



APPEARANCES:ROUGH DRAFT -- NOT PROOFREAD\*\*\*\*\*

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Also present:

Christina Kelsey, Esq., Mississippi Insurance Dept.  
Steve Simkins, Esq., State Farm  
Gene & Jana Renfroe  
Harry \*\*\*\*, The Scruggs Law Firm  
Heather Usry, videographer



1 Q\*\*\*\*And during the course of this deposition, I  
2 imagine that counsel, your counsel and maybe other  
3 counsel, will have objections. That's okay. Just let  
4 them state their objection, then go on and answer the  
5 question. Only if you're instructed by your counsel not  
6 to answer are you not to answer, and then we'll deal with  
7 that. Is that understandable?

8 A Yes, sir.

9 Q Thank you. Have you ever been deposed before?

10 A Yes, sir.

11 Q Okay. How many times?

12 A I couldn't tell you. Ten, 20.

13 Q Want to get into any the particular details in  
14 those cases, but what did -- what were the situations  
15 that those were -- that brought about your deposition?

16 A Sometimes the Commissioner is liquidator  
17 pursuing, sometimes there were -- the department was  
18 being sued, sometimes there were other third-party  
19 lawsuits that the department was just brought into as a  
20 witness.

21 Q Okay. Ever testify in a case where the suit  
22 involved a policyholder suing his insurance company for a  
23 breach of contract?

24 A There may have been some back in the '90s. I'm  
25 just not sure.

1 Q\*\*\*\*What did you do in preparation for your  
2 deposition today, Mr. Harrell?

3 A Confer with my counsel.

4 Q And who is that?

5 A Mr. Streetman and his lawyers and Ms. Kelsey.

6 Q And who is Ms. Kelsey with?

7 A Christina Kelsey, she's senior counsel with the  
8 Mississippi Department of Insurance.

9 Q When did you hire Mr. Streetman to be your  
10 lawyer?

11 A Don't know the exact date when I was served  
12 with the notice for deposition, conferred with the chief  
13 counsel for Mississippi Department of Insurance, who --  
14 Mark Haire. He and I then spoke to the deputy attorney  
15 general of the state of Mississippi. At that juncture,  
16 the attorney general's office decided that it was a  
17 conflict of interest for the attorney general's office to  
18 represent the Department of Insurance in this matter.

19 The attorney general's office started looking  
20 for law firms to represent us. It took longer than  
21 normal because there's so many different law firms  
22 involved in so much diverse Katrina litigation. It's  
23 normally a fairly quick process to find outside counsel.  
24 In this case it took a while. The exact date I don't  
25 know of the top of my head exactly when it was, but it's

1 been in the last week or two. PROOFREAD\*\*\*\*\*

2 Q Did the attorney general or deputy attorney  
3 general approve of your hiring of Mr. Streetman to  
4 represent you in this matter?

5 A They recommended Mr. Streetman.

6 Q Who is, to your knowledge, paying the legal  
7 bills of Mr. Streetman to represent you here today?

8 A Department of Insurance is approving those at  
9 the request of the approval of the attorney general  
10 pursuant to the statutes of the state of Mississippi.  
11 The Commissioner of Insurance is entitled to obtain  
12 outside attorneys, outside experts, any outside person  
13 they need. And the attorney general's office approved  
14 the retention of Mr. Streetman, and they approved that  
15 pursuant to that statute that State Farm as a result of  
16 this litigation and result of our examination should have  
17 to pay for the outside legal counsel since we could not  
18 use the attorney general's office because they were  
19 conflicted.

20 Q I'm sorry, if I understood the last part, that  
21 State Farm is paying for your counsel?

22 A Yes, sir, pursuant to agreement from the  
23 attorney general's office.

24 Q How long did you meet with --

25 MR. SCRUGGS: I'm sorry. Come on in.

1 BY MR. SCRUGGS:H DRAFT -- NOT PROOFREAD\*\*\*\*\*

2 Q How long did you meet with -- strike that. How  
3 many times did you meet with Mr. Streetman in preparation  
4 for your deposition today?

5 A We met yesterday and one day last week. I'm  
6 not sure exactly what date.

7 Q Starting with the one day last week, how long  
8 did y'all meet?

9 A Don't know.

10 Q Hour?

11 A No, it's multiple hours.

12 Q Sir?

13 A Several hours.

14 Q Okay. What about yesterday?

15 A Several hours.

16 Q Did you meet with any State Farm lawyers in  
17 preparation for your deposition today?

18 A No, sir.

19 Q Have you had any conversations with any State  
20 Farm lawyers or employees about this deposition before  
21 today?

22 A Other than the fact that it was occurring.

23 Q Who did you discuss with the fact that it was  
24 occurring from State Farm?

25 A Mr. Simkins.

1 Q\*\*\*\*Who is Mr. Simkins? PROOFREAD\*\*\*\*\*

2 A Steve Simkins. He's an attorney with State  
3 Farm.

4 Q And tell me about those conversations.

5 A There were no real conversations other than the  
6 fact that the deposition was existing. Talked to  
7 Mr. Simkins on other matters as relates to the ongoing --  
8 ongoing activities of the Mississippi Department of  
9 Insurance. That's what the gist of the conversations  
10 were normally about regarding issues involving the  
11 examinations.

12 MR. WEBB: Excuse me, Mr. Harrell. And to the  
13 extent that there were questions asked or answers given  
14 related to that, I want to impose an objection on behalf  
15 of State Farm to going into that or any answers relating  
16 to same.

17 MR. SCRUGGS: Okay.

18 MR. STREETMAN: And should we identify this  
19 gentleman that's --

20 MR. SCRUGGS: Sure --

21 MR. STREETMAN: -- entered the room?

22 MR. SCRUGGS: -- you want to identify yourself  
23 for the record?

24 MR. SIMKINS: I'm Steve Simkins, an attorney  
25 out of Atlanta for State Farm.



1 BY MR. SCRUGGS:H DRAFT -- NOT PROOFREAD\*\*\*\*\*

2 Q Okay. So in discussing with Mr. Simkins other  
3 matters relating to this exam that you mentioned, you  
4 brought up the fact you were going to be deposed here  
5 today?

6 A Yes, sir.

7 Q Was that the extent of the conversation?

8 A We never discussed anything involving the  
9 deposition other than the fact that I was going to be  
10 deposed.

11 Q "I'll see on June 7th," basically that was it?

12 A June 7th? What on June 7th, I'm sorry?

13 Q Is today June 7th?

14 MR. STREETMAN: Yeah.

15 BY MR. SCRUGGS:

16 Q Okay. Just that "I'll see you at this  
17 deposition"?

18 A Oh, okay. I'm sorry. I thought you meant on  
19 June -- I -- we never discussed the deposition in any  
20 context, just the fact that I was going to be deposed.

21 Q Okay. Did you have any conversations with any  
22 State Farm employee or lawyer, anybody affiliated with  
23 State Farm about either the document subpoena or the  
24 deposition subpoena that was served on you in April?

25 A If there were any discussions, you know, it was

1 just the fact that we got it and we were responding to  
2 it. There was nothing discussed regarding the context of  
3 any Department of Insurance production.

4 Q No discussions about what you were going to be  
5 asked or what your testimony would be, anything like  
6 that?

7 A No, sir.

8 Q Okay. Did you have any conversations with  
9 Mr. Dale, Commissioner Dale, about either the deposition  
10 subpoena or the document subpoenas that was served on you  
11 in April?

12 A Other than the fact that we had received it.

13 Q Anything about what you're going to be asked,  
14 what your testimony might be, anything in substance of  
15 what this deposition might be about?

16 MR. STREETMAN: I'm going to object to that  
17 question with regard to Mr. Harrell being also the  
18 attorney for Mississippi Department of Insurance. And if  
19 the question is substance of conversations, then I think  
20 those would be protected by privilege. Just if those  
21 existed, then it may be otherwise.

22 MR. SCRUGGS: Well, I'm not -- I'm not sure how  
23 much I want to go into this right now, but I'm going to  
24 disagree with that position. And as Mr. Harrell has  
25 already testified to, there is a special assistant

1 attorney general that's counsel for the insurance  
2 department. Apparently there's also a lawyer here from  
3 the insurance department. Mr. Harrell is the deputy  
4 commissioner of insurance, and the fact that he happens  
5 to be a lawyer I don't think shields any conversations he  
6 had with Mr. Dale or anybody in the insurance department.

7 BY MR. SCRUGGS:

8 Q In the sum and substance of these conversations  
9 you had with Mr. Dale about the subpoena, were you giving  
10 legal advice to Mr. Dale or the department?

11 A My job description and my standards and  
12 elements of my job as deputy commissioner of insurance,  
13 one of my roles is to provide counsel to the commissioner  
14 of insurance, the department of insurance employees, and  
15 its representatives. I provide legal advice to  
16 department representatives or the commissioner on a daily  
17 basis.

18 Q Well, my -- we'll get into that in a minute,  
19 I'm sure. But my question is: Were you giving legal  
20 advice to George Dale in relation to your discussions  
21 about these subpoenas and your testimony here today?

22 A I'm not liberty to go into the context of the  
23 discussions, but it was discussed what the department of  
24 insurance could and could not do legally.

25 MR. SCRUGGS: Okay. We might need to get Judge

1 Walker on\*the phone.FT -- NOT PROOFREAD\*\*\*\*\*

2 MR. STREETMAN: Okay.

3 MR. SCRUGGS: So --

4 MR. STREETMAN: You want to do it in a --

5 MR. SCRUGGS: We probably --

6 MR. STREETMAN: -- less crowded --

7 MR. SCRUGGS: Well, the problem is this will  
8 probably need to be on the record too. I don't know if  
9 we have another phone, and we got Kathryn on this one.  
10 So you tell me how to do it.

11 MR. STREETMAN: I mean, do you want to try to  
12 get him on a cell phone or you want to try to use another  
13 line here or if you...

14 MR. SCRUGGS: I'm not sure if I have his --  
15 actually, I think I have it memorized by now. I can try  
16 to get this on speaker. That's one way to do it. That's  
17 one way to do it.

18 (Short pause.)

19 JUDGE'S ASSISTANT: Judge Walker's chambers.

20 MR. SCRUGGS: Julie?

21 JUDGE'S ASSISTANT: Hello?

22 MR. SCRUGGS: Yes, Julie?

23 JUDGE'S ASSISTANT: Yes.

24 MR. SCRUGGS: Hi, this is --

25 JUDGE'S ASSISTANT: Zach.

1           \*\*\*\*\*MR. SCRUGGS:  -- this is Zach Scruggs.  How are  
2 you?

3           JUDGE'S ASSISTANT:  I'm find.  How you doing?

4           MR. SCRUGGS:  Doing well.  We have a deposition  
5 here today of Lee Harrell, and we've run into a roadblock  
6 on an issue we're going to need to perhaps address with  
7 Judge Walker pursuant to his protective order.  Is he  
8 available or will he be available any time soon?

9           JUDGE'S ASSISTANT:  He will be available.  He  
10 is on another conference call right now, but he will be  
11 available shortly.  What case is it?

12          MR. SCRUGGS:  This is the McIntosh case.

13          JUDGE'S ASSISTANT:  McIntosh?

14          MR. SCRUGGS:  Right.

15          JUDGE'S ASSISTANT:  Okay.

16          MR. SCRUGGS:  Civil Action No. 1080.

17          JUDGE'S ASSISTANT:  Yeah.

18          MR. SCRUGGS:  It's an '06 case.

19          JUDGE'S ASSISTANT:  I know that one by heart  
20 already.

21          MR. SCRUGGS:  I thought you might.

22          JUDGE'S ASSISTANT:  Hold on a second, let me --  
23 let me see if one of the law clerks can talk with you  
24 real quick because he likes them to figure out what the  
25 problem is first.

1           \*\*\*\*\*MR. SCRUGGS: Okay. Sure.EAD\*\*\*\*\*

2           JUDGE'S ASSISTANT: Just a second.

3           (OFF THE RECORD.)

4

5           LAW CLERK: This is Steve wing. I guess the  
6 judge wanted me to talk to y'all and see what's going on.

7           MR. SCRUGGS: Hey, Steve. This is Zach  
8 Scruggs. How are you?

9           LAW CLERK: Doing well.

10          MR. SCRUGGS: We've got a whole host of people  
11 here. This is the deposition of Lee Harrell, and we've  
12 got Jim Streetman here for the witness, Dan Webb and  
13 others for State Farm. And this is -- we've hit a  
14 potential roadblock here in background questions. One of  
15 the questions was discussions Mr. Harrell has had with  
16 George Dale about this opinion, the deposition and  
17 document subpoenas he was served with and his deposition  
18 here today. And I was met with a objection on the  
19 grounds that that conversation was privileged under the  
20 purported reason -- and again, whatever I state wrongly,  
21 I'll certainly let Mr. Streetman jump in -- that he is  
22 special counsel to the department and any conversation  
23 would be privileged.

24          The problem we have with that is that this  
25 witness is the deputy commissioner of insurance. That's

1 a creature of statute, and his position is created by  
2 statute. And nowhere in the statute does it designate  
3 Mr. Harrell as a special counsel or a lawyer or adviser  
4 in legal affairs to the Department of Insurance or  
5 Mr. Dale. Similarly, there is such a person, as you  
6 probably imagine, for most departments in government, and  
7 there is a special attorney general assigned to the  
8 insurance department. His name is Mark Haire. And just  
9 going off the Web site on the duties he has is to consult  
10 with the commissioner and deputy commissioner to provide  
11 legal and technical advice and to insure compliance with  
12 state law and department rules and regulations and to  
13 represent the commissioner in various proceedings.

14 So the fact that Mr. Harrell happens to be a  
15 lawyer -- and I believe even though we haven't gotten  
16 into it yet -- at one time had the role as a deputy  
17 special attorney general is irrelevant to his role now.  
18 He's a deputy commissioner of insurance. His job is to  
19 act in the commissioner's absence and to oversee the  
20 day-to-day operations of the commission. And that's set  
21 out in statute. He can't wear dual hats, in our opinion.  
22 The commission has a special attorney general for that  
23 role. And I'm not asking him about conversations between  
24 him and Mr. Haire. I'm asking him about conversations  
25 between him and Mr. Dale, and it's our position that's

1 not privileged and we're certainly entitled to go into  
2 it. So that's our position.

3 MR. STREETMAN: This is Jim --

4 LAW CLERK: All right.

5 MR. STREETMAN: This is Jim Streetman. Can you  
6 hear me? We're --

7 LAW CLERK: Yes, sir, I can hear.

8 MR. STREETMAN: And I represent Lee Harrell,  
9 and Lee is the deputy commissioner of insurance. As a  
10 part of his job as deputy commissioner of insurance and  
11 part of his job description -- and I've got somebody now  
12 getting that job description, and I don't know the words  
13 of art or the title of that, that hat -- is that he also  
14 serves as special counsel to the commissioner of  
15 insurance and as such provides legal advice to him. It's  
16 called the Mississippi Personnel Board Performance  
17 Review, and it states that his -- he provides legal  
18 advice to the commissioner of insurance, and I'm reading  
19 from that now.

20 And so we believe that any -- as such and in  
21 order for him to be able to perform those duties and to  
22 do them in the manner that he needs to do them, that he  
23 is -- that there is a privilege that exists when he is  
24 giving legal advice.

25 And further and with regard to -- it was our



1 understanding from the judge's order that I'm also  
2 quoting from with regard to these things during this  
3 deposition is that the judge stated that matters which  
4 actually proved to be contested will be addressed by the  
5 court later through a motion to compel. And this might  
6 be something that both sides need to research in greater  
7 detail and exchange documents, whatever. But we believe  
8 now that this is privileged, and those conversations are  
9 such that Mr. Harrell can't go into them at this time.

10 MR. SCRUGGS: Your Honor --

11 LAW CLERK: Let me to interpose a question  
12 here. Is -- do we know whether one of the job  
13 requirements of deputy commissioner is to be an attorney?

14 MR. SCRUGGS: It is -- Your Honor, I'll speak  
15 first. It is not one of the job requirements to be an  
16 attorney. It just happens to be he is an attorney. But  
17 it's -- if I've -- if you have a contrary view, Jim --

18 MR. STREETMAN: I would have to ask Lee that.  
19 Is -- I don't believe that that's one of the job  
20 requirements. But it is part of his job description, and  
21 it is part of his duties that he has taken on as the  
22 deputy commissioner and, again, is reflected in his job  
23 performance review with the state and is -- he acts as  
24 the lawyer for the commission. And along with -- and, as  
25 Zach said, along with -- there are other lawyers there.

1 There's Mr. Haire and others. PROOFREAD\*\*\*\*\*

2           LAW CLERK: Well, yeah, Steve, this is Zach  
3 Scruggs again for the McIntoshes. You know, just -- I'm  
4 reading the statute 83-1-7, sets out the duties of deputy  
5 commissioner. Nowhere does it say, A, he has to be a  
6 lawyer or, B, that he is the counsel or special counsel  
7 or anything like that to the commissioner of insurance.  
8 It says that he has power to act in his absence and has  
9 all the powers that the commissioner would have. And  
10 then I pulled the Web site on Mr. Harrell's job  
11 description, and it tracks that statute and references  
12 the statute. It also doesn't say anything about being  
13 counsel to the insurance department or to the  
14 commissioner.

15           I think that the mere fact that he happens to  
16 be a lawyer -- and there actually is a person that's  
17 designated for that role, and that's the special attorney  
18 general, Mr. Haire, who's not here. And that's the way  
19 it's always been. The department says special attorney  
20 general is assigned for those kind of functions.

21           And if I could clarify one more point, I'm just  
22 trying to get now into discussions he's had with  
23 Mr. Dale. Where this is going to present a problem is  
24 any conversations he's had with anybody under  
25 Mr. Streetman's interpretation -- I don't want to

1 misstate it -- any conversations he had with Mr. Dale or  
2 anybody in that department could be -- could have this  
3 broad-brush privilege thrown over it without any  
4 substantiation that that was -- he was giving legal  
5 advice to Mr. Dale or Mr. Dale or anybody else was  
6 seeking legal advice from him.

7           So you can see the problem that -- if this  
8 isn't addressed. You know, the deposition will be  
9 extremely limited if I can't find out any conversations  
10 or actions he's taken with the commissioner by virtue of  
11 the fact he's a lawyer. So this isn't something that I  
12 enjoy bringing to the court's attention right now, but  
13 I'm afraid that Mr. Streetman's interpretation of his  
14 role as special counsel will cloak everything he's done  
15 or said with privilege, and that's -- I don't think  
16 that's proper, and it's certainly not his functions as  
17 deputy commissioner.

18           MR. STREETMAN: Can I --

19           LAW CLERK: Sure.

20           MR. STREETMAN: Can I briefly respond?

21           LAW CLERK: Yes.

22           MR. STREETMAN: First of all, Mr. Haire  
23 actually works for the attorney general's office and is  
24 not involved in this because he's conflicted out because  
25 of a lot of other things that we won't go into with the

1 attorney general and cases and what has happened here.  
2 And again, I respect Zach's position in this, but the  
3 fact -- the mere fact, as he states, that Mr. Harrell is  
4 a lawyer is not what gives the privilege. The fact is  
5 that all lawyers, as we go through life, we -- as we are  
6 dealing with other persons, particularly those persons  
7 who have an expectation of that privilege, as in this  
8 case whether it's reflected in his job description, that  
9 privilege exists.

10           And in this instance when Mr. Harrell would be  
11 giving legal advice to -- to the commissioner, then he  
12 has -- that privilege exists, and we believe  
13 conversations with regard to what Mr. Harrell discussed  
14 with the commissioner that were handled by Mr. Harrell as  
15 his lawyer are, in fact, privileged. There may be other  
16 questions that are asked that are -- that are not  
17 privileged and strictly go to his performances and his  
18 duties under another hat with deputy -- excuse me, deputy  
19 commissioner. But we believe that the privilege exists.

20           And again, in keeping with the court's previous  
21 order, this might be an issue -- and Zach I think is  
22 absolutely correct in that this ruling would impact this  
23 deposition tremendously, and the court has instructed the  
24 lawyers that we would -- that we would move along and  
25 there would be a motion to compel. And this might be

1 something that needs to be briefed and argued in greater  
2 detail. But as of now, we would stand by our -- our  
3 position.

4 MR. SCRUGGS: Steve, if I could say one more  
5 thing, just a brief thing, if you go to the Mississippi  
6 Insurance Department Web site, the person that shows up  
7 in the insurance department that -- for the role that  
8 they've just described now that Mr. Harrell has is Mark  
9 Haire. There is someone designated to give advice and  
10 counsel that I -- that both Mr. Streetman and I  
11 explained, and that is not Lee Harrell. I have yet to  
12 see any kind of description with it says Lee Harrell is a  
13 lawyer for George Dale, the commissioner, or anyone else.

14 This is -- again, the Mississippi Insurance  
15 Department Web site lists Mark Haire as the one that  
16 special -- says chief counsel to the Mississippi  
17 Department of Insurance, special assistant attorney  
18 general. A lot of these agencies have special attorney  
19 generals assigned to them, and he's the chief counsel.  
20 He's the one that gives legal advice to Mr. Dale or the  
21 commission, not Mr. Harrell.

22 And again, this could be -- the broad brush  
23 that they could use for this could cover almost anything.  
24 So it's our position that we ought to -- I don't plan to  
25 spend too much time getting into conversations with him

1 and Mr. Dale, but certainly for background and there's  
2 going to be points in this deposition when that's  
3 relevant. And it's certainly not privileged, and every  
4 conversation he has with George Dale is not seeking or  
5 giving legal advice. But that would be the practical  
6 effect of that kind of ruling.

7 MR. STREETMAN: Steve, just one last thing.  
8 The -- and again I'm going to have to get the words for  
9 it from Lee --

10 A The job content questionnaire and the elements  
11 and standards which are -- have to be filed with the  
12 state personnel board and have to be approved by the  
13 state personnel board, the elements in both of those  
14 state documents that require for me to give legal counsel  
15 to the commissioner of insurance, department of insurance  
16 employees, and department of insurance representatives  
17 regarding matters before the department. And that's in  
18 there. It's been in there since the day I took -- became  
19 deputy, and it was approved by the state personnel board  
20 for me to serve in that dual capacity.

21 LAW CLERK: Okay. Could y'all hold on just a  
22 moment, please?

23 MR. SCRUGGS: I'm afraid we're going to have to  
24 say all this again.

25 MR. STREETMAN: We're fixing to argue this

1 again.\*\*\*\*\*ROUGH DRAFT -- NOT PROOFREAD\*\*\*\*\*

2 MR. SCRUGGS: I guess we could make it shorter.

3 LAW CLERK: I'm going to put y'all on hold for  
4 a moment. We're going to go have -- I think I got a  
5 pretty good idea of what's going on, and Sherry and I are  
6 going to go in and talk with the judge about this. Do  
7 y'all have a moment to hold or how do you want to handle  
8 that?

9 MR. STREETMAN: Sure.

10 MR. SCRUGGS: We can -- we can hold. That'd  
11 probably be the easiest thing to do as opposed to --

12 LAW CLERK: Okay. It shouldn't be too long.  
13 We'll be back with you in just a few minutes. All right?

14 MR. SCRUGGS: Why don't we go off the record,  
15 y'all.

16 (OFF THE RECORD.)

17 \*\*GET TAPE FROM HEATHER TO FILL IN HERE\*\*

18 THE COURT: We have Zach and Jim are the main  
19 two players in all of this. Jim filed a motion for  
20 protective order regarding Lee Harrell's deposition  
21 asserting that there would be certain privileges and  
22 considerable objections to the deposition, and I'm sure  
23 y'all are well aware of my June 1st order recognizing  
24 that and allowing the depositions to go forward and  
25 advising y'all's attorney -- that would be Jim -- that of

1 course you're free to instruct your client not to answer  
2 any questions you felt were improper and State Farm can  
3 interpose any objections and we'll take it up on a motion  
4 to compel. That's how we're going to leave it. I don't  
5 want to piecemeal and have to just basically sit in this  
6 deposition and make a ruling on every question. Y'all go  
7 ahead and do the deposition, get as much as you can, and  
8 then file a motion to compel. And I'll address that  
9 formal questions and objections of privilege, et cetera,  
10 at that time. So I'm not going to piecemeal this  
11 deposition.

12 MR. SCRUGGS: Your Honor, this is Zach Scruggs  
13 for the McIntoshes. I appreciate what the Court is  
14 saying. If I could just state one thing. I'm afraid  
15 this will impact a lot of the deposition if this  
16 objection to any conversations he's had with George Dale  
17 and people in the insurance department --

18 THE COURT: It probably will.

19 MR. SCRUGGS: Okay. Well, if that's Your  
20 Honor's ruling, then certainly it is. We just -- we felt  
21 that a ruling on this might clear up a lot of the  
22 remainder of the depo so we don't have to go back and do  
23 it again or --

24 THE COURT: Well, there's certainly a chance  
25 you're probably going to have to resume the depo at a



1 later time depending on what my rulings are.\*\*\*

2 MR. SCRUGGS: Okay.

3 THE COURT: But y'all do what you can, and I'll  
4 address it later on a motion.

5 MR. SCRUGGS: Thank you, Your Honor.

6 THE COURT: Thank you.

7 MR. SCRUGGS: Give me one second.

8 (OFF THE RECORD.)

9 BY MR. SCRUGGS:

10 Q Okay. Mr. Harrell, have you had conversations  
11 with Mr. Dale regarding the deposition and document  
12 subpoenas served on you in April?

13 MR. STREETMAN: Same objection and instruct the  
14 witness not to answer.

15 MR. SCRUGGS: Okay.

16 MR. WEBB: To the -- and let me go ahead and  
17 make this point on the record. I want to make sure that  
18 the point is clear that we reassert all the objections we  
19 made at this point and through the deposition in our  
20 motion for protective order relating to those type  
21 questions as well as questions dealing with the subject  
22 matter areas covered in the protective order request. Go  
23 ahead.

24 BY MR. SCRUGGS:

25 Q Okay. What did you and Mr. Dale discuss

1 regarding the deposition and document subpoenas served on  
2 you in April?

3 MR. STREETMAN: Same objection.

4 BY MR. SCRUGGS:

5 Q Are you going to follow your counsel's advice?

6 A Yes, sir.

7 Q Okay. So we'll -- I guess you can stip- --  
8 we'll stipulate that you're going to follow your  
9 counsel's advice when he instructs you not to answer. Is  
10 that --

11 A Yes, sir.

12 Q Okay.

13 MR. STREETMAN: And without repeating the  
14 entire objection, I would assume that we understand that  
15 it has to do with all that we've got on the record here?

16 MR. SCRUGGS: Sure.

17 MR. STREETMAN: And the matters, again, for --

18 MR. SCRUGGS: Why don't you state the basis for  
19 your objection, Jim, and then -- so I'm clear on it, and  
20 then we'll go on.

21 MR. STREETMAN: That this is privileged  
22 communication due to Lee's role as attorney and his  
23 actively giving legal advice to the commissioner and  
24 others at the commission.

25 BY MR. SCRUGGS:

1 Q\*\*\*\*Okay. In conversations with Mr. Dale regarding  
2 your deposition and testimony here today, were you giving  
3 legal advice to Mr. Dale in that regard?

4 A The discussions were held with Mr. Dale and  
5 sometimes others at the department regarding this. You  
6 know, discussions were regarding how and -- how the  
7 department was going to handle the deposition and the  
8 subpoena.

9 Q Well, let me ask the question again. In your  
10 discussions with Mr. Dale regarding your deposition here  
11 today, were you giving any legal advice to Mr. Dale?

12 MR. STREETMAN: And I'm going to -- I'm going  
13 to interject an objection because as Mr. Harrell's  
14 attorney, we've determined that, in fact, those  
15 discussions in preparation for this deposition were, in  
16 fact, giving legal advice. So we're going to, to that  
17 extent, instruct the witness not to answer other than to  
18 answer question or no with regard to it being legal  
19 advice.

20 MR. SCRUGGS: Well, that's what I was -- that  
21 was the question I had, and I'm going to object to you  
22 coaching the witness. I'm entitled to at least get an  
23 answer to whether he was giving legal advice to Mr. Dale  
24 or Mr. Dale was seeking legal advice. I'm going to ask  
25 the question again. The objection is noted.

1 BY MR. SCRUGGS:H DRAFT -- NOT PROOFREAD\*\*\*\*\*

2 Q And --

3 MR. WEBB: In addition -- excuse me, when you  
4 paused. In addition to the objections that I made  
5 previously and reasserted, I want to make it clear on the  
6 record that I'm continuing those objections to these line  
7 of questions as well as I want to interpose an objection  
8 here on the grounds that it's been asked and answered.

9 BY MR. SCRUGGS:

10 Q Okay. In the discussions you had with  
11 Mr. Dale -- in all the discussions you had with Mr. Dale  
12 regarding your deposition here today and the testimony  
13 you're going to give today, were you giving legal advice  
14 to Mr. Dale?

15 MR. WEBB: Same --

16 A In my --

17 MR. WEBB: -- objection.

18 A In my opinion, yes.

19 BY MR. SCRUGGS:

20 Q Okay. And what do you base that opinion on?

21 MR. WEBB: Same objection.

22 MR. STREETMAN: If he can -- we've been through  
23 it. It's the same thing we've been talking about is that  
24 he's acting as the attorney for the commission, and I  
25 don't believe that we have to go through that again. I

1 instruct the witness not to answer that question.

2 MR. SCRUGGS: I think objecting and instructing  
3 not to answer would be -- do just fine.

4 BY MR. SCRUGGS:

5 Q Did Mr. Dale ask you for legal advice in  
6 relation to the testimony that you were going to give  
7 here today pursuant to subpoena?

8 MR. WEBB: Same objections.

9 MR. STREETMAN: Could -- I'm sorry, could you  
10 repeat that? I just didn't hear the first part of that  
11 question.

12 BY MR. SCRUGGS:

13 Q Did Mr. Dale seek legal advice from you,  
14 Mr. Harrell, in your preparation for the deposition and  
15 document subpoenas that were served on you in April in  
16 your testimony here today?

17 MR. WEBB: Same objection.

18 MR. STREETMAN: Same objection.

19 MR. SCRUGGS: Instruct him not to answer?

20 MR. STREETMAN: Yes.

21 BY MR. SCRUGGS:

22 Q Okay. Did you have any conversations with  
23 Mr. Dale regarding the deposition and document subpoenas  
24 served on you in April and your deposition testimony here  
25 today that were not legal in nature?

1 A\*\*\*\*Not to my knowledge.PROOFREAD\*\*\*\*\*

2 Q How many conversations did you have with  
3 Mr. Dale regarding the deposition and document subpoenas  
4 served on you in April and your testimony here today?

5 A I couldn't tell you how many. We speak on  
6 almost a daily basis regarding issues.

7 Q Did you speak on a daily basis regarding the  
8 deposition and document subpoenas served on you in this  
9 case?

10 MR. WEBB: Same objection.

11 A Don't know.

12 BY MR. SCRUGGS:

13 Q Well, again, how often did you speak to  
14 Mr. Dale regarding the deposition and document subpoenas  
15 that were served on you?

16 A Don't know.

17 Q More than one?

18 A Yes, sir.

19 Q More than ten?

20 A Yes, sir.

21 Q More than twenty?

22 A Don't know.

23 Q What documents did you review in preparation  
24 for your deposition here today?

25 A Reviewed a letter from Mr. Streetman to you and

1 I believe a motion filed-by Mr. Streetman on behalf of  
2 the State of Mississippi and the department.

3 Q Anything else?

4 A Not to my knowledge.

5 Q So your testimony is no other documents, to  
6 your knowledge, other than a letter Mr. Streetman wrote  
7 to me and a motion for protective order.

8 A That's correct.

9 MR. STREETMAN: And just for clarification, I  
10 think those were both from Matt Taylor.

11 MR. SCRUGGS: Can we mark as Exhibit 1 to the  
12 witness's deposition just the re-notice of the deposition  
13 for today, just for.

14 - - -

15 (Exhibit 1 marked)

16 MR. WEBB: Did you say Exhibit 2?

17 MR. SCRUGGS: Exhibit 1.

18 MR. WEBB: Oh, okay.

19 MR. SCRUGGS: Mark as Exhibit 2 Mr. Harrell's  
20 deposition. This was served on Mr. Harrell on  
21 April 23rd. It was the document subpoena.

22 MR. STREETMAN: Do you need copies made of  
23 this?

24 MR. SCRUGGS: I'm just going to mark that for  
25 the record. I'm not going to ask him any questions about

1 it. I'm just marking it for the record. Actually, I'll  
2 ask one question.

3 BY MR. SCRUGGS:

4 Q Is that consistent with what I just stated? Is  
5 that the document subpoena served on you in April?

6 A It appears to be.

7 MR. SCRUGGS: Okay. Mark that as Exhibit 2.

8 - - -

9 (Exhibit 2 marked)

10 MR. SCRUGGS: Mark as Exhibit 3 what purports  
11 to be a response to the deposition subpoena -- excuse me,  
12 the document subpoena on May 7, 2007.

13 - - -

14 (Exhibit 3 marked)

15 BY MR. SCRUGGS:

16 Q Does that appear to be your response to the  
17 document subpoena served on you in April?

18 MR. STREETMAN: The response of the department  
19 or Mr. Harrell's response?

20 BY MR. SCRUGGS:

21 Q Well, let's just -- the first page of this  
22 says, "This letter is in response to the subpoena duces  
23 tecum recently received by Deputy Commissioner Lee  
24 Harrell in the above-referenced matter. Deputy  
25 Commissioner Harrell and the Mississippi Department of



1 Insurance...hereby respond as follows."\*\*\*\*\*

2 A It appears to be, yes, sir.

3 Q Okay. And who signed that response?

4 A Mark Haire.

5 Q And who is Mark Haire?

6 A He's one of our attorney general lawyers.

7 Q And you didn't respond to that depos- -- excuse  
8 me, you didn't respond to that document subpoena on  
9 behalf of the insurance department, did you?

10 A No, sir.

11 Q Mr. Haire did. Is that right?

12 A Yes, sir.

13 Q You can put that away or --

14 MR. STREETMAN: Did you mark this?

15 MR. SCRUGGS: She's got it. That's y'all's  
16 copy that you can do what you want.

17 - - -

18 (Exhibit 3 marked)

19 BY MR. SCRUGGS:

20 Q Okay. Let's briefly go through your  
21 background, Mr. Harrell. Where did -- where were you  
22 born?

23 A Jackson, Mississippi. I had to think on that  
24 one.

25 Q What is your educational background, college,

1 law school?ROUGH DRAFT -- NOT PROOFREAD\*\*\*\*\*

2 A Went to undergrad at University of Southern  
3 Mississippi down in Hattiesburg and got an undergraduate  
4 degree in criminal justice. Then I went to law school at  
5 Mississippi College School of Law. I graduated college  
6 in 1988 and went to law school straight thereon.  
7 Graduated from Mississippi College in 1991.

8 And I worked as assistant district attorney in  
9 Rankin and Madison Counties for a short period of time,  
10 and then I went to private practice in Richland,  
11 Mississippi, with another lawyer by the name of Richard  
12 Redfern. And then in -- I think it's November 1st of  
13 1992 I started as a special assistant to the attorney  
14 general and served in that capacity till maybe January of  
15 2001. At that time Commissioner Dale asked me to be  
16 deputy commissioner and special counsel.

17 Q When did you join the insurance department or  
18 start working for the insurance department?

19 A As a paid employee or as an AG lawyer?

20 Q Well, tell me the difference.

21 A I served as attorney general lawyer  
22 representing the department of insurance for a time from  
23 November of '92 till sometime in -- I don't have the  
24 exact dates -- sometime in probably January, late  
25 December of 2001. And then at that juncture I became a

1 full-time employee of the Mississippi Department of  
2 Insurance as deputy commissioner and special counsel.

3 Q Okay. In your capacity from -- I think you  
4 testified, correct me if I'm wrong, 1992 to 2001 you  
5 served as assistant attorney general for the insurance  
6 department. Is that correct?

7 A Yes, sir.

8 Q And was one of your jobs as assistant attorney  
9 general assigned to the insurance department to give  
10 legal advice to the commissioner and the commission on  
11 matters that were before it?

12 A To the commissioner of insurance and its  
13 employees and representatives, yes, sir.

14 Q Okay. So the answer is yes?

15 A Yes, sir.

16 Q Okay. Were you -- was your title chief counsel  
17 to the insurance department?

18 A I know it was special assistant attorney  
19 general. It may have been general counsel. I'm not sure  
20 of the exact title. Chief counsel, general counsel.

21 Q Is it fair to say that the role you served for  
22 the insurance department from '92 to 2001 is the role  
23 that Mark Haire performs now?

24 A In some capacity, yes, sir.

25 Q Okay. In 2001 you became deputy commissioner

1 of insurance? UGH DRAFT -- NOT PROOFREAD\*\*\*\*\*

2 A Yes, sir.

3 Q Okay.

4 MR. SCRUGGS: Mark as Exhibit, I think, 4 to  
5 your deposition.

6 - - -

7 (Exhibit 4 marked)

8 BY MR. SCRUGGS:

9 Q This is off the Mississippi Insurance  
10 Department Web site, and it states the mission of the  
11 Mississippi Insurance Department. Is that correct.

12 A Yes, sir.

13 Q Are you familiar with this document?

14 A I've seen it, yes, sir.

15 Q Okay. What are the duties of the department of  
16 insurance for the state of Mississippi?

17 A Pretty diverse duties. Actually, you're  
18 probably familiar with the insurance regulatory portions  
19 of it, and we can go into great detail there. And we can  
20 also -- the state fire academy falls underneath the  
21 Mississippi -- falls underneath the commissioner of  
22 insurance jurisdiction. The state fire marshal, the  
23 manufactured housing division, which -- slash mobile  
24 homes, is what a lot of people call them. It also has  
25 the burglar alarm division. Its official title -- its

1 official title slips my memory. Then you got the  
2 liquefied compressed gas division. You have the bail  
3 bondsman, we regulate those individuals. You have the --  
4 those are some of the peripheral issues. There are lot  
5 of individuals I'm not familiar with that fall underneath  
6 the jurisdiction of insurance -- of the commissioner of  
7 insurance --

8 Q Okay.

9 A -- in additional to the duties and  
10 responsibilities regulating the insurance industry.

11 Q Would read for me the first sentence of the  
12 mission of the Mississippi Insurance Department as listed  
13 or identified on the Web site.

