

Benjamin J. Mayerson, Esq.
Peter J. Dolan, Esq.
Allan J. Ray, Esq.

Of Counsel:
Margaret Connors, Esq.

**DOLAN &
MAYERSON, P.C.**
Attorneys At Law

1800 E. High Street, Suite 150
Pottstown, PA 19464
610-906-1966 phone
610-906-1575 fax
www.DolanMayerson.com

Other Locations:

3970 Perkiomen Ave
Exeter Ridge Corporate Center
Reading, PA 19606

Please send all correspondence to
Pottstown Office

February 24, 2014

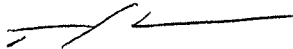
The Honorable Jeffrey K. Sprecher
Berks County Courthouse
633 Court Street
Reading, PA 19601

Re: Berg v. Nationwide Mutual Insurance Co., Inc. - No. 98-813

Dear Judge Sprecher:

Enclosed please find a courtesy copy of Plaintiff Bergs' Fee Petition & Statement of Damages for hearing scheduled for March 3, 2014.

Respectfully,



Benjamin J. Mayerson

BJM/dh

C: G. Frank McKnight, IV, Esquire
William O. Krekstein, Esquire

DANIEL BERG and SHERYL BERG,
Husband and Wife
Plaintiffs

COURT OF COMMON PLEAS
BERKS COUNTY, PA

v.

NO. 98-813

NATIONWIDE MUTUAL INSURANCE
COMPANY, INC.
Defendant

CIVIL ACTION – LAW

**PLAINTIFF BERGS’
FEE PETITION & STATEMENT OF DAMAGES**

I. DEFENSE OF “MERE NEGLIGENCE”

1. Attached at Tab 1 is a two-page brief succinctly stating why “mere negligence” is not a valid defense in this case. If the Court has any lingering doubt as to whether Defendant Nationwide appraised the insured loss in bad faith, it is respectfully requested that this additional argument be considered.

_____ **Accepted** _____ **Denied** _____ **Modified**

II. ATTORNEY FEE PETITION

2. To support an award of attorney fees in an insurance bad faith case, this Court must consider the following factors:

- (1) time and effort reasonably expended by the attorney in the litigation;
- (2) quality of services rendered;
- (3) results achieved and benefits conferred upon the class or upon the public;
- (4) magnitude, complexity, and uniqueness of the litigation; and
- (5) whether the receipt of a fee was contingent upon success.

See Birth Center v. St. Paul Companies, Inc., 727 A.2d 1144, 1160 (Pa. Super. Ct. 1999), *aff’d on other grounds*, 567 Pa. 386, 787 A.2d 376 (2001).

_____ **Accepted** _____ **Denied** _____ **Modified**

3. *Birth Center* also offers the following helpful guidelines:

The calculation of a reasonable fee **should** begin with the actual number of hours spent in pursuing the claim multiplied by a reasonable rate. Both the number of hours and the rate per hour shall be calculated on a basis reasonably reflective of the

relevant market and the magnitude, complexity and uniqueness of the claim and the related task.

The court may also consider the discretionary application of a fee enhancement to reflect the contingent risk of the particular bad faith claim at issue.

....

The court's ultimate responsibility is the award of a "reasonable" fee. We are mindful that a fee award is discretionary under Section 8371. Thus, we conclude the question of whether fees are awarded under the statute, and in what amount, must be subject to an abuse of discretion standard of review.

Id. at 1160-61 (emphasis added).

_____ **Accepted** _____ **Denied** _____ **Modified**

4. The Bergs' attorneys incurred 5,689.35 hours litigating this case on a contingency fee basis over a period of 16 years. This fee petition does not include at least 2,000 hours incurred by the firms' support staff. This fee petition does not include expert witness fees. This fee petition does not include the time expended in the calculation of the hours for this fee petition, which was a substantial undertaking. This fee petition does not include the hours incurred during the pleadings stage to certify this matter as a class action, which were specifically removed to eliminate further argument on this issue.

The remaining 5,689.35 hours are conservatively stated as it was necessary to recreate the hours incurred prior to 2002, when the firm failed to track their hours contemporaneous with the work. Defendant Nationwide was provided the actual time logs, and thereafter deposed the Bergs' attorneys, with respect to their work on the case, namely Margaret Connors, Hy Mayerson, and Ben Mayerson.

See Plaintiff Bergs' Itemization of Attorney Fees attached at Tab 4.

_____ **Accepted** _____ **Denied** _____ **Modified**

5. The Bergs respectfully request an hourly rate of \$525, and will briefly address each of the five factors that must be considered in fixing a reasonable rate. First, the enormity of the time and effort expended cannot be understated. The sixteen years of litigation only hints at the impact this undertaking had upon the family law-firm which disbanded under the weight of this case. The litigation required an enormous percentage of firm resources relative to other cases. Second, the

quality of services is detailed *infra*, but includes successful application for review by the Supreme Court of Pennsylvania, and a published Opinion from the Superior Court. The litigation forced Nationwide to purchase the subject vehicle, which it had refused to do prior to the filing of the lawsuit. This case also exposed, to the appellate courts, Nationwide's use of its extraordinary wealth to punish and deter the Bergs' attorneys for agreeing to represent its insured in this matter. Third, and perhaps most importantly, as detailed *infra*, the results of this case will benefit motorists in Pennsylvania who unwittingly agree to have their collision claim resolved through an insurer-controlled, direct-repair program, and will also promote safer repairs of said vehicles. Fourth, the magnitude, complexity, and uniqueness of the litigation is reflected in the necessity of securing appellate review, and further reflected in the Superior Court's decision to publish its Opinion. Fifth, the fee was undertaken on a contingency fee basis. The financial burden created by the need to litigate the case for 16 years, often working 14-hour days, without being paid, and without being able to focus upon other, fee generating business, created extraordinary hardship. A reasonable fee enhancement is justified.¹

_____ **Accepted** _____ **Denied** _____ **Modified**

6. The fee respectfully requested is \$2,986,908.75, which reflects the requested hourly rate multiplied by the number of hours recorded.

_____ **Accepted** _____ **Denied** _____ **Modified**

7. Nationwide's attorneys were paid at least \$2.5 million. Nationwide's billing records, authenticated by stipulation, reflect a fee closer to \$3.4 million. Nationwide's attorneys were not subjected to the hardship of generating income from other cases, to pay salaries for all staff, while simultaneously litigating this case on a contingency fee basis. Nationwide and its attorneys had

¹ Evidence of a fair hourly rate for this case includes the fact that Nationwide *voluntarily* paid Attorney Constance Foster \$725 per hour. Thus, Nationwide has tacitly admitted this rate is "reasonably reflective of the relevant market and the magnitude, complexity and uniqueness of the claim and the related task for this case." *See Birth Center* at 1160. By the time her testimony was complete on December 19, 2013, Attorney Foster's fee as an expert witness exceeded \$100,000. *See* 2013 N.T. 308/7-310/7 (Attorney Foster). Ms. Foster was not paid on a contingency fee basis. By comparison, an hourly rate of \$575 for the Bergs' attorneys, to litigate this case for 16 years on a contingency fee basis, is inherently fair.

Likewise, the amount Nationwide paid its own attorneys is "reasonably reflective of the relevant market and the magnitude, complexity and uniqueness of the claim and the related task for this case," albeit without the added hardship of the fee being paid at the end of the case, and only if their client won.

unlimited financial resources from which to draw. Neither lost a single night's sleep worrying whether this case would bankrupt Nationwide or its law firm.

See 2013 N.T. 146/1-10 (Nationwide Designee S. Costello conceding \$2.5 million in fees).
See Trial Exhibit No. 70 (Page 840 of 859) (\$901,340.00 single line-item billing entry).
See 2013 N.T. 139/2-8; 141/1-143/25 (S. Costello unable to explain billing discrepancy).

_____ **Accepted** _____ **Denied** _____ **Modified**

8. The Bergs attorneys navigated this case through the appellate courts, including successful application for review by the Supreme Court of Pennsylvania, helping to clarify Appellate Rule of Procedure 1925(b). *See Berg v. Nationwide Mutual Insurance Company, Inc.*, 607 Pa. 341, 6 A. 3d 1002 (2010) (Opinion Announcing the Judgment of the Court).

_____ **Accepted** _____ **Denied** _____ **Modified**

9. As a result of this litigation the Superior Court held, *inter alia*, that when a collision claim is processed through the insurer's direct repair program, the duty of good faith and fair dealing remains intact even where the repair program is not specifically identified in the insurance policy. The *Berg* Opinion, which is a published decision, also promotes safer collision repairs by making clear that a violation of Pennsylvania's *Motor Vehicle Physical Damage Appraiser Act*, 63 P.S. §851-863, will support a finding of insurer bad faith. *See Berg v. Nationwide Mutual Insurance Company, Inc.*, 44 A.3d 1164, 1170 (Pa. Super. 2012), *reargument denied*, (June 29, 2012), *appeal denied*, 65 A.3d 412 (Pa. 2013).

_____ **Accepted** _____ **Denied** _____ **Modified**

III. PUNITIVE DAMAGES

10. As a result of Nationwide's appraisal and repair decisions in this case, the subject vehicle was returned to the Bergs in a potentially dangerous condition with hidden structural repair failures. The uncontroverted evidence confirms that the vehicle's front tires wore down to the metal belts within a short period of time after the vehicle was returned to the Bergs, undeniably compromising the safe operation of the vehicle.

See 2004 N.T. 714/15-21 (Doug Joffred).

See 2004 N.T. 387/19-20 (Sheryl Berg).

