

Page 2

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Page 3

1 The deposition of JACK KELLY taken in the captioned
2 cause, pending in the United States District Court, for the
3 Southern District of Mississippi, Southern Division, being
4 taken before Nancy L. Farris, Court Reporter and Notary Public
5 of the State of Mississippi, said examination being conducted
6 after the witness had been duly sworn at the office of
7 Galloway, Johnson, Tompkins, Burr & Smith, 1213 31st Avenue,
8 Gulfport, on Monday, September 17, 2007, at approximately 9:33
9 a.m. and was completed.
10
11 *****
12
13 IT IS STIPULATED by and between counsel representing
14 the parties that this deposition is taken pursuant to
15 subpoena, and/or notice, and/or agreement for all purposes in
16 accordance with the Federal Rules of Civil Procedure.
17 IT IS FURTHER STIPULATED that all objections are
18 reserved until the time of trial of the cause, except those as
19 to form of the question, which must be made at the time of
20 taking of the deposition.
21 IT IS FURTHER STIPULATED that the reading and
22 signing of the deposition by the deponent is not waived.
23
24
25

Page 4

1 BY THE VIDEOGRAPHER: We are on the record.
2 This is the videotape deposition of Jack Kelly in
3 the United States District Court for the Southern
4 District of Mississippi, Southern Division, Thomas
5 C. and Pamela McIntosh, Plaintiffs, versus State
6 Farm Casualty Company, Forensic Analysis and
7 Engineering Corporation and E. A. Renfroe and
8 Company, Inc., Civil Action 1:06-cv-1080-LTS-RHW.
9 This deposition is taking place in the office of
10 Galloway, Johnson, Tompkins, Burr & Smith, 1213 31st
11 Avenue, Gulfport, Mississippi. Today is September
12 17th, 2007. The time is 9:33 a.m. At this time
13 will all present, please, introduce themselves,
14 after which the court reporter will swear in the
15 witness.
16 BY MR. WYATT: I'm Derek Wyatt appearing for
17 the plaintiffs, Mr. and Mrs. McIntosh.
18 BY MR. BACKSTROM: Sid Backstrom for the
19 plaintiffs.
20 BY MR. WYATT: Zach?
21 BY MR. SCRUGGS: I apologize. Zach Scruggs
22 appearing by phone for the plaintiffs.
23 BY MR. CANADA: Larry Canada on behalf of
24 FAEC and individually for Mr. Kelly.
25 BY MS. LIPSEY: Christine Lipsey on behalf of

Page 5

1 E. A. Renfroe and Company.
2 BY MR. BANAHAN: John Banahan on behalf of
3 State Farm.
4 BY MR. WYATT: Is there anyone -- would the
5 record reflect that Ms. Renfroe is also present.
6 Jana Renfroe. Okay, please, swear the witness.
7 JACK KELLY
8 After having been duly sworn by the court reporter, testified
9 as follows:
10 EXAMINATION BY MR. WYATT:
11 Q. Good morning, Mr. Kelly. I've introduced myself
12 already. I am Derek Wyatt with the law firm of Nutt and
13 McAlister and appearing today for the plaintiffs, Mr. and
14 Mrs. McIntosh. You, I take it have given depositions
15 previously; is that right?
16 A. Yes, sir, I have.
17 Q. Do you have a general understanding of the rules of
18 the road, so to speak, in deposition taking?
19 A. With limited experience, I think I understand.
20 You'll ask me a question. I'll wait till you end, and then
21 I'll respond; so we don't talk over each other.
22 Q. That's right. That's one of the main things. Also
23 answering yes and no as opposed to nodding.
24 A. Oh, that's right.
25 Q. And any time if you do not understand the question I

Page 6

1 ask you, just simply ask me to repeat the question, and I'll
2 state it in a way that you do understand. Can we have that
3 agreement?
4 A. Yes, sir, that's fine.
5 Q. All right, while we're on that subject, how many
6 depositions have you given to date?
7 A. Over the course of my lifetime? Or in relations --
8 Q. Let's take post Katrina first.
9 A. Post Katrina.
10 Q. And then if we need to go back we will.
11 A. Let's see. I believe four prior to this.
12 Q. Okay, what are the names of those cases that you
13 gave the depositions in?
14 A. Yes, Davies versus State Farm, Bukvic versus State
15 Farm.
16 Q. B-U-K-V-I-C?
17 A. Yes, sir, and Luffey versus State Farm and another
18 case in my own business, consulting engineering, which is not
19 related to Katrina work.
20 Q. Okay, so three are Katrina cases?
21 A. Yes, sir.
22 Q. To date, right?
23 A. Yes, sir.
24 Q. Are there others scheduled currently?
25 A. Not that I'm aware of, no.

Page 7

1 Q. So this one would make your fourth?
2 A. Yes, sir.
3 Q. Prior to the Katrina event, you mentioned that you
4 may have given depositions also. What would that concern just
5 generally?
6 A. A private matter with the family.
7 Q. With the family?
8 A. Yes, sir.
9 Q. All right, Mr. Kelly, tell me the summary more or
10 less of your work background prior to you're getting involved
11 in the Katrina investigations?
12 A. Yes, sir, when I graduated from college in 1967, I
13 went to work for a consulting engineering company in Dayton,
14 Ohio as an engineering intern. And then in 1970, I went to
15 graduate school at Purdue University in West Lafayette,
16 Indiana, and I worked for precast concrete manufacturing
17 company while I was going to school. I stayed with that
18 company upon graduation until 1982 when I moved to Ocean
19 Springs to work for Biloxi Prestress Concrete, a precast
20 concrete manufacturing company, and I worked with them until
21 1990, at which time I started my own consulting engineering
22 business, which I still have.
23 Q. Okay, from 1990 throughout the entire Katrina
24 employment that you had with Forensic, you were still
25 maintaining a business as a consulting engineer?

Page 8

1 A. Yes, sir.
2 Q. And when you took -- well what were you doing
3 immediately prior to the time you hired on with Forensic?
4 A. I was finishing up an engineering job project over
5 in southwest Louisiana. I had another project in Alabama. I
6 was being called on for some additional work.
7 Q. And what kind of work were you doing? You say job
8 analysis.
9 A. Both of those jobs were piling design.
10 Q. Piling design?
11 A. Yes.
12 Q. And that's concrete pilings?
13 A. Prestressed concrete pilings.
14 Q. Okay, would it be fair --
15 A. In addition to that, not in work, but we also were
16 recovering from the storm ourselves.
17 Q. Sure.
18 A. And we helped a displaced person clean up her house,
19 as best we could, and she ended up living with us for 20
20 months.
21 Q. Now you had done this precast concrete work all of
22 the way back to 1970?
23 A. Yes, sir.
24 Q. And you did that continuously from '70 to '82?
25 A. Employed by Concrete Manufacturing Company, yes.

Page 9

1 Q. In Dayton, Ohio?
2 A. No, from '70 until '82 it was in Indiana.
3 Q. Indiana?
4 A. Yes.
5 Q. Excuse me. And then continued precast concrete work
6 down here on the Coast?
7 A. Until from 1990. From '82 till '90.
8 Q. And then from 1990 up through 2005, what was your
9 work consisting of in that period?
10 A. I did consulting engineering work for contractors,
11 precast concrete plants and other consulting engineers.
12 Q. Would it be fair to say that your specialization in
13 engineering is in precast concrete work?
14 A. I would say most of my work is in that, yes.
15 Q. Well that's what you've been professionally employed
16 in through all these years you just told us about, right?
17 A. Well in precast concrete business, I was employed
18 from '70 until '90. From '90 until currently, I have my own
19 engineering business, and that work also includes other stuff
20 besides prestressed concrete.
21 Q. Right.
22 A. You know, wood form work design.
23 Q. Okay.
24 A. Construction problems with building bridges. You
25 know, these kinds of things.

Page 10

1 Q. Particularly what I'm concerned with is bracketing
2 the period from 1990 through 8/29/05. That -- those dates.
3 You continued your precast concrete work, right?
4 A. In addition to what I've just mentioned.
5 Q. Which would be what else exactly?
6 A. Form work design, construction problems.
7 Q. Okay, form work and construction problems?
8 A. Right.
9 Q. Okay, is it true that before 8/29/05, actually more
10 appropriately would be your employment at Forensic, which is
11 what? October 17th, '05?
12 A. Yes, sir.
13 Q. So actually from October 17th, '05 retroactively
14 going backwards, you had never done any Forensic hurricane
15 investigation as an engineer?
16 A. That's a fair statement.
17 Q. And you have no particular engineering specialty in
18 hydrology, do you?
19 A. No, I don't specialize in hydrolics.
20 Q. And you do not have any engineering specialty in the
21 field of wind dynamics?
22 A. I've used wind design in the past.
23 Q. Okay, what educational or professional licenses or
24 specializations do you hold in that particular subspecialty?
25 A. No licensing in that subspecialty, but I have taken

Page 11

1 a continuing education course in Florida for wind design.
2 Wind load design.
3 Q. Okay, what date did you take that and where?
4 A. I can't give you the date without looking on my
5 schedule of CEU's, but I would say it would be -- do you want
6 me to estimate?
7 Q. The best you remember.
8 A. Okay, I would say some time in the early 2000's.
9 Q. Is that the only instance where you undertook any
10 study about wind dynamics as an engineer?
11 A. I have attended some additional seminars in New
12 Orleans through ASCE where wind has been discussed and the
13 effects of wind and loading, and again I can't -- unless I go
14 back to my CEU record, I can't tell you when that was, but I
15 think that was also in the early 2000's.
16 Q. You're saying CV of record; is that what you said?
17 A. No, CEU.
18 Q. CEU?
19 A. Continuing Education Units.
20 Q. I see. So you have that information somewhere, but
21 you can't remember it today; is that right?
22 A. That's correct.
23 Q. Okay, is it also true that you've never -- before
24 October 17th, 2005, you've never held yourself out as an
25 expert in failure analysis due to wind storm?

