on that
10 time period?

11 A I believe that to be the case.

12 Q And then there's two more that have to do with
13 the bench trial in 2007, correct?

14 THE COURT: Is it important that I know each of these?
15 And if so, maybe you can just stipulate to what they are.
16 I'll write down what each question says. You want me to know
17 what each of these questions said.

18 So why don't you say it again and we'll see if you
19 agree, Mr. Krekstein. So question number one and question
20 number two.

21 MR. MAYERSON: Are you asking about the answers to
22 interrogatories or the answer to the question I just asked?

23 MR. KREKSTEIN: Your Honor, I'll stipulate -- I mean,
24 the documents are the -- Mr. Mayerson put them into evidence.
25 So they're in and they say what they say.

1 THE COURT: Right.

2 MR. KREKSTEIN: I don't think we need to summarize
3 them or explain them.

4 THE COURT: Well, that would be only for my benefit,
5 since I haven't read these yet. If you're going to start
6 asking questions I think I should know what the --

7 MR. KREKSTEIN: I'm happy to stipulate that the --

8 MR. MAYERSON: I'd rather -- I'll ask some questions
9 to get to the answer you would like.

10 THE COURT: Well --

11 MR. MAYERSON: All right. See what he wants to
12 stipulate.

13 MR. KREKSTEIN: I'm happy to stipulate to -- except
14 for one question that has to do with something called LEAP,
15 that the interrogatories essentially ask how much Nationwide
16 has paid our firm and experts through the course of the
17 litigation up to a certain point.

18 THE COURT: I know that. Let me read it. I'll just
19 read each one. Then you can ask the question.

20 (Brief pause.)

21 THE COURT: And this what you passed up to me, which
22 I've marked as 57, is a photocopy of 57. You have
23 highlighted this, Mr. Mayerson.

24 MR. MAYERSON: Yes, Your Honor.

25 THE COURT: Okay. You have no objection to what's

1 highlighted?

2 MR. KREKSTEIN: I don't, Your Honor, although I don't
3 use orange, so I would object to that.

4 THE COURT: You would object to the color?

5 MR. KREKSTEIN: Yes.

6 THE COURT: Good point. Okay.

7 MR. MAYERSON: The color happens to photocopy. That's
8 why I use it.

9 MR. KREKSTEIN: I apologize.

10 THE COURT: Should be more red and white perhaps.

11 MR. KREKSTEIN: I'm a yellow guy myself, Your Honor.

12 THE COURT: Okay. Well, we'll get into that another
13 time.

14 Okay. So I can write on this. Correct? You don't
15 want this back?

16 MR. MAYERSON: Yes, Your Honor. And Your Honor, to be
17 clear, that's why I used yellow in everything that -- or why
18 I used orange in everything that I submitted to you, is so
19 when I photocopied it opposing counsel would know exactly
20 what was highlighted.

21 THE COURT: Okay.

22 BY MR. MAYERSON:

23 Q Sir, you -- oh, are you ready, Your Honor?

24 THE COURT: Well, just give me one moment, please.

25 (Brief pause.)

1 THE COURT: 6 is sort of a catchall for everything.
2 It's sort of a total compilation of all the other five.

3 MR. MAYERSON: Supposed to be a sum total.

4 THE COURT: All right. I'm ready.

5 BY MR. MAYERSON:

6 Q Sir, you agree that these interrogatories were
7 first presented to you in May of 1998, May 28th -- I'm sorry,
8 May 28th, 2013?

9 MR. KREKSTEIN: Objection. They were obviously served
10 on counsel.

11 MR. MAYERSON: Yes.

12 BY MR. MAYERSON:

13 Q So the interrogatories, you agree, were served
14 on counsel and the request was made to Nationwide Insurance
15 Company on May 28th, 2013, and at that point Nationwide knew,
16 or sometime thereafter, that they were going to be required
17 to provide this information, if the Court so ordered.

18 MR. KREKSTEIN: I'm going to object to the extent that
19 Mr. Mayerson is seeking information that's protected by the
20 attorney-client privilege. I understand that he is -- the
21 Court's permitted him to ask questions concerning the areas
22 in the Notice to Attend. But asking about communications
23 between counsel and Mr. Costello, I believe, are privileged
24 and that privilege has not been waived.

25 THE COURT: Can you ask it another way?

1 MR. MAYERSON: Yes, Your Honor.

2 BY MR. MAYERSON:

3 Q Sir, when did you first learn that the Bergs
4 were requesting this information?

5 A I don't know the exact date but I assume it was
6 sometime shortly after the date of the interrogatories'
7 service. So late May, early June.

8 Q Thank you. And were you aware that eventually
9 this Court entered an order on August 21st, 2013, which
10 required Nationwide to produce verified answers to all six of
11 the interrogatories within 30 days?

12 A Yes. I understand that an order was entered.

13 Q And then you, in fact, did provide some
14 answers, which is the document we've marked as Exhibit 54?

15 A Yes.

16 Q And you agree that those answers were
17 incorrect?

18 A I don't know that I agree that they were --
19 that all of the answers were incorrect.

20 Q All right. Which answers were incorrect?

21 A I don't know whether any answers were incorrect
22 or to what extent they were incorrect. I know -- my
23 understanding is that some of the answers relating to expert
24 invoices or outside expenses as opposed to attorney fees
25 omitted expert -- one or more expert invoices. Because the

1 invoices were sent directly to Nationwide for some period of
2 time as opposed to counsel to then pass on to Nationwide.

3 THE COURT: So you know that the counsel fees are
4 correct. It's the other areas, the expert invoices, for
5 instance, that may not be correct, or you know they are not
6 correct?

7 THE WITNESS: Yes, Your Honor. I think that's a more
8 concise way to put what I just tried to put. Thank you.

9 BY MR. MAYERSON:

10 Q Sir, with regard to the expenses, the expert
11 witness fees and all other costs, in your original answer, if
12 you added both those answers together, would you agree it
13 came out to be \$27,375.72?

14 A I'm sorry. You're referring to number three?

15 Q I'm combining them both. Why don't I back up.
16 It will make it easier for you. In answer to interrogatory
17 3, the original answer, up through the jury trial of 2004 and
18 post trial motions, the amount of costs you verified was
19 \$24,092.37?

20 A Yes.

21 Q Okay.

22 THE COURT: And that -- by costs you mean expert
23 witness fees and related expenses?

24 MR. MAYERSON: Right. All other expenses other than
25 attorney fees.

1 THE COURT: Okay. 27,000 some dollars.

2 MR. MAYERSON: Well, it's actually 24 in that answer.

3 THE COURT: Okay. 24.

4 MR. MAYERSON: And then the reason you have 27, Your
5 Honor, is because I combined it with the next answer, which
6 was the cost through 2007, was an additional \$3,283.35
7 dollars.

8 BY MR. MAYERSON:

9 Q Correct?

10 A Correct.

11 Q And that brings the total to \$27,375.72?

12 A Correct.

13 Q And the actual amount was really 137,239 --
14 excuse me. That's incorrect. The total amount was
15 \$164,615.54, with a total increase of \$137,239.82. Does that
16 sound accurate to you?

17 THE COURT: Now, just so we're all clear, this would
18 be from the beginning of the case through 2004, including
19 post trial motions, and then from 2004 to 2007? Is that
20 correct?

21 MR. MAYERSON: And actually, Your Honor, it would also
22 include everything up till April of 2013, which would be the
23 appellate costs as well.

24 THE COURT: Okay. So basically you're asking for all
25 other expenses other than attorney's fees through April of

1 2013?

2 MR. MAYERSON: Right. And the incorrect answer that
3 was previously given was on the same information.

4 THE COURT: Okay. So do you agree with that or not?

5 THE WITNESS: I believe that number is -- it sounds
6 correct. I believe that to be the case.

7 BY MR. MAYERSON:

8 Q What was the reason -- I mean, that's about a
9 500 percent increase. Do you agree with that?

10 A I will take your word for it.

11 Q And what is the reason for that type of error?

12 A I think -- the reason for that type of error
13 has to do with changes in how Nationwide handled outside
14 vendor invoices in corporate contingent litigation. For a
15 period of -- this is a case that's gone on for 14 years now.
16 For a period of time, my understanding is that expert
17 invoices and other vendor invoices were submitted directly
18 from the vendor to Nationwide.

19 At some point in time, that policy changed so that
20 expert invoices were later -- were then included as line
21 items on outside counsel invoices and provided by counsel.
22 So if expert invoices came from, for instance, Ms. Foster,
23 for some period of time in the case, they would have gone
24 directly to Nationwide. For another period of time later in
25 the case they may have -- they would have been itemized on

1 counsel's invoice and then passed on to Nationwide. So to
2 the extent we were relying on outside counsel invoices to
3 identify the -- both the fees and the expenses, that would
4 not have captured all of those expenses.

5 Q All right. Do you know who prepared the
6 answers? Was it you or somebody else?

7 A The answers were prepared through cooperation
8 with counsel.

9 Q And did you review what -- what did you review
10 to reach your verification?

11 A I reviewed a number of things to try to
12 determine the answers to all of these questions, the ones I
13 verified. First I reviewed the paper records, the paper
14 files we keep over the course of this case for billing
15 records and invoices and other materials. I reviewed those.
16 Those were, based on my review, incomplete or unreliable. I
17 then went to online bill tracking system and reviewed what
18 was in there, which was also incomplete and substantially
19 less than the amounts in this.

20 And then based on the conclusion that -- because of the
21 life of the case and because of changes in systems and
22 different managing counsel over the years with perhaps
23 different approaches to putting things in the file and what
24 would be reflected in our files, I went to outside counsel
25 and thought the best source for what was invoiced to us would

1 be what was invoiced to us from outside counsel.

2 THE COURT: So just so I understand it, at one point
3 you had the experts being paid directly by Nationwide without
4 going through the billing of outside counsel?

5 THE WITNESS: That is correct.

6 THE COURT: And then at another point, those bills
7 came from outside counsel and then to Nationwide from there
8 and paid through -- either paid to outside counsel or paid
9 through outside counsel to the experts?

10 THE WITNESS: That's correct, Your Honor.

11 THE COURT: Okay.

12 BY MR. MAYERSON:

13 Q Do you happen to know how much Connie Foster
14 was paid for her work in this case?

15 A I do not know the total amount that Connie
16 Foster was paid.

17 Q Does that account for the difference, the error
18 of \$109,864?

19 A I do not know.

20 THE COURT: Where is this 109? You were talking about
21 137 I think. Unless there's -- just so we're --

22 MR. MAYERSON: Yes. You're correct, Your Honor. The
23 increase -- I actually have two figures here. I think the
24 increase for 2004 -- well, the answers will clarify that
25 issue. There was a substantial increase in excess of a

1 hundred thousand dollars. And the question I'm trying --

2 THE COURT: I just want to know, when you pick a
3 figure of 109, I never heard that figure before. So I want
4 to know what that is. So is it 137 or now you're asking
5 about a third figure? That's fine if now we're starting a
6 third figure. I'll just note it as a third figure. Do you
7 understand my question?

8 MR. MAYERSON: I do, Your Honor.

9 THE COURT: So I don't care how you handle it.

10 MR. MAYERSON: All right. May we come back to that?

11 THE COURT: Sure.

12 BY MR. MAYERSON:

13 Q Sir, was the entire error caused by the fact
14 that you had not included the payments to Connie Foster's law
15 firm --

16 MR. KREKSTEIN: Objection. Asked and answered, Your
17 Honor.

18 THE COURT: Well, I don't even -- I didn't get what
19 the answer was. On the 109 now. So would you give us the
20 answer again?

21 THE WITNESS: Yes, Your Honor. The answer is I don't
22 know to what extent Connie Foster's invoices are responsible
23 for that particular number, whether there were other
24 invoices, other expert fees in the underlying trials before
25 or other expenses that may have been included in that number.

1 What I do know is that some of those expenses were not
2 included in that -- this original response.

3 BY MR. MAYERSON:

4 Q Were any of Connie Foster's fees included in
5 the original response?

6 A I believe so but I don't know for certain.

7 Q Do you know how much time you personally
8 invested in trying to figure these answers out?

9 A A lot. I can't put a specific number of hours
10 on it, but in excess of eight hours trying to piece together
11 this information.

12 Q You agree that it's quite a task to do if you
13 don't have the information readily accessible?

14 A It is quite a task to do. I would say that the
15 information is in a variety of forms and those changed over
16 the course of the life of this case.

17 Q So like Nationwide, the Bergs are probably
18 having a similar problem?

19 MR. KREKSTEIN: Objection, Your Honor.

20 THE COURT: I don't understand.

21 MR. MAYERSON: The question -- it's relevant to
22 accusations that we didn't keep accurate billing records.

23 MR. KREKSTEIN: I just don't know what the question
24 was.

25 THE COURT: Pardon me?

1 MR. KREKSTEIN: I don't know what the question was.

2 THE COURT: Right. Sustained.

3 BY MR. MAYERSON:

4 Q Sir, you know what QuickBooks is, right?

5 A Yes.

6 Q And does Nationwide use QuickBooks or do they
7 use some more sophisticated program?

8 A For what purpose?

9 Q For all their billing. Everything that goes
10 out, every penny that's paid. Do they not have to account
11 for it?

12 A Yes. They use a variety of systems depending
13 on what's being paid and what area of the company.

14 Q Do you know why they do that?

15 MR. KREKSTEIN: Objection, Your Honor. I think this
16 goes beyond the scope of the Notice to Attend. How
17 Nationwide keeps its books. I mean Mr. --

18 THE COURT: Yeah. I was just going to say, I would
19 guess he can't answer that. So that might be the easier way
20 of handling it.

21 Is that correct?

22 THE WITNESS: That is correct.

23 BY MR. MAYERSON:

24 Q Sir, are you aware that every law firm, when
25 they're -- are you aware that Nationwide Insurance Company,

1 when they pay a law firm, especially a substantial amount of
2 money, we're talking hundreds of thousands of dollars per
3 year even, are you aware that they have to file a 1099 with
4 the federal government?

5 MR. KREKSTEIN: Objection, Your Honor. Again, I don't
6 think this is within the scope of the notice, nor do I think
7 he's qualified to comment on tax forms that may or may not be
8 filed by an insurance company.

9 THE COURT: I don't know what the prejudice would be
10 to answer this question, if he even knows the answer. Or I
11 don't know if it's outside the scope. But I think his
12 question, does he know the answer.

13 MR. KREKSTEIN: I think that's a fair question, Your
14 Honor?

15 THE WITNESS: I'm sorry, could you repeat the
16 question?

17 THE COURT: Do you know if they send out 1099's to law
18 firms that do the work, especially large law firms -- or
19 firms that do large amounts of work, hundreds of thousands of
20 dollars a year. Do you know that?

21 THE WITNESS: I'm obviously not a tax expert and don't
22 work in that area. My understanding from experience is that
23 W9 forms are requested from any vendor to whom Nationwide
24 issues payment and then during -- at the end of the tax year
25 a 1099 form would be sent out, both to the IRS and the

1 vendor, indicating the amounts that were paid to that vendor
2 under that taxpayer ID number for that year.

3 I also know from the limited experience I have with
4 1099 forms with vendors, primarily class action claims
5 administrators, that the 1099's are attributed to a taxpayer
6 ID number. They do not break out what was paid to a law firm
7 for each particular matter.

8 BY MR. MAYERSON:

9 Q Right. But -- it may not itemize it when they
10 make their filing but at some point when somebody's preparing
11 that filing it had to be a line item, correct?

12 A I'm not sure I understand the question. If
13 you're asking would -- would at some point the payments be a
14 line item somewhere and then attributed to that taxpayer ID
15 number, certainly any payment that's issued by a company like
16 Nationwide that goes to a vendor or have their tax
17 consequences, those -- those payments would be attributed to
18 that taxpayer ID number to make sure the tax information is
19 correct at the year end.

20 Q And that applies both to Nelson Levine deLuca
21 and Hamilton as it does to Saul Ewing for Connie Foster,
22 correct?

23 A If a payment were being made directly to one or
24 the other, then certainly there would be -- my understanding
25 there would be tax filings involved.

1 Q So all this effort and confusion that was
2 created by you going through all these billing invoices that
3 changed over time could have been avoided altogether with the
4 simple task of reaching out to your tax preparer?

5 A No.

6 Q Why is that?

7 A As I said before, the tax filings are
8 attributed to a taxpayer ID number. Nelson Levine and other
9 law firms and other vendors work on more than one matter for
10 the company. So payments issued to a particular vendor, be
11 it a law firm or an expert like Ms. Foster or others, would
12 reflect the aggregate payments to that vendor over that tax
13 year, not -- they would not be itemized for those tax
14 purposes per matter.

15 THE COURT: Which would include other cases, for
16 instance?

17 THE WITNESS: That's correct, Your Honor. And again,
18 I wanted to caveat this, that I'm not a tax professional, I'm
19 not a tax lawyer. I don't work in this area. But this is my
20 understanding, based on experience in other situations
21 involving 1099's.

22 BY MR. MAYERSON:

23 Q Well, do you know then why you were asked to
24 answer these interrogatories? Wouldn't they have been better
25 sent to somebody who would have that information and take

1 them only a short period of time to do it and to do it
2 accurately?

3 A No.

4 Q Why is that?

5 A For the reasons I explained.

6 Q All right.

7 A I don't know that there's other people that
8 would be in a better position to review the billing records
9 that are in the litigation files or materials that may be
10 available online and other sources and then going to the law
11 firm directly to get their billing information. I thought I
12 would be best situated to do that since I'm managing counsel
13 for the litigation and have currently the best working
14 knowledge of this file.

15 Q So you're -- basically you're saying that
16 Nationwide doesn't keep track of how much money they're
17 investing or paying in each case that they're defending,
18 especially a case like this?

19 A No, I'm not saying that.

20 Q Then isn't -- wasn't there a program called
21 Legal Expense Analysis Program that was designed specifically
22 for this task?

23 MR. KREKSTEIN: Objection, Your Honor. There was an
24 interrogatory directed to that.

25 MR. MAYERSON: Number one.

1 THE COURT: Number one?

2 MR. KREKSTEIN: Yes, Your Honor. And Mr. Costello did
3 not take the verification for the answer to that. Obviously,
4 based on Your Honor's prior instructions, if Mr. Costello
5 knows, that's fine. I just don't want anybody to assume that
6 he was the one who answered that particular interrogatory.

7 THE COURT: Can you answer that question?

8 THE WITNESS: I can answer it to the best of my
9 ability. I don't -- I didn't verify the answer to the LEAP
10 interrogatory. I don't have a working knowledge of what LEAP
11 was, which hasn't existed for several years.

12 My understanding, however, is that LEAP was a
13 claims-related expense tracking system. This -- any case --
14 in this case, this is a corporate piece of litigation. My
15 understanding would have been throughout the life of this
16 case that Nelson Levine's work on this case would not have
17 been billed through anything related to LEAP. It would have
18 been through the corporate litigation practice group.

19 BY MR. MAYERSON:

20 Q Sir, have you had an opportunity to review the
21 electronic claim file in this case?

22 A I have reviewed it. I have not reviewed it in
23 some time and did not do so in preparation for today.

24 Q Are you aware that right after we filed this
25 lawsuit it was transferred to an in-house attorney named

1 David Cole?

2 A I am aware of that historically.

3 Q Do you know David Cole?

4 A I do not.

5 Q Are you aware that when it was transferred to
6 David Cole, that acronym, LEAP, was stamped in our claim
7 file? And by stamped I mean entered electronically, not
8 physically stamped.

9 A I do not know that but I believe -- I'll take
10 your word for it.

11 Q So your previous -- does that change your
12 previous answer that it did not apply to this type of case?

13 A No, it does not.

14 Q All right. But you agree that LEAP is right in
15 our claim file?

16 MR. KREKSTEIN: Objection.

17 THE WITNESS: LEAP is a system for the -- for dealing
18 with claims.

19 BY MR. MAYERSON:

20 Q And it --

21 A This became a proposed class action and bad
22 faith suit, which involves a different expense -- or outside
23 counsel expense, litigation costs and fees than would
24 defending against a particular claim.

25 THE COURT: Are you still objecting?

1 MR. KREKSTEIN: I would -- I'll withdraw it, Your
2 Honor. I apologize.

3 BY MR. MAYERSON:

4 Q The first complaint was for insurance bad
5 faith, which is extracontractual, correct?

6 A That's correct.

7 Q LEAP was entered into the claim file after the
8 complaint was filed, correct?

9 MR. KREKSTEIN: Objection, Your Honor. Mr. Costello
10 did not know but was taking Mr. Mayerson's word for it.

11 MR. MAYERSON: I can show him if you want. If you
12 need to see it.

13 THE COURT: Would you be able to answer that?

14 THE WITNESS: Probably not, Your Honor. Like -- as I
15 tried to caveat this at the outset, I'm not an expert on
16 LEAP. LEAP hasn't been around for many, many years. And I'm
17 not the person best suited to answer questions about LEAP.
18 But I'll do the best I can, prefacing everything that I'm
19 speculating to a great degree.

20 BY MR. MAYERSON:

21 Q Are you verifying that LEAP was discontinued?
22 Because I know counsel said it's his understanding. I'm just
23 wondering if you're verifying that. Did you look into that?

24 THE COURT: You say counsel says they didn't
25 understand? What did you say?

1 MR. MAYERSON: I'm sorry, Your Honor. Opposing
2 counsel has told me that it's his understanding that LEAP was
3 discontinued in 2002. I'm wondering where that is coming
4 from because everything that I've read about it says it's
5 going to be a huge program and all claim departments are
6 going to have access to it. That's right in the Best Claims
7 Practices Manual, which is an exhibit in this case.

8 BY MR. MAYERSON:

9 Q So if it's going to -- a large program that's
10 going to be company wide that they're going to draw data
11 from, I'm just wondering why it was discontinued and how you
12 know that and if you know it for certain.

13 A I do not know for certain when it was
14 discontinued. I know for certain that it was discontinued.
15 I know also for certain that it was discontinued several
16 years ago. I can't tell you precisely when that happened. I
17 can tell you, like any large company, over the course of 14
18 to 15 years, systems will change over time for the tracking
19 of expenses and costs in litigation.

20 Q Did the name change or did the program get
21 discontinued altogether?

22 A I can't tell you what the differences would
23 have been, whether it was a name change versus a format or
24 functionality change. I don't know the answers to those
25 questions and couldn't speculate.

1 Q The system itself may still exist; it may just
2 be called something other than Legal Expense Analysis Program
3 a/k/a LEAP?

4 A I don't know that.

5 Q Okay. Now, I'm almost through and all I'd like
6 to know at this point is are the answers to the second
7 supplemental interrogatories marked as trial Exhibit 57, I
8 believe -- yes. Are they accurate today?

9 A May I have a moment to just review them to make
10 sure I know what I'm looking at?

11 Q Take all the time you need.

12 A I'm sorry. Can you restate your question?

13 MR. MAYERSON: Can we have it read back?

14 THE COURT: I can restate it if you want.

15 MR. MAYERSON: All right, Your Honor.

16 THE COURT: Is Exhibit 57, which is the second
17 supplemental responses of plaintiffs' May 28, 2013,
18 interrogatories, is that accurate and up to date. And the
19 most up to date.

20 Is that what you're asking?

21 MR. MAYERSON: I guess there are two questions, Your
22 Honor. One is was that -- is that accurate through the time
23 period? Because we're going to get to after April 2013.

24 BY MR. MAYERSON:

25 Q So is that accurate up until April of 2013?

1 A I believe so.

2 Q All right. And the reason I ask is because we
3 have marked as Exhibit 76 a line item from October 6, 2004,
4 for 901,340 that was not included in our itemization of the
5 fees previously up through the appellate courts. I don't
6 know if you're aware of that but the appellate courts were
7 using the figure of 922,000 that did not include this
8 901,000. Have you addressed that issue?

9 MR. KREKSTEIN: Objection, Your Honor. It seems like
10 a multi-part question.

11 THE COURT: Right. Basically we learned in the
12 testimony from a bookkeeper that the plaintiffs' evidence
13 shows that there was a fee or fees totalling \$901,000 that
14 was not accounted for. So now your question is?

15 BY MR. MAYERSON:

16 Q Does that change the answer to your
17 interrogatory where you state that the fees paid through 2004
18 was I think about -- somewhere around 1.1 million? And I can
19 get you the exact figure if you want.

20 THE COURT: The 922 is through 2004, isn't it?

21 MR. MAYERSON: Yeah. The date of that entry is
22 October 2004. And the 922,000 was all through 2004.

23 THE COURT: Right. Now you're saying 1.1 million.
24 But is that what he -- is that what he said it is now, the
25 updated 2004?

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.

1 THE COURT: I'm sure you heard about it. So you --
2 you obviously haven't had a chance to look into the
3 difference as to -- I mean, I guess obviously if you talked
4 to the bookkeeper, if the two of you were to talk to each
5 other, you might be able to figure it out. But that hasn't
6 happened.

7 THE WITNESS: Correct, Your Honor.

8 BY MR. MAYERSON:

9 Q One last question on your background.

10 A Yes, sir.

11 Q You mentioned that you defend -- you're
12 involved in the class action defense. Does that include bad
13 faith litigation that you're involved in or just class
14 action?

15 A Primarily class action. Occasionally bad
16 faith. This case was a proposed class action for a period of
17 time.

18 Q A period of time. Very, very, very long time
19 ago. I think you were still in law school when this case was
20 filed, right?

21 A No.

22 Q 1998?

23 A 1998 I was judicial law clerk for a judge in
24 Cleveland, Ohio.

25 Q I apologize. I misread your bio.

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 THE COURT: Well, did you say it may be 150?

2 THE WITNESS: I believe that to be the case.

3 THE COURT: Are you better off with 150?

4 MR. MAYERSON: I just want to know what it is; but
5 yes, it's a larger figure, obviously.

6 THE COURT: Well, that would include that which was
7 over a hundred thousand before in expert witness fees. So at
8 least it makes sense.

9 BY MR. MAYERSON:

10 Q So it's about 13,000 more than we had before.
11 And does that include payments to Connie Foster on the
12 remand, her preparing for today's testimony?

13 A I don't know if those have been invoiced yet.
14 I think it reflects what there's documentation to actually
15 assess right now. So if there's work that's being done that
16 hasn't been fully invoiced to this point, then clearly that
17 would not be included; but I believe it to capture everything
18 that has been reflected in invoice or bill to, I think, today
19 or, you know, within the last few days. And I'm going based
20 on pure recollection here. So if I'm off by a few thousand
21 dollars, particularly on the expenses, you know.

22 Q Off by how much?

23 A If I'm off by a few thousand dollars here or
24 there, it's just based on my understanding.

25 Q The records that you reviewed, do you know what

1 date they ended? Was that in June? July? August?
2 September? October?

3 A It went through up to December.

4 Q Went up to December?

5 A That's what I believe, yes.

6 THE COURT: You mean current. Sort of current?

7 THE WITNESS: Yes. Yes.

8 THE COURT: This month anyway.

9 THE WITNESS: Yes.

10 MR. MAYERSON: Thank you, Mr. Costello.

11 THE WITNESS: Thank you.

12 MR. KREKSTEIN: No questions, Your Honor.

13 THE COURT: All right. Thank you for your testimony.
14 You may step down.

15 THE WITNESS: Thank you, Your Honor.

16 THE COURT: I'm sure this is a very busy witness and
17 as far as I'm concerned he can be excused. Any reason for
18 him to stay?

19 MR. KREKSTEIN: Only because he wants to, Your Honor.
20 He's not leaving until tomorrow morning.

21 THE WITNESS: I will stay. And I do want to say, I
22 apologize for not having been here for the start of the
23 trial. We had another counsel attend the trial. I know
24 there was some confusion. So to the extent I -- I did not
25 intend any disrespect to the Court.

1 THE COURT: I'm sure of that. And I -- I'm sorry I
2 had to order you to be here, but it worked anyway. You're
3 certainly welcome to stay. That's for sure. Even
4 participate in litigation if you'd like.

5 (Discussion off the record.)

6 THE COURT: I don't know who's calling Ms. Foster.

7 MR. KREKSTEIN: Your Honor, it was our intent to call
8 Ms. Foster. And I understand that the parties have agreed
9 and I believe we discussed with Your Honor flexibility in
10 calling witnesses out of order. I just don't know, is the
11 plaintiff resting as far as presenting evidence? Is that
12 even appropriate to ask that question?

13 THE COURT: I think it's entirely appropriate. As I
14 understand it, unless there's something else, this would
15 conclude the case, but I -- there's always -- we had first of
16 all talked about coming in tomorrow, but I think we don't
17 need to come in was last I heard. So go ahead.

18 MR. MAYERSON: Well, there's still the Matsumoto
19 witness.

20 THE COURT: Oh yes, right.

21 MR. MAYERSON: He was unavailable. If, in fact, we're
22 going to have another hearing in January, then --

23 THE COURT: I don't want to have another hearing, but
24 if he's absolutely essential to you, he's available, as I
25 understand it, January 6th for vacation.