_____ **Accepted**

_____ **Denied**

_____ **Modified**

11. On **April 28, 1998**, just prior to this lawsuit being filed, Nationwide inspected the vehicle and entered a report in its claim file detailing/confirming the failed repairs. The inspection was conducted by Stephen Potosnak, at the direction of his supervisor Bruce Bashore. Bashore received the inspection report on **April 30, 1998**. See "Potosnak Report" at "A," attached under Tab 11. Bashore thereafter denied knowledge of the failed repairs. The Potosnak Report was redacted from the claim file pursuant to an untenable assertion of attorney-client privilege. See *redacted* Potosnak Report, at "B." See also Bashore letter of **May 19, 1998** claiming to be unaware of repair issues, at "C." Nationwide's final inspection took place **April 20, 1999**. The inspection confirmed the "primary structural components on the front of the vehicle are significantly misaligned." See Trial Exhibit No. 68 (Page 12 of 16), Anderton Report Summary, at "D." Nationwide did not produce this report either until the Bergs motioned for trial certification, which was well after both parties incurred substantial legal fees. When Mr. Bashore verified Nationwide's Answer to Complaint on **June 19, 2000**, after both inspections, he denied knowledge of repair failures. See Answer at paragraph 27 with verification, at "E."

Nationwide continued to deny knowledge of the failed repairs through **March 11, 2003**, when the Bergs took the deposition of its Corporate Designee, E. Michael O'Leary. See 2004 N.T. 846/12-847/7 (E. Michael O'Leary), and Trial Exhibit No. 80, Appendix A to 11/25/03 Report of Constance Foster (identifying March 11, 2003, as date of the Nationwide Corporate Designee Deposition), at "F." This was six years after the vehicle was returned on December 30, 1996, with hidden structural repair failures, and five years after it had the repairs inspected by Stephen Potosnak.

The Potosnak Report was un-redacted on **May 3, 2003**, a full *five years* after it was entered into the claim file. It was un-redacted to support Nationwide's denial to Request for Admissions. See Trial Exhibit No. 67 (Answer to Request for Admissions at 1, 2, 11), at "G." See also 2004 N.T.

494/7-495/19 (Bashore admitting Potosnak Report not a communication to counsel), at H. ²

_____ **Accepted** _____ **Denied** _____ **Modified**

12. James Chett, CPCU, testified as an insurance expert for the Bergs. Mr. Chett had more than thirty years of management experience in the insurance industry. Mr. Chett offered his opinion that **“Nationwide’s conduct was reckless in that it placed or allowed to be placed on the highway an unsafe vehicle.”** 2007 N.T. 176/8-10 (emphasis added). Mr. Chett explained as follows:

as an insurer – we have an obligation to make certain that vehicles are repaired and they’re repaired safely So as a manager in my position, and I would expect that every insurance manager’s position, they want to ensure that a car is safely repaired and placed on the highway. And if I can say even further, I think a lay person can tell you whether or not an unsafe car should or should not be on the highway, and I believe that Nationwide knew that the Berg vehicle was unsafe to operate and I will refer to the stipulation [referring to the Potosnak Report].

Id. at 177/13-178/6. On cross-examination Mr. Chett was probed as to the foundation for concluding the vehicle was unsafe. Mr. Chett responded as follows:

Twofold. According to the file and the documents that I reviewed, Mr. Wert testified that Nationwide had appraisers, material damage people, in and out of the shop while the vehicle was being repaired. And Mr. Wert, of course, is the individual who informed the Bergs that he felt their vehicle was unsafe. . . . The second basis is the Potosnak stipulation that was read into the record yesterday which identified a multitude of problems with that automobile that he found on his inspection of April, 1998.

Id. at 179/19-180/24. Nationwide pressed for a stronger basis to conclude the vehicle was unsafe. Mr. Chett elaborated as follows:

Your Honor, that’s what caused me to conclude that this vehicle was unsafe. When I saw problems with the sway bar combined with testimony, again, I don’t have it written down, but there was testimony that the car was taken back to the shop several times because the tires were wearing unevenly down to the steel in the tire. And I mean, again, even to a lay person, and I consider myself an expert

² A broad range of evidence, including eye-witness testimony, supports the conclusion that Nationwide was aware of the failed repairs before the vehicle was released to the Bergs via routine repair inspections performed throughout the four month repair period. The only evidence missing to make this an *uncontested fact* are the actual inspection reports. The Bergs respectfully submit that the *five-year* concealment of the Potosnak Report (and Anderton Report), while denying knowledge of the failed repairs, is compelling evidence corroborating the conclusion that Nationwide is concealing the inspection reports created during the course of the four-month repair period. Every witness admits the inspection reports should exist. Nationwide has not offered any explanation as to why there are none.

when it comes to making decisions about whether a car should be replaced or properly repaired, even a lay person has to realize that that vehicle is unsafe.

Id. at 182/7-16. After further cross-examination the following ruling was made:

The Court is ruling that his opinion with regard to whether or not the automobile was unsafe and therefore whether or not Nationwide was reckless in allowing the vehicle to be placed out on the road again is admissible evidence and that this witness is qualified to give that opinion.

Now, later on in weighing his opinion as to whether or not this was reckless conduct in relation to the other testimony that I've either already heard or will hear in this case, that's quite another thing, okay.

Id. at 225/13-18.

The second opinion permitted was that Nationwide improperly engaged in a "scorched-earth defense of this case." *Id.* at 226/23-25. During cross-examination, Mr. Chett was asked, "[s]o the basis of your testimony is that Nationwide defended this case and therefore that was improper." Mr. Chett responded as follows:

That's not quite correct. And I tried to allude to that a little bit earlier, but defending this case and I mentioned in my report, but defending this case and spending a lot of money and a lot of time stretches a small plaintiff's firm. The leverage is with the insurance carrier who has unlimited financial assets and the time. And I've done this. I mean, I'm telling you, when you use your superior assets against another party, you generally are going to prevail over the long haul if you're willing to go [interruption by the Court] Well, Your Honor, I just didn't feel it was reasonable for Nationwide to use all of these assets that they had to delay this case. And if I might also comment, when I looked at the bills, the legal bills [Trial Exhibit No. 70], there were certain dates that were of interest to me to see whether or not Nationwide was going to attempt to move this case to settlement or at least to alternative dispute resolution. And the bench marks that I looked at, the first one was the bench mark when Mr. Potosnak looked at that car because in my opinion that car had damage. That wasn't properly fixed. And it would seem reasonable that the insurance company would try and settle the case at that time. Another bench mark was after Mr. Anderton looked at the car and found some problems with the car. If you want to resolve cases, you try to resolve them as soon as you can, because you usually get a less expensive settlement and you limit your legal expenses. And I just didn't see any evidence - [interruption by the Court] Its not just the legal fees. It's the taxpayers expense, you know. It's insane.

Id. at 244/16-246/3; and 248/10-11. Nationwide's counsel pressed as to why Nationwide should be

penalized for zealously defending itself. Mr. Chett explained as follows:

We're talking about the Bergs, the Berg's case, the damage to their car. I didn't see that Nationwide ever repaired that car or replaced that car. I would expect – I would have expected efforts would have been made to take care of the car and take care of the damage to the car. What I felt happened in this case with the defense is that the Bergs got left behind and the issue became between Nationwide and Plaintiff's law firm And we completely forgot about our insured and that's the person to whom you [Nationwide] owe to discharge the insuring agreement.

Id. at 257/6-17.

_____ **Accepted** _____ **Denied** _____ **Modified**

13. In addition to the damages described above, the Bergs sustained other financial losses. Although the vehicle was declared a structural total loss on September 10, 1996, Nationwide did not purchase the vehicle until January 8, 1999, which was 27 months later.

_____ **Accepted** _____ **Denied** _____ **Modified**

14. During this time period, the Bergs made 27 monthly lease payments of \$385.04, totaling \$10,396.08. The Bergs also made a down-payment to secure the terms of the three year lease, which included \$1,160.75 capital reduction, \$949.25 vehicle trade-in, \$400.00 security deposit, and other leasing fees. The Bergs continued paying insurance premiums (\$354.30 every six months) on the subject vehicle from the date of loss, through the date of purchase 27 months later. The insurance premium paid during this 27 month period was \$1,594.35. The Bergs also incurred a \$500 deductible on their collision claim.

The total amount itemized above is \$15,000.43.

See Trial Exhibit No. 9 (Lease Agreement).

See Trial Exhibit No. 47 (Page 2 of 36)(auto policy identifying premium and deductible).

See 2004 N.T. 653/14-15 (Doug Joffred) (confirming \$500 deductible).

_____ **Accepted** _____ **Denied** _____ **Modified**

15. The Bergs respectfully request a punitive damage award be entered pursuant 42 Pa. C.S.A. §8371, in amount not exceeding a single digit ratio to the amount of attorney fees awarded.

_____ **Accepted** _____ **Denied** _____ **Modified**

16. Our courts recognize that a defendant's wealth is relevant because punitive damages are intended to cause a degree of financial pain to punish and deter similar future conduct. *See Hollock v. Erie Insurance Exchange*, 842 A.2d 409, 421-22 (Pa.Super.2004) (affirming 10 to 1 ratio due, in part, to "significant wealth" of insurer). Thus, a relatively small punitive damage award is unlikely to be a deterrent. A lesser amount is likely to be much like a fly on the back of an elephant.

_____ **Accepted** _____ **Denied** _____ **Modified**

17. Defendant Nationwide stipulated that a punitive damage award of \$18 million would not impact its financial stability.

See 2013 N.T. 96/21-97/5.

_____ **Accepted** _____ **Denied** _____ **Modified**

18. A punitive penalty of \$18 million is 2/10 of a penny for each dollar of excess Statutory Surplus owned by Nationwide.