Page 12

1 A. Yes, I think that's fair. I've never held myself to
2 be that.
3 Q. Okay, now tell me, Mr. Kelly, what were the
4 circumstances of you're becoming employed by this company
5 called Forensic Analysis?
6 A. Yes, the company Forensic Analysis Engineering
7 Corporation retained or employed a neighbor of mine, Brian
8 Ford, and I saw Brian one day after he was working for them.
9 And he told that they were looking for engineers to do some
10 inspection work, and would I have an interest. And I was
11 interested in it from, not a full-time standpoint because I
12 still had my own business. But I did contact them, and we
13 worked out an agreement for me to go to work for them.
14 Q. You knew Brian Ford?
15 A. Yes, sir.
16 Q. How did you know him?
17 A. He was my neighbor.
18 Q. Did you know Brian Ford's -- was Brian Ford an
19 engineer himself?
20 A. Yes, sir.
21 Q. Did you know his engineering background at that
22 time?
23 A. Yes, I understood he was a civil engineer.
24 Q. And what did you know about his employment history?
25 A. He was, I guess, manager of emergency situations

Page 13

1 with Mississippi Power. That's what I understood, and he had
2 retired.
3 Q. And did you know anything about his tenure with
4 Mississippi Power? How many years he had been employed there?
5 A. I understood it was a long time.
6 Q. Okay, you had an opportunity to meet and talk with
7 Mr. Ford on occasion as a result of being his neighbor, right?
8 A. Yes.
9 Q. What was your opinion of Mr. Ford's professional
10 abilities and capabilities?
11 A. I don't think I dealt with him on a professional
12 basis until this work here, the Hurricane Katrina work.
13 Q. Uh huh (affirmative response), what was your opinion
14 then?
15 A. My opinion the first day was that -- see before I
16 started, I told FAEC, I'd like to go around with one of their
17 engineers for a day and see what the work entailed. So I went
18 around with Brian on a Friday before the 17th, whatever day
19 that is, October 17th. And we went around, and he showed me
20 what the scope of the work was, and I thought he was fairly
21 thorough.
22 Q. You thought Brian was fairly thorough?
23 A. Yes, sir.
24 Q. Did you respect Brian Ford's engineering abilities?
25 A. I don't know what his engineering abilities are

Page 14

1 except for that day we went around together.
2 Q. Okay, well based on what you knew, did you respect
3 his ability?
4 A. Yes, I think what he saw, I saw, and I think we were
5 together on what we saw that day.
6 Q. Okay, now you are licensed in several states; is
7 that correct?
8 A. Yes, sir.
9 Q. What states are those?
10 A. I'm licensed in, as a civil engineer, in the states
11 of Ohio, Indiana, Kentucky, and then Louisiana, Mississippi,
12 Alabama, Florida, Georgia, South Carolina and North Carolina.
13 Q. Okay, how many of those states have you taken an
14 engineering test in order to become licensed?
15 A. One.
16 Q. Which one is that?
17 A. Ohio.
18 Q. So the other ones were by reciprocity?
19 A. Yes, sir.
20 Q. Meaning if you're an engineer and you're registered
21 in Ohio, you can get yourself registered in these other states
22 through reciprocal provisions?
23 A. If you would follow the rules, that's correct.
24 Q. And it involves filing a form, paying a fee, that
25 type of thing?

Page 15

1 A. Getting references on your professional
2 capabilities.
3 Q. Okay, now --
4 A. Let me add one other thing. I was also licensed as
5 a structural engineer in the state of Illinois for a while,
6 but when I moved down here, we got lost in the mailings, and
7 my license expired; so I did not renew that. However, I did
8 have a take an exam for that license in the state of Illinois.
9 Q. Okay, is that the only instance where a license has
10 lapsed that you held?
11 A. Yes.
12 Q. Okay, and has any other license been revoked or any
13 disciplinary action been taken?
14 A. No, sir.
15 Q. Now what was your understanding of the Mississippi
16 laws as they relate to the certification of engineers and
17 their ability to carry on their practice here legally?
18 BY MR. CANADA: Let me just enter an objection
19 as to if you're calling for a legal conclusion from
20 his standpoint.
21 BY MR. WYATT: I'm not, and I'll qualify that.
22 MR. WYATT CONTINUED:
23 Q. I'm just asking for your knowledge. I'm not asking
24 you to give a legal opinion? In other words you moved here
25 from Indiana, right?

Page 16

1 A. Yes, sir.
2 Q. And so I would assume you had to acquaint yourself
3 with the rules that pertain to you here, right?
4 A. Yes, sir.
5 Q. And also when you went to work for Mr. Kochan, did
6 you also inquire about that? About the rules that relate to
7 nonregistered engineers and registered engineers and so forth?
8 A. No, because I'm registered.
9 Q. Right, what's your understanding of what is required
10 if a person is not registered?
11 A. I don't think I understand the question.
12 Q. Okay, have you ever been told that it's necessary
13 for a corporation, firm or partnership to have a registered
14 engineer, a Mississippi registered engineer, in order to carry
15 on business here?
16 A. Yes.
17 Q. So you knew that, right?
18 A. Yes.
19 Q. And you knew that at the time that you went to work
20 for Forensic?
21 A. Yes.
22 Q. Okay, and Mr. Ford was a registered engineer in
23 Mississippi, wasn't he?
24 A. Yes, sir.
25 Q. Out of the other Forensic employees, that we haven't

Page 17

1 named yet, but who else was a Mississippi registered engineer
2 besides you and Mr. Ford?
3 A. I don't believe anybody else was.
4 Q. Then when Mr. Ford was terminated from his
5 employment relationship, were you then the sole registered
6 engineer working for Forensic in Mississippi?
7 A. The sole Mississippi licensed, registered engineer,
8 yes, sir.
9 Q. Let's just go through the roster to make sure we're
10 right about this. You had a gentleman named Sammis, Adam
11 Sammis. He wasn't an engineer, right?
12 A. That's correct.
13 Q. You had Manny Manon. I think his formal name is
14 Emmanuel Manny Manon. Did you know that individual?
15 A. Yes, I met him.
16 Q. Okay, he wasn't a Mississippi registered engineer,
17 was he?
18 A. I understood he was licensed in Florida.
19 Q. Okay, and then Mr. William Forbes. Where was he
20 licensed?
21 A. He was licensed in, outside of Mississippi. I'm not
22 sure where he's licensed. Somewhere on the East Coast, I
23 believe.
24 Q. All right, Randy Down?
25 A. Randy Down is a licensed engineer but not in the

Page 18

1 state of Mississippi, I understood.
2 Q. And Mr. Kochan is not licensed as all?
3 A. That's what I understand.
4 Q. So you were the sole licensed engineer in the
5 employment of Forensic after Brian Ford's termination?
6 A. Well after Brian left the company, yes.
7 Q. Okay, the 'um -- would that make you, Mr. Kelly --
8 would that have made you the principal engineer, the
9 designated, principal engineer for Forensic in that period of
10 time following Brian Ford's termination?
11 A. Yes, I became the, the -- I don't know the exact
12 terms and the rules and regulations of the state PE licensing
13 rules, but I think that's a fairly good term, principal
14 engineer for the firm, right.
15 Q. All right, and let's get for the record now, the
16 time period that we're talking about is October 17th, 2005
17 through what date?
18 A. The time period for what?
19 Q. The time period that you were acting as the
20 designated principal engineer for the firm called Forensic
21 Analysis and Engineering Corporation?
22 A. It wasn't October 17th. It was some time in
23 December or January.
24 Q. I'm --
25 A. When I came on as being the representative of the

Page 19

1 company for the Certificate of Authority to do business in the
2 state of Mississippi.
3 Q. Okay, let me ask the question this way. I think
4 we're talking about the same thing. When Mr. Ford was
5 terminated, that date we know was October 17th, 2005, right?
6 A. I don't know that.
7 Q. Well you hired that date, right?
8 A. I hired on that date, right.
9 Q. And you had talked to Brian before that date?
10 A. Yes.
11 Q. And in fact you had gone on this mock visit or
12 whatever you got?
13 A. Right.
14 Q. Is that right? Well assuming that Mr. Ford was
15 terminated on October 17th, 2005, and that the record
16 substantiates that, my question to you is, you were the only
17 person in Forensic's employment here in Mississippi that was
18 licensed registered Mississippi engineer. We've established
19 that, right?
20 A. Yes, sir.
21 Q. All right, so you were then acting as the designated
22 principal engineer for Forensic from and after the date that
23 Brian Ford was terminated and through whatever your date of
24 severance of your employment with Forensic was; is that
25 correct?

Page 20

1 A. No, I started acting as principal engineer, to use
2 that term, some time in December or January.
3 Q. Okay, would you tell me about that? How do you --
4 first of all, what is the date that you're fixing the time
5 that you started acting as a principal engineer?
6 A. The date that the paperwork was changed with the
7 state.
8 Q. And that's is in -- that's what? Do you know the
9 date?
10 A. No, I don't know the date.
11 Q. You believe it to be December, you're saying?
12 A. I think it was December or early January.
13 Q. December of 2005 or January?
14 A. Of five, right.
15 Q. Or January of 2005?
16 A. Right.
17 Q. Did you prepare the paperwork?
18 A. No.
19 Q. Did you sign anything in conjunction?
20 A. I signed -- I signed the paperwork and forwarded it
21 to Jackson. I think FAEC sent me a check to forward with them
22 to renew the COA for the following year.
23 Q. The COA is the Certificate of Authority?
24 A. Yes, sir.
25 Q. Okay, so before that date and in the time period

Page 21

1 between October 17th, 2005 and this date in December that
2 you're referring to, there was no designated principal
3 engineer acting for Forensic?
4 A. I understood it was Brian Ford.
5 Q. Okay, there wasn't anybody else that you knew of,
6 right?
7 A. No, sir.
8 Q. Were you preparing and signing inspection reports
9 during that bracketed time period, and I'm being careful to
10 give you -- I want to be clear with you about the chronology;
11 so we don't get messed up. October 17, 2005 through whatever
12 this December date is that we don't have a fix on yet, were
13 you signing reports and affixing your seal to those reports
14 during that time period?
15 A. Yes, sir, I was.
16 Q. Okay, now is it true that during that time period
17 you acted on Forensic's behalf in making a significant
18 technical decisions about these Forensic hurricane
19 investigations?
20 A. I don't think I understand that question.
21 Q. Okay, you were the person who was going and
22 inspecting right?
23 A. Yes, sir.
24 Q. And you were writing reports, and you were affixing
25 your official engineering seal, correct?

Page 22

1 A. Yes, sir.
2 Q. Were you making significant, technical decisions,
3 engineering wise, in regards to these Forensic hurricane
4 investigations?
5 A. I don't understand what you mean by significant,
6 technical decisions.
7 Q. Well did somebody else write the report, or did you?
8 A. No, I did.
9 Q. Did somebody else do the inspection, or did you?
10 A. I did.
11 Q. Were you the person who had the final say subject to
12 the peer review process of what the conclusion was about this
13 particular investigation?
14 A. Yes, sir.
15 Q. Is that significant in your opinion?
16 A. I guess it's significant in terms of the content of
17 the report.
18 Q. That's my question. You would agree with,
19 Mr. Kelly, would you not, that that's not tangential what you
20 were doing? That's not something that's just incidental. It
21 was in fact a significant part of the investigation itself,
22 right?
23 A. Well it was the total part of the investigation as
24 you described it.
25 Q. Okay, you were not an officer in Forensic, correct?