14 A "The mission of the Mississippi Insurance  
15 Department is to impartially enforce the laws and  
16 regulations enumerated in Mississippi Code Ann. Section  
17 83-1-1, et seq., thereby creating an environment  
18 conducive to a competitive marketplace for the sale of  
19 insurance products and services while providing the  
20 State's citizens with the maximum amount of consumer  
21 protection."

22 Q Okay. Would you agree with me that one of the  
23 principal duties of the Mississippi Department of  
24 Insurance is to provide its citizens with the maximum  
25 amount of consumer protection?

1 A\*\*\*\*Yes, sir.AFT -- NOT PROOFREAD\*\*\*\*\*

2 Q And how would the insurance department go about  
3 doing that, providing its citizens with the maximum  
4 amount of consumer protection?

5 A Well, you want to make sure there's a market,  
6 want to make sure that the rates comply with the  
7 statutes, you want to make sure that the policies that  
8 are being sold are being properly marketed and sold, and  
9 that the insurance companies honor the obligations of the  
10 contract.

11 Q Okay. Would that include, that mission, part  
12 of the insurance department's mission, include  
13 investigating companies that weren't paying claims for  
14 covered damage?

15 A Yes, sir.

16 Q Okay. Would that include sanctioning companies  
17 that did not pay claims for covered damage?

18 A Yes, sir.

19 Q Okay. Would you agree with me that part of  
20 this mission statement that the department is responsible  
21 for insuring that covered claims get paid regardless of  
22 the financial consequences?

23 A That's a two-answer question. The commissioner  
24 has a responsibility to make sure that insurance  
25 companies remain solvent and that they pay claims. If at

1 some juncture the commissioner of insurance determines  
2 that a company is not solvent, then he also has another  
3 duty to take regulatory action against the company. That  
4 could be administrative supervision, it could mean  
5 rehabilitation, it could also mean liquidation.

6 Q Assuming that the insurance company is  
7 solvent --

8 A Okay.

9 Q With that qualification that you testified to,  
10 would you agree with me that the department is  
11 responsible for insuring that covered claims get paid  
12 regardless of the financial consequences?

13 A The company is the one who entered into the  
14 contract. They collected a premium. They owe what's  
15 owed under the contract regardless of the consequences to  
16 the company.

17 Q Okay. Would that also be true regardless --  
18 strike that. Let me say it this way: Would you agree  
19 with me that the department's responsibility to insure  
20 that covered claims are paid would be true regardless of  
21 the financial consequences to others, aside from the  
22 insurance company?

23 A I don't understand your question. Who are  
24 others?

25 Q Other policyholders, other third parties, the

1 public at large. DRAFT -- NOT PROOFREAD\*\*\*\*\*

2 A It's a contract. The insurance company owes  
3 the -- owes what's owed under the contract. They entered  
4 into it; they owe the -- they owe whatever benefits are  
5 owed under the contract.

6 Q And they would owe those benefits, meaning the  
7 insurance companies, regardless of whether that might  
8 cause rates to go up sometime in the future. Would you  
9 agree with that?

10 A Yes, sir.

11 Q And that responsibility of the insurance  
12 companies to pay covered claims would exist regardless of  
13 whether that caused the company to leave the state or  
14 stop writing new business. Would you agree with that?

15 A Yes, sir.

16 Q There's no provision that you're aware of in  
17 these insurance contracts between the companies and the  
18 policyholders in the state of Mississippi that says that  
19 the companies don't have to pay covered claims if it  
20 cause rates to go up somewhere else, does it?

21 MR. WEBB: Objection to the form of the  
22 question.

23 A I don't claim to have read every policy. I  
24 don't recall ever reading a policy that had that  
25 limitation, and I don't believe the department of



1 insurance would approve any such provision.\*\*\*\*

2 BY MR. SCRUGGS:

3 Q So that wouldn't be a valid reason to not pay a  
4 claim. Would you agree with me there?

5 A Yeah --

6 MR. WEBB: Same objection.

7 A Yes, sir.

8 MR. SCRUGGS: That's Exhibit 4, Lori?

9 THE COURT REPORTER: Yes.

10 MR. SCRUGGS: Thanks. Mark as Exhibit 5 to  
11 your deposition a state statute, Mississippi Code  
12 Annotated 83-1-3 that identifies the creation and the  
13 duties of the commissioner of insurance.

14 - - -

15 (Exhibit 5 marked)

16 (OFF THE RECORD.)

17 A And what was your question, I'm sorry?

18 BY MR. SCRUGGS:

19 Q Oh, yeah, that's -- glad you asked me. What we  
20 have marked as Exhibit 5 is Mississippi Code Annotated  
21 83-1-3 that identifies the creation of the commissioner  
22 of insurance and lists his duties and qualifications and  
23 obligations. Is that correct?

24 A It appears to be a copy of 83-1-3, yes, sir.

25 Q Okay. And is that what 83-1-3 does is list the

1 requirements and duties of the commissioner of insurance?

2 A Yes, sir.

3 Q Okay. If you could, read to me for the record  
4 I believe the third sentence. It starts with "no  
5 person," for me.

6 A "No person shall be Commissioner of Insurance  
7 who is in any way connected with the management or  
8 control of any company, corporation, association, or  
9 order affected by this title; and his term of office  
10 shall immediately cease if at any time he shall become so  
11 interested."

12 Q Do you agree with that?

13 A I agree that's what it says.

14 Q Well, do you agree that that's a valid  
15 provision?

16 MR. WEBB: Objection to the form of the  
17 question.

18 MR. STREETMAN: Same objection. You can answer  
19 if you can.

20 A I don't understand your question, Mr. Scruggs.

21 BY MR. SCRUGGS:

22 Q Well, you've read it. Do you agree that that's  
23 a valid provision for -- or strike that -- a valid  
24 requirement for the commissioner of insurance?

25 A I --



1 BY MR. SCRUGGS:H DRAFT -- NOT PROOFREAD\*\*\*\*\*

2 Q Are you familiar with this article or have you  
3 read it?

4 A I've seen it, yes, sir.

5 Q Okay. If you could, read to me -- I'll just  
6 give you my copy, make it easier -- the highlighted  
7 portion -- there's three highlighted portions. If you  
8 don't mind reading that for me for the record, I'd  
9 appreciate it, Mr. Harrell.

10 A "Some say Copeland is the tail that wags the  
11 dog when it comes to insurance in Mississippi. He serves  
12 as wind-pool attorney..." -- you want me to read the  
13 whole sentence that's --

14 Q Please, sir.

15 A Okay. I'm sorry.

16 Q Please, sir. I'm sorry.

17 A "...but he or his firm also work for the state  
18 Insurance Department, the American Insurance Association,  
19 Mississippi Farm Bureau Companies, and, by his own count  
20 'at least 40 to 50' insurance companies."

21 Q Okay. If you could, read the next highlighted  
22 sentence and then the last one. I'm sorry, Mr. Harrell.

23 A "Copeland also helps elected Insurance  
24 Commissioner George Dale raise money from insurance  
25 companies for his campaigns. Period."

1 Q\*\*\*\*And the final sentence, sir?D\*\*\*\*\*

2 A "Dale was out of the office and could not be  
3 reached Thursday. But Deputy Insurance Commissioner Lee  
4 Harrell said: 'Greg raises money (for Dale's campaign).  
5 Lots of people raise money for us. I raise money for a  
6 lot of people... legislators... I don't see a conflict.  
7 Period."

8 Q Okay. Thank you.

9 MR. STREETMAN: Was a there a question  
10 associated with --

11 MR. SCRUGGS: Yeah, I'm --

12 MR. STREETMAN: -- the article?

13 MR. SCRUGGS: -- going to identify one more  
14 exhibit, and then I'm going to ask some questions. I'm  
15 just setting a predicate, if that's okay, Jim.

16 MR. STREETMAN: Sure.

17 MR. SCRUGGS: Exhibit 7.

18 - - -

19 (Exhibit 7 marked)

20 BY MR. SCRUGGS:

21 Q What we marked as Exhibit 7, Mr. Harrell, is a  
22 article in The Clarion-Ledger -- I don't think the date  
23 showed up on this copy -- Industry lobbyist represented  
24 Dale in Dem ballot dispute. Are you familiar with this  
25 article, Mr. Harrell? I'll just give you my highlighted

1 copy.\*\*\*\*\*ROUGH DRAFT -- NOT PROOFREAD\*\*\*\*\*

2 A Yes, sir.

3 Q Okay. If you could, read for me this paragraph  
4 and this first sentence, I'd appreciate it, sir.

5 A "Mississippi Insurance Commissioner George Dale  
6 says he sees no conflict in his having been represented  
7 in a ballot dispute by Greg Copeland, an attorney who is  
8 a longtime lobbyist for the insurance industry." Next  
9 sentence too?

10 Q Please, sir.

11 A "'Yes, he is in my campaign. I have not hid  
12 that,' Dale told The Associated Press..."

13 Q And, I'm sorry, one more sentence. I believe  
14 it's right here. This -- these two highlighted  
15 provisions. Thank you, sir.

16 A "The commissioner said he doesn't know whether  
17 either he or his campaign will pay for Copeland's  
18 services. 'We haven't talked about bills,' Dale said.  
19 'He just felt very strongly that I had been done wrong  
20 and volunteered to be helpful.'"

21 Q Thank you, sir. Now, circling back to  
22 Exhibit 5 that we read part of in the record, the 83-1-3  
23 statute, commissioner of insurance, do you see or believe  
24 there's any conflict there between the two articles that  
25 you just read, Exhibits 6 and 7, about the participation

1 of Mr. Copeland in Mr. Dale's campaign and his\*  
2 representation of Mr. Dale --

3 MR. STREETMAN: I -- I'm sorry, I --

4 BY MR. SCRUGGS:

5 Q With the provisions of this statute.

6 MR. WEBB: Object to the form of the question.

7 MR. STREETMAN: And I object to this question,  
8 and I'm going to instruct this witness not to comment  
9 with regard to -- these newspaper articles were written  
10 by Mr. Pender and I'm not sure who the other one is, that  
11 are -- obviously have things in them that are their  
12 opinions, and he's already testified as to what he  
13 believes to be the commissioner of insurance. He's not  
14 going to comment on these articles.

15 MR. SCRUGGS: You're instructing him not to  
16 answer?

17 MR. STREETMAN: I am.

18 BY MR. SCRUGGS:

19 Q Mr. Harrell, does Mr. Copeland represent the  
20 commissioner of insurance in a -- in a dispute with the  
21 democratic party?

22 A He's one of several lawyers that represent the  
23 commissioner of insurance in that capacity.

24 Q Okay. Does Mr. Copeland help raise money for  
25 Mr. Dale for his election campaigns?

1           A\*\*\*\*As I previously stated, yes, he among many  
2 others.

3           Q     Okay.

4           MR. STREETMAN: And not to -- I'm going to have  
5 a continuing objection not instructing him to answer but  
6 a continuing objection with regard to the questioning  
7 regarding Greg Copeland. But you can answer if you can.

8 BY MR. SCRUGGS:

9           Q     So is it fair to say that the article is not  
10 inaccurate in the sense that it noted that Greg Copeland  
11 represents the commissioner of insurance in litigation in  
12 a ballot dispute with the democratic party?

13          A     Mr. Copeland is one of several lawyers involved  
14 in representing the commissioner in that capacity.

15          Q     Thank you. And is it also fair to say that the  
16 article is not accurate -- inaccurate in stating that  
17 Mr. Copeland helps raise money for George Dale for his  
18 re-election campaigns?

19          A     Mr. Copeland is one of many that's given money  
20 to raise money for the commissioner of insurance in his  
21 role as commissioner of insurance, yes, sir.

22          Q     Okay. And is it also true, Mr. Harrell, that  
23 Mr. Copeland represents several different insurance  
24 companies?

25          A     It's my understanding he does.



1 Q\*\*\*\*All right. And isTit also true that\*  
2 Mr. Copeland is a lobbyist for insurance association?

3 A I don't know that.

4 Q Okay. Do you have any reason to doubt that  
5 being true?

6 A I don't know.

7 Q Okay. So do you see any conflict between that  
8 participation by Mr. Copeland and Mr. Dale's campaigns  
9 and legal defense and the provision that you previously  
10 read in 83-1-3 that states that no person shall be  
11 commissioner who is in any way connected with the  
12 management or control of any company, corporation,  
13 association, or order affected by this title?

14 MR. WEBB: Excuse me, Mr. Harrell. I want to  
15 impose the continuing objections that I made earlier as  
16 well as to object to the form of the question. In  
17 addition, I object -- I think this whole line of inquiry  
18 is beyond the scope of proper discovery in the McIntosh  
19 case. I don't see any connection at all between the line  
20 of questions that the plaintiffs' counsel is going into  
21 at this point and the McIntosh claim. Other insurance  
22 companies, Greg Copeland's involvement in representing  
23 Farm Bureau and other companies just simply has no  
24 connection with this case, and I just state that as an  
25 objection.

1           \*\*\*\*\*MR. SCRUGGS: Thank you.FREAD\*\*\*\*\*

2           MR. STREETMAN: I have the same objection.  
3    Could you please rephrase that question after that -- so  
4    that we're clear with regard to what the question is to  
5    Mr. Harrell?

6           MR. SCRUGGS: I don't think I can rephrase it.  
7    If he can answer the question, that -- and then I can  
8    certainly ask others. But there's a question on the  
9    table, so --

10          A    Can you restate the question, ma'am?

11          MR. SCRUGGS: Can you read the question back?

12                   (Question read)

13    BY MR. SCRUGGS:

14          Q    The answer, sir?

15          MR. WEBB: Same objection.

16          A    I don't see any conflicts there.

17    BY MR. SCRUGGS:

18          Q    Okay. As the deputy commissioner of insurance,  
19    you don't believe that that participation and  
20    representation by Mr. Copeland impairs the commissioner's  
21    ability to effectively regulate the insurance companies  
22    and protect the rights of the policyholders?

23          MR. WEBB: Same objections.

24          A    I don't see any difference, sir. Just like  
25    you're entitled to give contributions to judges, your dad

1 is entitled to give contributions to judges. I don't see  
2 any difference.

3 Q Okay.

4 A Don't see a conflict.

5 MR. SCRUGGS: Well, I move to strike the  
6 commentary other than the question, which I'll ask again.

7 BY MR. SCRUGGS:

8 Q Do you see any conflict between Mr. Copeland's  
9 participation in Mr. Dale's campaigns and his  
10 representation of Mr. Dale and the commissioner of  
11 insurance, Mr. Dale's, regulation of the insurance  
12 industry...

13 MR. WEBB: Same --

14 Q And --

15 MR. WEBB: -- objection.

16 BY MR. SCRUGGS:

17 Q -- excuse me --

18 MR. WEBB: I'm sorry.

19 BY MR. SCRUGGS:

20 Q -- and protecting the policyholder's right as  
21 you previously read in the mission statement?

22 MR. WEBB: Same objection.

23 MR. STREETMAN: The objection here is that he  
24 has already answered that question. But if he wants to  
25 and can answer it again, then go ahead.

1 BY MR. SCRUGGS:H DRAFT -- NOT PROOFREAD\*\*\*\*\*

2 Q The answer?

3 A I stand by my previous answer.

4 Q Which was what?

5 A The one I just stated.

6 Q What did you just state?

7 A I don't see any conflict. Just like anybody  
8 else can give contributions to anybody else running for  
9 political office.

10 Q Okay.

11 MR. STREETMAN: And for purposes of the record  
12 and just to clarify this, when we -- looks like we will  
13 end up in front of the judge, that we will be moving to  
14 strike those portions of the testimony that involve the  
15 newspaper articles and other questions involving them.  
16 And with -- I assume that we'll be asked for an expedited  
17 hearing and that we can have those done before a  
18 transcript is prepared or this video is released --

19 MR. WEBB: And I --

20 MR. STREETMAN: -- in any way.

21 MR. WEBB: Excuse me, Jim. Are you finished?  
22 I join in that on behalf of my client. Additionally,  
23 even though counsel said we were taking the deposition  
24 pursuant to the federal rules -- and that's certainly  
25 sufficient to cover our positions -- I want to make

1 certain that to the extent that it's not otherwise stated  
2 that any objections to the substantive use of this  
3 testimony in the McIntosh case or any other case are  
4 specifically reserved even if not made on the record.

5 MR. SCRUGGS: Well, I appreciate your  
6 statements. I don't know if there's any response I need  
7 to make. This is a civil deposition, and it's going to  
8 be taken. And there'll be a transcript, and that's about  
9 where it begins and ends.

10 MR. WEBB: Well, it may not end there, but it  
11 certainly begins there.

12 MR. STREETMAN: And I don't think I have any  
13 reserved objections as being a nonparty but...

14 MR. SCRUGGS: Okay. Are we on 8 now?

15 THE COURT REPORTER: Yes.

16 MR. SCRUGGS: Great. Mark for me, Lori,  
17 Exhibit 8 to Mr. Harrell's deposition.

18 - - -

19 (Exhibit 8 marked)

20 BY MR. SCRUGGS:

21 Q Do you recognize this document?

22 A It appears to be something off the Mississippi  
23 Department of Insurance Web site.

24 Q Okay. And this purports to be the Mississippi  
25 Insurance Department Web site listing the bio and

1 responsibilities and duties of PGeorge Dale as\*\*  
2 commissioner of insurance. Is that accurate?

3 A Yes, sir.

4 Q Okay. Turn the page for me to page 2.

5 Mississippi Insurance Guaranty Association, tell me what  
6 that board does -- excuse me, Mississippi Insurance  
7 Guaranty Association (Property and Casualty). What does  
8 that association supposed to do?

9 A That is an entity that is -- when a insurance  
10 company becomes insolvent and unable to pay its claims,  
11 whether it's a Mississippi domestic insurance here in  
12 Mississippi or one in New York or California or wherever  
13 it may be, that entity assesses all other property and  
14 casualty insurance companies selling insurance in the  
15 state of Mississippi to pay the outstanding claims,  
16 insurance policy or the claims of the insolvent insurance  
17 company.

18 Q Okay. So this -- where it states that it  
19 provides a mechanism for the payment of covered claims,  
20 that would be only in instances of an insolvent insurance  
21 company --

22 A Yes.

23 Q -- is that correct?

24 A Yes, sir.

25 Q Okay. Does the commissioner of insurance

1 appoint the members of this board, of this association?

2 A I'll go have to go back and look at the  
3 statutes. I believe that's correct.

4 Q Do you know who the members of this board are?

5 A No, sir.

6 Q Okay. If you'll look down more at the bottom  
7 for me, Mr. Harrell, it says Mississippi Windstorm  
8 Underwriting Association. Do you see that?

9 A Yes, sir.

10 Q Okay. And it says, "Commissioner Dale approves  
11 the plan of operation of this board and appoints three  
12 members to the board..." Do you know which three members  
13 Mr. Dale appointed to the board of the Mississippi  
14 Underwriting Association -- Windstorm Underwriting  
15 Association?

16 A No, sir.

17 Q Okay. Do you know whether they're people in  
18 the insurance business or what their backgrounds are?

19 A Information at the office. I personally don't  
20 know off the top of my head.

21 Q Okay. Thank you.

22 MR. STREETMAN: Are you done with this one?

23 MR. SCRUGGS: Yeah --

24 MR. STREETMAN: I just want to --

25 MR. SCRUGGS: -- I think I am.





1 Q\*\*\*\*Okay. But as you sit here today, you don't  
2 know one way or the other?

3 A I don't have any reason to believe that he did  
4 not.

5 Q Okay. The next sentence says, "Said deputy  
6 shall be commissioned by the Governor..." Were you  
7 commissioned by any governor?

8 A I would assume so. Personnel department  
9 handles that.

10 Q Okay. Thank you. Put that aside.

11 MR. SCRUGGS: Exhibit 10.

12 - - -

13 (Exhibit 10 marked)

14 BY MR. SCRUGGS:

15 Q What I've handed you, Mr. Harrell, as  
16 Exhibit 10 to your deposition is also pulled off the  
17 Mississippi Insurance Department Web site. And under the  
18 legal and investigative division it shows -- identifies  
19 Mark Haire. Is that accurate?

20 A Yes, sir.

21 Q Okay. And can you read for me the first  
22 paragraph under "mission" of the legal and investigative  
23 division?

24 A The first paragraph or first sentence?

25 Q First paragraph, sir.

1           A\*\*\*\*"The Legal Division is responsible for  
2 consulting with the Commissioner and Deputy Commissioner,  
3 as well as technical and professional staff, to insure  
4 compliance with state law and Department rules and  
5 regulations. Period. The Division also represents the  
6 Commissioner in various proceedings regarding  
7 receiverships, liquidations and insolvencies of insurance  
8 companies. This Division serves as legal counsel for the  
9 Commissioner of Insurance, the State Fire Marshal  
10 Division, the Liquified Compressed Gas Division, and the  
11 Mississippi State Fire Academy."

12           Q     And this division is headed by Mark Haire. Is  
13 that correct?

14           A     Yes, sir.

15           Q     Okay. And you don't head this division, do  
16 you, Mr. Harrell?

17           A     That division reports to me.

18           Q     It reports to you.

19           A     Yes, sir.

20           Q     Yes. But you're not the head of that division.  
21 Is that correct?

22           A     No, I'm not general counsel. I'm special  
23 counsel.

24           Q     Okay. And I believe you testified to this, but  
25 just for the record, you used to have the role that

1 Mr. Haire now enjoys with the Mississippi Insurance  
2 Department. Is that correct?

3 A Yes, sir.

4 Q Okay. And that was before you became deputy  
5 commissioner.

6 A Yes, sir.

7 Q Okay. If we could go back to Exhibit 9 for a  
8 minute. I have my copy right here. Does it state  
9 anywhere in Section 83-1-7, which governs the duties of  
10 the deputy commissioner, that you are to give legal  
11 advice to the department or the commissioner of  
12 insurance?

13 A It does not in this document. As I mentioned  
14 earlier, in my job content questionnaire and my standards  
15 and elements which are approved by the state personnel  
16 board require that I give legal counsel.

17 Q But my question to you is: Does this statute  
18 that identifies the creation and obligations and duties  
19 of the deputy commissioner of insurance, that does not  
20 list being special counsel or counsel to the insurance  
21 department as one of your duties. Is that correct?

22 A Does not prohibit it, no, sir.

23 Q That was --

24 MR. SCRUGGS: Move to strike.

25 BY MR. SCRUGGS:

1 Q\*\*\*\*That was not my question. My question was --  
2 and your counsel can ask you all the questions he wants  
3 about this document. My question is simply this,  
4 Mr. Harrell: Does Section 83-1-7 state that one of your  
5 duties as deputy commissioner to provide legal counsel to  
6 the commissioner of insurance or the department of  
7 insurance?

8 MR. WEBB: Objection. Asked and answered in my  
9 review.

10 \*\*\*CHECK OBJECTION WITH HEATHER\*\*\*

11 BY MR. SCRUGGS:

12 Q Sir?

13 A This particular statute is one of the  
14 requirements, but it does not specifically mention my  
15 role as the special counsel.

16 Q So the answer is no.

17 A Not under this particular requirement.

18 Q This particular requirement is the statute that  
19 creates and lists the responsibilities of the deputy  
20 commissioner. Is that accurate?

21 A That along --

22 MR. WEBB: Same objection.

23 A -- with my job content questionnaire and  
24 standards and elements, yes, sir --

25 BY MR. SCRUGGS:

1 Q\*\*\*\*Okay.H DRAFT -- NOT PROOFREAD\*\*\*\*\*

2 A -- would be the answer.

3 Q But again, it does not list you as being  
4 counsel to the insurance department in Section 83-1-7.  
5 Is that correct?

6 MR. WEBB: Same objection.

7 A That particular one does not.

8 BY MR. SCRUGGS:

9 Q That particular one. That particular statute?

10 A That statute.

11 Q 83-1-7?

12 A Yes, sir.

13 Q All right.

14 MR. STREETMAN: We've gone about an hour and a  
15 half now. Could we take a five-minute break, bathroom  
16 break? Are you at a place where --

17 MR. SCRUGGS: Let me -- let me ask just one or  
18 two follow-up questions.

19 BY MR. SCRUGGS:

20 Q Is there a statute that you know of that does  
21 assign you or list you as special counsel to the  
22 commissioner of insurance or the department of insurance?

23 A I'm not aware of one either direction, saying  
24 yes or no to the question.

25 Q Well, that wasn't my question.

1           \*\*\*\*\*MR. SCRUGGS: I'm going to move to strike that.

2 BY MR. SCRUGGS:

3           Q     The question is: Is there any statute that  
4 you're aware of that lists you as deputy commissioner one  
5 of your responsibilities is also to be counsel to the  
6 insurance department or the commissioner of insurance?

7           MR. WEBB: Objection, asked and answered.

8 BY MR. SCRUGGS:

9           Q     You can answer.

10          A     I'm not aware of a statute.

11          Q     Thank you.

12          MR. SCRUGGS: Why don't we take just a real  
13 quick five-minute bathroom break.

14          MR. STREETMAN: It's about ten minutes to  
15 11:00. Why don't we get back here at 11:00.

16          MR. SCRUGGS: Okay. We can do that.

17                 (OFF THE RECORD.)

18          MR. SCRUGGS: We're back on the record.

19 BY MR. SCRUGGS:

20          Q     Mr. Harrell, still with Exhibit 10 here to your  
21 deposition, who was the deputy commissioner of insurance  
22 before you took that role in 2001?

23          A     Ron Hanna.

24          Q     Hanna?

25          A     Yes, sir, H-A-N-N-A.

1 Q\*\*\*\*Was he an attorney? PROOFREAD\*\*\*\*\*

2 A No, sir.

3 Q Okay. So the deputy commissioner when you were  
4 serving as special assistant attorney general, the role  
5 that Mr. Haire now has, Mr. Hanna was not a -- an  
6 attorney.

7 A Mr. Hanna was not an attorney.

8 Q Okay. Thank you. You had mentioned previously  
9 something about a personnel board or personnel. There  
10 was some document you were referring to. Is that -- is  
11 that enough information for you to get where I'm -- I'm  
12 asking? There's some -- you referred to some -- in your  
13 testimony earlier some kind of personnel directive or  
14 document --

15 A The state personnel board.

16 Q Okay. And what -- you referenced some piece of  
17 paper that said that you were special counsel?

18 A Yes, sir.

19 Q What was that?

20 A You have two different documents. You have the  
21 job content questionnaire, which all the personnel gurus  
22 in the state government refer to that as JCQ. So they'll  
23 use those. They won't use job content questionnaire.  
24 They'll call it a JCQ. That's a document that every  
25 employee in the state government has to have filled out

1 regarding what their duties and responsibilities are.  
2 There's also a standards and elements document that, the  
3 best of my knowledge, every employee in the state  
4 government has to have. It's also standards and  
5 elements. It's fairly self-explanatory. It explains  
6 what the employee is supposed to do in their role.

7 Q Who fills out this questionnaire and the  
8 standard and elements document?

9 A It's drafted from the personnel department  
10 within the respective agencies, best of my knowledge, and  
11 then it's -- then it's my understanding it's submitted to  
12 the state personnel board.

13 Q I guess my question is a little more simple  
14 than that. Do you fill out this job content  
15 questionnaire for you?

16 A Explain when you say fill out. It's --

17 Q Well --

18 A -- a form.

19 Q Yeah, there's a form. And do you provide  
20 information into that form that pertains to your  
21 position?

22 A In this particular one, yes, sir.

23 Q Okay. And would the same be true for the  
24 standards and elements document? It's a form, and you  
25 list or provide information in it about what you do? Is



1 that fair to say?DRAFT -- NOT PROOFREAD\*\*\*\*\*

2 A With the cooperation from the -- somebody from  
3 the personnel department within the department of  
4 insurance.

5 Q But whether it's with or without cooperation,  
6 you're providing information in those forms, those  
7 preprinted forms. Is that fair to say?

8 A Yes, sir.

9 Q Were either of these -- the job content  
10 questionnaire and the standards and element document, is  
11 that -- either of those documents approved by the  
12 attorney general?

13 A I have no idea.

14 Q Okay. Were those documents approved by the  
15 state legislature?

16 A I have no idea.

17 Q Okay. Sticking with Exhibit 10, how many  
18 people are in this legal and investigative division,  
19 Mr. Harrell?

20 A I'm going to have to confess: I'm going to  
21 have to count them. That's --

22 Q That helps.

23 A Okay. I'll have to use the old-fashioned way  
24 with my -- I'm going to have to name them, and then we  
25 can count on my fingers. And we won't get past my

1 fingers. And I apologize. That's the easiest way.

2           There's Mark Haire, then there's Christina  
3 Kelsey -- and I'm walking around the office complex, so  
4 I'm going to have to do that slowly to make sure I don't  
5 miss any. And if I do, I'm sure legal counsel Ms. Kelsey  
6 will correct me. And then there's Kim --

7           Q     I'm sorry, Ms. Kelsey is sitting here in the  
8 room.

9           A     Yes, ma'am -- yes, sir.

10          Q     Okay.

11          A     There's Mark Haire, Christina Kelsey, Kim  
12 Gilmer -- Kim Causey now. She's gotten married.

13               MR. WEBB: Excuse me, what was her last name?

14          A     Causey, C-A-U-S-E-Y. And there's Joel Jones,  
15 and then there's --

16 BY MR. SCRUGGS:

17          Q     George Jones?

18          A     Joel, Joel Jones.

19               MR. STREETMAN: Joel.

20          A     That's another person. He had experience in  
21 Jackson too.

22               Joel, J-O-E-L, Jones and then there's  
23 Stephanie -- I cannot spell her name -- @@Guyshaw. We  
24 can get you the correct spelling, I just can't spell it.  
25 Then there's Linda @@Boozer -- and that's probably not

1 the correct pronunciation. Then there's Sisk, S-I-S-K.  
2 Those are all different attorneys. And then there's one  
3 investigator, John @@Hornbeck, and then their legal  
4 secretary.

5 Q Okay. Mark Haire, Christina Kelsey, Kim  
6 Causey, Joel Jones, Stephanie @@Gonashaw, Linda Boozer,  
7 and Aaron Sisk are all attorneys with the legal and  
8 investigative division?

9 A Yes, sir.

10 Q Okay. And there's one investigator whose name  
11 is John Hornbeck.

12 A Yes, sir.

13 Q Okay. Does this division have the authority to  
14 bring lawsuits against insurance companies for activities  
15 taken against the policyholder, denials, conduct, that  
16 kind of thing?

17 A If required, yes, sir.

18 Q What do you mean by if required?

19 A If you have a company that's not doing  
20 something pursuant to what the law requires, the normal  
21 process is we would bring them in and tell them do, you  
22 know, whatever it may be, go pay the health insurance  
23 claims in a timely basis pursuant to the statute and  
24 impose a penalty if needed or required. If they didn't,  
25 then the commissioner could proceed with a hearing and

1 order them to do so. If they didn't do it after that,  
2 then he has the authority to suspend their license, take  
3 other actions. And one option is go to the courthouse.

4 Q Let me -- let me back up, try to go through  
5 what you just told me. Does this -- does the legal and  
6 investigative division of the Mississippi Department of  
7 Insurance that we're talking about now have the authority  
8 to initiate actions against insurance companies for not  
9 paying claims?

10 A I think so, yes, sir.

11 Q Okay. Have they ever done so before, to your  
12 knowledge?

13 A It's never been required, no, sir.

14 Q You say never been required. You've never had  
15 a situation in your experience with the department where  
16 you found that an insurance company wasn't properly  
17 paying claims?

18 MR. WEBB: Objection to the form of the  
19 question.

20 A We've never had to go to litigation to the  
21 courthouse to get the claims paid. Normally they would  
22 follow the other procedure.

23 BY MR. SCRUGGS:

24 Q Well, tell me about that other procedure. Have  
25 been there been instances where the department has had to

1 initiate some kind of administrative action against an  
2 insurance company for not paying claims?

3 A None that jump off the top of my head,  
4 specifics regarding the details, but yes, sir there've  
5 been administrative actions taken against companies for  
6 not following what we believe are the -- the laws.

7 Q Well, when you say not following...the laws,  
8 would that include not paying covered claims?

9 A Yes, sir, not following terms and conditions of  
10 the contract.

11 Q Okay. Has the insurance department had to  
12 initiate such administrative actions against any  
13 insurance companies in response to Hurricane Katrina?

14 A There was an instance involving -- throughout  
15 the process -- let's back up. You may have a special --  
16 you know, a one-on-one situation with a consumer that  
17 would contact the department of insurance regarding their  
18 claim, whether it's ABC insurance company or XYZ. That  
19 process would be worked through the consumer service  
20 division on a -- on a case-by-case basis. And in those,  
21 the department would look at it. And sometimes, you  
22 know, we would rule in favor of the consumer, that we  
23 don't think this is covered. If you would like to pursue  
24 this, then we would recommend you go hire legal counsel  
25 of your choosing. Other times we would tell the company

1 that, you know, it's our position that this is covered,  
2 that this is covered under that particular policy.

3           Early on in Katrina there were, you know, lots  
4 of letters back and forth, you know, from consumer  
5 services representatives amongst all the different  
6 insurance companies involved. That's one process. Then,  
7 you know, that would be a case-by-case scenario. If you  
8 filed a complaint with the department of insurance to try  
9 to get your claim paid, and then that process would work  
10 through the system, through consumer services, in  
11 communications with the respective insurance -- I mean  
12 insurance company in an attempt to get that claim  
13 resolved. Sometimes that's a factual dispute. Sometime  
14 it's a contractual dispute. Some of those we're able to  
15 resolve. If you say it was all as related to Katrina or  
16 if you say it's all wind and the insurance company takes  
17 a different position, it's somewhat -- it's a factual  
18 dispute. That's somewhat harder to resolve. If you had  
19 an insurance company saying something different regarding  
20 what the policy did and didn't cover, then that's where  
21 the department could intervene, and both the respective  
22 companies through a bulletin sometime in 2005 -- the  
23 exact date, we can pull that -- instructing them as to  
24 how we thought they should pay all their claims.

25           Q     Okay. And we'll get into that in a minute.

1 But let me break down what you -- you testified to a lot  
2 there, so let me try to break it down.

3 I believe you testified the consumer service  
4 division would handle consumer policyholder complaints  
5 about their claims not being paid. Is that correct.

6 A Yes, sir.

7 Q All right. And if you look down the first  
8 paragraph of the second -- second paragraph, the first  
9 sentence, can you read that for me?

10 A The second paragraph, first sentence?

11 Q Yes, sir.

12 A Okay. I'm sorry. "The Investigative Division  
13 reports directly to the Legal Division and is -- and is  
14 responsible for reviewing alleged improper activities of  
15 agents and/or companies."

16 Q Okay.

17 MR. STREETMAN: Can we -- for purposes of the  
18 record, that's from Exhibit 10, I believe.

19 MR. SCRUGGS: That's correct. That's correct,  
20 it's from Exhibit 10.

21 BY MR. SCRUGGS:

22 Q Do you agree with that statement you just read,  
23 Mr. Harrell?

24 A Yes, sir.

25 Q Okay. And what would happen if they -- the

1 legal division or the investigative division -- found  
2 improper activities of agents and companies? What would  
3 the next step be?

4 MR. WEBB: Objection to the form of the  
5 question.

6 A It would be reported to myself and the  
7 commissioner of insurance.

8 BY MR. SCRUGGS:

9 Q And then what would happen after that?

10 A We'd evaluate it and determine what action the  
11 department could take to insure the claims were properly  
12 promptly paid and disciplinary action taken if necessary.

13 Q What actions could the commissioner take?

14 A Depends on the -- do you have a set of facts or  
15 just in general?

16 Q I'm just talking in general. You referenced  
17 that it would be reported to you and the commissioner and  
18 that you would -- you would try to determine what action  
19 to take. I'm trying to figure out what your options are.

20 A The -- you know, for instance, on -- assuming  
21 you're relating to Katrina claims or just in general  
22 insurance claims?

23 Q Well, let's do a Katrina.

24 A Okay. If the department became aware that  
25 Company X was not properly paying their claims pursuant



1 to the terms and conditions of the contract, the  
2 department of insurance could tell them -- instruct the  
3 company to pay the claim pursuant to the terms and  
4 conditions of the contract and --

5 Q But --

6 A I'm sorry. Go ahead.

7 Q Let me stop you right there and ask a question  
8 about that, and I'll certainly let you finish right  
9 there. Your testimony that the commissioner of insurance  
10 could order a company to pay a claim that it found was  
11 owed that was not being paid?

12 A Yes, sir.

13 Q Okay. Keep on. I'm sorry.

14 A If the company did not follow the -- after you  
15 have given the fund -- due process issues, investigate  
16 the allegations thoroughly, and make sure -- you couldn't  
17 just get up on the podium and make wide allegations and  
18 statements. We would have to be able to -- from the  
19 commissioner's perspective, we have to be able to back up  
20 what we could say. And we would back it up once we got  
21 there, bring the company in, tell them what we found,  
22 tell them what they -- what we think they need to do. If  
23 they disagree with that, then the commissioner could have  
24 a hearing on it. The commissioner could enter an order  
25 on that. The company could comply with the order. The

1 company could go to the courthouse orAthe commissioner of  
2 insurance could also go to the courthouse. If it  
3 involved something that was of questionable legalities  
4 issues, the commissioner of insurance could make  
5 referrals to the appropriate criminal authorities.

6 Q Okay. Did -- breaking down what you just  
7 testified to again, were there any instances in Katrina  
8 where the commissioner of insurance ordered a particular  
9 insurance company to pay a claim?

10 MR. WEBB: Objection to the form of the  
11 question.

12 A There was a -- it's across -- you're probably  
13 very familiar with the -- what I call the "State Farm  
14 reevaluation" of their homeowners claims. In that issue,  
15 State Farm, after meeting with department of insurance  
16 representatives, agreed to voluntarily reopen all of  
17 their -- initially all of their slab claims in the lower  
18 three counties.