1 MR. KREKSTEIN: That's correct, Your Honor.

2 THE COURT: And is he absolutely essential to you?

3 MR. MAYERSON: It's hard to know what he's going to
4 say. I think we have a terrific case and so our case isn't
5 going to come apart without him. But if we're going to not
6 have the case -- if we were going to have the case over, I'd
7 be fine without him coming in.

8 THE COURT: Yeah, I wouldn't be pulling a fast one on
9 you. I mean, I wouldn't be saying we're going to have some
10 more evidence and then not allow you to bring him in.

11 I think this will be the evidence -- this will be the
12 case then as far as the defense is concerned, correct?

13 MR. KREKSTEIN: We only anticipate presenting Ms.
14 Foster.

15 THE COURT: Yeah. So that will be the end of it.
16 Clearly the end of it. Unless there's someone else. And the
17 only one I'm hearing someone else is for you, which would be
18 apparently January 6th. That's at least what we've all
19 agreed to.

20 MR. KREKSTEIN: We did reserve the right to bring back
21 Ms. Snyder, the bookkeeper. Only because she provided us
22 with an Excel spreadsheet that we still have not been able to
23 fully go over. I will have an answer shortly to the Court.
24 I don't want to keep everybody waiting on that. I know she
25 had some difficulty with her availability.

1 THE COURT: Shortly is what?

2 MR. KREKSTEIN: I will give the Court an answer by the
3 end of tomorrow.

4 THE COURT: Oh. So we are coming back tomorrow.

5 MR. KREKSTEIN: No, no. I'm happy to do it by phone
6 call or letter to the Court and Mr. Mayerson. I don't have
7 to come back for that.

8 THE COURT: So as of tomorrow, we may be coming back
9 next week, so there may be something else in the way of
10 evidence. So I guess we could -- you could leave resting
11 open for now until we see where we are. I don't know that
12 that will put you in a difficult position. I won't
13 misrepresent you or mislead you either saying that, well,
14 he's finished, you're finished now, and then he brings
15 somebody else in and you want to bring somebody else in. I
16 don't care. So that's fine with me.

17 As of tomorrow, the end of Friday, we'll find out
18 whether the defense is bringing anybody else in. And then we
19 can have a collective phone call. That's fine. We can do
20 some conference call and then you can both rest and I can
21 communicate that to the record or however you want to do it.
22 Or we can reconvene. So however we want to do it.
23 As of tomorrow afternoon, that deadline is fine with this
24 Court.

25 MR. KREKSTEIN: That's fine with us, Your Honor.

1 THE COURT: Okay.

2 MR. MAYERSON: Thank you.

3 THE COURT: So you'll call -- we'll go off the record.

4 (Discussion off the record.)

5 THE COURT: You may call your next witness.

6 MR. KREKSTEIN: Okay.

7 THE COURT: No answer to your question yet. We'll

8 find out tomorrow at 3 o'clock.

9 MR. KREKSTEIN: Okay. So the plaintiff is also going

10 to advise whether they intend to call other witnesses.

11 THE COURT: In fairness --

12 MR. KREKSTEIN: That's fine.

13 THE COURT: That's fine with me. I'm assuming that's

14 what you want to do.

15 MR. MAYERSON: The witness becomes important if

16 they're going to call Jeanine Snyder to the stand.

17 THE COURT: We'll find out tomorrow afternoon at 3

18 o'clock. It's their move first and then your move after

19 that. And then your move after that, unless there's really

20 no move. If you're not moving, then you don't have to move,

21 the game's over and we'll put that on the record.

22 MR. KREKSTEIN: That's fine, Your Honor. Defense

23 calls Constance Foster to the stand.

24 THE COURT: Now, you're also an attorney as I

25 understand it?

1 THE WITNESS: I am indeed.

2 THE COURT: We don't have to swear you in, you being
3 an officer of the Court and have taken an oath.

4 We'll have you be seated and just tell us for the
5 record what's your name.

6 THE WITNESS: My name is Constance Foster,
7 F-O-S-T-E-R.

8 MR. KREKSTEIN: Your Honor, Ms. Foster was admitted as
9 an expert in insurance claims practices, regulatory
10 compliance and insurance regulatory matters during the first
11 bad faith trial. Rather than go through her qualifications
12 again, which I don't think have changed, unless Ms. Foster
13 wants to add to it, we would ask that Ms. Foster again be
14 admitted as an expert as to those areas.

15 THE COURT: And tell me that again, the expert -- the
16 areas. Insurance claims.

17 MR. KREKSTEIN: Insurance claims practices, regulatory
18 compliance --

19 THE COURT: Now wait. Just a moment.

20 MR. KREKSTEIN: I apologize.

21 THE COURT: Okay.

22 MR. KREKSTEIN: Regulatory compliance and insurance
23 regulatory matters.

24 THE COURT: And there's no objection, Mr. Mayerson?

25 MR. MAYERSON: Yes, Your Honor, there is an objection.

1 THE COURT: There is. Okay.

2 MR. MAYERSON: Yes. And it goes to her varying
3 opinions, but --

4 THE COURT: No, I mean to her being qualified as an
5 expert in the field of insurance claims practice, regulatory
6 compliance and insurance regulatory matters. No objection to
7 that, qualified as an expert in that area?

8 MR. MAYERSON: I don't know that Ms. Foster has any
9 experience in claims practices or in collision claims or in
10 appraising collision losses. Certainly in regulatory issues,
11 but I don't think that's an issue in the case.

12 THE COURT: I just want to know how we're qualifying
13 her. And if you are not agreeing to qualify her this way as
14 an expert, then you may cross-examine. And I want to avoid
15 that if we can. But certainly it's your right to do that.

16 MR. MAYERSON: I would like to cross-examine her on
17 one specific area.

18 THE COURT: All right. So out of these three --
19 insurance claims practice, regulatory compliance and
20 insurance regulatory matters -- you agree that this witness
21 may be qualified as an expert in the last two, regulatory
22 compliance and insurance regulatory matters?

23 MR. MAYERSON: Well, she was the insurance
24 commissioner, so certainly -- certainly she is an expert in
25 insurance regulatory matters. That is not an issue.

1 THE COURT: That's one of them. Do we go beyond that?

2 MR. MAYERSON: Yes.

3 THE COURT: Which is the next one you agree to?

4 MR. MAYERSON: To proper claims handling.

5 THE COURT: You agree she is an expert in insurance
6 claims practice?

7 MR. MAYERSON: No, I disagree with that.

8 THE COURT: Regulatory compliance?

9 MR. MAYERSON: Yes.

10 THE COURT: So two --

11 MR. MAYERSON: We don't oppose it. We don't believe
12 -- we don't oppose it.

13 THE COURT: Then at this time this Court will qualify
14 this witness as an expert in regulatory compliance and in
15 insurance regulatory matters. And you'd like to ask
16 questions -- which, of course, Mr. Krekstein, you can respond
17 with questions -- regarding insurance claims practice.

18 MR. KREKSTEIN: That's fine, Your Honor.

19 THE COURT: Okay. Mr. Mayerson.

20 MR. MAYERSON: Thank you, Your Honor.

21 CONSTANCE FOSTER

22 CROSS-EXAMINATION, QUALIFICATIONS

23 BY MR. MAYERSON:

24 Q Ms. Foster, you recall giving testimony in this
25 case previously, correct?

1 A I do.

2 Q And at that time the matter was being presi ded
3 over by Judge Stall one?

4 A Correct.

5 Q And Judge Stall one asked you if you had ever
6 been di squal i fi ed as an expert wi tness, correct?

7 A Correct.

8 THE COURT: Have you ever been qual i fi ed, previ ously
9 qual i fi ed?

10 MR. MAYERSON: Ever been di squal i fi ed.

11 THE COURT: I thought that's what you said.
12 Di squal i fi ed.

13 MR. MAYERSON: Yes.

14 BY MR. MAYERSON:

15 Q What was your --

16 THE COURT: Meaning that she was offered for
17 qual i fi cation and the Court did not qual i fy her?

18 MR. MAYERSON: That's correct.

19 THE COURT: Not that she was di squal i fi ed. Sounds a
20 lot worse. Di squal i fi cation. But in that way. Okay. I
21 understand your questi on.

22 BY MR. MAYERSON:

23 Q And so, Ms. Foster, you answered that questi on
24 incorrectly; is that right?

25 A I answered it correctly based on my knowl edge

1 as of that date. Subsequent -- I think I testified in 2005.
2 I can't remember actually, it's been a number of years ago.
3 Subsequent to that, I would say approximately two or three
4 years ago, I can't remember exactly when, counsel brought to
5 my attention the fact that a motion in limine had been
6 granted in a case where I had been proffered as an expert. I
7 had never been in the courtroom. It was apparently decided
8 on the papers. And that was the first time that I ever was
9 aware that that motion had been granted.

10 Q And you are -- the attorney that had retained
11 you in that matter was Tim Lenahan, correct?

12 A I think that's correct. I think it was the
13 Novak versus Progressive case and Tim Lenahan -- I was
14 actually representing the plaintiff in that case.

15 Q And that was in the Middle District -- United
16 States District Court, Middle District, Civil Action Number
17 04-0632?

18 A I couldn't possibly remember the civil action
19 number.

20 Q But that disqualification came on September
21 13th, 2005, correct?

22 A I think that was the date of the opinion.

23 Q Yes. That is the date of the opinion. I can
24 show it to you if you'd like.

25 THE COURT: The date of the opinion. You mean on just

1 the motion in limine there was an opinion?

2 THE WITNESS: Yes.

3 MR. MAYERSON: Yes. Memorandum and order. Your
4 Honor, you had a copy of this yesterday when we made our
5 motion yesterday to preclude Ms. Foster.

6 THE COURT: Oh, okay. All right. That's right. We
7 said we would deal with it on you objecting to certain areas
8 and then we'll make rulings as you make the objection. So
9 you have an objection in this area. And again, I don't know
10 if disqualification is the proper word. I don't like that in
11 this case because she never really had a chance to even be
12 offered as -- through her own testimony in that particular
13 case. But on the papers she was not -- well, she was not
14 permitted as an expert, and I assume in that case it was on
15 insurance claims practice -- or what was she not permitted as
16 an expert in?

17 MR. MAYERSON: Well, what the opinion said was Ms.
18 Foster, who except for her tenure as an insurance
19 commissioner, is a lawyer associated with law firms with a
20 practice devoted to insurance matters, while qualified as an
21 attorney with knowledge of insurance statutes and
22 regulations, she offers nothing in the way of experience
23 comparable to Mr. Chett in the internal handling of claims.
24 Mr. Chett, coincidentally, is the plaintiffs' expert in this
25 case. So in --

1 THE COURT: So let me ask this then. Have you ever
2 been qualified as an expert in insurance claims practice at
3 any time in any court in Pennsylvania or federal court?

4 THE WITNESS: Yes. A number of times. In fact,
5 attached to my expert report, which, of course, now it would
6 be slightly out of date, is a list of all of the matters in
7 which I have been qualified, from the U. S. Tax Court to the
8 Commonwealth Court, on a variety of issues but including
9 specifically bad faith cases.

10 THE COURT: Including fact based, meaning insurance
11 claims practice?

12 THE WITNESS: That's correct. Based on my experience
13 of reviewing claims in the context of being an insurance
14 commissioner and reviewing claims and claims handling for
15 compliance with insurance regulatory law.

16 THE COURT: So if you've been qualified in -- more
17 than 10 times has it been? In that area.

18 THE WITNESS: Oh, in that area? I would say probably
19 less than 10 in that area. More than 10 total. But
20 specifically on claims practices, I would say less than 10.

21 THE COURT: I guess we can either find out what your
22 experience is in claims practice at this time or if you want
23 to continue -- or if you're asking for qualification I'll
24 make a ruling on the qualification at this time.

25 MR. MAYERSON: I actually had one more piece of

1 question.

2 THE COURT: Okay.

3 BY MR. MAYERSON:

4 Q Ms. Foster, when you found out that you had
5 testified incorrectly with regard to Judge Stallone's
6 question to you, didn't you have an obligation under the Code
7 of Professional Responsibility to correct that incorrect
8 testimony?

9 MR. KREKSTEIN: Objection, Your Honor. I think --

10 THE COURT: Sustained. We got -- we're dealing with
11 the issue of qualification as an expert, and then the weight
12 that this Court puts on her qualifications or her testimony
13 is another issue.

14 But at this point do you have anything else with
15 regard to qualifying this witness in the area of insurance
16 claims practice?

17 MR. MAYERSON: No, Your Honor.

18 THE COURT: You're still objecting to it?

19 MR. MAYERSON: I'm objecting to her testifying about
20 claims handling because I don't think she has any experience
21 at all in claims handling.

22 THE COURT: Claims handling is insurance claims
23 practice, right?

24 MR. MAYERSON: I think they're synonymous, yes.

25 THE COURT: You've been qualified in that area. Well,

1 do you want to ask any more questions on her experience in
2 this area?

3 MR. MAYERSON: Sure. Yeah.

4 BY MR. MAYERSON:

5 Q What experience do you have in adjusting
6 claims?

7 A I have never been a claims adjustor. My
8 experience in this area really comes from three sets of
9 experience as I --

10 Q Could I just ask some pointed questions?

11 MR. KREKSTEIN: I'd ask that the witness be allowed to
12 answer.

13 THE COURT: Yes, you may. Go ahead.

14 THE WITNESS: My experience in this area, I think,
15 arises out of three different aspects of my life. As we
16 said, I was insurance commissioner. And one of my
17 obligations when I was insurance commissioner was to enforce
18 the Unfair Insurance Claims Practices Act, which sets forth
19 the standards for claims handling in the State of
20 Pennsylvania. And I did that over a period of five years.

21 Also I served as a CEO of an insurance company and it
22 was -- happened to be a medical as opposed to automobile
23 company, but I was very, very involved in claims, which tend
24 to be very, very large during that period of time. And
25 I've also spent a large number of years -- I've been an

1 insurance practitioner my entire life. That's where I
2 started when I graduated from law school in 1975. I am
3 involved in claims, every aspect of claims including advising
4 and doing file reviews for insurance companies who want an
5 independent opinion, not in expert context but want an
6 independent opinion or a second look at a claim to give them
7 some advice on, you know, does this look like bad faith or
8 proper claims handling to me.

9 THE COURT: At this point this Court will qualify this
10 witness also in the area of insurance claims practice; and
11 certainly Mr. Mayerson, you can continue to ask questions on
12 cross-examination in this area, which goes to the issue of
13 how much weight this Court should put on this testimony. In
14 other words, if -- if she's never had experience in the area
15 of property claims, then, I mean, you can certainly ask
16 questions about that. But at this point, this Court has
17 qualified this witness as an expert.

18 And you may continue, Mr. Krekstein.

19 DIRECT EXAMINATION

20 BY MR. KREKSTEIN:

21 Q Ms. Foster, you testified during the first bad
22 faith trial in this matter, correct?

23 A I did.

24 Q Prior to your testimony, did you have the
25 opportunity to review the transcript from the jury trial that

1 was held in this matter?

2 A I did.

3 Q And during the bad faith trial, did you have an
4 opportunity to actually sit through and watch the trial?

5 A I was there for the entire trial.

6 Q And during that trial, you testified as to
7 various opinions, correct?

8 A I did.

9 Q And in formulating those opinions you reviewed
10 various documents?

11 A I reviewed a large number of documents, all of
12 which I think are set forth in a listing of which I think is
13 attached to my expert reports.

14 Q Could you just generally give a description,
15 and I'm certainly not going to ask you to itemize them, the
16 types of documents that you reviewed?

17 A Sure. Well, as you mentioned, I reviewed the
18 trial transcript of the jury trial. I reviewed the entire
19 claims log. There were a number of depositions that had been
20 taken. There were various expert reports that were filed by
21 the plaintiffs.

22 Q Including their bad faith expert, Mr. Chett?

23 A Including their bad faith expert, Mr. Chett.
24 As well as other documents, correspondence, you know, going
25 back and forth between the parties. I think those are the

1 general categories.

2 THE COURT: The record will indicate that you just
3 said there were a lot of those. And then you set them forth.
4 The question is, did you review the depositions and
5 everything else that you said after that?

6 THE WITNESS: Yes. I did.

7 BY MR. KREKSTEIN:

8 Q And part of -- at least part of your opinions
9 were to rebut opinions proffered by Mr. Chett on behalf of
10 the plaintiffs?

11 A That's correct. My recollection is I actually
12 filed a report and a supplementary report which addressed Mr.
13 Chett's opinions.

14 Q Subsequent to the jury trial -- excuse me,
15 subsequent to the bad faith trial, the matter went up on
16 appeal, various appeals. Are you aware of that?

17 A I am.

18 Q And eventually there was a Superior Court
19 opinion issued in this matter that remanded the case back to
20 the Court where we're sitting here today. Did you read that
21 opinion?

22 A I have.

23 Q In addition to that opinion, subsequent to your
24 testimony in the first bad faith trial have you reviewed any
25 additional documents?

1 A (No response.)

2 Q And if I asked that question incorrectly --

3 A No. I'm just trying to think. I obviously

4 spent a fair amount of time reviewing things that I had

5 looked at previously. I guess the one item I can

6 specifically identify is I looked at the trial testimony

7 itself in printed form, which I -- obviously I had been

8 present before but I had not previously actually reviewed it.

9 THE COURT: You're saying for today is what you've

10 done?

11 THE WITNESS: Yes. For today, a new thing that I

12 looked at would have been the actual transcript from the bad

13 faith trial.

14 BY MR. KREKSTEIN:

15 Q Anything else, Ms. Foster?

16 A The Superior Court opinion, which you

17 identified. Oh, yes. I was forwarded the proposed findings

18 of fact by both parties, both for Nationwide and the Bergs,

19 and I did take a look at those also.

20 Q In this case?

21 A In this case. That's correct.

22 Q Ms. Foster, are you familiar with the

23 Pennsylvania Unfair Trade Practices and Consumer Protection

24 Law?

25 A I am.

1 MR. KREKSTEIN: Your Honor, I'm going to try to refer
2 to it as that. I have a lot of trouble referring to it as
3 the UTPCPL. It's a bit of a tongue twister. So please bear
4 with me.

5 THE COURT: Whatever is easier. You can even
6 abbreviate it more if you'd like to.

7 MR. KREKSTEIN: I'd love to just call it the U, but I
8 don't know if the court reporter would go for that. I'll do
9 my best.

10 BY MR. KREKSTEIN:

11 Q Ms. Foster, you said you read the transcript
12 from the jury trial that took place?

13 A Correct.

14 Q And you're aware of the causes of action that
15 the Bergs alleged against both Nationwide and Lindgren in
16 that action?

17 A Correct.

18 Q And do you know what the verdict of the jury
19 was in that action?

20 A Yes. I know they found specific -- I'm
21 familiar with the Nationwide portion of it, not the Lindgren.
22 As to Nationwide I know there was a finding adverse to the
23 plaintiff on the common law fraud and there was a jury
24 verdict of I believe \$295 against Nationwide on what they
25 called a catchall provision.

1 Q And you have some familiarity with that
2 catchall provision?

3 A I do indeed.

4 Q And you said you addressed -- you reviewed the
5 Superior Court opinion --

6 MR. MAYERSON: Would you like some water?

7 THE WITNESS: Yes, I would. For some reason I'm a
8 little croaky.

9 THE COURT: We'll go off the record for a moment.

10 (Discussion off the record.)

11 BY MR. KREKSTEIN:

12 Q To your knowledge did the Superior Court
13 opinion address the impact of the Unfair Trade Practice and
14 Consumer Protection Law verdict?

15 MR. MAYERSON: Your Honor, at this point we would like
16 to make an objection that Ms. Foster's not here to interpret
17 the Superior Court opinion. That's the role of the Court.
18 And we would object on that basis.

19 MR. KREKSTEIN: I haven't asked her to interpret it.

20 THE COURT: Well, ask your question again. That is a
21 concern, as to how far you're going to --

22 MR. KREKSTEIN: I understand.

23 THE COURT: -- go with this.

24 MR. KREKSTEIN: I simply asked Ms. Foster was she
25 aware, did she read the portion of the Superior Court opinion

1 addressing the verdict in the Unfair Trade Practice and
2 Consumer Protection Law action.

3 THE COURT: Are you objecting to that?

4 MR. MAYERSON: She can -- no. I will not object to
5 her answering that question.

6 THE COURT: Okay.

7 THE WITNESS: Yes. I read that portion of the
8 opinion.

9 BY MR. KREKSTEIN:

10 Q Have you rendered an opinion as to the effect,
11 if any, the Unfair Trade Practice and Consumer Protection Law
12 verdict has on an alleged violation of the bad faith statute?

13 MR. MAYERSON: And I'll object again now because the
14 Superior Court has said what it is, and this Court can
15 interpret it, but Ms. Foster's role here is not to interpret
16 what the Superior Court said with regard to that issue.

17 MR. KREKSTEIN: Your Honor, Ms. Foster is uniquely
18 qualified in her status as a former insurance commissioner to
19 interpret and -- I won't put words in her mouth. But
20 frequently called on to interpret the effect of other
21 statutes on insurer conduct. I'm not asking Ms. Foster to
22 opine whether this constitutes bad faith, as that's the trial
23 Court's purview. I do believe that Ms. Foster's
24 qualifications enable her to comment on how the UTPCPL
25 affects an insurer's alleged violation under the bad faith

1 statute in her regulatory capacity.

2 THE COURT: I would have to say I'll allow it and
3 we'll see, again, what the answer is and how much weight this
4 Court puts on it.

5 MR. MAYERSON: And I can have a continuing objection?
6 I don't have to --

7 THE COURT: Sure. Absolutely. If you want to raise a
8 new objection, you may do so.

9 So you may answer the question.

10 THE WITNESS: I would have a two-part response to
11 that. I think the first question is in general, what impact
12 does it have. I mean, it's clear that insurance issues do
13 arise under the Consumer Protection Law, but they arise in
14 the context of common law fraud, deceit, in the tort kind of
15 context. And it does not address the issues of contracts and
16 obligations under contracts. And that's specifically true --

17 THE COURT: Excuse me, since I have to try to
18 understand this. Could you explain that, what you just said?

19 THE WITNESS: Yeah. If you -- sure. Sure. If you
20 look at the kinds of claims that are brought under the
21 Consumer Protection Law and indeed the kinds of claims that
22 were brought in this specific case, they go to fraud, they go
23 to deception, they go to misinformation type of claims.

24 Contract claims are not -- are not cognizable under
25 the Consumer Protection Law. And indeed, in this very

1 specific case, the allegations that were made in the consumer
2 protection part of this case went exactly there. There was a
3 claim for common law fraud, there was a common law -- there
4 was a claim for misrepresentation. And in fact, what
5 happened, there was an award of \$295.

6 But as the Superior Court pointed out, I think quite
7 succinctly, no one knows what that award means. It's related
8 to some kind of tort type claim but it can't be related to
9 any specific fact or any specific allegation.

10 THE COURT: Continue.

11 BY MR. KREKSTEIN:

12 Q Ms. Foster, you said it was a two-part answer.
13 Did you combine that second part?

14 A I did. Yes.

15 Q Okay. I just wanted to make sure. Ms. Foster,
16 are you also aware that in this lawsuit the plaintiffs have
17 alleged that Nationwide violated the Pennsylvania Motor
18 Vehicle Physical Damage Appraisers Act?

19 A I am aware of that.

20 Q And do you have an understanding of the Act?
21 Have you ever come across the Act in any of your positions?

22 A Absolutely. I think it's important to put the
23 Appraisers Act into some kind of context.

24 THE COURT: Can I get that again? What is the name of
25 it?

1 THE WITNESS: It's the Appraisers Act. I call it the
2 Appraisers Act.

3 THE COURT: That's good enough.

4 THE WITNESS: Yeah. The informal name. The insurance
5 department has many different functions. Most people are
6 familiar with the fact that it regulates insurance companies,
7 it approves products, it approves rates. But another one of
8 its functions is to regulate entities or persons who are
9 involved in the business of insurance but are not part of
10 insurance companies. And there's a whole range of those
11 types of individuals and entities. There's agents and
12 brokers, there's what we call managing general agents,
13 there's reinsurance intermediaries.

14 Another group of those people are appraisers. And
15 they're people who are licensed just like you are licensed
16 for other -- just like we're licensed as lawyers. You're
17 licensed, you get a license and that allows you to perform
18 certain tasks within the business of insurance. That's what
19 the Appraisal Act is. It's a licensing statute which allows
20 individuals to act as appraisers.

21 BY MR. KREKSTEIN:

22 Q Is it your opinion that the Appraisal Act
23 applies to insurance companies?

24 A It does not. If you look at the definition, if
25 you look at the definition of the appraisal -- in the

1 appraisal statute and it talks about the persons -- it
2 defines the person who is covered by this statute as the
3 person who is performing the appraisal.

4 MR. MAYERSON: Objection. Move to strike.

5 THE COURT: On what basis?

6 MR. MAYERSON: This is addressed in the Superior Court
7 opinion. The Superior Court clearly said the violations of
8 the Appraisers Act are evidence of bad faith. Ms. Foster may
9 disagree with that personally. But she can't overrule the
10 Superior Court.

11 THE COURT: Are you here to say that bad faith equals
12 contract? We're talking about the contract where the
13 insurance company is in a contract with the person who is
14 paying the premiums, and you're saying that the only way that
15 you can get bad faith in an insurance case is if it affects
16 -- if it affects the contract? Is that what you're saying?

17 THE WITNESS: Well, because bad faith applies to
18 proceeds under the policy. I mean, that is what the bad
19 faith statute says. It says proceeds under the policy, which
20 to me means the contract.

21 But I think here we're talking about a slightly
22 different issue. Question is, is are violations of the
23 Appraiser Act possible evidence of bad faith by an insurance
24 company. I believe what the Superior Court said is yes,
25 violations of secondary statutes can be evidence of bad

1 faith. For example, violations of Unfair Insurance Practices
2 Act.

3 THE COURT: Can be?

4 THE WITNESS: Can be. Sure. With a proper
5 foundation. So if there was evidence that somebody had
6 violated the Unfair Insurance Practices Act and there had
7 been a finding, I don't think anyone at this point would say
8 that wouldn't be relevant evidence.

9 Here you have evidence of a potential violation by a
10 third party appraiser of a third party statute, which I don't
11 believe goes to the conduct of the insurance company.

12 MR. MAYERSON: Your Honor, I'd like to be clear.

13 THE COURT: So would I. Just let me try to catch up
14 here. You think the jury may have reached their verdict
15 adverse to Nationwide by finding a violation of the
16 Appraisers Act?

17 THE WITNESS: Oh, no. No, no. Let me clarify.
18 Because I'm probably going too fast. There are two really
19 separate issues. The first question and the one the jury
20 found the verdict on was on the Consumer Protection Act. And
21 that's the fraud and deception. I don't believe the
22 Appraisers Act was part at all.

23 THE COURT: Why are we talking about it?

24 THE WITNESS: Because it's now been brought up in this
25 case, in my understanding, is independently of the jury

1 verdict, plaintiffs now are asserting that violation of the
2 Appraiser Act can prove bad faith in this case.

3 THE COURT: So we have -- it's the plaintiffs'
4 position that the jury has found violations of the Appraisers
5 Act or it's your position that you will be establishing
6 through your testimony through this trial violations of the
7 Appraisers Act. Is that it?

8 MR. MAYERSON: Yes, Your Honor. Not will be. Have
9 done. And more so, what I'd like the Court to understand is
10 that these are the exact same arguments that Nationwide
11 raised to the Superior Court. And by same arguments, I mean
12 the Appraisers Act applies to appraisers and not insurance
13 companies. We've --

14 MR. KREKSTEIN: Your Honor, we're still under direct.
15 I'm happy to --

16 THE COURT: Excuse me. So you're here to tell us that
17 -- tell us two things. One, that all those letters --

18 MR. KREKSTEIN: UTPCPL.

19 THE COURT: Consumer law. You're here to tell us that
20 the consumer law -- a violation of the consumer law is not
21 enough to go to bad faith. Is that right?

22 THE WITNESS: Well, I think -- I think what I was
23 being is very particular as to the facts of this case. The
24 facts of this case is there was a jury verdict of \$295. The
25 Superior Court itself said it cannot tell what the jury found

1 to support that \$295.

2 THE COURT: Well, you agree they found fraud,
3 deception, misrepresentation?

4 THE WITNESS: Of some sort on -- on some issue. It
5 could have had to do with advertising --

6 THE COURT: Are you here to advise this fact-finder
7 that that in it -- of itself, what happened here by the jury
8 is not enough for -- to establish bad faith?

9 THE WITNESS: At the very least I'm saying that. I'm
10 actually -- I actually believe that because there is no
11 factual basis or no factual connection between the jury
12 verdict and -- and any particular facts, I don't know what
13 evidence it could be. In different circumstances, with jury
14 interrogatories, it might be possible.