Page 23

1 A. Correct.
2 Q. How were you paid? Who paid you?
3 A. I was paid by the home office.
4 Q. Mr. Kochan?
5 A. Well either Ms. Nellie Williams or Mr. Kochan, I
6 guess. I don't recall.
7 Q. How did the checks get to you?
8 A. By mail.
9 Q. And they either came from Reno, Nevada or Raleigh,
10 North Carolina?
11 A. Yes, I would say so.
12 Q. And if Reno, that's Nellie Williams?
13 A. Yes, that's right.
14 Q. Director of Operations of Forensic?
15 A. Yes, sir.
16 Q. And if Raleigh, it came from Mr. Kochan's office in
17 Raleigh, North Carolina; is that right?
18 A. That's right.
19 Q. Okay, did that ever change throughout the time that
20 you were doing this work?
21 A. I don't believe so. Let me define the time we were
22 doing this work as the time I was doing those reports that
23 we're talking about, right?
24 Q. That's correct.
25 A. Yes, sir. So we're talking from October until the

Page 24

1 December time frame.
2 Q. Let me correct that so we are clear. In fact we
3 don't have an end date yet of your employment yet with
4 Forensic, do we? We've not established that.
5 A. No.
6 Q. What is the date that you finally severed? You did
7 your last act for Forensic?
8 A. It would have been in December of -- we're in '07 --
9 '06.
10 Q. Okay, so you worked over one year for Forensic?
11 A. Yes, sir.
12 Q. You worked actually a year and a couple of months;
13 is that right?
14 A. Yes, sir, but this engineering work was done or
15 these Katrina work was done from my part from October 17 to
16 before Christmas essentially. It might have been a handful of
17 cases hanging after Christmas, but that's the time frame that
18 I was doing this Katrina work. And in that time I also did my
19 own business.
20 Q. Okay, all of the compensation that you got from
21 Forensic was transmitted to you in a manner you just testified
22 to; is that correct?
23 A. Yes, I'm not sure if it came from Reno for a period
24 of time or from Raleigh. I don't know where it came from. I
25 can't recall where it came from, but it came by mail. I got a

Page 25

1 check.
2 Q. Now a minute ago you remarked that Brian Ford left
3 the employment of Forensic or words to that effect; is that
4 right?
5 A. Yes, sir.
6 Q. Did you -- were you made aware that Brian Ford was
7 fired from Forensic?
8 A. No, I didn't have that understanding.
9 Q. Did you report to the recreational vehicle that was
10 situated in Biloxi, Mississippi and was Forensic mobile
11 office? Is that where you went?
12 A. Yes, sir.
13 Q. And the first day that you went there full time was
14 October 17th, 2005?
15 A. Yes, sir.
16 Q. Was Adam Sammis there that day?
17 A. Yes, he was.
18 Q. Who else was in the RV when you went there that day?
19 A. I think Brian was there. I think -- and I think
20 Manny was there.
21 Q. The first time you went?
22 A. That's right.
23 Q. Was that in the morning or afternoon?
24 A. It would have been in the morning.
25 Q. How long did you stay at the RV that day?

Page 26

1 A. That's almost two years ago. I don't think very
2 long. I think I picked up my assignments, and I think I left
3 and went to do the work.
4 Q. Sometimes people recall their first impression of a
5 new employment relationship.
6 A. Right.
7 Q. You just don't have any recollection of that?
8 A. Well I met the people the Friday before; so I knew
9 who they were.
10 Q. Who's the people?
11 A. Manny and Adam at that mobile office.
12 Q. You had gone there the Friday before the 17th?
13 A. Yes, sir.
14 Q. That's when you went out with Brian?
15 A. That's right.
16 Q. What was the property y'all went on that day?
17 A. What was the --
18 Q. What property? What homeowner property was that?
19 A. I don't recall the homeowners' names. One in
20 Gulfport, and -- I think both were in Gulfport.
21 Q. Okay, now did you return to the RV on the 17th,
22 after you had been there that --
23 A. Yes.
24 Q. Did you come back there that day?
25 A. Yes.

Page 27

1 Q. Who was there when you came back?
2 A. I think just Adam.
3 Q. And what did you do?
4 A. I gave him the, my digital camera, and he would put
5 them through his computer and print me out the pictures that I
6 took from the camera. And I would use those pictures then to
7 go ahead and write my reports.
8 Q. Had you already been out with one of State Farm's
9 employees before that?
10 A. No.
11 Q. When did you go out with a State Farm employee?
12 A. I met Mark Wilcox at a home site. It was, I think,
13 the week after -- I think it was the week after the 17th; so
14 it would have been the next week some time the best I can
15 recall.
16 Q. Okay, some time around the 24th of October?
17 A. I think some time in that week.
18 Q. And what was the reason you went with Mark Wilcox,
19 who is an employee of State Farm, right? Why did you go with
20 him out to inspect a property?
21 A. I was asked by Adam to go on out and take a look at
22 that property with Mark. That there was some questions on it.
23 Q. What property was that?
24 A. The one I was just talking about. I don't know the
25 name of it. It was in Gulfport or Long Beach, I believe.

Page 28

1 Q. Do you recall anything about the property?
2 A. Yes, I remember some things about the property.
3 Q. What do you recall?
4 A. It was the -- in that area it was one of the south
5 most houses still standing. South of the railroad tracks.
6 There were -- there was a tree down on the corner of the
7 house, the northeast corner, I believe. There was a good bit
8 of damage to the structure, and I found evidence of some
9 significant water level at that point.
10 Q. Now did you know Brian Ford had been fired at that
11 time when you were out there with Mark Wilcox?
12 A. I don't know when I -- I didn't know Brian Ford was
13 fired. I was told at some point, and I don't know when, that
14 Brian was not going to be doing any more reports for State
15 Farm. That's what I was told.
16 Q. So when you went back to the RV, or let's just say
17 it this way. At any time when you were at the RV on October
18 17th, is it your testimony that you were unaware that Brian
19 Ford had been fired?
20 A. Yes, sir.
21 Q. And is it your testimony that you had no knowledge
22 that Lecky King, an employee for State Farm, had called the RV
23 that day and was angry about the wind findings in certain
24 reports?
25 A. At that time, that's correct.

Page 29

1 Q. You did know that later; is that your testimony?
2 A. Yes, I've seen information later on. I think some
3 time later on.
4 Q. When's the first time that you knew about the Lecky
5 King telephone call to Brian Ford and Adam Sammis on October
6 17th, 2005?
7 A. Best of my recollection, it was in the fall of '06
8 when I was shown some privileged information by some
9 investigators and told not to talk about it.
10 Q. That would be roughly a year later?
11 A. Yes, sir.
12 Q. Did you ever inquire of, from Mr. Kochan or Nellie
13 Williams about E and O coverage, errors and omission coverage
14 for yourself as you were doing these hurricane investigations?
15 A. I don't believe I inquired about it, but I became an
16 employee.
17 Q. So if you had made an inquiry about that -- in other
18 words if you had expressed concern to Nellie Williams or Mr.
19 Kochan, and asking am I insured for what we're doing here?
20 Suppose a lawsuit develops? If you would asked about that, it
21 would have been just purely gratuitous and not because you
22 knew about Brian Ford getting fired by Lecky King?
23 A. Let's break that question up into two parts. The
24 last part, I did not know Brian Ford was fired by Lecky King.
25 The first part is I asked to become an employee because I

Page 30

1 didn't want to run this through my own business and have to
2 pay, you know, premiums on my billings. It was more finally
3 advantageous for me to become an employee.
4 Q. You asked to become an employee of Forensic, you're
5 saying?
6 A. Yes, sir.
7 Q. But my question to you is, what made you ask am I
8 insured? What made you --
9 A. I didn't ask that question; as I recall.
10 Q. Okay, so you have no recollection of having asked
11 that?
12 A. That's right.
13 Q. And if there's documentation that exists showing
14 that, would you contend that that's not true? That it's
15 counterfeit information? It's just not --
16 A. No, I just might not remember it.
17 Q. Okay.
18 A. But I don't recall asking that.
19 Q. If -- okay. So in other words, it's your testimony
20 that if you had asked about whether you were insured, being
21 concerned about lawsuits and so forth, it was entirely
22 unrelated to the fact that State Farm had just brought about
23 the termination of Brian Ford?
24 A. I would have to separate that. I did not know that
25 State Farm or Lecky King had fired Brian Ford on the 17th of

Page 31

1 October.
2 Q. That's my question to you though. The answer would
3 simply be that's correct, I think, in the way that I stated
4 it. I'm not suggesting that --
5 A. Then state it again because I'm getting confused.
6 Q. Sure.
7 A. There's two parts to that question.
8 Q. Sure.
9 A. To me they are completely independent.
10 Q. All right, it's this. If you had asked about
11 insurance, and you had suggested, you know, what happens if a
12 class action lawsuit gets filed? Am I covered? That kind of
13 thing, okay. If you had said that and it was in October of
14 2005, my question to you is, is it would be your testimony
15 that that is entirely unrelated to the event where Brian Ford
16 was terminated at State Farm's request, Lecky King's request?
17 A. That's a very confusing question to me. I don't
18 mean to be hard about this, but I can't understand. First of
19 all, I have no knowledge on October 17th that Lecky King fired
20 Brian Ford. I do not recall asking about the insurance for a
21 class action lawsuit on the 17th of October '05.
22 Q. Yeah, I think we're saying the same thing.
23 Mr. Kelly, that if you had -- I was only trying to suggest to
24 you that based on your testimony you didn't even know about
25 Brian Ford being fired until you say '06, right? December of

Page 32

1 '06?
2 A. No, that's when I saw the conversation between Lecky
3 King and --
4 BY MR. CANADA: Hold on just one second, okay.
5 Because it's a sticky situation here in that he
6 has been instructed by investigating authorities not
7 to disclose or discuss what he was shown or what he
8 discussed with investigating authorities. So,
9 please, adhere to their admonishment to you, okay.
10 BY MR. WYATT: Wait. I don't understand that,
11 Larry. What are you instructing him not to do now?
12 I don't understand your instruction to the witness.
13 BY MR. CANADA: My instruction to him is not to
14 get into details about what he discussed with an
15 investigating authority that has told him not to
16 discuss it with anyone.
17 BY MR. WYATT: What investigating authority
18 are we talking about?
19 BY MR. CANADA: I think he told you earlier
20 that he was shown some documents for the first time
21 in December of '06 and told not to discuss it.
22 BY THE WITNESS: Well it was in the fall of
23 '06.
24 BY MR. CANADA: Fall of '06.
25 BY MR. WYATT: Wait let me just understand