19 BY MR. SCRUGGS:

20 Q Let me -- my question was a little more  
21 fundamental than that. We'll get to that later on. But  
22 did the insurance department during Katrina ever -- let's  
23 just break it down in two parts. Going from Exhibit 10,  
24 did the insurance department ever find improper  
25 activities of agents and/or companies in relation to

1 Hurricane Katrina?RAFT -- NOT PROOFREAD\*\*\*\*\*

2 A There are some ongoing cases as we speak where  
3 that's an issue.

4 Q Where there's allegations of improper  
5 activities by agents or companies?

6 MR. STREETMAN: Zach, you're just talking big  
7 pic- -- generally anybody.

8 MR. SCRUGGS: I'm talking about Hurricane  
9 Katrina.

10 MR. STREETMAN: Just anything after Hurricane  
11 Katrina, not --

12 BY MR. SCRUGGS:

13 Q My question is -- it says that the  
14 investigative division is responsible for reviewing  
15 alleged improper activities of agents and their  
16 companies. My question is: Is the investigative  
17 division doing that in relation to Hurricane Katrina?

18 A At this juncture, it's not the investigative  
19 division involved in that. The department of insurance  
20 is doing it -- doing a review of one company at this  
21 juncture, and that's being done by outside examiners that  
22 the commissioner pursuant to the statute has retained.

23 MR. WEBB: And I want to interpose an objection  
24 to going into or discussing anything with respect to  
25 that.

1 BY MR. SCRUGGS:H DRAFT -- NOT PROOFREAD\*\*\*\*\*

2 Q And I'm not talking about what I think you're  
3 referring to, is this market conduct exam or whatever  
4 it's called with State Farm. But generally did the  
5 insurance department, whether it's the legal  
6 investigative division or whoever, find any improper  
7 activities of agents or companies in relation to their  
8 handling of Katrina?

9 MR. WEBB: Same objection and objection to  
10 form.

11 A We'd have to go back and look at each one of  
12 the consumer files. There were I don't know how many --  
13 there were several thousand consumer files that were  
14 opened at the Mississippi Department of Insurance as it  
15 relates to Katrina. A lot of those we were able to work  
16 and get the claim paid pursuant to the satisfaction of  
17 the insured. A lot of these -- you know, some of those  
18 we were not able to get paid pursuant to the satisfaction  
19 of the insured. In some of those the company initially  
20 took the position -- and I can't point to any one  
21 particular claim. I'm using a broad brush, as you said  
22 earlier, to talk about what the department was involved  
23 in at that juncture and is still involved in in some  
24 capacity as dealing with the victims of Katrina.

25 They would contact the department of insurance.

1 We would work with them on their respective claim to make  
2 sure that the claim got paid. Sometimes there were  
3 issues involving what was and wasn't covered. Sometimes  
4 it was issues involving who was my insurance company;  
5 they didn't know. Sometimes there were issues involving  
6 we thought the company should give more credence to an  
7 eyewitness, what a neighbor saw, what a engineer saw.  
8 And that was a process that we worked through, because in  
9 some instances, the insurance company had their own  
10 potentially engineer. They may have their own adjuster's  
11 report.

12 Q My question --

13 MR. STREETMAN: Zach, I don't think he -- I  
14 think I understand your question --

15 MR. SCRUGGS: Yeah.

16 MR. STREETMAN: -- but I don't think he  
17 understands --

18 MR. SCRUGGS: Well, yeah, let me --

19 MR. STREETMAN: -- your question.

20 A I apologize. Can you restate -- let me --

21 MR. STREETMAN: Can I have just a moment,  
22 please?

23 (Conference between Mr. Streetman and the  
24 witness outside the hearing of the court reporter.)

25 MR. STREETMAN: Zach, if you would, just ask

1 the question --H DRAFT -- NOT PROOFREAD\*\*\*\*\*

2 BY MR. SCRUGGS:

3 Q Yeah. My question was --

4 A I didn't understand --

5 Q -- a lot more --

6 A -- that question.

7 Q -- fundamental than --

8 A I misunderstood the question. I apologize.

9 Q That's okay. That's why we're all here.

10 Did the insurance department find any improper  
11 activities involving the agents or companies relating to  
12 the adjustment of claims for Hurricane Katrina?

13 A Out -- outside of any pending examination  
14 issues, you know, at this juncture as it relates to our  
15 consumer files that were coming in in the days and weeks  
16 following the storm, we didn't find anything that we  
17 thought was improper or illegal at this juncture. We did  
18 work with the companies, because we had a different  
19 interpretation or different position regarding the facts,  
20 working with the companies or the adjusters or whoever it  
21 may be to get the claim paid. There was a difference of  
22 opinion. I didn't see anything that made it illegal or  
23 improper at that juncture.

24 Q Well --

25 A Was that -- maybe that still didn't answer your

1 question --ROUGH DRAFT -- NOT PROOFREAD\*\*\*\*\*

2 Q Somewhat but somewhat not. I'm asking from the  
3 time Hurricane Katrina hit, the legal division and the  
4 investigative division supposed to have reviewed alleged  
5 improper activities of agents and companies. Again, my  
6 question is: Did the department or this division find  
7 any evidence of improper activities of agents and  
8 companies in the handling of claims from Hurricane  
9 Katrina?

10 MR. WEBB: Objection to the form of the  
11 question.

12 A Except for, you know, a pending examination  
13 that you referenced earlier, I'm not aware of any.

14 BY MR. SCRUGGS:

15 Q Except for the pending examination of State  
16 Farm that you referenced earlier, there's no other  
17 instance where you found an improper activity of an agent  
18 or company in relation to handling Katrina?

19 MR. WEBB: Objection to the form of the  
20 question. I think it misstates his answer too.

21 MR. STREETMAN: You can answer.

22 A I'm not aware of anybody that did anything  
23 improper or illegal, if that's your -- that's your  
24 question.

25 BY MR. SCRUGGS:

1 Q\*\*\*\*Anybody, meaning any insurance company or claim  
2 adjuster, you're not aware of them doing anything  
3 improper or illegal?

4 A That'd be correct, yes, sir.

5 Q Okay. But you referenced a exam that's ongoing  
6 as we speak?

7 A Yes, sir.

8 Q Okay. Is that examination being conducted  
9 because you found some improper or illegal activity?

10 MR. WEBB: Objection to the form of the  
11 question.

12 MR. STREETMAN: I object, instruct him not to  
13 answer.

14 MR. SCRUGGS: On what grounds?

15 MR. STREETMAN: On the grounds that it would go  
16 to the -- the body of the examination.

17 MR. WEBB: We join that objection and shorthand  
18 version is restate the position stated in our motion for  
19 protective order.

20 BY MR. SCRUGGS:

21 Q The Mississippi Insurance Department is a  
22 governmental body. Is that correct?

23 A Yes, sir.

24 Q Okay. And the commissioner of insurance is  
25 elected by the people of the state of Mississippi. Is



1 that correct? UGH DRAFT -- NOT PROOFREAD\*\*\*\*\*

2 A Yes, sir.

3 Q Okay. And one of his jobs, as you testified to  
4 earlier, is to protect the consumer, the policyholder.  
5 Is that correct?

6 A Yes, sir.

7 Q Okay. And my question is: Did you find -- is  
8 this investigation or examination that you're conducting  
9 right now, was that brought about by any finding of  
10 improper or illegal activity in regards to that company?

11 MR. WEBB: Same objection.

12 MR. STREETMAN: I object and instruct him not  
13 to answer. I think that there -- I think I understand --  
14 I mean, I think I understand what your question is, Zach,  
15 and perhaps we're cutting -- we're splitting hairs here.  
16 Obviously, the examination is ongoing, and we wouldn't be  
17 able to testify to those things, and a decision was made  
18 to do the examination.

19 MR. SCRUGGS: Well --

20 MR. STREETMAN: So if the question can be  
21 couched in those terms -- and I don't know, but as asked  
22 I'm going to instruct him not to answer but --

23 BY MR. SCRUGGS:

24 Q Well, what is the basis for you not testifying  
25 as to the examination involving State Farm?

1           \*\*\*\*\*MR. STREETMAN: It's not his basis. It's my  
2 basis as his lawyer interjecting and that being pursuant  
3 to the statute that the examination is ongoing and that  
4 he wouldn't be able to comment on it. Obviously,  
5 something led to there, and if you want to ask that  
6 question, I understand but --

7           MR. SCRUGGS: Is that a Mississippi statute?

8           MR. STREETMAN: Yes.

9           MR. SCRUGGS: What's the statute?

10          MR. STREETMAN: 83-5-209(5)(a).

11          MR. SCRUGGS: As I'm sure you're aware, this is  
12 a case in federal court?

13          MR. STREETMAN: I am.

14          MR. SCRUGGS: And a state statute has no  
15 application to --

16          MR. STREETMAN: Zach, that's --

17          MR. SCRUGGS: -- discovery --

18          MR. STREETMAN: -- that's something that we're  
19 going to take -- I think the judge has already told us  
20 we're going to take --

21          MR. SCRUGGS: Well, I want to get it on the  
22 record that it's improper for you to object and instruct  
23 a public official in the state of Mississippi not to  
24 answer --

25          MR. STREETMAN: Okay.

1           \*\*\*\*\*MR. SCRUGGS: -- a question on the basis of a  
2 state statute. It has no application to the Federal  
3 Rules of Evidence on the rules of discovery.

4           MR. STREETMAN: It's noted.

5           MR. SCRUGGS: Okay.

6 BY MR. SCRUGGS:

7           Q     Other than this infamous market conduct  
8 examination or whatever it is, has the legal  
9 investigative division or the Mississippi Department of  
10 Insurance initiated any kind of action, administrative  
11 lawsuits, whatever, against any company for its  
12 claim-handling activities as a result of Hurricane  
13 Katrina?

14           MR. WEBB: All previous objections. Move to  
15 strike as argumentative.

16           MR. STREETMAN: Other than the examination that  
17 we --

18           MR. SCRUGGS: Other than --

19           MR. STREETMAN: -- other than the State Farm  
20 examination.

21           MR. SCRUGGS: That's correct.

22           MR. STREETMAN: Okay.

23 BY MR. SCRUGGS:

24           Q     Other than this examination that, you know,  
25 that has been objected to already.

1           A\*\*\*\*I'm not aware of any. There were -- of any  
2 official finding by the department of insurance on that  
3 issue.

4           Q     Okay. And how many instances did the -- strike  
5 that. Were there any alleged improper activities of  
6 agents or companies that the investi- -- that the  
7 investigation division looked into?

8           A     There were lots of complaints which could  
9 involve allegations that were filed with the department  
10 of insurance. Those were either handled by somebody at  
11 the department of insurance, whether the consumer,  
12 whether they're legal, whether investigatory, whether  
13 myself, whoever it may be. In the days and weeks  
14 following the storm we converted everybody at the  
15 department to working with consumers, whether they were  
16 the mail room clerk, whether they were financial  
17 examiners, licensing people. They all converted over  
18 working with consumers. And in those instances there --  
19 we worked with the consumer to get the claim paid.

20          Q     Well, I'm not -- I'm not talking about getting  
21 their claim paid and dealing with routine or even  
22 unroutine volume of consumer complaints. I'm talking  
23 about how many instances of alleged improper activities  
24 involving agents or companies did the division  
25 investigate after Hurricane Katrina.

1           \*\*\*\*\*MR. WEBB: Objection to the form of the  
2 question.

3           A     I couldn't tell you.

4 BY MR. SCRUGGS:

5           Q     Okay. Were there any?

6           A     We investigate every complaint that comes to  
7 the department.

8           Q     All right. And did some of these complaints  
9 involve -- or at least allege improper activities of  
10 companies and agents?

11          A     I'm sure they do.

12          Q     But you didn't find any -- or to your  
13 knowledge, the division didn't find any. Is that  
14 correct?

15          A     Except for the ongoing examination you  
16 referenced.

17          Q     Okay. And there is -- I counted, and you can  
18 correct me if I'm wrong -- eight people in this legal and  
19 investigative division. Is that right?

20          A     I'd have to go back and count them. They were  
21 whoever I named them.

22          Q     Mark Haire --

23          A     Yes, sir.

24          Q     -- is one, Christina Kelsey is two, Kim Causey  
25 is three, Joel Jones is four, Stephanie @@Gonshaw is

1 five, Linda Boozer is six, Aaron Sisk is seven, and  
2 investigator John Herbeck is eight. Is that fair to  
3 say?

4 A Yes, sir.

5 Q Okay. So there's eight people in the legal and  
6 investigative division.

7 A Yes, sir.

8 Q Okay. Would this division be the one  
9 responsible for investigating instances of altered or  
10 changed engineering reports by an insurance company?

11 A It would -- one second. Excuse me. The  
12 initial complaints -- excuse me -- would come in --

13 THE WITNESS: Can I get some more water? I  
14 apologize.

15 (OFF THE RECORD.)

16 A I'm sorry. Can you restate -- excuse me --  
17 your question?

18 BY MR. SCRUGGS:

19 Q Yeah, let me do that because you might not have  
20 understood it, or you might have.

21 Would this division, the legal and  
22 investigative division, be the one responsible for  
23 looking into allegations of altered or changed  
24 engineering reports by insurance companies from Hurricane  
25 Katrina?

1           A\*\*\*\*It would probably initially start with the  
2 consumer services division. That's where most of your  
3 consumer calls first go to. And they would come there,  
4 those individuals would work the claim or work the  
5 complaint, and then if they had an issue that needed to  
6 be referred to legal, then it would go to legal. And  
7 then it would go to myself and the commissioner.

8           Q     Right. But if there was an instance of a -- or  
9 an allegation of an altered or changed engineering report  
10 from one cause to the another, that would be something  
11 that the legal and investigative division would  
12 investigate, would it not?

13          A     In a normal situation, yes. In this particular  
14 Katrina related storm, the department is utilizing some  
15 outside individuals to investigate any issues and  
16 concerns the department has.

17          Q     Well, who are they?

18          A     They're contract, independent individuals that  
19 the department contracts with to conduct the examination.

20          Q     Well, I'm going to leave aside, certainly, this  
21 market conduct exam. But is this the division that would  
22 be responsible for looking into allegations of altered or  
23 changed engineering reports?

24                MR. STREETMAN: Zach, if I can, you're not  
25 talking about the State Farm exam. Is that right?

1           \*\*\*\*\*MR. SCRUGGS: I'm not -- well, I've asked some  
2 questions about the market exam. I understand that  
3 there's objections and instructions not to answer. I'm  
4 asking about the responsibilities of this division to  
5 allegations that I just referenced.

6           MR. STREETMAN: And that's what I -- and that's  
7 what I thought your question was. I don't know that he  
8 understood it --

9           MR. SCRUGGS: Okay.

10          MR. STREETMAN: -- because I understood it to  
11 be take the market exam, put it over here --

12 BY MR. SCRUGGS:

13          Q     Leaving aside the market conduct exam with  
14 State Farm and, furthermore, leaving aside -- when did  
15 this market conduct examination start?

16          A     Sometime in 2006. I don't have the exact date  
17 in front of me.

18          Q     Would October 2006 sound about right?

19          A     I'd have to defer to counsel --

20          MR. STREETMAN: We'll stipulate October 19, I  
21 believe, is correct.

22 BY MR. SCRUGGS:

23          Q     Okay. My question is this: Any allegations of  
24 altered or changed engineering reports from one cause to  
25 the other -- excuse me -- that came to the attention of



1 the department of insurance, aside from this market  
2 conduct exam that started on October 19, 2006, is the  
3 legal and investigative division the one responsible for  
4 investigating that?

5 MR. WEBB: Excuse me, Mr. Harrell. I object to  
6 the form of the question. And specifically by using the  
7 word aside from the market conduct exam, is implying that  
8 there's something found or determined by the market  
9 conduct exam. I think the objection would be withdrawn  
10 if we could just simply leave the market conduct exam out  
11 of the question and make sure that the question is asked  
12 on any context of other --

13 MR. SCRUGGS: Well, the question stands, and  
14 that's -- I don't think that's a valid objection. And  
15 there's been objections and testimony that other than the  
16 market conduct exam, so the question is perfectly proper.

17 MR. STREETMAN: And from the deponent's  
18 perspective, I think that we need to use, with all  
19 deference to Mr. Webb here, that seems to help clarify  
20 the questions with regard to that.

21 MR. SCRUGGS: Mr. Webb's objection is noted.  
22 And let me ask the question again because we've had  
23 probably two minutes pass between question and answer.  
24 So here we go.

25 BY MR. SCRUGGS:

1 Q\*\*\*\*Other than the market conduct examination of  
2 State Farm that started October 19, 2006, any allegations  
3 of altered, changed engineering reports from one cause to  
4 the other, would it be the legal and investigative  
5 division's responsibility to investigate those?

6 MR. WEBB: Same objection.

7 A They would be involved, yes, sir.

8 BY MR. SCRUGGS:

9 Q Okay. Did they find -- excuse me, were there  
10 any such allegations made and brought to the attention of  
11 the department of insurance and more specifically the  
12 legal and investigative division, aside from the market  
13 conduct examination that occurred starting October 19,  
14 2006?

15 MR. WEBB: Same objection.

16 A Other than what we've read in the paper, I'm  
17 not aware of anybody providing the department of  
18 insurance any evidence of any wrongdoing.

19 BY MR. SCRUGGS:

20 Q Well, what have you read in the paper?

21 A You know, lots of, you know, allegations about  
22 altered documents. We have not seen that in any of our  
23 files we've looked at.

24 Q Okay. Have you looked into any of the  
25 allegations -- has the department or you as deputy

1 commissioner or anyone in the department looked into  
2 these allegations of altered or changed engineering  
3 reports that you read about in the paper?

4 MR. STREETMAN: Are we -- are we talking about  
5 those read in the paper -- and I apologize for having to  
6 clarify this -- but with regard to the examination or  
7 otherwise?

8 MR. SCRUGGS: I'm just -- he -- I'm just  
9 following up on his testimony, Jim, that -- he testified  
10 that other than what he saw in the newspaper about  
11 altered or changed engineering reports.

12 BY MR. SCRUGGS:

13 Q My question is: Have you or anybody in the  
14 department of insurance followed up or tried to  
15 investigate those allegations that you did read in the  
16 paper of altered or changed engineering reports?

17 A Yes, sir.

18 Q Okay. Tell me about that.

19 A That's part of the pending State Farm matter.

20 Q That's part of the pending State Farm market  
21 conduct exam?

22 A Yes, sir.

23 Q Okay. So all the allegations that you've read  
24 in the paper about altered or changed engineering reports  
25 are part of the market conduct exam that's ongoing at

1 State Farm.ROUGH DRAFT -- NOT PROOFREAD\*\*\*\*\*

2 A Yes, sir.

3 Q Okay. You had testified earlier about hiring  
4 outside consultants, contractors, whatever term -- I  
5 don't want to butcher the term you used -- to help  
6 investigate and look into these matters. Were you  
7 talking about in reference to the market conduct  
8 examination of State Farm?

9 A Yes, sir.

10 Q Okay. Who are these outside consultants?

11 A Well, you have a gentleman by the name of Jimmy  
12 Blissett.

13 Q Who is he?

14 A B-L-I-S-S-E-T-T. He is a gentleman that  
15 resides here in the Jackson area that has done work for  
16 the department of insurance in the past, and he's working  
17 on the examination of State Farm, sort of coordinating  
18 it.

19 Q He's coordinating the market conduct exam of  
20 State Farm?

21 A Yes, sir.

22 Q What is his background?

23 A He is a accountant. He is a certified  
24 financial examiner. He is a former chief financial  
25 examiner for the Mississippi Department of Insurance.

1 He's also worked for the Mississippi Department of  
2 Insurance serving as -- on liquidations of insurance  
3 companies. He's also served as deputy liquidator of some  
4 HMOs the department of insurance had to take over  
5 previously. He's also served as a financial examiner for  
6 the department of insurance. He's also conducted market  
7 conduct examinations for the Mississippi Department of  
8 Insurance.

9 Q Okay. What -- what is his present occupation  
10 or job before he was appointed to be the head of this  
11 market conduct exam? What did -- what did he do?

12 A He owned his own company.

13 Q And what -- what company is that?

14 A I think the name is Blissett & Company or maybe  
15 Blissett, Inc. I'm not positive --

16 Q What is --

17 A -- the company name.

18 Q I apologize. What is Blissett & Company do?

19 A I know what they do for the department of  
20 insurance, the Mississippi Department of Insurance.

21 Q What did they do? Well --

22 A In that capacity, Mr. Blissett worked on  
23 insolvent insurance companies for the department of  
24 insurance, he also conducted market conduct examinations  
25 for the department of insurance, and he also conducted

1 financial examinations for the department of insurance.

2 Q Is that all he does?

3 A Off the top of my head, yes, sir.

4 Q So he doesn't -- he's not employed by the  
5 Mississippi Department of Insurance.

6 A No, sir.

7 Q But to the best of your knowledge, all he does  
8 is look into insolvency and conduct market conduct  
9 examinations for the department of insurance.

10 A Yes, sir.

11 Q Okay. Is it fair to say that this man's  
12 background, Mr. Blissett, is that of a financial analyst?

13 A That's what his original background was, yes,  
14 sir.

15 Q Okay. Is this present market conduct  
16 examination against State Farm, are there any issues of  
17 insolvency involved of State Farm?

18 MR. STREETMAN: I object and instruct him not  
19 to answer.

20 MR. SCRUGGS: Well, it just -- I think that's  
21 probably -- I think that's a fair question. I'm not  
22 getting into the details of this examination. I hope to  
23 at some point.

24 BY MR. SCRUGGS:

25 Q But are there any -- is there any allegations

1 or any evidence that State Farm is insolvent and, hence,  
2 this market conduct examination?

3 MR. STREETMAN: I instruct the witness not to  
4 answer. And, Zach, that may be a fair question. I don't  
5 know. We'll have to have the judge to clarify that. But  
6 I'm going to instruct him at this time, since it may lead  
7 into other questions or other matters, not to answer any  
8 questions regarding any findings concerning the  
9 examination.

10 A Can we go off the record just a second? I need  
11 to check with my legal counsel.

12 (OFF THE RECORD.)

13 BY MR. SCRUGGS:

14 Q Okay. Mr. Harrell, I'll hand you what we're  
15 going to mark as Exhibit 11 to your deposition. You can  
16 put that away.

17 - - -

18 (Exhibit 11 marked)

19 BY MR. SCRUGGS:

20 Q Mr. Harrell, I've handed you what's marked  
21 Exhibit 11 to your deposition. It is the legal complaint  
22 of Thomas and Pamela McIntosh versus State Farm,  
23 Forensic, and E.A. Renfroe. Are you familiar with this  
24 legal action at all?

25 A No, sir.

1 Q\*\*\*\*Okay. Are you aware that the McIntoshes' claim  
2 allege, as you will, that there were altered or changed  
3 engineering reports done on their property?

4 A No, sir.

5 Q Okay. Do you know any -- do you have any  
6 information about the McIntoshes or their claims against  
7 State Farm or any other entity?

8 A No, sir.

9 Q Have you ever heard of the McIntoshes before?

10 A When I was --

11 MR. WEBB: Objection to the form. I'm sorry.

12 A Prior to the summons, I don't think I have.

13 BY MR. SCRUGGS:

14 Q Okay. So just so I'm clear and for the record  
15 is clear -- and if I asked this before, forgive me -- you  
16 don't have any knowledge about the McIntoshes' claims  
17 that there were altered engineering reports done on their  
18 property.

19 A No, sir.

20 Q Okay. Nothing in the media or the news or  
21 anything like that.

22 A No, sir.

23 Q Okay. What about anyone else in your  
24 department?

25 A I don't know what they would know.



1 Q\*\*\*\*Okay. Well, that's fair enough.\*\*\*\*

2 To the best of your knowledge, is the legal and  
3 investigative division of the Mississippi Department of  
4 Insurance looking into the claims made by the McIntoshes  
5 as to altered or changed engineering reports?

6 A We're looking into the allegations of altered  
7 and changed engineering reports, yes, sir.

8 Q Okay. Has anyone in the department contacted  
9 the McIntoshes regarding that investigation?

10 A That would be part of the market conduct  
11 examination.

12 Q So part of the market conduct exam would be to  
13 look into allegations of altered or changed engineering  
14 reports?

15 A Yes, sir.

16 Q Okay. Would that include the allegations of  
17 altered or changed engineering reports made by the  
18 McIntoshes?

19 A Yes, sir.

20 Q Okay.

21 MR. SCRUGGS: Mark this as Exhibit 12 to your  
22 deposition.

23 - - -

24 (Exhibit 12 marked)

25 BY MR. SCRUGGS:

1 Q\*\*\*\*I've handed you what is Exhibit 12 to your  
2 deposition, which is a October 12, 2005, Forensic  
3 Engineering report done on Pam and Chris McIntoshes'  
4 home. Are you familiar with that document?

5 A No, sir.

6 Q Can you read the first -- the connotation  
7 that's written on the front of that document?

8 A You talking about --

9 Q If you can.

10 A -- the section right here?

11 Q Yes, sir.

12 A Some squiggly lines. "Put in wind file. Do  
13 not pay bill. Do not discuss."

14 Q Okay. And it's your testimony you've never  
15 seen this document before?

16 A No, sir.

17 Q Okay. Turning to the page 2 of this report  
18 under "conclusions," can you read to me the conclusions  
19 of this Forensic Engineering report on the McIntosh home.

20 A "Conclusions. Based upon the information that  
21 has been presented to FAEC and evidence gleaned during  
22 our inspection, FORENSIC ANALYSIS & ENGINEERING  
23 CORPORATION" -- excuse me -- "has made the following  
24 conclusion concerning the damage to the structure.  
25 Period." First bullet point, "The tree failures in the

1 northwesterlyUdirection are the result -- are the result  
2 of the winds out of the southeast from the approaching  
3 hurricane." Next bullet point, "The roof, door, carpet,  
4 and window damage was caused by wind and wind driven  
5 debris."

6 Q And the last bullet point?

7 A "It is FAEC's opinion that the interior damage  
8 of the structure is primarily the result of the failure  
9 of the windows, walls, and doors due to wind."

10 Q Okay. Thank you. You can put that aside.

11 MR. SCRUGGS: And are we on Exhibit 13? Okay.

12 BY MR. SCRUGGS:

13 Q I'll hand you what we'll mark as Exhibit 13 to  
14 your deposition.

15 - - -

16 (Exhibit 13 marked)

17 BY MR. SCRUGGS:

18 Q Exhibit 13 purports to be an October 20, 2005,  
19 engineering report performed on the residence of Pam and  
20 Chris McIntosh. Does that appear accurate to you?

21 A Yes, sir.

22 Q Okay. If you can, read to me the conclusions  
23 on the last page of the October 20th engineering report.

24 A "Conclusion. Based on the information that has  
25 been presented to FAEC and evidence gleaned during our

1 inspection, FORENSIC ANALYSIS & ENGINEERING CORPORATION  
2 has made the following conclusions concerning the damage  
3 to the structure." First bullet point, "The tree  
4 failures in the northwesterly direction are the result of  
5 the winds out of the southeast from the approaching  
6 hurricane." Second bullet point, "There appears to have  
7 been damage to the structure by wind as evidenced by  
8 missing shingles on parts of the roof structure. Damage  
9 to the second story -- damage to the second story floor  
10 and first floor ceilings was predominantly caused by wind  
11 and intruding rainwater." Third bullet point, "The  
12 damage to the first floor walls and floors appears to be  
13 predominantly caused by rising water from the storm surge  
14 and waves."

15 Q From your memory of just looking at the  
16 October 12 report and now looking at the conclusions of  
17 the October 20 report, do those conclusions appear to be  
18 inconsistent?

19 MR. WEBB: Object --

20 MR. STREETMAN: I'm going --

21 MR. WEBB: -- to the form of the question.

22 MR. STREETMAN: -- these documents speak for  
23 themselves. He's already testified that he hasn't seen  
24 either one of these documents and that he -- that part of  
25 the examination would be the investigation of any

1 allegations of changed or altered reports, I believe as  
2 Mr. Scruggs has characterized those. And as such, I  
3 would instruct this witness not to comment or testify.

4 MR. SCRUGGS: Well, I'm not sure that that's  
5 valid in the sense that there's a predicate to this  
6 question, and I'm asking just -- whether the document  
7 speaks for itself or not or whether that's even a valid  
8 objection, I'm asking him if he's reviewed these two  
9 exhibits to his deposition, and I'm asking this witness  
10 based on his knowledge of reading the conclusions whether  
11 those conclusions appear consistent or inconsistent to  
12 him.

13 MR. STREETMAN: I instruct --

14 MR. SCRUGGS: And based on -- based on that  
15 question -- answer will follow another question. And so  
16 that's the question.

17 MR. WEBB: Same objection.

18 MR. STREETMAN: I instruct him not to answer.

19 MR. SCRUGGS: Okay.

20 BY MR. SCRUGGS:

21 Q Are you not going to answer that question?

22 A I'm going to follow the advice of counsel.

23 Q Which counsel?

24 A My only counsel, Mr. Streetman.

25 Q Okay. Is the information about altered or

1 changed engineering reports something that would be  
2 relevant and important to a market conduct examination of  
3 State Farm or any other company?

4 A Yes, sir.

5 Q Okay. To your knowledge, is this market  
6 conduct examination looking into this particular matter  
7 and these exhibits that I've attached to your deposition?

8 MR. WEBB: Objection --

9 MR. STREETMAN: Instruct him not to answer.

10 MR. WEBB: To the form of the question.

11 BY MR. SCRUGGS:

12 Q Exhibit 14 to your deposition is a series of  
13 e-mails --

14 MR. SCRUGGS: I'm afraid I only have two copies  
15 of this, so you may have to look on, Dan, to the one that  
16 she's going to label.

17 - - -

18 (Exhibit 14 marked)

19 BY MR. SCRUGGS:

20 Q What we marked as Exhibit 14 to your deposition  
21 is a series of e-mails from Forensic engineering company,  
22 the engineering company that just did the report --

23 MR. WEBB: Excuse me, for the record and  
24 identification purposes, since we don't all have copies,  
25 these appear to bear plaintiffs' Bates numbers

1 McIntosh-000414 through McIntosh-000436.\*\*\*\*\*

2 MR. SCRUGGS: That's correct. And I was --  
3 thank you. I was -- you took the words out of my mouth,  
4 Dan.

5 BY MR. SCRUGGS:

6 Q Exhibit 14 does -- is identified as McIntosh  
7 Bates numbers 414 through 436, and I'll represent to you  
8 these are e-mails obtained from Forensic Analysis &  
9 Engineering company through discovery, which is the  
10 company that did the reports you just read. Fair enough?

11 MR. WEBB: Objection to the form of the  
12 question.

13 BY MR. SCRUGGS:

14 Q Is that --

15 A I didn't realize there was a question. I'm  
16 sorry.

17 Q Is that a -- do you accept that representation  
18 for purposes of this question?

19 A If you say that's what it is, then --

20 Q Okay. That's probably the best way to answer  
21 it.

22 A Okay.

23 Q If you could turn to page -- the Bates number  
24 is probably the best way to do it -- 424.

25 A (Complies.)

1 Q\*\*\*\*Are you there?- NOT PROOFREAD\*\*\*\*\*

2 A Yes, sir.

3 Q Okay. And this is an e-mail from Randy Down to  
4 Bob Kochan and Nellie Williams on Tuesday, October 18,  
5 2005, at 9:54 a.m. Does that appear to be correct from  
6 what I just read?

7 A Yes, sir.

8 Q Okay. If you could, read for me that first  
9 paragraph.

10 MR. STREETMAN: I'm looking at these e-mails,  
11 and it doesn't appear the department of insurance or  
12 Mr. Harrell is a party to these e-mails. Again, they've  
13 made -- been made an exhibit to his testimony. I don't  
14 know that he's identified them as such. In reading them  
15 it looks as though they are speaking to matters with  
16 regard to conclusions, findings, et cetera, between  
17 Forensic and other parties. And I'm going to instruct  
18 the witness not to testify with regard to anything  
19 contained within these e-mails at this time.

20 MR. SCRUGGS: Well, that's the whole point is  
21 whether he had knowledge of this and what they're -- what  
22 they're doing or not doing about it.

23 MR. STREETMAN: I understand.

24 MR. SCRUGGS: And I don't think it's a proper  
25 objection that the department of insurance isn't on these



1 e-mails because the point is what the department knew or  
2 didn't know about it.

3 BY MR. SCRUGGS:

4 Q So the question is: Has the department of  
5 insurance obtained any e-mails like the one I'm about to  
6 have you read between Forensic and -- talking about State  
7 Farm's adjustment of claims and engineering reports?

8 MR. WEBB: Renew the objection.

9 MR. STREETMAN: I'm going to renew the  
10 objection with -- that would be part of the ongoing -- it  
11 could be a part of the ongoing examination and --

12 MR. SCRUGGS: I can't know that and the  
13 objection can't be valid until we ask him a question, can  
14 it?

15 MR. STREETMAN: I don't think that question --  
16 objection will be valid until the judge makes a decision,  
17 Zach.

18 MR. WEBB: And I want to also add to the  
19 objections I previously made. Counsel mentioned that the  
20 point is what the department knew. And what the  
21 department knew related to these issues then, now, or  
22 subsequently really has no -- is outside the scope of  
23 discovery in the McIntosh case.

24 MR. SCRUGGS: Well, obviously, I disagree. And  
25 what the insurance commission knew or didn't know and

1 approved and didn't approve is extremely relevant to the  
2 McIntosh case, and it's certainly going to be a vital  
3 part of State Farm's defense of this matter. And I don't  
4 think that objection as to relevancy would have any merit  
5 at this juncture anyway. You can file a motion in limine  
6 or do whatever you want to do. But the...

7 BY MR. SCRUGGS:

8 Q Are you not going to answer any of these  
9 questions about e-mails that would be relevant to the  
10 investigation of altered engineering reports?

11 MR. WEBB: Objection to the form of the  
12 question.

13 A I'm going to follow the advice of  
14 Mr. Streetman.

15 BY MR. SCRUGGS:

16 Q Okay. Did you have any knowledge of  
17 allegations of altered engineering reports before the  
18 market conduct examination was instituted in October 19,  
19 2006?

20 MR. WEBB: Objection to the form of the  
21 question.

22 A I'm sorry, I apologize, can you restate --  
23 restate the question, make sure I'm answering --

24 Q Yeah. Did you have any knowledge, you or the  
25 department --

1 A\*\*\*\*Okay.H DRAFT -- NOT PROOFREAD\*\*\*\*\*

2 Q -- have any knowledge of allegations of altered  
3 or changed engineering reports prior to October 19, 2006?

4 MR. WEBB: Objection to the form of the  
5 question.

6 A Yes, sir.

7 BY MR. SCRUGGS:

8 Q Okay. And what did you do about those  
9 allegations?

10 MR. WEBB: Objection to the form of the  
11 question.

12 A The department of insurance is conducting an  
13 examination of State Farm to get to the bottom of the  
14 allegations.

15 BY MR. SCRUGGS:

16 Q Is it your testimony that State Farm didn't  
17 conduct any investigation into the allegations of altered  
18 or changed engineering reports until October 19, 2006?

19 MR. WEBB: Objection to the form --

20 MR. STREETMAN: I'm --

21 MR. WEBB: -- of the question.

22 MR. STREETMAN: -- I'm sorry, I'm not following  
23 the question. I apologize.

24 MR. SCRUGGS: Well, his answer seemed to  
25 suggest they're looking into this in this market conduct

1 exam. My question didn't have anything to do with the  
2 market conduct exam. My question -- and I'll ask it  
3 again -- was whether the insurance department knew of  
4 allegations of altered or changed engineering reports  
5 prior to October 19, 2006. He answered yes.

6 BY MR. SCRUGGS:

7 Q So my question is as follows: What did the  
8 department of insurance do to investigate these  
9 allegations of altered or changed engineering reports  
10 prior to October 19, 2006?

11 A That is the mechanism the department of  
12 insurance utilizes to investigate the allegations.

13 Q Okay. So -- so that might answer or might not  
14 answer the question that was on the table before. Is it  
15 your testimony that State -- that the -- State Farm --  
16 strike that. Is it your opinion that the department of  
17 insurance didn't conduct any investigation into  
18 allegations of changed or altered engineering reports  
19 until they initiated the market conduct exam on  
20 October 19, 2006?

21 MR. WEBB: Objection to the form of the  
22 question.

23 A There were meetings with law enforcement  
24 officials sometime around that time period. I don't know  
25 the exact date.

1 BY MR. SCRUGGS:H DRAFT -- NOT PROOFREAD\*\*\*\*\*

2 Q What law enforcement officials?

3 A There were the U.S. Attorney's Office and their  
4 representatives.

5 Q Anybody else?

6 A I don't know who else was in the meeting.

7 Q Who from the U.S. Attorney's Office?

8 A Mr. Lampton.

9 Q Dunn Lampton?

10 A Yes, sir.

11 Q Who else?

12 A Mr. Dowdy and others. I don't -- don't recall  
13 the rest of them.

14 Q John Dowdy?

15 A Yes, sir.

16 Q Who else?

17 A Don't recall.

18 Q But you recall those two.

19 A Yes, sir.

20 Q Anybody from the attorney general's office?

21 A That was attorney general.

22 Q Oh, I didn't hear your testimony. The attorney  
23 general was there as well?

24 A You mean the Mississippi Attorney General?

25 Q That's the one.

1 A\*\*\*\*No, sir.RAFT -- NOT PROOFREAD\*\*\*\*\*

2 Q Okay. Was Mr. Haire there?

3 A No, sir.

4 Q Was Mr. Dale there?

5 A In one of the meetings.

6 Q Okay. And I assume from your testimony that  
7 you were in those meetings.

8 A Yes, sir.

9 Q Okay. And these meetings occurred before the  
10 October 19, 2006, market conduct examination?

11 A Somewhere in that arena. I don't -- I don't  
12 recall the exact dates.

13 Q To the ones that happened prior to, for just  
14 purposes of this deposition only, October 19, 2006, what  
15 was discussed?

16 A I apologize. The exact date or dates of the  
17 meetings, as I stated earlier, I'm not -- I'm not  
18 positive of when they occurred. They occurred on or  
19 around those dates. They were sometime in 2006, the  
20 initial meetings. We requested a meeting with  
21 Mr. Lampton to meet with him regarding issues and  
22 concerns that were out there and wanted to insure him  
23 that we were going to cooperate and work with him or his  
24 office.

25 Q Were one of those issues and concerns that were

1 out there altered or changed engineering reports?

2 A Yes, sir.

3 Q Okay. Did -- in your discussions with  
4 Mr. Lampton and people in his office, did the McIntoshes'  
5 specific claim come up?