15 THE COURT: We'll find out that's -- so I understand
16 that. And now you're here also to tell us that violations of
17 the Appraisers Act -- to tell this fact-finder violations of
18 the Appraisers Act, even if this Court finds that there are
19 violations of the Appraisers Act, that that in and of itself
20 does not go far enough to find bad faith under the
21 contractual relationship of the insurance contract?

22 THE WITNESS: Yeah. I need to be very precise there.
23 When it is a third party appraiser. Which is what we have in
24 this case. Appraisers can also be --

25 THE COURT: Third party. Who --

1 THE WITNESS: It means it's independent. They work
2 for Lindgren. This was not an employee of Nationwide. This
3 was a third party.

4 MR. MAYERSON: Objection, Your Honor. She has not
5 laid a foundation for this testimony or opinion whatsoever.

6 THE COURT: All right. Well, why don't you try to --
7 I understand now what you're saying. And apparently you're
8 talking about Lindgren, that that's a third party. And so if
9 you want to pursue that and lay a foundation, you can. I
10 don't have any other questions.

11 Did you want to say anything else? I hope not, Mr.
12 Mayerson. I understand where we are at this point. But is
13 there anything you find essential at this time?

14 MR. MAYERSON: Only to make sure I have a continuing
15 objection.

16 THE COURT: Right. Right. Yes.

17 MR. MAYERSON: Thank you.

18 THE COURT: All right.

19 BY MR. KREKSTEIN:

20 Q Ms. Foster, you mentioned in passing the Unfair
21 Insurance Practices Act.

22 A Correct.

23 Q And if you didn't, I apologize, did you also
24 mention the Unfair Claims Settlement Practice regulations?

25 THE COURT: Can we call -- for my benefit, we can call

1 one the Appraisers Act, one the Consumer Protection Act, and
2 what are we calling --

3 MR. KREKSTEIN: These are --

4 THE COURT: Is there another one now?

5 MR. KREKSTEIN: Yeah. There's two other ones.

6 There's a Unfair Insurance Practices Act, which is statutory.

7 We'll call that UIPA.

8 THE COURT: Just a moment. Unfair Insurance Practices
9 Act.

10 MR. KREKSTEIN: And then there are --

11 THE COURT: Just a moment. What would you call that?

12 THE WITNESS: That is actually, at least in industry,
13 called the UIPA. That's pretty much how it's referred to.

14 UIPA, Unfair Insurance Practices Act.

15 THE COURT: Well, Unfair Insurance Practices Act goes
16 to what?

17 THE WITNESS: Goes to claims handling. Specifically
18 goes to claims handling and has certain standards that are
19 spelled out in more detail in the regulations for how claims
20 are to be handled.

21 THE COURT: So can we just summarize it as under the
22 Claims Handling Act?

23 THE WITNESS: Okay.

24 THE COURT: Call it that.

25 MR. KREKSTEIN: That's fine.

1 THE COURT: So now we have Consumer Protection Act,
2 Claims Handling Act and Appraisers Act. And what's the
3 fourth one?

4 MR. KREKSTEIN: The fourth one is under the
5 Pennsylvania code, the Unfair Claims Settlement Practice
6 regulations.

7 THE WITNESS: I would just call that the claims reg as
8 opposed to the statute.

9 THE COURT: So that would be a regulation under the
10 Pennsylvania code?

11 THE WITNESS: Correct.

12 THE COURT: And what does that -- what does that go
13 to?

14 THE WITNESS: That gives a lot more detail on
15 appropriate claims practices.

16 THE COURT: Those are regs that --

17 THE WITNESS: They've been around for a long, long
18 time.

19 THE COURT: You have a lot to do with those regs?

20 THE WITNESS: Absolutely.

21 THE COURT: Enforcing them as well as -- who creates
22 the regs?

23 THE WITNESS: The insurance department does.

24 THE COURT: Okay. All right. So that -- yeah. Then
25 we would call the -- call it regs, is that --

1 THE WITNESS: Claims reg.

2 THE COURT: Mr. Mayerson, is that all right? We're
3 talking about the Consumer Protection Act, the Appraisers
4 Act, the Claims Handling Act, the regs or regulations.

5 MR. MAYERSON: So far all I know is that we've
6 itemized a list of consumer protection statutes. I'm not
7 sure what the witness, Ms. Foster --

8 THE COURT: We'll find out. At least I know what
9 we're talking about when Mr. Krekstein mentions it by that
10 way hopefully.

11 MR. KREKSTEIN: I will endeavor to keep it consistent,
12 Your Honor.

13 THE COURT: Okay.

14 BY MR. KREKSTEIN:

15 Q Ms. Foster, are you aware of allegations by the
16 Bergs against Nationwide concerning violations of either and
17 the Claims Handling Act or the regs?

18 A I believe -- although this is not something
19 I've looked at in detail, I believe I have seen an allegation
20 regarding a failure to communicate on one occasion on a
21 timely basis.

22 Q And what is your understanding of how the
23 Claims Handling Act and/or the regs deal with that type of
24 issue?

25 A The claims -- both the Claims Handling Act and

1 the regs find that there are violations -- one of the
2 conditions to a finding of a violation is proof of pattern
3 and practice. Insurance companies are big -- huge entities,
4 and the whole purpose of both the statute and the regulations
5 is not every time there's a mistake, a oops or something was
6 not perfectly done. It's really to fine, punish and correct
7 where there is a pattern and practice of failure to comply.

8 THE COURT: Is that more under the regs than under the
9 claim handling?

10 THE WITNESS: No, it's both. The pattern and practice
11 is under both.

12 MR. MAYERSON: Your Honor, I would object because
13 she's speaking very broadly about a lot of statutes. And
14 while there may be a willingness to overlook something as
15 minor as a failure to reply to a letter within ten days,
16 which I think is what we're talking about in this case, there
17 certainly wouldn't be a willingness to overlook some other
18 things, such as assigning an appraisal to an unlicensed
19 appraiser. You can't just do that once and think it's
20 insignificant whereas --

21 THE COURT: Well, do you want to raise these on
22 cross-examination?

23 MR. MAYERSON: I'm sorry. Yes, Your Honor.

24 BY MR. KREKSTEIN:

25 Q I believe you were starting down this path, Ms.

1 Foster, but can insurance companies be penalized by the
2 insurance department by violating these Claims Handling Act
3 and regs?

4 A Absolutely.

5 Q What is the standard that the insurance
6 department follows?

7 MR. MAYERSON: Objection, Your Honor. Relevance.
8 This has nothing to do with the bad faith statute that we're
9 here to talk about today.

10 MR. KREKSTEIN: It will.

11 MR. MAYERSON: It will not. It has nothing to do with
12 it.

13 THE COURT: So it's one way that the insurance
14 department regulates and enforces the laws, but obviously
15 another way is filing a bad faith claim and being successful
16 or not successful on it. I recognize that. So I guess I'll
17 allow you to continue with this and we'll see how you're
18 going to tie it together.

19 MR. KREKSTEIN: Very well.

20 Can we repeat the question? I apologize.

21 (Whereupon, the Reporter read the referred-to portion
22 of the testimony.)

23 BY MR. KREKSTEIN:

24 Q What is the standard that the insurance
25 department follows in imposing penalties for violations of

1 the Claims Handling Act and the regs?

2 A Well, there's actually -- well, as I said, the
3 standard is pattern and practice, and the penalties are
4 typically -- ultimately you could lose your license in a most
5 egregious type of situation. But the penalties are either
6 per offense --

7 THE COURT: Most egregious meaning once?

8 THE WITNESS: I mean if --

9 THE COURT: Doesn't have to be a pattern or practice?

10 THE WITNESS: Oh, no, it does have to be a pattern and
11 practice. I meant if the pattern and practice were so
12 egregious, there was mishandling of every single claim, I as
13 commissioner would say this company shouldn't be in business
14 and pull its license.

15 THE COURT: I think that sort of applies in so many,
16 many ways. If I have an employee that isn't working well for
17 me, if they're saying -- if there's a pattern and practice
18 that's not working, I can let them know that, under this
19 pattern and practice. But if they violate an ethical
20 standard, one day I could just fire them on that basis. And
21 I assume that's sort of analogous to -- to -- depending on
22 how serious it is, pattern and practice is one thing, but an
23 -- when you said egregious, a single egregious act could
24 cause --

25 THE WITNESS: Oh, absolutely. A single egregious act

1 could certainly cause there to be regulatory response. It
2 wouldn't be under the Claims Handling Act. But if it were
3 egregious enough, there are a myriad of other statutes and
4 regulatory provisions that if you had that kind of concern,
5 that you could take appropriate action. Absolutely.

6 THE COURT: So how are you giving this answer?

7 THE WITNESS: Well, I would say for the -- if you're
8 just looking at claims handling, it must be a pattern and
9 practice. You are subject to one level of penalties if
10 basically the finding is negligence. You're subject to a
11 whole 'nother level of penalties if there's a finding that it
12 was egregious or willful.

13 And then, Your Honor, I think, to bring in your
14 example, if there's a single egregious act, the company is
15 also liable under a whole variety of other provisions, to
16 losing its license and other regulatory action. But not
17 under the trade practice -- not under the claims handling.

18 BY MR. KREKSTEIN:

19 Q You said that you reviewed a great deal of
20 documents. Regarding the documents you reviewed, including
21 what Mr. Mayerson represented was a failure to comply -- an
22 alleged failure to comply with the regs by Mr. Witmer, do you
23 believe that those would constitute a violation of the Claims
24 Handling Act or the regs?

25 A A single incidence definitely would not.

1 Q And how would these allegations or allegations
2 under the Claims Handling Act and the regs relate to
3 allegations under the bad faith statute?

4 MR. MAYERSON: Your Honor, same objection. This is
5 exactly what was addressed in the Superior Court opinion.

6 THE COURT: I don't quite understand that. Say that
7 again. How would a single incident under the claims handling
8 and the regs, how would that apply, a single incident under
9 the bad faith?

10 MR. KREKSTEIN: That's fine. That's a fine question,
11 Your Honor.

12 THE WITNESS: Well, my response is, is that a single
13 instance would not be a violation of the claims handling or
14 claims reg.

15 THE COURT: Right. Now, so you're not going to go
16 into this other area? I mean, I would imagine if we looked
17 at a bunch of cases we could find out what, in fact,
18 constituted bad faith and that's that. I mean, unless you're
19 going to give us a summation of what the law is in this area,
20 which I'm not sure is appropriate or not appropriate. But I
21 don't know how you're going to ask this question.

22 MR. KREKSTEIN: I was waiting. I didn't know if you
23 were asking a question. I'll move on.

24 THE COURT: Okay.

25 BY MR. KREKSTEIN:

1 Q Ms. Foster, as part of your review of the
2 documents in this matter, are you also aware that through Mr.
3 Chett, the plaintiffs have alleged a -- accused Nationwide of
4 employing a -- these are Mr. Chett's words -- Scorched Earth
5 litigation strategy?

6 A I am.

7 Q Okay. Do you agree?

8 A I took a long look at this issue --

9 THE COURT: Excuse me. Could you tell us, first of
10 all, what your definition of Scorched Earth litigation is?

11 MR. KREKSTEIN: That should have been my next
12 question.

13 THE WITNESS: Absolutely. I'm very glad that you
14 asked that question. I mean, to me the term Scorched Earth
15 is a term that's used when -- in particular a defendant, is
16 utilizing often its greater resources for the purposes of
17 kind of overwhelming a plaintiff. And that can be through
18 noticing of many depositions, you know, all -- all of the
19 kind of litigation tactics. You know, delay. Everything
20 that makes it more difficult for a plaintiff. That's my
21 definition of Scorched Earth. It's action by the defendant
22 typically to sort of overwhelm the plaintiff.

23 BY MR. KREKSTEIN:

24 Q Based on that definition, Ms. Foster, do you
25 agree with Mr. Chett?

1 MR. MAYERSON: Objection, Your Honor.

2 THE COURT: I think we need to have a -- I don't know
3 what Mr. Chett -- how he even used it. I guess I'll find
4 out. He's not going to testify. That came in previously.

5 MR. KREKSTEIN: He did.

6 THE COURT: So I'm going to have to look at what Mr.
7 Chett said and --

8 MR. KREKSTEIN: One of his terms, Your Honor, was
9 Scorched Earth. Ms. Foster provided her definition.

10 THE COURT: Right. But what was the foundation for
11 Scorched Earth that Mr. Chett gave, if you know? Do you know
12 what it is?

13 THE WITNESS: My recollection is his definition -- my
14 definition is very close to his. I don't recall that we were
15 defining sort of what Scorched Earth was differently.

16 MR. MAYERSON: What he said was that it's stretching a
17 small plaintiffs' law firm through financial means because
18 you usually win in the long run when you do that.

19 THE WITNESS: I don't think that's very different. I
20 think --

21 THE COURT: You would agree with that?

22 THE WITNESS: Yeah. I think we're saying basically
23 the same thing.

24 MR. MAYERSON: And then may I state an objection for
25 the record? The witness, I believe, is about to give an

1 opinion about my conduct and my firm's conduct in the case.
2 And that is improper under Pennsylvania decision, Superior
3 Court decision Rhodes, R-H-O-D-E-S, versus USAA, at 21
4 Atlantic 3d 1253, Page 1264. And therein the Superior Court
5 stated, the focus of a bad faith claim is necessarily on the
6 insurer's conduct and its basis for denying benefit under the
7 policy or refusing to promptly settle the claim. The insurer
8 wants to turn the tables as it were and change the focus to
9 its insureds. The relevant inquiry in a bad faith case is
10 whether the insurer had a reasonable basis for its conduct.
11 The state of mind of the insured is irrelevant. And so
12 if we allow Ms. Foster to go down this path of attacking the
13 motions, the pleadings and everything that we did to try and
14 get the evidence we felt we needed, while not being paid a
15 dime, everything that we did --

16 THE COURT: While not being what?

17 MR. MAYERSON: Paid a dime so far. We're doing it on
18 a contingency fee basis. Her basic opinion is that we
19 overworked the file. We fought too hard for our clients.

20 MR. KREKSTEIN: Objection to the extent he's
21 characterizing Ms. Foster's testimony that has not even been
22 spoken.

23 THE COURT: Well, let's -- thank you. I understand
24 where we are. I don't know, you can raise that objection if
25 you want to after we get to that question. And then we can

1 have further explanation somehow. But ask your next
2 question.

3 BY MR. KREKSTEIN:

4 Q My question is, in rebutting Mr. Chett's
5 opinion that Nationwide employed a Scorched Earth litigation
6 strategy, what is your opinion?

7 A My opinion is, is that -- is that Nationwide
8 did not provide -- did not engage in Scorched Earth. It
9 engaged in a defense against an aggressive plaintiff.

10 Q Are you also aware that the Bergs have alleged
11 the use of a litigation strategy -- and it's been called many
12 names; I'm going to try and make it consistent -- referred to
13 in another reported case called Bonenberger versus
14 Nationwide?

15 A I am familiar with that.

16 Q What's your opinion regarding that allegation?

17 MR. MAYERSON: Objection, Your Honor. The Superior
18 Court has said that all evidence relevant to this point is
19 admissible.

20 MR. KREKSTEIN: That's not what the Superior Court
21 said. That just isn't --

22 THE COURT: Can we just find out what it is you're
23 going to say about the plaintiff as a result of Bonenberger?
24 And then we'll see if you have any problems with that. Can
25 we do it that way?

1 THE WITNESS: That's fine with me.

2 THE COURT: Okay.

3 THE WITNESS: My review of the entirety of this file
4 gives no evidence that that claims practice manual was used
5 by Nationwide, had been discontinued prior to this claim and
6 was never used by any of the personnel and did not control
7 the practices and procedures of Nationwide during the process
8 of this --

9 THE COURT: That's the Berg case you're saying?

10 THE WITNESS: It was not used in the Berg case.

11 THE COURT: Well, okay. Well, then tell us -- what I
12 have to know is how Bonenberger -- Bonenberger finds Scorched
13 Earth, right?

14 THE WITNESS: No. Bonenberger was a case that dealt
15 with a specific claims manual in which perhaps Scorched Earth
16 was a part of it.

17 THE COURT: What did you ask her about Bonenberger?
18 Can you ask that question again?

19 MR. KREKSTEIN: I can, Your Honor.

20 MR. MAYERSON: Your Honor, it looks like the witness
21 might want more water.

22 THE WITNESS: Sure. Thank you.

23 THE COURT: Go ahead. Tell us about Bonenberger and
24 what you want this witness to answer that's applicable to --
25 and how was Bonenberger used by Mr. Chett?

1 MR. KREKSTEIN: Mr. Mayerson has alleged that
2 Nationwide in this case used a claims manual that was at
3 issue in Bonenberger.

4 MR. MAYERSON: Your Honor, it would be much easier if
5 you said used the strategy that was attached to that claim
6 manual. It's like throwing the baby out with the bath water.
7 They got rid of the manual and want to say the strategy went
8 along with that manual when in reality the strategy is very
9 simple --

10 MR. KREKSTEIN: I'll call it a strategy.

11 MR. MAYERSON: -- it's just you beat the heck out of
12 them.

13 MR. KREKSTEIN: I'll call it strategy. I'll call it
14 whatever you -- whatever anybody wants. There was a --

15 THE COURT: Excuse me. Could I just take a recess.

16 (Discussion off the record.)

17 MR. KREKSTEIN: Rather than me testify, would it be
18 appropriate to ask Ms. Foster to explain her understanding?

19 THE COURT: That's fine. The question is, explain --
20 Ms. Foster should explain her understanding of the holding in
21 the Bonenberger case.

22 BY MR. KREKSTEIN:

23 Q Yeah. First off, is it your understanding that
24 the plaintiffs have alleged that the strategy utilized in the
25 Bonenberger case was utilized in this case?

1 A Yes.

2 Q What is your understanding of what that
3 strategy was?

4 A Well, it's sort of similar to the Scorched
5 Earth discussion, which is a strategy of not -- of just -- I
6 think Scorched Earth probably summarizes it the best.

7 Q And what is your opinion on whether that
8 strategy was utilized in the Berg case or the Berg claim?

9 THE COURT: And can you just -- that's where I stopped
10 before. Can you just tell us how it was used in the
11 Bonenberger case, so we understand what your definition of
12 Scorched Earth is that you're applying to Berg?

13 THE WITNESS: Well, I think the Bonenberger case was
14 really, if I remember right, and I didn't look at this
15 recently, is the Superior Court held that the claims manual
16 itself could be used as evidence against Nationwide as
17 evidence of bad faith.

18 THE COURT: That the claims manual itself?

19 THE WITNESS: Could be used as evidence. In this case
20 the claims manual was not used. And I've not seen any
21 evidence that it was.

22 MR. MAYERSON: The strategy.

23 THE WITNESS: Well, we're -- specifically the judge
24 inquired about the claims manual in Bonenberger itself.

25 THE COURT: So you distinguished between the two by

1 whether the claims manual was used, and it was used in
2 Bonenberger but was not used here?

3 THE WITNESS: Right. And then I think the pending
4 question was then is, was the strategy used, even if the
5 manual wasn't used. And here I --

6 THE COURT: The strategy?

7 THE WITNESS: Yes.

8 THE COURT: What strategy?

9 THE WITNESS: The same strategy that was set forth in
10 the claims manual.

11 THE COURT: Okay. Which is the Scorched Earth
12 strategy, which again, if you just give us your definition of
13 what it was in Bonenberger, so we know what you're applying
14 to Berg. I mean, either that or you don't know the answer to
15 the question.

16 THE WITNESS: I don't feel comfortable talking that
17 much about the facts of Bonenberger because I simply haven't
18 looked at it in a while. I mean, I'm familiar with the
19 general holding. But I think the question of was the
20 strategy -- was the strategy of -- Scorched Earth strategy
21 used, can be answered by simply examining the docket in this
22 case.

23 Scorched Earth strategy is when the defendants are
24 attempting, through various mechanisms, to overwhelm the
25 plaintiffs. But in this case we had eight amended

1 complaints. I'm not saying there's anything wrong with it.
2 But it's just a fact. That's what happened. We had eight
3 amended complaints. We had five --

4 MR. MAYERSON: Objection, Your Honor.

5 THE WITNESS: We had five class action complaints,
6 which gives rise to a whole different level of defense, as
7 everyone is aware. We had noticing of depositions and
8 subpoenaing of regulators all around the country, all of
9 which needed to be defended. There were just innumerable
10 motions.

11 So against the allegation of was this Scorched Earth,
12 you have to look at the record in terms of who the moving
13 party was that caused this litigation to become as expensive
14 as it did.

15 THE COURT: Well, for instance, the eight amended
16 complaints, that ended in -- what year was the eighth one?

17 THE WITNESS: Something like that.

18 THE COURT: I remember reading it in the opinion. It
19 said that the eighth amended complaint was --

20 MR. MAYERSON: I can tell you the date, Your Honor.

21 THE COURT: Okay.

22 MR. MAYERSON: The eighth amended complaint was filed
23 on October 22nd, 1999.

24 THE COURT: October 25th, 1998.

25 MR. MAYERSON: I could be wrong.

1 THE COURT: I think you are. The Bergs' final amended
2 complaint, the eighth, was filed on October 25th, 1998. Or
3 else the Superior Court is wrong. Okay. So we have as of
4 October 25th, 1998.

5 And then you said about the depositions of regulators
6 all over the country?

7 THE WITNESS: Well, subpoenas, I believe.

8 THE COURT: Subpoenas.

9 THE WITNESS: A number of them were issued. And then
10 you have to look at just --

11 THE COURT: Well, when were they issued?

12 THE WITNESS: Oh, gosh.

13 THE COURT: I mean --

14 MR. MAYERSON: Between that time period.

15 THE COURT: Up until 1998?

16 MR. MAYERSON: It would have been during the time the
17 class actions were pending, because that was the purpose of
18 them.

19 THE COURT: That's a good point. When were the class
20 actions pending? Do you know that? Or when were they
21 resolved? I assume they're out of the question. At least
22 October 25th, 1998, they're no longer an issue.

23 MR. MAYERSON: They didn't even become an issue until
24 Nationwide PO'd the regular complaint twice.

25 THE COURT: So are you saying -- just since you're the

1 witness, are you saying that the subpoenas had to do with
2 regulators under the class action suit?

3 THE WITNESS: I think that's the timing. I think
4 that's the timing.

5 THE COURT: And that would have been pretty much it as
6 your answer. So --

7 MR. KREKSTEIN: I don't think she was finished, Your
8 Honor.

9 THE WITNESS: After that, throughout the whole -- then
10 you had the whole totality of it, is you have to look at
11 motion practice. Who is filing the motions. How -- were
12 they moved by -- were they moved by the plaintiff or by the
13 defendant? What kind of response was that caused by?

14 Because in a Scorched Earth strategy you're going to
15 find it is the defendant a majority of the time who is filing
16 motions and seeking depositions and document requests. And I
17 don't think the record will show that in this case.

18 THE COURT: Okay.

19 BY MR. KREKSTEIN:

20 Q Ms. Foster, you also had an opportunity to
21 review the claims handling aspect of this claim. Is that
22 correct?

23 A It is.

24 Q What is your opinion as to Nationwide's
25 handling of the claim?

1 A I think that Nationwide --

2 MR. MAYERSON: Your Honor, objection. This is one of
3 the items that we filed in our motion in limine. The
4 Superior Court, according to my reading of it, which I think
5 is a fair reading, rejected all of her other opinions; and
6 that's the foundation for her ultimate opinion here that they
7 weren't bad faith, plus it's the ultimate opinion, which is
8 really your province and not Ms. Foster's.

9 MR. KREKSTEIN: Your ultimate opinion, Your Honor, is
10 --

11 THE COURT: I'm going to allow it. I just want to
12 know -- so we had -- we heard about claims handling and that
13 Act. And then -- what you said about claims handling and
14 that Act or claims handling itself has to do with a pattern
15 or practice.

16 THE WITNESS: Correct.

17 THE COURT: Okay. So with that said, you believe the
18 pattern or practice of Nationwide in handling the claims is
19 not -- I don't want to put words in your mouth. What are you
20 saying?

21 THE WITNESS: Okay. Can I have the question again?

22 MR. KREKSTEIN: Could we read the question back?

23 (Whereupon, the Reporter read the referred-to portion
24 of the testimony.)

25 THE WITNESS: I believe that Nationwide complied with

1 all regulatory standards that are -- that are applicable. I
2 mean, if you look -- if you look at the facts of this claim,
3 there was an accident, the claim the next day went into a
4 Blue Ribbon Panel.

5 THE COURT: What?

6 THE WITNESS: Went in a Blue Ribbon. Into a Blue
7 Ribbon facility. The claim was processed relatively quickly.
8 The claim was paid. Apparently the underlying repairs that
9 were made were defective. I don't think there's much dispute
10 about that now. Nationwide was not given notice of that.

11 And one thing that I should clarify that's very
12 important. Nationwide's original obligation under the policy
13 is simply to pay for the repair. It has no obligation to
14 make sure that the repairs are done appropriately. Under the
15 policy. But it also had a guarantee under the Blue Ribbon
16 provision. Was given notice that there were defects in the
17 repairs but told not to get involved. Despite that there was
18 some conversation with counsel. Counsel said don't get
19 involved. Months go by. Then all of a sudden they get a
20 letter saying we're -- we're now going to sue Nationwide.

21 THE COURT: Counsel should not -- who's counsel?

22 THE WITNESS: Mr. Mayerson was -- had some discussions
23 during the period of time -- from the first notice that they
24 got that there was a problem with the repair, until they got
25 notice that they were about to be sued, there was

1 conversation between Mr. Mayerson and a representative of
2 Nationwide -- who I think was Mr. Bashore, but don't told me
3 to that -- saying that they were aware that there were
4 problems with the repairs but that --

5 THE COURT: Who was aware?

6 THE WITNESS: Both Mr. Bashore and Mr. Mayerson, and
7 -- but that --

8 THE COURT: Mr. Mayerson said he was aware of the
9 problems. Okay.

10 THE WITNESS: And Mr. Bashore was too.

11 MR. MAYERSON: Objection. At what time period are you
12 saying? Because Mr. Bashore --

13 MR. KREKSTEIN: Your Honor, that's cross-examination
14 to her direct.

15 THE COURT: I would like to get this all straight. I
16 don't know what we're talking about. So if you can tell us
17 approximately the time too.

18 THE WITNESS: Okay. The --

19 THE COURT: If you know. If you don't know --

20 THE WITNESS: Yeah. I'm trying to remember the
21 specific dates. I believe it was September --

22 MR. KREKSTEIN: Would it help your recollection if you
23 had a copy of your reports?

24 THE WITNESS: It would for sure.

25 MR. KREKSTEIN: Your Honor, may I?

1 THE COURT: Sure. I mean, you can even stipulate as
2 to what the time is.

3 THE WITNESS: Because I think my report sets forth
4 very clearly all the dates and times.

5 THE COURT: So you're speaking about what you put in
6 your report?

7 THE WITNESS: Correct.

8 MR. KREKSTEIN: May I approach, Your Honor?

9 THE COURT: Yes, please.

10 THE WITNESS: Okay. This is very helpful. In
11 November -- on November 3rd of 1997, plaintiffs' counsel
12 notified Nationwide that there were problems with the repairs
13 but also said don't get involved. That's a paraphrase but I
14 think a fair one.

15 Then on December the 12th -- so that's November the
16 3rd.

17 THE COURT: Told Nationwide not to get involved?

18 THE WITNESS: That's correct. The exact language is,
19 please direct all future communications to me. Please do not
20 contact Lindgren Chrysler Plymouth as your communication may
21 have an impact on Mr. Berg's pending litigation.

22 Because, of course, the first thing that Nationwide
23 would do when notified of a problem with repairs is talk to
24 the person who did the repairs. But they were specifically
25 instructed not to do that.

1 Then on December the 12th there was a telephone call
2 between -- where Nationwide called plaintiffs' counsel and
3 informed them -- informed counsel that under its Blue Ribbon
4 program, it was interested in the defects to the repairs and
5 wanted to take steps to start the inspection process. And he
6 was told basically to hold off.

7 Nothing else happens now until April the 22nd of 1998.
8 So we're about four months later. And then they get a letter
9 from plaintiffs' counsel saying now we're going to sue you
10 over these defective repairs and we want you to purchase the
11 automobile. Nationwide does a preliminary review of the
12 automobile and then less than two weeks later we have
13 litigation.

14 THE COURT: They do a preliminary review. Meaning
15 they do an inspection?

16 THE WITNESS: They do an inspection of the vehicle.
17 Because there had been a specific request by plaintiffs'
18 counsel that there be a inspection by an independent
19 inspector. That was the specific request.

20 THE COURT: Okay.

21 THE WITNESS: Nationwide went out to determine whether
22 or not they should agree to that request, so they took a
23 preliminary look at it, agreed that there probably -- that
24 there were some problems and agreed -- and in fact, retained
25 an independent expert then. Despite the fact that litigation

1 is going on, went out and retained an independent expert for
2 purposes of trying to inspect the automobile. There were a
3 lot of false starts.