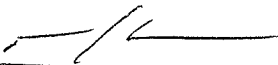
See 2013 N.T. 101/21-102/4 (Jeffrey Silver, CPA).

_____ **Accepted** _____ **Denied** _____ **Modified**

19. The attorney fee award entered in favor of the Bergs is _____.

20. The punitive damage award entered against Nationwide is _____.

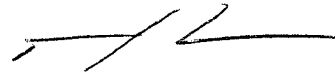
Respectfully Submitted,



Benjamin J. Mayerson
Counsel for Plaintiff Bergs - ID #73742

VERIFICATION

I, Benjamin J. Mayerson, Esquire, Attorney for Plaintiffs in this action, verify that the statements made in the foregoing Fee Petition and Statement of Damages 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: 2/21/14

DOLAN & MAYERSON, P.C.
BY: Benjamin J. Mayerson, Esquire
I.D. #73742
Margaret R. Connors, Esquire
I.D. #33612
1800 E. High Street, Suite 150
Pottstown, PA 19464
610-906-3147

Attorney for Plaintiffs

DANIEL BERG and SHERYL BERG,
Husband and Wife

Plaintiffs

v.

NATIONWIDE MUTUAL INSURANCE
COMPANY, INC.

Defendant

COURT OF COMMON PLEAS
BERKS COUNTY, PA

NO. 98-813

CIVIL ACTION - LAW

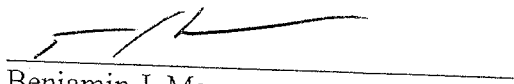
CERTIFICATE OF SERVICE

I, Benjamin J. Mayerson, Esquire, hereby certify that on the *24th* day of February, 2014, a true and correct copy of Plaintiff Bergs' Fee Petition and Statement of Damages was sent via U.S. first-class mail, postage prepaid, to counsel of record as follows:

G. Franklin McKnight, IV, Esquire
William O. Krekstein, Esquire
Nelson, Levine de Luca & Hamilton
518 Township Line Road, Suite 300
Blue Bell, PA 19422

DOLAN & MAYERSON, P.C.

BY:



Benjamin J. Mayerson
Attorney for Plaintiffs

ARGUMENT BRIEF
AGAINST DEFENSE OF “MERE NEGLIGENCE”

The concept of “mere negligence” being insufficient to prove insurer bad faith might be best understood in the context of an underinsured motorist (personal injury) claim, rather than a collision claim. For instance, a policy holder sues for bad faith because the insurer possessed all necessary medical documentation to complete an evaluation within three months, but failed to review the documentation timely and the evaluation took an extra two or three months to complete. This is not insurer bad faith. In the context of a direct repair collision claim, “mere negligence” would be where the insurer has no reason to know repair efforts may fail, and releases the policy proceeds to its direct repair facility without further investigation.

In this case, Nationwide recklessly disregarded four established facts, identified as red flags, which would place any reasonable insurer on notice that the claim required further investigation prior to releasing the policy proceeds to its repair facility. Moreover, Nationwide created a fiduciary duty requiring it to ensure the frame repairs succeeded when it decided, without the Bergs’ knowledge, that frame repairs would be attempted by an unapproved repair facility after the vehicle was declared a structural total loss due to a twisted frame. Nationwide’s expert acknowledged a fiduciary duty existed. Her acknowledgement was necessitated by her opinion that Nationwide had the exclusive right to decide whether the vehicle would be repaired or totaled. *See* 2013 N.T. 209/7-211/4 (Constance Foster). Indeed, it is a principal of insurance law that “[t]he duty of good faith originates from the insurer's status as a fiduciary for its insured under the insurance contract, which gives the insurer the right, *inter alia*, to handle and process claims.” *Berg v. Nationwide Mutual Ins. Co., Inc.*, 44 A.3d 1164, 1170 (Pa. Super. 2012), *reargument denied* (June 29, 2012), *appeal denied*, 65 A.3d 412 (Pa. 2013), *citing Ridgeway v. U.S. Life Credit Life Insurance Co.*, 793 A.2d 972, 977 (Pa. Super. 2002). *See also* testimony of the Bergs’ insurance expert, attached to this Damages Petition at Tab 12 (opining it was reckless for Nationwide to permit release of vehicle).

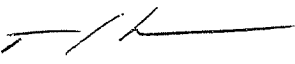
Nationwide contends it was justified in not investigating whether the frame repairs attempted by the non-BRRP facility succeeded because Doug Joffred reported successful frame repairs. This contention is not credible because it is not documented in Nationwide’s claim file. To the contrary, it was elicited by Nationwide’s counsel during trial, nine years after the event, via leading questions to a non-adverse witness. *See* 2004 N.T. 685 (Doug Joffred). If such a conversation took place it is required to be, and would have been, documented in the claim file at the time of the event. *See* 31 Pa. Code §146.3, attached.

The conclusion that a report of successful frame repairs never occurred is corroborated by the fact that the frame repairs failed. It is illogical that Mr. Joffred would report successful frame repairs when the repairs in fact failed. Besides, assuming the alleged report of successful frame repairs is correct, common sense required Nationwide to investigate that alleged report when the repairs remained incomplete well after the expected 25 day repair-period expired. The reason the claim file does not contain a report of successful frame repairs is because it never occurred.¹

If lingering doubt remains as to whether Nationwide appraised the collision claim in bad faith, the Bergs rely upon the numerous statutory and regulatory violations of Pennsylvania's Motor Vehicle Physical Damage Appraisers Act that occurred during the appraisal and attempted repairs. This evidence includes, *inter alia*, the following two *uncontested* facts: Nationwide assigned the appraisal to an un-licensed appraiser; and, it directed structural repairs be attempted by an unidentified repair facility without the Bergs' knowledge or consent.

Finally, the Bergs rely upon the *uncontested* fact that Nationwide redacted from its claim file the April 30, 1998, pre-suit inspection report of Stephen Potosnak through the first five years of this litigation. The report confirmed structural repair failures. The report was *not* a communication to counsel. Instead of working to resolve the developing claim dispute in good faith, Nationwide forced this lawsuit and concealed its knowledge of the repair failures for *five years* pursuant to an untenable assertion of attorney-client privilege. Nationwide paid its attorneys between \$2.5 and \$3.4 million attempting to conceal what it knew, and when it was known. This is the *Bonenberger* strategy; using superior financial strength to deter lawyers working on a contingency fee basis. It is respectfully requested that this Court enter relief in an amount that will deter Nationwide.

Respectfully Submitted,


Benjamin J. Mayerson
Counsel for Plaintiff Bergs - ID #73742

¹ Nationwide was permitted to ask leading questions of Mr. Joffred, as if under cross-examination, because Nationwide filed a cross-claim against the repair facility he managed. Although a cross-claim was filed, the co-defendants remained business partners throughout the course of this litigation. Mr. Joffred admitted at trial that his facility was never suspended or reprimanded by Nationwide for the Berg repairs, and that 40% of its business was derived from Nationwide referrals. See 2004 N.T. 631/7-632/25. Indeed, it is difficult to identify a single instance where Mr. Joffred did not agree with a fact Nationwide's counsel was attempting to establish, even where his agreement contradicted *his* prior testimony.

C

West's Pennsylvania Administrative Code Currentness

Title 31. Insurance

Part VIII. Miscellaneous Provisions

Chapter 146. Unfair Insurance Practices

▣ Subchapter A. Unfair Claims Settlement Practices

→ → **§ 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.

Adopted Dec. 16, 1978.

31 Pa. Code § 146.3, 31 PA ADC § 146.3

Current through Pennsylvania Bulletin, Vol. 43, Num. 52, dated December 28, 2013.

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END OF DOCUMENT

DANIEL BERG and SHERYL BERG,
Husband and Wife

Plaintiffs

v.

NATIONWIDE MUTUAL INSURANCE
COMPANY, INC.

Defendant

COURT OF COMMON PLEAS
BERKS COUNTY, PA

NO. 98-813

CIVIL ACTION – LAW

**PLAINTIFF BERGS’
ITEMIZATION OF ATTORNEY FEES**

By Order dated August 15, 2005, following the jury trial of December, 2004, the Bergs’ provided responses to Nationwide’s Interrogatories and Requests for Production of Documents pertaining to the Bergs’ claim for attorney fees and costs. The Bergs provided Nationwide supporting documentation too voluminous to attach hereto but which will be available at the hearing scheduled for March 3, 2013.

The total hours logged at the time this discovery was complete on or about September 22, 2005, was 2,573.7 hours. The following itemizes hours incurred thereafter.

<u>Year</u>	<u>Hours Recorded</u>	<u>Significant Event</u>
11/97 – 9/22/05	2,573.7	Jury Trial (12/04)
9/05 – 12/05	105.15	Depositions of Bergs’ Attorneys (11/05)
2006	327.3	NW’s 2 nd Motion for Summary Judgment
2007	590.7	Bench Trial (6/07)
2008	270.1	Appeal to Superior Court I
2009	190.8	Appeal to SCOPA
2010	66.7	NW’s Post-Argument Motion in SCOPA
2011	144.0	Appeal to Superior Court II
2012	237.7	NW Petition to SCOPA
2013	927.8	Remand Trial (12/13)
2014	255.4	Post Remand Proceedings
Total	5,689.35	

1 A It's going to be approximate. I mean, it's not 146
 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 date they ended? Was that in June? July? August? 148
 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: well, did you say it may be 150? 147
 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 THE COURT: I'm sure of that. And I -- I'm sorry I 149
 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.