6 A I don't recall the specific claim issues.

7 Q Did any particular claims come up?

8 A Not any particular claim.

9 Q Any particular policy -- I'm sorry, strike  
10 that. This might help you get to the answer. Any  
11 particular policyholder's names comes up as people that  
12 might have had altered or changed engineering reports?

13 A There were no specific individual policyholder  
14 or policyholder's names utilized.

15 Q Okay. Just that that was out there?

16 A Yes, sir.

17 Q But you didn't know which people that was out  
18 there for?

19 A We did not discuss any specific names.

20 Q Okay. But certainly there were names if  
21 something was out there. Would that be fair to say?

22 MR. WEBB: Objection to the form.

23 MR. STREETMAN: I think he answered that. They  
24 didn't discuss anybody in particular.

25 MR. SCRUGGS: No, I understand. That is his

1 testimony.\*ROUGH DRAFT -- NOT PROOFREAD\*\*\*\*\*

2 BY MR. SCRUGGS:

3 Q My answer is from that -- from that testimony  
4 it's fair to deduce that there were names of people that  
5 alleged altered or changed engineering reports. Is that  
6 fair?

7 A There were none -- to my knowledge and  
8 recollection, there were none -- no particular insured  
9 policyholders named in the initial meeting that I  
10 participated in.

11 Q No, I understand, and you testified to that.  
12 My question is a little bit simpler than that. Is it  
13 fair to deduce from that that there were -- were people  
14 that did allege altered or changed engineering reports  
15 for you to even initiate the meeting?

16 A Oh, yes, sir. I'm sorry, I misunderstood you.  
17 Yes, sir, there were -- there were allegations out there  
18 of that.

19 Q But you can't -- you don't remember who made  
20 the allegations?

21 A No, sir.

22 Q Okay. You don't remember a single name.

23 A No, sir.

24 Q Is it fair to say there would be more than one  
25 person that made such an allegation?



1 A\*\*\*\*Yes, sir.AFT -- NOT PROOFREAD\*\*\*\*\*

2 Q Okay. And what did you do, you or the  
3 department do, to investigate those allegations?

4 MR. WEBB: Objection to the form of the  
5 question.

6 A Department commenced the market conduct exam of  
7 State Farm.

8 BY MR. SCRUGGS:

9 Q Is it fair to say that the insurance department  
10 had knowledge of altered -- strike that. Is it fair to  
11 say that the insurance department had knowledge of  
12 allegations of altered or changed engineering reports  
13 prior to October 19, 2006?

14 A Yes, sir, that's what would've caused the  
15 examination.

16 Q Well, when did you -- when did the department  
17 or the legal or investigative division first have  
18 knowledge that -- of allegations of altered or changed  
19 engineering reports?

20 A I don't know.

21 Q Would it have been the year 2006?

22 A It would've been sometime on or before  
23 October -- excuse me -- 19, 2006.

24 Q Okay. Did you or anyone in your department  
25 view a 20/20 piece or read any news articles about the

1 Cori or Kerri Rigsby?T -- NOT PROOFREAD\*\*\*\*\*

2 A I can't recall any one particular program, but  
3 yes, there was lots of news media.

4 Q About Cori and Kerri Rigsby?

5 A About the whole Katrina issue.

6 Q I understand. But more in particular about the  
7 allegations made by Cori and Kerri Rigsby, do you or  
8 anybody in the department recall seeing any reports about  
9 that?

10 A I don't recall any one particular program.

11 Q But you recall learning of the allegations of  
12 Cori and Kerri Rigsby from somewhere. Is that --

13 A Yes, sir.

14 Q -- fair to say?

15 A Yes, sir.

16 Q Okay. Did you or anyone in the department do  
17 anything to follow up on the allegations they were  
18 making?

19 A Yes, sir.

20 Q What'd you do?

21 A We met with Mr. Lampton and his  
22 representatives.

23 Q Okay. And that was the meeting you discussed  
24 previously?

25 A Yes, sir.

1 Q\*\*\*\*Okay. And what did they tell you at these  
2 meetings, being Mr. Lampton and Mr. Dowdy?

3 A In general we discussed the allegations that  
4 were out there regarding different things, regarding  
5 that, regarding wind versus water issues as well. We  
6 volunteered our services. We worked with them on a joint  
7 task force.

8 Q Well, that's -- in trying to get more specific,  
9 what did they tell you about their investigation and...

10 A Specifically, I don't recall them disclosing  
11 anything regarding their investigation.

12 Q Okay. Well, after that meeting did y'all just  
13 go your separate ways or have y'all still been in contact  
14 with the -- contact with the U.S. Attorney's Office  
15 regarding their investigation into this matter?

16 A We're still in contact with the federal task  
17 force.

18 Q Okay. What -- what is this joint task force  
19 that you testified to?

20 A I'm not exactly sure who's all on it. It's a  
21 task force created by Mr. Lampton.

22 Q Well, can you tell me more about it than that?

23 A Not really. We were on it for a short period  
24 of time, and then there were concerns that the department  
25 of insurance does not have -- as it relates to insurance

1 issues does not have criminal law enforcement authority.  
2 There was a concern regarding sharing of documents back  
3 and forth and communications back and forth.

4 Q What were those concerns?

5 A Certain federal rules of criminal procedure and  
6 law enforcement.

7 Q Were you cooperating and sharing information?

8 A Yes, sir. We still are today.

9 Q No, no, excuse me, but there were concerns  
10 about you cooperating and sharing information with the  
11 U.S. attorneys?

12 A Their concern, since we were not law  
13 enforcement authority -- and I think it's Rule 6C, I'm  
14 not positive of that. There were concerns with law  
15 enforcement sharing documentation with non-law  
16 enforcement.

17 Q Okay. No one in the legal investigative  
18 division had criminal experience?

19 A No one has law enforcement authority.

20 Q Okay. Would it be fair to say that information  
21 about altered or changed engineering reports would be  
22 something useful to the department of insurance in  
23 conducting its market conduct examination?

24 MR. WEBB: Objection to --

25 MR. STREETMAN: He's already --

1 \*\*\*\*\*MR. WEBB: -- the form.OFREAD\*\*\*\*\*

2 MR. STREETMAN: -- testified to that.

3 MR. SCRUGGS: Has he? I don't think so. I  
4 didn't -- I certainly didn't ask that question.

5 MR. STREETMAN: You asked him if they -- if  
6 that led to the -- I'll let him answer the question.

7 MR. SCRUGGS: Yeah, it's a simple --

8 BY MR. SCRUGGS:

9 Q Is it -- is information and documentation about  
10 altered or changed engineering reports something that  
11 would be useful to the people conducting this market  
12 conduct examination of State Farm?

13 MR. STREETMAN: Would it be alleged?

14 A Yeah, that --

15 MR. STREETMAN: Hold on just a second.

16 A I'm sorry.

17 MR. STREETMAN: Is that the question? I mean,  
18 I don't think there's been any -- you didn't -- alleged  
19 things that would come to them as opposed to --

20 MR. SCRUGGS: Well, he's -- I don't think it's  
21 alleged. We've -- he's got two exhibits to his  
22 deposition that you've instructed him not to answer on  
23 that put it out of the alleged category. You can phrase  
24 your answer any way you want to --

25 MR. WEBB: I'm --

1           \*\*\*\*\*MR. SCRUGGS:  -- but --OFREAD\*\*\*\*\*

2           MR. WEBB:  Excuse me.  Were you --

3           MR. SCRUGGS:  But the question is a lot simpler  
4  than that.

5  BY MR. SCRUGGS:

6           Q     Would information about altered or changed  
7  engineering reports be something useful to a -- the  
8  people conducting this market conduct examination for  
9  State Farm?

10          MR. WEBB:  Object to the comments described in  
11  the exhibits.  Move to strike.

12          MR. SCRUGGS:  Well, hopefully we'll have  
13  testimony soon from this witness about those exhibits,  
14  and you can get his own commentary.  But for the time  
15  being, I got a question on the table.

16          A     Yes, sir.

17  BY MR. SCRUGGS:

18          Q     That would be useful.

19          A     Yes, sir.

20          Q     And would e-mails between Forensic employees  
21  talking about what State Farm is instructing them to do  
22  regarding an engineering reports, would that also be  
23  something useful to the investigators doing this market  
24  conduct examination?

25          MR. WEBB:  Objection to the form of the

1 question and characterization of the content of the  
2 e-mail.

3 A Yes, sir.

4 MR. SCRUGGS: Well, as you guys often say, the  
5 document speaks for itself. That was 14 or 15?

6 THE COURT REPORTER: That was 14.

7 MR. SCRUGGS: Okay.

8 - - -

9 (Exhibit 15 marked)

10 MR. STREETMAN: Is this a good place to take to  
11 break?

12 MR. SCRUGGS: Tell you what, let me just ask a  
13 couple questions about one thing, and then I think we  
14 will be. We'll -- it'll be about five minutes at the  
15 most, and if it goes over five minutes, we'll go ahead  
16 and break. Is that okay?

17 MR. STREETMAN: You can go as long as you want  
18 to. It's your -- your deal.

19 MR. SCRUGGS: This is Exhibit 15?

20 THE COURT REPORTER: Yes, sir

21 MR. SCRUGGS: Okay. You might just have to  
22 look on that one, Dan.

23 MR. WEBB: That's fine.

24 BY MR. SCRUGGS:

25 Q Exhibit 15 to your deposition is also from the

1 Web site, the Mississippi Insurance Department Web site,  
2 and it is called the "Consumer Service Division." Does  
3 that appear accurate to you?

4 A Yes, sir.

5 Q Okay. And how many people are in this  
6 division, Mr. Harrell?

7 A I don't know.

8 Q Well, I don't want you to guesses, but can you  
9 approximate for me?

10 A Probably 13, looks like from this picture.

11 Q And who heads this division?

12 A Cathy Vernon.

13 Q Is that who's pictured right here on  
14 Exhibit 15?

15 A The top right-hand picture?

16 Q Yeah.

17 A Yes, sir.

18 Q Okay. And what is the role of this consumer  
19 service division? What are they supposed to be doing?

20 A Their goal is to assist consumers in getting  
21 their conflicts or disputes with insurance companies or  
22 insurance agents resolved.

23 Q Was that their role during Hurricane Katrina?

24 A Yes, sir.

25 Q And there are basically 13 people in this



1 division? \*\*ROUGH DRAFT -- NOT PROOFREAD\*\*\*\*\*

2 A Yes, sir.

3 Q Okay. If you could, read to me the last  
4 clause. It's on the last line, begin with "comma and."  
5 Can you read that for me? Actually, I tell you what,  
6 just read the paragraph. It's short.

7 A The mission paragraph?

8 Q Yeah.

9 A I'm sorry.

10 Q That's okay.

11 A "Mission. The Consumer Services Division is  
12 responsible for mediating and resolving conflicts between  
13 the insurance industry and Mississippi residents. The  
14 division provides information to the public, assisting  
15 consumers in all phases of their insurance business.  
16 Period. The division receives complaints from and  
17 interviews policyholders who feel they have not received  
18 fair consideration by insurance companies or agents, and  
19 takes corrective action against such offenders when  
20 appropriate."

21 Q Okay. And this division is headed by Cathy  
22 Vernon.

23 A Yes, sir.

24 Q And what -- strike that. What qualifications  
25 does Cathy Vernon have to head this division that's

1 responsible for mediating and resolving conflicts between  
2 the insurance industry and Mississippi residents?

3 A That would be in her personnel file. I'm not  
4 sure what her job qualifications are.

5 Q Okay. But it is your testimony that these 13  
6 people would be the ones responsible for initially  
7 investigating -- strike that. These 13 people would be  
8 the ones in the insurance department initially charged  
9 with receiving, investigating, and trying to resolve  
10 conflicts between the policyholders and their companies.

11 A Yes, sir.

12 Q Okay. And it also says here they take  
13 corrective action against such offenders when  
14 appropriate. What corrective action could this division  
15 take?

16 A The division would make a referral, whether  
17 verbally or written, to the legal department and/or  
18 myself as deputy commissioner of insurance regarding  
19 issues or concerns that they had seen or received.

20 Q And that's a corrective action it would take?

21 A Yeah -- excuse me. Yes, sir.

22 Q Okay. Get some water.

23 And I think from your prior testimony you  
24 testified, correct me if I'm wrong, that the consumer  
25 service division is the one that initially fielded and

1 looked into all the calls and complaints coming in about  
2 insurance companies and their conduct. Is that fair to  
3 say?

4 A They were one of them.

5 Q Well, who else other than the consumer service  
6 division did that?

7 A In the days following the storm -- normally  
8 consumer services handles those calls. Due to volume and  
9 the size of Katrina, the department of insurance utilized  
10 other people within the department to help field the  
11 phone calls, from all respective divisions.

12 Q How long did that go on?

13 A A month or more.

14 Q I mean, you're still getting calls and  
15 complaints to this day for denials from Hurricane  
16 Katrina, are you not?

17 A Very few.

18 Q Okay. But you did receive calls after a month  
19 after the storm. Would that be fair to say?

20 A Yes, sir.

21 Q Okay. And again, this division is the one  
22 that's responsible for handling and fielding and dealing  
23 with those calls. Is that fair to say?

24 A Yes, that's their primary responsibility.

25 Q Okay. How would this division go about

1 determining whether corrective action would be\*  
2 appropriate?

3 A If they see a pattern of an issue, whether it's  
4 somebody not timely paying a health insurance claim,  
5 somebody not paying --

6 Q Let's stick with Katrina.

7 A Okay.

8 Q I apologize.

9 A The -- if they saw a pattern of issues, then  
10 Ms. Vernon would bring it to usually my attention and  
11 somebody within the legal department's attention, and we  
12 would sit down and discuss the issues that they were  
13 seeing.

14 Q How often did that happen after Katrina?

15 A Briefly.

16 Q How many calls or complaints did the consumer  
17 service division field from policyholders after Katrina?

18 A I don't know.

19 Q More than 100?

20 A Oh, yes, sir.

21 Q How many instances -- your testimony was  
22 frequently -- fair to say -- that Ms. Vernon would bring  
23 to you and the head of legal investigative division  
24 instances where she thought corrective action might be  
25 appropriate. How many times was that?

1           A\*\*\*\*I don't know if you'd use corrective action.  
2     There were -- there were -- you know, there were meetings  
3     throughout that process with Ms. Vernon and others at the  
4     department of insurance regarding what -- what they're  
5     seeing and what they're hearing from -- from the callers.

6           Q     Okay. And she was having these discussions  
7     with you to determine whether corrective -- any  
8     corrective action should be taken?

9           A     In some instances.

10          Q     Okay. How many instances?

11          A     I couldn't tell you.

12          Q     More than ten?

13          A     We would meet periodically on a weekly basis  
14     bi-weekly basis, or whenever Cathy and the legal division  
15     thought we needed to meet.

16                   MR. SCRUGGS: Why don't we take a lunch break.

17                   (OFF THE RECORD.)

18     BY MR. SCRUGGS:

19           Q     Mr. Harrell, we're resuming your deposition,  
20     and I'm going to hand you what is Exhibit 16?

21                   THE COURT REPORTER: Yes.

22   - - -

23   (Exhibit 16 marked)

24                   MR. STREETMAN: We've already got that.

25     Somebody just handed it to me.

1 A\*\*\*\*Get this in front of me.FREAD\*\*\*\*\*

2 MR. SCRUGGS: This is a different one.

3 A Yeah.

4 MR. SCRUGGS: I'll just put it over here.

5 MR. WEBB: 16. Right?

6 MR. SCRUGGS: That's right, 16.

7 BY MR. SCRUGGS:

8 Q And this was printed off the Mississippi  
9 Insurance Department Web site property and casualty  
10 rating division. And if you could, read for me the  
11 mission statement.

12 A "Mission. The Property and Casualty Rating  
13 Division is responsible for reviewing the rates, rules  
14 and forms for all property and casualty policies sold by  
15 licensed insurance companies in the State. Period.  
16 Regulations for procedures to be followed by the  
17 companies are contained in Miss. Code Ann. 83-2-1 et  
18 seq."

19 Q Okay. Who heads this decision?

20 A John Wells.

21 Q Okay. How many people are in this division?

22 A Let's see. I think five.

23 Q What is this division's responsibility?

24 A To review the policies and the rates and rules  
25 that property and casualty insurance companies utilize in

1 the state of Mississippi. NOT PROOFREAD\*\*\*\*\*

2 Q Would this division be responsible for  
3 approving policy provisions in insurance contracts sold  
4 in the state of Mississippi?

5 A If it relates to property and casualty, yes,  
6 sir.

7 Q Right, yeah. And these are all property and  
8 casualty questions.

9 A Sure. Yes, sir.

10 Q Okay. Did this division approve the -- what's  
11 been called the anticoncurrent cause clause? Are you  
12 familiar with that term?

13 A If it was approved, it would've been approved  
14 by this division.

15 Q Okay. And you're familiar with the term  
16 anticoncurrent cause clause.

17 A Yes, sir.

18 Q Okay. Sometimes refer to it as ACC clause?  
19 Have you heard it referred to as that?

20 A No, sir.

21 Q Okay. Maybe that's just me for short. We'll  
22 stick to anticoncurrent cause clause unless I get  
23 tongue-tied.

24 So this division would've been the one  
25 responsible for approving the anticoncurrent cause

1 clause.\*\*\*\*ROUGH DRAFT -- NOT PROOFREAD\*\*\*\*\*

2 A Yes, sir.

3 Q Okay. Would this division have been the one  
4 responsible for approving what's commonly known as the  
5 flood exclusion in policies of insurance?

6 A Yes, sir.

7 Q Okay. And more specifically, would this  
8 division have been the one responsible for approving the  
9 anticoncurrent cause clause in the standard State Farm  
10 homeowners property insurance form?

11 A Yes, sir.

12 Q Okay. And same question for flood exclusion,  
13 would this division be the one responsible for approving  
14 State Farm's flood exclusion in its property and  
15 homeowners property form?

16 A Yes, sir.

17 Q Okay. What is Mr. Wells' background?

18 A I'm not sure. He was in that position when I  
19 became deputy.

20 Q Okay. Are there any lawyers in this property  
21 and casualty rating division?

22 A No, sir.

23 Q Okay. Anyone qualified to read and interpret  
24 insurance contracts in this division?

25 MR. WEBB: Objection to form.



1 A\*\*\*\*Yes, sir.AFT -- NOT PROOFREAD\*\*\*\*\*

2 BY MR. SCRUGGS:

3 Q Who might that be?

4 A Mr. Wells and his employees.

5 Q Okay. What is the basis of their qualification  
6 to be able to read and interpret insurance provisions and  
7 insurance contracts?

8 A Mr. Wells has been in the industry before, and  
9 he's worked for the department since sometime in the late  
10 '90s, I think.

11 Q He's been in what industry before?

12 A The insurance industry.

13 Q Okay. And that's your basis for testifying  
14 that he's qualified to read and interpret insurance  
15 contracts?

16 A He has other qualifications that would probably  
17 be in his personnel file. I'm not familiar with those.

18 Q No -- well, the only qualifications I'm asking  
19 about now are those related to his ability to read and  
20 interpret provisions in insurance contract. So I'll --  
21 with that moniker, I'll ask the question: What  
22 qualifications does this man, Mr. Wells, have to read and  
23 interpret insurance provisions in insurance contracts?

24 A I believe he has a college degree, and he has  
25 many years of experience in the insurance industry.

1 Q\*\*\*\*Doing what?T -- NOT PROOFREAD\*\*\*\*\*

2 A I'd defer you exactly to Mr. Wells, but he  
3 worked in the insurance industry.

4 Q Okay. Do you know what he did in the insurance  
5 industry?

6 A No, sir.

7 Q Okay. But he's not a lawyer.

8 A No, sir.

9 Q Okay.

10 MR. SCRUGGS: Mark this as Exhibit 17 to your  
11 deposition. This is one of the things I didn't clip.

12 - - -

13 (Exhibit 17 marked)

14 BY MR. SCRUGGS:

15 Q I marked as Exhibit 17 to your deposition  
16 Mississippi Code Annotated 83-2-11 disapproval of rates;  
17 interim rates. Does that look accurate to you?

18 A Yes, sir.

19 Q Okay. Can you read for me subsection 1 and  
20 subsections A and B of one of that statute, please.

21 A Excuse me. "The commissioner shall disapprove  
22 a rate or policy form or endorsement if the commissioner  
23 finds that the rate is unjustified, or the policy form or  
24 endorsement: (a) Is in any respect in violation of or  
25 does not comply with this code; or (b) Contains or

1 incorporates by reference any inconsistent, ambiguous or  
2 misleading clauses or exceptions and conditions which  
3 unreasonably or deceptively affect the risk purported to  
4 be assumed in the general coverage of the contract."

5 Q Okay. Would the rating division that we've  
6 been talking about be the one to determine whether a  
7 provision in an insurance contract is inconsistent,  
8 ambiguous, or misleading?

9 A They would -- yes, sir, they would be the one  
10 reading the policy.

11 Q So the answer would be that division would be  
12 the one to -- responsible for determining whether a  
13 clause is inconsistent, ambiguous, or misleading.

14 A Yes, sir.

15 Q Okay. What qualifications does Mr. Wells and  
16 the other people in this division have to be able to  
17 determine whether a clause is inconsistent, ambiguous, or  
18 misleading?

19 A The job titles have certain job qualifications,  
20 and they must meet those job qualifications to be able to  
21 even apply for the position.

22 Q What are those qualifications?

23 A I don't know.

24 Q And I don't want to misstate your answer, but  
25 is it fair to say that your testimony is that there --

1 you believe they're qualified to determine whether the  
2 clauses are inconsistent, ambiguous, or misleading  
3 because they're in that division?

4 A Yes, sir.

5 Q Okay. And that's the only thing you can base  
6 that testimony on?

7 A Yes, sir.

8 Q Okay. To your knowledge, does anybody --  
9 excuse me. To your knowledge, does anybody in the  
10 property or casualty division of the insurance department  
11 review judicial opinions interpreting various clauses of  
12 these insurance contracts that you approve?

13 A The legal division would summarize judicial  
14 opinions or statutes and provide summaries of those to  
15 the respective divisions.

16 Q Okay. So there's someone in the legal division  
17 whose job it is to read judicial opinions and interpret  
18 the clauses that you approve as the insurance department?

19 A Yes, sir.

20 Q Who is that?

21 A There's no one particular person. That's part  
22 of the duties of the legal division.

23 Q Okay. Is there any particular person in the  
24 legal division who has that responsibility or that  
25 primary responsibility, even if he or she are not the

1 only ones that exercise it?OT PROOFREAD\*\*\*\*\*

2 A No, sir.

3 Q Okay. That's just a general thing these guys  
4 do.

5 A Mr. Haire would assign somebody, go read that  
6 case and summarize it and get us a summary of what it  
7 means.

8 Q But nobody in the property and casualty rating  
9 division would be reading cases interpreting these  
10 clauses. They would just rely on summaries given to  
11 them?

12 A They would -- they would have a copy of the  
13 case attached in some instances.

14 Q How does either the property and rating  
15 division or the legal division track legal opinions and  
16 interpret these clauses? Do they do research or do they  
17 just get cases as they come to their attention?

18 A They get the cases as they come down from the  
19 courts.

20 Q Okay. Does that include courts other than  
21 Mississippi?

22 A Primarily Mississippi and Fifth Circuit.

23 Q Okay. Do they -- does either the property or  
24 casualty rating division or the legal division do  
25 research on whether courts in other parts of the country

1 have struck down clauses or helped -- found them  
2 inconsistent, ambiguous, or misleading?

3 A I'd have to refer you to the legal department.

4 Q Okay. Who in the legal department would you  
5 refer me to?

6 A Mr. Haire.

7 Q Okay. To your knowledge has the rating -- the  
8 property and casualty rating division or anybody else in  
9 the department of insurance ever done this, found a  
10 clause inconsistent, ambiguous, or misleading?

11 A There were clauses that we've had removed from  
12 policies, yes, sir.

13 Q From property and casualty policies?

14 A Excuse me. Yes, sir.

15 Q And what clauses were those?

16 A Don't, you know, specifically. I just know  
17 it's happened because I've been involved in discussions  
18 with legal counsel. But the specific policy or specific  
19 insurance company I don't recall. There were issues with  
20 punitive damages at one time. There were issues with  
21 binding arbitration provisions at one time. The  
22 department, on binding arbitration, did not allow it.  
23 The Fifth Circuit sometime a couple years ago opined that  
24 the commissioner of insurance nor the attorney general  
25 could prohibit an insurance company from utilizing that.

1           \*\*\*\*\*AndUthe same with punitive damages. We -- at  
2 one time we did not allow punitive damages to be excluded  
3 under insurance policies. The attorney general opined  
4 saying they could during Mr. Moore's tenure. Then soon  
5 thereafter he issued a different opinion that superseded,  
6 reversed or whatever, the first opinion. That issue was  
7 ultimately litigated by an insurance company, and the  
8 attorney general opinion basically was held valid and the  
9 insurance companies could exclude punitive damages.

10           Those are two instances that jump out at me.  
11 There are -- there are instances, you know, not on a  
12 daily basis, but there are instances throughout the  
13 operations of the department of insurance where language  
14 is amended and modified at the request of the department.

15           Q     Well, that's what I'm trying to get to,  
16 examples where the department found a clause in an  
17 insurance contract inconsistent, ambiguous, or misleading  
18 and it was taken out. And tell me about those instances.

19           A     For specific examples, I'm going to have to  
20 refer to Mr. Wells. That's his primary responsibility.  
21 I'm not involved in that on a daily basis. I just know  
22 of certain examples that I just discussed. But, you  
23 know, on a daily basis I'm going to, like I said earlier,  
24 refer you to Mr. Wells.

25           Q     Well, Mr. Wells would report to you, would he

1 not? \*\*\*\*\*ROUGH DRAFT -- NOT PROOFREAD\*\*\*\*\*

2 A Yes, sir.

3 Q Okay. Don't you think Mr. Wells would consult  
4 with you before he found a clause in an insurance  
5 contract inconsistent, ambiguous, or misleading?

6 A There are instances where he instructs the  
7 company to take that language out. If they voluntarily  
8 do so, then the problem is resolved. If they don't, then  
9 it would be brought up the ladder, so to speak, to myself  
10 or the attorneys or the commissioner.

11 Q But your testimony is that Mr. Wells, if he  
12 instructed an insurance company to take out a provision,  
13 that he wouldn't check with you first or at least report  
14 to you that he was instructing them to do that?

15 A Depends on what, you know, the issues are.  
16 Some of them are mundane issues of whether, you know,  
17 they don't use this word. Some of them are not familiar  
18 with the particular statutes in Mississippi, and they  
19 would have the address those on a case-by-case position.

20 Q Okay. Well, you -- circle back to an earlier  
21 question and answer. Before becoming deputy  
22 commissioner, you were the head of the legal and  
23 investigative division, were you not?

24 A Yes, sir.

25 Q Okay. Did you read and interpret cases that



1 interpreted insurance clauses that were in contract that  
2 the department was approving in your tenure?

3 A I may have.

4 Q Do you remember a specific example?

5 A No, sir. There were other lawyers in the  
6 division. I would normally have them handle that.

7 Q Okay. Well, do you remember during your tenure  
8 as -- as counsel to the insurance department finding that  
9 a clause in the insurance contract that the department  
10 approved was ruled to be inconsistent, ambiguous, or  
11 misleading or the like?

12 MR. STREETMAN: Are you talking about other  
13 than the ones that he's -- that he just -- that he  
14 testified to earlier?

15 MR. SCRUGGS: I'm talking about during his  
16 tenure as special attorney general.

17 A There were issues in the '90s involving  
18 uninsured motorist and underinsured motorist. That was a  
19 evolving creature. I think every time the Mississippi  
20 Supreme Court addressed that issue I think they came out  
21 with a little different opinion than they had the week  
22 before or the month before. That was an issue that the  
23 department's legal division tracked. Back then they came  
24 out with the old paper slips. It was pre all the  
25 Internet stuff, and you had to read the paper slips on

1 a -- whenever they came out to see what, if anything, the  
2 Supreme Court had done on underinsured motorist stacking,  
3 things like that. That's one instance that I --

4 Q Sure.

5 A -- was involved in.

6 MR. SCRUGGS: Mr. Webb remembers all that.

7 MR. WEBB: Implying I'm old?

8 MR. SCRUGGS: No. No. That would've been  
9 something you'd have been involved in.

10 A Seasoned veteran.

11 MR. WEBB: Thank you.

12 BY MR. SCRUGGS:

13 Q Other than the stacking examples, do you  
14 remember specific instances as special counsel and head  
15 of the legal and investigative division where you were  
16 interpreting judicial opinions that were interpreting  
17 clauses of insurance contracts that the department was  
18 approving?

19 A Off the top of my head, no, sir.

20 Q Okay. And I assume -- I can't assume that. Do  
21 you recall in your tenure both as a special assistant  
22 attorney general and as deputy commissioner finding or it  
23 being brought to your attention that a particular clause  
24 in a contract you approved had been held to be  
25 inconsistent, ambiguous, or misleading by some court?

1 A\*\*\*\*No, sir.RAFT -- NOT PROOFREAD\*\*\*\*\*

2 Q Okay. How would this division, the property  
3 and casualty division, go about determining whether a  
4 clause was inconsistent, ambiguous, or misleading?

5 A They would read it themselves initially. If  
6 they have any questions or concerns, they are to consult  
7 with the legal department.

8 Q And again, you're not a -- you don't know what  
9 the qualifications are of the people in this rating  
10 division to interpret and determine whether a provision  
11 is inconsistent, ambiguous, or misleading. Is that fair  
12 to say?

13 A I personally don't. That's something the  
14 personnel department would handle.

15 Q Okay. Does this department have an archive of  
16 the forms that -- approved forms that it's approved for  
17 these contracts?

18 A The department, pursuant to a record retention  
19 program, does retain documents for a said amount of time.  
20 And after that, pursuant to department archives, those  
21 records have to be purged.

22 Q What's that time period?

23 A As it relates to the property and casualty  
24 division, I'm -- I'm not sure off the top of my head.  
25 It's all said in writing on that.

1           \*\*\*\*\*Sir, could you -- could I inconvenience you to  
2 pour me a glass of water? I don't think I can reach that  
3 far.

4           Q     Sure.

5                     (OFF THE RECORD.)

6 BY MR. SCRUGGS:

7           Q     You were saying that there's documents --

8                     MR. WEBB: You're going to have to move --

9           A     That's not going to go. She's giving us an  
10 evil look down there.

11                     (OFF THE RECORD.)

12 BY MR. SCRUGGS:

13           Q     Is it your testimony that there's something in  
14 writing that sets out the document retention policy for  
15 property and casualty approved forms?

16           A     Yes, sir.

17           Q     Where would I get that?

18           A     Request the department of insurance, and  
19 they'll -- we'll produce it.

20           Q     Okay. Just any -- to Joe Citizen, to anybody,  
21 I can call them up or write them a letter and --

22           A     Yes, sir, write them, and we'll be glad to  
23 produce it.

24           Q     Who would I write it to?

25           A     You can send it to --



1 Q\*\*\*\*Well, let me -- let me -- my question is more  
2 general. Are you familiar with the State Farm policy --  
3 homeowners policy 7955?

4 A I've read State Farm's -- some of their  
5 homeowner policies. This particular number may or may  
6 not have been that particular policy.

7 Q Well, yeah, I understand you might not have  
8 looked at the McIntoshes' particular insurance policy.  
9 My question is more general. You're familiar with a  
10 State Farm homeowners policy 7955.

11 A I have read a State -- some State Farm  
12 insurance policies, homeowners policies. I'm not sure if  
13 it was this particular -- they have more than one  
14 homeowners filing. I'm not sure if it was FP-7955 or  
15 not.

16 Q Okay. Do you know when this policy form  
17 FP-7955 was approved by the Mississippi Department of  
18 Insurance?

19 A No, sir, I do not.

20 Q Okay. Who would've approved this policy form?

21 A The rating division.

22 Q Okay. The rating division that you testified  
23 about earlier?

24 A Yes, sir.

25 Q That's headed by Mr. Wells?

1 A\*\*\*\*Yes, sir.AFT -- NOT PROOFREAD\*\*\*\*\*

2 Q Okay. What did the -- what actions did this  
3 rating division undertake to determine whether this was  
4 an appropriate -- actually, strike that. If you can,  
5 turn with me to page 10 of it, this policy form, which is  
6 also Bates No. 144.

7 A (Complies.)

8 Q Are you there?

9 A Yes, sir.

10 Q Okay. If you could, read to me under Section  
11 I-Losses Not Insured, subsection 2 right there. If you  
12 could, read that right there for me.

13 A "We do not insure under any coverage" --

14 THE WITNESS: Let me get it a little closer,  
15 Jim.

16 A "We do not insure under any coverage for any  
17 loss which would not have occurred in the absence of one  
18 or more of the following excluded events. We do not  
19 insure for such loss regardless of: (a) the cause of the  
20 excluded event; or (b) other causes of the loss; or (c)  
21 whether other causes acted concurrently or in...sequence  
22 with the excluded event to produce the loss; or (d)  
23 whether the event occurs suddenly or gradually, involves  
24 isolated or widespread damage, arises from natural or  
25 external forces, or occurs as a result of any combination

1 of these."\*ROUGH DRAFT -- NOT PROOFREAD\*\*\*\*\*

2 Q Okay. What actions did the rating division  
3 undertake to determine whether that provision you just  
4 read was a valid policy form?

5 A I'd have to defer you to the rating division.

6 Q And Mr. Wells?

7 A Yes, sir.

8 Q Okay. Did the rating division, to your  
9 knowledge, conduct any analysis to determine whether the  
10 provision you just read was ambiguous, inconsistent, or  
11 misleading?

12 A I don't know.

13 Q Okay. Who would know the answer to that?

14 A Mr. Wells or his predecessors.

15 Q Who was his predecessor?

16 A Nellie Mitchell or another gentleman -- Bob  
17 Gibson.

18 Q Okay. And how long has Mr. Wells been the head  
19 of this rating division?

20 A I don't know off the top of my head.

21 Q Within the last six years?

22 A He was -- he's been named that -- he was in  
23 that position before I became a deputy.

24 Q Okay. So at least prior to 2001.

25 A Yes, sir.



1 Q\*\*\*\*Okay. Now, the head of the rating division  
2 reports to you. Is that fair to say?

3 A Yes, sir.

4 Q Okay. But it's your testimony you're not aware  
5 of any particular analysis that this rating division  
6 conducted to determine whether this particular policy  
7 provision was proper or whether it was ambiguous,  
8 inconsistent, or misleading.

9 A I'm not aware of any.

10 Q Okay. Did the rating division undertake any  
11 analysis to determine whether this provision could be  
12 used to deny an entire loss if there were multiple  
13 causes?

14 A It's the -- can you clarify your question?

15 Q I'll try. Did the rating division, the one  
16 that approved this particular policy provision we've been  
17 reading, undertake any analysis or determination to  
18 determine whether this provision could be used by an  
19 insurance company to deny an entire loss with multiple  
20 causes?

21 MR. WEBB: Objection to the form of the  
22 question.

23 BY MR. SCRUGGS:

24 Q Some excluded and some not.

25 MR. WEBB: Same objection.

1           A\*\*\*\*The department's interpretation of that  
2 provision was, has been, and is that when you have a  
3 combination of multiple causations -- for example, if you  
4 were to have wind and water -- that the insurance  
5 contract as we read it is the insurance company would owe  
6 any damage caused by wind. However, under the exclusion  
7 provisions, they would not owe any damage caused by the  
8 water.

9           Q     Was that the -- was that a determination that  
10 was made by the rating division and the insurance  
11 department when this provision was approved?

12          A     I'm not sure when this provision was approved.

13          Q     But would that have been a -- an interpretation  
14 that the insurance department did whenever it was  
15 approved?

16          A     I don't know.

17          Q     Okay. If you look on -- if you can go back to  
18 the first page, which is 138, I think you'll see up in  
19 the top right corner it says FP-7955, and then under it  
20 says 8 slash 96. Would that determine the date that this  
21 policy provision was approved?

22          A     Don't know.

23          Q     You don't know. You don't know what they would  
24 mean?

25          A     It means something was filed in 8/96.

1 Q\*\*\*\*Okay. So it's the -- your testimony, is it  
2 fair to say, that it's been and is and always has been  
3 the insurance department's interpretation of this  
4 provision that it can exclude damage caused by water but  
5 not damage caused by both wind and water.

6 MR. WEBB: Objection to the form of the  
7 question.

8 A Repeat your question again.

9 BY MR. SCRUGGS:

10 Q Sure. Is it your testimony, as I understood it  
11 from just before, that it's the insurance department's  
12 interpretation of this anticoncurrent clause provision  
13 we've been reading that it can exclude damage caused by  
14 water, but it doesn't exclude damages caused by wind and  
15 water?

16 MR. WEBB: Same objection.

17 A It could under that -- under our interpretation  
18 of that policy language in question, the damage caused by  
19 water could be excluded; the damage caused by wind is  
20 covered.

21 BY MR. SCRUGGS:

22 Q Okay. So this provision -- under the  
23 department's interpretation, this provision couldn't be  
24 used to exclude damage just because there was water also  
25 involved if there was wind involved.

1           \*\*\*\*\*MR. WEBB:  Objection to the form of the  
2 question.

3           A     The company would have to pay the wind portion.

4 BY MR. SCRUGGS:

5           Q     Okay.  Even if there was also water.

6           A     Yes, sir.

7                     MR. WEBB:  Objection to form.

8 BY MR. SCRUGGS:

9           Q     Your answer?

10          A     Yes, sir.

11          Q     Okay.  What representations did State Farm make  
12 to the commissioner or the rating division about how this  
13 particular anticoncurrent cause clause would be  
14 interpreted and applied to losses?

15                     MR. STREETMAN:  Are you talking about if the --  
16 when it was proposed as a -- as this policy in whatever  
17 year that may be that we don't know or --

18                     MR. SCRUGGS:  Well, at the time of approval or  
19 subsequently.

20          A     I don't know what representations were made  
21 whenever the policy was originally filed with that  
22 language in it.  As it relates to Katrina issues, the  
23 department issued some bulletins soon after the storm  
24 made landfall regarding how we thought companies should  
25 be adjusting the claims and paying the claims.

1 BY MR. SCRUGGS:H DRAFT -- NOT PROOFREAD\*\*\*\*\*

2 Q Yeah, and we'll get into those in just a  
3 second, and thank you. But my question is maybe a little  
4 more -- more general. What representations did State  
5 Farm ever make to the commissioner or the rating  
6 department at any time, approval or subsequently, about  
7 how this particular clause was going to be interpreted  
8 and applied to losses?