4 THE COURT: When was it that the independent expert
5 went out to inspect?

6 THE WITNESS: Let me see. I know I have that.

7 MR. MAYERSON: Maybe we should use names. Because
8 there's a lot of inspectors.

9 THE WITNESS: The first inspection was done by Stephen
10 Potosnak.

11 MR. MAYERSON: That was on?

12 MR. KREKSTEIN: Objection, Your Honor.

13 THE COURT: That was what? Who said --

14 MR. MAYERSON: I'm asking.

15 THE COURT: You asked.

16 MR. MAYERSON: I think you want to know. What date
17 was that?

18 THE COURT: I thought you were saying something.

19 MR. KREKSTEIN: I'm just trying to let it be her who
20 testifies.

21 THE COURT: I thought you asked the question.

22 THE WITNESS: April 28th. April 28th, 1998, was the
23 date of the Potosnak inspection. May 4th was the filing of
24 the complaint. May 12th, so this is after litigation had
25 started, Nationwide continues to try to resolve the repair

1 problems and had hired an independent and was ready to start
2 the inspection. That was confirmed on May 19th.

3 THE COURT: And who is this person?

4 THE WITNESS: This person is Mr. Shaw. Is that the
5 correct name? I can't remember.

6 THE COURT: Did they do an inspection?

7 THE WITNESS: Well, on May the 16th they traveled to
8 the home. The car -- the car is apparently in the driveway
9 but the Bergs are not at home and the inspection does not
10 take place.

11 MR. MAYERSON: And that's Terry Shaw.

12 THE WITNESS: That is Terry Shaw. That's what I
13 thought.

14 There were various other attempts in May -- May
15 through July, and an inspection -- a partial inspection
16 finally takes place on August the 21st of 1998.

17 THE COURT: Whatever happened with the Potosnak
18 inspection, do you know?

19 THE WITNESS: Well, that was the finding that indeed
20 there were problems or that Nationwide believed there were
21 problems with the repairs and so therefore they wanted to go
22 to meet the plaintiffs' demand, which is that an independent
23 expert review and evaluate the claim. That was the specific
24 request by plaintiff. So they were attempting to do that at
25 various times. It never happened. The final inspection

1 never took place. And ultimately Nationwide purchased the
2 car, bought out the lease, and the Bergs were left with no
3 residual liability.

4 THE COURT: When was ultimately?

5 THE WITNESS: The purchase of the lease was December
6 23rd, 1998. And the purchase for \$18,000.

7 THE COURT: You say there was never an independent
8 inspector?

9 THE WITNESS: It never happened. There were five or
10 six attempts over the course of several months.

11 THE COURT: So what Mr. Potosnak said was that it
12 needs to be bought out, I guess, and even though you never
13 had an independent, it was bought out?

14 THE WITNESS: Well, ultimately to protect the
15 Potosnaks [sic] and to protect the value of the automobile as
16 potential future evidence, the automobile was purchased by
17 Nationwide.

18 THE COURT: Okay. So --

19 THE WITNESS: So the Bergs --

20 THE COURT: Got the same result. They wanted it
21 totaled, I guess, back -- and they get the result by getting
22 the value of the --

23 THE WITNESS: Well, they were -- well, the lease -- by
24 purchasing it, to the extent that the Bergs could have had
25 any liability for returning a car with defective repairs in

1 it, they were relieved of that liability. The Bergs were
2 completely protected by that purchase.

3 THE COURT: In August -- in September --

4 THE WITNESS: In December of 1998. So as --

5 MR. MAYERSON: '99.

6 THE WITNESS: '99.

7 MR. KREKSTEIN: Wait.

8 THE WITNESS: As of that --

9 MR. KREKSTEIN: Excuse me. '98.

10 MR. MAYERSON: No. January '99 was the purchase.

11 THE WITNESS: Well, I have December 23rd, 1998, they
12 reached settlement. Reached an agreement. Okay. So the
13 actual purchase may have been a few days later.

14 So as of that date, as of the date that the car was
15 purchased, all the repairs on the automobile had been paid
16 for by Nationwide. The car had been purchased. The Bergs
17 had been relieved of any potential liability under the lease.
18 They had -- Nationwide had made numerous efforts to try to
19 inspect the car, to repair what needed to be done, and in my
20 view, Nationwide did everything that was reasonable and
21 appropriate and -- to pay the proceeds under the policy.

22 MR. MAYERSON: Your Honor, I would just remind the
23 Court, we object to this because the Superior Court reached a
24 completely different opinion on this issue and rejected Ms.
25 Foster's opinion.

1 THE COURT: You can tell me all about that. I'll read
2 all about that. We have this witness who's giving an expert
3 opinion and then you can cross-examine.

4 Continue, please.

5 BY MR. KREKSTEIN:

6 Q Ms. Foster, have all the opinions that you've
7 rendered here today been rendered to a reasonable degree of
8 certainty?

9 A Yes.

10 Q Within the areas that you've been qualified as
11 an expert witness?

12 A Yes, they have.

13 MR. KREKSTEIN: Nothing further, Your Honor.

14 THE COURT: Okay. Do you even want to start? I
15 imagine your cross will be longer than 20 minutes.

16 MR. MAYERSON: Yes, it will be longer than 20 minutes.
17 I don't mind starting; I don't mind waiting.

18 THE COURT: It might be better that -- since we didn't
19 really take a break, why don't we take a break at this time.

20 And I'll, of course, advise you, remind you, that
21 you're still under oath and you cannot discuss your testimony
22 with anyone, even your counsel, during the time that we are
23 on break. You understand that?

24 THE WITNESS: I do understand. Thank you.

25 THE COURT: You may step down. And we'll -- did you

1 want to say something?

2 MR. KREKSTEIN: I didn't, Your Honor. I was actually
3 going to say a similar thing that you said, that we were
4 going to invite Ms. Foster to join us for lunch and represent
5 that we will not discuss the case.

6 THE COURT: Sure. So we'll come back at -- I guess
7 1:30. And we'll be ready to start at 1:30.

8 MR. MAYERSON: I don't mean to be, you know,
9 unreasonable. But it would seem that they're going to be
10 asking Ms. Foster some more questions on redirect. And it
11 would seem perhaps not appropriate for the witness to be
12 having lunch. But I guess if they're representing that
13 they're not going to talk about the testimony. All right.

14 THE COURT: Yeah. That's good enough for me.

15 MR. MAYERSON: All right.

16 THE COURT: Okay. So we'll reconvene at 1:30.

17 MR. MAYERSON: Your Honor, I'm sorry. Maybe this is a
18 good time to put on the record -- when we come back we'll do
19 it. I want to address the 109, 137 thousand dollar
20 discrepancy.

21 THE COURT: That came from --

22 MR. MAYERSON: That was during Mr. Costello.

23 THE COURT: So why do I need to know that now? We can
24 do it at the end of the -- you're not going to do it through
25 this witness, are you?

1 MR. MAYERSON: No.

2 THE COURT: Okay. Whatever you want to do we can do
3 when the testimony is over.

4 MR. MAYERSON: All right. Thank you.

5 THE COURT: Thank you.

6 (Recess declared from 11:40 a.m. until 1:42 p.m.)

7 CONSTANCE FOSTER, Resumed

8 THE COURT: Cross-examine.

9 MR. MAYERSON: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. MAYERSON:

12 Q Ms. Foster, there's just two or three legal
13 principles I want to see if you agree with. The first one is
14 that you agree that Nationwide had a duty to deal with the
15 Bergs on a fair and frank basis?

16 A Yes.

17 Q And at all times act in good faith?

18 A Yes.

19 Q And that the duty of good faith originates from
20 the insurer's status as a fiduciary for its insured under the
21 insurance contract which gives the insurer the right
22 inter alia to handle and process claims.

23 MR. KREKSTEIN: Objection, Your Honor.

24 THE COURT: That being?

25 MR. KREKSTEIN: Number one, it calls for a legal

1 conclusion. Number two, if Mr. Mayerson is reading from a
2 case, it's probably a nice thing for the witness to tell her
3 which case he's reading from.

4 THE COURT: Yeah. I mean, we -- I guess you could
5 make that argument, in what was testified to previously,
6 legal conclusion. I've given certainly both of you a lot of
7 latitude with regard to this expert and her opinion.

8 And you already answered that you agree with it?

9 THE WITNESS: The first two. I don't think I answered
10 the third one yet.

11 MR. MAYERSON: Yes. The one about the fiduciary duty.
12 I'm reading from the Berg opinion.

13 THE COURT: I was going to say. I can take judicial
14 notice too.

15 MR. MAYERSON: And the point being is that I think Ms.
16 Foster will agree that when she testified here before she
17 said she disagreed with that principle.

18 THE WITNESS: That is correct. And I still do.

19 MR. MAYERSON: All right.

20 THE WITNESS: The term fiduciary, when used in this
21 context, is not the same as a fiduciary like you're a trustee
22 of a trust or, you know, somehow subject to the fiduciary
23 capabilities. I certainly agree with you that that's what
24 the case says.

25 BY MR. MAYERSON:

1 Q All right. So in essence, you're disagreeing
2 with what the Superior Court has said in this context?

3 A No. I mean, the Court said what it said and it
4 uses that -- uses that language. Probably the person I'm
5 disagreeing with is you in terms of what that language means.
6 But no, I don't disagree that that's what the Court said.

7 Q Well, I haven't said what I think it means.
8 All I said is do you agree that the duty of good faith
9 originates from the insurer's status as a fiduciary for its
10 insured under the insurance contract which gives the insurer
11 the right inter alia to handle and process claims?

12 A Yes. I would agree with that.

13 Q All right. And in this context we have a first
14 party claim, correct?

15 A That is correct. It's a collision claim.

16 Q And that's not an underinsured motorist claim,
17 right?

18 A That's correct.

19 Q And there has been some debate in the legal
20 communities about whether this duty -- this fiduciary duty
21 applies in an injury UIM claim, right?

22 A Well, there is a lot of debate about whether
23 there's a difference in standards in terms of handling a
24 claim between a first party and third party.

25 Q But this is a pure first party case, right?

1 A That is correct.

2 Q No hybrid, nothing. This means Nationwide had
3 a fiduciary obligation to the Bergs in the handling of this
4 claim because they had the decision, as you said, to decide
5 whether the vehicle is a total loss or not.

6 MR. KREKSTEIN: Objection.

7 BY MR. MAYERSON:

8 Q Do you --

9 A Well, I don't think --

10 THE COURT: What's the nature of the objection?

11 MR. KREKSTEIN: The objection is that Mr. Mayerson is
12 asking Ms. Foster's definition of the term of fiduciary. And
13 again, I think that's, number one, beyond the scope of
14 direct; number two, beyond the scope of her expert report;
15 and number three, inappropriate given what Ms. Foster's
16 previous interpretation of that term was. So it has been
17 asked and answered as well.

18 THE COURT: Well, you got a yes to your question about
19 the specific definition of fiduciary, using the word
20 fiduciary by the appellate court, that that -- that this
21 witness agrees with that. Do you need to get any more on
22 this?

23 MR. MAYERSON: And I just -- she may have answered
24 this already.

25 BY MR. MAYERSON:

1 Q But you agree that that duty, that phrase that
2 we just talked about, applied to the Bergs in this case?

3 A Applies to the Bergs. It's a first party case.
4 Yes.

5 Q Thank you. Okay. And then the Berg opinion
6 also says -- and I'm addressing your argument or your opinion
7 about the issue of the contract claim and what role that
8 might play in whether or not there's a bad faith case here or
9 not. Okay. And what the Superior Court said, and I believe
10 was addressing your opinion from the 2007 trial, but what
11 they said is the law implies this duty of good faith into the
12 insurance contract, and thus the breach of such an obligation
13 constitutes a breach of the insurance contract. Do you agree
14 with that?

15 A Yes.

16 Q All right. So when you testified earlier that
17 the only obligation Nationwide had to the Bergs was to pay
18 the amount on the repair appraisal, that wasn't quite
19 correct, right? Because they also have a duty of good faith.

20 A I don't separate -- I mean, their duty, I see
21 that is as a combined factor. They have a duty to pay the
22 proceeds under the policy and they must do so in good faith.
23 Yes.

24 Q You also agree then that the breach of the
25 obligation to act in good faith constitutes a breach of the

1 insurance contract?

2 A Yes.

3 Q Thank you. Do you also agree that Section
4 146.3 of the Unfair Practices Act titled File and Record
5 Documentation states that the claim files of the insurer
6 shall be subject to examination by the commissioner or by his
7 appointed designees and that the file shall contain notes and
8 work papers pertaining to the claim in the detail that
9 pertinent events and the dates of events can be
10 reconstructed?

11 A I can't testify from memory as to the number of
12 the section; but yes, that sounds like an accurate reading.

13 Q Essentially what it says is that the insurance
14 company has to keep a claim file together so that the events
15 in the claim can be reconstructed?

16 A Correct.

17 Q Are you aware that under Nationwide's Blue
18 Ribbon Repair Program there's a provision for a separate
19 claim file to be kept at the Blue Ribbon repair facility?

20 A Well, I think that goes back to the fact -- and
21 I realize that the Superior Court reached a different
22 conclusion, but the -- I know that what Nationwide felt and I
23 felt at the time is that the claim under the policy was an
24 indemnification claim in which Nationwide had the obligation
25 to reimburse the Bergs for the cost of the repairs, that

1 there was a separate claim, a separate guarantee under --
2 under the Blue Ribbon whereby they became liable also for the
3 correctness of those repairs. But for the --

4 THE COURT: Correctness of?

5 THE WITNESS: Excuse me?

6 THE COURT: Correctness of what?

7 THE WITNESS: The repairs.

8 THE COURT: Correctness of the repairs?

9 THE WITNESS: Correct. So if the Bergs had not taken
10 their automobile to a Blue Ribbon shop, Nationwide had no
11 liability for the fact that the repairs were done correctly
12 or not. That's what indemnification means. It means I pay
13 you.

14 If the Bergs had -- if Mrs. Berg had broken her arm --
15 and I know I used this example before -- and gone to the
16 hospital and the hospital committed malpractice --

17 MR. MAYERSON: Objection, Your Honor. This is an
18 argument that Ms. Foster tried to advance at the last
19 hearing. It's not in her report and I did not open the door
20 to this type of argument.

21 THE COURT: Did you say you mentioned it earlier? I
22 remember the broken arm business.

23 THE WITNESS: Yes. I testified to it earlier in the
24 first trial, yes.

25 MR. MAYERSON: Not this trial. It's an improper

1 analogy. It's not in her report.

2 THE COURT: I mean, if this is something that's
3 relevant and you want to tell us what you were saying, I
4 don't see any reason why you can't say that.

5 MR. MAYERSON: I have a reason, Your Honor. I haven't
6 been able to prepare for it fairly. And what I think she's
7 going to say is that a doctor, a physician, isn't liable for
8 the malpractice -- or rather a health insurer isn't liable
9 for the malpractice of a doctor and therefore Nationwide
10 shouldn't be liable for the malpractice of a collision repair
11 shop. And I think that's the analogy she's about to draw.

12 Is that right?

13 THE WITNESS: Yes.

14 THE COURT: Okay. All right. Well, then I guess
15 we'll sustain your objection that you can't get that in but
16 it's already in.

17 MR. MAYERSON: Well, you can't unring a bell but it
18 should be disregarded.

19 THE COURT: Well, anyway, we'll disregard what we deem
20 appropriate for disregarding and you can move on to your next
21 question.

22 BY MR. MAYERSON:

23 Q Isn't it true that you just -- as you just
24 acknowledged, the Superior Court disagreed with that
25 conclusion anyway, right?

1 A The Superior Court disagreed with the
2 conclusion -- it's actually kind of complicated, but what the
3 Superior Court said is that Nationwide's handling of the Blue
4 Ribbon claim, the guarantee claim, was cognizable under the
5 bad faith statute.

6 Q Okay.

7 A I don't think they addressed the issue of
8 specifically whether it was one claim or two claims. They
9 simply said that the guarantee claim was also subject to bad
10 faith.

11 Q Anyway, a patient can sue their health insurer
12 for bad faith if the health insurer fails to honor that claim
13 for medical treatment too, correct?

14 A If they fail to pay.

15 Q Right. All right. So with regard to this
16 case, I know you disagree with the fact that Nationwide was
17 aware of the structural repair failures before the vehicle
18 went back to the Bergs. And I will get back to that later.
19 But right now I just want to ask you, if this Court were to
20 conclude that Nationwide was, in fact, aware of the condition
21 of this vehicle before it was returned to the Bergs as fully
22 restored, would you agree that that would be bad faith?

23 A I think you sort of have a hypothetical within
24 a hypothetical because, to me, in order for there to be bad
25 faith, the repairs have to be defective. I don't think

1 that's under dispute any longer. Nationwide had to be aware
2 of it and Nationwide itself had to either instruct or allow
3 -- specifically allow the car to be returned in that
4 condition. Those are not the facts as I understand them in
5 this case.

6 Q I understand that you dispute the facts in the
7 case. But did the Superior Court in this case not say that
8 that would constitute bad faith? If Nationwide interfered
9 with the total loss appraisal and then returned the vehicle
10 to the Bergs despite knowing of the structural repair
11 failures, that would satisfy the Toy definition of bad faith.
12 Being the Supreme Court decision Toy.

13 MR. KREKSTEIN: Can I ask that Ms. Foster be provided
14 with a copy of the Superior Court report -- opinion, excuse
15 me, if she's going to be asked about it?

16 THE COURT: Yes. And you want to supply that? That's
17 fine.

18 MR. KREKSTEIN: I would supply mine. Mine has writing
19 over it --

20 THE COURT: Mine does too.

21 MR. KREKSTEIN: -- if Mr. Mayerson doesn't object to
22 that.

23 MR. MAYERSON: I got it right here.

24 MR. KREKSTEIN: Oh, I have a clean copy. May I
25 approach, Your Honor?

1 THE COURT: Yes.

2 Certainly if you want to look at anything at any time,
3 just take the time to do so.

4 THE WITNESS: Okay. Thank you. I'm pretty familiar
5 with this document.

6 THE COURT: What Mr. Mayerson just asked you, if the
7 repair is defective, as I understand the proffered facts, the
8 theory in this case, perhaps the facts in this case -- we'll
9 go into that at the appropriate time. But if the -- if a
10 vehicle can be repaired, then it would not be defective just
11 for repairing it, but if a car -- if a vehicle would be
12 totaled, does that in and of itself mean that it would be
13 defective if it was repaired?

14 THE WITNESS: No. I mean, totaled is an economic
15 decision. It's not -- it's not necessarily a structural
16 decision. And in fact, the Appraisers Act actually lays that
17 forth very clearly. It's a pure economic decision. You look
18 at how much it would cost to repair it, plus the salvage
19 value, and then determine whether the car simply is worth the
20 repair. It's not whether it's repairable but whether it
21 makes sense to repair it.

22 THE COURT: So if I drive a 1997 Volvo and I'm in a
23 crash and it's going to cost \$10,000 to repair it, it's an
24 economic decision to pay me the value of the automobile now,
25 which might be certainly less than 10,000?

1 THE WITNESS: Exactly. And if you had exactly the
2 same injuries -- or damage to a brand new BMW, it would be
3 repaired. Exactly. It's an economic decision.

4 THE COURT: So what was -- what do I take from what
5 was read to you about repairs being defective? In our case
6 -- I guess there is a claim that the repairs were defective
7 because the car should have been totaled because they
8 couldn't fix the suspension or something like that. Is that
9 --

10 THE WITNESS: Well, without getting into the technical
11 parts of it, I think the claim -- the guarantee claim was
12 that whatever repairs were made were not made appropriately
13 and that the car was not returned in its pre-loss condition.
14 So it's not necessarily tied to the total loss issue. It's
15 tied to the fact that whatever was supposed to be done was
16 not done correctly. And I think that is more or less an
17 undisputed fact. It was not done correctly.

18 THE COURT: Okay. So when we have these three
19 ingredients, three elements, repairs defective, Nationwide
20 aware of it, and allowing the car to be returned -- I assume
21 Nationwide allowing the car to be returned, that would be the
22 definition of what Mr. Mayerson was asking you, I believe, to
23 be bad faith; is that correct?

24 THE WITNESS: Right. I think that he was asking me
25 that. And I think that's what the Superior Court was also

1 saying.

2 And it's important to put this in a time frame too.
3 Because this is when the original accident happened, is at
4 the time that the repairs were done by Lindgren, was
5 Nationwide aware at that time when the car was returned to
6 the Bergs that the repairs were defective. Not that they
7 knew a year later or a year and a half later. It was did
8 they know at that time.

9 THE COURT: Well, they returned it a year later.

10 THE WITNESS: Yeah. A year later, clearly Nationwide
11 was put on notice that they were defective. The question is
12 did Nationwide know in 19 -- I got to remember the dates
13 again. When the car was originally returned --

14 MR. MAYERSON: 1996. December of '96.

15 THE COURT: Is that when the accident was?

16 MR. MAYERSON: The accident was September of '96. And
17 the car was returned in December of '96. December 30th.

18 THE WITNESS: Yes. So as of December of 1996, did
19 Nationwide know that Lindgren had not repaired the vehicle
20 properly. Was it -- did it know -- one, did it know the
21 repairs were improper, and did it nevertheless specifically
22 allow the car to be returned to the Bergs in that condition.

23 And that time element is key because, as I said, a
24 year or so later, basically everybody admits there was a
25 defect. But the question is who knew in December of 1996.

1 THE COURT: I just have one question. What the
2 testimony was earlier today was that -- I think it was -- an
3 agreement was reached but that agreement was reached in 1998
4 as opposed to 1996?

5 THE WITNESS: Exactly.

6 THE COURT: That Nationwide would purchase it.

7 THE WITNESS: That's correct.

8 THE COURT: So you're --

9 MR. MAYERSON: Your Honor, that's a misunderstanding
10 of what transpired. I will get to that. That is Ms.
11 Foster's version, to be clear.

12 THE COURT: Well, under Ms. Foster's version, you're
13 saying the key to this whole thing is that Nationwide clearly
14 admitted that they are purchasing the vehicle, I guess
15 because it can't be driven or it can't be fixed, in 1998.
16 December --

17 THE WITNESS: Well, I don't think that determination
18 was actually ever made because of their inability to complete
19 the inspection. My understanding is they decided to purchase
20 it because the lease was up and in order just to ensure that
21 the Bergs were taken care of and protected and to ensure that
22 the vehicle itself was preserved for future evidentiary
23 matters, they purchased the car.

24 THE COURT: So somewhat for economic purposes?

25 THE WITNESS: Right. I don't think a determination

1 was ever made that it ultimately couldn't be fixed.

2 THE COURT: Nationwide never made that determination?

3 THE WITNESS: No, because it never got the inspection.

4 THE COURT: But Nationwide had -- well, I'll let you
5 go from there.

6 MR. MAYERSON: Thank you.

7 BY MR. MAYERSON:

8 Q Ms. Foster, if the Court were to agree that the
9 Superior Court seems to say that if, in fact, Nationwide was
10 aware of the failed repairs before the vehicle was released
11 to the Bergs, that that would be bad faith. Do you agree
12 with that?

13 MR. KREKSTEIN: Objection, Your Honor. I think,
14 again, it's asking the ultimate conclusion in the case, which
15 was objected to by Mr. Mayerson.

16 THE COURT: Didn't you ask the question in the
17 context of bad faith? Repairs defective, aware of it, allow
18 car to be returned. And you answered that, that that would
19 be bad faith.

20 MR. MAYERSON: Good. Okay.

21 THE COURT: And so how are you asking your question?

22 MR. MAYERSON: So the next -- I wasn't sure that we
23 had established that admission.

24 THE WITNESS: If you had all three elements, I did say
25 it would be bad faith.

1 BY MR. MAYERSON:

2 Q The next question is can you think of any other
3 insurance bad faith case where the insurance company
4 knowingly placed its insured in harm's way?

5 A Well, you have a very large assumption in
6 there, which is that Nationwide, in fact, did that in this
7 case.

8 Q Understood.

9 A Which is clearly under dispute. With that
10 aside, I don't remember, because it is so atypical that bad
11 faith cases arise in the physical damage arena. I can't
12 think of another case.

13 Q So there is no other case that you're aware of
14 that the insurance company actually knowingly placed its
15 insured in harm's way?

16 A Well, I will not agree to your word other. I
17 will say I'm aware of no case --

18 Q Fair enough.

19 A -- in which that is the case.

20 THE COURT: Good point. You're not acknowledging that
21 this is --

22 THE WITNESS: Exactly.

23 BY MR. MAYERSON:

24 Q Would you agree that if that, in fact,
25 happened, that that would have a pretty significant degree of

1 reprehensibility?

2 A I think I already agreed that if they did the
3 three things that I articulated, that would be bad faith.
4 Yes.

5 Q So the answer is yes?

6 A I won't agree to your reprehensibility, because
7 I think that's a characterization. I do think that, yes, if
8 all three elements -- you're aware of the defects, they were
9 aware of the seriousness of the defects and they purposely
10 and knowingly released the car, I agree that would be bad
11 faith. I also disagree that that's the facts of this case.

12 Q Understood. You also testified about the fact
13 that if an insurance company repeatedly engages in certain
14 violations of the Insurance Practices Act, that their license
15 could be pulled?

16 A That's correct.

17 Q All right. And you'll agree too that that is a
18 far more significant punishment than any punitive damage
19 award this Court might enter in this case?

20 A Right. But I also said that was in the most
21 egregious circumstances. That typically -- I'm doing this
22 from memory. I think the typical penalty is \$500 per
23 violation or it's doubled in the case of willfulness.

24 Q But they could have their license pulled?

25 A That is a technical possibility. Yes. I've

1 never known it to happen.

2 Q And you also said that a single instance of a
3 violation of any of these peripheral consumer protection
4 statutes is not a big deal, but only when they do it
5 repeatedly does it become a big deal. And so my question is
6 couldn't there be a single instance that because of the facts
7 of that single instance it snowballed to become something
8 really reprehensible?

9 A Yes. But let me -- I have to take your
10 question apart a little bit. Because you said I said that
11 these violations of other statutes don't count. That's not
12 what I said. I said violations of individual items within
13 the Unfair Insurance Practices Act, the UIPA, do not become a
14 violation until they become a pattern and practice.

15 I think in response to the judge's question of
16 essentially the same question is if there were something so
17 egregious is it possible that the insurance department would
18 take the action, it's absolutely yes. It wouldn't be under
19 UIPA because the UIPA doesn't recognize that, but the
20 insurance commissioner has a lot of tools in her box, and if
21 there were a very egregious situation, there's clearly other
22 regulatory action that could be taken.

23 Q One of the other things you said, I think you
24 were referencing a single event where Nationwide didn't
25 respond to one of my letters within ten days?

1 A I understand there was an alleged ten-day
2 violation, yes.

3 Q You also understand we would never file a bad
4 faith lawsuit over that. That would be ridiculous, right?

5 MR. KREKSTEIN: Objection, Your Honor. I'm not sure
6 that Ms. Foster can opine on what Mr. Mayerson's capable of
7 doing.

8 BY MR. MAYERSON:

9 Q I guess what I'm asking, if I can ask a
10 clarifying question, is, the allegations that we've made in
11 this case and the evidence we believe we've developed is a
12 lot different in nature and character than one of these
13 trivial violations that you say needs to be done repeatedly
14 before it becomes significant?

15 A Let me just say this. I understand the
16 allegation regarding the ten-day rule is just one of the many
17 evidentiary issues that you've raised. Yes.

18 Q All right. I'm almost ready to get to what
19 I've prepared. So far I'm just still responding to some of
20 the things you've said, one of which was that this jury award
21 of \$295 has some sort of significant meaning in this case to
22 you, at least, in your opinions. Right?

23 A No.

24 Q Oh, it doesn't?

25 A No. I was saying -- I was saying the opposite,

1 is here is an area in which I entirely agree with the
2 Superior Court, is you can't -- it's impossible to tell
3 exactly what that \$295 represented. The only thing that we
4 know it represented, which the Superior Court identified, was
5 some violation, completely undefined, under the catchall
6 provision.

7 Q So if Nationwide were to put in their proposed
8 findings of fact that this \$295 represented a specific item
9 of damages, like insurance premium payments, I think is their
10 argument, you would disagree with that?

11 A I agree with the Superior Court that you cannot
12 -- it's not apparent what -- either what the basis of the
13 verdict or the amount of the verdict represents.

14 Q Are you aware that Judge Stallone denied
15 Nationwide's motion on the same issue, where Judge Stallone
16 said we disagree that -- with Nationwide's argument. It has
17 no factual basis for knowing how the jury calculated this
18 amount of damages and therefore its argument is based only on
19 assumptions.

20 A No, I was actually unfamiliar with that.

21 Q You're aware, though, that Nationwide is
22 arguing that the \$295 represented premiums paid over a
23 certain period of time?