Transactions Listing

Search for: berg Search by: Matter Description (First Line) Stage: (all) Type: Fees

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units	Price	Value
10/6/2004	KAG	10292.000095 / Nationwide Berg v. Nationwide, et al, Redacted	T	10,604.00	85.00	901,340.00
			Date: 10/6/2004	<u>10,605.40</u>		<u>901,543.00</u>
Date: 10/7/2004						
10/7/2004	EN	10292.000095 / Nationwide Berg v. Nationwide, et al, Participate in conference call with Craig Cohen, Michael Nelson, Al Turadian Redacted	T	1.30	145.00	188.50
Redacted						
10/7/2004	EN	10292.000095 / Nationwide Berg v. Nationwide, et al, Redacted	T	1.40	145.00	203.00
10/7/2004	CAC	10292.000095 / Nationwide Berg v. Nationwide, et al, Conference call with Al Turadian Redacted	T	1.00	170.00	170.00
Redacted						
			Date: 10/7/2004	<u>3.70</u>		<u>561.50</u>
Date: 10/11/2004						
10/11/2004	KAG	10292.000095 / Nationwide Berg v. Nationwide, et al, Review Redacted	T	1.70	85.00	144.50
Redacted						
			Date: 10/11/2004	<u>1.70</u>		<u>144.50</u>
Date: 10/12/2004						
10/12/2004	KAG	10292.000095 / Nationwide Berg v. Nationwide, et al, Redacted	T	2.20	85.00	187.00
Redacted						
			Date: 10/12/2004	<u>2.20</u>		<u>187.00</u>
Date: 10/13/2004						
10/13/2004	KAG	10292.000095 / Nationwide Berg v. Nationwide, et al, Redacted	T	5.10	85.00	433.50
Redacted						
				<u>12.7</u>		<u>1326.5</u>

8/31/2005 10:31:04 AM

Page: 258

CONFIDENTIAL

00000839

PHOTOCOPY OF EXHIBIT NO. 70 (Page 840 of 859)

1 Q The system itself may still exist; it may just 138
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. 139

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 140
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 141
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 142
 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. 143
 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 you -- 144
 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. 145
 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.

Doug Joffred (2004)

713

1 the earlier part when you were deciding it was a total loss,
2 is that right?

3 A No, it wouldn't be a parts list until we would
4 order parts.

5 Q Tear down time, that's when you get paid for
6 work you've done when the vehicle is not going to be
7 repaired, right?

8 A Correct.

9 Q So just as coincidence when you were asking
10 Nationwide for tear down time you had already torn down the
11 vehicle, decided the frame was twisted, and you were asking
12 to be paid for your time?

13 A If the vehicle was a total loss, yes.

14 Q You had decided at that time that it was a
15 total loss. This was before Nationwide came out, right?

16 A Could you --

17 Q I understand that later you changed your mind
18 but at this point when you asked for tear down time you had
19 decided that the frame was twisted. And I think exactly what
20 you said was the whole body was twisted and it was one of
21 those situations that just shouldn't be repaired; is that
22 correct?

23 A Yes.

24 Q So this was at the time when you were asking
25 for the tear down, right?

715

1 A Yes.

2 Q And what happened to the alignment report?

3 Q Didn't you tell me that you didn't have a
4 printer for it?

5 A I couldn't tell you for sure if there was a
6 printout available.

7 Q Page 139 of the deposition of 2002 at Line 3.
8 Does that refresh your recollection, sir?

9 A Is this in regards to a printout for the
10 alignment?

11 Q I'm asking you what happened to the alignment
12 report. You said that the alignment was okay. I asked you
13 for a report, a version of the alignment specs. You told me
14 you couldn't produce it, right?

15 A Apparently, yeah. We didn't have a printer.

16 Q Right. You didn't have a printer.

17 MR. MYERS: Your Honor, may we ask him to read the
18 question in the line before?

19 THE COURT: No. No. No. Go ahead. This is your
20 client. You said you were going to have him back on the
21 stand tomorrow.

22 MR. MYERS: Okay, Your Honor.

23 BY MR. MAYERSON:

24 Q The last thing I don't understand when you did
25 the supplement you did a whole bunch of new things that you

714

1 A Correct.

2 Q The testimony today that you were giving to
3 Nationwide I just want to revisit. You still work for
4 Nationwide, right?

5 A Yes.

6 MR. COHEN: Objection.

7 BY MR. MAYERSON:

8 Q Do you get more than 40 percent of your
9 business from Lindgren now or Nationwide or less --

10 MR. MYERS: It was asked and answered previously. I
11 object.

12 THE COURT: I think so. The question was asked and
13 answered. Next question.

14 BY MR. MAYERSON:

15 Q Mrs. Berg came to you and explained about the
16 tires in March or April of '97, correct?

17 A I would say, yes, around that time.

18 Q You looked at the tires and you saw that the
19 tires were wearing down to the belt in the front, right, the
20 two front tires?

21 A Yes.

22 Q And you sent her on her way?

23 A No, I told her I would check the vehicle out.

24 Q That's right. You checked the alignment,
25 right?

716

1 changed around on this appraisal. You didn't put on a new
2 apron panel or a front rail and some other items on there
3 miscellaneous you will agree?

4 A Right.

5 Q When you switched all of this around it came
6 out to the exact same figure. It was only \$150 difference?

7 A Yes.

8 Q Can you explain how that happens? Is that just
9 a coincidence?

10 A I would say, yeah. There is some things we put
11 on. Some things we took off, adjusted labor times, took my
12 time out to do the unibody, sent the work out, put that
13 amount in there, yeah. It is all spelled out as far as what
14 we used and what we didn't.

15 MR. MAYERSON: Thank you, sir.

16 THE COURT: May I see counsel at sidebar?
17 (whereupon, the following discussion occurred at
18 sidebar.)

19 THE COURT: I don't want to ask this question but I'm
20 confused. I don't know if the jury is confused. My notes
21 indicate that Mr. Witmer was testifying he says it was my
22 decision to override the appeal of Doug Joffred of Lindgren
23 and if I took pictures or made notes they would have been
24 sent to the claims log.

25 MR. MAYERSON: I think that's correct.

Sheryl Berg (2004)

1 A Four.

385

2 Q You are going through some health problems
3 right now?

4 A Yes.

5 Q Do you recall how long it took the repairs to
6 the vehicle to be complete the first time?

7 A The first time approximately four months.

8 Q And during that repair period did you have a
9 rental vehicle?

10 A For 30 days.

11 Q What happened when that rental vehicle
12 expired?

13 A They told me that basically you are on your
14 own now. That's all that is covered under your policy.

15 Q Do you have another family vehicle?

16 A At that time we only had a Dodge panel van.

17 Q And was there a back seat to that van?

18 A No.

19 Q You had a 17-year-old son?

20 A Yes.

21 Q Was he living at home with you?

22 A Yes.

23 Q Was he driving at that time?

24 A At that time, no.

25 Q Do you have occasion to have to drive in this

1 panel van together as a family, the three of you?

386

2 A Yes.

3 Q Can you give us an example?

4 A Oh, there was times when he had to go to
5 football practice. There was, you know, at least two trips a
6 day back and forth to school for football practice. So, yes,
7 we did use it for that.

8 Q There was no back seat?

9 A No.

10 Q So would Dan Junior sit on the floor --

11 MR. MYERS: Objection, Your Honor. I believe there
12 is no relevance to this.

13 THE COURT: Sustained. Let's get into the facts
14 involving the claims.

15 BY MR. MAYERSON:

16 Q When you got the vehicle back on December
17 30th, 1996, how long did you have it before you realized that
18 the repairs were not sufficient?

19 A Basically that night on the way home. Can I
20 go -- can I describe or can I elaborate?

21 THE COURT: Just answer the question.

22 THE WITNESS: Okay. I am sorry, Your Honor.

23 THE COURT: That's all right. You are doing good.

24 BY MR. MAYERSON:

25 Q You took it back on January 2nd?

1 A Yes.

387

2 Q Do you remember whether or not the vehicle was
3 left there for some period of time on January 2nd?

4 A Yes.

5 Q When you got it back were you told that the
6 repairs had been corrected?

7 A I was told that they were corrected and that
8 the car was as good as new.

9 Q And eventually did you develop additional
10 problems?

11 A Yes. When you would even turn the wheel just
12 a little bit to the left or the right it sounded like
13 everything was falling apart, a loud knocking noise driving
14 down the road. I knew that the steering wheel was straight
15 but it literally felt like the car was going down the road
16 like this.

17 Q And at some point did these problems affect
18 the tires of the vehicle?

19 A Yes. After the -- about 30 days we noticed
20 that the tires were literally worn down to the metal.

21 Q There has been some testimony I think that Mr.
22 -- withdraw that. Did you take it back to Lindgren when that
23 happened?

24 A Yes, I did.

25 THE COURT: Excuse me. Were these new tires when the

1 car was repaired?

388

2 THE WITNESS: I'm not sure if they were new tires at
3 that point. But they had passed inspection and they were --

4 THE COURT: Right before your accident they were new
5 tires?

6 THE WITNESS: Yes.

7 BY MR. MAYERSON:

8 Q The record reflects the vehicle had
9 approximately 14,000 miles to 15,000 miles on the date of the
10 accident. Would you have any reason to disagree with that?

11 A No.

12 Q You didn't drive it for the next four months
13 because it was getting repaired?

14 A Correct.

15 Q And you approximate this was a couple of
16 months after you got the vehicle back that the tires started
17 to wear?

18 A Actually I think it was within the first month
19 that we got it back.

20 Q And when you took it back to Lindgren what did
21 they tell you?

22 A They said it was no fault of any repair that
23 they did that I needed to just get new tires.

24 Q Is that what you did?

25 A That's what we did.

A

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.