9 MR. WEBB: Objection to form.

10 A State Farm after -- I'm dealing in after  
11 Katrina. After Katrina made landfall State Farm  
12 representatives made representations to the Mississippi  
13 Department of Insurance, specifically myself, regarding  
14 how they were adjusting and adjudicating claims. It was  
15 my understanding of their representations that they were  
16 paying the wind portions of the claim, but they were not  
17 paying the water portions of the claim.

18 Q Okay. Did State Farm make any representations  
19 about this anticoncurrent cause clause prior to Katrina  
20 to the department or the rating division?

21 A If they did, I was not involved in that.

22 Q Okay. But just so I'm clear: The department  
23 doesn't read this interpretation to exclude losses just  
24 because one of the causes was excluded.

25 MR. WEBB: Objection to form.

1           A\*\*\*\*You would still owe a portion of the damage  
2 that was done by wind.

3 BY MR. SCRUGGS:

4           Q     Okay.  And would you agree with me that a  
5 clause that acted to exclude an entire loss just because  
6 one of the causes was excluded would be misleading,  
7 inconsistent, or ambiguous?

8           MR. WEBB:  Objection to form.

9           A     I'm not aware of a clause that the department  
10 interprets that way.

11 BY MR. SCRUGGS:

12          Q     Interprets what way?

13          A     Are you saying that's what that provision says?

14          Q     No, let me --

15          A     I'm sorry.

16          Q     -- let me rephrase the question and see if I  
17 can do it this way.  Would you agree with me that a  
18 provision in an insurance policy that did exclude an  
19 entire loss just because one of the causes was excluded  
20 under a policy would be an ambiguous, misleading, or  
21 inconsistent policy provision?

22          MR. WEBB:  Objection to form.

23          A     I'd have to see the particular policy in  
24 question and read it.

25 BY MR. SCRUGGS:

1 Q\*\*\*\*Okay. Well, you just read what we call the  
2 anticoncurrent cause clause. Is that correct?

3 A Yes, sir.

4 Q Would you agree with me that that policy form  
5 acted to exclude an entire loss just because one of the  
6 causes was excluded, that that would be an ambiguous,  
7 misleading, or inconsistent form?

8 MR. WEBB: Objection to form.

9 A That's not how the department interprets that  
10 provision.

11 BY MR. SCRUGGS:

12 Q Well, yeah. And that's not my question.

13 A Okay.

14 Q My question is that that's what the provision  
15 acted to do or if that was -- if that was how the --  
16 strike that. Maybe we can get there this way. If this  
17 interpreta- -- if this particular policy provision that  
18 you just read, the anticoncurrent cause clause was being  
19 applied to exclude an entire loss just because one of the  
20 causes was excluded under the policy, that that would be  
21 an inconsistent, ambiguous, and misleading interpretation  
22 of that provision.

23 MR. WEBB: Object to the form.

24 A I don't think -- that's not how we interpret  
25 it, and we would not know whether it's ambiguous. I

1 don't know. That's not how the department interpreted  
2 that provision or any of the provisions similar to that,  
3 and that's why we instructed the companies to pay the  
4 wind portions of the claims in our bulletins --

5 Q No, I understand, and I'm not asking how the  
6 department interprets this provision. You've  
7 testified --

8 A And I apologize. Restate your question and  
9 let's see if we can --

10 Q That's fine. Yeah, yeah, you've testified how  
11 the department interprets it, and I appreciate it. But  
12 my question is: If this policy provision was interpreted  
13 in this manner or the effect of this provision was to  
14 exclude the ACC provision, the anticoncurrent clause  
15 provision, if the effect of that provision was to exclude  
16 an entire loss just because one of the causes was  
17 excluded, that that would be misleading, inconsistent, or  
18 ambiguous.

19 MR. WEBB: Objection to form of the question.

20 A Then I think it'd be appropriate. Now, whether  
21 it's ambiguous, I'm not sure I can answer that question,  
22 but that would not be appropriate under the department's  
23 interpretation of the policy limits.

24 BY MR. SCRUGGS:

25 Q It wouldn't be appropriate?



1 A\*\*\*\*Yeah.H DRAFT -- NOT PROOFREAD\*\*\*\*\*

2 Q Well, would that be inconsistent with other  
3 policy provisions? Do you know that?

4 MR. WEBB: Objection to form.

5 A Don't know.

6 BY MR. SCRUGGS:

7 Q Would that be an ambiguous application of that  
8 provision?

9 MR. WEBB: Same objection.

10 A Could be.

11 BY MR. SCRUGGS:

12 Q Okay. And would it be a misleading application  
13 of that provision?

14 A Could be.

15 MR. WEBB: Objection to form.

16 Q Okay.

17 THE WITNESS: Doesn't somebody have a  
18 conference call at 2:00?

19 MR. SCRUGGS: I don't know. Do you want --

20 MR. WEBB: I do.

21 THE WITNESS: No, I thought one of y'all said  
22 that --

23 MR. WEBB: I do have a conference call at 2:00,  
24 but they're supposed to call me, so I'm assuming --

25 MR. SCRUGGS: All right. Okay.

1 \*\*\*\*\*(OFF THE RECORD.)OT PROOFREAD\*\*\*\*\*

2 BY MR. SCRUGGS:

3 Q Follow up on your last answer, I think it's  
4 fair to say your testimony was that the anticoncurrent  
5 cause clause could be ambiguous or misleading if it was  
6 applied in a way that would exclude an entire loss just  
7 because one of the causes is excluded. Can you elaborate  
8 on why your answer was it could be?

9 MR. WEBB: Objection to form of the question.

10 A It depends how else the answer is -- the  
11 policy...

12 MR. WEBB: Hello? It's the judge.

13 MR. SCRUGGS: Are we going to go off --

14 MR. WEBB: Yeah. Yes, sir, I'm here.

15 MR. SCRUGGS: Are we going to go off the record  
16 or is -- I didn't know if -- if you were going to jump in  
17 or if we're going off the record. Let's go off the  
18 record just for a minute.

19 (OFF THE RECORD.)

20 MR. SCRUGGS: Back on the record.

21 BY MR. SCRUGGS:

22 Q Strike the previous question. I want to circle  
23 back to something --

24 THE WITNESS: Before you get there, do we want  
25 to wait for Ms. Kelsey?

1           \*\*\*\*\*MR. STREETMAN: We can go ahead.\*\*\*\*\*

2 BY MR. SCRUGGS:

3           Q     Does the department, the insurance department,  
4 Mr. Harrell, have a file containing all the proof forms  
5 for a particular company? Is it categorized by company?

6           A     It's my understanding that's the way they have  
7 it categorized.

8           Q     Okay. So I could -- if I asked -- put in a  
9 request for the insurance department, they could produce  
10 all the files they had in their possession on approved  
11 forms for State Farm, for instance?

12          A     Yes, sir, I --

13          Q     Okay.

14          A     -- believe so. Just let Mr. Streetman know  
15 what you're -- what you need, and we'll get it for you.

16          Q     Sure. And other than the policy forms, would  
17 there be anything else in these files?

18          A     I don't know if the policy forms are kept in  
19 the same filing system as rates. There'd be rating  
20 files, but I don't know if they're in the same file or  
21 not.

22          Q     Would -- does the department, and I assume it  
23 would be the rating division, when they initially approve  
24 a form, is there anything they put in the file, do they  
25 do a memo to the file on the issues involved and why they

1 approved it or anything like that? Is there any  
2 commentary or discussion, documentation anywhere other  
3 than the fact that a form was approved?

4 A Under the current electronic filing system --  
5 it's called SERF -- that would all be tracked  
6 electronically, any commentary from the rating division  
7 back to State Farm or Allstate, whoever, it would be  
8 tracked back and forth. And all that's in a -- it would  
9 be in some type of captured data format regarding policy,  
10 you know, one, two, three, whatever the policy number  
11 would be.

12 Q So hypothetically, any -- any communications  
13 are between the department and State Farm and vice versa  
14 on -- well, this provision is okay but take out this word  
15 or add this word or we got problems with this -- the way  
16 this is worded, that would all be captured. So tell me  
17 where I could find that information.

18 MR. WEBB: Objection to the form.

19 A Under the -- under the current electronic  
20 filing system, SERF, it's my understanding all that's  
21 captured electronically. You can just -- if you ask --  
22 ask for it, we'll -- give Mr. Streetman what you're  
23 wanting, we'll be glad to try to get that or give you  
24 access to it.

25 Q What about before y'all put all this on

1 electronic -- in electronic form, how would I go about  
2 finding that information, that information being, you  
3 know, any memos or documentation as to the rating  
4 division's comments about a particular form or  
5 communications between State Farm back and forth on the  
6 provisions?

7 A Any communications that were -- that are there,  
8 we'd have them and we'd be glad to produce them.

9 Q Okay. Where would those be located?

10 A They'd be stored in the rating division.

11 Q Okay. Would they be -- would they be stored in  
12 the same file that the proof forms would be in or would  
13 they be in a different file?

14 A I would assume they're in the same -- same  
15 file. Don't know.

16 Q How long back -- how far back would State --  
17 would the insurance department have forms on State Farm,  
18 approved forms and documentation related to those  
19 approved forms?

20 A Each division -- each division regarding each  
21 particular type of records that they maintain has a  
22 record retention program that the department of archives  
23 reviews, approves, rejects, whatever they do with it.  
24 And we would only have them pursuant to that time period  
25 that the department of archives allows us to keep them.

1 After that we have to purge them.OFREAD\*\*\*\*\*

2 Q Well, what's that time period?

3 A As it relates to the rating division, do not  
4 know.

5 Q You don't know?

6 A I do not know.

7 Q Well, what proof would you have -- or the  
8 rating division have that it ever approved a form? For  
9 instance, if -- when did this form get approved or that  
10 form get approved? How would you go back and find out  
11 the original form that was approved and any documentation  
12 relating to it?

13 A That's part of the problem. The department has  
14 requested money from the legislature to be able to  
15 electronically image -- or other type of electronic  
16 storage database of not just these records, all the  
17 records of the department of insurance utilizes, comes in  
18 the possession of. The problem with the -- the state of  
19 Mississippi does not have sufficient funds to do so.

20 Q Well, how would I go back, whether I was asking  
21 Mr. Streetman or -- or the department directly, how would  
22 I go back and find the files that relate to the initial  
23 approval of this anticoncurrent cause clause that we've  
24 been talking about?

25 A You can ask as to when it was -- when do the

1 department's records reflect it was first approved, and  
2 we will -- I do not know the answer, but we will be glad  
3 to get you the answer.

4 Q Okay. And that request -- well, the request  
5 will be the request. I'll send it in or e-mail it or  
6 whatever but --

7 MR. STREETMAN: However you want to do it.

8 MR. SCRUGGS: Right.

9 BY MR. SCRUGGS:

10 Q But the -- would that also be the case for any  
11 communications or documentation relating to the approval  
12 of the anticoncurrent cause clause, whenever it was  
13 approved?

14 A I apologize, I'm not following your question.

15 Q Okay. We're talking about the anticoncurrent  
16 cause clause you just read. If I put in a request for  
17 the initially approved form, would there also be in that  
18 file or a file information about -- relating to the  
19 approval of that form, whether it's memos in the file or  
20 correspondence back and forth, that kind of thing? Would  
21 that also be something that would be kept?

22 A If the records are still being kept pursuant to  
23 the record retention schedule, then we would have them.  
24 If it's already passed the time period that the  
25 department of archives allows the department to retain

1 them, then the department would not have them.\*

2 Q Let me ask a simple question. How do -- how do  
3 you know as deputy commissioner of insurance that this  
4 policy provision you just read was ever approved?

5 A I personally would not. Mr. Wells would have  
6 to represent that to me.

7 Q Okay. So as you sit here today, you're not --  
8 you don't know one way or the other that this provision,  
9 the anticoncurrent cause clause was ever approved by the  
10 insurance department.

11 A There was an anticoncurrent cause provision  
12 approved by the Mississippi Department of Insurance that  
13 relates to State Farm's homeowners insurance policies.

14 Q There was?

15 A Yes, sir.

16 Q How do you know that?

17 A Mr. Wells advised me of that.

18 Q What else did he advise you of related to that?

19 A As it relates to what issues? There were --

20 Q Well, let me -- let me just stick with what you  
21 just testified to. I think you testified that Mr. Wells  
22 advised you that the Mississippi Department of Insurance  
23 approved the anticoncurrent cause clause we just read.  
24 Is that fair to say?

25 A Yes, sir.



1 Q\*\*\*\*All right. Tell me aboutRthe sum and substance  
2 of that conversation.

3 A After the storm made landfall, the department  
4 of insurance somewhere after that started receiving  
5 inquiries, complaints, whatever you want to couch them --  
6 some of them couch different things -- but from different  
7 consumers regarding anticoncurrent causation. The  
8 department of insurance had a meeting, and best of my  
9 knowledge, I can't specify who all was there. In the  
10 meeting was myself, and somewhere in the meeting was --  
11 were some of the attorney general lawyers, side of the  
12 department of insurance, and rating individuals -- and  
13 individuals from the rating division.

14 Q Okay. And what did y'all discuss?

15 A The anticoncurrent causation language.

16 Q What about it?

17 A What it means and how the department  
18 interpreted it.

19 Q Well, what did it mean?

20 A The department's interpretation of it at that  
21 time and when they reviewed the policy, as I stated  
22 earlier, is that the language does allow an insurance  
23 company to exclude water or to -- however, it did not  
24 allow them to exclude any damage caused by wind,  
25 whether -- regardless of whether the house would've

1 washed away afterDthe wind came through. The portion  
2 that was originally caused by the wind damage was owed  
3 under the terms and conditions of the policy as the  
4 department of insurance determines them.

5 Q Well, what did the department base that  
6 interpretation on?

7 A Reading the policy.

8 Q Okay. Well, let me ask you this question.  
9 We'll just -- we're still on -- sorry about that.

10 A That's fine.

11 Q Exhibit 17.

12 THE COURT REPORTER: Eighteen.

13 BY MR. SCRUGGS:

14 Q Eighteen, excuse me. Why did -- why was this  
15 provision necessary, Mr. Harrell? There is a provision  
16 down here called the water damage exclusion that excludes  
17 damage caused by water. Is that correct?

18 A Yes, sir.

19 Q Okay. So why was a provision needed to exclude  
20 water but not wind if that's already excluded down here?

21 A As to why State Farm put in there, I would have  
22 to refer you to State Farm. I'm not sure why the  
23 companies put it in there.

24 Q But it's the department's interpretation that  
25 damage caused by wind is covered and damage caused by

1 water is not. UGH DRAFT -- NOT PROOFREAD\*\*\*\*\*

2 MR. WEBB: Object to the form.

3 A Correct.

4 BY MR. SCRUGGS:

5 Q Okay. But there's a provision down here that  
6 excludes water damage. Right?

7 A Yes, sir.

8 Q Okay. And these policies cover wind damage.  
9 Is that right?

10 A Unless it's excluded. Unless they X the wind.

11 Q Right. Aside from -- aside from an X wind  
12 policy --

13 A Yeah.

14 Q -- these policies cover wind damage.

15 A Yes, sir.

16 Q Okay. So why was this provision put in there?

17 MR. STREETMAN: He just testified to that.  
18 You'd have to ask State Farm.

19 MR. WEBB: Same objection.

20 BY MR. SCRUGGS:

21 Q Okay. Well, let me ask a follow-up question,  
22 then. Why would a provision like this have been approved  
23 whenever it was approved?

24 A The way the department reads the policy is that  
25 it doesn't -- it says if we -- if you have wind and

1 water, whichever -- regardless of which one comes first,  
2 this contract makes you pay the wind. However, you  
3 wouldn't -- if, say, the roof blew off, okay, five  
4 seconds later, five hours later, it's irrelevant how  
5 long, if water came in and washed the rest of the house  
6 away, they would -- this contract would make them be  
7 obligated to pay the damage to the roof and any  
8 subsequent damage that occurred as a result of no roof  
9 being there.

10 Q Okay. Well, and that's the department's  
11 interpretation.

12 A Yes.

13 Q But that's not what this provision says, does  
14 it?

15 A That's the department's interpretation, and  
16 that was State Farm's representation as to the department  
17 of insurance regarding how they were interpreting it and  
18 applying it.

19 Q After Katrina.

20 A Yes, sir.

21 Q Okay. And you don't know about any  
22 representation they made to the department prior to  
23 Katrina.

24 A No, sir.

25 Q But again -- and please read this provision

1 again. I want to be fair. What you just said, the  
2 interpretation you just gave me for how the department  
3 interprets this provision, is not what's stated in that  
4 provision, is it?

5 MR. STREETMAN: The provision says what it  
6 says. He's testified to what -- to what his  
7 interpretation and the department's interpretation is.

8 MR. SCRUGGS: I understand, but what -- the  
9 anti -- let me be heard on that. The anticoncurrent  
10 cause clause is extremely important to this litigation  
11 and probably a lot of other ones, and it doesn't -- it's  
12 certainly important how the department interpreted it.

13 MR. STREETMAN: And he's --

14 MR. SCRUGGS: But it's also --

15 MR. STREETMAN: -- explained it.

16 MR. SCRUGGS: It's also important how it -- how  
17 it reads regardless of how the department interprets it.

18 MR. STREETMAN: And it reads the way it reads,  
19 and that's not going to change now or in the future or  
20 when it was approved. And he has said that this is  
21 the -- he has testified as to the way the department of  
22 insurance interprets it.

23 BY MR. SCRUGGS:

24 Q Well, the question is: Does that policy --  
25 does that provision, the ACC clause, read differently

1 from how you interpreted it? I mean, does it -- is that  
2 consistent -- does that provision state the provisions in  
3 the ACC clause -- strike that. I can answer it a better  
4 way. The anticoncurrent cause clause you just read, is  
5 that consistent with how you interpreted it, you being  
6 the department of insurance?

7 A The department's interpretation of it is  
8 consistent with the way we read it, now and then.

9 Q I'm going to read this to you. "We do not  
10 insure for such loss regardless of...the cause of the  
11 excluded event...other causes of the loss...or whether  
12 other causes acted concurrently or in any sequence with  
13 the excluded event to produce the loss..." Reading  
14 straight from the provision.

15 Now, isn't that inconsistent with how the  
16 department construes this provision, which is it covers  
17 wind and not covers water?

18 A No, sir.

19 Q It's not.

20 A No, sir.

21 Q You think that what I just read is consistent  
22 with how the department's interpreting it.

23 A Not only is it consistent with the way we  
24 interpreted it at the time that it was reviewed, it's  
25 consistent with how we read it now. And that is our

1 interpretation is consistent with what State Farm  
2 represented to the department after Katrina made  
3 landfall.

4 Q I'm sorry. Say that last part again?

5 A It's consistent with how the department  
6 interpreted it when -- before Katrina, it's consistent  
7 with how the department interpreted it after Katrina, and  
8 still to this day and our interpretation is consistent  
9 with how State Farm represented their interpretation of  
10 that to the department of insurance.

11 Q Okay. A provision that excludes a loss  
12 regardless of whether other causes acted concurrently or  
13 in any sequence is consistent with your interpretation --

14 MR. STREETMAN: He's --

15 BY MR. SCRUGGS:

16 Q -- that wind --

17 MR. STREETMAN: -- testified --

18 BY MR. SCRUGGS:

19 Q -- regardless --

20 MR. STREETMAN: -- and I --

21 MR. SCRUGGS: No, he's not.

22 MR. STREETMAN: -- no, I instruct him not to  
23 answer. He's not going to answer any more questions --  
24 you've asked him over and over and over about  
25 interpretation, reading it. Submit it to the judge. If

1 we're wrong, then we'll do -- PROOFREAD\*\*\*\*\*

2 MR. SCRUGGS: Well, it's not a proper objection  
3 and -- or --

4 MR. STREETMAN: That's fine.

5 MR. SCRUGGS: -- instruction not to answer that  
6 you think he's answered it because he's answered it about  
7 three different ways --

8 MR. STREETMAN: I'm --

9 MR. SCRUGGS: -- and I'm entitled to get into  
10 this. He's the deputy commissioner of insurance. This  
11 is a provision at issue in this lawsuit.

12 MR. STREETMAN: You've been into it and over it  
13 and over it and over it. He's not going to answer any  
14 more questions about it.

15 MR. WEBB: And I object to the form because it  
16 calls for a conclusion that I think is ultimately up to  
17 the judge in this or some other court.

18 MR. SCRUGGS: It's certainly not what y'all are  
19 saying in court, and we're going to get into this a  
20 little more.

21 BY MR. SCRUGGS:

22 Q You're not going to answer the question?

23 A I'm following the advice of Mr. Streetman.

24 Q Okay.

25 MR. SCRUGGS: We're definitely going to be



1 back.\*\*\*\*\*ROUGH DRAFT -- NOT PROOFREAD\*\*\*\*\*

2 Exhibit 19. See how this fits.

3 - - -

4 (Exhibit 19 marked)

5 (OFF THE RECORD.)

6 MR. SCRUGGS: Okay. Exhibit 19?

7 THE COURT REPORTER: (Nods head affirmatively.)

8 BY MR. SCRUGGS:

9 Q Okay. Do you recognize this letter, sir?

10 A Yes, sir.

11 Q And what is this letter?

12 A It is a letter from me to Allen McGlynn at  
13 State Farm Fire and Casualty.

14 Q Okay. Dated March 24, 2006.

15 A Yes, sir.

16 Q Okay. Read me the first sentence.

17 A "The Mississippi Department of Insurance,  
18 ('Department') is continuing to receive complaints from  
19 insureds of State Farm Fire and Casualty Company ('State  
20 Farm' or 'Company') concerning the Company's  
21 interpretation and application of the concurrent  
22 causation provision found in Section I -- or Section" --  
23 maybe that's I 2 maybe -- "of State Farm's standard  
24 Homeowners Policy. Period."

25 Q Okay. When did the department first determine

1 that the anticoncurrent cause provision that we've been  
2 talking about was being interpreted to exclude an entire  
3 loss if there was a non-covered event?

4 MR. WEBB: Objection to the form of the  
5 question.

6 A It would've been when we first hear of the  
7 allegation or when we confirm it? I mean, restate the  
8 question for me.

9 BY MR. SCRUGGS:

10 Q The first paragraph in your letter stated that  
11 the department of insurance is continuing to receive  
12 complaints from insureds about the application of the  
13 concurrent cause provision.

14 A Yes, sir.

15 Q The one we've been reading about. When did the  
16 department first start learning of these complaints  
17 regarding State Farm's interpretation of that provision?

18 A We first started hearing allegations of that  
19 sometime in early part of 2006.

20 Q Early 2006?

21 A Yes, sir.

22 Q None prior to that date?

23 A Not prior to -- sometime in early 2006.

24 Q Okay. Well, how did the department learn of  
25 these complaints?

1           A\*\*\*\*Either by phone calls, consumer complaints, in  
2 personal meetings with consumers, meeting with --  
3 meetings with consumers on the Mississippi Gulf Coast in  
4 town hall type meetings and homeowner association type  
5 meetings.

6           Q     Okay. When did all those take place?

7           A     Sometime prior to March 24th, 2006.

8           Q     Okay. Any of that occur in 2005?

9           A     Don't recall specifically.

10          Q     Is it your testimony you don't recall a  
11 specific complaint related to the State Farm  
12 interpretation of this concurrent cause provision in  
13 2005?

14          A     I don't recall one either way.

15          Q     Okay. Read for me the second sentence.

16          A     Picking up with "more specifically"?

17          Q     Uh-huh.

18          A     Okay. "More specifically, we are hearing from  
19 your insureds who have slab claims as a result of  
20 Hurricane Katrina who complain that State Farm is  
21 supposedly taking the position that even if a dwelling  
22 suffered wind damage prior to the arrival of storm surge,  
23 no claim payment for wind damage is due since the water  
24 would have washed the structure away anyway,  
25 notwithstanding the damage caused by wind. Period."

1 Q\*\*\*\*Okay. Isn't that exactly what that provision  
2 says?

3 MR. WEBB: Objection --

4 BY MR. SCRUGGS:

5 Q The ACC provision?

6 A No, sir, not --

7 Q That's not what it says?

8 MR. WEBB: Objection to form.

9 A Not the department's interpretation of it.

10 BY MR. SCRUGGS:

11 Q Not asking about the department's  
12 interpretation of a provision. I'm talking about what  
13 the provision actually says.

14 MR. STREETMAN: We've been through that. He  
15 has testified to it. It says what it says.

16 MR. SCRUGGS: That's not an appropriate answer  
17 or objection, it says what it says.

18 BY MR. SCRUGGS:

19 Q The -- the question is: Isn't -- isn't the  
20 position that you're contending State Farm might be  
21 taking exactly what the provision says?

22 A Not in our opinion.

23 Q Well, what is your opinion?

24 MR. STREETMAN: He's already given his opinion.  
25 You're going back and wanting him to comment with regard

1 to the ACC --UGH DRAFT -- NOT PROOFREAD\*\*\*\*\*

2 MR. SCRUGGS: Well, he hadn't --

3 MR. STREETMAN: -- and then --

4 MR. SCRUGGS: -- answered the question yet,  
5 Jim, because --

6 MR. STREETMAN: Well, we're --

7 MR. SCRUGGS: You can instruct him to answer  
8 and not answer every single question, but I'm here and  
9 this is a --

10 MR. STREETMAN: I understand that.

11 MR. SCRUGGS: -- deposition, and he wrote a  
12 letter about this provision. None of those objections  
13 are valid. They're not just not. I mean, he wrote the  
14 letter about the ACC provision, and I'm --

15 MR. STREETMAN: I understand that --

16 MR. SCRUGGS: -- and he's saying how it's  
17 interpreted.

18 MR. STREETMAN: -- says -- you want him to --  
19 you keep going back and want him to say -- he says, if  
20 you'll go to page 2, how they interpret it. He says in  
21 the next sentence how it's interpreted in this thing.  
22 You know, ask him about those things. To keep going back  
23 and asking him about the language in the -- in the ACC,  
24 which says what it says, is -- he has testified there 's  
25 an interpretation.

1           \*\*\*\*\*MR. SCRUGGS: I understand there's an  
2 interpretation. We've been -- we've certainly been over  
3 that, and that's not the root of any of my questions.  
4 The question is: Isn't the interpretation that he's  
5 charging State Farm might be taking exactly what the  
6 provision says?

7 BY MR. SCRUGGS:

8           Q     Is that true?

9           MR. STREETMAN: He's testified to that. We've  
10 been --

11          MR. SCRUGGS: No --

12          MR. STREETMAN: -- over that.

13          MR. SCRUGGS: -- he hadn't.

14          MR. STREETMAN: Can you answer that question?

15          MR. WEBB: I'm going to object to form.

16          A     You two -- repeat what the question was.

17 BY MR. SCRUGGS:

18          Q     I'll just -- I'll say -- I'll try to put it the  
19 best way I know how, Mr. Harrell. You just read about --  
20 you referenced complaints that State Farm was  
21 interpreting this anticoncurrent cause clause a  
22 particular way. Is that right?

23          A     Yes.

24          Q     You just read that, and you wrote it.

25          A     Yes, sir.

1 Q\*\*\*\*Okay. Now, isn't that what the provision  
2 itself says?

3 A No, sir.

4 Q Well, what's your basis for saying that?

5 A The department's reading and interpretation of  
6 the provisions.

7 Q I know how you interpreted it and how you  
8 wanted it to be applied. But you would agree with me  
9 that the provision, if you read it, says exactly what you  
10 just wrote.

11 MR. STREETMAN: I'm instructing him not to  
12 answer this question or any other questions -- we're  
13 going back over and you're wanting to argue with him  
14 about the interpretation versus the reading. They read  
15 it one way, and they interpreted it that way.

16 MR. SCRUGGS: Okay.

17 BY MR. SCRUGGS:

18 Q Read the last sentence in that paragraph for  
19 me, Mr. Harrell.

20 A "If this is State Farm's position, it is  
21 contradictory to representations made by State Farm to  
22 Department representatives."

23 Q Why do you say "if this is State Farm's  
24 position"?

25 A In previous meetings and discussions with State

1 Farm representatives as the result of complaints the  
2 department was receiving, we asked State Farm  
3 representatives how are you applying that anticoncurrent  
4 causation. The representations back to the department of  
5 insurance were consistent with the department's  
6 interpretation that they owed the wind; they did not owe  
7 any water damage.

8 Q So if State Farm was interpreting this  
9 provision in a way that would exclude the wind and water  
10 if wind was -- excuse me, if water was involved, then  
11 that would be an improper interpretation under the  
12 department's view.

13 A Yes.

14 MR. WEBB: Objection to form.

15 BY MR. SCRUGGS:

16 Q Answer?

17 A Yes, sir.

18 Q If you'll turn the page for me, Mr. Harrell, on  
19 your letter, read for me the -- sometimes it's easier if  
20 I just -- this paragraph here.

21 A Okay.

22 Q Thanks.

23 A "It is the Department's interpretation of the  
24 foregoing provision that while loss subject to the water  
25 damage exclusion generally is not covered, loss resulting



1 from any damage caused by wind is clearly covered.  
2 Period. Thus, the loss must be apportioned and any wind  
3 damage claim paid regardless of whether tidal surge slash  
4 water subsequently washed the structure away or caused  
5 other damage. Period."

6 Q And to the extent that the anticoncurrent cause  
7 clause says something different than that, it's invalid.  
8 Would you agree with me?

9 MR. WEBB: Objection to --

10 A I --

11 MR. WEBB: -- the form of the question.

12 A I don't think it says anything different than  
13 that.

14 BY MR. SCRUGGS:

15 Q Well, if someone were to read it that way,  
16 would that be an improper application?

17 MR. WEBB: Objection to the form.

18 A In the department's interpretation, yes, sir.

19 BY MR. SCRUGGS:

20 Q Okay. You reference a bulletin down here. If  
21 you could, read to me that line there and then the  
22 bulletin for me.

23 A "I draw your attention to Bulletin No. 2005-6,  
24 issued by Commissioner Dale on September 7, 2005, which  
25 provides as follows with respect to slab claims resulting

1 from Hurricane Katrina: NOT PROOFREAD\*\*\*\*\*

2 "In some situations, there is either very  
3 little or nothing left of the insured structure and it  
4 will be a fact issue whether the loss was caused by wind  
5 or water. Period. In these situations, the insurance  
6 company must be able to clearly demonstrate the cause of  
7 the loss. I expect and believe that where there is any  
8 doubt, that doubt will be resolved in favor of finding  
9 coverage on behalf of the insured. In instances where  
10 the insurance company believes the damage was caused by  
11 water, I expect the insurance company to be able to prove  
12 to this office and to the insured that the damage was  
13 caused by water and not by wind."

14 Q Okay. And I'm going to ask you some questions  
15 about that bulletin in a minute, but it's actually the  
16 line below that, if you could read that, that I do want  
17 to ask you some questions about.

18 A The "this Bulletin" line sentence --

19 Q Yes, sir.

20 MR. STREETMAN: The next sentence, is that what  
21 you're --

22 MR. SCRUGGS: Yes, sir.

23 MR. STREETMAN: -- starting with "this  
24 Bulletin"?

25 MR. SCRUGGS: Yes, sir.

1           A\*\*\*\*"This Bulletin clearly directs insurers to bear  
2 the burden of proving the cause of the loss. If the  
3 insurer believes the loss was caused solely by water,  
4 then the insurer must be able to prove that the damage  
5 was caused by water and not by wind."

6           Q     So according to this Bulletin 2005-6 issued  
7 September 7, 2006, and this letter of yours --

8                     MR. STREETMAN: 2005.

9 BY MR. SCRUGGS:

10          Q     I apologize.

11                     MR. SCRUGGS: Thank you. And let me -- I'll  
12 just start over so I can get the dates right.

13 BY MR. SCRUGGS:

14          Q     So according to this bulletin that you  
15 reference in your letter, 2005-6, and the letter that you  
16 wrote on March 24, 2006, it's the insurers that bear the  
17 burden of proving the cause of the loss from Hurricane  
18 Katrina.

19          A     Yes, sir.

20          Q     Okay. Read -- and I'm going to have a couple  
21 questions about this -- the last paragraph, first  
22 sentence that starts with "I wish."

23          A     "I wish to take this opportunity to remind you  
24 that State Farm is required to comply with both of the  
25 aforementioned Bulletins as it considers slab claims and

1 the wind vs. water issue resulting from Hurricane  
2 Katrina. Period."

3 Q Okay. What steps did State Farm -- strike  
4 that. What steps did the insurance department take to  
5 insure that State Farm complied with the bulletins in  
6 this letter that you -- that you sent?

7 A We required State Farm to respond in writing  
8 specifically as to how they were handling these claims,  
9 not the verbal representations that had previously been  
10 committed to the department.

11 Q Anything other than that?

12 A Not at that juncture.

13 Q Well, what about after that juncture or aside  
14 from that juncture?

15 A That's what led to the department of insurance  
16 examination of State Farm, one of the issues.

17 Q The compliance with these bulletins and this  
18 letter?

19 A And their representations to the department of  
20 insurance in subsequent letters.

21 Q Okay. Why was this letter written,  
22 Mr. Harrell? Why did you write this letter on March 24,  
23 2006?

24 A The department on multiple occasions had been  
25 given verbal representations by State Farm

1 representatives regarding how they were adjusting  
2 claims --

3 Q Can you tell me who -- and I apologize. I  
4 don't want to interrupt. Can you tell me who those State  
5 Farm representatives were?

6 A I can tell you who I dealt with.

7 Q Sure.

8 A There would have been Webb Howell and Allen  
9 McGlynn.

10 Q I started to say Alleen. Okay. Allen. Okay.

11 A In one meeting possibility of the gentleman  
12 he's I want to say Joe Fincher. I think that's his name.

13 Q Okay.

14 A And their claim person. His memory slips my  
15 mind at the time. I apologize. Handles the claims for  
16 Mississippi.

17 Q Terry Blalock?

18 A Yes, sir.

19 Q These were the representatives that were giving  
20 oral representations to you?

21 A Yes, sir, at --

22 Q Okay --

23 A -- different times.

24 Q -- and proceed with your answer. And I  
25 apologize. You -- the question was why you wrote this

1 letter, and you were talking about State Farm\*\*  
2 representatives.

3 A The department prior to -- prior to this letter  
4 had received complaints from insureds alleging that State  
5 Farm was telling them that they don't owe any damage  
6 in -- different versions of the stories, just  
7 paraphrasing the -- the consensus of it is that different  
8 policyholders all had a similar version that State Farm  
9 adjusters or representatives were advising they don't owe  
10 any damage for the wind because the house would've washed  
11 away later anyway, as it relates to the water surge areas  
12 in the lower three counties.

13 Throughout the process, the department would  
14 communicate with State Farm representatives regarding  
15 that issue. Usually it would be Webb Howell -- at least  
16 for myself, Webb Howell or Allen McGlynn in most  
17 situations. And they said, "No, that's not how we're  
18 doing it. We're apportioning the wind and water damages.  
19 We're paying the wind; we're not paying the water." That  
20 would go on. Then you'd hear more complaints.

21 The department wanted to make sure exactly how  
22 State Farm was doing -- doing their claims. That's what  
23 resulted in the letter, to make them put in writing to us  
24 how they were handling their wind versus water issues.

25 Q Did you communicate with Allen McGlynn or Webb

1 Howell before sending this letter that you were going to  
2 send a letter?

3 A I'm sure I told Mr. McGlynn. It probably  
4 wouldn't have been Webb. We had -- we'd have  
5 conversations on issues frequently regarding State Farm  
6 claims.

7 Q Right. And I guess my question is: Did you --  
8 did you tell Mr. McGlynn or Mr. Howell or anybody, "Hey,  
9 I'm going to send you a letter the next couple of days  
10 regarding y'all's alleged interpretation of the  
11 anticoncurrent cause clause, so don't be surprised when  
12 you get it" or --

13 A I don't remember. I wouldn't have -- I  
14 wouldn't have had a problem telling him the letter is  
15 coming.

16 Q Did you -- do you remember you or someone else  
17 in the department sending State Farm a draft letter with  
18 this in it with -- strike that -- a draft letter, a draft  
19 version of this letter, prior to the official letter  
20 being sent?

21 A I don't remember.

22 Q Okay. You don't remember one way or the other?

23 A No, sir.

24 Q Okay. And I don't want to misstate your prior  
25 testimony, but just so I'm clear for the record and I can

1 transition and move: The only steps the department took  
2 at this time to insure that this letter and the bulletins  
3 it referenced were complied with was requiring State Farm  
4 to respond.

5 A We --

6 Q In writing.

7 A We -- they responded in writing and represented  
8 to the department of insurance this is how they're  
9 handling it. We had no reason at that time to doubt or  
10 question their representations.

11 Q You didn't?

12 A No, sir.

13 Q Notwithstanding all the complaints you were  
14 getting?

15 MR. WEBB: Objection to the form.

16 A At that juncture during the late spring and  
17 early summer of 2006, the complaints as it related to  
18 those issues were dropping off substantially.

19 BY MR. SCRUGGS:

20 Q Oh, they were?

21 A Yes, sir.

22 Q Is there anything I can look at that would  
23 evidence the number and frequency and variance of  
24 complaints coming into the Mississippi Department of  
25 Insurance regarding this clause or anything related to



1 Katrina?\*\*\*ROUGH DRAFT -- NOT PROOFREAD\*\*\*\*\*

2 A You can look at the consumer log of all the  
3 calls coming in, the consumer services division, and also  
4 base it on phone calls the rest of the department was  
5 getting.

6 Q Would that log show what the calls were about  
7 or just that a call was made?

8 A It would show what calls came in and what files  
9 were opened.

10 Q Okay. Is that something that the department  
11 would have in its possession somewhere, these logs of  
12 calls and complaints coming in?

13 A Yes, sir.

14 Q Okay. Why did you write this letter to Allen  
15 McGlynn?

16 A Because he's -- at that time Mr. McGlynn was  
17 the attorney I was dealing with on behalf of State Farm.

18 Q Okay. He's an attorney?

19 A Yes, sir.

20 Q Okay. And again, I don't want to misstate your  
21 testimony, but is it that you took State Farm's word for  
22 it that they were complying with this letter and the  
23 bulletins when they responded?