24 A I don't actually remember that.

25 Q Do you agree now that the alleged lack of

1 denial of benefits that we've heard so much about from
2 Nationwide is the incorrect focus in this case?

3 A No. I do not agree.

4 Q All right. Do you understand that the Superior
5 Court stated, we find the Court's focus on the alleged lack
6 of denial of benefits to be confusing in light of the Section
7 8371 which sets forth no such requirement to be entitled to
8 damages per the insurer's bad faith?

9 A What section are you on?

10 Q 1178 -- 1177 to 1178.

11 A Oops, I think I have a different version. You
12 must have the Atlantic version and I have the Superior Court.

13 THE COURT: We've played this game a couple days ago
14 too.

15 BY MR. MAYERSON:

16 Q May I read it to you and then hand --

17 A Yes, as long as you hand it to me because I
18 want to see it in context.

19 THE COURT: You can point it out in there too.

20 THE WITNESS: Yeah, if you point it out in this copy,
21 that will be fine.

22 BY MR. MAYERSON:

23 Q If you don't mind, may I read that into the
24 record?

25 A Can I just review this section for a second?

1 Q Sure. Did you see where I pointed to?

2 A Yes. I'll start right there.

3 (Brief pause.)

4 Okay.

5 Q Did you say you're ready?

6 A Yes.

7 Q So the Court actually said, to the contrary the

8 focus cannot be on whether the insurer ultimately -- and they

9 emphasize it themselves -- whether the insurer ultimately

10 fulfilled its policy obligation since if that were the case

11 then insurance companies could act in bad faith throughout

12 the entire pendency of the claim process but avoid any

13 liability under the statute by paying the claim at the end.

14 A That's what it says. Yes.

15 Q And for purposes of the Bergs' Section 8371

16 claim, whether Nationwide ultimately paid the benefits due

17 under the policy is not the relevant inquiry. The dispute is

18 whether Nationwide acted in bad faith in its dealings with

19 the Bergs. Do you agree with that?

20 A Yes. And what the Court clearly was saying is

21 that from the time that the accident occurred until the time

22 that the policy proceeds and everybody, there's no disputing,

23 were completely paid, that the actions that Nationwide took

24 during that period of time are relevant.

25 Q You know there is a dispute as to whether

1 everything was paid. That's your version. May not be
2 disputed between you and counsel. But we certainly dispute
3 that.

4 A No, I didn't realize that.

5 Q Okay. So --

6 A Are you -- that there are policy proceeds still
7 payable?

8 Q No. That the Bergs are not out-of-pocket any
9 expenses.

10 THE COURT: That there are some expenses that they're
11 out-of-pocket?

12 MR. MAYERSON: Yes. Yes.

13 THE COURT: Do you want to just tell us what that is,
14 what your theory is?

15 MR. MAYERSON: Yeah. We feel it's immaterial to the
16 case. We don't think it's a big part.

17 THE COURT: Then you didn't need to bring it up.

18 MR. MAYERSON: She keeps saying that it's undisputed
19 this and it's undisputed that. It's hard because it is
20 disputed.

21 THE COURT: Okay. Then that is disputed and -- but
22 you don't want to tell us what --

23 MR. MAYERSON: I can if you want.

24 THE COURT: Why don't you tell us how you dispute it.
25 You can't do that just off the top of your head?

1 MR. MAYERSON: I wish I could, Your Honor. But I have
2 it in my hand now.

3 BY MR. MAYERSON:

4 Q Do you agree that when the Bergs signed their
5 three-year lease, that they had to put down \$3400?

6 A (No response.)

7 Q Did you know that?

8 A No, I didn't. But that certainly would not be
9 unusual.

10 Q Right. And the accident that rendered their
11 vehicle a structural total loss allegedly happened nine
12 months into this three-year lease. Is that right?

13 A Yes. Well, I disagree with a couple of pieces
14 of that. First of all, the total loss. Because total loss
15 is a statutorily defined term. And also it is my
16 understanding that the Bergs used the automobile and drove it
17 several tens of thousands of miles during this period of
18 time.

19 Q Do you agree that that was appropriate, that
20 the Bergs were stuck driving this vehicle with, clearly,
21 structural problems?

22 A No. I wouldn't want to see anybody driving a
23 defective automobile.

24 Q So do you know why Nationwide tracked the
25 vehicle's odometer as if the Bergs had done something wrong

1 by driving the vehicle?

2 A I don't know anything about it.

3 Q I thought you just said that they --

4 A I've seen findings of facts and other things
5 that the automobile was, in fact, used.

6 Q Right. And you're aware that that's
7 Nationwide's theory, that somehow the Bergs are to blame
8 because they drove the vehicle after they learned of the
9 structural repair failures?

10 A I have never heard anyone from or representing
11 Nationwide assert that this was the Bergs' -- as you put it
12 -- the word that you just used. It was their fault or
13 whatever. I forget -- what word did he just use?

14 Q Whatever. Fault. That the Bergs were somehow
15 to blame, that the Bergs maybe were being disingenuous about
16 the vehicle being unsafe.

17 A I never heard that.

18 Q Have you read Nationwide's proposed findings of
19 facts?

20 A I've reviewed both sets very -- I reviewed them
21 but not in detail.

22 Q Okay. All right. Now, I've responded to much
23 of what you said and I'd like to ask you a couple questions
24 about the facts of this case. Were the Bergs -- you
25 mentioned that Nationwide -- rather Lindgren was an

1 independent contractor.

2 A Lindgren was a -- Lindgren is not owned or
3 controlled by Nationwide so therefore it is a third party,
4 that is correct.

5 Q What criteria did you use to make that
6 conclusion, if any?

7 A Because it's not owned -- I've never seen any
8 evidence that Lindgren is owned or controlled by Nationwide.

9 Q Okay. Were the Bergs ever advised -- so we
10 have an issue here and I want to develop and explore that.
11 Were the Bergs ever advised that Nationwide's Blue Ribbon
12 repair facility was an independent contractor?

13 A I don't -- I can't recall if those words were
14 used. I know they were advised that they could use Lindgren
15 because it was a Blue Ribbon facility.

16 Q And they would get a Nationwide Blue Ribbon
17 guarantee and a Nationwide Blue Ribbon appraisal and
18 Nationwide Blue Ribbon repairs and Nationwide Blue Ribbon
19 guarantee?

20 A I never heard the rest of those words and I
21 don't recall seeing them in the testimony.

22 Q That is an uncontested fact in this case.

23 A Okay.

24 THE COURT: What are those things?

25 Unless you know.

1 THE WITNESS: No, I don't know.

2 MR. MAYERSON: I do know.

3 THE WITNESS: I've never heard those words.

4 MR. MAYERSON: I don't want to get lost in my
5 direction here. I'd like to get to it if we can.

6 THE COURT: You can tell me later then.

7 MR. MAYERSON: I think we're going to ask Ms. Foster
8 if she's ever seen it because it's relevant to her opinion
9 that Nationwide can't be liable for violations of the
10 Appraisers Act in this case.

11 THE COURT: I don't know what that had to do with the
12 question I asked.

13 BY MR. MAYERSON:

14 Q As part of the Blue Ribbon Repair Program was
15 Lindgren expected to comply with Nationwide's requirement to
16 use automated software program which had pre-established
17 pricing and repair procedure times programmed into the
18 software?

19 A I don't recall hearing anything about that.
20 I'm going back trying -- thinking about the whole trial. I
21 just don't recall if there was any testimony about that.

22 Q As part of the Blue Ribbon Repair Program was
23 the repair facility required to have specific equipment?

24 A Again, I just don't recall.

25 Q As part of the Blue Ribbon Repair Program was

1 the approved repair facility required to permit Nationwide
2 personnel to conduct routine inspections of repairs in
3 progress and complete at Nationwide's discretion and without
4 pre-approval from the repair facility?

5 MR. KREKSTEIN: Your Honor, I understand Your Honor is
6 giving wide latitude, but I get the impression that Mr.
7 Mayerson is asking -- basically giving Ms. Foster a test and
8 asking her her recollection of -- I don't even know if those
9 are facts, but whether she recollects certain facts in her
10 review of the documents. I don't think that Ms. Foster is up
11 here to recite what she read. Nor probably could any of us.
12 She's up there giving her opinions as an expert. If Mr.
13 Mayerson wants to question her on her opinions, I think
14 that's valid. But I think these questions are just
15 completely off the reservation as far as what Ms. Foster is
16 supposed to be testifying to. It's not a memory exam.

17 MR. MAYERSON: Ms. Foster's testified that she's read
18 everything in the file, that she is the --

19 MR. KREKSTEIN: I have read everything in the file;
20 and I can assure you, I remember maybe a little of it.

21 MR. MAYERSON: And so the foundation of Ms. Foster's
22 opinions may be at odds with what she actually knows is in
23 the file and her -- specifically her opinion that this was an
24 independent contractor may be at odds with what was actually
25 happening. Especially if she doesn't even know what was

1 actually happening.

2 THE COURT: So the question you're asking is what?

3 MR. MAYERSON: Well, the question I'm asking her is if
4 she is aware that Nationwide controlled the repair process by
5 requiring the repair facilities to use automated software, by
6 requiring them to have certain equipment, by requiring them
7 to have control and inspections and come in there and then to
8 do monthly performance evaluations. I mean, those are the
9 things that make up an agency relationship.

10 THE COURT: Well, the objection's overruled. I'm not
11 sure if you know that and that had something to do with your
12 opinion or you didn't know it, but you can certainly answer
13 that question.

14 THE WITNESS: It's possible I looked at that before.
15 But I can say this, is that if all of those things were true,
16 I don't see anything inconsistent between that and a third
17 party relationship. If you -- you know, it's not -- it's
18 very common that contracts have standards of performance,
19 have inspection rights, have audit rights, have all of the
20 rest of it. That doesn't change the nature of the contract
21 and change it into an agency simply because those kinds of
22 provisions are in the contract.

23 BY MR. MAYERSON:

24 Q What about a parent agency?

25 A What?

1 Q A parent agency.

2 A Oh, a parent agency.

3 THE COURT: Parent authority you mean?

4 BY MR. MAYERSON:

5 Q When a third party is led to believe there is
6 an agency relationship and they rely upon that.

7 A I just don't recall that even being discussed
8 in this case.

9 Q It's being discussed right now though.

10 A Well...

11 Q All right. So you're unfamiliar with it, is
12 what you're saying?

13 A Well, what I'm saying is I -- I -- okay.

14 THE COURT: So you're asking --

15 THE WITNESS: I'm not sure there's a question.

16 THE COURT: Are you asking if these issues constitute
17 control?

18 MR. MAYERSON: I am undermining her opinion that there
19 was no agency relationship because I think it was a
20 gratuitous statement in her testimony that is unsupported by
21 any facts.

22 THE COURT: Right. So I don't know where you're going
23 with this. What's your theory with this witness who's made
24 this statement? Unless your theory is that all of this
25 constitutes control, which is what this witness has said

1 constitutes the lack of independence. If that's what you're
2 saying. I just wonder where you're going with this.

3 MR. MAYERSON: What I want to do, first and foremost,
4 is to show that Nationwide is liable for the Appraisers Act
5 and all the violations at this repair shop because of
6 Nationwide's hand in everything that happened.

7 THE COURT: That may be. I don't know what your
8 question is going to be here and just -- well, ask your next
9 question.

10 BY MR. MAYERSON:

11 Q Are you aware that the guidelines of Blue
12 Ribbon Repair Program permit Nationwide to do random monthly
13 inspections on routine basis?

14 A Yes, I remember testimony about that.

15 Q And does Nationwide offer a Blue Ribbon
16 appraisal guarantee guaranteeing the appraisal includes all
17 damage?

18 A Yes. I know there were various guarantees
19 associated with Blue Ribbon.

20 Q In addition to that appraisal guarantee, that
21 Nationwide also offer a Blue Ribbon guarantee on the quality
22 of the repairs?

23 A Yes.

24 Q And since the Court had asked, I do have a
25 copy, which I guess we could mark as Exhibit 78.

1 (Nationwide Blue Ribbon Repair Program Appraisal
2 Guarantee and Repair Guarantee - marked for identification as
3 EXHIBIT NO. 78.)

4 MR. MAYERSON: I guess we'll label it Exhibit 78,
5 Nationwide Blue Ribbon Repair Program Appraisal Guarantee and
6 Repair Guarantee.

7 THE COURT: I'm sorry?

8 MR. MAYERSON: I was simply naming it for the court
9 reporter as an exhibit.

10 THE COURT: Oh. All right. No objection to that?

11 MR. KREKSTEIN: No objection, Your Honor.

12 THE COURT: I mean, Mr. Krekstein, any objection to --

13 MR. KREKSTEIN: I'm sorry. I was looking down. I
14 said no objection.

15 THE COURT: Oh, okay. Thank you.

16 BY MR. MAYERSON:

17 Q Does that, in your opinion, get us any closer
18 to making Nationwide responsible for violations of the
19 Appraisers Act if their guarantee on the appraisal violates
20 state law?

21 A No. If you look at the Appraiser Act and look
22 at the definition of appraiser, it says it is a natural
23 person.

24 Q Okay.

25 A It says it is a natural person. It is not the

1 employer. It is not somebody who enters into a contract with
2 them. The Appraisers Act on its face applies only to natural
3 persons.

4 Q I'm going to hand you a copy of what's been
5 stipulated to as the regulation in effect on the date of
6 loss, that being September 4th, 1996. It's a certified copy.
7 This is attached to the Court's proposed conclusions of law.
8 I'd like you to read that highlighted green portion there,
9 which is the definition of appraisal.

10 THE COURT: Is this something that's already marked?

11 MR. MAYERSON: We'll mark this, just to be sure.

12 THE COURT: I'm not saying you should mark it. I just
13 wondered if it was already marked.

14 MR. MAYERSON: Let's mark it as 79. Exhibit 79.

15 MR. KREKSTEIN: Can I see it, Your Honor?

16 THE COURT: Yes.

17 (Chapter 62, Motor Vehicle Physical Damage Appraisers
18 - marked for identification as EXHIBIT NO. 79.)

19 MR. MAYERSON: If we could put the stipulation on the
20 record, then we don't need it. We don't need to re-mark it
21 then. There's a separate stip. Do the parties agree that
22 this is a correct version of the regulations in force on
23 September 4th, 1996?

24 BY MR. MAYERSON:

25 Q Can you read the --

1 MR. KREKSTEIN: Excuse me. Is that what the
2 stipulation says? Can I see it?

3 MR. MAYERSON: You want me to read the stipulation?

4 MR. KREKSTEIN: I just want to read it first.

5 (Brief pause.)

6 THE COURT: Are you going to read the stipulation? Is
7 that what you're going to do?

8 MR. MAYERSON: Do you want me to read the stipulation
9 into the record? Sure.

10 THE COURT: I want to know what it says.

11 MR. MAYERSON: The parties stipulate that the records
12 from the Legislative Reference Bureau attached hereto as
13 Exhibit A mailed on September 21st, 2004, to Benjamin
14 Mayerson, Esquire, are true and correct copies. By signing
15 this stipulation, the parties are not waiving any objection
16 to admissibility or relevance but only to the authenticity at
17 the trial of this matter. And it is signed by counsel for
18 Nationwide, Craig Cohen, as well as counsel to the former
19 co-defendants who have now been released.

20 THE COURT: So this goes to authenticity of --

21 MR. MAYERSON: The regulation to the Appraisers Act.

22 THE COURT: Of September 21st, 2004.

23 MR. MAYERSON: Mailed on September 21st, 2004,
24 applicable for September 4th, 1996.

25 THE COURT: So this was what was in effect September

1 4th of '96. It's authentic. Okay.

2 MR. MAYERSON: All right.

3 BY MR. MAYERSON:

4 Q Ms. Foster, could you read into the record --
5 one moment.

6 (Brief pause.)

7 THE COURT: Mr. Mayerson, you may proceed.

8 BY MR. MAYERSON:

9 Q Ms. Foster, I understand that your opinion is
10 to sort of insulate Nationwide from compliance or violation
11 of the Appraisers Act.

12 MR. KREKSTEIN: Objection, Your Honor.

13 THE COURT: Sustained.

14 MR. KREKSTEIN: Argumentative.

15 BY MR. MAYERSON:

16 Q You believe that Nationwide's not liable for
17 violations of the Appraisers Act committed in this case, if
18 any?

19 A Committed by Lindgren.

20 Q Okay. Now, having said that, I'd like if you
21 could read into the record the definition of an appraisal.

22 A It defines appraisal as a monetary
23 determination of damage incurred by a motor vehicle when the
24 making of such a determination is assigned in order to fix
25 the value of insurance claims. Appraisals shall include a

1 determination whether made by the insurer, its employees, its
2 agents or related entities or made by another individual or
3 entity otherwise assigned to make a determination. In other
4 words, third parties.

5 MR. MAYERSON: Off the record.

6 (Discussion off the record.)

7 BY MR. MAYERSON:

8 Q So in your role in the insurance department,
9 you do market conduct examinations?

10 A Yes.

11 THE COURT: Market conduct examinations?

12 MR. MAYERSON: I'm going to ask her what it is.

13 BY MR. MAYERSON:

14 Q What is it?

15 A Market conduct examinations is a review of an
16 insurance company's operating practices and procedures.

17 Q And do you agree that the Department of
18 Insurance has fined Nationwide or filed action against
19 Nationwide for violating the Appraisers Act, specifically for
20 failure to include the appraiser's license number as required
21 by the Appraisers Act?

22 A I'm not aware, but if, in fact, there were
23 Nationwide appraisers who were doing appraisals and failed to
24 do that, that would not surprise me.

25 Q All right. So --

1 THE COURT: Could you give me those words again?
2 Market?

3 THE WITNESS: Conduct.

4 MR. MAYERSON: Conduct examination.

5 THE COURT: And which is review of the appraisals?

6 THE WITNESS: No. It's review of the practices and
7 procedures of an insurance company. It's everything from
8 claims handling to rates. It's -- it can be very broad. But
9 appraisals could be one of them.

10 BY MR. MAYERSON:

11 Q And Ms. Foster -- and I assume what you're
12 saying is that, of course, the insurance department has at
13 times charged insurance companies for violating the
14 Appraisers Act, which is fine if it's actually an insurance
15 company appraiser doing it, but in this instance it was the
16 Blue Ribbon repair shop that did it, so Nationwide is not
17 liable for any unlawful conduct?

18 A Yes.

19 Q Okay. Do you agree that Nationwide has to
20 appraise the Berg loss?

21 A Sure. Nationwide -- that's part of the
22 adjustment process.

23 Q Do you agree that Nationwide assigned its
24 appraisal duties to its Blue Ribbon repair shop?

25 A Yes.

1 Q Do you agree that all the witnesses that
2 testified in this matter agree that Nationwide's assigned
3 appraiser was Doug Joffred at the Blue Ribbon repair
4 facility?

5 A Yes. Well, that's my understanding. That it
6 was Doug Joffred.

7 Q Do you agree that, according to the number of
8 hours written in the repair appraisal documents -- I'm not
9 talking about the total loss. I'm talking about what
10 happened after the total loss was done away with and now
11 we're going to repair the vehicle. Do you agree that the
12 number of hours written in those documents, that the repairs
13 to this vehicle should have taken 30 days?

14 A I don't know.

15 Q That's according to Doug Witmer. And
16 specifically, Doug Witmer -- if you want to take a look at
17 his testimony, I don't know that we need to go through it,
18 but it's at Page 310, Line 1 through 17. Mr. Witmer admits
19 there's a standard formula for this, and that this -- under
20 this repairs it should have been done in 30 days. Do you
21 want me to pull out the testimony?

22 THE COURT: What are you asking this witness?

23 MR. MAYERSON: I'm asking her if she agrees that the
24 repairs to this vehicle should have only taken 30 days --

25 THE WITNESS: I don't know.

1 MR. MAYERSON: -- according to standard formula.
2 THE WITNESS: I don't know.
3 THE COURT: Would that help if you were to look at --
4 THE WITNESS: No. Because I think that's a -- that's
5 something that a -- somebody who works on car would know how
6 long it would take.
7 THE COURT: They would know, but you would not
8 necessarily --
9 THE WITNESS: I don't feel like I -- I could look at
10 the list all day and I would have no idea how long it would
11 take.
12 BY MR. MAYERSON:
13 Q For purposes of the following questions, would
14 you agree that that's what the record reflects?
15 A Well, I guess I should check then if that's --
16 Q Okay.
17 A Is that in this book?
18 Q Yes. It would be Doug Witmer, at Page 310.
19 A Hold on.
20 THE COURT: You could ask it as a hypothetical.
21 MR. MAYERSON: Should I do that?
22 THE COURT: That's fine. Whatever is --
23 MR. MAYERSON: I think she's almost there now.
24 THE WITNESS: Okay. 310.
25 MR. MAYERSON: Line 1 through 17.

1 THE WITNESS: Okay.

2 Okay.

3 BY MR. MAYERSON:

4 Q You agree?

5 A I agree with what?

6 Q You agree that it should have taken 30 days
7 according to Doug Wiltmer, using standard Nationwide formulas?

8 MR. KREKSTEIN: Objection, Your Honor. She can
9 testify that that's what it says but I don't -- she's already
10 testified she's not capable of making that --

11 THE COURT: We don't need her to tell us that. It
12 says what it says. She's not able to say one way or another.

13 MR. MAYERSON: Next question.

14 THE COURT: Next question.

15 BY MR. MAYERSON:

16 Q Do you agree the repair efforts lasted just
17 about four months from the date the vehicle was smashed?

18 A The -- I think that's right. I have to go back
19 and calculate the dates but that sounds correct.

20 Q September 4th through December 30th, 1996. Do
21 you agree that after four months, the vehicle was returned to
22 the Bergs as if fully restored?

23 A I don't -- I mean, the vehicle was returned to
24 the Bergs. I don't recall anybody -- or any testimony about
25 it. It was returned, and I know it came back a few days

1 later, there were some additional repairs made and then
2 several months later there were major issues.

3 Q So you're unsure of whether or not the Bergs
4 were told there might be some residual repair problems? Do
5 you have any evidence to suggest they were told that?

6 A No. I just don't recall any evidence one way
7 or another.

8 Q You agree that the twisted frame was not
9 restored?

10 A I would agree that the repairs were defective.

11 Q Do you agree that the twisted frame was part of
12 the defective repairs, that the frame was left on the vehicle
13 with unrepaired damage?

14 A I'm trying to remember if that was -- I know
15 there was a litany of issues that were identified. I just
16 don't recall. It's very possible that the frame was one of
17 those issues.

18 Q Do you agree -- if we establish later and get
19 you to agree that the frame was one of the issues that was
20 unrepaired, do you agree that the twisted frame was the
21 reason the vehicle was originally declared a total loss by
22 Doug Joffred?

23 MR. KREKSTEIN: Objection, Your Honor. She's already
24 testified that she's not able to discern what was damaged and
25 what wasn't. She's not a repair person.

1 BY MR. MAYERSON:

2 Q Based on your review of the claim log, where
3 there's a note in there that says vehicle's a total loss,
4 frame is twisted --

5 MR. KREKSTEIN: Now we're back to a memory test, Your
6 Honor. The record is what the record is. I don't understand
7 what Ms. Foster's recollection of the record has to do with
8 anything.

9 MR. MAYERSON: Ms. Foster gave a recollection of what
10 the record said. And I'm showing that her recollection is
11 not supported by what's actually in the record.

12 MR. KREKSTEIN: I'm unaware that Ms. Foster said
13 anything related to that.

14 MR. MAYERSON: All right. I can move on.

15 BY MR. MAYERSON:

16 Q Do you agree that the primary structural
17 components on the front of the vehicle remained, quote,
18 significantly misaligned and with no identifiable benefit,
19 end quote, from the structural repair efforts required by
20 Nationwide and that this was opined by Nationwide's own
21 expert, William Anderton?

22 MR. KREKSTEIN: Same objection, Your Honor.

23 THE WITNESS: I --

24 THE COURT: Well, do you know?

25 THE WITNESS: No. I know -- I know that there were

1 defective -- I said over and over again that the repairs were
2 defective. The exact nature of the repairs and what specific
3 parts, I don't recollect.

4 THE COURT: You can't answer that question?

5 THE WITNESS: I certainly can't recollect who said --
6 which of the many people who talked about them may have said
7 exactly what.

8 BY MR. MAYERSON:

9 Q Were you aware that when the Bergs returned the
10 vehicle on numerous occasions, that one of the complaints was
11 that the tires had worn down to the metal belt, both front
12 tires?

13 A Is this during the period from when it was
14 originally returned to them in December?

15 Q This was one month after it was returned to
16 them. Both Mrs. Berg and Doug Joffred, the assigned
17 appraiser, confirmed and admitted that the tires were worn
18 down to the metal belts.

19 A I do know there was -- after the first return,
20 the car came back and there were further repairs that were
21 made. I don't recall that it related directly to the tires.

22 Q All right. I'd like to show you the Potosnak
23 report. And you had testified earlier that the Potosnak
24 report showed that there might have been some problems. I
25 think you called it a preliminary report.

1 A Correct. From the claims logs. Yes.

2 Q We are looking at trial Exhibit Number 8, page
3 4 of 70.

4 MR. MAYERSON: Your Honor, would you like a copy?

5 THE COURT: He did an inspection in April of 1998?

6 MR. MAYERSON: Right.

7 THE COURT: Okay.

8 BY MR. MAYERSON:

9 Q Now, you had characterized this as a
10 superficial inspection. I don't know the word you used but
11 you said --

12 A No, I never used the word superficial.

13 Q What did you use?

14 A I said that my understanding is Mr. Potosnak
15 was sent out -- after the demand by plaintiffs' counsel that
16 there be an independent inspection of the vehicle, Mr.
17 Potosnak was sent out to determine whether or not that was a
18 reasonable request and one that Nationwide should agree to.
19 Mr. Potosnak did go out. He did look at the vehicle and he
20 did agree that there was evidence of issues and that
21 therefore they proceeded to try to hire an independent expert
22 and have the vehicle inspected, as requested by you.

23 Q When you were testifying you said we all --
24 this was -- well, strike that. Let's look at what the report
25 says. I've highlighted a couple parts. First of all, it was

1 ordered by a gentleman named Bruce Bashore, right?

2 A Um-hum.

3 Q And Mr. Potosnak said he did not discuss these
4 findings with PH, which is the policyholder, correct?

5 A Correct.

6 Q And that the front tires/wheels, left, LF, left
7 front, in substantially in comparison to the right front. Do
8 you see that?

9 A Correct. Yes.

10 Q So the wheels are off alignment, correct?

11 MR. KREKSTEIN: Objection, Your Honor. Again, Ms.
12 Foster is not a repair person.

13 MR. MAYERSON: Well, it says substantially in.

14 MR. KREKSTEIN: It says what it says. I don't
15 understand why --

16 THE COURT: Why don't you perhaps -- do you want to
17 ask a question about this? Perhaps the witness can review
18 this and then you can ask your question.

19 THE WITNESS: Yes. I've seen this before.

20 BY MR. MAYERSON:

21 Q All right. Do you agree that the detail in
22 this report was available to Nationwide at any time that
23 Nationwide may have examined this vehicle in the four months
24 before the vehicle was returned to the Bergs?

25 MR. KREKSTEIN: Objection, Your Honor.

1 THE WITNESS: I don't know.

2 MR. KREKSTEIN: He's referring to an April '98 log
3 note and saying would Nationwide have had this information
4 available to them back in time.

5 MR. MAYERSON: Let me ask you this question -- I'm
6 sorry, Your Honor. I don't want to --

7 THE COURT: Well, this is an independent report from
8 Mr. Potosnak. Now it's by Mr. Bashore.

9 THE WITNESS: He's actually a Nationwide employee.
10 Mr. Potosnak is.

11 THE COURT: Mr. Potosnak is a Nationwide employee?

12 THE WITNESS: Correct.

13 THE COURT: So he does an inspection on April 28th,
14 1999. And this is what he writes.

15 THE WITNESS: Correct.

16 MR. MAYERSON: Not 19 -- 1998.

17 THE COURT: 1998. I'm sorry. And then you want to
18 know if this was available from April of 1998 to be looked at
19 by Nationwide up until December 23rd of '98?

20 MR. MAYERSON: Let me ask a different question, lay a
21 foundation, because it is confusing.

22 BY MR. MAYERSON:

23 Q Ms. Foster, Mr. Potosnak put this vehicle up on
24 a lift, correct?

25 A Correct. That's my understanding.

1 Q And he didn't take the vehicle apart?

2 A I don't think so.

3 Q So he was able to see this -- all this detail
4 that's in here from putting the vehicle up on a lift?

5 A That's my understanding. Yes.

6 Q So if somebody else had put the vehicle up on a
7 lift at some date prior to this, this would have been visible
8 to them too?

9 A That's right. And if plaintiffs had -- when
10 Nationwide was first notified of the fact that there were
11 defects, if they had been given access to the car at that
12 time and had done the review that they did at 4/30/1998, they
13 would have known it. That's correct. But they were not
14 given access at your instruction.