To: CARLSOB - Bev Carlson
To: BASHORB - Bruce Bashore
cc: POTOSNS - STEPHEN J. POTOSNAK

Date: 04/30/1998 Time: 08:02AM

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
cc: POTOSNS - STEPHEN J. POTOSNAK

Date: 04/30/1998 Time: 08:01AM

From: STEPHEN J. POTOSNAK

Subject:

Potosnak Report

~~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 SEEN 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. PAN 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 PAN BLADE. AS VIEW FROM REAR, APPEARS FRONT SHEETMETAL

<...MORE...>

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

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 COMPLAINTREC'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

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

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

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 5 of 70)

B

Redacted Potosnak Report

***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01
PH: Berg, Daniel G & Sharon E
Requester: David Cole
***** Page # 0004 *****

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

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.

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:



COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

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]

04/23/1998 09:11AM CARLSOB UNASSIGN

0614 COMPLAINT RECV'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...>

C



**NATIONWIDE
INSURANCE
ENTERPRISE**
Nationwide is on your side

1000 NATIONWIDE DR * PO BOX 2655 * HARRISBURG PA 17105

The Mayerson Law Offices, P.C.
Benjamin Mayerson
123 West Main Street
Trappe, PA 19426

May 19, 1998

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 will 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.

120 - CC0700-01

COPY OF EXHIBIT NO. 15

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- on missing structure welds, poor weld repairs, interference between the steering gear and the cross member, the vehicle's inability to sustain another impact and repairs that caused permanent damage to other parts. In my opinion, Mr. Phillips' comments are not accurate. Prior to the preparation of his report, I do not believe Mr. Phillips had any significant experience or knowledge related to collision damage estimating or the repair techniques and procedures that are required to restore a damaged unibody structure.
- The plaintiffs' Motion for Summary Judgement states more than once that the vehicle was a "near total loss" rather than an actual total loss.
 - The Accident Check report does not indicate that the vehicle should have been a structural or economic total loss.

Summary

The subject vehicle sustained a substantial amount of collision impact damage to the front-end outer body and structural components. The subsequent collision repairs required multiple body part and structural component replacement, structural component repair/alignment, body panel straightening, repaint activity and corrosion protection procedures. Significant aspects of those repairs are incomplete and/or poorly repaired and, as such, the overall repair to the subject vehicle would be unacceptable by collision repair industry standards. The most notable deficiencies were observed in the following areas.

- The primary structural components on the front of the vehicle are significantly misaligned. The misalignment involves both repaired (original OEM) welded structure and replaced welded structure.
- Various and numerous weld sites are not properly primed or painted and exhibit surface corrosion at and around the GMAW weld sites. The visible portions of the repaired and replaced structural components were not properly corrosion protected.
- There is no indication that any corrosion protection materials were applied to the internal surfaces of the closed section components after completing the repair of the original structure or the welding of the replaced structure.
- Some welds on secondary structure are missing and other welds are not properly dressed down for appearance, but the primary welded components are structurally sound.

Based upon my inspection of the vehicle, the repairs that were identified in the Supplement Report dated February 5, 1997, which was prepared by LCP and accepted by NMIC, were adequate and appropriate to correct the collision damage on the subject vehicle. The identified repair procedures and techniques were also consistent with commonly accepted collision repair industry practices and procedures. The quality and quantity of the replaced parts (single parts or assemblies) were properly identified and consistent with the repair Supplement Report. The body

E

Bergs' 8th Amended Complaint

Hundred and twenty-four Dollars and seventy-eight cents (\$12,624.78) for the attempted repairs to the JEEP.

25. Despite the repeated and reasonable requests of Plaintiffs to have their JEEP repaired to the condition that it existed just prior to the damage in question being incurred, the Defendants, either jointly or severally, have refused to do so.

26. Defendant NATIONWIDE should have, but failed to re-inspect Plaintiffs' JEEP to be certain the Jeep was properly repaired prior to it being released to the Bergs.

27. Solely as a result of the conduct of Defendants, LINDGREN and NATIONWIDE, either jointly or severally, through their agents, servants, workmen or employees, the JEEP was not repaired to the condition that it existed just prior to the damage in question being incurred, and in condition unreasonably safe for its intended use, having un-repaired structural collision damages, including, without limitation, steering and front suspension/alignment problems, deviations in the left frame rail location, front end shoved to the right, unpredictable handling, premature tire wear, poor performance, and mal-positioned parts, doors, and other components thereof or related thereto, as well as various other mechanical, structural and electrical problems which are currently being investigation. An initial report delineating these problems is attached hereto as "E", as attached to 7th amended complaint.

28. The pre-accident fair market value of the JEEP was Twenty Two Thousand Three Hundred and Seventy-seven Dollars and Fifty-five cents (\$22,377.55).

~~Answer~~ to P^{ur} Amended Complaint

investigation, Defendant Nationwide is without sufficient knowledge or information which would allow it to either admit or deny the remainder of this averment. Strict proof is, therefore, demanded at the time of trial.

21. After reasonable investigation, Defendant Nationwide is without sufficient knowledge or information which would allow it to either admit or deny this averment. Strict proof is, therefore, demanded at the time of trial.

22. After reasonable investigation, Defendant Nationwide is without sufficient knowledge or information which would allow it to either admit or deny this averment. Strict proof is, therefore, demanded at the time of trial.

23. The document to which Plaintiffs refer in this averment is a writing and, therefore, speaks for itself. Any characterization by Plaintiffs as to the factual content, or legal significance, of that writing is hereby denied. The remainder of this averment is a conclusion of law to which no response is required.

24. The document to which Plaintiffs refer in this averment is a writing and, therefore, speaks for itself. Any characterization by Plaintiffs as to the factual content, or legal significance, of that writing is hereby denied. The remainder of this averment is a conclusion of law to which no response is required. To the extent that a response is required, it is hereby denied.

25. This averment is a conclusion of law to which no responsive pleading is required. To the extent a response is required, it is expressly denied that Defendant Nationwide ever refused to pay for reasonable repairs to Plaintiffs vehicle.

26. This averment is a conclusion of law to which no responsive pleading is required. To the extent the court deems a response is required, it is denied.

~~27.~~ The document to which Plaintiffs refer in this averment is in writing and, therefore, speaks for itself. Any characterization by Plaintiffs as to the factual content, or legal significance, of that writing

is hereby denied. Further, the designation of Mr. Barone as an expert, and any opinion given by Mr. Barone, is expressly denied as a legal conclusion. The remainder of this averment is a conclusion of law to which no response is required. To the extent that the court deems a response is required, it is hereby denied.

28. After reasonable investigation, Defendant Nationwide is without sufficient knowledge or information which would allow it to either admit or deny this averment. Strict proof is, therefore, demanded at the time of trial.

29. Denied. This averment is a conclusion of law to which no responsive pleading is required.

30. After reasonable investigation, Defendant Nationwide is without sufficient knowledge or information which would allow it to either admit or deny that Plaintiffs provided sufficient notice to the Defendant of the alleged improper, insufficient and inadequate repairs to the Jeep within a reasonable time by letter and/or telephone conversation with a clear intention to look to each Defendant for damages, and therefore, strict proof is demanded at time of trial. It is expressly denied that Defendant has ignored such notice with the exception of requesting Plaintiffs to hold said Jeep for examination by Defendants. To the contrary, Defendant Nationwide was advised by Plaintiffs' attorney on January 6, 1998, not to get involved in the dispute between Plaintiffs and co-Defendants, Lindgren Chrysler Plymouth, Inc., and Lindgren and Manske, Inc., (hereinafter "Lindgren").

COUNT I - BREACH OF CONTRACT - PLAINTIFFS V. LINDGREN

31. Nationwide hereby incorporates by reference its answers to paragraphs 1 through 30 as if fully set forth herein.

32. through 34(h). These averments are directed at a Defendant other than Defendant Nationwide and, therefore, no responsive pleading is required. To the extent that the court deems a responsive pleading required, this averment is denied.

WHEREFORE, Defendant, Nationwide Insurance Company denies liability of any kind for the plaintiff's damages, if any, and requests that this Court dismiss the Complaint against the Defendant,

VERIFICATION

I, **BRUCE BASHORE**, verify that the averments of facts set forth in the foregoing Answer to Complaint with New Matter are true and correct to the best of my personal knowledge, information and belief. I understand that the verification is made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.


BRUCE BASHORE

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E. Michael O'Leary (a Corp Designee)

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1 witmer was saying that that's all that he had at that time?
2 A I believe.
3 Q What's that time that we are talking about?
4 Isn't that in '97, a year after the repairs were done?
5 A Yes.
6 Q Thank you. You are saying that you might have
7 had more documents in your file?
8 A There may have been a copy of the supplement
9 that was received by us because payment was made based upon
10 the supplement.
11 Q Sir, why don't you turn to the log on December
12 4th, 1997, Exhibit 8 at page 9?
13 A Exhibit 8, page 9?
14 Q Yes.
15 A Which entry?
16 Q The entry from your assistant, your right-hand
17 person, Bev Carlson.
18 THE COURT: Date?
19 MR. MAYERSON: December 4th, 1997 at 12:17 p.m.
20 THE WITNESS: Yes, sir.
21 BY MR. MAYERSON:
22 Q Does that not say, from Bev Carlson, that the
23 16 pages that were faxed to me is all that pertains to the
24 blue ribbon repair program portion of the claim?
25 A Yes, it does.