24 MR. WEBB: Objection to form.

25 A Yes, sir.

1 BY MR. SCRUGGS:H DRAFT -- NOT PROOFREAD\*\*\*\*\*

2 Q Okay.

3 MR. SCRUGGS: Excuse me. Give me one second to  
4 get organized.

5 (OFF THE RECORD.)

6 MR. SCRUGGS: Exhibit 20?

7 THE COURT REPORTER: Yes.

8 MR. SCRUGGS: Well, we're going to have to have  
9 more than this.

10 THE COURT REPORTER: Did you give me one?

11 MR. SCRUGGS: Did I give you one?

12 THE COURT REPORTER: I don't believe so.

13 MR. SCRUGGS: Well, you're the most important  
14 person, so I tell you what, mark -- if you can mark this,  
15 and we'll just let them look on. Thank you.

16 \*\*CHECK WAS HEATHER ON RECORD FOR ALL THAT\*\*

17 - - -

18 (Exhibit 20 marked)

19 BY MR. SCRUGGS:

20 Q Okay. Exhibit 20 --

21 THE VIDEOGRAPHER: Zach, put your mike on.

22 MR. SCRUGGS: I took it off. I was trying to  
23 fool you. I was trying to test you, make sure you're  
24 still -- I need to sit down anyway.

25 MR. WEBB: Excuse me, before you go into this,

1 I notice it doesn't have a Bates number on it. Is this  
2 something that's already been produced or --

3 MR. SCRUGGS: No --

4 MR. WEBB: Okay.

5 MR. SCRUGGS: -- it hadn't been produced.

6 MR. WEBB: I just want to lodge an objection to  
7 asking the witness questions about a document that hadn't  
8 here before been produced but -- to give us an  
9 opportunity to review it beforehand. Just note that  
10 objection, please.

11 MR. SCRUGGS: Does that go both ways?

12 MR. WEBB: Pardon?

13 MR. SCRUGGS: Does that go both ways?

14 MR. WEBB: I'm not asking him about anything.

15 BY MR. SCRUGGS:

16 Q Exhibit 20 I've handed you is a September 16,  
17 2005, letter from the Consumer Federation of America to  
18 various insurance commissioners, including George Dale.  
19 Have you seen this letter?

20 A I don't recall it.

21 Q Okay. Put that aside.

22 MR. STREETMAN: Can I have that and get a copy  
23 made for us since we were -- I'm just going to hand it  
24 out. You can keep going.

25 MR. SCRUGGS: Well, why don't you just make a

1 copy of this exhibit that's stamped here, as long as Lori  
2 is okay with that.

3 That wasn't so bad, was it?

4 - - -

5 (Exhibit 21 marked)

6 BY MR. SCRUGGS:

7 Q Okay. Exhibit 21, this purports to be a  
8 March 31, 2006, letter from State Farm, Mr. Burwell to  
9 you. Do you recognize this letter?

10 A Yes, sir.

11 Q And was this in response to your letter of  
12 March 24, 2006?

13 A Yes, sir.

14 Q Okay. If you would turn the page, the second  
15 page, first --

16 \*\*CHECK HEATHER HERE\*\*

17 MR. SCRUGGS: Yeah, yeah, I'm going to.

18 BY MR. SCRUGGS:

19 Q -- first paragraph starts "in using." Can you  
20 read that for me?

21 A Yes, sir. "In using this type of comprehensive  
22 review of all information, we are administering claims in  
23 accordance with the directives outlined -- outlined by  
24 the Mississippi Department of Insurance in Bulletin  
25 2005-6 and...2006-2. Period." Second sentence too?

1 Q\*\*\*\*No, that's good. Thank you. Well, actually, I  
2 skipped something. If you could go to the first page and  
3 read where it says -- starts "when evidence."

4 A "When evidence shows that the hurricane winds,  
5 parenthesis, or objects driven by those winds, end  
6 parenthesis, and rains entering the insured premises  
7 caused by the hurricane winds proximately caused damage  
8 to the insured property, those losses will be covered  
9 under the policy, and this will be the case even if flood  
10 damage, which is not covered, subsequently occurred.  
11 Period."

12 Q So in those two provisions you read, State Farm  
13 seems to be saying that they're complying with the  
14 department's -- with your letter and the two bulletins.  
15 Is that correct?

16 A Yes, sir.

17 Q Okay. And you took their word that they were  
18 doing that.

19 A Yes, sir.

20 Q Okay. Without any kind of follow up to make  
21 sure that that was the case.

22 A Yes, sir.

23 Q Okay. Put that aside.

24 MR. SCRUGGS: 22, Exhibit 22 to your  
25 deposition.

1 \*\*\*\*\*ROUGH DRAFT -- - - -ROOFREAD\*\*\*\*\*

2 (Exhibit 22 marked)

3 BY MR. SCRUGGS:

4 Q This is a March 28, 2006, article by Anita Lee  
5 called Approved by accident? Are you familiar with this  
6 article?

7 A I -- I don't remember it.

8 Q Okay. And this purports to be a Q and A with  
9 Commissioner George Dale. Does that refresh your  
10 recollection at all?

11 A No, sir.

12 Q Okay. I'm just going to ask one question about  
13 it. If you could turn the page, down at the bottom of  
14 page 2...

15 MR. WEBB: And while he's doing that, this is  
16 not something y'all have produced too. Is that right,  
17 Zach? Or do you know?

18 MR. SCRUGGS: I don't think it was produced to  
19 McIntosh. It's a --

20 MR. WEBB: Okay.

21 MR. SCRUGGS: It's an article.

22 BY MR. SCRUGGS:

23 Q I just have one question about this. If you  
24 could, read the bottom question and answer on page 2 that  
25 starts with "when were concurrent-cause clauses." Can

1 you read that for me, Mr. Harrell?FREAD\*\*\*\*\*

2 A "When were -- when were concurrent-cause" --

3 Q This --

4 A -- "clauses" --

5 Q -- is the question. I'm sorry.

6 A Yeah.

7 Q Yeah.

8 A Did you say read the question or the answer?

9 Q Read both, please.

10 A I'm sorry. "When were concurrent-cause clauses  
11 added to insurance policies, the clauses that say we will  
12 not pay the claim if water was involved in causing the  
13 damage?"

14 Q Okay.

15 A "We have looked at that. Somewhere over the  
16 last 15 years, and I'm not sure that it's in all policy  
17 language. I don't know."

18 Q Okay.

19 MR. STREETMAN: You want him to keep reading?

20 MR. SCRUGGS: Yes, sir.

21 A Oh, I'm sorry. I thought that was --

22 BY MR. SCRUGGS:

23 Q That's okay. Yeah, it skips. It skips.

24 A Okay. "Keep in mind, we have three people in  
25 our rating division. Period. Companies have hundreds

1 of -- hundreds of type policies, property and casualty  
2 policies, that come through that division. Let's hope  
3 that there's nothing in these policies that in any way  
4 hurts the consumer that we have approved unknowingly.  
5 And I'm not saying we approved this unknowingly, but it  
6 got in the policy.

7 "Now our job is to interpret what's in the  
8 policy in a manner that benefits the consumer, and that's  
9 what we're attempting to do."

10 Q All right. And read the last question and  
11 answer -- I mean the next one.

12 A "So, you might not have realized how this was  
13 going to be interpreted when it was approved?"

14 "Oh, I'm admitting that with just the volume of  
15 the number of type policies -- and there are hundreds of  
16 them in the course of a year that come through my rating  
17 division -- there may be other things that are in  
18 policies that would have gotten approved by my department  
19 by accident.

20 "That's just the volume of business that they  
21 do. Let's hope it's a minimal number of things that were  
22 approved."

23 Q And the last. Sorry.

24 A "Are you saying this was an accident?"

25 "I'm not saying this is an accident. I'm just



1 saying probably, in retrospect, based on the effect it's  
2 had on this storm, we probably wouldn't have approved it.  
3 Period."

4 Q Do you agree with what Mr. Dale said there?

5 A If the department would've known that State  
6 Farm -- let me back up here, retract that. The  
7 department approved the concurrent causation language  
8 with the interpretation that we had that it was that  
9 we've discussed multiple times today. State Farm had  
10 represented to the department of insurance that it was  
11 interpreting it the same way. Hindsight, you know, 20/20  
12 is 20/20, don't know what else we could've done to make  
13 it, the department's interpretation, any clearer or State  
14 Farm's application of it any clearer.

15 Q Well, Mr. Dale says here that based on what he  
16 knows now, he wouldn't approve this clause. Is the  
17 department undertaking any effort to void this clause or  
18 have it modified in the future?

19 MR. WEBB: Objection to form.

20 MR. STREETMAN: Object and instruct him not to  
21 answer as that may be a part of the examination.

22 MR. SCRUGGS: Well, I understand -- though I  
23 don't agree -- with the objections into the market  
24 conduct exam, but I'm not sure that's a valid objection  
25 as to what the department plans on doing based on its

1 finding after the fact, so I'm going to ask the question.

2 BY MR. SCRUGGS:

3 Q Has the insurance -- excuse me, has the  
4 insurance department undertaken any effort to modify or  
5 invalidate this clause based on what you now know as  
6 Mr. Dale talked about in Exhibit 22?

7 MR. STREETMAN: Same -- same objection.

8 MR. SCRUGGS: Are you instructing him not to  
9 answer?

10 MR. STREETMAN: Yes, sir.

11 MR. SCRUGGS: Okay. Exhibit 23.

12 - - -

13 (Exhibit 23 marked)

14 BY MR. SCRUGGS:

15 Q Exhibit 23 is a judicial opinion by Judge  
16 Senter in the case Buente versus Allstate Insurance  
17 Company. Are you familiar with this opinion?

18 A I remember reading it when it came out.

19 Q Okay. And is it correct that your letter of  
20 March 24, 2006, was sent after this opinion was issued by  
21 Judge Senter?

22 A What was the date of the letter?

23 Q The date of the letter was the 24th.

24 A And the date of this document is dated the  
25 24th?

1 Q\*\*\*\*The opinion appears to have been issued on the  
2 24th.

3 A And my letter is dated the 24th? I believe  
4 it's the same date, aren't they?

5 Q Did you have knowledge of this opinion before  
6 you wrote this letter?

7 A I don't -- I don't think so. I don't remember.

8 Q Turn to page 9 of that opinion for me. If you  
9 could, read for me -- and maybe I'll just -- the  
10 highlighted part here. I'll just give you my version of  
11 Exhibit 23. This is an excerpt from Judge Senter's  
12 opinion in Buente versus Allstate.

13 A "I find that Exclusion 23 under Coverages A and  
14 B and Exclusion 15 under Coverage C create ambiguities in  
15 the context of damages sustained by the insured during a  
16 hurricane. Period. These provisions purport to exclude  
17 coverage for wind and rain damage, both of which are  
18 covered losses under this policy, where any excluded  
19 cause of loss, e.g. water damage, is 'the predominant  
20 cause of the loss.' I find that these two exclusions are  
21 ambiguous in light of the other policy provisions  
22 granting coverage for wind and rain damage..." -- keep  
23 reading the sentence or stop there?

24 Q The -- to the end of the sentence.

25 A "...and in light of the -- of the inclusion of

1 a 'hurricane deductible' as part of the policy. Period."

2 Q Okay. Do you remember reading that when it  
3 came out?

4 A I remember reading the opinion.

5 Q Do you agree with that judicial determination?

6 A I think that's consistent with the department's  
7 interpretation that that shouldn't be how the policy is  
8 interpreted.

9 Q But -- and I certainly don't want to be  
10 argumentative with you, but the judge in that paragraph  
11 you just read isn't saying how Allstate is interpreting  
12 the policy. He's saying what he -- that he finds the  
13 anticoncurrent cause clause in that particular policy  
14 ambiguous. Is that a fair assessment?

15 A That's my understanding of what he's saying.

16 Q Okay. He's just saying it's ambiguous.

17 A Yes, sir.

18 Q Okay. Read the bottom part of page 9 there.  
19 Starts with "but."

20 A "But it is my opinion, upon a thorough review  
21 of the terms of the Allstate policy, that the damage  
22 attributable to wind and rain will be covered, regardless  
23 of whether a later inflow of water caused additional  
24 damage that would be excluded from coverage. Period."

25 Q Is that consistent with how the department

1 interprets\*the anticoncurrent cause clause?\*\*\*\*

2 A Yes, sir.

3 Q Okay. Thank you.

4 MR. STREETMAN: You done with this?

5 MR. SCRUGGS: Yes, sir. Exhibit 24.

6 - - -

7 (Exhibit 24 marked)

8 BY MR. SCRUGGS:

9 Q Exhibit 24 to your deposition is a Memorandum  
10 Opinion by Judge Senter in the case Tuepker versus State  
11 Farm. Are you familiar with this opinion?

12 A I remember reading it when it came down.

13 Q Okay. Turn to page 7 for me, and I'll  
14 represent to you this opinion -- well, doesn't say when  
15 it came down. It was into May, but you'll just have to  
16 accept my representation for purposes of this question.

17 If you could, turn to 7 for me and read the  
18 highlighted part here and then there. You don't have to  
19 read the middle clause.

20 A "I also find that the language in the State  
21 Farm policy that introduces subsection 2 of SECTION I  
22 dash LOSSES NOT COVERED is ambiguous. The provisions in  
23 question purport to exclude from coverage -- coverage  
24 losses that would otherwise be covered, such as wind  
25 damage, when that covered loss happens to accompany water

1 damage (an excluded loss)." Skip the next section.

2 "I find that this language in the State Farm  
3 policy creates ambiguities in the context of damages  
4 sustained by the insured during a hurricane. These  
5 provisions purport to exclude coverage for wind and rain  
6 damage, both of which are covered losses under this  
7 policy, where an excluded cause of loss...water damage,  
8 also occurs. I find that these two exclusions are  
9 ambiguous in light of the other policy provisions  
10 granting coverage for wind and rain damage and in light  
11 of the inclusion of a 'hurricane deductible' as part of  
12 the policy. Period."

13 Q Thank you. So -- and again, is it fair to say  
14 that Judge Senter was finding that State Farm  
15 anticoncurrent cause clause that we've been talking about  
16 a lot today ambiguous?

17 MR. WEBB: Objection to the form.

18 A Yes, sir.

19 BY MR. SCRUGGS:

20 Q Okay. And do you agree with his interpretation  
21 of the anticoncurrent cause clause?

22 A Yes, sir.

23 Q And it's consistent with how the department  
24 interprets the anticoncurrent cause clause.

25 A Yes, sir.

1 Q\*\*\*\*Okay. And this might've been asked before, but  
2 so I'm clear and for the record: Has State Farm --  
3 strike that. Has the department of insurance done  
4 anything to address this opinion with -- in approving or  
5 modifying or changing the anticoncurrent cause form in  
6 the State Farm policies?

7 MR. WEBB: Objection to form.

8 MR. STREETMAN: Zach, again, I object and  
9 instruct him not to answer due to it being part of the  
10 ongoing examination.

11 MR. WEBB: I'd also add an objection as counsel  
12 knows a decision in this case is on appeal, and I believe  
13 counsel is involved in that appeal. The issue is not  
14 finally decided.

15 MR. SCRUGGS: Okay. Well, I won't say it.

16 BY MR. SCRUGGS:

17 Q The -- let me ask the question this way: Did  
18 State Farm do anything from this date of this opinion,  
19 which I'll represent to you was in May 2006, until  
20 October 19, 2006, market conduct exam, to modify or  
21 invalidate or void the policy provision that Judge Senter  
22 just found ambiguous in this opinion?

23 MR. WEBB: Object to the form.

24 A I'm not sure what State Farm did.

25 BY MR. SCRUGGS:

1 Q\*\*\*\*I'm sorry. That was my question, and I strike  
2 the question. That's a fair answer. Did the department  
3 of insurance do anything from the date of this opinion,  
4 which I'll represent to you is late May 2006, to  
5 October 19, 2006, to invalidate or void or modify this  
6 anticoncurrent cause clause provision that Judge Senter  
7 held ambiguous?

8 MR. WEBB: Objection to the form.

9 A Matter is -- our attorneys looked at it, and  
10 the matter is on appeal.

11 BY MR. SCRUGGS:

12 Q Your attorneys --

13 A On appeal.

14 Q -- looked at it, and the matter is on appeal?  
15 I'm not sure I follow you. I apologize.

16 A That ruling, it's my understanding from -- our  
17 attorneys reviewed the document, our in-house attorneys  
18 reviewed that ruling, and reviewed the language. The  
19 matter is on appeal, so I don't think there's a final  
20 ruling regarding that particular matter yet.

21 Q But you and the department agree with the  
22 interpretation and the ruling that Judge Senter made on  
23 that clause. Is that right?

24 A Yes, sir.

25 Q So as the department of insurance, the one that



1 approves\*the forms, did you take any action from the time  
2 this opinion was issued till this market conduct exam to  
3 address this -- this ruling and modify or void the  
4 provision?

5 MR. WEBB: Objection to the form.

6 A No, sir.

7 MR. SCRUGGS: Okay. Exhibit 25, the infamous  
8 wind/water claim protocol. Sorry, Dan, I'm not getting  
9 as good to throw those across as I used to.

10 - - -

11 (Exhibit 25 marked)

12 BY MR. SCRUGGS:

13 Q Mr. Harrell, I marked as Exhibit 25 to your  
14 deposition a September 13, 2005, State Farm document that  
15 is commonly referred to as a wind/water claim handling  
16 protocol. Are you familiar with this document?

17 MR. WEBB: Before you answer that question,  
18 Mr. Harrell, I don't know if we picked up on the record  
19 the comment of counsel describing this as -- by use of a  
20 pejorative word in the introduction statements. I'd  
21 object to that as argumentative and move to strike. Go  
22 ahead and answer the question.

23 MR. SCRUGGS: Didn't mean to offend you, Dan.

24 A What was the question again, gentleman?

25 BY MR. SCRUGGS:

1 Q\*\*\*\*LetUme see if I can remember it.\*\*\*\*

2 MR. STREETMAN: I think do you recognize that  
3 document.

4 MR. SCRUGGS: Thanks, Jim.

5 A Yes, sir.

6 BY MR. SCRUGGS:

7 Q And this document being the wind/water claim  
8 handling protocol.

9 A Yes, sir.

10 Q When did you first see this document?

11 A After the commencement of the department's  
12 examination of State Farm.

13 Q The market conduct exam?

14 A Yes, sir.

15 Q Okay. I just have a couple questions about it,  
16 if you can turn the page for me. If you could, read for  
17 me this provision right here that's, I guess, highlighted  
18 and underlined.

19 A "Damage to Property Caused by Flood Waters with  
20 available Flood Policy. Where wind acts concurrently  
21 with flooding to cause damage to the insured property,  
22 coverage for the loss exist -- exists only under flood  
23 coverage, comma, if available. Period."

24 Q Thank you. That's inconsistent with the  
25 interpretation the department gives the anticoncurrent

1 cause clause. IsDthat correct?ROOFREAD\*\*\*\*\*

2 MR. WEBB: Objection to form.

3 MR. STREETMAN: That is subject to the  
4 examination. Clearly he's testified that he didn't see  
5 this until after that. Obviously this document, I think  
6 as you characterized it, as the famous or infamous or  
7 whatever. And, therefore, with regard to this document,  
8 I'm going to instruct him not to answer.

9 MR. SCRUGGS: Well, I don't have a single  
10 question about the market conduct exam. My question is  
11 simply a document that was generated two years -- excuse  
12 me, one year before the market conduct examination  
13 started, whether the instruction in this document is  
14 consistent with how, A, State Farm represented to the  
15 department it was interpreting the provision and, two,  
16 the department's own interpretation of the provision.

17 MR. WEBB: Objection to the form of the  
18 question.

19 BY MR. SCRUGGS:

20 Q Can you answer any of those questions?

21 MR. STREETMAN: I think he can, if I can -- if  
22 I can interject. I think if your question is, is the  
23 language -- without comment from him other than that, but  
24 it is language here on -- that he just read consistent  
25 with the department's interpretation and that's the

1 end -- if that's the question, I think yes, you can  
2 answer that --

3 MR. SCRUGGS: That's one part of the question.

4 MR. STREETMAN: Okay.

5 BY MR. SCRUGGS:

6 Q So let me -- I'm going to read it so we can  
7 keep the record consistent. This provision -- you just  
8 read it, I don't want to misstate it -- "Damage to  
9 Property Caused by Flood Waters with available Flood  
10 Policy. Where wind acts concurrently with flooding to  
11 cause damage to the insured property, coverage for the  
12 loss exists only under flood coverage, if available." Is  
13 that instruction inconsistent with how the department  
14 interprets the anticoncurrent cause clause?

15 MR. WEBB: Objection to the form.

16 MR. STREETMAN: You can answer that.

17 A That is not consistent with the department's  
18 interpretations.

19 BY MR. SCRUGGS:

20 Q Okay. Next question. Is that provision I just  
21 read and that you read previously inconsistent with what  
22 State Farm representatives represented to you how they  
23 were interpreting that clause prior to October 19, 2006?

24 MR. WEBB: Objection to the form.

25 MR. STREETMAN: You can answer that question.

1           A\*\*\*\*ThatGis not consistent with what State Farm  
2 representative represented to the Mississippi Department  
3 of Insurance.

4 BY MR. SCRUGGS:

5           Q     Thank you. And you would agree with me that  
6 that would be an improper interpretation of the  
7 anticoncurrent cause clause.

8           MR. WEBB: Objection to the form.

9           MR. STREETMAN: I -- I think that he's answered  
10 that question, and I'm uncomfortable with it going beyond  
11 that as it may touch upon findings in the examination. I  
12 think he's testified that's not consistent with the  
13 department's interpretation.

14           MR. SCRUGGS: So you're going to instruct him  
15 not to answer that one?

16           MR. STREETMAN: I am.

17           MR. SCRUGGS: Okay.

18           MR. STREETMAN: I mean, I think he's answered  
19 it.

20 BY MR. SCRUGGS:

21           Q     Okay. One more question on this. Up above  
22 where it says "Damage Caused by Excluded Water," if you  
23 could read for me that title and then that provision.

24           A     "Damage Caused by Excluded Water. When the  
25 investigation indicates that the damage was caused by

1 excluded water and the claim investigation does not  
2 reveal independent windstorm damage to separate portions  
3 of the property, there is no coverage available under the  
4 homeowners policy pursuant to the following language in  
5 Section 1 Losses Not Insured."

6 Q Okay. You would agree with me, Mr. Harrell,  
7 that in the case of a slab, for instance, there's often  
8 not any independent windstorm damage available.

9 MR. WEBB: Objection to the form.

10 A It'd be a case-by-case scenario. Each case  
11 would stand on its own facts.

12 BY MR. SCRUGGS:

13 Q Okay. Well, I appreciate that, but the  
14 question is: In a slab case there's often not any  
15 independent windstorm damage to separate portions of the  
16 property that can be determined, would there not?

17 A Again, I'd have to look -- it'd be a  
18 case-by-case adjustment of each claim.

19 Q You'd agree with me that in a claim  
20 investigation process it'd be important to determine  
21 whether wind caused any damage to a structure before the  
22 water got there, would it not?

23 MR. WEBB: Objection to form.

24 A Yes, sir.

25 BY MR. SCRUGGS:

1 Q\*\*\*\*Okay. And if wind did cause damage to a  
2 structure before water got there, it'd be covered  
3 regardless of what water did later.

4 MR. WEBB: Objection to form.

5 A The damage caused by the preceding wind.

6 BY MR. SCRUGGS:

7 Q Uh-huh.

8 A Yes, sir.

9 Q Okay. I think I'm finished with that one.

10 A Are you almost at a stopping point?

11 Q Let me -- I have one more -- when I say line of  
12 questions, just a couple questions, and then we'll be at  
13 a stopping point. Is that okay with you?

14 A That's fine.

15 Q You can -- I'm not going to tell you you can't  
16 take a break.

17 MR. STREETMAN: Stopping point as in you're  
18 going to be done with your questions or a stopping point  
19 to --

20 MR. SCRUGGS: Stopping point to bathroom,  
21 coffee break kind of stuff.

22 MR. STREETMAN: Okay.

23 MR. SCRUGGS: Sound good?

24 MR. STREETMAN: Yeah. How long do you expect  
25 to go --

1 \*\*\*\*\*MR. SCRUGGS: I think -- READ\*\*\*\*\*

2 MR. STREETMAN: -- Zach?

3 MR. SCRUGGS: -- I think after these couple  
4 questions, we rest...

5 THE WITNESS: Why don't we just go off and take  
6 a restroom break now because it looks like you have a  
7 pretty thick stack of --

8 MR. SCRUGGS: Yeah.

9 THE WITNESS: -- stuff, and I don't envision  
10 one question on that pile of stuff, documents.

11 MR. SCRUGGS: You'd be surprised, surprised how  
12 quick I am. That's fine. Let's take a break.

13 (OFF THE RECORD.)

14 MR. SCRUGGS: Exhibit 26 to your deposition.

15 - - -

16 (Exhibit 26 marked)

17 BY MR. SCRUGGS:

18 Q What I marked as Exhibit 26 to your deposition,  
19 Mr. Harrell, is a pleading filed by State Farm in the  
20 case Palmer versus State Farm Fire and Casualty Company.  
21 Are you familiar with this document at all?

22 A No, sir.

23 Q Okay. This document was filed on March 22,  
24 2007, and I'll just represent to you from the BCF filed  
25 stamp that that's when it was filed by State Farm. Can



1 you read for any bottom paragraph at the bottom of page  
2 8, starts with "this result."

3 A "This result, and State Farm's position, is  
4 supported by the State Farm homeowners policy issued to  
5 Plaintiffs. See homeowners policy attached as  
6 Exhibit "1", Section I-Losses Not Insured, par. 2." The  
7 whole paragraph or just that one --

8 Q Yes, sir.

9 A "The portion of the policy contained in Section  
10 I-Losses Not Insured Paragraph 2, is commonly referred to  
11 as the 'anti-concurrent causation' language. It is clear  
12 that the policy contemplates a situation where there may  
13 be two or more losses to property. Pursuant to the terms  
14 and conditions of the policy, irrespective of the timing  
15 of the losses, or the number of said losses, if but one  
16 of those causes of loss is excluded pursuant to Paragraph  
17 2, then the entire loss is excluded. Here, the reality  
18 of Plaintiffs' allegations mean that even if Plaintiffs  
19 were successful in proving that a specific portion of  
20 their property was damaged by wind to a particular degree  
21 prior to the arrival of...water, because water was in the  
22 chain of causation of the destruction of the property,  
23 including that portion damaged by wind, then the loss is  
24 not covered."

25 Q Okay. Two questions about what you just read.

1 Is what you just read inconsistent with how the insurance  
2 department interprets the anticoncurrent cause clause?

3 MR. WEBB: Before you answer that question, I  
4 want to object on two grounds. No. 1 is you've given him  
5 incomplete information related to the context of what the  
6 claim is made here because the plaintiffs in this case  
7 were claiming only a total loss and not a partial loss,  
8 and they were using the partial loss in an attempt to  
9 justify payment for the total loss but not for the  
10 partial loss. Entirely different context than which  
11 we're talking about here today. It's not fair to ask the  
12 witness that question.

13 Additionally, to the extent that you're making  
14 a representation that this is a position taken on behalf  
15 of State Farm, it's inconsistent with a position stated  
16 in the correspondence of March 31st. I think you full  
17 well know that that's not the case. But I'll just let it  
18 go at that.

19 MR. STREETMAN: Let me just make a comment for  
20 the record, because we're in new waters for me and him.  
21 The way I understand your question is not him to comment  
22 on the pleading or the validity of the pleading or the  
23 legal conclusions but just whether or not what he just  
24 read is consistent with what we've been talking about all  
25 afternoon with the department of insurance. Is -- is

1 that correct?UGH DRAFT -- NOT PROOFREAD\*\*\*\*\*

2 MR. SCRUGGS: That's correct.

3 MR. STREETMAN: Okay.

4 BY MR. SCRUGGS:

5 Q So the question --

6 MR. WEBB: And my objection is that he can't  
7 answer that question properly without understanding the  
8 full nature of the claims made by those claimants in that  
9 case.

10 MR. SCRUGGS: And I understand, and your  
11 objection is noted and --

12 MR. STREETMAN: And I'm going to allow him to  
13 answer it under that limited parameters that we just  
14 talked about.

15 MR. SCRUGGS: And what we'll do is, I'm going  
16 to ask the question again to keep the record consistent,  
17 and you just state that you objected based on the grounds  
18 you just objected to.

19 MR. WEBB: Yeah, that's fine.

20 MR. SCRUGGS: Sound good?

21 MR. WEBB: So the record will show it.

22 MR. SCRUGGS: Yeah, the record will definitely  
23 show your objection.

24 BY MR. SCRUGGS:

25 Q Question: The provision you just read in

1 Exhibit 26, which is a motion filed by State Farm, is  
2 that provision consistent with the department of  
3 insurance interpretation of the anticoncurrent cause  
4 clause?

5 A Let me answer it with what I -- what I think  
6 the document says, because I'm not sure -- the way I read  
7 this -- this paragraph is that you're saying if you had  
8 wind and water, then you can exclude the whole loss, if  
9 they came together. If that's what that is saying, then  
10 that's -- conflicts with the department's interpretation  
11 of anticoncurrent causation.

12 Q Okay. Well, and I don't want to be  
13 argumentative, and I'm really going to -- I'm going to  
14 move on after this one question. But you answered the  
15 question if that's what that means. You just read the  
16 provision.

17 A Yeah.

18 Q Is the provision you just read, what you read,  
19 consistent with how the department of insurance construes  
20 the anticoncurrent cause clause that it references?

21 MR. WEBB: Note my objections.

22 MR. STREETMAN: And rather than provision, can  
23 we say paragraph because provision --

24 MR. SCRUGGS: I'm sorry, the paragraph in the  
25 motion.

1 A\*\*\*\*Now I got totally confused. The ---\*\*

2 BY MR. SCRUGGS:

3 Q You can read it again if necessary.

4 A My understanding of the question is, is that  
5 consistent with the department's interpretation of the  
6 anticoncurrent causation. Was that the basis of your  
7 question?

8 Q (Nods head affirmatively.)

9 A My question is: It is not.

10 Q Okay. Second question: Is what you just read  
11 in this State Farm motion consistent with the  
12 representations that State Farm made to you and the  
13 department prior to October 19, 2006?

14 MR. WEBB: Same objections.

15 A No.

16 BY MR. SCRUGGS:

17 Q Okay. Thank you. You can put that away.  
18 Okay.

19 MR. WEBB: Did you mark this as an exhibit?

20 MR. SCRUGGS: I did. Somebody did.

21 THE COURT REPORTER: Twenty-six.

22 MR. STREETMAN: I bet she did.

23 MR. SCRUGGS: Okay. Exhibit 27.

24 - - -

25 (Exhibit 27 marked)

1 BY MR. SCRUGGS:H DRAFT -- NOT PROOFREAD\*\*\*\*\*

2 Q Exhibit 27 to your deposition purports to be a  
3 Mississippi Insurance Department Bulletin No. 2005-6  
4 filed September 7, 2005. Are you familiar with this  
5 document?

6 A Yes, sir.

7 Q Okay. Who drafted this document?

8 A It was a combination effort involving myself  
9 and others at the department.

10 Q What others?

11 A Probably Mark Haire would have assisted in the  
12 drafting of this document and other lawyers within the  
13 legal division.

14 Q Okay. Why was this bulletin written?

15 A One second. Let me read it real quick to  
16 refresh my memory. I apologize.

17 Q Sure. Go ahead.

18 A There were -- early on in the days \*\*CHECK  
19 HEATHER\*\* -- and early on in the days following the storm  
20 everybody was aware of the feeling, housing issues and  
21 all those wonderful -- those tragedies that everybody  
22 down there was being subjected to. You know, in the days  
23 following the storm, you know, there may have been a  
24 reason why somebody couldn't have their claim adjusted a  
25 day, two days, three days after the storm. But by

1 September that process should've been substantially  
2 addressed. You still had lots of, you know,  
3 inconveniences, and we understood that, from everybody,  
4 from the insurer's perspective, somebody trying to  
5 inspect the property, someone trying to still do recovery  
6 issues, whatever the case may be. But we were also  
7 receiving complaints from consumers regarding water  
8 damage, regarding the wind versus water and the -- being  
9 able to inspect the premises. That's what resulted in  
10 this, to make sure -- they issued it to make sure the  
11 companies realized that in our department's position that  
12 they needed to fully inspect the property before a  
13 coverage decision is made. You can't just blanketly say,  
14 "You're in a water surge area; therefore, we're not  
15 paying any claims in that area."

16 Q Okay. So this provision was drafted to make  
17 sure insurance companies weren't doing that kind of  
18 adjustment that you described?

19 MR. WEBB: Objection to form.

20 A Yes, sir.

21 MR. STREETMAN: You can answer.

22 A Yes, sir.

23 BY MR. SCRUGGS:

24 Q Okay. And I promise the reading will -- is  
25 about to stop, but if you could, read to me that

1 paragraph that starts with "in some situations."

2           A     "In some situations, there is either very  
3 little or nothing left of the insured structure and it  
4 will be a fact issue whether the loss was caused by wind  
5 or water. In these situations, the insurance company  
6 must be able to clearly demonstrate the cause of the  
7 loss. I expect and believe that where there is any  
8 doubt, that doubt will be resolved in favor of finding  
9 coverage on behalf of the insured. In instances where  
10 the insurance company believes the damage was caused by  
11 water, I expect the insurance company to be able to prove  
12 to this office and the insured that the damage was caused  
13 by water and not by wind."

14           Q     Okay. So under this bulletin, if an insurance  
15 company cannot clearly demonstrate the cause of the loss  
16 was water, then the department's directing the company to  
17 pay that claim. Is that fair to say?

18                   MR. WEBB: Objection to the form of the  
19 question.

20           A     Yes, sir.

21 BY MR. SCRUGGS:

22           Q     Okay. And similarly, according to this  
23 bulletin, the department's saying that if the insurance  
24 company has any doubt as to what caused a loss in  
25 Katrina, the department's directing the company to pay



1 that claim. Is that right?OT PROOFREAD\*\*\*\*\*

2 MR. WEBB: Same objection.

3 A If they can't prove that it was a -- excuse  
4 me -- excluded peril, then they need to pay it.

5 BY MR. SCRUGGS:

6 Q Right. And if -- and furthermore, is it fair  
7 to say that this document is saying that if the insurance  
8 company has any doubt as to what caused the loss, it  
9 should pay the claim?

10 A If they can't prove it, then they need to pay  
11 it.

12 Q No -- right. And I'm -- you testified to that.  
13 My question is somewhat different, and I'm just reading  
14 from this provision. This provision says, "I expect and  
15 believe that where there is any doubt, that doubt will be  
16 resolved in favor of finding coverage on behalf of the  
17 insured." So my question is: Is it bulletin directing  
18 the insurance companies that if they have any doubt as to  
19 the cause of a loss, they should pay the claim?

20 A Yes, sir.

21 Q And pursuant to this bulletin that you drafted  
22 with Mark Haire and others, would you agree with me that  
23 under this directive, if an insurance company had an  
24 engineering report that said a policyholder's loss was  
25 caused by wind, then it should pay that loss, should it

1 not? \*\*\*\*\*ROUGH DRAFT -- NOT PROOFREAD\*\*\*\*\*

2 MR. WEBB: Objection to the form of the  
3 question.

4 A Yes, sir.

5 BY MR. SCRUGGS:

6 Q Okay. And that would be true even if it got  
7 another report that said damage was caused by water.

8 MR. WEBB: Same objection.

9 A You'd have to look at each -- each report and  
10 find out why they're different.

11 BY MR. SCRUGGS:

12 Q Okay. But generally, you'd agree with me that  
13 if an engineering -- if an insurance company had a  
14 engineering report that said the damage was caused by  
15 wind, it should pay that claim.

16 A That's --

17 MR. WEBB: Same objection.

18 A That's part of the adjusting process. You look  
19 at the adjusters, look at the engineer. All those are  
20 factored in the company's decision to substantiate their  
21 case as to why it was wind or why it was water.

22 BY MR. SCRUGGS:

23 Q Right. And I don't know if that's exactly the  
24 answer to my question, but that's okay. We'll get there.

25 You would agree with me that if a company had a

1 engineering report that said the damage was caused by  
2 wind, then there's at least some doubt as to what caused  
3 the loss, and that claim should be paid.

4 MR. WEBB: Objection to form.

5 A Was there anything else -- I mean, you'd have  
6 to look at the entire file. If there's nothing else to  
7 rebut that. If they have another engineer, another  
8 adjuster that had a conflicting opinion, if that was what  
9 was in the file, then they need to -- my thought process  
10 is they need to pay the claim.

11 BY MR. SCRUGGS:

12 Q Okay. Even if there is a conflicting report?

13 MR. WEBB: Objection to form.

14 A If you have conflicting expert opinions, you  
15 need to address -- address those or find out why, get  
16 them resolved.

17 BY MR. SCRUGGS:

18 Q I understand. But if there were conflicting  
19 engineering reports on the cause of a loss, shouldn't the  
20 insurance company pay that loss?

21 MR. WEBB: Objection to form.

22 BY MR. SCRUGGS:

23 Q From the insurance company. The insurance  
24 company has in its possession and pursuant to its  
25 direction two engineering reports, and they conflict on

1 the cause of the loss. One says it's excluded, the other  
2 says it's covered. That claim should be paid, should it  
3 not?

4 MR. WEBB: Objection to form.

5 A I think they need to get the conflicting  
6 opinions addressed and resolved.

7 BY MR. SCRUGGS:

8 Q Okay. Well, the fact that they're conflicting  
9 opinions would indicate to you that there was some doubt  
10 as to the cause of loss, would it not?

11 MR. WEBB: Objection to form.

12 A Yes, sir.

13 BY MR. SCRUGGS:

14 Q Okay. What kind of punishment would a company  
15 receive if it violated the directive that you authored  
16 with other people in Bulletin No. 2005-6?

17 MR. WEBB: Objection to form.

18 BY MR. SCRUGGS:

19 Q What are the consequences of not following this  
20 bulletin?

21 MR. WEBB: Same objection.

22 A There -- if the company is not following the  
23 bulletin's regulations or statutes -- I mean, this is a  
24 bulletin issued. The bulletins may not carry the weight  
25 of law, just like attorney general opinions may not carry

1 the weight of law. The department relies on this  
2 document to insure that they're being paid pursuant to  
3 this bulletin. If they're not, then that's something the  
4 department -- excuse me -- would address, whether it's in  
5 finding out why they were not and, if they're not, taking  
6 whatever disciplinary action the commissioner deems best,  
7 whether that's penalties, whether that's making them  
8 reopen claims, whether that's fines, what that's  
9 suspension of licensing -- licenses. It is a myriad of  
10 options and penalties that could be there.