15 Q I was hoping to prevent that whole line of
16 questions about how we prevented them from getting that
17 inspection. But I guess we'll go through it. But before we
18 --

19 A No, I'm just referring to the letter that said
20 --

21 Q I know what you're referring to.

22 A Yeah.

23 Q And we'll get back to it. But what I want to
24 make sure the Court understands is that this report from
25 Stephen Potosnak --

1 MR. KREKSTEIN: It's not a question, Your Honor. He's
2 lecturing to the Court.

3 MR. MAYERSON: All right. Sorry.

4 BY MR. MAYERSON:

5 Q I'd like to make clear -- I'd like the record
6 to reflect --

7 MR. KREKSTEIN: That's not a question, Your Honor.

8 MR. MAYERSON: All right. I'll strike that.

9 BY MR. MAYERSON:

10 Q Ms. Foster, do you agree that Nationwide did
11 not produce this Potosnak report to the Bergs for five years?

12 A I know there was a lot of litigation and
13 various Court rulings about this particular log entry.

14 THE COURT: Do you know, yes or no? Do you know that?

15 THE WITNESS: Well, I do know that it wasn't produced
16 until sometime later. Yes.

17 BY MR. MAYERSON:

18 Q Five years. Here's the document where
19 Nationwide finally disclosed it. On March 21st -- actually
20 on May 5th, 2003, which was marked as Exhibit Number 67.
21 Which is an answer to request for admissions.

22 A Okay.

23 Q So you agree now that Nationwide did not
24 disclose the findings of that Potosnak report to the Bergs
25 for five years?

1 A I agreed with you from the beginning.

2 Q All right. Well, when you -- okay. Thank you.

3 Do you believe that Nationwide had a reasonable basis
4 to withhold this information from the Bergs for five years?

5 MR. KREKSTEIN: Objection, Your Honor. Mr. Mayerson
6 has not laid a foundation that Nationwide withheld anything.

7 MR. MAYERSON: I thought we just established that.

8 MR. KREKSTEIN: What Mr. Mayerson established is that
9 Mr. Potosnak's log note was not provided to Mr. Mayerson
10 until, I believe, 2003. Withholding is something different.

11 THE COURT: What?

12 MR. KREKSTEIN: Withholding is something different.

13 MR. MAYERSON: All right.

14 THE COURT: Okay.

15 MR. MAYERSON: I'll go further then. Just take
16 longer.

17 BY MR. MAYERSON:

18 Q Ms. Foster, are you aware that Nationwide was
19 on two occasions ordered to produce the contents of their
20 claim file subject only to the attorney-client privilege?

21 A I know there was a lot of litigation over this.
22 I don't remember the specifics. And I do remember that
23 attorney-client privilege was part of it. Presumably because
24 they were already in litigation by the time that this
25 inspection was done.

1 Q You keep talking about that they were already
2 in litigation; but you understand, don't you, that the
3 Superior Court has said that the insurer's duty of good faith
4 continues after suit is filed?

5 A Oh, yes, of course.

6 Q So the fact --

7 A No, I say that because you brought up the
8 question of the attorney-client privilege. Once you're in
9 litigation, now there is -- I'm just putting it in the
10 context of the attorney-client privilege. I wasn't taking a
11 position one way or another on the other issue.

12 Q So you agree that Nationwide had a continuing
13 duty of good faith when the lawsuit was filed, and that the
14 lawsuit being filed on May 4th, which is roughly a week or so
15 after the Potosnak inspection, is really irrelevant, right?

16 A Yes. I think their duty to -- their duty to
17 continue in good faith to process the claim extended all the
18 way until they purchased the automobile. Yes.

19 Q Is there any reason that you -- you're not an
20 automotive expert, so you have no idea whether the Bergs
21 should have been driving that vehicle once Mr. Potosnak saw
22 the fact that the wheels were off?

23 A No. I have -- I couldn't give an opinion on
24 that.

25 Q But you do know that Nationwide allowed the

1 Bergs to continue driving the vehicle, in fact didn't tell
2 them what the Potosnak inspection found, right?

3 A That's my understanding.

4 Q And in fact, they tracked the mileage on the
5 vehicle's odometer while the Bergs were driving the vehicle;
6 is that right?

7 A I don't know how they did it at the time. I
8 don't know if there was a reconstruction later.

9 Q That's a great point. Because didn't
10 Nationwide require numerous inspections of the vehicle
11 throughout this period of time? Terry Shaw --

12 THE COURT: You mean -- period of time, you mean up
13 until 2003?

14 MR. MAYERSON: I mean from the time the Bergs retained
15 representation and sent a letter to Nationwide, the vehicle
16 was inspected by Terry Shaw first -- well, first it was
17 Potosnak --

18 THE COURT: What period of time? That's all I want to
19 know.

20 THE WITNESS: After April of 1998.

21 MR. MAYERSON: From November of '97 through the
22 Anderton inspection -- well, until they bought the vehicle in
23 '99. January '99. So about a year.

24 THE WITNESS: Yes. The car was looked at by a number
25 of people.

1 BY MR. MAYERSON:

2 Q Nationwide kept saying they need another
3 inspection, another inspection, right?

4 A That's because most of the inspections didn't
5 happen.

6 Q Some of the inspections did happen, though,
7 right?

8 A Only partials.

9 Q Okay. Each time a partial inspection happened,
10 Nationwide took note of the odometer, right?

11 A I would think that would be in the ordinary
12 course.

13 Q Okay. And why were these inspections only
14 partial, if you know?

15 A One of them I know is because the Bergs weren't
16 present. I know there was another case where apparently an
17 inspection had been set and at the very last minute, I guess
18 plaintiffs' counsel said it had to be at a neutral location
19 whatever that meant. So it was cancelled.

20 Q I think your facts are a little fuzzy on this
21 and that's probably why you --

22 A No, I don't think so.

23 Q Okay.

24 A I'll be happy to refer to my report because I
25 know that I laid that all out in detail.

1 Q You're trying to say that the Bergs interfered
2 with Nationwide's ability to get an inspection of the
3 vehicle, right?

4 A No.

5 Q Oh. I thought you were.

6 A No. I'm not trying to characterize it. I'm
7 simply trying to say those are the facts. And that those
8 facts are relevant to Nationwide's response and Nationwide's
9 handling of the claims. I am not imputing --

10 THE COURT: The facts are that Nationwide --

11 THE WITNESS: -- still did not --

12 THE COURT: Excuse me. -- that Bergs' counsel did
13 interfere with the ability of Nationwide to do a full and
14 complete inspection, because of what you just said, that --

15 THE WITNESS: Well, he's trying to say I'm imputing
16 something to the plaintiffs and I don't mean to do that at
17 all. I'm simply saying these are the facts for whatever
18 reason --

19 THE COURT: We want to know what the reasons were that
20 there was no inspection. And you're saying because
21 plaintiffs' counsel at one point wanted to do it at a neutral
22 place. Another one was that the Bergs were not present?

23 THE WITNESS: Correct. Those are the things that
24 happened and those are the things that caused delay. And
25 that delay, I'm simply making the point, is not the

1 responsibility of Nationwide.

2 BY MR. MAYERSON:

3 Q Okay. And that's your opinion based on what
4 you've reviewed?

5 A Correct.

6 Q Now, the Potosnak inspection was April 28th,
7 correct?

8 A Correct.

9 Q And then Terry Shaw inspected the vehicle on
10 May 16th?

11 A May 16th.

12 Q That's the one where Mr. Berg agreed to be at
13 his house and Terry Shaw went to his home and that's on --

14 A That's on May --

15 Q May 16th. About two weeks after the Potosnak
16 inspection.

17 A That's on May the 12th.

18 Q Are you aware that Terry Shaw did inspect the
19 vehicle on that date and did, in fact, report to Nationwide
20 that there was unrepaired frame damage on the vehicle?

21 A Yes. I understood he did an external review.

22 Q Okay. And do you understand that Mr. Berg said
23 he was there waiting?

24 A I've seen that in findings of fact or something
25 somewhere.

1 Q And having -- Mr. Berg having delivered the
2 vehicle to Mr. Potosnak to do the comprehensive inspection
3 report of Mr. Potosnak, there would be no reason for Mr. Berg
4 to try and interfere with Mr. Shaw's inspection, correct?

5 A I told you, I am -- I am not implying that in
6 any way.

7 Q I just want to be clear that perhaps it was Mr.
8 Shaw who didn't make a good faith effort or a diligent effort
9 to try and find Mr. Berg, who was there waiting for him.
10 Right?

11 A I don't know what -- I don't know. I was not
12 there. I don't know who did what. What I do know is that
13 for these various reasons, a complete total inspection was
14 not completed.

15 Q Did the Bergs have any motive to delay the
16 final inspection of this car?

17 A I have no idea of what the Bergs are thinking
18 or what you were thinking.

19 Q You can't think of any possible motive?

20 A I do not impute any motive.

21 Q In fact, the Bergs have purchased a replacement
22 vehicle with their own money by this point because Nationwide
23 wouldn't buy this vehicle and now they had two car payments,
24 right?

25 A Nationwide did not purchase the vehicle until

1 the end because it had a duty to ascertain the exact extent
2 and nature of the damage. It has a -- it has a duty not only
3 to the -- to this policyholder, Nationwide has a
4 responsibility to all of its policyholders to make sure that
5 only claims that are due and payable are paid.

6 Q Are you telling this Court that -- are you
7 telling everybody here that the findings in that Potosnak
8 report would have risked other policyholders if Nationwide
9 would have honored the claim on that date?

10 A I'm saying that this was not -- the Potosnak
11 report was not a final report. You had asked for an
12 independent report. They tried to do that so that they could
13 come to a final determination as to whether the car should be
14 repaired again or whether it should be a total loss or what
15 should happen to it.

16 THE COURT: Semantics-wise, we're talking about final
17 report, final inspection. Is that what we're talking about?

18 THE WITNESS: Right.

19 THE COURT: What is a final inspection?

20 THE WITNESS: A final inspection is an actual report
21 from an appraiser that says, you know, this is everything
22 that we think is wrong and, most importantly, it contains the
23 decision whether or not the car is repairable or whether it
24 is a total loss.

25 And it's saying about the total loss is very important

1 because Mr. Mayerson mentioned that the words total loss
2 appear in the claims file. But a total loss is a defined
3 statutory term. And a car is only declared a total loss when
4 certain specific steps are taken.

5 THE COURT: Could you just hold on one second. I want
6 to read this.

7 (Brief pause.)

8 THE COURT: So you're saying --

9 THE WITNESS: I'm saying this is --

10 THE COURT: Excuse me. There's more to read. Let me
11 just read this.

12 THE WITNESS: Oh, sure.

13 (Brief pause.)

14 THE COURT: So we have a final report someplace?

15 THE WITNESS: No.

16 MR. KREKSTEIN: Actually, Your Honor, I don't want to
17 interrupt and I don't want to be accused of coaching the
18 witness. Can I refresh her recollection?

19 THE COURT: It seems like that is correct, we don't
20 have a final report because --

21 THE WITNESS: Oh, are you talking about the Atherton
22 [sic] report? Oh, okay.

23 THE COURT: Okay.

24 THE WITNESS: What was the date of that?

25 MR. KREKSTEIN: Can I speak to the witness briefly?

1 THE COURT: So there was a final report?

2 THE WITNESS: Yes. I'm trying to remember --

3 THE COURT: Atherton report?

4 THE WITNESS: Yes. I was thinking that was after --

5 THE COURT: Can you tell us what the Atherton report

6 --

7 MR. KREKSTEIN: Anderton. William Anderton was an

8 expert retained --

9 THE COURT: I mean what number.

10 MR. KREKSTEIN: What finding of fact?

11 THE COURT: Well --

12 MR. KREKSTEIN: Oh, his report.

13 THE COURT: Yeah.

14 MR. KREKSTEIN: I don't think his report's in

15 evidence. He testified though.

16 MR. MAYERSON: I can address it, Your Honor, in a

17 question if you'd like.

18 THE COURT: The point is, what my question is, is this

19 report from April 30th, 1998 --

20 MR. KREKSTEIN: That's a log note, Your Honor.

21 THE COURT: Okay, log note. This doesn't tell you

22 what a final report would tell you?

23 THE WITNESS: No.

24 THE COURT: You never got a final report, so you never

25 got what you needed -- Nationwide needed. But for some

1 reason they made a decision to declare it totaled at that
2 time, the end of December, because it was an economic
3 decision. Is that what I --

4 THE WITNESS: Because the lease was up and the car was
5 going to be --

6 THE COURT: An economic decision?

7 THE WITNESS: Right. And let me say why this isn't a
8 final report. It's a listing. It's a listing. It doesn't
9 have any evaluations in it, it doesn't have any cost
10 estimates, none of the things that are necessary in order for
11 there to be a full evaluation whether the car is repairable
12 or not.

13 BY MR. MAYERSON:

14 Q That begs the question, doesn't it? Why not?
15 Why didn't Nationwide do a full report on that date when the
16 Bergs delivered them the vehicle and the Bergs had written
17 them a letter on April 22nd saying time is of the essence, we
18 have to file a lawsuit, we don't want to, what is Nationwide
19 going to do about this. And then Nationwide does a non-final
20 report. Is that right?

21 A That's right. Because -- because your letter
22 said you wanted a evaluation by an independent expert.

23 Q Well --

24 A In order to make -- just because -- just
25 because you ask for it, Nationwide has an obligation to

1 determine whether or not there is cause to go ahead and do
2 that. And that's -- that is what Mr. Potosnak did. He went
3 out. He said yes, there's cause and they immediately decided
4 to hire Mr. Shaw to do the independent evaluation that you
5 had requested.

6 THE COURT: So here where it says spoke with Bruce
7 Bashore and reviewed, waiting for call back from shop with
8 decision, that means whether the decision would be made to
9 make a -- to do a full report?

10 THE WITNESS: No. I don't -- I'm not -- I don't know.
11 Mr. Bashore was his supervisor.

12 THE COURT: Well, what was that decision that he was
13 waiting for?

14 THE WITNESS: I don't know.

15 MR. MAYERSON: They wanted Lindgren to buy the
16 vehicle.

17 THE COURT: Well, you don't know, okay.

18 BY MR. MAYERSON:

19 Q Do you dispute that?

20 A I don't know.

21 THE COURT: Who's they?

22 MR. MAYERSON: Nationwide wanted Lindgren to buy the
23 vehicle. That's what the discussion was.

24 THE COURT: Do you know?

25 MR. MAYERSON: That's argument, Your Honor.

1 THE COURT: Well, then we'll move on.

2 MR. MAYERSON: All right.

3 BY MR. MAYERSON:

4 Q So at that date at least Mr. Bashore knew about
5 everything that was in that report; is that right?

6 A Correct.

7 Q All right. I'd like to show you trial Exhibit
8 Number 15, which is Bruce Bashore's letter on May 19th.

9 THE COURT: 1998.

10 MR. MAYERSON: Yes.

11 BY MR. MAYERSON:

12 Q So it's right after the Potosnak inspection.
13 You see what Mr. Bashore says, the portion I highlighted
14 there?

15 A Yes. It says if the independent expert finds
16 any problems with the repairs.

17 Q Why would Mr. Bashore use that term, any
18 problems, when he knows from the Potosnak report the
19 extensive repair problems?

20 A I don't know.

21 Q You don't know why. But we do know that they
22 didn't tell the Bergs about the extensive problems that were
23 revealed in the Potosnak report, right?

24 A I think we covered that. Yes.

25 Q I'd like to show you what's been marked as

1 trial Exhibit 50. This is marked collectively as Exhibit 50
2 with some other documents. But it's a letter dated September
3 16th, 1998, from Nationwide's counsel. Do you see he uses
4 the same language, suggesting that Nationwide's unaware of
5 any repair problems with the vehicle. Right?

6 A Yes. I have seen this letter before. This is
7 the letter from -- I guess the retained counsel by Nationwide
8 after the litigation was filed.

9 Q And it says that Nationwide would like a
10 preliminary inspection at this point, and I quote, to
11 determine if it was improperly repaired. Do you see that?

12 A Yes.

13 Q Do you know why Nationwide would use -- why
14 Nationwide's counsel would use that type of language if it
15 wasn't pretending that the vehicle was not improperly
16 repaired?

17 A I'm sorry. You have to do that all over
18 again. Which paragraph are you referring to?

19 Q I'm referring to the language where it says the
20 vehicle needs to be properly measured to determine if it was
21 improperly repaired. Doesn't everybody --

22 THE COURT: Where do I find that?

23 MR. MAYERSON: It is underlined on the second
24 paragraph. First sentence, second paragraph.

25 THE COURT: Oh, okay.

1 THE WITNESS: I see that's what it said, what Mr.
2 Nelson said.

3 BY MR. MAYERSON:

4 Q Again, Nationwide is concealing or withholding
5 or not producing the Potosnak report, right?

6 MR. KREKSTEIN: Objection, Your Honor.

7 THE COURT: Do you know the answer to that question?

8 THE WITNESS: No. I don't see any connection.

9 THE COURT: That's your objection, that this witness
10 wouldn't be able to say that?

11 THE WITNESS: I don't know what Mr. Nelson knew or
12 didn't know.

13 THE COURT: I don't mean to -- just a moment.

14 MR. KREKSTEIN: My objection is to Mr. Mayerson's
15 characterization, assuming fact not in evidence. The only
16 thing that Ms. -- the only thing that Ms. Foster testified to
17 is that the Potosnak log note was produced in discovery in
18 2003.

19 THE COURT: Five years later. Yeah. Okay. Well, so
20 then it doesn't even need to be answered. It's already been
21 answered.

22 Going back to May 19th of 1998, this letter to Mr.
23 Mayerson from Bruce Bashore, it says here that they will be
24 contacting the Bergs to set up an inspection within the next
25 two weeks. Is that just any inspection or is that a final

1 inspection?

2 THE WITNESS: That's the independent inspection.
3 That's the attempt to get that final independent inspection.

4 THE COURT: You're saying that that just couldn't be
5 done?

6 THE WITNESS: There were all -- yes. There were all
7 these issues and it didn't get done until the Anderton
8 report.

9 THE COURT: Where is the vehicle at this time? Still
10 at Lindgren?

11 MR. MAYERSON: No, the Bergs had it. Paying premiums
12 on it, paying car payments on it, sitting in their driveway.
13 They have a replacement vehicle, waiting, hoping for --

14 MR. KREKSTEIN: Objection, Your Honor.

15 THE COURT: You answered my question as to where it
16 is. Okay.

17 BY MR. MAYERSON:

18 Q Ms. Foster, you read Nationwide's proposed
19 findings of fact?

20 A Yes.

21 Q Number 82 of Nationwide's proposed findings of
22 fact says Mr. Anderton -- in his first inspection of August
23 21st, 1998, it says Anderton was informed that he could only
24 perform a visual inspection as the vehicle had to be returned
25 to the Bergs within a short period of time. Do you remember

1 that?

2 A That's right. I do remember that.

3 Q Do you remember the trial testimony that my
4 father, Mr. Hy Mayerson, objected because that was hearsay
5 because the Bergs never told Mr. Anderton that, right?

6 A No, I don't remember.

7 Q Okay. And if you look at the trial testimony
8 -- and if the Court wants to look at it, that's exactly what
9 happened. And Judge Stallone said he's not offering it for
10 the truth of the matter asserted, merely to show Mr.
11 Anderton's course of conduct to why Mr. Anderton didn't
12 complete a full inspection on August 21st, 1998. Right?
13 Should I get the testimony out?

14 A I don't know what the question is.

15 Q The question is, isn't Nationwide using hearsay
16 to establish the truth of the matter asserted? I mean, the
17 Bergs didn't have anything to do with it. The Bergs never
18 told Mr. Anderton to limit his inspection. That was
19 Nationwide's choice.

20 A I have no idea.

21 THE COURT: And Mr. Anderton is an independent
22 inspector?

23 MR. MAYERSON: Mr. Anderton is from Chicago and he was
24 flown out for an inspection on August 21st, 1998. And
25 Nationwide would have us believe that the Bergs interfered

1 with that inspection or the Bergs said they had to have the
2 vehicle back real quickly and so he couldn't complete a full
3 inspection on that date.

4 THE COURT: Do we have a report from him?

5 MR. MAYERSON: Yes. We do.

6 THE COURT: Do you know what it is?

7 MR. MAYERSON: Yes. Here.

8 THE COURT: Looks like 68. It's a report that's
9 attached to the request for admissions.

10 MR. MAYERSON: Is that the request for admissions of
11 October 4th, 2013?

12 THE COURT: Yes.

13 BY MR. MAYERSON:

14 Q All right. And so we see on there -- do you
15 have a copy, Ms. Foster?

16 A No, I don't.

17 MR. MAYERSON: May I approach the witness?

18 THE COURT: You may.

19 BY MR. MAYERSON:

20 Q You see here that the inspection, the final
21 inspection, was done on April 20th, 1999, right?

22 THE COURT: Who --

23 THE WITNESS: April 20th of 1999 --

24 THE COURT: What final inspection?

25 MR. MAYERSON: Mr. Anderton finally did a breakdown of

1 the vehicle on that date. The one that Nationwide --

2 THE COURT: That's what's offered. Do you agree with
3 that?

4 THE WITNESS: Yes.

5 BY MR. MAYERSON:

6 Q That's pretty much the inspection that Mr.
7 Bashore was demanding in his letters of May 19th, 1998,
8 right?

9 A I'm sorry, that was the -- that was the
10 inspection?

11 Q That Nationwide claimed it needed in Mr.
12 Bashore's letter of May of 1998.

13 A Well, it was the inspection that you requested
14 back in April of 1988 [sic].

15 Q All we wanted to do was get the vehicle
16 purchased.

17 A No, you specifically --

18 MR. KREKSTEIN: Objection, Your Honor. It's not a
19 question.

20 THE COURT: Sustained. Well, there was a letter of
21 May 19th referring to a telephone conversation of May 12th.

22 THE WITNESS: Um-hum. To get the inspection, right.

23 THE COURT: In which Nationwide would like to have an
24 independent expert inspect the Bergs' Jeep. And that there
25 was a contact made to legal services and that they would be

1 contacting the Bergs to set up an inspection within the next
2 two weeks.

3 Now, what is your question after that? If you have
4 one.

5 BY MR. MAYERSON:

6 Q Well, my question is, the Anderton -- the final
7 Anderton inspection of 1999 -- April of 1999, is that the one
8 that's referenced in Mr. Bashore's letter that he says was
9 needed and that you're saying I said was needed?

10 THE COURT: Do you want to see that?

11 THE WITNESS: Yes. I don't think I have that. I
12 don't have that in front of me anymore.

13 THE COURT: Here.

14 THE WITNESS: Yes. I think so. Yes.

15 BY MR. MAYERSON:

16 Q Okay. So it took Mr. -- it took Nationwide
17 about a year to get this inspection?

18 A Yes. For all the reasons we've discussed.

19 Q Okay. And those requests for admissions of
20 October 4th, 2013, when did Nationwide produce us the results
21 of that inspection?

22 THE COURT: That's actually what I did ask. Do we
23 have a report from Mr. Anderton?

24 MR. MAYERSON: Oh, I'm sorry, Your Honor. It's
25 attached -- it is attached to their answers. And it was not

1 produced until 2003.

2 THE COURT: The Anderton report was not produced until
3 2003. But it was a report that was done after April 20th,
4 1999.

5 MR. MAYERSON: Correct.

6 THE COURT: And it's attached to the request for
7 admissions of October 4th, 2013. But it must have been
8 available to you before that. But at any rate, may I look at
9 the report?

10 THE WITNESS: Yes. I was just looking at it.

11 THE COURT: Well, you go ahead. You look at it.

12 THE WITNESS: Do we have another copy so we can look
13 at it simultaneously?

14 MR. MAYERSON: Yeah, it's marked as an exhibit. Let
15 me see which one it is.

16 For the record, it is Exhibit 67. Doesn't seem to be
17 here.

18 (Discussion off the record.)

19 MR. MAYERSON: Here it is, right on top.

20 THE COURT: Where do I find it?

21 MR. MAYERSON: What are you looking for?

22 THE COURT: The Anderton report.

23 MR. MAYERSON: Isn't it attached to the back?

24 THE COURT: It might be.

25 MR. KREKSTEIN: Your Honor, can I just produce you my

1 copy?

2 THE COURT: Yes, please.

3 MR. MAYERSON: I could have sworn it was attached.

4 THE COURT: It might be but there's a lot of things.

5 MR. MAYERSON: Oh, no, this is the wrong...

6 THE COURT: Okay. Why don't we take a brief recess.

7 I'll look over this report. It's good time for a recess.

8 And, of course, you understand you're still under

9 oath?

10 THE WITNESS: Absolutely.

11 THE COURT: You cannot discuss anything at all with
12 anyone, including counsel.

13 THE WITNESS: Very good.

14 THE COURT: So we'll be back in ten minutes.

15 (Recess declared from 3:16 p.m. until 3:33 p.m.)

16 (Appendix A to 11/25/03 Report of Constance Foster -
17 marked for identification as EXHIBIT NO. 80.)

18 BY MR. MAYERSON:

19 Q Ms. Foster, you were talking about what is
20 contained in a final inspection. Which is like an appraisal,
21 right?

22 A Correct.

23 Q Is there any -- there's nothing like that in
24 Mr. Anderton's report, right?

25 A No. Looking at this document refreshes my

1 recollection. Mr. Atherton [sic], as the report clearly
2 states, was hired and retained as an expert in terms of the
3 litigation. And his report apparently was prepared on
4 November the 14th of 2003 and turned over to you on November
5 18th of 2003.

6 Q I'm sorry, was prepared when?

7 A It was prepared, report date 11/14/03.

8 Q The inspection was in April '99?

9 A That's correct.

10 Q Do you know why Mr. Potosnak didn't do an
11 appraisal?

12 A Because -- I don't know for sure but --

13 Q If you don't know, that's fine.

14 A Okay.

15 Q I don't want you to guess.

16 A No, I don't know. Other than they intended to
17 get a final inspection and appraisal by the independent.

18 Q Certainly there was no indication that the
19 Bergs were preventing them from doing this final inspection
20 on that date, right?

21 THE COURT: On what date?

22 MR. MAYERSON: April 28th, 1998.

23 THE WITNESS: That wasn't the inspection you asked.

24 BY MR. MAYERSON:

25 Q Okay. So we're going -- we're going to walk

1 through that. Apparently there's an April 22nd letter where
2 you feel I wanted them not to do an inspection like
3 Potosnak's to buy the vehicle?

4 A No.

5 Q Let me back up.

6 A Okay.

7 Q We agreed earlier that Nationwide has a duty to
8 deal with the Bergs on a fair and frank basis?

9 A Correct.

10 Q So what reasonable defense did Nationwide have
11 for not paying the Bergs for their collision loss after the
12 Potosnak inspection on April 28th, 1998?

13 A Because there was no evaluation as to what the
14 appropriate next steps were. What we have is an evaluation
15 of problems. But we do not have an evaluation of whether the
16 car is repairable, whether it should be a total loss or what
17 -- at that point.

18 THE COURT: Excuse me. Do we ever get that final
19 inspection?

20 THE WITNESS: No. I mean, and that's what I was
21 saying earlier. The inspection -- the Atherton inspection
22 was actually an inspection that was done for purposes of
23 litigation and was not prepared until 2003. So prior to the
24 purchase of the vehicle, no.

25 THE COURT: We never got what seemed to be holding up

1 things --

2 THE WITNESS: Right. There was never a report that
3 said it's repairable, it's not repairable, it should be a
4 total loss, and go through the appropriate analysis.

5 BY MR. MAYERSON:

6 Q Wouldn't you agree that the control of that
7 decision, that outcome, was completely within Nationwide's
8 hands?

9 MR. KREKSTEIN: Objection. Asked and answered.

10 THE COURT: The answer would be no. I forget how it
11 was answered before.

12 MR. KREKSTEIN: Then I'll allow the -- I'll withdraw
13 the objection.

14 THE WITNESS: Okay.

15 BY MR. MAYERSON:

16 Q The Bergs delivered the vehicle for whatever
17 inspection Nationwide wanted on April 28th, 1998, correct?

18 A They delivered the vehicle for inspection,
19 correct.

20 Q And Nationwide chose not to do the inspection
21 that you're saying now would have been necessary?

22 A Nationwide responded to a specific request of
23 the policyholder, who wanted an independent inspection.

24 Q Right. So you're talking about Exhibit --
25 trial Exhibit 11.

1 THE COURT: Again, the 28th is when Mr. Potosnak did
2 his inspection.

3 MR. MAYERSON: Yes.

4 THE COURT: Okay.

5 MR. MAYERSON: And it's our theory, Your Honor, that
6 the case should --

7 MR. KREKSTEIN: Objection, Your Honor. Argument.

8 THE COURT: You answered my question.

9 BY MR. MAYERSON:

10 Q I'm showing you Exhibit 11, which is the letter
11 you keep referring to saying that we somehow prevented a
12 comprehensive inspection by Mr. Potosnak on April 28th.
13 That's --

14 MR. KREKSTEIN: Objection, Your Honor. That's not
15 what she said.

16 BY MR. MAYERSON:

17 Q Well, you tell us what it is then.

18 A That is not what I said. What I said is that
19 you requested a -- let me see. I want to find the language
20 here. I suggest Nationwide also have the vehicle inspected
21 as soon as possible by an independent expert for purposes of
22 litigation if we are to resolve this matter.