Page 33

1 this.
2 MR. WYATT CONTINUED:
3 Q. All right, Mr. Kelly, your counsel is suggesting
4 that someone has instructed you not to disclose information
5 that you know about the subject of, for example we're talking
6 about Brian Ford's termination? Has someone instructed you
7 not to disclose that information?
8 A. I don't know how to answer without saying a little
9 bit about the investigation. Should I?
10 BY MR. CANADA: You can tell them --
11 BY THE WITNESS: Who came?
12 BY MR. CANADA: Who it was and what they told
13 you not to do.
14 BY THE WITNESS: In the fall of '06, I was
15 interviewed by two investigators with the U. S.
16 Department of Justice, who were doing investigations
17 into engineering companies' relationships with
18 insurance companies and insurance companies'
19 dealings, engineering companies, etc. And in that
20 number of hours of investigation, I was shown
21 information that I understood to be privileged, and
22 they requested that I not discuss the information
23 they had shown me with anybody else.
24 MR. WYATT CONTINUED:
25 Q. And have you discussed that information in any of

Page 34

1 depositions you've given?
2 A. No, but the same issue was addresses, as I recall,
3 in the first or second deposition where I didn't answer the
4 question because of a privilege situation.
5 Q. Let me ask you --
6 A. Best I can remember.
7 Q. Okay, while we're on that subject, you've given
8 statements to the FBI; is that correct?
9 A. U. S. Department of Justice.
10 Q. U. S. Department of Justice?
11 A. Right.
12 Q. Have you ever been interviewed by the FBI?
13 A. There was an FBI agent who was assigned to Homeland
14 Security who was assigned to Department of Justice. That's
15 how I understood the connection.
16 Q. Is this the --
17 A. He was not an FBI guy.
18 Q. Excuse me. Is that the '06, fall of --
19 A. Yes, that's the fall '06.
20 Q. What is the date of that? Do you know the date that
21 this occurred?
22 A. I think it was in October. I'm not real sure.
23 Q. Where did that take place?
24 A. At my house.
25 Q. So an FBI agent showed up with some Justice

Page 35

1 Department people?
2 A. No, and I want to be clear. Two people showed up,
3 and as I understood it, they were from the Department of
4 Homeland Security, who were assigned to the U. S. Department
5 of Justice.
6 Q. Okay, but one of them was employed by the --
7 A. A retired FBI guy.
8 Q. Retired?
9 A. He was retired.
10 Q. Excuse me. What was his name?
11 A. I don't recall his name.
12 Q. Did you give recorded statement to them?
13 A. No, sir.
14 Q. Did they interview you and take notes of what you
15 said?
16 A. Yes, I believe they wrote down things.
17 Q. Did you have a copy? Were you given a copy?
18 A. I was not given a copy of their notes.
19 Q. Did you give -- have you been interviewed by any
20 other criminal authorities?
21 A. I was interviewed by the state of Mississippi
22 Attorney General people.
23 Q. And when was that interview?
24 A. I think it was March in '06, and then again they had
25 some other questions several months later.

Page 36

1 Q. Twice?
2 A. Yes, sir.
3 Q. And where did those interviews take place?
4 A. The first one at my house, and the second one at a
5 hotel over here in Gulfport.
6 Q. Did you give a recorded statement in either
7 instance?
8 A. I believe I was recorded by them the second time
9 when I met with them in Gulfport.
10 Q. At the hotel?
11 A. At the hotel.
12 Q. Do you have copies of the recording?
13 A. No, I don't.
14 Q. Were you represented by counsel at either of those
15 occasions?
16 A. No, there was no attorney with me. They just showed
17 up at the house.
18 Q. Your address in Ocean Springs is this the same house
19 that you claimed as your residency during the time that you
20 were working for Forensic?
21 A. Yes, sir.
22 Q. What is the address?
23 A. 3904 Queen Elizabeth Drive.
24 Q. Has that remained consistent? You haven't changed
25 your address any?

Page 37

1 A. No, sir.
2 Q. I want to show you a document that is a instant
3 message. You know what instant messaging is, right?
4 A. Probably.
5 Q. You used it some while you were --
6 A. I've never used it.
7 Q. You've never used it?
8 A. No, sir.
9 Q. Is there any particular reason you didn't? You just
10 never got the program on your --
11 A. I'm not a computer genius, and I don't -- the less
12 computer the better for me.
13 Q. I understand. You and I share that. In any event
14 you have seen, I take it, a copy of instant message before; is
15 that right?
16 A. Yes, I have.
17 Q. You know what it looks like? It has a name of
18 someone and then a statement. It's just like a conversation.
19 A. Right. I have seen my wife's.
20 Q. Okay.
21 A. She does that once in a while. I've seen hers.
22 Q. Okay, I want to tell you what this instant message
23 says, and then I'll hand it to you and let you look at it for
24 a second. And this relates to your testimony just a moment
25 ago about your inquiring about insurance, and particularly

Page 38

1 your inquiring about insurance within eight days of Brian
2 Ford's termination from Forensic. And this is the instant
3 message. RDown 007, I take it that's Randy Down, right?
4 A. Randy Down, I guess.
5 Q. Just got off of the phone with Jack. Is that what
6 he referred to you as?
7 A. Yes, everybody did.
8 Q. Okay, I think he's a bit more comfortable now with
9 the signature and sealing of reports. He is looking at every
10 potential that there might be for liability exposure for his
11 practice and has asked a lot of questions including: should
12 there be a class action lawsuit two plus years from now, will
13 he still be protected under our liability, and it has errors
14 and omissions in parenthesis, coverage. To the best of my
15 knowledge, the answer is yes. That's Randy speaking. The
16 reply is from Nellie. I would agree with that as long as his
17 report appears on the FAEC letterhead that would be the case.
18 Randy says, right. Randy says, he's just very, very cautious.
19 Nellie says, I can't blame him. It's nuts down there. Randy
20 says, yes. Is that an accurate recitation of your
21 conversations with -- let me finish first.
22 A. I'm sorry.
23 Q. And then you can answer and explain. With your
24 conversations with Randy Down concerning this subject?
25 BY MR. CANADA: What --

Page 39

1 BY THE WITNESS: Can I ask you the date on
2 that?
3 MR. WYATT CONTINUED:
4 Q. The date on this is October 25, 2005, which would
5 be a mere eight days after Brian Ford was terminated. Does
6 that help refresh your recollection?
7 A. Well I don't recall that. You know, if that's what
8 he says, I must have had that, but I can't recall that.
9 Q. You don't believe that Mr. Down just made that up,
10 do you?
11 A. No, I don't think so.
12 Q. So you think that he was actually talking about a
13 conversation that you had with him?
14 A. I believe that's probably right.
15 Q. All right.
16 BY MR. CANADA: Derek, just for the heck of it,
17 where does that come from?
18 BY MR. WYATT: This comes from Nellie Williams'
19 files?
20 BY MR. CANADA: Nellie Williams' files?
21 BY MR. WYATT: Yeah, Nellie Williams' files.
22 BY MR. CANADA: And that's been disclosed to us
23 under Rule 26?
24 BY MR. WYATT: Well I don't know that it has
25 been disclosed to you under Rule 26 in this case.

Page 40

1 BY MR. CANADA: Or any case. I'm not aware of
2 it in any other case.
3 BY MR. WYATT: Well I don't know. You know, I
4 would have to go through everything I've got to find
5 that out.
6 BY MR. CANADA: Well I can tell you that it
7 hasn't been. So what else are you going to, here
8 today, ask this witness about that has not been
9 disclosed to us beforehand?
10 BY MR. WYATT: Well I'm going to ask him
11 anything that I really want to ask him about, Larry.
12 BY MR. CANADA: Sure.
13 BY MR. WYATT: You can make your objections as
14 you see fit, and we can take those up with the
15 Court.
16 BY MR. CANADA: Well unless we see that you've
17 got all kinds of stuff that you're not disclosing
18 under Rule 26, or as I see Exhibit No. 2 here, you
19 tend to go into the Shows case contrary to Rule
20 26(d), then we may have a discussion with the Judge
21 sooner than that.
22 BY MR. WYATT: Well you can make any objection
23 you want, and we will take it up with the Court.
24 That's fine.
25 BY MR. CANADA: What's your reason -- and again

Page 41

1 based upon your prior interpretations of Rule 26,
2 because we had this discussion in North Carolina
3 last year, what's your reason for not disclosing
4 these things?
5 BY MR. WYATT: What things, Larry, first of
6 all?
7 BY MR. CANADA: I don't know. Here's one right
8 here. I assume you're going to attach that as an
9 exhibit since you referred to it.
10 BY MR. WYATT: I haven't attached anything yet.
11 BY MR. CANADA: Well I request that you do it.
12 BY MR. WYATT: Okay, let me just say this.
13 Okay, look, I'm not going to take up my deposition
14 time with your debating every document that goes
15 into this deposition. You're free to challenge
16 those as you see fit under the rules, and we'll take
17 it up with the Court. You have previous disclosure
18 of everything in the Shows case. I don't have any
19 understanding of what you're even talking about
20 about a disclosure issue. But you can make
21 objections, as you know, and they can be taken up,
22 but I'm not going to debate on the record.
23 BY MR. CANADA: I just asked you a simple
24 question, Derek.
25 BY MR. WYATT: I understand. I just --

Page 42

1 BY MR. CANADA: What over documents do you have
 2 that you've not disclosed to us.
 3 BY MR. WYATT: I'm not going to engage in
 4 some kind of colloquy with you that interrupts my
 5 deposition, okay.
 6 BY MR. CANADA: So you refuse to identify --
 7 BY MR. WYATT: If you're going to take it up --
 8 BY MR. CANADA: -- that's fine.
 9 BY MR. WYATT: -- you're going to take it up --
 10 BY MR. CANADA: I want to see how many there
 11 are.
 12 BY MR. WYATT: -- with the Court.
 13 BY MR. CANADA: Please, attach this as Exhibit
 14 No. 3 to this deposition, and this is a document
 15 that you referred to and alleged that it is from
 16 Randy Down to Nellie Williams and off of their
 17 computers I suppose.
 18 BY MR. WYATT: It can be marked. There's no
 19 problem.
 20 BY THE WITNESS: Could I ask a question before
 21 we continued? What is the date on the bottom of
 22 that?
 23 BY MR. WYATT: 9/15/2007.
 24 BY THE WITNESS: And who penciled in the date
 25 at the top?