11 BY MR. SCRUGGS:

12 Q Okay. Well, what steps has the department of  
13 insurance taken to insure that this bulletin is complied  
14 with?

15 A Back in 2006 we addressed earlier the letter  
16 dated March -- I don't have it in front of me -- March  
17 something to Allen McGlynn to insure they were complying  
18 with it, and they responded back a few days later  
19 insuring us they were complying with this bulletin. And  
20 the department became concerned in -- later in 2006  
21 regarding whether they were or were not, and that's one  
22 of the reasons the department of insurance called the  
23 examination.

24 Q The market conduct examination?

25 A Yes, sir.

1 Q\*\*\*\*Okay. Has the insurance department filed any  
2 kind of amicus brief in the appeal of Tuepker versus  
3 State Farm, the opinion you just read that held that the  
4 anticoncurrent cause clause is ambiguous?

5 A No, sir.

6 Q Has it sought to intervene in any way or be  
7 heard on its interpretation -- it being the department of  
8 insurance interpretation -- of the anticoncurrent cause  
9 clause before the Fifth Circuit?

10 A No, sir.

11 Q And why is that?

12 A The department normally doesn't file amicus  
13 briefs in those matters. We haven't -- we haven't done  
14 so. We normally don't do so.

15 Q Okay. Well, the department of insurance  
16 construes and interprets the attorney -- excuse me, the  
17 anticoncurrent cause clause in a manner that you've  
18 testified to at length today. Is that correct?

19 A Yes, sir.

20 Q All right. And you do understand that the  
21 interpretation of the anticoncurrent cause clause is up  
22 on appeal to the Fifth Circuit in at least one case and  
23 perhaps several others.

24 A Yes, sir.

25 Q And neither you or anyone in the department

1 felt it necessary to voice to the court, "Hey, this is  
2 how the insurance department interprets this provision  
3 that is in litigation and up on appeal"?

4 MR. WEBB: Objection to the form.

5 A No, sir.

6 BY MR. SCRUGGS:

7 Q Okay. Has there been talk about trying to be  
8 heard before the Fifth Circuit on how this clause should  
9 be properly interpreted?

10 A There were discussions with the lawyers with  
11 the department regarding what the department can and --  
12 could and could not do regarding that issue.

13 Q And what was the determination?

14 A To not take any action at that time.

15 Q Okay. And I don't want to misstate your prior  
16 testimony, but would you agree with me that one of the  
17 jobs of the department of insurance is to protect the  
18 rights of the policyholders in the insurance contract  
19 process?

20 A Yes, sir.

21 Q And to insure that the policy provisions and  
22 forms that you approve are interpreted fairly and  
23 properly from the point of view of the policyholder.

24 A Yes, sir.

25 Q All right. And with those understandings, the

1 department of insurance hasn't tried to file anything  
2 with the Fifth Circuit to let the Fifth Circuit know how  
3 this clause that's at issue should be interpreted.

4 MR. STREETMAN: He's testified they haven't  
5 filed anything.

6 MR. SCRUGGS: Okay. Just making sure I'm clear  
7 for the record.

8 MR. STREETMAN: It can't be any clearer than  
9 they haven't filed anything.

10 BY MR. SCRUGGS:

11 Q Okay. Do you not think from you being the  
12 deputy commissioner of the department that it's important  
13 for the department to be heard on this issue?

14 A The department has made it very clear our  
15 position regarding that interpretation. We've issued  
16 bulletins, we've issued -- you may go back and you may  
17 even find press releases. There's -- there's articles in  
18 the paper regarding the department's position on this  
19 issue. I think everybody is very clear on the  
20 department's position on this issue.

21 Q And I understand and -- but you're a lawyer.  
22 Right?

23 A Yes, sir.

24 Q And the only way things get to the attention of  
25 a court or a court of appeal is through pleadings. Is



1 that fair to say?DRAFT -- NOT PROOFREAD\*\*\*\*\*

2 A Yes, sir.

3 Q All right. But -- and just clear for the  
4 record -- I don't want to keep on asking this -- the  
5 department of insurance hasn't filed anything stating its  
6 interpretation in court filings with the Fifth Circuit or  
7 the Southern District or any other court.

8 A We would not have filed anything in the  
9 Fifth --

10 MR. STREETMAN: Did -- have you or haven't  
11 you --

12 A No.

13 MR. STREETMAN: -- filed anything?

14 A No, we have not filed anything.

15 BY MR. SCRUGGS:

16 Q Thank you.

17 MR. STREETMAN: Are you through with this one?

18 MR. SCRUGGS: Yeah, yeah. Thanks. Try to  
19 short circuit some of this.

20 (OFF THE RECORD.)

21 BY MR. SCRUGGS:

22 Q You're correct --

23 MR. SCRUGGS: I'm sorry, back on the record.

24 BY MR. SCRUGGS:

25 Q I apologize for that, Mr. Harrell.

1           \*\*\*\*\*You're aware that sometime earlier this year  
2 State Farm announced that it was going to stop writing  
3 new homeowner's business on the -- in the state of  
4 Mississippi?

5           A     Yes, sir.

6           Q     Okay. And what was the reasons they gave for  
7 that decision?

8           A     The legal environment in the state of  
9 Mississippi.

10          Q     Can you be more specific?

11          A     Court cases, specifically the attorney general.

12          Q     Well, let's talk about court cases for a  
13 minute. What court cases?

14          A     They didn't specify. I assume the ones coming  
15 out of south Mississippi.

16          Q     Okay. The Broussard decision?

17          A     (Indicating).

18          Q     You don't know? Did they reference the  
19 opinions in Tuepker or Broussard as a reason for -- for  
20 pulling out?

21          A     Don't recall referencing any -- any one case.

22                 MR. SCRUGGS: Okay. Exhibit 27? Just a quick  
23 question, and we can move along. We got one more. You  
24 get a highlighted portion, Dan.

25                 MR. WEBB: All right.

1 \*\*\*\*\*ROUGH DRAFT -- - - -ROOFREAD\*\*\*\*\*

2 (Exhibit 28 marked)

3 BY MR. SCRUGGS:

4 Q This is an article titled Proposed rate hike on  
5 hold written by Natalie Chandler on May 13, 2007. Are  
6 you familiar with this article?

7 A Yes, sir.

8 Q Okay. If you can, turn to the second page of  
9 it and read to me the highlighted part right there.

10 A Okay.

11 MR. STREETMAN: Why don't you read by Zach's --

12 MR. SCRUGGS: Yeah, that might be easier.

13 A "To begin writing again in Mississippi, State  
14 Farm needs legal clarification on its policies, Supple  
15 said. The company and other insurers say their policies  
16 cover wind damage but not water, and that the policies  
17 exclude damage that could have been caused by a  
18 combination of both. Period."

19 Q And the next one. I'm sorry.

20 A The next highlighted section?

21 Q No, the next --

22 A That one?

23 Q This right here. I apologize. I didn't  
24 highlight it.

25 A "The company is appealing a case in which a

1 federal judge ruled State Farm must prove which element  
2 caused a home's destruction. Period."

3 Q Okay. This paragraph right here that you just  
4 read, that's consistent with the insurance bulletin you  
5 issued 2005-6, is it not?

6 MR. WEBB: Objection to form.

7 A Yes, sir.

8 BY MR. SCRUGGS:

9 Q All right. Read to me the highlighted  
10 paragraph after that provision.

11 A "'That's an example of something we need to  
12 clear up to move forward,' Supple said. 'If we don't get  
13 that, then it will be a consideration of -- then it will  
14 be a consideration of how certain that makes doing  
15 business in the state.'"

16 Q Okay. So -- and again, from reading this  
17 article and the provisions you just read, State Farm is  
18 appealing a provision that requires it to prove which  
19 element caused the loss. Is that fair?

20 MR. WEBB: Objection to --

21 A Yes --

22 MR. WEBB: -- the form of the question.

23 A Yes, sir.

24 BY MR. SCRUGGS:

25 Q Okay. But that ruling is consistent with the

1 insurance department's bulletin that you co-authored  
2 2005-6, is it not?

3 MR. WEBB: Objection to form.

4 A Yes, sir.

5 BY MR. SCRUGGS:

6 Q Okay. So is it fair to say that State Farm is  
7 saying that it's not going to write new homeowners  
8 coverage until that interpretation is overturned?

9 MR. WEBB: Objection to the form --

10 MR. STREETMAN: I don't think he can testify as  
11 to what State Farm is saying. Again, it's -- you know,  
12 this is a newspaper article. It says what it says. He's  
13 testified that this other part is consistent with the  
14 department of insurance's -- I just don't think -- and  
15 now I'm going to instruct him not to answer what State  
16 Farm's position is or isn't. I'm sure there's State Farm  
17 officials that you're going to ask that of.

18 MR. SCRUGGS: I'm sure -- I'm sure there are  
19 and I will.

20 BY MR. SCRUGGS:

21 Q But you just read a direct quote from a State  
22 Farm official that purports to say that they're not going  
23 to write new business until that interpretation is  
24 voided. And my question is: Is that how you read it?

25 MR. STREETMAN: You can --

1           \*\*\*\*\*MR. WEBB: Objection to form.\*\*\*\*\*

2           MR. STREETMAN: -- answer that. Is that how  
3 you read it?

4           A     Is that how I read the quote?

5 BY MR. SCRUGGS:

6           Q     Yeah.

7           A     Yes, sir.

8           Q     Okay. So you'd agree with me that it's not  
9 fair to just blame lawsuits or the courts for not writing  
10 new policies on the coast, wouldn't --

11           MR. STREETMAN: I'm not going to have him  
12 testify to what's fair or isn't fair and instruct him not  
13 to answer.

14 BY MR. SCRUGGS:

15           Q     Okay. Would that, in your opinion, as deputy  
16 commissioner of insurance be a proper reason to stop  
17 writing insurance on the coast or the state of  
18 Mississippi?

19           MR. WEBB: Objection to the form.

20           A     If what would be a proper reason?

21 BY MR. SCRUGGS:

22           Q     Not writing new coverage until the  
23 interpretation that the court and the department of  
24 insurance has promulgated is overturned.

25           MR. WEBB: Objection to the form.

1           A\*\*\*\*I don't think they have to have -- there's no  
2 statute mandating they have to write anywhere in the  
3 state of Mississippi.

4 BY MR. SCRUGGS:

5           Q     No, I understand.

6           A     They don't have to have a reason.

7           Q     I understand. But as the deputy commissioner  
8 of insurance, you can certainly make a determination on  
9 what a proper or improper reason for a company that  
10 you're regulating to not write new coverage, could you  
11 not?

12                   MR. WEBB: Objection to form.

13           A     I'm not aware of any statute that spells out  
14 the reasons they have to write it, so --

15 BY MR. SCRUGGS:

16           Q     Okay. So they can just do what they want?

17                   MR. WEBB: Objection to form.

18 BY MR. SCRUGGS:

19           Q     Mr. Harrell?

20                   MR. STREETMAN: I'm instructing him not to  
21 answer that.

22 BY MR. SCRUGGS:

23           Q     As deputy commissioner of insurance you can't  
24 answer that question?

25                   MR. WEBB: Objection to form.

1           \*\*\*\*\*MR. STREETMAN: On -- on my advice he can't.

2 BY MR. SCRUGGS:

3           Q     Okay. Has State Farm or any insurance company  
4 or anyone affiliated with an insurance company ever  
5 communicated to you or the commissioner, directly or  
6 indirectly, that it would stop writing in this state  
7 unless the department's claim handling directives were  
8 revoked or relaxed?

9           A     No.

10           MR. SCRUGGS: Okay. Y'all will be pleased to  
11 know that I think I'm finished with the ACC questions,  
12 and I just have one or two more lines of inquiry. So I  
13 think we'll be through by 5:00.

14 BY MR. SCRUGGS:

15           Q     Okay. Shifting gears. The mediation program.

16           A     Yes, sir.

17           Q     Okay. The first mediation program that I  
18 believe was instituted by the department in late 2005.  
19 Is that correct?

20           A     Sometime in the latter part of 2005.

21           Q     Okay. Did the department have any  
22 communications or dialogue with the insurance industry  
23 before it set up that mediation program?

24           A     We told them it was coming.

25           Q     Did you ask for a dialogue or input?



1 A\*\*\*\*Not to my knowledge.PROOFREAD\*\*\*\*\*

2 Q Okay. Dealing with that -- did that first  
3 mediation program that was instituted in late December of  
4 2005, is that still ongoing?

5 A Yes, sir.

6 Q Okay. And I understand and -- at least I think  
7 I understand, correct me if I'm wrong, there's a separate  
8 mediation structure that the department agreed to with  
9 the State Farm in March of this year or was that the  
10 same --

11 A No, sir, there's no separate mediation program.

12 Q It's the same.

13 A Yes, sir.

14 Q Okay. So the mediation -- so for purposes of  
15 the question, so I'm clear: There's one insurance  
16 department mediation program, and it was what was  
17 constituted in December 2005.

18 A No, sir. There's two mediation programs.

19 Q Oh, okay.

20 A You have the one that's being conducted on the  
21 non- -- what we call the non-litigation claims conducted  
22 in Hattiesburg where Southern Miss is donating us office  
23 space. That was implemented sometime in the latter part  
24 of 2005.

25 Q Okay.

1           A\*\*\*\*Sometime after that -- I want to say sometime  
2 in 2006. I don't have the dates in front of me -- Judge  
3 Senter contacted the department and asked us would we  
4 come visit with him to set up a mediation program for his  
5 lawsuits because he had seen and heard lots of great  
6 things about the mediation program. So we went down  
7 there and met with Judge Senter and talked to him about  
8 the mediation program in Hattiesburg, how it works and  
9 explained it to him. At a juncture he asked us would we  
10 set one up for him and the lawsuits filed in his court,  
11 and we did so.

12           Q     When did -- Judge Senter initiated that -- that  
13 meeting with you and the department?

14           A     Yes, sir.

15           Q     When was that meeting initiated?

16           A     I don't know off the top of my head.

17           Q     Well, help me out. You testified 2006. Was it  
18 summer of 2006?

19           A     I don't know off the top of my head without  
20 looking at the records when we implemented the -- or  
21 called it the litigation mediation program. If you have  
22 the dates of when that was implemented, then it was  
23 sometime prior to that, probably 30, 45 days before that  
24 is when the process started.

25           Q     Do you have any way of getting to me when you

1 had that initial meeting with Judge Senter about  
2 implementing the insurance department's mediation program  
3 to litigated claims in his court?

4 A I can check my records, and I can check with  
5 Judge Senter and ask him when did we first meet. He may  
6 have a better record than I do, but I'll be glad to  
7 check.

8 Q And I don't want you to guess or speculate, but  
9 I want -- I'm trying to get some area in here of  
10 approximation. Would it have been the summer of 2006?

11 A I don't know when -- I don't know when we  
12 started the -- I don't remember off the top of my head  
13 when we started the litigation mediation program. If you  
14 have the dates of when that regulation went into effect,  
15 then it would stand to reason that 35 to 40 -- 30 or 45  
16 days before that is when we started the communications  
17 with Judge Senter and his law clerks regarding his  
18 request to implement a mediation program for him.

19 Q Okay. The regulation, there was a regulation  
20 issued by the insurance department that put that in  
21 effect?

22 A That's my understanding, yes, sir.

23 Q Okay. Kind of like a bulletin that we were  
24 going through before?

25 A Yes, sir.

1 Q\*\*\*\*Okay. Do you know when that -- you don't know  
2 when that bulletin was issued?

3 A No, sir.

4 Q Okay. But that's something I could find by  
5 going to the insurance department's Web site?

6 A Yes, sir.

7 Q Okay. And that bulletin would've been issued  
8 after your meeting with Judge Senter of his insistence.

9 A Yes, sir.

10 Q Okay. Who called you -- how did -- tell me --

11 MR. WEBB: Excuse me. I'm sorry. Did you say  
12 at his assistance?

13 MR. SCRUGGS: Insistence.

14 MR. WEBB: Insistence. Okay.

15 MR. SCRUGGS: I don't know if you got that, but  
16 that's what I meant to say. Maybe both, I don't know.

17 BY MR. SCRUGGS:

18 Q The -- how was the initial conversation  
19 instituted? Who called you or who called who?

20 A Initially, I got a phone call from a state  
21 representative who's a lawyer. And I apologize. My  
22 memory -- should be on the westerly side of the state.

23 Q Be on the what?

24 A The westerly side of the state. She's a state  
25 representative that's also a lawyer.

1 Q\*\*\*\*Upshaw?DRAFT -- NOT PROOFREAD\*\*\*\*\*

2 A Yes, sir, Jessica Upshaw something. She has a  
3 hyphenated name. I apologize for her last name. She  
4 called and said, "Lee, call Judge Senter. Here's his  
5 cell number." Well, I don't make a preference --  
6 practice of calling federal judges. I never met Judge  
7 Senter prior to that time. I said, "Will you give me  
8 some more numbers?" "Here's his two law clerks; call  
9 them, then." I said okay, I feel more comfortable  
10 calling the law clerks versus a federal judge.

11 Q Who were the law clerks?

12 A Ronnie Cochran and Jerry -- Jerry Reed.

13 Q Okay. Did you know any of those gentlemen  
14 prior to that call?

15 A Never heard -- never had met them, never heard  
16 of them.

17 Q Okay. Proceed.

18 A We -- I contacted them, and we spoke over the  
19 telephone. I don't recall exactly who all was in the  
20 initial telephone -- telephonic discussions. And the  
21 gist of it is when could we come see the judge. You  
22 know, when a judge asks you to come see him, you tend to  
23 go see him when he wants you to see him. So we quickly  
24 rearranged our calendar.

25 The commissioner and I and maybe one of our

1 attorneys, I can't recall for sure, went down and visited  
2 with Judge Senter in his chambers and his law clerks and  
3 explained the program, how it worked, what it involved,  
4 and went through the -- you know, the whole program. And  
5 then we subsequently had subsequent follow-up meetings  
6 with him and some of our lawyers in telephonic  
7 conversations and ultimately brought in the American  
8 Arbitration Association who was running the program for  
9 us in Hattiesburg to also run this program for Judge  
10 Senter.

11 Q Okay. How many different meetings did you have  
12 with Judge Senter and his law clerks on this subject?

13 A I couldn't tell you. I don't recall. There  
14 weren't twenty, but they were greater than -- there was,  
15 you know, three, four, five, six, you know, multiple  
16 telephone conversations.

17 Q Tell me about what was generally discussed in  
18 these meetings.

19 A The judge wanted to learn how the program  
20 worked, and he wanted to find ways to get these lawsuits  
21 resolved. That was the -- you know, that's shortened,  
22 but that was the gist of all the conversations is to how  
23 he could do that.

24 Q Well, how did you tell him -- what did you tell  
25 him about how the mediation program worked?

1           A\*\*\*\*I explained -- I don't know if you tell Judge  
2 Senter anything, but I explained to him how the mediation  
3 worked in Hattiesburg, and we walked through it, you  
4 know.

5           Q     Well, walk through it with me.

6           A     Okay. The -- if the -- in this case in the  
7 Hattiesburg program, you know, if the insured wants it,  
8 he or she can request it. They can come with or without  
9 counsel. They can come in --

10          Q     Let me -- let me stop you right there. Was  
11 there an initial regulation that the insured could not  
12 have counsel with them?

13          A     I don't recall any such regulation.

14          Q     That was never the case?

15          A     I don't remember it.

16          Q     Proceed.

17          A     Then go in and they can present their evidence,  
18 they can present just like any other mediation, the  
19 insurance company questioner will present their evidence  
20 and then go back and forth just like any other mediation  
21 to try to get the claim resolved.

22                     In a federal courtroom litigation mediation it  
23 was going to have to work a little bit different in that  
24 it was our take that Judge Senter was going to have to  
25 motivate the lawsuits to go into mediation. His clerks

1 said, "You mean order?" Well, that's your word, but I  
2 think you can motivate them to go. And ultimately he --  
3 my recollection is he initially took a start of some  
4 random sampling and ordered -- I forget the first wave,  
5 but ordered X amount of lawsuits to go into mediation.

6 Q So it was the clerks' and the judge's idea to  
7 order litigated claims into mediation.

8 A Yes, sir.

9 Q Okay. Was there any discussion about -- in all  
10 these discussions you were having with the department --  
11 strike that. With all these discussions you were having  
12 with the court and his law clerks about the mediation  
13 program, did particular lawsuits brought by @@Prince's or  
14 Scruggs Katrina Group or other law firms come up?

15 A The judge was in the first couple of meetings,  
16 and he was at the end. But in between all the  
17 discussions were done with his law clerks. So he  
18 wasn't -- he wasn't involved in any every single  
19 discussion. I mean, he's not going to have @@ there. I  
20 don't recall specifically any one particular plaintiff or  
21 defendant being discussed.

22 Q You don't recall any discussions about any of  
23 the cases the Scruggs Katrina Group had?

24 A I don't recall any of the specific -- any one  
25 case that you guys had versus any other plaintiff



1 attorney.\*\*ROUGH DRAFT -- NOT PROOFREAD\*\*\*\*\*

2 Q Well, aside from any particular one case, about  
3 the law firm in general, that the law firm had cases.

4 A I mean, we knew -- everybody knew who the  
5 lawyers were.

6 Q But no specific discussion on this firm's got  
7 this many cases or we're going to send this many cases  
8 from that firm into mediation, anything like that?

9 A No, sir.

10 Q Okay.

11 A Judge Senter picked who he -- who he sent in.

12 Q Okay. And the best of your recollection, this  
13 was occurring throughout the process -- this process was  
14 occurring, these discussions, about a mediation program  
15 that eventually was set up in 2006?

16 A Whatever the date is. You can look -- I don't  
17 know off the top of my head.

18 Q That's fair. That's fair. Do you or the  
19 commissioner have continuing conversations with the court  
20 or the court's law clerks about the mediation program?

21 A We have -- have meetings, status reports. I go  
22 down there and check with the law clerks to see how it's  
23 going, what can be done to improve it. Triple A has, you  
24 know, telephonic discussions and/or meetings with the law  
25 clerks as well. We recently met in the last -- sometime

1 in the last few months to -- the judge asked us to commit  
2 a non-binding arbitration program.

3 Q What is non-binding arbitration?

4 A It is -- just like a normal arbitration process  
5 that you would be familiar with, but in this context the  
6 arbitrator would issue a -- a ruling that's not binding.  
7 You would say company X, you pay initially -- whatever  
8 you pay. Plaintiff you wanted Y. I think it is this. I  
9 think this is what this case is worth, and this is my  
10 opinion. This is my order, whatever he or she couches it  
11 as. And they would give that to both parties. Both  
12 parties can accept it; both parties can reject it. But  
13 it gives both parties an opportunity to have a mutual  
14 third party to evaluate the set of facts presented to  
15 both sides and give an opinion of what they think the  
16 case is worth.

17 Q Well, what's the difference between that and  
18 mediation, non-binding mediation?

19 A The mediation, the mediator in most situations  
20 doesn't issue any kind of written document. And in most  
21 situations, he does not say -- or she say -- I think your  
22 case, Mr. Scruggs, is worth, you know, \$10 million or  
23 \$10. In non-binding arbitration, the arbitrator would  
24 issue an opinion.

25 Q Is this non-binding arbitration program been

1 instituted yet?H DRAFT -- NOT PROOFREAD\*\*\*\*\*

2 A Yes, sir.

3 Q And tell me about that. You had started -- is  
4 this something that is being done at the insistence of  
5 Judge Senter?

6 A The initial idea came from Judge Senter. The  
7 mediation program, according to him, it was working  
8 great, and he wanted to try other ideas and other ways to  
9 move some of this litigation out of his courtroom, get it  
10 resolved and get -- you know, get the two parties to  
11 agree on something. And that was a process that was out  
12 there. The department of insurance cannot -- we have a  
13 statute that allows us to do non-binding type resolution  
14 disputes. We could not do binding, and the court's  
15 opinion is that they could not do binding arbitration.

16 Q Okay. Let me ask you about this non-binding  
17 arbitration -- excuse me, non-binding -- yeah, it'd be  
18 non-binding arbitration. If the mediator or the arbiter  
19 issues an opinion on what he thinks this case is worth  
20 and one of the parties doesn't like it, then that's the  
21 end of it, is it not?

22 A End of the arbitration, yes, sir.

23 Q All right. I mean, does that -- does that  
24 arbiter's non-binding opinion go to the court?

25 A I'm not sure if Judge Senter sees his orders or

1 not. \*\*\*\*\*ROUGH DRAFT -- NOT PROOFREAD\*\*\*\*\*

2 Q Okay. So, in effect, this non-binding arbiter  
3 issues an opinion of what he thinks it's worth, and  
4 unless both parties agree to it, then there's nothing to  
5 it.

6 A Correct.

7 Q Okay. And it's your testimony this process has  
8 been instituted by the court?

9 A Yes, sir, that's my understanding.

10 Q Okay. How many cases have been sent to this  
11 non-binding arbitration?

12 A I'd have to refer you to Judge Senter.

13 Q Okay. When was this non-binding arbitration  
14 program instituted?

15 A Again, I can get you specific dates. It should  
16 be out on our Web page, but it was sometime -- I want to  
17 say sometime earlier this year, in 2007.

18 Q Is this for both litigated and non-litigated  
19 claims?

20 A Yes, sir.

21 Q Okay. Sometime in -- and, I'm sorry, tell me  
22 the date?

23 A Sometime earlier 2007 is the best of my  
24 recollection.

25 Q Would it have been before March 1, 2007?

1 A\*\*\*\*I don't know.-- NOT PROOFREAD\*\*\*\*\*

2 Q But the mediation program for non- -- strike  
3 that. The mediation program for litigated claims was  
4 instituted sometime in 2006.

5 A Yes, sir.

6 Q Okay. Why was the AAA, the Triple A, chosen to  
7 run the insurance department's mediation program that was  
8 subsequently adopted in some way, shape, or form by the  
9 court?

10 A The department -- when the department decided  
11 to implement a mediation program, the department did not  
12 and does not have sufficient staff and resources to run  
13 the mediation program. The department interviewed  
14 several different entities, one out of Florida --

15 Q What was the name of that entity?

16 A I don't recall off the top of my head. They  
17 did -- they did some of the mediation programs for the  
18 Florida Department of Insurance in previous hurricanes.  
19 We also interviewed some folks out of south Louisiana. I  
20 think it was JAM or JAR or something. I forget their  
21 acronym, that were affiliated with some lawyers here in  
22 Mississippi as well. And we also interviewed Triple A.  
23 And then maybe -- there may be one other applicant who we  
24 spoke to regarding their -- what they could bring to the  
25 table for this. And an ultimate decision was made to go

1 with the Triple A.RAFT -- NOT PROOFREAD\*\*\*\*\*

2 Q Okay. Did the -- you're a lawyer barred in the  
3 state of Mississippi. Right?

4 A Yes, sir.

5 Q Okay. Did you or anyone in the department of  
6 insurance in conducting this -- these interviews talk to  
7 the Mississippi Bar about the mediation program or the  
8 mediators that it had available to it?

9 A I personally didn't, but lawyers at the  
10 department did.

11 Q Okay. And what was the sum and substance of  
12 that interview or inquiry?

13 A I wasn't in there, but they contacted the bar  
14 regarding how somebody gets on the state bar  
15 association's list of mediators.

16 Q And what? And what came of it?

17 A I wasn't -- I wasn't in the phone call. They  
18 contacted the state bar association, somebody did in the  
19 legal department, talking about the mediation.

20 Q But the decision was made to use Triple A.

21 A Yes, sir.

22 Q And who made that decision?

23 A It was a consensus and recommendation upon all  
24 parties at the department involved.

25 Q In the department?

1 A\*\*\*\*Yes, sir.AFT -- NOT PROOFREAD\*\*\*\*\*

2 Q Okay. Did anyone look into the Triple A's  
3 affiliation or connection with the insurance industry  
4 before that selection?

5 A No, sir.

6 Q Are the Triple A arbiters that are used in the  
7 insurance department's mediation all from Mississippi?

8 A Best of my knowledge, they're all licensed  
9 lawyers here in Mississippi.

10 Q If someone were to participate in an insurance  
11 department's mediation program for either litigated or  
12 non-litigated claims, do the parties have a choice on who  
13 that mediator would be?

14 A The regulation spells it out. Like I said, I  
15 haven't looked at it in a while, but the best of my  
16 recollection -- and I'd defer -- defer to the regulation  
17 itself. But the Triple A -- when they send it out,  
18 there's a process and -- out there as to how they come up  
19 with the actual mediator. And I'd have to go back and  
20 look at the actual regulation, make sure that that's --  
21 my testimony would be accurate.

22 Q Okay. Well, and I certainly want that. But do  
23 the parties have any choice on who their mediator is  
24 under this insurance department mediation?

25 A Yes, sir. If they have a objection or a

1 conflict, then the regulation tells them to state it to  
2 Triple A.

3 Q Well, what if -- what if the objection or  
4 comment is, "We want to choose our own mediator, we don't  
5 want somebody the AAA is sending down," what do they do  
6 then?

7 A I don't believe, best of my knowledge, we've  
8 ever had a issue. We go with the list of mediators that  
9 are on the list, and that's who we go with. If somebody  
10 wants to use their own mediator, there's no prohibition.  
11 They can go out and do their own private mediation.

12 Q I understand. You can always elect a private  
13 mediator. But often -- and you're a lawyer. Often  
14 lawyers on opposing sides like to choose a mediator that  
15 they both know.

16 A Uh-huh.

17 Q So my question is: Do lawyers in non- --  
18 excuse me, in litigated claims -- or the parties, I  
19 should say, have a choice on who the AAA sends down or is  
20 it just take this person or go to private mediation?

21 A If they have a recommendation, if they have an  
22 objection, then they can voice it. The department --

23 Q What would happen if they objected?

24 A Triple A would evaluate it. The department is  
25 not involved in picking and choosing and assigning



1 mediators to each case.-- NOT PROOFREAD\*\*\*\*\*

2 Q No, I understand. And I didn't -- I wasn't  
3 trying to insinuate they did. But I guess my question is  
4 of Triple A, if Triple A said this is the mediator for  
5 your case -- I assume that's the a process -- and one of  
6 the parties says, "I don't want to use that mediator,"  
7 what -- what can that party do?

8 A That mediator would be replaced with another  
9 mediator.

10 Q It would?

11 A Yes, sir.

12 Q Okay. So if one party objects to the mediator  
13 involved for any reason, just says, "I don't want to use  
14 him or her," then another one is put in its place?

15 A Triple A evaluates the objection and makes a  
16 decision.

17 Q Well, what if Triple A doesn't think that  
18 that's a valid objection or think that -- doesn't find  
19 the lawyer's reason for wanting a different mediator  
20 credible? Then they still have to use them?

21 A I'm not aware that ever happened.

22 Q Well, what if it did happen?

23 A We'd have to address it and look at it.

24 MR. WEBB: Objection to form.

25 BY MR. SCRUGGS:

1           Q\*\*\*\*Okay. I don't want to misstate your prior  
2 testimony, but is it your testimony that you have  
3 periodic updates with either Judge Senter or his clerks  
4 on the status of insurance department's mediation  
5 program, both for non-litigated claims and the claims  
6 that are before Judge Senter?

7           A       Judge Senter wouldn't be -- his law clerks  
8 wouldn't be involved in the ones that aren't in his  
9 courtroom. But we get status reports from Triple A, and  
10 then at times we meet with Judge Senter's law clerks to  
11 see how is it going, what can we do to -- new ways, new  
12 ideas can we come up with and implement to try to get  
13 these claims resolved.

14          Q       Well, let me ask my question this way: What  
15 role does department of insurance -- strike that. What  
16 role does the department of insurance have in the  
17 court-ordered mediations of litigated claims before Judge  
18 Senter?

19          A       We're not assigning the cases. We're not  
20 picking the cases. We're not picking the mediators s.  
21 We're using our regulation to run the program pursuant  
22 to, you know, the regulations that we adopted.

23          Q       So the mediation program for litigated claims  
24 before Judge Senter is being run pursuant to the  
25 department of insurance guidelines.

1 A\*\*\*\*Yes, sir.AFT -- NOT PROOFREAD\*\*\*\*\*

2 Q Are these status reports that you're updating  
3 the court on, are they a matter of public record?

4 A Most time it's just a face-to-face meeting with  
5 them, whenever I'm on the coast, sit down with the law  
6 clerks.

7 Q Okay. Which law clerk do you mainly meet with?

8 A Whichever one is there. Either Mr. Reed or  
9 Mr. Cochran.

10 Q Okay. What -- is there any way -- is there any  
11 record for me to look at to determine how many claims  
12 have settled in the department of insurance mediation  
13 program, both the litigated and non-litigated, compared  
14 to the number of claims that were submitted to mediation?  
15 Do you follow my question?

16 A Yes, sir. That's usually put out on our Webb  
17 site as we get new numbers on a weekly or every other  
18 week, every third week basis. Whenever we get numbers.

19 Q Do you include in your numbers the litigated  
20 claims that are ordered to mediation pursuant to Judge  
21 Senter?

22 A We break them out. Separate categories.

23 Q But that would be a category. Judge Senter's  
24 order of mediations would be on your Web site?

25 A Yes, sir.

1 Q\*\*\*\*Okay. So I could go look on that Web site.

2 A It's my understanding it's out there. If it's  
3 not, let Mr. Streetman know, and we'll be glad to get you  
4 that --

5 Q No, I just want to be able to go look.

6 A Yeah. My understanding is -- I haven't been  
7 out there lately.

8 Q To the Web site?

9 A I'm not looking at that issue.

10 Q Okay. And does it have both the number of  
11 claims that have settled in mediation and the number of  
12 claims that have not?

13 A Yes, sir.

14 Q So I could look at the total number of people  
15 that participated in the mediation program and the total  
16 number of people that have settled in that mediation  
17 program.

18 A That's my understanding. To make it easy,  
19 tells you how many signed up --

20 Q Yeah.

21 A -- how many have been resolved, how many are  
22 not resolved, and the resolution percentage.

23 Q Both for the department's mediation program and  
24 Judge Senter's.

25 A Yes, sir.

1 Q\*\*\*\*Does the Web site list the amount of dispute  
2 between the settled claims and the non-settled claims?

3 A No, sir.

4 Q Is there any way for me to get that  
5 information?

6 A We don't have that information. We don't track  
7 it.

8 Q So if I was an attorney trying to determine  
9 whether this is something I wanted to do or recommend my  
10 clients to do, I wouldn't have any way of finding out the  
11 amount of dispute that was involved in the claims that  
12 settled in these mediations and those that did not.

13 A That's correct.

14 Q Okay. And similarly, is there any listing of  
15 the policy limits of the claims that settle in these  
16 mediations as opposed to the policy limits of the claims  
17 that did not settle in mediation?

18 A No, sir.

19 Q Okay. I'd have no way of getting that  
20 information.

21 A No, sir.

22 Q And the department doesn't have that  
23 information.

24 A Department does not have it.

25 Q Okay. And similarly, is there any kind of way

1 I can learn from this Web site or otherwise the estimated  
2 damages of the settled claims in these mediations as  
3 opposed to the claims that didn't settle?

4 A No, sir.

5 Q Department doesn't have that information.

6 A No, sir.

7 Q Okay. And is there any information about the  
8 policy limits or the estimated damages of the non-settled  
9 claims in these mediations?

10 A No, sir.

11 Q Okay. Don't you think that would be good  
12 information to have for someone to judge whether this  
13 mediation program was really working or not?

14 A See, I think you can look at the results and  
15 see that -- that it's working.

16 Q No, I understand, and I'll look at -- I will  
17 look at the results. But it'd be important -- don't you  
18 think it'd be important for someone to know how much was  
19 in dispute and how much these claims were settling for  
20 relative to how much was in dispute?

21 A It's a case-by-case response. I don't think  
22 you can make a blanket approach saying -- saying that.  
23 It's a case-by-case analysis. You got to look at each  
24 of -- each of your cases.

25 Q I know, and I don't -- I appreciate that. But

1 I guess my question a little more fundamental. Don't you  
2 think it would be helpful to people that are looking at  
3 this program to determine what these claims are really  
4 settling for compared to how much is at issue?

5 A We're not tracking that information. We don't  
6 have it, so --

7 Q I understand you don't have it, but don't you  
8 that would be useful information to have?

9 A Don't know.

10 Q You don't know?

11 A It's not something that -- it's not something  
12 we have, not something we're tracking regarding how much  
13 the claim did or didn't settle for, how much the insured  
14 asked for, how much the company was willing to pay.

15 Q Well, you would agree with me that if the  
16 average amount of money that these claims were settling  
17 for, the successful claims, was like 5-, \$10,000 and the  
18 amount of dispute on the non-settled claims was 50-,  
19 \$60,000, that'd be something important for people to  
20 know, wouldn't it, to track the success of this program?

21 A If they don't --

22 MR. WEBB: Objection to form.

23 A -- want to settle -- I don't -- I'm not  
24 officially answering you because we don't have the data.  
25 I'm not sure what the consumer would or would not find

1 helpful in that matter when they go to mediation.

2 Q Okay.

3 MR. STREETMAN: I'm sorry, but I'm going to  
4 have to take another break. I got to arrange --

5 MR. SCRUGGS: Yeah, that's probably --

6 MR. STREETMAN: -- I got -- I got to arrange  
7 for people to be here.

8 MR. SCRUGGS: Yeah. And I apologize. Time did  
9 run. I got a couple answers that I wasn't expecting to  
10 led to questions I really wasn't -- I apologize, I wasn't  
11 anticipating, but I do have a couple more on this, and  
12 then I think we can wrap up pretty quick. But we might  
13 go a little past 5:00.

14 MR. STREETMAN: Okay. A little past 5:00 being  
15 a little past 5:00 lawyer time or a little past 5:00  
16 regular folk time?

17 MR. SCRUGGS: Let's say 5:15. And I will do  
18 everything in my power to make sure that happens.

19 (OFF THE RECORD.)