1 Q That is from your assistant, Bev Carlson?
2 A Yes, it is.
3 Q You guys didn't have the supplement a year
4 after the repairs were done, correct?
5 A I can only surmise in saying that I believed
6 the amount that shows paid in previous date was consistent
7 with a supplement that was produced.
8 Q Sir, just answer my question.
9 THE COURT: That's it. Finished.
10 MR. MAYERSON: Yes. I'm finished. I'm not done.
11 BY MR. MAYERSON:
12 Q Sir, there has been a lot of talk about
13 Nationwide purchasing this vehicle. I just like -- the
14 purchase was done to secure the evidence pending the
15 inspection you all claimed necessary, correct?
16 A I can't answer that.
17 Q At the time that you guys purchased the vehicle
18 you were still denying that there were any defects to the
19 repairs, correct?
20 A I was not part of that decision making.
21 Q Well when I took your deposition in the year
22 2003 isn't it true you told me you were unaware of any
23 structural defects?
24 MR. COHEN: Objection.
25 THE COURT: Overruled.

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1 THE WITNESS: I said that I was personally unaware of
2 any structural defects.
3 BY MR. MAYERSON:
4 Q And the part of your deposition in the year
5 2003 was as a corporate designee of Nationwide to tell me
6 what Nationwide had done for the Bergs, correct?
7 A I would like to, yes, that's true.
8 Q Thank you. And isn't it true when Nationwide
9 couldn't get exclusive control of the vehicle and the Bergs
10 tried to buy the vehicle before Nationwide took exclusive
11 control that Nationwide threatened to sue Summit Bank if
12 Summit Bank doesn't give the vehicle to Nationwide instead of
13 the Bergs?
14 MR. COHEN: Objection.
15 THE COURT: Sustained. Next question.
16 MR. COHEN: Objection.
17 THE COURT: This is the last piece of paper, Mr.
18 Mayerson.
19 MR. MAYERSON: Yes, it is, Your Honor.
20 THE COURT: Exhibit 27. How old on a minute.
21 MR. COHEN: Objection.
22 THE COURT: All right. Ask your questions.
23 MR. COHEN: Your Honor, we have an objection to the
24 exhibit.
25 THE COURT: It may not be admitted into evidence.

1 Let's hear what the questions are. You can object to the
2 questions. I don't know the significance of it at this
3 point.
4 (Letter of 01-13-99 - marked for identification
5 as Exhibit No. 27.)
6 BY MR. MAYERSON:
7 Q Sir, did you have counsel representing
8 Nationwide between --
9 MR. COHEN: Objection. Attorney/client privilege.
10 THE COURT: Sustained.
11 BY MR. MAYERSON:
12 Q Can you take a look at that letter?
13 THE COURT: Was this letter sent to you?
14 THE WITNESS: No, it was not.
15 THE COURT: It was sent to Mr. Bruce Wunsch. Who is
16 he?
17 THE WITNESS: The Assistant Treasurer of Summit Bank.
18 THE COURT: What does he know about this?
19 MR. MAYERSON: He is the corporate designee --
20 THE COURT: That doesn't mean he knows everything that
21 is going on. No. As was said at sidebar earlier for the
22 purpose of taking his discovery deposition he was designated
23 as a corporate designee which may be to know as much as there
24 is to know about anything. That's only for discovery
25 purposes under the rules. It is not for the purpose of

APPENDIX A

<u>NAME OF DEPONENT</u>	<u>TITLE</u>	<u>DATE OF DEPOSITION</u>
BAYSHORE, BRUCE	NW Employee	3/28/02
BERG, DANIEL	Plaintiff	3/20/02
BERG, SHARON	Plaintiff	6/21/02
BOWEN, DAVID	KC Auto Body, VP	5/17/01
COFFMAN, JENNIFER	NW Employee	5/28/02
GRUMBEIN, MICHAEL	NW Employee	9/14/01
JOFFRED, DOUGLAS	Lindgren Employee	4/14/98
JOFFRED, DOUGLAS	Lindgren Employee	7/02/02
JONES, DEAN	NW Employee	5/28/02
KARR, STEVEN	Lindgren Employee	10/09/02
KREIDER, KEITH	Lindgren Employee	10/09/02
KURTZ, GERALD	Employee of Morgantown Garage	11/15/00
MILLER, GREG	Lindgren Employee	04/14/98
O'LEARY, MICHAEL	NW 30 (b) 6 Corporate Designee	03/11/03
POTOSNAK, STEPHEN	NW Employee	10/11/00
RUOSS, DANIEL	Body Shop Owner	06/19/03
STITZEL, RONALD	NW Employee	06/28/01
WEINRICH, RICHARD	Lindgren Employee	03/21/01
WERTZ, DAVID	Fired Lindgren Employee	05/22/02
WITMER, DOUG	NW Employee	06/28/01

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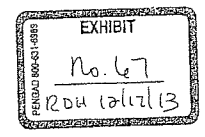
Potosnak Inspection
T. 41

NELSON LEVINE de LUCA & HORST
BY: ADAMS, LEVY, ESQUIRE
I.D. NO. 66866
FOUR SENTRY PARKWAY, SUITE 300
BLUE BELL, PA 19422
(610) 862-6500

ATTORNEYS FOR DEFENDANT
NATIONWIDE MUTUAL INSURANCE
COMPANY

DANIEL BERG & SHARON BERG
Plaintiffs,
v.
LINDGREN CHRYSLER-PLYMOUTH, INC.
and
LINDGREN AND MANSKE, INC.
and
NATIONWIDE MUTUAL INSURANCE CO.
Defendants,
v.
K.C. AUTO BODY, INC.
Additional Defendant

IN THE COURT OF COMMON PLEAS
OF BERKS COUNTY
NO. 98-813



DEFENDANT NATIONWIDE MUTUAL INSURANCE COMPANY'S
OBJECTIONS AND ANSWERS TO PLAINTIFFS' MARCH 21, 2003,
REQUEST FOR ADMISSIONS

Defendant Nationwide Mutual Insurance Company ("Nationwide"), by and through its undersigned counsel, and in accordance with its agreement with the Plaintiffs to respond by May 5, 2003, hereby objects to and answers Plaintiffs' March 21, 2003 Request for Admissions directed to Defendant Nationwide as follows:

REQUEST FOR ADMISSION 1:

Defendant Nationwide Mutual Insurance Company, through its *Blue Ribbon* manager Stephen Potosnak, had an opportunity to inspect the repair work at issue in this litigation in April of 1998.

ANSWER 1:

Nationwide objects to the term "had an opportunity" as vague and ambiguous. Without waiving any objections, the request is denied as stated. It is admitted that Property Damage Specialist Stephen Potosnak inspected the repair work on or about

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April 28, 1998. Plaintiffs are further directed to Mr. Potosnak's deposition of October 11, 2000.

REQUEST FOR ADMISSION 2:

Following the inspection of the Bergs' vehicle in April of 1998, Stephen Potosnak made an entry in the Nationwide Claim Log that the inspection confirmed several problems with the repairs to the vehicle.

ANSWER 2:

Denied as stated. It is admitted that following his inspection of the Bergs' vehicle on or about April 28, 1998, Mr. Potosnak made an entry in the activity log reflecting that his inspection revealed that the repairs to the vehicle were not properly performed. See unredacted portion of activity log at pages 4-5, attached hereto as Exhibit "A." Plaintiffs are further directed to Mr. Potosnak's deposition of October 11, 2000.

REQUEST FOR ADMISSION 3:

Defendant Nationwide did not notify the Bergs, or the Bergs' law firm, that the April of 1998 inspection confirmed problems with the repairs until April 14, 1999; the date Defendant Nationwide produced the Claim Log.

ANSWER 3:

Denied as stated. It is admitted that by the time of Mr. Potosnak's inspection on or about April 28, 1998, which revealed that the repairs were not properly performed, plaintiffs had already commenced litigation against Lindgren and counsel for plaintiffs made it clear that Nationwide was a likely defendant per his correspondence dated April 22, 1998, a copy of which is attached hereto as Exhibit "B." Plaintiffs in fact commenced litigation against Nationwide shortly after Mr. Potosnak performed his inspection. Litigation was clearly anticipated against Nationwide at the time of his inspection. Moreover, shortly thereafter, as the record demonstrates, Nationwide attempted to assist the Bergs with their repair-related issues, but it became clear that the Bergs were more interested in litigating against Nationwide than they were about resolving their repair-related issues.

REQUEST FOR ADMISSION 4:

Defendant Nationwide inspected the Berg vehicle in April of 1998, without providing notice to Bergs prior to the inspection taking place.

Exhibit "A" to NW Reply to RFA

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***** ACTIVITY LOG *****
Claim Key: 5837C 137421 09041996 01 Print Date: 07/29/1998
H: 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

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To: CARLSOS - 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 AM 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 COMPARISION 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...>

H

Bruce Bashore (2004)

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1 Q With the Court's permission, yes?

2 THE COURT: Go ahead.

3 THE WITNESS: Simply states, reinspected

4 policyholders truck on 4/28 at A.W. Golden's as per request

5 from Bev Carlson and Bruce Bashore. This was arranged

6 through policyholders' attorney. I did not discuss truck or

7 findings with the policyholder. Had truck on a lift. Right

8 fender hanging out from rear edge. Right front molding

9 hanging loose. Hood gaps uneven on both sides. Upon looking

10 at front tires/wheels, left front in substantially in

11 comparison to right front, which is even with edge of fender

12 in brackets it says, makes rear appear shifted to the right.

13 Right front apron and rail not replaced. Right apron still

14 split in several areas. Right rail still has damage near

15 swaybar mount. Fan blade closer to left side of shroud than

16 right side appears to have contacted shroud at some point and

17 broke shroud near upper mounting point on radiator support.

18 As viewed from the rear, appears front sheet metal

19 shifted to the left. Conclusion, appears upper body sway was

20 not pulled completely back before replacement of parts began.