Page 43

1 BY MR. WYATT: Mr. Kelly, with all due respect,
 2 sir, this is not a forum for the witness to start
 3 making inquiries about the proceeding.
 4 Unfortunately, that's not the way that the protocol
 5 of a deposition works.
 6 BY THE WITNESS: I understand that. I would
 7 just like to comment that you told me that this is
 8 dated October 25, and yet the date at the bottom of
 9 the page is September 15th, which is before I even
 10 started working there.
 11 BY MR. WYATT: It in fact does reflect those
 12 two dates. It does reflect those two dates.
 13 MR. WYATT CONTINUED:
 14 Q. And your testimony just to make sure we're clear
 15 about this though, earlier you testified that you did not have
 16 such a conversation. Your recollection now is that you did;
 17 is that clear? Do we have that clear?
 18 A. No, I don't recall --
 19 Q. You don't?
 20 A. -- having that conversation.
 21 Q. Okay.
 22 A. But I believe if Randy said that, we probably did,
 23 but I don't recall that.
 24 Q. Okay, did anyone ever tell you, Mr. Kelly, that Mark
 25 Wilcox -- you know him, right?

Page 44

1 A. Yes, sir.
 2 Q. That's who you went on the first investigation with,
 3 right?
 4 A. No, it was an investigation -- it was the following
 5 week of my first week, I believe.
 6 Q. Excuse me. I'm saying -- that's right. You went on
 7 an investigation with a State Farm claims employee. He went
 8 with you on the investigation?
 9 A. Yes.
 10 Q. And that was Mark Wilcox?
 11 A. That's what I understood.
 12 Q. And Mark Wilcox, you developed a rapport throughout
 13 your employment with Forensic with Mark Wilcox, right?
 14 A. I spoke to him a couple of times.
 15 Q. Okay, you actually hand delivered reports to State
 16 Farm's office, didn't you?
 17 A. Yes, I have.
 18 Q. So you know who Mr. Wilcox is, right?
 19 A. Yes, I know who he is.
 20 Q. No question about that?
 21 A. Right. I don't recall giving him any reports.
 22 Q. Did you ever learn that Mr. Wilcox communicated that
 23 State Farm wanted Brian Ford relieved of his duties? Did you
 24 ever learn that at any time that you were employed by
 25 Forensic?

Page 45

1 A. I'm not aware that Mark Wilcox asked to have Brian
 2 released, no.
 3 Q. Okay, are you aware that anybody did for State Farm?
 4 A. I'm aware that somebody told Randy -- well Randy
 5 Down told me that State Farm requested that Brian not do any
 6 more reports. As I have stated that already, I don't know
 7 exactly when that was, and I don't know who in State Farm
 8 instigated that.
 9 Q. Okay.
 10 BY VIDEOGRAPHER: Counsel, we have four minutes
 11 on tape.
 12 BY MR. WYATT: Sure. It might be a good time
 13 to take a break.
 14 BY VIDEOGRAPHER: Take a quick pause, all
 15 right.
 16 BY MR. WYATT: And we'll go ahead and change
 17 out.
 18 BY VIDEOGRAPHER: Stand by. We're going off
 19 the record. It's 10:30.
 20 (Off the record.)
 21 BY VIDEOGRAPHER: We're back on the record.
 22 This is Tape 2 in the continuing deposition of Mr.
 23 Jack Kelly. The time is 10:38.
 24 MR. WYATT CONTINUED:
 25 Q. Mr. Kelly, a couple of more questions on the subject

Page 46

1 of Brian Ford's termination. I believe you stated you just
2 knew that he was gone, but you didn't know he was terminated
3 or the circumstances; is that right?
4 A. Yes, Randy Down told me that State Farm had
5 requested that he do no more reports for State Farm.
6 Q. And when did you first know that?
7 A. Well as I already started, it was some time, I
8 think, after the week of the 17th.
9 Q. Of what year?
10 A. Of October.
11 Q. Of what year?
12 A. '05.
13 Q. Some time after the week of October of 17th, 2005?
14 A. Right.
15 Q. Can you be more definite than some time after the
16 week of October 17th?
17 A. No, sir, I just -- I remember that I came in from a
18 job, and Randy called me and told me that Brian would not be
19 doing any more reports for State Farm.
20 Q. Was it a surprise to you at that time?
21 A. Yes.
22 Q. And what did you understand to be the circumstances
23 of Mr. Ford's termination?
24 A. I was not aware he was terminated at that time. I
25 asked Randy the reason why, and the response was just that

Page 47

1 State Farm had requested that he do no more reports for them,
2 and that was all I got.
3 Q. Were you ever instructed to go and rewrite Brian
4 Ford's reports?
5 A. I was given reports that I understood were
6 incomplete or not finished and usually they had draft on them
7 or had drafts of reports, and I would go do those. Some were
8 Brian's work. Some were Manny's work.
9 Q. My question though was, did you ever -- were you
10 instructed to rewrite reports that Brian Ford had already
11 written?
12 A. No, I don't recall. I don't recall that.
13 Q. Okay, going back to these person's that you spoke
14 with, criminal investigating authorities, were you offered any
15 kind of immunity in your, when you dealt with these criminal
16 investigating authorities and that includes both the Homeland
17 Security event at your house, the Attorneys General
18 investigation at your house and the hotel interview that you
19 gave?
20 A. Yes, I'm not aware that I was given any immunity.
21 Q. You're not aware --
22 A. That I have been given any immunity.
23 Q. Okay, were you served with a subpoena for documents?
24 A. By whom?
25 Q. Anyone?

Page 48

1 A. Of those two groups you mean?
2 Q. Yes.
3 A. Yes.
4 Q. Tell me about who was the first one that served you
5 with the subpoena.
6 A. The first one was the Mississippi Attorney General's
7 office.
8 Q. And when did that happen?
9 A. That would have been -- I believe that was March
10 '06.
11 Q. Okay.
12 A. And the U. S. was when they came to my house, which
13 I'm thinking was October of '06, as best I can recall.
14 Q. U. S. Justice Department came to your house?
15 A. Yes.
16 Q. Did you -- were you represented by counsel?
17 A. I didn't have any attorneys there with me there.
18 They just showed up at my house.
19 Q. No, I mean had you retained counsel to represent
20 you?
21 A. For what?
22 Q. Anything to do with that subpoena or their
23 investigation.
24 A. Somewhere down the line Mr. Kochan retained an
25 attorney in Jackson to represent the firm, I guess. An

Page 49

1 attorney was retained.
2 Q. Okay, now for you?
3 A. I assume I was included in it, yes.
4 Q. Do you have any understanding that you are
5 represented by counsel?
6 A. Yes, I understand Mr. Canada.
7 Q. Well that's what he announced today. I'm speaking
8 of -- we're talking about a separate subject matter, and I
9 assume you're talking about another attorney other than Mr.
10 Canada; is that right?
11 A. Yes, that's right.
12 Q. Who is this attorney?
13 A. Mr. McDuff in Jackson.
14 Q. Rob McDuff?
15 A. Rob McDuff, right.
16 Q. Okay, and it's your understanding that Rob McDuff
17 represents you as counsel?
18 A. On as needed basis, yes.
19 Q. Okay, who is paying for your representation?
20 A. On that to Mr. McDuff, you mean?
21 Q. Yes.
22 A. Yes, Mr. Kochan.
23 Q. Mr. Kochan?
24 A. Yes.
25 Q. The man that owns Forensic?

Page 50

1 A. Yes.
2 Q. And are you -- Mr. Canada is your attorney as well?
3 A. Mr. Canada is FAEC's insurance company's attorney
4 representing FAEC in these Katrina matters. Did I state that
5 fair? That's how I understand it.
6 Q. But not your attorney personally?
7 A. I can't distinguish the difference.
8 Q. Well I would assume you would know if you have an
9 attorney relationship. Do you know if you have an attorney
10 relationship with Mr. --
11 A. Yes, I have an attorney relationship with him.
12 Q. Who is paying for that attorney relationship?
13 A. I guess the insurance company.
14 Q. You're not in any event, right?
15 A. No, I'm not.
16 Q. Okay, so any time that you had an attorney
17 throughout this matter, it's either been paid for by Mr.
18 Kochan or someone with Mr. Kochan, such as his insurance
19 company; is that right?
20 A. That's what I understand, yes.
21 Q. When you were served with these subpoenas, and let
22 me go through these individually with you. The Mississippi
23 Attorneys General subpoena, March of '06, did you turn over
24 hard copy information to them?
25 A. Meaning paper?

Page 51

1 Q. Yes.
2 A. Yes, I gave them some paper and then disks, FAEC's
3 that came from Raleigh.
4 Q. Okay, how did you get the disks that came from
5 Raleigh?
6 A. Raleigh or -- I'm not sure if Nellie or Bob sent it.
7 Somebody sent it to me, and then I delivered it because we
8 were running right down to the day of having to submit the
9 information.
10 Q. When you were served with the subpoena, did you call
11 Mr. Kochan?
12 A. Yes.
13 Q. What did you tell him?
14 A. That these two investigators were here and that I
15 was given a subpoena, and I faxed him the subpoena.
16 Q. Did Mr. Kochan seem surprised?
17 A. You know, I can't say -- you know, I was pretty
18 shaky at that point; so I'm not sure exactly what I recall
19 about his response but. How do you mean surprised? All shook
20 up or something.
21 Q. Was he completely caught unawares when you told him
22 I've been served with a criminal subpoena for evidence?
23 A. I don't know if he was caught unprepared or not,
24 unaware. I think I even called him before I spoke to the two
25 gentlemen just to tell him they were there and, you know, what

Page 52

1 should I do.
2 Q. You mean they knocked on your door, and you went and
3 called Mr. Kochan?
4 A. No, when they came in the house, and --
5 Q. You called Mr. Kochan right away?
6 A. Yes, I think so.
7 Q. And you told him somebody is here with a criminal
8 subpoena?
9 A. Well they didn't give me the subpoena yet. They had
10 questions. They gave me the subpoena at the end of the
11 questions.
12 Q. Did you ask to be excused so you could go call Mr.
13 Kochan?
14 A. No, I just called him up.
15 Q. Right then?
16 A. Yeah.
17 Q. And you don't recall though whether he was surprised
18 or not; is that right?
19 A. No, if he was surprised, I didn't pick up a strong
20 sense of that.
21 Q. I see.
22 A. I don't know.
23 Q. What did he say?
24 A. I hope I'm not getting the two confused because I
25 did the same thing when the U. S. people came, too. I believe