20 MR. SCRUGGS: Back on the record.

21 BY MR. SCRUGGS:

22 Q We were talking about the mediation program,  
23 Mr. Harrell. The line of questioning I think we were  
24 finishing was what information was and was not available  
25 about the mediation program?



1 A\*\*\*\*Yes, sir.AFT -- NOT PROOFREAD\*\*\*\*\*

2 Q And did Judge Senter or the law clerks in the  
3 discussions you had with him in preparation for setting  
4 up the court's mediation program that I believe was going  
5 to be supervised by the department of insurance and the  
6 AAA, did they ask any of the questions I asked about the  
7 average amount of claims that were settled -- strike  
8 that. I can ask that a lot better than I did.

9 In y'all -- in you and Commissioner Dale's  
10 conversations with the court and his two law clerks  
11 regarding the establishment of a mediation program or the  
12 use of the insurance department's mediation program, did  
13 they ask you any questions or seek any information about  
14 the amount of dispute of the settled claims versus the  
15 non-settled claims?

16 A I don't remember any discussions, no.

17 Q They didn't ask any I information about what  
18 the amount of dispute or the policy limits or estimated  
19 damage were for settled claims versus non-settled?

20 A No, sir.

21 Q Okay. What protections are in place,  
22 Mr. Harrell, under either the insurance department's  
23 mediation program or the one adopted by the court to  
24 insure that the mediation is done in good faith?

25 A The intent is that it's done in good faith. As

1 to what authority does the commissioner or\*the court have  
2 to make a ruling that somebody was not negotiated in good  
3 faith, I don't -- I don't see where either party really  
4 has that jurisdiction.

5 Q Right. So, I mean, for instance, if the  
6 insurance company came into a mediation either for the  
7 non-litigated claims or the litigated claims, said,  
8 "We're just offering \$1 and that's it," is there anything  
9 that can be done?

10 A Not from -- I'm not aware of anything.

11 Q Okay. You would agree with me that if an  
12 insurance company came in the mediation and took a  
13 hardline position like that, hypothetically, that we're  
14 going to offer \$1 or we're got going to offer anything,  
15 that there's nothing that the medication -- excuse me,  
16 there's nothing that the mediator or the department of  
17 insurance or the AAA or the court could do to punish or  
18 otherwise oversee that process.

19 MR. WEBB: Objection to the form.

20 A I'm not sure what -- what authority the court  
21 could and couldn't have. If the court is monitoring it  
22 independently, I think of us watch and see what cases are  
23 resolved, tracking other dismissal orders. If the  
24 department was to see, whether it's -- you know, you hear  
25 the same argument from the insured's perspective. If the

1 insured wanted \$3 million on a \$100,000 policy and  
2 wouldn't budge off 3 million, there's also nothing the  
3 department could do in that category either.

4 Q Why -- why did you bring that up example?

5 A That's just a number.

6 Q Have you -- have you had any reports that  
7 insureds have been unreasonable like that in mediations,  
8 either litigated or non-litigated?

9 A Well, no, just using that as an example. I  
10 mean, whether --

11 Q No, I under- --

12 A -- 10 million or \$1 or \$50. It's just an  
13 example. I just chose --

14 Q No, I understand.

15 A -- out of the sky.

16 Q I understand. My question was more  
17 fundamental. Let me ask it this way: Has the department  
18 gotten reports, either on the litigated claims or the  
19 non-litigated claims, that insurance companies were being  
20 unreasonable or lowballing in the mediations?

21 A We've heard about both sides in both the  
22 litigation and the non-litigation groups.

23 Q Well, who do you hear that from?

24 A Whether it's insureds, whether it's insurance  
25 companies, we're hearing it from -- from all sides.

1 Q\*\*\*\*So you get -- you being the department of  
2 insurance -- get status updates on the progress of the  
3 litigated claims that are in mediation pursuant to Judge  
4 Senter's orders?

5 A Not a status report. It's couched as some  
6 written document. We get a document showing how many  
7 have been requested, how many have been resolved, how  
8 many didn't resolve, and what's the resolution rate for  
9 both programs. There's not a written documentation  
10 coming in, you know, from some insured or some insurance  
11 company -- I'm misstating. That -- that's -- we've heard  
12 complaints from both sides, whether you're the insurance  
13 company or whether you're the insurance -- whether you're  
14 the insured, complaining about different issues at  
15 different times.

16 Q Okay. What about the mediators, do you get  
17 reports from the mediators about how particular  
18 mediations are going, both in the litigated and  
19 non-litigated claims?

20 A No, sir.

21 Q Okay. You would agree with me that there's no  
22 downside for an insurance company or if you want to use  
23 the example of an insured -- well, strike that. Let me  
24 answer -- ask it in two parts just to be fair. You would  
25 agree with me that there's no downside in these

1 mediations, both the litigated and the non-litigated  
2 claims, for an insurance company to come in with a  
3 lowball offer. There's no downside, there's -- to them  
4 doing that, is there?

5 MR. WEBB: Objection to the form of the  
6 question.

7 A I'm not sure what you're calling downside.  
8 It's probably not going to get resolved, and they're  
9 going to have to pay the -- pay the defense attorney and  
10 all -- and the mediator. I mean, the benefit of the  
11 mediation program, whether it's in this program or any  
12 other mediation program, is to try to get the dispute  
13 resolved.

14 Q But there's no -- when I say no downside,  
15 there's no consequence from the AAA or the court or the  
16 insurance department if an insurance company took that  
17 position, is there?

18 A We haven't seen it. If we were to start seeing  
19 that with companies or a company would come in and start  
20 "No, I'm giving you zero, zero, zero, zero," that's  
21 something the department would have to investigate to see  
22 what action we could take.

23 Q Are you familiar with the McIntosh mediation --  
24 strike that. Wrong Mc. Have you -- are you familiar  
25 with the McFarland mediation that was conducted pursuant

1 to the insurance department's mediation program?

2 A No, sir.

3 Q You've never seen anything on the news about  
4 it?

5 A I'm aware there's a commercial, but that's the  
6 extent of my knowledge of it.

7 Q Have you looked into what's been said on these  
8 commercials?

9 A I don't pay any attention.

10 Q You don't -- you didn't try to determine  
11 whether what those people were saying about their  
12 experience in mediation was true or not true?

13 A No, sir.

14 Q Okay. But your testimony is that you don't  
15 know of any examples of insurance companies going into  
16 mediations and offering zero.

17 A I'm not saying it didn't happen. I'm saying  
18 off the top of my head I'm not aware of any instances  
19 that happened. It probably did, but I'm not aware of  
20 any.

21 Q And what could the department, the AAA, or the  
22 court do if that situation did occur?

23 A I can't address what power Judge Senter has.  
24 He has a whole different avenue of resources available to  
25 him as a federal judge. If the department got into the

1 process and saw companies not, you know, what is -- you  
2 know, negotiating in good faith, what is that? That's a  
3 @@ -- but if we're seeing companies coming in and just  
4 zeroing everybody out, that would be something the  
5 department would not to look at and sit down and try to  
6 figure out ways to address it because the intent is to  
7 get the claims resolved so Mississippi can continue our  
8 recovery and rebuilding effort.

9 Q Would you agree with me that it would be more  
10 effective to mediate claims in bulk as opposed to on a  
11 case-by-case basis?

12 A What do you mean, in bulk?

13 Q I mean insurance company mediate all the cases,  
14 not just one by one on the -- strike that. Let me ask it  
15 a better way because actually that question is a little  
16 confusing. On the litigated claims, would you agree with  
17 me that it's better for the insurance companies to  
18 mediate all the claims a particular law firm might have  
19 as opposed to just mediating on a case-by-case basis?

20 A You mean do one giant mediation for every case  
21 that John Doe plaintiff attorney has at one time? Is  
22 that your question?

23 Q Yeah.

24 A I'm not sure how you would do that, because  
25 each case has to stand on its -- on its own set of facts.

1 Q\*\*\*\*What makes you say that?FREAD\*\*\*\*\*

2 A Each set of facts are different from location  
3 to location, residence --

4 Q How many hurricanes did we have?

5 A Best of my knowledge, one.

6 Q And what was involved in that hurricane?

7 A You had different wind in different places,  
8 different water surges in different places, different  
9 building structures, different elevations.

10 Q What's your basis of saying there was different  
11 wind and water elevations at different places?

12 A That's my opinion of being down there and  
13 reading what I've read in all the different news media  
14 accounts.

15 Q Any particular ones that come to mind?

16 A No, sir.

17 Q Did you attend the -- are you all right?

18 A Yes. Back is just getting sore.

19 Q Did -- I'll try to fix that. Did you attend  
20 the -- Judge Senter's status hearing on the Woullard and  
21 Guice class action settlement proposals in end of  
22 February 2007?

23 A Yes, sir.

24 Q Who did you attend that with?

25 A Myself, Christina Kelsey, and Jimmy Blissett.



1 Q\*\*\*\*The last person?NOT PROOFREAD\*\*\*\*\*

2 A Jimmy Blissett.

3 Q Does Jimmy Blissett work for the department?

4 A Jimmy Blissett is the gentleman running the  
5 State Farm examination.

6 Q Why would Jimmy Blissett have been with you at  
7 that mediation -- excuse me, at that settlement  
8 conference?

9 A We wanted to go listen and see what was said at  
10 the hearing.

11 Q Okay. Did the insurance -- but I'm --  
12 particularly Mr. Blissett, what would be his reason for  
13 going along on something like that?

14 MR. STREETMAN: I'm going to object because  
15 that has to do directly with the examination process.

16 BY MR. SCRUGGS:

17 Q Well, is Mr. Blissett a lawyer?

18 A No, sir.

19 MR. SCRUGGS: Okay. So you're instructing him  
20 not to answer?

21 MR. STREETMAN: Yeah.

22 BY MR. SCRUGGS:

23 Q Y'all three went down there together?

24 A Yes, sir.

25 Q Okay. And you stayed for both hearings?

1 A\*\*\*\*Yes, sir.AFT -- NOT PROOFREAD\*\*\*\*\*

2 Q Okay. And what was your reason for going down?

3 A Wanted to see what took place in the hearings.

4 Q Anything more specific than that?

5 A No, sir.

6 Q Okay. Did you meet with anybody there in  
7 particular or the court or any of its clerks during that  
8 hearing?

9 A Yes, sir.

10 Q Okay. Tell me about that.

11 A Met with Judge Senter's law clerks after the  
12 hearing.

13 Q Before the hearing, during it, or after?

14 A After.

15 Q Okay. And what did y'all discuss?

16 A The mediation program.

17 Q Did y'all discuss anything about the goings on  
18 and the arguments at the hearing that you just attended?

19 A I don't recall any.

20 Q You don't recall?

21 A I don't recall any discussions.

22 Q None at all?

23 A I'm sure it came up. Any specifics as to what  
24 was and wasn't said I just don't remember.

25 Q Okay. Did you leave that hearing with any of

1 Judge Senter's law clerks?NOT PROOFREAD\*\*\*\*\*

2 A I don't remember leaving with them. We may  
3 have. We had -- I had my own car. I would've left in my  
4 own car.

5 Q Well, would -- would you have -- after the  
6 hearing would Ronnie Cochran, for instance, been in the  
7 same car with you?

8 A No, sir.

9 Q So your testimony is that when you left the  
10 federal courthouse that day, Ronnie Cochran wasn't in the  
11 car with you?

12 A I don't remember him being in the car.

13 Q At any point that day were you and Ronnie  
14 Cochran in the same vehicle?

15 A I don't -- I don't remember it.

16 Q How long did y'all meet after the hearing with  
17 Ronnie Cochran and Terry Reed?

18 A Hour or so. I don't -- don't know.

19 Q What did you discuss regarding the mediation  
20 program?

21 A In general how's it -- how's it going. Triple  
22 A was with us, Debbie Middlemore.

23 Q What's her name?

24 A Excuse me, Debbie Middlemore.

25 Q Is she the one that's running this mediation

1 program for the AAA?FT -- NOT PROOFREAD\*\*\*\*\*

2 A Yes, sir.

3 Q Anybody else besides her?

4 A Don't recall.

5 THE WITNESS: Can we take a -- I need a quick  
6 recess.

7 MR. SCRUGGS: Sure. Off the record.

8 (OFF THE RECORD.)

9 MR. STREETMAN: Could you ask him the question  
10 regarding Mr. Cochran again?

11 MR. SCRUGGS: Sure.

12 BY MR. SCRUGGS:

13 Q The question --

14 MR. STREETMAN: If he saw Mr. Cochran on that  
15 date --

16 THE VIDEOGRAPHER: Are we --

17 MR. STREETMAN: Yeah, I'm sorry.

18 (Short pause.)

19 BY MR. SCRUGGS:

20 Q I was -- I think -- I'm not quite sure, but I  
21 was asking you about meeting with Ronnie Cochran and  
22 Jerry Reed on the day of the Guice and Woullard hearing.  
23 And I was asking about that meeting, and I think you  
24 testified y'all met after the hearing?

25 A Yes, sir.

1 Q\*\*\*\*And I think you wanted to clarify your answer.

2 A Yes, sir. We met briefly, and then after that  
3 went and met Ronnie and Jerry down the street at some  
4 place, I don't remember the name of it, and had a Coke.

5 Q After the hearing?

6 A Yes, sir.

7 Q Okay. Any particular reason why y'all went off  
8 campus?

9 A No, sir. They were -- they were leaving, and  
10 they said can you join us. I said I'll go by a few  
11 minutes, and I got to leave.

12 Q Okay. And what did y'all discuss at that  
13 meeting over a Coke?

14 A Did not discuss anything involving the case. I  
15 don't remember.

16 Q Anything about the mediation program?

17 A Not at that meeting.

18 Q Okay. Let me ask a really fundamental  
19 question. Why would you and the AAA person, Debbie  
20 @Mellar, be meeting with Judge Senter's law clerks about  
21 the mediation program on the day of the Woullard and  
22 Guice hearing?

23 A We were there to observe the hearing, and then  
24 we met with them afterwards to discuss the mediation  
25 program.

1 Q\*\*\*\*Which mediation program?FREAD\*\*\*\*\*

2 A The federal mediation program.

3 Q The federal -- the one in -- the court-ordered  
4 mediation program?

5 A Yes, sir.

6 Q Why would -- what involvement -- I guess I'm  
7 trying to get a clear idea. What involvement would the  
8 department have in that?

9 A We're overseeing the program for the judge.

10 Q Oh, you are?

11 A Yes, sir.

12 Q Okay. And you still are as of today?

13 A Yes, sir.

14 Q Okay. March 2007 at some point State Farm and  
15 the insurance commissioner reached some kind of agreement  
16 regarding outstanding claims that State Farm has. Is  
17 this ringing a bell?

18 A Yes, sir.

19 Q Okay. How did this agreement come about?

20 MR. STREETMAN: I need to...

21 (Conference outside the hearing of the court  
22 reporter.)

23 MR. STREETMAN: I'm going to instruct the  
24 witness not to answer as this is part of the examination  
25 process.

1           \*\*\*\*\*MR. SCRUGGS: A settlement agreement between  
2 the insurance commission for the state of Mississippi and  
3 State Farm where they agreed to reopen claims is my  
4 question, and you're instructing him not to answer?

5           MR. STREETMAN: That's right.

6           MR. SCRUGGS: And that's part of the market  
7 conduct --

8           MR. STREETMAN: If it's -- if it was after --  
9 are you talking about March of this year?

10          MR. SCRUGGS: I don't know what it -- how it  
11 relates to market conduct exam. I just know that there  
12 was --

13          MR. STREETMAN: I wasn't asking if you knew how  
14 it was related. I asked you if it was March of this  
15 year.

16          MR. SCRUGGS: I think that's when it came out.

17          MR. STREETMAN: Okay. It's -- it is related to  
18 the market conduct examination, and I'm instructing the  
19 witness not to answer.

20          MR. SCRUGGS: All right.

21 BY MR. SCRUGGS:

22           Q     Am I correct, Mr. Harrell, that this agreement  
23 between State Farm and the Mississippi Department of  
24 Insurance was announced to the public? Was it not?

25           A     Yes, sir.

1 Q\*\*\*\*Okay. And at least some of the terms of it  
2 were announced to the public via some kind of press  
3 release or something like that. Am I correct in that?

4 A Yes, sir.

5 MR. WEBB: Objection to the form.

6 MR. STREETMAN: And anything that's a part of  
7 public press release of the agreement, obviously you can  
8 ask him. Anything that has to do with the manner in  
9 which they came about it or is related to the  
10 examination, I would have an objection. So we'll just  
11 take it question by question.

12 MR. SCRUGGS: Okay. Well, I don't know. I  
13 don't have any information right now that it has anything  
14 to do with anything other than your objection.

15 BY MR. SCRUGGS:

16 Q So did -- you know, how long did -- let me just  
17 ask it on a case-by-case, question-by-question basis.  
18 How long did the Mississippi Department of Insurance and  
19 State Farm negotiate this settlement slash reopen cases  
20 agreement?

21 A That process started sometime in January of  
22 '07.

23 Q Okay. So in January of '07 the Mississippi  
24 Department of Insurance and State Farm were negotiating a  
25 deal where State Farm would reopen thousands of slab



1 claims.\*\*\*\*ROUGH DRAFT -- NOT PROOFREAD\*\*\*\*\*

2 MR. WEBB: Objection to the form of the  
3 question.

4 A The --

5 BY MR. SCRUGGS:

6 Q Thousands of claims in general, slab or not.

7 MR. WEBB: Objection to the form.

8 A In January of 2007 the department was already  
9 conducting its examination into the operation of State  
10 Farm as relates to their Katrina claims. Without  
11 jeopardizing the investigation at this juncture, there  
12 were issues and concerns that were raised, and the  
13 department was in the -- was working on those issues to  
14 find the best way to get them resolved. One of those was  
15 to reopen slab claims.

16 BY MR. SCRUGGS:

17 Q So during the market conduct examination of  
18 State Farm, State Farm agreed with the insurance  
19 department to reopen slab claims.

20 MR. WEBB: Objection to the form of the  
21 question.

22 MR. SCRUGGS: Just trying to make sure I  
23 understand what he just testified to, because I'm not  
24 clear.

25 MR. STREETMAN: Is your question during the --

1 as a result of the examination or during the time period,  
2 if that makes any sense?

3 MR. SCRUGGS: Well, I think his testimony was  
4 that it was as a result. I'm just trying to make sure  
5 that that's -- that I understood him accurately.

6 MR. STREETMAN: Okay. Well, then --

7 MR. SCRUGGS: That's all.

8 MR. STREETMAN: -- if it's as a result, then  
9 I'm instructing him not to answer.

10 MR. SCRUGGS: He might already have. I just  
11 have to read the transcript.

12 BY MR. SCRUGGS:

13 Q The negotiations that led to State Farm's  
14 agreement to reopen certain slab claims started in  
15 January of 2007?

16 MR. WEBB: Objection to form.

17 A Somewhere in that ballpark, yes, sir.

18 BY MR. SCRUGGS:

19 Q And was there any -- was there any  
20 determination to include non-slab claims in that  
21 reopening process?

22 A It's stemming from the market conduct issues,  
23 so I have to be careful what I can say pursuant to  
24 statutes. But there were -- the issues that we were  
25 seeing were all within the water surge area, and they

1 were all concerning slab claims.OOFREAD\*\*\*\*\*

2 Q Who initiated these negotiations?

3 MR. STREETMAN: I'm going to object and  
4 instruct him not to answer. That's a part of the  
5 examination.

6 BY MR. SCRUGGS:

7 Q I saw in the public record slash press release,  
8 media reports, whatever, that in announcing this  
9 settlement or this deal in March 2007 the insurance  
10 commissioner noted that after the Woullard settlement  
11 broke down, that he reached an agreement with State Farm.  
12 Is that an accurate characterization of the timing of all  
13 this?

14 MR. WEBB: Objection to the form.

15 A The agree- -- the department was proceeding  
16 with the process of having State Farm reopen the slab  
17 claims. That was a process that was ongoing before that,  
18 and that was a process that was ongoing before General  
19 Hood and Mike Moore reached their settlement with State  
20 Farm and your law firm. That information was shared with  
21 General Moore and General Hood prior to the settlement  
22 hearing with Judge Senter.

23 Q And I appreciate that. The -- I'm asking about  
24 the part of the announcement that seemed to indicate that  
25 when the Woullard settlement broke down, that the

1 insurance commissioner stepped in to do a deal with State  
2 Farm. I don't have a specific -- granted I don't have a  
3 specific press statement in front of me, but would that  
4 be a fair characterization of how this settlement between  
5 State Farm and the department of insurance was reached?

6 MR. WEBB: Objection to form.

7 A The department was going to proceed, and they  
8 had already advised the attorney general and Mike Moore,  
9 whatever role he was playing, the department was going to  
10 do that. The department had already advised State Farm  
11 they were going to do that. When the settlement -- when  
12 Judge Senter would not approve the settlement, the  
13 department proceeded with what the department was going  
14 to do beforehand and included in that the other non-slab  
15 claims.

16 Q Okay. Did you or the commissioner have any  
17 discussions with Judge Senter or his law clerks about  
18 either the court's failure to approve the Woullard  
19 settlement or State Farm's settlement with the insurance  
20 commissioner in March 2007?

21 A Restate that. I'm sorry.

22 Q Sure. And that's fair. Did either you or the  
23 commissioner have any conversations with either the court  
24 or his two law clerks about the -- either the settlement  
25 negotiations or the settlement between State Farm and the

1 department of insurance in March 2007?D\*\*\*\*\*

2 A I advised the law clerks of what the department  
3 was in the process of doing.

4 Q Okay. And what was their response?

5 A They didn't have a response. I just told them  
6 what we were fixing to do.

7 Q When did you tell them that?

8 A Probably the day of the hearing.

9 Q Okay. So you told them the day of the Woullard  
10 hearing?

11 A Yes, sir.

12 Q So you told the court and the clerks the day of  
13 the Woullard hearing that State Farm and the insurance  
14 department had been entering their own settlement?

15 A No, I said the department of insurance was  
16 going to make State Farm reopen slab claims.

17 Q Okay. But that was couched as some kind of  
18 settlement or agreement, was it not?

19 A No, sir. At that juncture State Farm had not  
20 agreed to anything. This is what the department was  
21 going to tell them to do.

22 Q Did State Farm ever agree to that?

23 A Yes, sir.

24 Q When?

25 A Sometime after that and prior to the

1 announcement. UGH DRAFT -- NOT PROOFREAD\*\*\*\*\*

2 Q Okay. But just so I'm clear: You advised the  
3 court and the clerks that the department was going to  
4 require State Farm to reopen all its slab claims.

5 A It would've been the clerks. I don't think  
6 Judge Senter was in that meeting.

7 Q So you advised Judge Senter's law clerks that  
8 the department was going to require State Farm to reopen  
9 slab claims.

10 A Yes, sir.

11 Q Did you advise the law clerks on any minimum  
12 amount that would have to be paid once they reopened  
13 these slab claims, that being State Farm?

14 A Not at that juncture, no, sir.

15 Q Okay. Well, what would just ordering State --  
16 and this is a fundamental question, Lee. What would just  
17 requiring State Farm to reopen the slab claims, what --  
18 was there any -- just reopen them or was there you got to  
19 reopen them and pay a certain amount of money? You see  
20 what I'm saying?

21 A Yes, sir. The department -- @see, the  
22 department had issues arising out of the examination  
23 regarding how State Farm adjudicated slab claims.

24 Q I appreciate that, and that wasn't my question,  
25 though. My question is: Was there -- other than the

1 requirement you, State Farm, reopen your slab claims, was  
2 there any requirement you're going to reopen them and pay  
3 this amount or pay that amount, or you're just going to  
4 reopen them and once you reopen them you can do whatever  
5 you want to do?

6 MR. WEBB: Objection to form.

7 MR. STREETMAN: That was a -- it --

8 BY MR. SCRUGGS:

9 Q I can break it down, but, I mean, do you  
10 understand the question?

11 A I think so. In the initial discussions with  
12 State Farm, the department -- there was -- our concern  
13 was regarding how the claim was initially adjudicated,  
14 and what we were going to do is have them come in with a  
15 new team of individuals and readjust the claim. If that  
16 process revealed that the insured was over policy limits,  
17 then that's what he was owed. If it revealed they were  
18 owed \$25,000, then that's what they revealed, and that's  
19 what the process was going to be. But there was no --  
20 initially there was not a -- in just the slab issues our  
21 concern was involving how they adjusted them, and that's  
22 why we wanted them readjusted.

23 MR. STREETMAN: He doesn't understand your  
24 question, obviously. I think I do --

25 MR. SCRUGGS: No, I think he actually -- he did

1 answer it somewhat.AFT -- NOT PROOFREAD\*\*\*\*\*

2 MR. STREETMAN: It was my understanding you  
3 were asking did you say, okay, if you're going to reopen  
4 these, you got to pay them X number of dollars.

5 MR. SCRUGGS: Yeah. Okay. And that's --  
6 that's true --

7 A The answer is no.

8 MR. SCRUGGS: Okay. Thank you, Jim. And --

9 MR. STREETMAN: I didn't mean to conduct your  
10 examination --

11 MR. SCRUGGS: No, you're trying to be helpful,  
12 and I appreciate that and making sure everybody is on the  
13 same page.

14 BY MR. SCRUGGS:

15 Q The -- so when you advised at the time in late  
16 February -- I'll just represent to you when the Woullard  
17 hearing was -- that you advised the court's clerks that  
18 the department was going to require State Farm to reopen  
19 and readjust slab claims, there was no monetary component  
20 it to. It was just you readjust them with new adjusters,  
21 and whatever you determine is owed, you pay it.

22 MR. WEBB: Objection to form.

23 BY MR. SCRUGGS:

24 Q Is that fair?

25 A Yes, sir.



1 Q\*\*\*\*Okay. When was it decided -- and you  
2 communicated that to the clerks.

3 A Yes, sir.

4 Q Okay. When was it decided that there'd also be  
5 a monetary component to it, you'll reopen and readjust  
6 these slab claims and pay X amount?

7 A Sometime after that. I don't know the exact  
8 date.

9 Q How did that come to be part of the deal or --  
10 MR. WEBB: Objection to the form.

11 MR. STREETMAN: And I object and instruct him  
12 not to answer as I believe that's part of the examination  
13 process.

14 MR. SCRUGGS: Well, in all fairness, Jim, he  
15 kind of opened the door by testifying that he -- that as  
16 a result of the market conduct exam they saw there was a  
17 problem with slabs, so that's why they required them to  
18 reopen. So this is -- I'm just following what he's  
19 already opened the door to.

20 MR. STREETMAN: I understand he may have. I'm  
21 still going to instruct him at this point not to answer.

22 MR. SCRUGGS: Okay.

23 MR. STREETMAN: I'm trying to give you some  
24 leeway with regard to that, to this stuff. And it gets  
25 into some gray areas and things that I'm not sure about,

1 and so -- I'm, again, trying to let him go as\*far as  
2 possible but --

3 BY MR. SCRUGGS:

4 Q Who supervises the mediators in this mediation  
5 program, both the -- the actual mediators. Mediation  
6 programs @@ more specific being mediators, who supervises  
7 the mediators in both the non-litigated mediation claims  
8 and the litigated mediation claims?

9 A Triple A oversees the mediators.

10 Q Well, who determines whether these guys are  
11 doing their job or actually being effective mediators or  
12 not?

13 A Triple A will evaluate and make recommendations  
14 to the department. And if it's a federal mediation  
15 issue, then they would also make recommendations to the  
16 court.

17 MR. SCRUGGS: Okay. I do have one more area to  
18 get into which may be quick, may be not. There's a  
19 couple things we can do. Obviously there's going to be a  
20 lot of matters that we're going to be taking before Judge  
21 Walker, and hopefully we're coming back at least for a  
22 couple matters, maybe more. At least hopefully maybe.  
23 If y'all are right, none. But the only area I have left  
24 to go into is the rate approval process that I left  
25 aside. We talked about the approval process of a policy

1 form, and that bled into the attorney -- I mean the ACC  
2 clause. But I also have some questions for this witness  
3 about the approval of rates in general and what goes into  
4 that. And I don't anticipate it being real long, but at  
5 the same time, I don't want to break my word, and I don't  
6 want to keep everybody here longer than necessary,  
7 especially if we might come back. So, Jim, what --  
8 what's your thoughts?

9 MR. STREETMAN: I -- you know, we're at -- you  
10 know, there's a reason that we have the rule. We're at  
11 about -- I think about seven hours of actual deposition  
12 start -- if we say we started at 9:30 --

13 MR. SCRUGGS: How many -- how -- what are we on  
14 time? You usually keep it on the video, don't you?

15 THE VIDEOGRAPHER: Yeah, it's about -- it's  
16 about six hours.

17 MR. SCRUGGS: Six hours.

18 MR. STREETMAN: It -- it would be my  
19 preference -- I believe the deponent is getting tired,  
20 and we would -- if -- and what we would be willing to  
21 stipulate to, if, in fact, the judge said to us we win on  
22 everything that we've argued about so far, we would still  
23 make this opponent available to you to ask what  
24 additional questions that you have regarding rate. And  
25 then -- and by that time, you know, we'll be able to

1 clear up a lot of these issues.ROOFREAD\*\*\*\*\*

2 MR. SCRUGGS: Okay. And that's -- y'all've all  
3 been real patient. I appreciate particularly your  
4 patience. I think -- I certainly -- you know, I think  
5 it'd be another 20, 30 minutes. But if you're -- with  
6 your representation that he'll be made available for that  
7 extra hour, which won't take that, to go through the rate  
8 approval process and some questions related to that, then  
9 I think we can probably recess this deposition. And with  
10 the caveat from my point of view that there are areas  
11 that I asked that I wasn't allowed to go into that I'm  
12 going to be moving to the court to get into.

13 MR. STREETMAN: And what we want -- and -- and  
14 I don't know if you're just going to go ahead and do it  
15 by motion or by letter to me, to us, if we're going to  
16 reconvene anyway, so I don't know. We can talk about it,  
17 but let's keep that -- keep that communication open  
18 and --

19 MR. SCRUGGS: Yeah, right.

20 MR. STREETMAN: -- we'll see if we can work out  
21 what issues we have.

22 MR. SCRUGGS: And I would work with you and all  
23 the parties' counsel here to --

24 MR. STREETMAN: Right.

25 MR. SCRUGGS: -- get an appropriate time,

1 whether we're talking about a lot of issues or just the  
2 rate approval process issue and...

3 MR. WEBB: On the hour, if that is an exact  
4 time, my question about that is, are we talking about an  
5 hour total, even if we come back, even if the court says  
6 come back?

7 MR. SCRUGGS: Well, we would move like you  
8 moved in Rigsby to, you know, get whatever you asked for.  
9 We're going to move for additional time to ask the  
10 questions I didn't get the answer to. What you moved in  
11 Rigsby.

12 MR. WEBB: I made a motion in Rigsby?

13 MR. SCRUGGS: Yeah.

14 MR. WEBB: Renfro versus Rigsby?

15 MR. SCRUGGS: In the -- in the McIntosh case.

16 MR. WEBB: Oh, McIntosh.

17 MR. SCRUGGS: The Rigsby matter. The Rigsby  
18 matter. I think you had all this stuff that you couldn't  
19 go into and asked for additional time. I'm sure we'll  
20 have something like that --

21 MR. STREETMAN: I'm not going to come in with a  
22 stopwatch and --

23 MR. SCRUGGS: I understand --

24 MR. STREETMAN: -- you got --

25 MR. SCRUGGS: -- and I --

1           \*\*\*\*\*MR. STREETMAN: -- fifty-nine minutes and --

2           MR. SCRUGGS: -- believe me, I don't want to  
3 waste --

4           MR. STREETMAN: -- you know, so --

5           MR. SCRUGGS: -- my time any more than I want  
6 to waste --

7           MR. STREETMAN: But also --

8           MR. SCRUGGS: -- y'all's time.

9           MR. STREETMAN: -- in -- between now and when  
10 we reconvene it's my understanding we will probably have  
11 these other issues resolved so we can all get them --

12           MR. SCRUGGS: We'll make a motion at some  
13 point --

14           MR. WEBB: Sure.

15           MR. SCRUGGS: -- sooner rather than later to  
16 compel answers to certain questions. And as Judge Walker  
17 indicated on the phone, he's going to look at all that,  
18 matters or, you know, discussions he's had with Dale and  
19 others and then the market conduct exam stuff.

20           MR. WEBB: Before we go today, I want to ask a  
21 couple of questions to clarify a couple of things just so  
22 we'll be clear about that too.

23           MR. STREETMAN: Are we talking about real  
24 people couple of questions or --

25           MR. WEBB: Yes.



1 this morning you were asked some questions about  
2 Mr. Streetman's involvement in representing you, and I  
3 recall -- and I may be absolutely recalling this fuzzily,  
4 and I just need your help on it. I recall that you  
5 mentioned something about State Farm was paying for  
6 Mr. Streetman's involvement? Do you remember mentioning  
7 something like that?

8 A Yes, sir.

9 Q Just so I'm clear: What's -- what is the basis  
10 or how does it come about that State Farm is being  
11 charged or assessed fees related to Mr. Streetman's  
12 involvement?

13 MR. SCRUGGS: Object to the form, asked and  
14 answered.

15 A Pursuant to the examination statutes, the  
16 commissioner of insurance is allowed to retain multiple  
17 expert type things. And in this case, it's Mr. Streetman  
18 to represent us in this matter.

19 BY MR. WEBB:

20 Q So the way I understand it -- and I didn't want  
21 the record to be unclear about this -- it's not a  
22 situation where State Farm has been voluntarily engaged  
23 in going out and seeking counsel for you or the  
24 commission, is it?

25 MR. SCRUGGS: Object to the form.



1           A\*\*\*\*Not -- no, sir, it was ordered by\*the -- an  
2 order.

3 BY MR. WEBB:

4           Q     All right, sir. And there were several  
5 questions asked during the course of your deposition  
6 earlier today about various interpretations that the  
7 department has taken relative to policy provisions. And  
8 just to be clear about that: As I understand it, at no  
9 point in time either in the past up through during and  
10 including today has the department ever taken a position  
11 that merely because there is some wind damage that a  
12 company should also have to pay for a total loss  
13 including the water damage?

14           MR. SCRUGGS: Object to the form.

15           A     In your scenario, they'd have -- they'd have to  
16 pay the wind damage. If it's 10 percent, 10 percent.

17 BY MR. WEBB:

18           Q     But they -- but the department's position has  
19 never been that they would also have to pay for the water  
20 damage, too.

21           MR. SCRUGGS: Object to the form.

22 BY MR. WEBB:

23           Q     Right?

24           A     That's correct.

25           Q     Okay. And I don't know how quick you could get

1 your hands on it, but Exhibit 21, if y'all have it there,  
2 Mr. Burwell's letter -- and this will be very quick. I  
3 just want to go to one -- it's on the second page of  
4 Exhibit 21, and it is the second full paragraph, the  
5 sentence -- Mr. Scruggs read some excerpts from various  
6 documents, and I'm talking about the sentence that begins  
7 "but when the investigation indicates." Do you see that?

8 A What paragraph are you in?

9 Q It's the second full paragraph -- excuse me,  
10 third full paragraph on that page.

11 A Okay. I see it.

12 Q "But when the investigation indicates that the  
13 damage was caused by excluded water and the investigation  
14 does not indicate independent windstorm damage to  
15 separate portions of the property, there is no coverage  
16 available under the homeowner's policy." See that?

17 A Yes, sir.

18 Q Okay. And this was a letter that you received  
19 sometime after March 31, 2006. Correct?

20 A Yes, sir.

21 Q Okay. As a follow up to the questions about  
22 that letter and the questions that Mr. Scruggs asked you  
23 about out of that one pleading in that Palmer case where  
24 you read a portion of the brief, it would be consistent  
25 with that for State Farm to have taken the position that

1 in your judgment that if independent windstorm damage  
2 would have occurred in the absence of excluded water,  
3 that it was covered even if the property had some water  
4 damage before or after the windstorm occurred. That's  
5 the way you understood it. Correct?

6 MR. SCRUGGS: Object to the form of the  
7 question. It misstates his prior testimony, and it's  
8 been asked and answered. If you understand what he just  
9 asked you --

10 BY MR. WEBB:

11 Q If you do.

12 A I'm going to have to ask you to --

13 Q Okay. I'll try.

14 A Repeat that. That's a --

15 Q And I'm --

16 A -- pretty long-winded --

17 Q -- I'm trying to rush through just a few  
18 questions.

19 As I understand it, the position that if  
20 there's independent windstorm damage -- and I'm using the  
21 reference of Mr. Burwell's letter here and also the  
22 Palmer pleading as a reference. But as I understand it,  
23 that if State Farm's position is that if there's  
24 independent windstorm damage that would have occurred in  
25 the absence of excluded water, that that being covered,

1 even if the property also later sustained water damage,  
2 is the way you understood that the policy was being  
3 applied. Is that correct?

4 MR. SCRUGGS: Object to the form, and it's  
5 leading. If you understand, you can answer.

6 MR. STREETMAN: You can answer if you  
7 understand it.

8 BY MR. WEBB:

9 Q If you do.

10 A It's my understanding that the water -- I mean  
11 the wind portion would be covered and the water would  
12 not.

13 Q Right. Okay. As I recall from seeing some  
14 things -- and I believe -- and like Mr. Scruggs said  
15 earlier, I don't have a particular press release or a  
16 bulletin in front of me. But as I recall, the department  
17 has announced that there are likely to be or will be  
18 market conduct examinations focusing on multiple insurers  
19 with relation to Hurricane Katrina. Is that true?

20 A Yes, sir.

21 MR. WEBB: Okay. Indulge me just a moment.  
22 That's all I have at this point reserving questions  
23 for --

24 MR. SCRUGGS: One single follow-up question to  
25 what he just asked.

1 \*\*\*\*\*ROUGH DFURTHER EXAMINATIONAD\*\*\*\*\*

2 BY MR. SCRUGGS:

3 Q What other companies are going to get the  
4 pleasure of a market conduct examination?

5 MR. STREETMAN: At this time, that would be  
6 part of the market conduct examination, not been  
7 determined, and I'm going to have to instruct him not to  
8 answer. We can take that up with the judge.

9 BY MR. SCRUGGS:

10 Q You're not going to answer?

11 A Upon advice of counsel.

12 MR. SCRUGGS: Okay. Let's recess.

13 (Deposition recessed at 5:39 p.m.)

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