21 Reviewed with Dennis at shop same day, 4/28, and requested

22 revised copy to see if right rail on apron replacement was

23 removed. Received call from Doug at shop on 4/29. Attorney

24 has all paperwork. He will have to get revisions back from

25 him. Explained findings to Doug. Suggested a course of

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1 action to shop. Doug asked me to call general manager, Greg

2 Miller, as well. I called and explained to him as well.

3 Greg stated he has call into attorney. Will advise ASAP

4 Spoke with Bruce Bashore and reviewed. Waiting from call

5 back from shop with decision.

6 BY MR. MAYERSON:

7 Q So this is Steve Potosnak's inspection report

8 that he was testifying to on the stand, correct?

9 A Yes.

10 Q And he told you -- in fact, you requested him

11 to do this inspection, correct?

12 A That's correct.

13 Q And based on this entry -- let me ask you

14 this, Mr. Potosnak is a licensed appraiser, correct?

15 A I believe he's testified to that, yes.

16 Q And his title at Nationwide is property damage

17 specialist?

18 A Yes.

19 Q And do you know how many months before the

20 Berg lease was over that this took place?

21 A No.

22 Q The Berg lease expired on December of 1998,

23 that would make this about eight months?

24 A Correct.

25 Q Did you call me or Mr. and Mrs. Berg or

495

1 anybody to tell us what Nationwide found out?

2 A No, I did not.

3 Q Can you tell me why?

4 A Because Steve's note said that Lindgren was

5 going to call you.

6 Q Where does it say that?

7 A The last sentence where it says Greg stated he

8 has call into attorney. would advise ASAP Greg Miller at

9 Lindgren.

10 Q Wouldn't -- when that mentioned attorney they

11 are talking about Lindgren's attorney, correct?

12 A I assume they meant you.

13 Q You assumed that they meant me? But at the

14 very least this communication, this log entry was for the

15 claim file. It was not for any attorney of Nationwide, was

16 it?

17 A That was part of the log.

18 Q It was just an ordinary log entry?

19 A Correct.

20 Q And it documents structural deficiencies to

21 the repairs, correct?

22 A Documents several pieces of damage to the

23 vehicle, yes, in which includes the apron and rail, which is

24 structural.

25 Q And it also says that the apron rails were not

496

1 replaced?

2 A That it does say.

3 Q That's because the original appraisal that

4 Nationwide had said that the apron and rail were supposed to

5 be replaced, correct?

6 A Yes, that's correct.

7 Q So at this point Mr. Potosnak is saying there

8 might be collision repair fraud, correct?

9 MR. COHEN: Objection.

10 THE COURT: Sustained.

11 MR. MAYERSON: I will rephrase the question.

12 BY MR. MAYERSON:

13 Q Right now Mr. Potosnak in this case is

14 documenting a fact that the parts that were paid beforehand

15 supposed to have been replaced were not replaced, correct?

16 A Yes, that's what I believe. He had a note in

17 there that he called Lindgren.

18 Q And you were here for the testimony when Mr.

19 Witmer said that he didn't have any supplements when I asked

20 him a year after the repairs were complete, correct?

21 A Yes, I heard that.

22 Q All right. So at the very least it's clear on

23 April 28th, 1998 Nationwide knew that these repairs were not

24 done properly?

25 A Yes.

Jim Chett, CPCU

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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

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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

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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

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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

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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

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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

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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

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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.

IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

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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

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?

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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

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:

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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

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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

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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.

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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?

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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 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.

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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 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

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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

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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,

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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

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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

Jim Clett, LPCU

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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

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

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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? Now 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.

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?

One Bethlehem Plaza, Bethlehem, PA 18018

THE LESSEE: This Lease is between the LESSEE: DANIEL BERG

RD #3 658 MOHNTON PA 19540

LESSOR: NORCO JEEP EAGLE, INC. 1055 S HANOVER ST POTTSTOWN PA 19464

3 back of EXHIBIT D Berg 2

The words Lessor, Lessee, vehicle, and each of them, when used in this Lease, shall mean and refer to the Dealer described in Paragraph 1, above, and assigned by the Dealer as described in Paragraph 2, below, and then they apply to First Valley Bank.

You hereby agree to lease to me and I agree to lease from you the following described Motor Vehicle (hereinafter called the "Vehicle") in accordance with the following terms and conditions of this Lease. I understand that the disclosure made in this Lease under the Federal Consumer Leasing Act is also made on behalf of First Valley Bank, One Bethlehem Plaza, Bethlehem, Pennsylvania 18018 (the "Bank"), if this Lease is assigned to the Bank, I understand that you intend to assign this Lease to the Bank.

1. DESCRIPTION OF LEASED VEHICLE:

Table with columns: YEAR, MAKE, MODEL, BODY TYPE, COLOUR, VEHICLE ID NUMBER, VIN, PLATE NO. STATE. Row: 1996 JEEP GRAND CHER, SH, CHARGOLO, 1J4G758Y7C227842, NEWPAJ 5964 PA 95

IF CHECK IS CHECKED, I am leasing this Vehicle primarily for Commercial, Professional, or Agricultural purposes. Otherwise, the Vehicle is primarily for Consumer purposes.

Table: INITIAL CHARGES DUE WHEN I SIGN. Includes Cash/Down Payment (\$1160.75), Sales Tax on MSRP (\$104.47), Trade-in amount (\$949.25), and others.

Table: OTHER CHARGES PAYABLE WHEN I SIGN. Includes First Monthly Lease Payment (\$353.25), Sales Tax on MSRP (\$31.79), Refundable Security Deposit (\$400.00), Registration Fee (\$33.00), Certificate of Title Fee (\$15.00), Processing Fee (\$350.00), Extended Service Plan (N/A), and TIRE TAX (\$5.00).

Table: TOTAL PAYMENT DUE WHEN I SIGN. Sub-TOTAL: 1188.04, (Sub-Total of Sub-TOTAL): 3402.51

Table: EACH MONTHLY LEASE PAYMENT CONSISTS OF. Monthly Rent (\$353.25), Sales Tax on Lease (\$31.79), and others. TOTAL AMOUNT OF EACH MONTHLY LEASE PAYMENT: 385.04

Table: TOTAL FEES AND TAXES I WILL PAY DURING THE TERM for off-lease. Registration, certificate of title, license fees and taxes (ESTIMATED): 1407.91

Table: TERM OF LEASE: 36 months commencing on the date of 36 monthly lease payments of 385.04 each on the 28th day of each month beginning with the date of this Lease.

Table: TOTAL AMOUNT OF ALL MONTHLY LEASE PAYMENTS (7 x 385.04): 13861.44

12. EXCESS MILEAGE CHARGE: At the end of the regular term of this Lease, I agree to pay you 10 cents per mile for each mile over 45000 miles which the Vehicle is driven. If the Lease is terminated before the end of its term for any reason, the maximum mileage figure will be prorated on a monthly basis for the number of months that the Lease was in effect in order to determine whether I owe an excess mileage charge.

13. PAYMENT TERMS: Payments shall be made to First Valley Bank, Bethlehem, PA on any date, place of payment you may direct. I MUST MAKE ALL PAYMENTS ON THIS LEASE EVEN THOUGH THE VEHICLE MAY BE DAMAGED OR FAIL TO OPERATE PROPERLY. 14. LATE PAYMENT CHARGE: I will pay you an additional late charge of 5% of the original amount of each payment which is not paid in full within 10 days after it is due. 15. INSURANCE: During the Term of this Lease, at my expense, I must obtain and maintain in full and at least the minimum insurance coverage shown below: (a) Public Liability - with limits of not less than \$100,000 per person, \$200,000 per accident and \$50,000 for property damage. (b) Collision - with a deductible of not more than \$500. (c) Comprehensive, Fire and Theft - with a deductible of not more than \$500. I agree to purchase this insurance coverage through any agent, broker or insurer of my choice. See Paragraph 21 on the reverse side. 16. OPTION TO PURCHASE: I may purchase the Vehicle from you at the end of the term of this Lease. I must first give you at least 30 days advance notice in writing of my intention to purchase the Vehicle. The purchase price of the Vehicle at the end of the Term will be 18631.00 plus sales tax. If I exercise my option to purchase the Vehicle, I will pay the purchase price stated, plus (1) all necessary and payments and other charges that you shall state; plus (2) any official fees and taxes imposed in connection with my purchase of the Vehicle. 17. SECURITY INTEREST: To secure payment and performance of my obligations on this Lease, I grant you a N/A (Describe security interest)

18. WARRANTIES: You will provide me with a copy of the standard manufacturer's warranty which applies to the Vehicle. You warrant that you are the manufacturer's authorized dealer. I HAVE SELECTED THE VEHICLE TO BE LEASED. YOU HAVE NOT MADE ANY WARRANTIES TO ME REGARDING THE VEHICLE, EITHER EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE UNLESS THEY ARE WRITTEN ON THIS LEASE.

19. MAINTENANCE: MAINTENANCE, REPAIRS, OPERATING EXPENSES AND OPERATION OF THE VEHICLE: I will be responsible for all of the items mentioned in this paragraph, including, but not limited to, repairs, servicing, oil changes, and operation of the Vehicle as listed. During the term of this Lease, I agree to keep the Vehicle in good mechanical condition and to be responsible for all of the following: (1) All oil, lubricants, antifreeze, and other fluids necessary for proper operation and replacement of parts and accessories. The following standards apply to the oil, filters, fluid, or replacement of tires, chassis and body of the Vehicle, and other parts. Each of them to be replaced and not to be re-used: (1) Tires - I will replace tires as needed and to be replaced at least 50% and are appropriate to the road conditions and the vehicle's weight. (2) Tires - I will replace any tires, tubes, or related items, including but not limited to, bumper, grille, chrome and bright metal trim, to be replaced. (3) Glass - Any glass which is cracked, scratched, pitted or broken is to be replaced. (4) Batteries - Any battery, including or related parts, which is damaged or worn is to be replaced. (5) Other - Any other parts are to be replaced as needed and not re-used. (6) Other - Any other parts are to be replaced as needed and not re-used.