Page 53

1 I called Bob both times.
2 Q. Well that would have been considerably later though,
3 right?
4 A. The second one, yes.
5 Q. Uh huh (affirmative response), so we're talking
6 about this is the first one you ever got?
7 A. Yes.
8 Q. Right?
9 A. Right.
10 Q. At your house at Ocean Springs March 2006?
11 A. Yes.
12 Q. Okay, what did Mr. Kochan say when --
13 A. Just talk to them and answer their questions.
14 Q. Okay.
15 A. Be cooperative.
16 Q. All right, and then somehow you and Mr. Kochan
17 discussed that they would send you some disks of information?
18 A. No, at the end of the interview, they gave me a
19 subpoena. So I called -- I called or faxed Bob. Well I faxed
20 him the subpoena, and I guess I probably called them to say a
21 fax is coming, and we have to have all this information to
22 them within a very -- it was a very short period of time. I
23 think it was a week or something like that. Then I believe I
24 -- I think I called the investigator and asked if we could
25 submit digital -- I mean CD's with the information on it, or

Page 54

1 would it have to be paper. Because that was going to take a
2 long time to print up all that paper, and they said they could
3 accept CD's. So then Nellie or Bob or his office went to work
4 on creating copies of all that data and sent it to me for
5 delivery to the courthouse over in Biloxi.
6 Q. And you did deliver it?
7 A. Yes, sir. On time.
8 Q. You had some paper, hard copy paper there at your
9 house at that time, right?
10 A. Yes.
11 Q. And you delivered that also to the --
12 A. Yes, it was a miniscule amount. Not many sheets.
13 But I didn't know if they got into the system of the
14 electronic files.
15 Q. Right, did you deliver all the hard copy paper that
16 you had?
17 A. No.
18 Q. You held some back from the subpoena?
19 A. Well everything that I had that was not on a disk
20 somewhere, I copied, which wasn't much, and they copied
21 everything else. Nothing was held back from the subpoena. We
22 gave them everything they asked for.
23 Q. Did you give them all of the e-mails that you had
24 sent from your Ocean Springs address or received there?
25 A. I don't recall if that was asked for. I don't

Page 55

1 recall the information on the subpoena.
2 Q. Do you recall the subpoena asking for printouts of
3 electronic data?
4 A. Is that the one from the state?
5 Q. Yes, sir.
6 A. Yes.
7 Q. But my question more specifically to you is did you
8 give them all of the e-mails that you had sent or received
9 from your Ocean Springs address and that was requested by the
10 subpoena?
11 A. Well I would have given it to them as provided by
12 the home office.
13 Q. No, but my question is not what you would have done.
14 This is the question, did you give them all of the e-mails
15 that were sent or received from any computer located at your
16 residence address?
17 A. Well I don't recall printing out any e-mails
18 specifically to give to them. Because any e-mails I had would
19 have been in the files that were hard copies; so I didn't
20 print anything out. The paper I gave them were like a memo to
21 the file that I sent on up just for record purposes to the
22 home office on a phone call from somebody or what comment I
23 would have made about the question asked about a report, and I
24 didn't know if those got in the electronic files; so I printed
25 those out. I made a copy of those, which were printed out in

Page 56

1 the job, you know, in the specific case folder.
2 Q. Let me ask you this question, Mr. Kelly. How many
3 computers did you have in your house?
4 A. One.
5 Q. Was it a laptop or desktop?
6 A. It was a laptop.
7 Q. And where did you get the laptop?
8 A. It's my own. I use it in my business. I bought it
9 a number of years ago.
10 Q. Is that the same laptop that you used throughout
11 your work with Forensic?
12 A. Yes.
13 Q. And you carried that into the field with you?
14 A. No.
15 Q. You just kept it there at your house?
16 A. I kept it at the house.
17 Q. What did you use when you went to the RV?
18 A. I didn't use a computer at the RV.
19 Q. So what you brought back to the RV were the digital
20 pictures?
21 A. Yes, from the camera.
22 Q. And then you wrote your report at that laptop at
23 your house?
24 A. Yes.
25 Q. Is that the way you always did it?

Page 57

1 A. As best I can recall, I would bring memory stick,
2 which is about like that, two inches long say, and I would
3 copy the report, the draft of the report that I would do, on
4 to that memory stick and bring that to the office, field
5 office in Biloxi. And would take the data off that, those
6 reports off that memory stick, and then I would bring it again
7 with me in the evening and put pictures that I took back on
8 the memory stick.
9 Q. Okay.
10 A. And then print out the pictures for me so I could
11 make reference to them going into the report.
12 Q. What -- what -- this laptop computer that you have
13 at your house, is that registered and licensed in your name?
14 A. Yes, sir.
15 Q. And you have the user name that you created and the
16 password and so forth to boot the computer up?
17 A. Yes, sir.
18 Q. Has it always been the same?
19 A. As far as I know.
20 Q. Okay.
21 A. I mean I bought it for my business.
22 Q. All right, and that computer, did you use that
23 computer to communicate over the internet with Raleigh or
24 Reno, Nevada?
25 A. Yes.

Page 58

1 Q. And you sent and received e-mails from that computer
2 to at least those two locations, right?
3 A. Yes, after a while. At first I didn't use that for
4 sending these files, but e-mails, I would use it for e-mails.
5 Q. The files were through the FTP site?
6 A. Yes, sir.
7 Q. Okay, so you accessed the FTP site through your use
8 of your laptop at your house?
9 A. Yes, sir, but not initially. It was sometime in
10 November, I think, before that was set up.
11 Q. Okay, what e-mail addresses did you utilize? And if
12 you would, please, tell me all of them that you utilized in
13 any time that you worked for Forensic Engineering?
14 A. Well my -- for other people, too, you mean?
15 Q. Your e-mail address.
16 A. Just my e-mail address.
17 Q. This is the receipt end we're talking about now.
18 A. It would be JKelly@Forensic-Analysis. There's a
19 .com after that.
20 Q. Okay.
21 A. And then my own e-mail address, if I did some of
22 that, which I may have sporadically, was -- at that time it
23 was JVKPE@Earthlink.net.
24 Q. Was that the one you used at the beginning?
25 A. Yes, it would have been.

Page 59

1 Q. And then you were assigned the Forensic Analysis
2 address later?
3 A. Yes, when I had access to the FTP site through a
4 bigger, you know, a high speed connection that I didn't have
5 initially. Initially I had a telephone dial up.
6 Q. Is that the only two e-mail addresses you utilized
7 throughout the entire time that you were conducting activities
8 for Forensic Engineering in conjunction with the hurricane
9 investigation?
10 A. Yes, I believe so.
11 Q. Did you use any other computers other than the one
12 you just told me about?
13 A. No, the only other computer was the one on site that
14 Adam used to give me information. Print out information. So
15 I wouldn't say that I used it, but he used it with my memory
16 stick.
17 Q. That's the laptop that was in RV?
18 A. That's correct. Field office.
19 Q. You brought him your memory stick, and then --
20 A. Yes.
21 Q. Do you have any other external drive devices besides
22 that memory stick that you used in your work for Forensic?
23 A. Well it's my understanding that that's not an
24 external drive device. It's just a memory --
25 Q. Memory?

Page 60

1 A. Memory.
2 Q. Excuse me.
3 A. Yeah, and that's -- I don't have an external drive.
4 Q. I'm sorry. I misspoke. I told you I didn't know
5 anything about computers.
6 A. Well we're in the same league.
7 Q. A memory stick?
8 A. Memory stick, right. I have one or two of those.
9 Q. One or two?
10 A. Yes.
11 Q. Do you still have the ones that you used during your
12 work with Forensic?
13 A. Yes.
14 Q. Okay, those are -- now back to the issue of the
15 Attorneys General subpoena. As I understand it from what
16 you've said, I want to make sure I'm clear about it, you did
17 not print out the e-mails that were on your laptop at that
18 time and hand those, hand the hard copy of those e-mails to
19 the investigating authorities; is that right?
20 A. I did not do that because I don't recall having any
21 e-mails on my computer at that time.
22 Q. In March of '06, you had no e-mails on your laptop
23 computer related to your work with Forensic?
24 A. I don't recall that. Any e-mail I had, I cleaned
25 out. If it was worthwhile, I printed it out, put it in the

Page 61

1 job file. So I had a hard copy in the file.
2 Q. So you're saying that you deleted e-mails as they
3 came in, and you printed them?
4 A. Yes.
5 Q. So when they serve this subpoena then, there were no
6 e-mails stored electronically on your laptop?
7 A. Not that I recall, no. Because at that time, I
8 would have been using the FTP site or the
9 JKelly@ForensicAnalysis.com, and it has its own storage place
10 for e-mails. It's not on my computer.
11 Q. You had this Earthlink e-mail service first, right?
12 A. Yes.
13 Q. Did you keep that throughout the entire time?
14 A. I kept that only because the displaced person who
15 was living with us used Earthlink; so she used that, and I
16 kept it for her. Once I got the modem, the high speed modem
17 set up, which was in November of '05, I used that all the
18 time.
19 Q. But that's -- I'm talking about e-mail addresses.
20 Not so much --
21 A. Oh, I'm sorry. I thought you meant the access.
22 Q. Yeah, you kept the Earthlink address throughout the
23 time you were with Forensic? It was still viable?
24 A. It was still viable, yes.
25 Q. And so was the Forensic Analysis after the date you

Page 62

1 were assigned that?
2 A. Yes, sir.
3 Q. So those were both working viable e-mail addresses
4 you had throughout that time period?
5 A. That's correct.
6 Q. Are they still today?
7 A. No, I cancelled the Earthlink earlier this year.
8 Earlier this year.
9 Q. Okay, now the disk that you got from Raleigh, North
10 Carolina -- after you talked to Mr. Kochan on the phone, you
11 know, the investigators are there, and you called Mr. Kochan,
12 right?
13 A. Uh huh (affirmative response).
14 Q. And y'all arranged for Mr. Kochan to send you some
15 disks; is this correct?
16 A. No, I faxed him the subpoena that I was given --
17 Q. Yes.
18 A. -- as I said, and we have to deal with it. We have
19 to get all this information to them. And I think Nellie had
20 some conflicts in time, and she asked me if I could inquire as
21 to whether or not we could submit electronic data in disk form
22 versus the hard, all the hard paper because that would be
23 easier for them. So I called up somebody and asked the
24 question, and they said that would be fine. And so data came
25 to me to give to Mississippi Attorney General's office in

Page 63

1 electronic format.
2 Q. And what date did you do that?
3 A. Whatever day the subpoena said. It seems to me it
4 was like a week or ten days after I got the subpoena, and I
5 believe it would have been in March.
6 Q. And Nellie was involved in this business of getting
7 these documents together for the criminal investigating
8 authorities?
9 A. That's correct.
10 Q. And where was she doing that?
11 A. She was located in Reno, Nevada.
12 Q. Okay, later in October '06 when the Justice
13 Department visited you, did you get another subpoena?
14 A. Yes, sir.
15 Q. Did you produce e-mails to the Justice Department
16 authorities pursuant to that subpoena?
17 A. I gave them from my office, as far as I know,
18 everything that they asked for including e-mails. And they
19 wanted originals; so they got the original printout of an
20 e-mail.
21 Q. Did you print e-mails off of your laptop computer,
22 and then in turn deliver those to those authorities?
23 A. No.
24 Q. Had you deleted e-mails from your computer at the
25 time that subpoena was served on you?