23 THE COURT: Who says that?

24 THE WITNESS: That is a letter from --

25 MR. MAYERSON: Your Honor (indicating).

1 THE WITNESS: -- Mr. Ben Mayerson.
2 THE COURT: This one (indicating).
3 MR. MAYERSON: No. (indicating).
4 BY MR. MAYERSON:
5 Q Let me lay a foundation so the judge knows
6 where we're at.
7 MR. KREKSTEIN: Objection, Your Honor.
8 THE COURT: I just asked a question. Let me just read
9 what it says here.
10 (Brief pause.)
11 THE COURT: You have a report that says the vehicle
12 was no longer crashworthy, is what you have.
13 MR. MAYERSON: Right.
14 THE COURT: No longer crashworthy.
15 MR. MAYERSON: There were --
16 THE COURT: Means it's totaled.
17 MR. MAYERSON: We have a report saying -- everything
18 that everybody looked at the vehicle, that found all the
19 defects --
20 THE COURT: What does it mean, crashworthy?
21 MR. MAYERSON: It means if it was in another crash it
22 would not protect the occupants the way it was intended to
23 protect the occupants.
24 THE COURT: And that report will come in sometime or
25 you'll tell us where this report is?

1 MR. MAYERSON: Well, there's -- it's in the proposed
2 findings of fact, yes. His name's Donald Phillips.

3 BY MR. MAYERSON:

4 Q Ms. Foster, is that the letter that you keep
5 referring to, to suggest that the Bergs did not want Mr.
6 Potosnak to do a complete inspection on April 28th, 1998?

7 A It is the letter I was referring to but not for
8 that purpose. I was referring to the letter because there
9 are specific instructions from you that this expert is to be
10 independent, and that is reiterated on the second page where
11 you say if you need more time to, quote, retain an
12 appropriate expert, please advise. This is unequivocal.

13 Q Well, the letter also says, will Nationwide
14 please buy the vehicle, right?

15 A Yes. And Nationwide was in the process -- and
16 you're suggesting that they retain an expert to determine if
17 that's the appropriate course of action.

18 Q But if Nationwide would buy the vehicle, there
19 would be no reason to retain an expert, right?

20 A Nationwide cannot buy a vehicle because a
21 policyholder asks that it be purchased.

22 Q But after the Potosnak inspection, they
23 certainly could; and Mr. Bashore, in fact, admitted that.
24 Right?

25 A You mean could have? I mean, they had the

1 ability to do it?

2 Q And the duty of good faith to do it.

3 A I don't remember Mr. Bashore admitting that.

4 THE COURT: Where does that come from?

5 MR. MAYERSON: Which part?

6 THE COURT: Mr. Bashore admitting that.

7 MR. MAYERSON: That he had the authority to do that?

8 THE WITNESS: Oh, he had the authority to do it. I
9 admit he probably had the authority. That doesn't mean it
10 was the right thing to do. He had the authority do a lot of
11 things.

12 BY MR. MAYERSON:

13 Q You're saying it would not have been the right
14 thing to do based upon the Potosnak report that shows the
15 wheels are out of spec, that the frame rail is still twisted,
16 that the vehicle's all out of whack? At that time the right
17 thing to do was to let the Bergs continue to drive that
18 vehicle?

19 A The right thing to do is to hire an expert as
20 expeditiously as possible as requested, get the vehicle
21 inspected so a final determination could be made.

22 Q So we -- I want to go back now to -- I'd like
23 to finish up because I know this is getting tedious, but you
24 have said that the Bergs caused a substantial amount of
25 litigation in this case. And we have established that the

1 Potosnak report was not produced for five years. Right?

2 A Yes.

3 Q All right. And during that five years, while
4 Nationwide was suggesting that the vehicle was not repaired
5 -- that there were no repair defects that they were aware of
6 -- and we talked about the Bruce Bashore letter, Mr. Nelson's
7 letter saying we need an inspection to see whether there were
8 any repair defects. Do you recall that?

9 A I recall you showing me a letter from Mr.
10 Nelson.

11 Q All right. So during this five-year period
12 where we don't know what Nationwide is thinking with regard
13 to this vehicle, there were -- the litigation proceeded,
14 right?

15 A Yes.

16 Q And during this five-year period, I'd like to
17 show you what's been marked as Exhibit Number 80.

18 MR. MAYERSON: Your Honor, may I hand you a copy?

19 THE COURT: Okay. Thank you.

20 BY MR. MAYERSON:

21 Q That's the last page of your expert report,
22 right?

23 A Yes. I assume it is. Yes.

24 Q And that lists all the depositions that you
25 reviewed in this case?

1 A Correct.

2 Q And isn't it true that every one of those
3 depositions were taken and done either -- by either party
4 while Nationwide was concealing or withholding the Potosnak
5 report?

6 MR. KREKSTEIN: Objection, Your Honor. Again, object
7 to characterization of facts not in evidence.

8 THE COURT: Well, how would you prefer it to be
9 stated?

10 MR. KREKSTEIN: That question was asked to Ms. Foster
11 and Ms. Foster said repeatedly I -- you know, I'm not
12 conceding that it was withheld. The thing that Ms. Foster
13 agreed with that it was provided in 2003.

14 THE COURT: Okay. So it was not provided up until --
15 I think it was 2003. Is that right?

16 MR. KREKSTEIN: I believe that's what it was.

17 THE COURT: Okay. So that's how you can word it.
18 That's acceptable?

19 MR. KREKSTEIN: Yes, Your Honor.

20 THE COURT: So go ahead and ask it again.

21 MR. MAYERSON: All right.

22 BY MR. MAYERSON:

23 Q So during this period of time between the date
24 the Potosnak inspection confirmed all the structural repair
25 failures and the date the Potosnak report was produced in

1 2003, the litigation proceeded, including the necessity of
2 all those depositions?

3 MR. KREKSTEIN: Objection, Your Honor. Objection to
4 Mr. Mayerson stating that the Potosnak inspection revealed
5 all the problems. Ms. Foster previously testified that she's
6 not a mechanical or vehicle expert.

7 THE COURT: Yeah. Clearly, Allerton's [sic] report
8 talks about parts, problems with parts. I think it either --
9 either that the wrong parts are put in or that they -- there
10 was some errors that were done. Whereas Potosnak doesn't say
11 that in here. He just says that there's upper body sway and
12 it was not pulled completely back before replacement and
13 parts began.

14 MR. MAYERSON: Your Honor, the Potosnak report does
15 talk about the wheels --

16 MR. KREKSTEIN: Your Honor, were you asking Mr.
17 Mayerson a question? I just want to be clear.

18 THE COURT: No. I don't know where we are at this
19 point. There's a difference between the Allerton report,
20 which I agree is not an independent report, as pointed out by
21 this witness, and the Potosnak -- Potosnak noticed things. I
22 don't know whether this would mean that the car should be
23 totaled. It certainly means that something else should be
24 done in the way of an inspection. Right?

25 THE WITNESS: Right.

1 THE COURT: Okay.

2 THE WITNESS: Exactly.

3 THE COURT: I don't know where -- if that was in the
4 way of an objection that I came up with that conclusion.

5 MR. KREKSTEIN: I wasn't objecting, Your Honor. I
6 just -- if you are asking Mr. Mayerson a question, I'm
7 certainly not going to object to that. I just wanted to know
8 whether this was a dialogue or whether there was a question
9 pending to the witness.

10 THE COURT: I don't know.

11 MR. KREKSTEIN: Fair enough.

12 THE COURT: Thank you.

13 Okay.

14 BY MR. MAYERSON:

15 Q Ms. Foster, you're not a licensed appraiser,
16 right?

17 A Correct.

18 Q And so it's not really your role to decide
19 whether these repairs of the Potosnak report are significant
20 or insignificant, right?

21 A That's correct.

22 Q It does show that the vehicle -- that the
23 repairs failed, right?

24 MR. KREKSTEIN: Objection. I think Mr. Mayerson is
25 establishing what Ms. Foster doesn't know and then basically

1 trying to get her --

2 MR. MAYERSON: Your Honor --

3 THE COURT: Just a moment.

4 And then what?

5 MR. KREKSTEIN: Trying to get her to agree that the
6 repairs were bad. I don't understand the question.

7 THE COURT: I agree. Sustained.

8 BY MR. MAYERSON:

9 Q Ms. Foster, are you aware that when Mr.
10 Bashore, who ordered the Potosnak inspection, when he signed
11 the answer to the complaint on January 20th of 2000, that he
12 denied knowledge of any repair problems?

13 A You'd have to show that to me.

14 Q I'm talking about the 27th allegation of the
15 eighth amended complaint, and then the answer is under it.

16 A It says as well as other mechanical, structural
17 and electrical problems which are currently being
18 investigated.

19 And the answer is -- Mr. Bashore says the document
20 which the plaintiffs refer is in writing and therefore speaks
21 for itself.

22 Well, I think I should read the whole answer because
23 the whole answer as I read it isn't exactly what you just
24 said.

25 THE COURT: What was the question again?

1 THE WITNESS: The question was the -- the averment,
2 which is quite long, states, solely as a result of the
3 conduct of defendants, Lindgren and Nationwide, either
4 jointly or severally through their agents, servants, workmen
5 or employees, the Jeep was not repaired to the condition that
6 it existed just prior to the damage in question being
7 incurred and in condition unreasonably safe for its intended
8 use, having unrepaired structural collision damages
9 including, without limitation, steering -- and then it just
10 goes through the list, I won't go through it -- as well as
11 various other mechanical, structural and electrical problems
12 which are currently being investigated. An initial report
13 delineating these problems is attached as Exhibit E as
14 attached to the seventh amended complaint.

15 Now I don't have Exhibit E. What was Exhibit E?

16 BY MR. MAYERSON:

17 Q That was the expert report of Charlie Barone
18 (phonetic) talking about the -- some of the repair --

19 A All right.

20 THE COURT: Who?

21 MR. MAYERSON: Charlie Barone.

22 THE WITNESS: That's plaintiffs' expert report.

23 MR. MAYERSON: One of the experts in the case.

24 THE WITNESS: And the answer was, the document to
25 which plaintiffs refer in the averment is in writing and

1 therefore speaks for itself. Assuming that means the Barone
2 report. Any characterizations by plaintiffs as to the
3 factual content or legal significance of that writing is
4 denied. The designation of Mr. Barone as an expert is
5 expressly denied as a legal conclusion. And then it says,
6 the remainder of this averment is a conclusion of law to
7 which no response is required. To the extent that a Court
8 deems a response is required, it is hereby denied.

9 So all -- that's what the answer says. Yes. To that
10 averment.

11 THE COURT: So you want an answer to a question. And
12 I'm sorry, the question again was?

13 MR. MAYERSON: Isn't it true that Nationwide was
14 denying knowledge of any repair defects even when they
15 answered the complaint verified by Bruce Bashore?

16 THE COURT: Which was answered when?

17 MR. MAYERSON: In January of 2000? Is that what it
18 says?

19 THE WITNESS: Well, the Jeep was not repaired through
20 its agents in a condition unreasonably safe for its intended
21 use having unrepaired structural...

22 There is a general denial here of probably an eight or
23 nine point allegation. I can't tell you what was in Mr.
24 Bashore's mind when that response was drafted.

25 THE COURT: I just have to ask this question. Mr.

1 Anderton did a visual inspection on August 21st, 1998. Then
2 I wrote under here, April 20th, 1999. I don't know what that
3 is.

4 THE WITNESS: I think that's the date he finished --

5 MR. MAYERSON: That's his inspection date.

6 THE WITNESS: That he completes his inspection but the
7 report isn't written until four years later.

8 THE COURT: Okay. So now this is before the complaint
9 is answered; is that correct?

10 MR. MAYERSON: The Anderton inspection is --

11 THE COURT: No. What -- what you're asking for the
12 answer that was provided verifying --

13 THE WITNESS: It looks like it was answered on January
14 the 20th of 2000, if I'm reading this stamp correctly.

15 THE COURT: Verified by Mr. Bashore, is January of
16 2000. After the Allerton report. And you're asking if -- if
17 Mr. Bashore denied any structural damage or repair damage.

18 MR. MAYERSON: Really is he dealing with the Bergs on
19 a fair and frank basis.

20 THE COURT: The question I would have is Nationwide
21 knew about all the problems that Mr. Anderton brought out
22 when they answered the complaint?

23 THE WITNESS: Right. But it refers to -- you know,
24 it's hard to interpret a pleading. But since they attached
25 the report of Mr. Barone as Exhibit E, I interpret his answer

1 as being that he doesn't necessarily agree with Mr. -- what
2 Mr. Barone has to say.

3 THE COURT: Who doesn't?

4 THE WITNESS: Mr. Bashore when he answers the
5 complaint.

6 THE COURT: Oh, he doesn't agree with --

7 THE WITNESS: With Barone. Because that's what's
8 attached in that allegation.

9 THE COURT: Okay. But Nationwide would have known
10 that their independent expert for litigation purposes has
11 done a report and has found that there were lots of errors
12 with putting parts in and the wrong parts or something like
13 that.

14 THE WITNESS: Now, remember the report wasn't actually
15 prepared until 2003.

16 MR. MAYERSON: No, it wasn't produced to the Bergs
17 until --

18 MR. KREKSTEIN: Objection, Your Honor.

19 THE WITNESS: No. If you actually look at the report
20 and look at its date, which is attached here, the Atherton
21 report says on its front, inspection date 4/20/99, report
22 date 11/14/03, produced 11/18.

23 THE COURT: You're saying that -- that he never told
24 anybody on behalf of --

25 THE WITNESS: Oh, I'm not saying that. I'm saying the

1 report itself was not prepared until three years later.

2 THE COURT: Okay.

3 THE WITNESS: I don't know what he said and I don't
4 believe there's any testimony as to what he provided
5 Nationwide, outside the report.

6 THE COURT: Next question.

7 MR. MAYERSON: Yes.

8 BY MR. MAYERSON:

9 Q Ms. Foster, do you agree that when Nationwide
10 purchased the vehicle, there was a dispute between the Bergs
11 and Nationwide over who would purchase the vehicle?

12 A I know there was some dispute. I don't
13 remember if it had to do with who was going to purchase it.

14 Q Do you recall that the Bergs wanted the vehicle
15 to be put in a secure storage unit until Mr. Anderton
16 completed his inspection?

17 A Yes, I do remember some discussion about that.

18 Q And do you remember Nationwide refused that
19 request?

20 A I know they purchased it and preserved the
21 vehicle.

22 Q And did you know that when that detail couldn't
23 be worked out, that Nationwide threatened to sue Summit Bank
24 if Summit Bank sold the vehicle to the Bergs instead of
25 Nationwide?

1 A No.

2 Q You didn't know that?

3 A Or at least I don't recall it. I might have
4 known at one time.

5 MR. MAYERSON: Your Honor, may -- would you like a
6 copy of this?

7 MR. KREKSTEIN: Your Honor, I don't want -- I don't
8 want to nit-pick but could I just be told what's being handed
9 to the witness and the judge?

10 MR. MAYERSON: Here (indicating).

11 MR. KREKSTEIN: Thanks.

12 THE WITNESS: Okay.

13 BY MR. MAYERSON:

14 Q Do you know why Nationwide was threatening to
15 sue Summit Bank if the vehicle was sold to the Bergs instead
16 of Nationwide?

17 A No.

18 Q Do you know why the Bergs didn't want the
19 vehicle to go to Nationwide without a secure storage
20 facility?

21 A No.

22 Q Isn't it because the Bergs were worried that
23 Nationwide was going to change the condition of the vehicle
24 before the final inspection?

25 A I said I don't know.

1 MR. KREKSTEIN: Objection. Asked and answered.

2 THE COURT: Sustained.

3 Anything further?

4 MR. MAYERSON: Yes. You had mentioned -- questioned
5 whether or not we would be presenting evidence of our expert.
6 I didn't plan on doing it with this witness. It's part of
7 the record. Is there any reason you wanted me to go through
8 that?

9 THE COURT: I don't have a position one way or
10 another.

11 MR. MAYERSON: All right.

12 THE COURT: We have -- we have his testimony. And --
13 what's his name again?

14 MR. MAYERSON: Donald Phillips, physical engineer.

15 THE COURT: Oh, I don't know about that one then.
16 Okay. We have the testimony of Mr. Phillips, which is
17 already on record, and there's nothing that -- if there's
18 nothing that he can add, then we have it as evidence.

19 MR. MAYERSON: Yes.

20 THE COURT: So there would be no reason to bring him
21 back in to testify.

22 MR. MAYERSON: No. I wouldn't bring him back in. I
23 was just confused when you said are you going to be
24 presenting evidence of your expert. And I just didn't know
25 if you wanted -- I mean, I've already presented it. It's

1 part of the record.

2 THE COURT: I meant calling an expert, calling anybody
3 up here. You're not going to do that?

4 MR. MAYERSON: No.

5 THE COURT: Okay.

6 BY MR. MAYERSON:

7 Q So then the last thing I'd like to do is talk
8 --

9 MR. KREKSTEIN: Your Honor, can I redirect?

10 THE COURT: Yes, you may. Are you finished with this
11 witness?

12 MR. MAYERSON: No. I was going to ask her another
13 area of question.

14 THE COURT: Okay.

15 BY MR. MAYERSON:

16 Q You testified that Nationwide was unaware of
17 any repair failures until receiving the Bergs' letter of
18 representation on November 3rd, 1997?

19 A Yes.

20 Q Okay.

21 A That's my understanding of the record. Yes.

22 Q And you understand that the Bergs' contention
23 is that Nationwide was aware of the repair failures via
24 routine monthly random inspections performed throughout the
25 four-month repair period?

1 A I'm aware that that's the contention. Correct.

2 Q And what we have assembled is the evidence in
3 support of that, which includes admissions by all of
4 Nationwide management, that the random inspections were being
5 performed as standard under the Blue Ribbon Repair Program.
6 You'll agree with that?

7 MR. KREKSTEIN: Objection, Your Honor.

8 MR. MAYERSON: I think you already did actually.

9 MR. KREKSTEIN: Objection, Your Honor. And no, she
10 didn't.

11 THE COURT: Pardon me? She didn't?

12 MR. KREKSTEIN: She didn't. I'll allow the witness to
13 answer.

14 THE COURT: Okay.

15 THE WITNESS: And the question is what?

16 BY MR. MAYERSON:

17 Q Did you already admit that Nationwide was
18 performing routine monthly random inspections throughout the
19 four-month repair period pursuant to standard Blue Ribbon
20 Repair Program procedures?

21 MR. KREKSTEIN: Objection. Vague. And ask that the
22 question be specific as to where these random inspections
23 were being performed so the witness can answer it.

24 THE COURT: And again, what is the specific four-month
25 date of this?

1 MR. MAYERSON: The four months that the vehicle was at
2 the Blue Ribbon repair facility, which is September 4th
3 through December 30th of 1996.

4 THE COURT: Okay.

5 BY MR. MAYERSON:

6 Q What we have is attached as -- it's already
7 marked as Exhibit Number 34, are Nationwide's Blue Ribbon
8 repair standards. And you agree that those standards say
9 that a separate control log will be maintained by the shop
10 for vehicles referred under this program?

11 A That's what it says.

12 Q All right. It also says the control log will
13 be furnished by Nationwide?

14 A Right. I assume that means they give them a
15 document.

16 Q And the log must be available for examination
17 by Nationwide representatives at all times?

18 A Yes. That's what it says.

19 Q And then it says on Page 3 of 9, a Nationwide
20 representative will be allowed during normal hours to
21 periodically spot-check estimates in vehicles that are under
22 repair or completed and that all invoices pertinent to the
23 vehicle being repaired must be made available and that the
24 loss may be readjusted and credits issued to Nationwide
25 and/or the shop and these credits will be recorded on the

1 shop log sheet?

2 A That's what it says.

3 Q And then Exhibit Number 8 of 9 of Exhibit 34 is
4 one of these evaluation sheets?

5 A Yes.

6 THE COURT: In other words, this is what the --
7 Nationwide could be using to inspect during the time that the
8 Blue Ribbon repair shop is doing the work on the automobile.
9 Is that correct?

10 THE WITNESS: Yes. I mean, that seems to be a sample.
11 I haven't seen any that refer to the Bergs' claim.

12 THE COURT: Okay.

13 BY MR. MAYERSON:

14 Q That's right. We don't have any that refer to
15 the Bergs' claim.

16 A Well, it says spot-check, so that's not
17 surprising.

18 Q Well, it was there for four months, right?

19 A Yes.

20 Q And it was declared a structural total loss?

21 A It was never declared a total loss. There was
22 an opinion in a log. The process for declaring a total loss
23 never was followed.

24 Q I'm saying declared, that the assigned
25 appraiser declared it verbally, called --

1 A He made that statement as preliminary opinion,
2 yes.

3 THE COURT: That's within the first four -- first --
4 THE WITNESS: Day.

5 THE COURT: First day.

6 MR. MAYERSON: No, it's not. It's on September 10th.

7 MR. KREKSTEIN: Objection, Your Honor.

8 THE COURT: Okay. So we have -- we have it the first
9 day or the first couple of days after they have the vehicle
10 there. And then there may be some other times as well. But
11 you've answered my question.

12 THE WITNESS: The log note is very specific as the
13 day. It's within a few days of the accident.

14 BY MR. MAYERSON:

15 Q It's on September 10th, right?

16 MR. KREKSTEIN: Objection.

17 THE WITNESS: I don't recall.

18 MR. MAYERSON: I can pull out the log note.

19 THE WITNESS: It is what it is.

20 THE COURT: You're withdrawing your objection?

21 MR. KREKSTEIN: I am. I didn't want to interrupt.
22 I'm sorry.

23 MR. MAYERSON: Okay.

24 THE COURT: So you say it's -- you don't know if it
25 was September --

1 THE WITNESS: I don't know the precise day. It's
2 shortly after the accident.

3 BY MR. MAYERSON:

4 Q Dean Jones is a CPCU. Can you tell us what a
5 CPCU is?

6 A Yes. It's a certified public chartered
7 underwriter. I may not have it right. It's a designation
8 for underwriters.

9 Q And it's a pretty significant designation in
10 the insurance industry?

11 A For underwriting, yes.

12 Q Dean Jones testified that these random
13 inspections were happening throughout the State of
14 Pennsylvania in every county?

15 A I think I recall that, yes. That was part of
16 the Blue Ribbon program.

17 Q And he said that these people doing the
18 inspections are actually claim managers. They're not low
19 level adjustors. They're claim managers?

20 A I don't recall that specific --

21 Q Here I'll show you.

22 A It's possible.

23 Q Referring to the 2004 trial transcript, Page
24 191, Lines 1 through 7.

25 A Yes. Mid level. That's the language he uses.

1 THE COURT: What's the significance of that?

2 THE WITNESS: Well, the CPCU I don't think has any
3 significance at all because that's an underwriting
4 designation, not a claims handling designation generally.
5 The significance there, I think, of the mid level is that
6 they were using fairly sophisticated personnel to do these
7 spot checks.

8 BY MR. MAYERSON:

9 Q And that these personnel, if they would see the
10 vehicle, they would be a part of Nationwide management that
11 saw the condition of the vehicle if, in fact, they did,
12 right?

13 MR. KREKSTEIN: Objection, Your Honor. When Mr.
14 Mayerson is referring to the vehicle, is he referring in a
15 general sense or to the Berg vehicle?

16 MR. MAYERSON: To the Berg vehicle.

17 THE WITNESS: I'm sorry, is that a hypothetical
18 question? If -- if --

19 BY MR. MAYERSON:

20 Q What I'm saying is that these random
21 inspections that were done throughout the course of the Berg
22 repairs for four months, if in fact they were done, that the
23 person that was doing them was part of Nationwide management.

24 A Well --

25 MR. KREKSTEIN: Objection, Your Honor. Is this a

1 hypothetical?

2 THE WITNESS: There's general testimony --

3 THE COURT: Just a moment.

4 THE WITNESS: I'm sorry.

5 THE COURT: Wait. Let's just start over now. There's
6 an objection. Is this a hypothetical? I don't think it is,
7 because --

8 MR. KREKSTEIN: It was an "if."

9 THE COURT: Well, there's no question that -- there's
10 no question that the person who's doing these spot
11 inspections is -- you used the word sophisticated, did you
12 say, or a higher level?

13 THE WITNESS: According to the testimony that he just
14 showed me, that was the pattern and practice. I have no idea
15 of -- one, I've never seen any evidence that the Berg vehicle
16 was ever subject --

17 THE COURT: Right. But in general.

18 THE WITNESS: And who did it. But according to that
19 testimony, he calls him a mid level claims manager.

20 THE COURT: So --

21 THE WITNESS: What that means in the hierarchy of
22 Nationwide, I have no idea.

23 THE COURT: I thought you said they were somewhat
24 sophisticated.

25 THE WITNESS: Sophisticated, yes. I think technically

1 sophisticated is how I would interpret that, and he took it
2 one more step and said does that mean they're management. I
3 --

4 THE COURT: You don't know.

5 THE WITNESS: I don't know.

6 BY MR. MAYERSON:

7 Q Well, it says mid level manager, right?

8 A Yeah, but that means managers of a claim
9 facility. That's not the same thing as being --

10 Q That's all I mean. I don't mean like this
11 gentleman here (indicating). I don't mean somebody up in the
12 top level management. I mean in the claim department
13 management. This is not a low level guy. This is part of
14 the management team at the claim department.

15 A That's how I would interpret mid level.

16 Q And you agree that Mr. Jones, who has this high
17 level designation for underwriting, admitted that these
18 inspections took place from August of '96 and as far as he
19 can remember and that he was part of the program, and he said
20 yes.

21 A Yes.

22 Q And he also said that there was a Blue Ribbon
23 shop log that was required to be kept at the shop, so that
24 when the property damage specialist came out, any
25 discrepancies he could document on the Blue Ribbon shop log.

1 And he said yes, he believes that's correct?

2 A On a spot-check basis. Yes.

3 Q And then he was asked, and if they performed a
4 random inspection of the Berg vehicle and noticed some
5 deficiencies in the repairs, those deficiencies would be
6 noted on the Blue Ribbon shop log, correct?

7 A I assume you're reading from his testimony.

8 Q Okay. And then Mr. O'Leary -- do you remember
9 who Mr. O'Leary is?

10 A No.

11 Q He was the director of the Blue Ribbon Repair
12 Program for the State of Pennsylvania. So he ran the whole
13 program. And so he agreed that the people that were sent out
14 to the shops to do the random inspections and the performance
15 evaluations for the shops. Yes. They would perform random
16 inspections on our Blue Ribbon facilities. And same as Mr.
17 Grumbain, one of the property damage specialists supervisors
18 admitted the same thing. Right?

19 A Yeah. They testified that they, in fact, did
20 random inspections.

21 Q All of them, right?

22 THE COURT: They testified what?

23 THE WITNESS: That they, in fact, did random or
24 spot-checking inspections. Yes.

25 THE COURT: During the time that the Berg vehicle was

1 there?

2 THE WITNESS: Yeah. Or they did it across the state.
3 I don't even recall seeing any testimony there was specific
4 random inspection at Lindgren during this period of time. It
5 was certainly not of the Berg vehicle.

6 THE COURT: Why are you asking any of -- any more
7 questions along these lines of this witness?

8 MR. MAYERSON: Why?

9 THE COURT: Yeah.

10 MR. MAYERSON: Okay. Well, I can ask one more
11 question.

12 BY MR. MAYERSON:

13 Q Isn't that testimony uncontroverted?

14 A I think -- the question of whether Nationwide
15 was conducting random inspections under the Blue Ribbon
16 program on a statewide basis at various times during the four
17 months as far as I know is uncontroverted, yes. The question
18 is whether there was one at Lindgren and specifically of the
19 Berg vehicle.

20 Q And then lastly, Mr. Potosnak testified that he
21 did this several times a month at each facility.

22 A I have no idea of how many automobiles go
23 through a Blue Ribbon facility on a monthly or yearly basis.

24 MR. KREKSTEIN: Your Honor, I'm going to object. If
25 Mr. Potosnak said something in the trial transcript, why does

1 Mr. Mayerson need Ms. Foster to confirm that? Trial
2 transcript's in evidence.

3 THE COURT: Right.

4 MR. KREKSTEIN: This is not a memory test for Ms.
5 Foster.

6 THE COURT: No. I forget what you said the reason
7 you're asking this witness these questions.

8 MR. MAYERSON: Well, we started off with testimony
9 asking her, according to the Superior Court opinion, if in
10 fact this Court were to conclude that Nationwide was aware of
11 the structural repair failures, then that would satisfy the
12 duty -- the elements of bad faith under the statute.