20. DEFAULT: The word "Default" as used in this Lease means: (1) My failure to make any payment on time. (2) My failure to fulfil my responsibilities or obligations under this Lease. (3) Loss or destruction of the Vehicle, whether or not covered by my insurance. (4) My commencing any bankruptcy or insolvency proceedings as a debtor. (5) Abuse of the Vehicle prior to the expiration of the term of this Lease.

21. DUTY AT THE END OF THE LEASE TERM: At the end of the Term of this Lease, I agree to return the Vehicle to you in good mechanical condition and to be responsible for all of the following: (1) All of the items mentioned in Paragraph 19. (2) All late charges on payments made after Paragraph 13. (3) Any excess mileage charges for which I may be responsible under Paragraph 12, and (4) The cost of repairing or restoring the Vehicle to the condition required under Paragraph 19, above. I will also return the Vehicle to you at your address indicated above, at such other location as you shall specify in writing.

22. EARLY TERMINATION: (a) I have no right to terminate this Lease before the end of the Term except as follows: (1) I have paid a Lease Termination Fee as defined in Paragraph 19, above. Then I may terminate this Lease on the next day of the month or a date which is a multiple of 30 days of the Vehicle, in each event I will pay you an amount of \$1000. (b) If the KADA rated value of the Vehicle on the date of the lease and the total to be paid by me by the end of the lease under physical damage insurance is acceptable to you (after the applicable deductible as set forth in Paragraph 19), and (c) If the terms specified in Paragraph 21(a), (b), and (c) may be met by early termination upon lease termination. However, this Lease may be terminated only by you to that the lease term expires on a date which is a multiple of 30 days from the date of termination. I must then provide you with the following: (1) A monthly rental payment, late charges, and mileage charges (as set forth in Paragraph 19) of \$100.00. (2) All monthly rental payments, late charges, and mileage charges (as set forth in Paragraph 19) at the time of terminating, transporting, storing and taking the Vehicle, plus reasonable attorney's fees incurred through any lawsuit brought by you to collect these payments.

THIS LEASE CONTINUES ON THE REVERSE SIDE. BY SIGNING, I ACKNOWLEDGE RECEIVING A FULLY COMPLETED COPY OF THIS LEASE AND AGREE TO BE LEGALLY BOUND BY ITS TERMS.

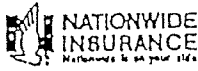
LESSEE: Daniel G Berg Signature. LESSOR: NORCO JEEP EAGLE, INC. Signature: [Signature]

DELIVERY RECEIPT: By signing below, I acknowledge that the Vehicle was delivered to me and I have examined the Vehicle and determined that it is as described in Item 1, above, and the dealer hereby, in the presence of me, has the mileage shown below. 13325. I accept the Vehicle on the Terms of this Lease. 12/29/95

LESSOR(S): DANIEL G BERG Key Hole. Odometer: 25. Date: 12/29/95

NOTICE: SEE REVERSE SIDE FOR IMPORTANT INFORMATION

EXHIBIT 9 12-14-94 AR



CENTURY II AUTO POLICY DECLARATIONS

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
MCINTON, PA
19540-9A04

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 #1J4QZ68Y7TC227842	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	
	UNINSURED MOTORISTS-BODILY INJURY	\$ 300,000 EACH OCCURRENCE ENDORSEMENT 2357	\$ 55.70
	UNDERINSURED MOTORISTS-BODILY INJURY	\$ 50,000 EACH PERSON \$ 100,000 EACH OCCURRENCE ENDORSEMENT 2358	\$ 9.40
	LOSS OF USE BROAD FORM	\$ 50,000 EACH PERSON \$ 100,000 EACH OCCURRENCE ENDORSEMENT 2311	\$ 23.50 \$ 11.10
	TOWING AND LABOR	\$ 25 PER DAY \$ 750 PER ACCIDENT \$ 50 EACH DISABLEMENT	\$ 1.70
	FIRST PARTY BENEFITS		
	OPTION 1-MEDICAL BENEFIT	\$ 100,000	\$ 21.30
	OPTION 2-INCOME LOSS BENEFIT	\$ 50,000 TOTAL	
	OPTION 4-FUNERAL BENEFIT	\$ 2,500 MONTHLY	\$ 7.00
	LIMITED TORT	\$ 1,500	\$.20
		TOTAL	\$ 354.30
	VEHICLE ENDORSEMENTS 1729		
	LEASEHOLDER-	FIRST VALLEY BANK	

Auto-7100

CENTURY II AUTO POLICY DECLARATIONS

2.	1996 DODG B160 RAM	ID #2870811X88K633791	Six Month Premium
	Coverages	Limits Of Liability	

COURT OF COMMON PLEAS OF BERKS COUNTY, READING, PENNSYLVANIA

Doug Joffred

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1 accident you guys didn't get paid until March of '97?
2 A NO.
3 Q No, that's not unusual?
4 A NO.
5 MR. MAYERSON: Thank you, sir.
6 THE COURT: One question here. With regard to this
7 supplement, again, it said on Page 70 where you gave the
8 figure for the cost of the parts less the 10 percent it says
9 the last line says supplemental adjustments \$500. What is
10 that an adjustment to, in your opinion, in your explanation
11 what is it an adjustment to?
12 THE WITNESS: when the estimate was written it was a
13 500 deductible. When the supplement came up for some reason
14 it took it out and put it right back in. It does that -- it
15 just to show that there is a \$500 deductible.
16 THE COURT: I see. All right.
17 MR. COHEN: Your Honor, I will probably take some
18 time with this witness.
19 THE COURT: All right. We are going to recess at
20 this time for lunch. Again, I don't want anyone talking to
21 this witness at all with regard to this case or the
22 testimony. He is on the stand. He is under oath. He is
23 under cross-examination. This applies to all witnesses, but
24 I just want to make certain that Mr. Joffred understands this
25 as well.

1 THE WITNESS: Yes.
2 THE COURT: All right. And with that understanding by
3 everybody we will recess for lunch and because I have a
4 legal matter also to attend to before you get back I'm going
5 to suggest that we be ready to go at 1:30 this afternoon.
6 Again, don't discuss the case.
7 (Whereupon, the jury left the courtroom at 12:07
8 p.m.)
9 (Whereupon, a recess was taken from 12:10 p.m. until
10 1:30 p.m.)
11 (Whereupon, the following discussion occurred in the
12 retiring room.)
13 THE COURT: All right. It is 1:25, counsel. We are
14 all in the retiring room. As I said that I would at lunch
15 break, in an effort to save time, I would review all of the
16 documents relevant to the motions in limine filed by
17 nationwide relative to the Motor Vehicle Physical Damage
18 Appraisers Act and I am of the opinion that the motion should
19 not be and I do not intend to grant the motion but to deny
20 it.
21 Very briefly, again, keeping in mind the time problem
22 that we may have, and I still don't know how many witnesses
23 the Defendant is going to call, or how long it is going to
24 take. In either event, I think that the Section 62.1 in the
25 definitions which say an appraiser is defined as a monetary

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1 determination of damage incurred by a motor vehicle when the
2 making of such a determination is assigned in order to fix
3 the value of the insurance claims. Appraisals shall include
4 a determination whether made by the insurer, its employees,
5 its agents, or related entities or made by another individual
6 or entity otherwise assigned to make a determination.
7 Then when I go to Section 62.3 it talks about the
8 standards of the appraisal. And it would appear to me that
9 everything that they say with regard to what the standards
10 are are really set forth in the document which was prepared,
11 Exhibit 6, prepared by Mr. Joffred.
12 I mean he appears to be, in every respect, the
13 appraiser contemplated by the Act and whether or not you want
14 to call this damage report instead of an appraisal report,
15 which one of you corrected me on earlier in the trial, or
16 whether or not the supplemental or reprint or the supplement
17 report those things in the Court's opinion are insignificant.
18 Of course, I can't ignore the fact that Mr. Joffred, I
19 believe, has testified and answered to Plaintiffs' questions
20 that ever since he got his license he attached his license to
21 every appraisal or whatever kind of report you want to call
22 it, estimate of damage or whatever, since. So am I
23 misinterpreting the Act? wouldn't be the first time. But
24 that's the Court's ruling.
25 MR. COHEN: Your Honor, in light of that court ruling,

1 I intend to call a witness to testify as to his
2 interpretation of whether or not body shop personnel have to
3 be licensed.
4 THE COURT: Well, save your breath because he will not
5 be permitted to testify in that. You asked me to rule on
6 this issue without telling me that you had an expert so
7 that's a closed matter. You waived that.
8 MR. COHEN: It's not an expert. It's a Nationwide
9 employee.
10 THE COURT: That's too bad. He is not going to be
11 approved for testifying relative to the application in this
12 Act. The Court has ruled.
13 MR. COHEN: Okay.
14 THE COURT: This is not going to be a jury question at
15 this point. I was probably willing to make it a jury
16 question, but you chose not to do that. You pursued your
17 motion in limine. In either event, I've signed the order to
18 the Plaintiff relative to this matter which pertains to the
19 motion in limine. Okay. Let's go.
20 MR. COHEN: One more thing, Your Honor.
21 THE COURT: Just a moment. Let me sign this.
22 MR. COHEN: I can do all of my questioning with regard
23 to Mr. Joffred now in Plaintiffs' case, but I was intending
24 on using boards. And if I can only do that in the case in
25 chief, then I will wait. I definitely have exhibits that I

Stipulation

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

Stipulation

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

Jeffrey Silver, CPA

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?

Jeffrey Silver, CPA

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 --