Page 64

1 A. You mean afterwards?
2 Q. No.
3 A. So as not to produce them.
4 Q. At the time the subpoena was delivered to you, had
5 you deleted e-mails from your laptop computer?
6 A. Prior to that time?
7 Q. Yes.
8 A. Yes.
9 Q. How many e-mails had you deleted?
10 A. I have no idea.
11 Q. What is the brand and -- do you know the brand and
12 model of your laptop?
13 A. It's a Gateway 2000 laptop.
14 Q. And do you know the e-mail program that your
15 computer runs?
16 A. I don't understand that.
17 Q. Is it Outlook Express or something -- does that
18 sound familiar to you?
19 A. I have seen that on the chart, but I don't --
20 Q. You don't --
21 A. I go to -- it goes through Internet Explorer, I
22 think.
23 Q. Okay.
24 A. That's a program. I don't know.
25 Q. Okay.

Page 65

1 A. Let me make sure we're on the same page here. These
2 e-mails are not stored on my computer. They're stored in a
3 site. FAEC has my e-mail address, and I go to that place, and
4 I read something and print it out or discard it. So my
5 computer doesn't have it, but it's the site that holds the
6 mail that has it.
7 Q. So let's take that separately; so we're clear about
8 this.
9 A. Am I making any sense to you?
10 Q. Sure.
11 A. Because I --
12 Q. Sure, sure. Let's take it separately. So you got
13 an Earthlink e-mail, it came straight to your laptop, right?
14 It was on your computer there? Your laptop there in Ocean
15 Springs; is that correct?
16 A. Well after I went to Earthlink, I would dial up
17 Earthlink see if I had e-mail, and then I would read it. So I
18 guess to read it, it had to come to the machine. I mean
19 obviously it came to the machine.
20 Q. You just -- you had an e-mail address with
21 Earthlink?
22 A. Yes.
23 Q. And you could boot your laptop, go on the internet,
24 and you could read your e-mail like everybody does?
25 A. Yes.

Page 66

1 Q. And so that e-mail was on your laptop computer,
2 correct?
3 A. That's correct.
4 Q. Okay, but you deleted those e-mails?
5 A. Not from the computer but from the site where it's
6 stored, correct.
7 Q. Wherever it was stored?
8 A. That's right. Wherever it was stored.
9 Q. Even if it was stored on your laptop, you still
10 deleted it; is that correct?
11 A. That's correct.
12 Q. The same thing is true for the Forensic-Analysis.com
13 e-mails, right?
14 A. Yes, that's right.
15 Q. Exactly?
16 A. Yes.
17 Q. You could boot your computer, read the e-mails?
18 A. I go to broad -- I go through this broadband modem
19 to the FAEC mailbox.
20 Q. Right.
21 A. And I open it up, and there is ten messages, and I
22 can read them and print them out or throw them away.
23 Q. And in either case, you did not print out any
24 e-mails that there were delivered in your production to either
25 the state criminal investigating authorities or the Justice

Page 67

1 Department authorities?
2 A. Not specifically for that, but I might have printed
3 something out earlier that went into the case file.
4 Q. Other than that? Other than that, when the subpoena
5 asked you for electronic data, my question is limited to that.
6 A. Yes.
7 Q. You did not print out any e-mail and deliver that
8 with your production to those authorities?
9 A. That's correct.
10 Q. That's all. Let me ask you. Let's turn attention
11 away from that for just a second. You're -- the only person
12 that you went with for training about conducting a hurricane
13 loss investigation was Brian Ford, wasn't it?
14 A. That's correct.
15 Q. And after Brian was terminated, you didn't undergo
16 any further training as far as the protocol for conducting an
17 investigation and writing up the report and etc., right?
18 BY MR. BANAHAH: I'm going to object to the
19 form of your question.
20 BY THE WITNESS: Could you repeat the question?
21 MR. WYATT CONTINUED:
22 Q. Yeah, sure. You didn't undergo any further training
23 with anyone for the purpose of conducting the investigations
24 and writing up the reports and so forth?
25 A. No, sir, as I said, this was a very short time frame

Page 68

1 of six or eight weeks. Something in that line.
2 Q. Right. Do you recall telling -- let me strike that.
3 You and Mr. Forbes conducted a lot of dialogue back and forth,
4 right?
5 A. Yes, sir.
6 Q. And Mr. Forbes was another engineer that Mr. Kochan
7 had hired who stayed up in Virginia; is that right?
8 A. Yes, sir.
9 Q. And he was the guy that signed off a lot of times as
10 the peer reviewer, right?
11 A. Yes, sir.
12 Q. So you would correspond back and forth -- would you
13 call him Bill, Bill Forbes?
14 A. That's correct.
15 Q. And over the months that you worked for Forensic,
16 you sent a lot of the correspondence back and forth and talked
17 to Mr. Forbes frequently on the phone and so forth, right?
18 A. A lot of correspondence. I wouldn't say we talked
19 frequently. It was on occasion.
20 Q. On occasion?
21 A. Yes, sir.
22 Q. Do you recall telling Mr. Forbes that -- this
23 statement is taken out of an e-mail. I will just read it to
24 you, and then you can comment on it. This is you speaking to
25 Mr. Forbes, and you say, the thing I found interesting was the

Page 69

1 lead time of the wind ahead of the water because this is what
2 we experienced. I cannot say what speeds the wind were, but
3 they were definitely were ahead of the water by our
4 observations. Do you recall making that statement to Mr.
5 Forbes?
6 A. Not offhand. If I knew what the -- some previous --
7 give me the string of e-mails, and I might be able to.
8 Q. Well just hearing that, you don't recognize your
9 words at all? Is that totally foreign do you, or do you
10 remember --
11 A. No, I recall this being an issue. Now I can't say I
12 specifically remember I spoke to Bill about it that day or
13 whatever but. So we were here in the storm. I stayed here
14 and so I saw, what I saw. Related that to the group.
15 Q. Take a look at Exhibit 31 to the Shows complaint,
16 which is marked as Exhibit 2, and tell me if that in fact is
17 the e-mail that you sent to Mr. Forbes?
18 BY MR. CANADA: Before you respond, let me just
19 enter my objection to your conducting discovery
20 contrary to Rule 26(d) in the Shows case.
21 BY MR. WYATT: So noted.
22 BY MR. CANADA: Go ahead.
23 BY MR. BANAHAH: Can we -- before we go on, can
24 we agree that an objection as to one is as good to
25 all; so that we're not --

Page 70

1 BY MR. WYATT: Certainly.
2 BY MR. BANAHAN: Okay.
3 BY MR. WYATT: Certainly.
4 BY THE WITNESS: Go ahead now?
5 MR. WYATT CONTINUED:
6 Q. Yeah, please, sir.
7 A. Okay, this is about Hurricane Katrina modeling
8 information. You know, I wrote that. That's my name.
9 Q. That's what I'm getting at. That's your e-mail to
10 Mr. Forbes, right?
11 A. Yes.
12 Q. And let me just take it a second, and I'll hand it
13 back to you if you need. And I did read your statement
14 correctly, right? The thing I found interesting, that's you?
15 The thing you found interesting was the lead time of the wind
16 ahead of the water. That's what you told him, right?
17 A. Yes.
18 Q. Was that -- you were being truthful with him,
19 weren't you?
20 A. Yes, sir.
21 Q. And then you said, because this is what we
22 experienced. You were relating it to your actual experience,
23 field experience, right?
24 A. Home experience.
25 Q. Oh, your home experience?

Page 71

1 A. Yes, sir, this is -- apparently -- I'm thinking that
2 this is regarding the Hurricane Katrina hind cast model, which
3 was a publication put out by NASA, I think, and that document
4 or report specifically showed charts at different locations
5 along the Coast of wind speed versus water depth. And the
6 wind speed preceded the water rise by several hours, and this
7 is what I noticed physically with my own eyes because I was
8 here in the storm.
9 Q. Okay.
10 A. I believe that's what that was.
11 Q. There's nothing in this e-mail that you would today
12 contend was untrue, right? You were being perfectly candid
13 and sincere with Mr. Forbes, right?
14 A. Yes, sir.
15 Q. And that was true not only the date that you wrote
16 this e-mail, which was January the 10th but even before that,
17 right?
18 A. Yes, I saw on August 29th the wind coming in advance
19 of the water rise.
20 Q. Right.
21 A. Yes.
22 Q. Okay, do you recall, Mr. Kelly, that Mark Wilcox,
23 the State Farm guy, that took you out on property
24 investigation -- and I never did quite understand why
25 Mr. Wilcox felt it was necessary to go with you on that, but

Page 72

1 we'll go into that later. Do you recall that Mr. Wilcox sent
2 you all a form investigative report that he suggested that you
3 use?
4 A. I recall him providing more or less a format or a
5 guide or outline so to speak of how to present data in a very
6 general way.
7 Q. Uh huh (affirmative response). Did you use it?
8 A. No, not to my knowledge. We were essentially in the
9 same format, and as I recall, we just kept our own format.
10 Q. Let me show you a copy of what we're talking about.
11 Exhibit 30 to the Shows case --
12 BY MR. CANADA: Can we just make my objections
13 continuing to your asking questions about the Shows
14 case, or should I make them each time?
15 BY MR. WYATT: No, no. You can just --
16 BY MR. CANADA: Sure.
17 MR. WYATT CONTINUED:
18 Q. Exhibit --
19 A. May I make a comment before you start --
20 Q. Sure.
21 A. -- another question?
22 Q. Yes, sir.
23 A. I have not prepared for anything but the topic that
24 I was subpoenaed on, which was the McIntosh case. So I have
25 not looked over any of this stuff that you're showing me now