13 THE WITNESS: They were aware and knowingly allowed the
14 automobile to be returned to the Bergs.

15 BY MR. MAYERSON:

16 Q Right. All right. And aside from all the Blue
17 Ribbon personnel at Nationwide, the body shop manager at this
18 facility admitted that Nationwide was there throughout the
19 four-month repair period too.

20 MR. KREKSTEIN: Objection, Your Honor.

21 THE COURT: Yes. I don't know -- are you asking a
22 question?

23 MR. MAYERSON: Yes. I'm asking her if she is aware of
24 that.

25 THE COURT: Well, I don't know at that -- I mean,

1 she's given you the basis that you need to -- she's given you
2 all the elements that you need and we just plug those in. We
3 don't need this witness to plug in the answers.

4 MR. MAYERSON: All right. That's fair enough. I'm
5 almost done. I think I have at least one more question.

6 BY MR. MAYERSON:

7 Q Ms. Foster, what is your hourly rate that
8 you're being compensated for your testimony and your review
9 and all the work you've done?

10 A Today?

11 Q Yes.

12 A Today. I think it's 725.

13 Q 725?

14 A Per hour. Correct.

15 Q And --

16 A Don't hold me to that because -- I'm not
17 actually -- I'm not actually sure. I don't do the billing or
18 anything but I believe that's correct. And I'll give you the
19 -- I'll verify it.

20 THE COURT: Are you with a law firm now?

21 THE WITNESS: Yes. I'm a partner at Saul Ewing.

22 THE COURT: Okay. I don't know if you want to explain
23 why you don't know what it is.

24 THE WITNESS: Well, because it changes -- it changes
25 every year and it changes automatically. It's not changed by

1 me. It's changed in the computer system. And so I'm quite
2 sure it's 725. But I just don't want to be -- I just want to
3 be extremely conservative and want to verify it.

4 BY MR. MAYERSON:

5 Q Do you know how much you've been compensated
6 for your review of this file and your preparation of two
7 reports, your testimony in 2007 and your testimony today?

8 A I do know the answer to that because you served
9 a subpoena on my law firm. And following law firm procedures
10 is I turn that subpoena over to our general counsel, who
11 actually put together a packet of all the requested
12 documents, which was basically our billing. So I know --
13 having looked at that, is -- the total up until -- from the
14 time I testified -- from the time I was retained until I
15 completed my testimony in the first bad faith case was
16 approximately \$85,000 including costs.

17 Q And since that time?

18 A Well, since that time -- there's been a huge
19 gap, but since the time I was requested to become involved
20 again, the invoices are less than 10,000.

21 Q And does that \$10,000 include your testimony
22 here today?

23 A No. That's actually invoiced.

24 THE COURT: That's actually what?

25 THE WITNESS: Invoiced. What's been invoiced. So

1 that would not include anything in December.

2 BY MR. MAYERSON:

3 Q Can you approximate how many hours you've put
4 in that's not included in that?

5 A In December? If I had to guess, including
6 today, which has been a long day, I'd say probably about 20
7 hours.

8 MR. MAYERSON: Thank you, Ms. Foster.

9 THE COURT: I just have two questions before we go --
10 give the opportunity to counsel to ask questions. You were
11 the Pennsylvania insurance commissioner in what years?

12 THE WITNESS: From 1987 to 1992 under Governor Casey.

13 THE COURT: And you said you worked for an insurance
14 company?

15 THE WITNESS: I did. I was a CEO of Phico Insurance
16 Company for -- interim CEO of an insurance company for six
17 months in 2001.

18 THE COURT: And of course, that would have no
19 involvement in any way that would be an issue that anybody
20 needs to know about with regard to Nationwide, for instance?

21 THE WITNESS: Not that I can think of.

22 THE COURT: Okay.

23 THE WITNESS: It was a med mal carrier.

24 MR. MAYERSON: Your Honor, I marked as an exhibit that
25 I think we got interrupted. I think maybe you went back to

1 read something. There was one last question I had. And it's
2 the exhibit that's been marked. I think there was a question
3 on the record that never got answered.

4 BY MR. MAYERSON:

5 Q Exhibit 80. You agree that all those
6 depositions were taken during the time period that Nationwide
7 was -- had not produced the Potosnak report?

8 A That appears to be correct.

9 Q All right. And two of those depositions I'm
10 holding in my hand are Mr. and Mrs. Berg's depositions?

11 A I don't -- I assume that's what you're holding
12 in your hand, but I see them on the list, yes.

13 Q And they were each deposed for -- in one case
14 looks like seven hours, and five hours in the other case.

15 MR. KREKSTEIN: Objection, Your Honor. Relevancy.

16 THE COURT: I don't know that -- I don't know that
17 you're able to even answer that question. So -- but so --

18 MR. KREKSTEIN: That's a better objection, Your Honor.

19 THE COURT: Anything further?

20 MR. MAYERSON: No, Your Honor. Thank you.

21 THE COURT: Are you okay or do you -- I don't know how
22 much -- Mr. Krekstein, how much time do you need?

23 MR. KREKSTEIN: Very short, Your Honor.

24 THE COURT: I mean, I'm not rushing you at all.

25 MR. KREKSTEIN: I appreciate that. I'll try to be

1 very short. If Ms. Foster wants a break, I'm certainly --

2 THE WITNESS: No, I'm fine. Thank you.

3 REDIRECT EXAMINATION

4 BY MR. KREKSTEIN:

5 Q Ms. Foster, I'm going to jump around, and I
6 apologize if I do. Mr. Mayerson before spoke about the Bergs
7 not -- and I'm paraphrasing. I might have gotten this wrong,
8 but something about the Bergs still being out money. Do you
9 recall that?

10 A Yes.

11 Q And I believe the judge asked Mr. Mayerson what
12 was that. And I don't think we got an answer. Is that
13 correct?

14 THE COURT: I think it was the down payment on the
15 leased vehicle, I believe.

16 MR. MAYERSON: And that's -- yeah. That's one obvious
17 item.

18 BY MR. KREKSTEIN:

19 Q So maybe there's more. We just haven't heard
20 it, Ms. Foster?

21 A I guess.

22 Q If the Bergs were seeking reimbursement for
23 monies still owed under the policy, would normally that be
24 encompassed in a claim for breach of contract?

25 A Absolutely. It's one of the things that's

1 always mystified me, frankly, about this case is how we have
2 -- where bad faith arises out of failure to pay proceeds
3 under the policy, and the contract claim was withdrawn.
4 Which to me means that there was no breach of contract. And
5 if there is --

6 MR. MAYERSON: Your Honor, again, this is what the
7 Superior Court already addressed. Ms. Foster's perfectly
8 entitled to disagree with what the Superior Court said, but
9 the Superior Court explicitly said --

10 MR. KREKSTEIN: I would allow Ms. Foster to testify.

11 MR. MAYERSON: My objection's noted on the record.
12 And then maybe you could make a ruling on it. But what --

13 MR. KREKSTEIN: I'd just allow Ms. Foster to answer --
14 I'd request that Ms. Foster be allowed to finish her answer.

15 THE WITNESS: Now I've gotten -- now I've gotten lost.

16 THE COURT: I'm sorry?

17 THE WITNESS: Now I've gotten lost. Where are we?

18 MR. KREKSTEIN: I'll ask you again.

19 BY MR. KREKSTEIN:

20 Q Ms. Foster, was the breach of contract claim
21 withdrawn by the Bergs --

22 A Yes.

23 Q -- at the jury trial?

24 A I'm sorry. Yes.

25 Q What significance, if any, does that have to

1 you?

2 MR. MAYERSON: Objection. Relevance.

3 THE COURT: Well, overruled. We'll hear what
4 significance it may be. May have.

5 THE WITNESS: The bad faith statute says that bad
6 faith arises for failure to pay the proceeds under a policy,
7 which is a contract claim. And by withdrawing -- and the
8 contract -- the underlying contract claim was withdrawn,
9 which leaves the bad faith without an anchor.

10 BY MR. KREKSTEIN:

11 Q Does it also signify the fact that the Bergs
12 aren't contending that they're owed any money under the
13 policy?

14 A Absolutely. And even -- and even if there were
15 a contention there, the policy was an indemnification policy,
16 which means that there was an obligation to pay for the
17 repairs. The question of whether they made a down payment on
18 their vehicle is irrelevant to the question of whether there
19 was an indemnifiable loss under the policy.

20 Q You heard Mr. Mayerson refer repeatedly to
21 something called the Potosnak report?

22 A Yes.

23 Q Can you explain where that report is found?

24 A It's a log note.

25 Q If you'd explain to the Court what a log note

1 is.

2 A A log note is a entry that a -- anybody who
3 works on a claim makes to summarize a phone call. It's a --
4 it's an electronic note system. That's what it is.

5 THE COURT: So it's, I guess, technically a report
6 only in the technical sense, but it's --

7 THE WITNESS: It's not a report in the sense of, you
8 know, you write a report. It is -- it is simply notes or
9 observations.

10 BY MR. KREKSTEIN:

11 Q Ms. Foster, regarding the inspection done by
12 Mr. Potosnak on -- I believe April 28th, 1998, do you recall
13 that?

14 A Yes.

15 Q Do you recall how that inspection was arranged?

16 A I think through plaintiffs' counsel.

17 Q Okay. So would it be fair to assume if it was
18 arranged through plaintiffs' counsel, then plaintiffs'
19 counsel would have known the inspection was occurring?

20 A Yes. Seems fair.

21 THE COURT: Would have done the what? Plaintiffs'
22 counsel would have done the what?

23 MR. KREKSTEIN: If it was arranged through plaintiffs'
24 counsel, is it safe to assume that plaintiffs' counsel would
25 have known the inspection would be occurring.

1 THE COURT: Oh, okay.

2 MR. KREKSTEIN: Maybe a little too obvious. I should
3 just move on.

4 BY MR. KREKSTEIN:

5 Q Ms. Foster, is there any evidence based on your
6 review of the record that following the Potosnak inspection
7 that was arranged through plaintiffs' counsel, that
8 plaintiffs' counsel requested the findings of Mr. Potosnak's
9 inspection?

10 A I don't recall any.

11 Q In fact, in May, Mr. Mayerson and Bruce Bashore
12 had a discussion, correct?

13 A In May? Yes.

14 Q Is there any reference in any document you've
15 seen that during that conversation Mr. Mayerson asked Mr.
16 Bashore what Mr. Potosnak found?

17 A I don't recall him.

18 Q And Mr. Mayerson and Mr. Bashore during that
19 conversation agreed that an independent inspection --

20 MR. MAYERSON: Objection. Leading.

21 MR. KREKSTEIN: Fair enough.

22 BY MR. KREKSTEIN:

23 Q Can you take a look at Mr. Bashore's May 18th
24 letter if you have it in front of you?

25 A Yes. Hold on.

1 Q If you don't --

2 A No, I don't have that one any longer. I had it
3 at one time.

4 MR. KREKSTEIN: Your Honor, may I?

5 THE COURT: Yes.

6 MR. KREKSTEIN: Once again, mine has writing on it.
7 Can I hold my thumb over it when the witness looks?

8 THE COURT: Sure.

9 MR. KREKSTEIN: I don't want to -- I'm happy to go
10 through the exhibit book. I think I know where it is.

11 THE COURT: I might have it here.

12 May 19th?

13 MR. KREKSTEIN: May 19th, Your Honor. Thank you.

14 (Document handed to the witness.)

15 THE WITNESS: Thank you. Thank you.

16 BY MR. KREKSTEIN:

17 Q Ms. Foster, was that letter referring a
18 conversation between Mr. Bashore and Mr. Mayerson on May
19 12th?

20 A Yes.

21 Q Is there any reference to any request for any
22 findings from Mr. Potosnak?

23 A No.

24 Q And in fact, what is the letter evidencing an
25 agreement between Mr. Mayerson and Mr. Bashore to do?

1 A To have the car inspected by an independent
2 expert.

3 MR. KREKSTEIN: Thank you. Your Honor, I have nothing
4 further.

5 RE-CROSS-EXAMINATION

6 BY MR. MAYERSON:

7 Q Ms. Foster, even if the Bergs -- Mr. Krekstein
8 secured your agreement that the Bergs must have been aware of
9 the Potosnak inspection because Mr. Berg himself delivered
10 the vehicle to the inspection, right?

11 MR. KREKSTEIN: Objection to me securing an agreement.
12 I'm not sure --

13 THE COURT: What?

14 MR. KREKSTEIN: He said Mr. Krekstein secured an
15 agreement. And if I heard him wrong, I apologize.

16 THE COURT: Secured an agreement? You asked a
17 question that was raised with this witness. Okay. Now that
18 was raised by Mr. Krekstein. Whatever it was, it was raised.
19 Now you want to ask your question about that.

20 MR. MAYERSON: Yes.

21 MR. KREKSTEIN: Withdrawn, Your Honor.

22 THE COURT: Thank you.

23 BY MR. MAYERSON:

24 Q Knowing that an inspection took place and
25 knowing what the results of the inspection are, are two very

1 different things, right?

2 A Yes.

3 Q And the Bergs were never told what the results
4 of that inspection were?

5 A As far as I know. Until the report -- until
6 the copy of the log note was actually produced.

7 Q Five years later?

8 A Five years later.

9 Q And do you think that if Nationwide would have
10 disclosed the findings of that inspection to the Bergs, that
11 maybe this lawsuit perhaps could have been avoided and a
12 resolution reached?

13 MR. KREKSTEIN: Objection, Your Honor.

14 THE COURT: Does that go to bad faith or does that go
15 to resolution of the issue, resolution of the dispute?

16 MR. MAYERSON: Well, Your Honor --

17 BY MR. MAYERSON:

18 Q Ms. Foster, isn't it true that at the time of
19 the Potosnak inspection, the lawsuit had not been filed?

20 A Yes. The inspection was between the period of
21 the notice from the Bergs and the actual filing of the
22 lawsuit.

23 Q And in fact, the Bergs requested an extension
24 -- they actually filed a motion to stay the rule to file the
25 complaint to provide Nationwide an opportunity to purchase

1 the vehicle. Correct?

2 A Yes. But it all -- apparently litigation had
3 been going on for months and months with -- between Lindgren
4 and others, and notice was only given to Nationwide a number
5 of days before you were up against that deadline.

6 Q But all the same, the Bergs were asking for a
7 stay on the rule to file the complaint to provide time for
8 Nationwide to purchase the vehicle. I think you've already
9 answered that.

10 A I think that did happen. Yes.

11 Q All right. You agreed that the Bergs never
12 requested a copy of the Potosnak report; is that right?

13 A I said I don't recall -- I just don't recall
14 hearing evidence or seeing a document that reflected that.

15 Q Did you --

16 A In the course of the claims adjudication. I'm
17 not saying within the course of the litigation.

18 Q Well, that's what I mean. I mean, the Court
19 ordered Nationwide to produce the claim file twice, right?

20 A Yes. That was long after the claim had already
21 been resolved.

22 Q But the Burgs really wanted a copy of that,
23 whatever was in the claim file. It's not as if the Bergs
24 didn't care about it, right?

25 MR. KREKSTEIN: Objection, Your Honor, as to what the

1 Bergs thought.

2 THE COURT: Are you able to answer that?

3 THE WITNESS: No. I have no idea.

4 BY MR. MAYERSON:

5 Q All right. Well, you at least agree that the
6 Bergs went to some trouble to try and get what they were
7 entitled to get?

8 A The Bergs sought a lot of discovery, and this
9 is certainly one of the items that they pursued.

10 Q And then the last question I have really is
11 when you said that the Bergs filed all these motions, do you
12 think that maybe they filed all these motions because they
13 couldn't get the evidence that they were entitled to get?

14 A I have no idea why they filed all the motions.

15 Q Well, wouldn't that be one good reason? In
16 fact, wouldn't that be one of the only reasons?

17 A I just don't want to speculate with you as to
18 why you made certain decisions on how to pursue this case.

19 Q All right.

20 A You know that answer.

21 Q Well, yes, I know the answer is that we wanted
22 to get the evidence that was being withheld from us.

23 MR. KREKSTEIN: Objection, Your Honor. Mr. Mayerson
24 is testifying.

25 THE COURT: I believe that quite a while back you had

1 made the statement that you felt that this dragged out --
2 Mr. Snyder.

3 (Discussion off the record between the Court and
4 counsel in another matter.)

5 THE COURT: Going back on the record, you had some
6 time ago drew a conclusion or raised the issue. I'm not sure
7 which. That's what I'm asking you. That the unusual thing
8 about this case is that the Bergs had raised so many issues
9 on discovery and that that had a lot to do with the cost of
10 the litigation being so extensive and expensive.

11 THE WITNESS: I think that's fair. Because the
12 allegation was -- is that Nationwide had engaged in Scorched
13 Earth. And I made that observation in the context in the
14 Scorched Earth scenario you expect to see most of the
15 activity being triggered by the defendant. In this case --
16 I'm not saying there's anything inappropriate or wrong with
17 it, but they chose to litigate the case in the same way -- in
18 a certain way. Nationwide's entitled to defend against it.
19 And that's what I believe happened in this case.

20 THE COURT: Well, you have Nationwide being entitled
21 to defend against anyone --

22 THE WITNESS: Exactly.

23 THE COURT: -- in any situation.

24 THE WITNESS: Exactly. It's not Scorched Earth. It's
25 defense.

1 THE COURT: I was just wondering if you don't really
2 have an opinion about the questions that were just asked, one
3 way or another. Do you -- did you earlier say you had an
4 opinion that the plaintiff had -- was -- by raising so many
5 issues, that that contributed immensely or to a large extent
6 or to most of the expenses that were as a result of it? What
7 did you say?

8 THE WITNESS: Well, just now he was asking me about
9 the motivation as to why plaintiff -- and -- as to why
10 plaintiff pursued the case the way they did. I don't have an
11 opinion.

12 What I did say is, as I said in the context of the
13 Scorched Earth accusation, is that if you look at this -- if
14 you look at the totality of the docket here, there is not
15 evidence of Scorched Earth, because the activity was
16 initiated by the plaintiff. I'm not saying it was wrong.
17 I'm not saying it was out of bad motivation. It's simply
18 that's what happened. And when it happened, Nationwide is
19 entitled to a defense and that defense does not become bad
20 faith because it defends itself.

21 THE COURT: Does what?

22 THE WITNESS: Because they defend themselves against
23 whatever case plaintiffs choose to pursue.

24 BY MR. MAYERSON:

25 Q Ms. Foster, do you know how long it took the

1 Bergs to get photographs of the vehicle?

2 A No.

3 Q I mean, you would agree that's the most basic
4 evidence in the case?

5 A Photographs of the vehicle when? At the time
6 of the accident?

7 Q We have -- the only photographs we have of this
8 vehicle -- well, let me ask you a question. Do you agree
9 that the Blue Ribbon Repair Program operates on a platform of
10 photographs? Right? The repair shop does an appraisal and
11 takes a bunch of pictures of the car and sends it to
12 Nationwide?

13 A Okay.

14 Q All right.

15 A That would be standard procedure.

16 Q Right. And so when we requested copies of
17 photographs, Nationwide objected. And we filed a motion to
18 compel. And the Court ordered Nationwide to produce
19 photographs. Were you aware of that?

20 A I think so. I mean, I -- there were so many
21 motions about so many things. But yes.

22 Q And Nationwide's answer was that there are no
23 photographs. Did you know that?

24 A I was not aware of that.

25 Q And then we filed a motion for sanctions

1 because we secured evidence proving that there was
2 photographs. And then Nationwide produced two photographs,
3 after saying there were none. And then are you familiar with
4 that?

5 A No.

6 Q Would you like to see the two photographs?

7 (Photocopy of Two Photographs - marked for
8 identification as EXHIBIT NO. 71.)

9 MR. KREKSTEIN: What do the two photographs, Your
10 Honor, have to do with the motion filed to get the
11 photographs, which Mr. Mayerson's asking about?

12 MR. MAYERSON: If it shows what a Scorched Earth
13 defense is. It's not just filing motions --

14 THE COURT: Well, I'm trying to get from you -- and
15 where are you on this whole thing? Are you of the opinion
16 that the Bergs brought much of this expense on themselves?

17 THE WITNESS: Yes.

18 THE COURT: Yes. So --

19 THE WITNESS: Yes.

20 THE COURT: And --

21 THE WITNESS: It's what caused the case to grow the
22 way that it has.

23 THE COURT: But you're not aware of many of the things
24 that Mr. Mayerson could go into now?

25 THE WITNESS: Yeah. I mean, there clearly was motion

1 practice back and forth. Again, I put this in the context of
2 a Scorched Earth. That is the allegation, that this was
3 Scorched Earth, in which case you would see the majority,
4 predominantly action that the --

5 THE COURT: Who made that allegation?

6 THE WITNESS: The expert of the plaintiffs.

7 THE COURT: That's right. Did the Superior Court
8 agree that it was Scorched Earth?

9 THE WITNESS: No. They said it's an open issue.

10 BY MR. MAYERSON:

11 Q They said that the Bergs could present evidence
12 of it?

13 A Correct.

14 Q And you were, in fact, here today when we had
15 to get two Court orders to get an answer to six
16 interrogatories that were served in May. Right?

17 A I heard the testimony this morning, yes.

18 Q And in fact, the witness, I mean, initially
19 just didn't show up.

20 MR. KREKSTEIN: Objection, Your Honor.

21 THE COURT: The witness initially did not show up?

22 MR. KREKSTEIN: That was Mr. Costello, Your Honor.

23 THE COURT: That would be the last couple of days.

24 MR. KREKSTEIN: Yes.

25 THE COURT: He did not appear. And you wanted him

1 here and then Nationwide didn't want to supply him and you
2 raised that issue prior and I said -- to assure you, I said
3 -- when you called my chambers asking if I have made a ruling
4 on that, I said I'll make a ruling when we have everybody
5 here together in three or four days, and that's what we did.
6 So you wanted to tell that -- the point is, he was not here.

7 MR. KREKSTEIN: That's correct, Your Honor.

8 THE COURT: He was not supplied. But we dealt with
9 that issue further here. I don't know if you want to go into
10 all this or not or it's just something that this Court will
11 be aware of and can make its own conclusions. It's entirely
12 up to you. This expert witness has given an opinion based on
13 that. And we can certainly allow you to go into that even
14 tomorrow if you wanted to. I don't know if this witness is
15 available.

16 MR. MAYERSON: I don't want to go into it in any more
17 detail except I would like to ask the witness, you agree that
18 the Bergs, when they were doing all this work, were never
19 paid anything?

20 MR. KREKSTEIN: Objection, Your Honor. What work?

21 MR. MAYERSON: All this motion practice that she's
22 talking about.

23 MR. KREKSTEIN: You mean the Bergs' attorney?

24 MR. MAYERSON: Yes.

25 MR. KREKSTEIN: Oh. He said the Bergs.

1 THE COURT: You weren't paid anything when you're
2 doing all this. I certainly understand that. I mean, at
3 least that's what --

4 MR. MAYERSON: The idea is there's a federal opinion
5 --

6 THE COURT: Sometime you're going to be providing your
7 legal fees in this case. But then you said it's a
8 contingency fee agreement. So I don't know what all that
9 means.

10 BY MR. MAYERSON:

11 Q Ms. Foster, you're aware of a federal opinion
12 that states that the bad faith statute and the fee provision
13 of the bad faith statute acts as a filtering function because
14 rational attorneys will only work as diligently as necessary,
15 because they're working on a contingency fee basis?

16 MR. KREKSTEIN: Your Honor, I just want the record to
17 reflect that Mr. Mayerson is now relying on federal court
18 opinions. Previously he filed a motion in limine to get us
19 not to refer to federal court opinions. So is that motion
20 withdrawn so I can go back to referring to law, both state
21 and federal?

22 MR. MAYERSON: The federal court opinions that
23 preclude evidence are the ones that are at odds with Hollock
24 versus Erie.

25 THE COURT: I think we don't need to ask this witness

1 any more questions on the law or on opinions and what
2 opinions stand for. We'll give you the opportunity, if you
3 wish to, to cross-examine on the conclusion that you have
4 caused a lot of this -- the allegation that you have caused a
5 lot of the expense in this whole thing. Either that or you
6 can make your argument and set forth exactly what all the
7 things that were done. However you want to do it. But you
8 certainly are entitled to deal with that issue and we would
9 allow for you to deal with that issue at another time. I
10 don't know if that will be tomorrow or when that would be.

11 MR. MAYERSON: Your Honor, that's fine. I'm willing
12 to do that. One of the issues that we talked about I think
13 is, first of all, the law says the plaintiffs' state of mind
14 is not at issue, and then once you go down this road is it
15 does open up the door to this type of collateral issues. So
16 now we're going to go into these collateral issues because
17 Ms. Foster was allowed to give her opinion that the cost of
18 this litigation was the Bergs' fault, the Bergs' counsel's
19 fault. So I guess what I have to do is show why it wasn't
20 our fault.

21 MR. KREKSTEIN: Your Honor, that's -- number one,
22 that's not what Ms. Foster said. Number two, as Ms. Foster
23 testified, Ms. Foster's opinion was presented in direct
24 contradiction to the opinion proffered by the Bergs through
25 Mr. Chett that there was a Scorched Earth litigation,

1 whatever, and this argument that the litigation strategy in
2 Bonenberger somehow applies in this case. So to say that
3 we're now opening a new door is frankly ridiculous.

4 THE COURT: Well, I opened the door when I asked what
5 it was that you said earlier, several hours ago, and now --
6 and I -- I mean, I've clearly recognized that the door is
7 open. And you have the right, if you wish to, to question
8 this witness on cross-examination for impeachment purposes of
9 what -- of how she's hanging her actual opinion on all these
10 things, and you can impeach if you wish to do that, or if you
11 wish to just simply make the arguments when we get to -- to
12 some point.

13 I don't know whether you expect this witness might
14 change her opinion if you went through all these things or if
15 you wanted to impeach her by asking the questions. Or if --
16 of record we have discussion and noted of all the things --
17 well, we do have noted. I mean, it's all in the file of all
18 the things that had to be supplied by further argument. I
19 don't know.

20 I just want to give you the opportunity, if you want
21 that opportunity. And you know that anyway, so I don't even
22 really to have say that. Are we coming back on this case, I
23 guess is what I'm asking?

24 MR. MAYERSON: Your Honor, I think I've already laid
25 out the trouble we had getting evidence in our proposed

1 findings of fact. It's pretty much spelled out in there.
2 And I think that justified everything we had to do in this
3 case.

4 THE COURT: And all of that is of record anyway.

5 MR. MAYERSON: Yes.

6 THE COURT: Okay. All right. Well, that answers my
7 question. And anything further of this witness?

8 MR. KREKSTEIN: No, Your Honor. I ask that Ms. Foster
9 be excused.

10 THE COURT: And no objection to that?

11 MR. MAYERSON: No, Your Honor.

12 THE COURT: All right. Thank you.

13 THE WITNESS: No objection from me. Thank you.

14 THE COURT: Thank you very much. Have a safe trip.
15 Are you going back to?

16 THE WITNESS: Harrisburg.

17 THE COURT: Shouldn't be too bad.

18 THE WITNESS: It's a little over an hour.

19 THE COURT: Even at this hour.

20 MR. KREKSTEIN: Can I take a minute just to say
21 good-bye to Ms. Foster?

22 (Discussion off the record.)

23 (Whereupon, at 4:53 p.m., the proceeding was
24 concluded.)

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

I hereby certify, as the stenographic reporter, that the foregoing proceedings were taken stenographically by me, and thereafter reduced to typewriting by me or under my direction; and that this transcript is a true and accurate record to the best of my ability.

By: _____
Rachelle D. Hirneisen
Registered Merit Reporter
Certified Realtime Reporter

PROOF OF SERVICE

Pursuant to Rule 121 of the Pennsylvania Rules of Appellate Procedure, the undersigned hereby certifies that on this date, a true and correct copy of the foregoing Reproduced Record, Volume III of V was served upon the following parties via first class mail:

Benjamin J. Mayerson, Esq.
Mayerson Law, P.C.
1 N. Sunnybrook Rd.
Pottstown, PA 19464

Dean R. Phillips, Esq.
Colin J. O'Boyle, Esq.
Union Meeting Corporate Center V
925 Harvest Drive, Suite 300
Blue Bell, PA 19422

*Counsel for Appellee Daniel Berg, individually
and as the Executor of the Estate of Sharon Berg
a/k/a Sheryl Berg*

Dated: September 8, 2015



DECHERT LLP
Ellen L. Mossman (Pa. 319149)
Cira Centre, 2929 Arch Street
Philadelphia, PA 19104-2808
(215) 994-4000

*Counsel for Appellant Nationwide Mutual
Insurance Company*