Page 73

1 in advance to today. I want you to understand that.
2 Q. What did you do to prepare for this deposition?
3 A. I read through the McIntosh file.
4 Q. Whose McIntosh file?
5 A. My McIntosh file.
6 Q. You have a McIntosh file yourself?
7 A. Yes.
8 Q. What does it consist of?
9 A. You've been given it. It has Brian's first report
10 in it, my report, directions to the house site, and there may
11 be one or two other things in it. I don't recall, but I've
12 not looked over all these jobs.
13 Q. I understand.
14 A. There's a tremendous -- you know there's a whole box
15 full of files. I didn't look through all that.
16 Q. Yes, sir.
17 A. I just want -- I'm sorry. I just wanted to make
18 sure you understood that.
19 Q. Yes, sir, I do understand that. When a witness is
20 deposed, the general idea is that the witness is knowledge,
21 whatever knowledge the witness has that's probative, of
22 course, of something, you know, involved in the lawsuit, is
23 the appropriate subject matter. So Mr. Wilcox, for example,
24 having sent on the October 28th, just 11 days after you
25 started working for Forensic, a form inspection report would

Page 74

1 be something that I would think that you might have been aware
2 of while you were working for Forensic; is that correct?
3 A. Yes, sir.
4 Q. You did in fact get a copy of this, didn't you?
5 A. Yes, I did.
6 Q. Okay, I'm trying to understand. Is it your
7 testimony, Mr. Kelly, that you did not follow the form report
8 that Mr. Wilcox transmitted to you all?
9 A. Can I take a look at that?
10 Q. Certainly, yes, sir. Sure.
11 A. I don't believe we changed what we had to mimic this
12 format. Cause I think what we had was very close to this
13 format.
14 Q. It was already?
15 A. It was already very close to this format.
16 Q. And what is it particularly that you're thinking
17 about when instantly recognize that it's the same as what you
18 already had?
19 A. Well we had --
20 Q. What comes to mind?
21 BY MR. CANADA: I object. Hold on. Let me
22 object to your characterization of the form of the
23 question. Go ahead and answer.
24 BY THE WITNESS: If we have in our reports
25 general description of the house. We had some

Page 75

1 weather information. We have our observations made
2 during the inspection, and then we come up with
3 conclusions, and then we attach -- we already attach
4 the closing statement, and we attach pictures.
5 MR. WYATT CONTINUED:
6 Q. So you're looking at the topics in the report, is
7 that what it is, rather than content?
8 A. Yes.
9 Q. Okay, what I'm asking about is the content of the
10 report. Mr. Wilcox went to the trouble to write out -- what
11 is this a three page report?
12 A. Yes.
13 Q. In detail covering all kinds of subject matter like
14 how you identify storm surge did this damage, that type of
15 thing, right? So my question is a not whether you had your
16 format topics set up the same as he, the question is did you
17 utilize this report and the content of this report in
18 composing your reports for Forensic?
19 A. No, I don't recall that we did.
20 Q. Okay, you're saying we. Did you is what I'm asking
21 about?
22 A. Did I? No, I didn't
23 Q. Okay, did Mr. Sammis have this document?
24 A. Yes, I think I got it from him.
25 Q. Did Mr. Sammis compose portions of the Forensic

Page 76

1 reports?
2 A. He would take a draft that I would give him and then
3 put it into the format that we ended up with for the final
4 report. I don't believe he composed anything in there
5 himself. The weather information was primarily done by Bill
6 Forbes, that heading we had on weather.
7 Q. All right, so it's your testimony that you don't
8 think Mr. Sammis wrote any portions of the reports?
9 A. I don't believe so. I don't recall that.
10 Q. What is the first inspection that you recall you
11 went on?
12 A. I can't recall the first day what I went on. I was
13 handed, you know, two or three cases and directions to them.
14 I don't remember which ones they were.
15 Q. Do you recall the Mullins inspection?
16 A. Yes, sir.
17 Q. Tell me what you recall about your instructions that
18 were given to you by Forensic or anyone else concerning that
19 particular inspection.
20 A. Yes, I understood that Manny had made an inspection
21 of the property and had drafted a report, but it was not
22 completed. So as Manny was no longer with the company, I was
23 assigned to finish it. So I went to the house location.
24 There were pictures of the house in the file, and then I
25 interviewed a neighbor, and then took the information that

Page 77

1 Manny had with my information of the site and wrote a report
2 for the Mullins case.
3 Q. Who gave you the instructions to do that?
4 A. I believe it was Adam gave me the assignment.
5 Q. And when you went to the Mullins property, did you
6 contact Ms. Mullins in advance and explain that you were
7 coming for the purpose of conducting another inspection?
8 A. No, sir, I did not.
9 Q. You never spoke with Ms. Mullins when you went out
10 there, did you?
11 A. No, sir.
12 Q. And the same is true of the McIntoshes? You never
13 spoke with Mr. and Mrs. McIntosh when you went to do another
14 inspection of their property; is that correct?
15 A. That's correct.
16 Q. In each case you were going behind the engineer who
17 had already been there and conducted an inspection, right?
18 A. Yes, sir.
19 Q. And in each case you changed the conclusion of the
20 first engineer? When you did your second inspection and wrote
21 a report, you altered the conclusion of the first engineer?
22 BY MR. CANADA: Object to the form of the
23 question.
24 BY MR. BANAHAN: Joined.
25 BY MS. LIPSEY: Also joined.

Page 78

1 BY THE WITNESS: Go ahead now?
2 BY MR. CANADA: Yeah.
3 BY THE WITNESS: I made my own conclusion.
4 MR. WYATT CONTINUED:
5 Q. Your conclusion --
6 A. Which was different from the other engineer's
7 conclusion.
8 Q. And in the case of Mullins, for example, Mr. Manon
9 went to the site, and his conclusion was that the small little
10 house had been moved by wind from its original footing to the
11 middle of the road, turned around 180 degrees and set down,
12 right?
13 A. Yes, sir, basically.
14 Q. You changed that to say that water had moved the
15 house to the center of the road, right?
16 BY MR. CANADA: Object to the form.
17 BY THE WITNESS: I made my own conclusion which
18 differed from Mr. Manon's conclusion.
19 MR. WYATT CONTINUED:
20 Q. Is it correct that you changed it to say that water
21 had moved the house to the middle of the road?
22 BY MR. CANADA: Objection, asked and answered.
23 MR. WYATT CONTINUED:
24 Q. You may answer.
25 A. My conclusion was that water moved the house to the

Page 79

1 middle of the road.
2 Q. Okay.
3 A. It's a different conclusion than Mr. Manon had on
4 his unfinished report.
5 Q. Okay, at the time you wrote that, Mr. Kelly, you
6 knew that if conclusion was water, it effectively meant an
7 insured didn't get paid under their policy, correct?
8 A. I didn't know what their policy was.
9 Q. No, that's not my question. At the time you wrote
10 that -- and indeed the same is true of McIntosh, too, or
11 correct me if I'm wrong -- you, Mr. Kelly, knew that if the
12 conclusion said water effectively that meant the insured did
13 not get paid, correct?
14 A. I think I would have to know the policy to know that
15 information because you could have flood coverage.
16 Q. My question to you is that under State Farm's
17 homeowner policy is it true or not that you understood when
18 you wrote that report, particularly in the Mullins case, that
19 if your conclusion was water moved the house to the middle of
20 the road, it meant that the insured didn't get paid?
21 BY MR. CANADA: He's already answer the
22 question twice. Just because you don't like the
23 answer, doesn't mean you keep asking the question.
24 MR. WYATT CONTINUED:
25 Q. Did you understand my question?

Page 80

1 A. I understand your question, and my understanding is
2 that you can have a policy that can cover water with flood
3 insurance. You can have a policy that just has wind
4 insurance, and I've read in the papers where agents have told
5 people they didn't need flood insurance, and they didn't get
6 it. So I think the answer is that I wrote a conclusion that I
7 felt was proper, and I really didn't want to know whether the
8 people got paid or not. I wrote my conclusion not wanting to
9 know what the policy covered.
10 Q. Did you ever investigate a single property under
11 Forensics employment where you were investigating under a
12 flood policy?
13 A. I don't know. I was investigating assignments where
14 State Farm had the coverage. I don't know if they had
15 coverage, the owner had coverage for water damage or wind --
16 wind damage I'm assuming because --
17 Q. So in other words throughout the time you were
18 employed by Forensic, you never had any understanding of
19 whether State Farm and Forensic were sending you out to
20 investigate a homeowner policy loss or a flood loss? You
21 never knew one day the difference between those two; is that a
22 correct statement?
23 A. No, I did hear somewhere along the way about
24 concurrency, and uh -- and I went by the assignment sheet
25 which said determine, you know, the cause of damage to this

Page 81

1 spot or that spot or whatever and gave us our task.
2 Q. Uh huh (affirmative response), but that's not my
3 question to you.
4 A. Okay.
5 Q. Here's what the Ladies and Gentlemen of the jury
6 want to understand from your testimony, is it your testimony
7 that throughout the time you worked for Forensic, you never
8 knew throughout the whole time whether your assignments were
9 being conducted pursuant to a homeowners insurance policy or a
10 flood policy?
11 A. No, I understood that they were homeowners policies.
12 Q. Always, right?
13 A. That's what I understood.
14 Q. You never conducted one single flood policy
15 investigation during the time that you worked for Forensic?
16 A. Not that I recall it being called flood. If it was
17 tied into homeowners, then maybe.
18 Q. Okay, so therefore when you wrote your conclusion in
19 the Mullins report, you would have known, right, Mr. Kelly,
20 that a conclusion that said water moved the house to the
21 middle of the road meant effectively the insured didn't get
22 paid?
23 A. Well I don't know if that person had flood insurance
24 or not.
25 Q. As far as the homeowners policy was concerned, the

Page 82

1 reason you were there?
2 A. Oh, as far as the homeowners policy, it's my
3 understanding homeowners is wind, and you can get the writer
4 for the floor. That's what I understand.
5 Q. Okay, so same --
6 A. Whether or not they had flood with their homeowners,
7 I don't know, but I'm assuming it was -- I would assume it's
8 just wind.
9 Q. And therefore if the conclusion was water, it meant
10 under the homeowners policy they did not get paid?
11 A. With what I've just described, that's correct.
12 Q. Okay, how many times did you go behind another
13 engineer and rewrite a report that changed the conclusion from
14 the original? On how many occasions did you do that?
15 BY MR. CANADA: Object to form.
16 Mischaracterization of testimony.
17 BY THE WITNESS: Well I can recall under a
18 handful, McIntosh and Mullins are the two, and there
19 was another one later on in January, I think, was
20 one came up. I don't recall the case number.
21 MR. WYATT CONTINUED:
22 Q. Okay, let's see if we can recall some of these, and
23 do you remember going to the Glenda Shows property, which is
24 located at 4010 South Shore Drive in Pascagoula and going
25 behind Manny Manon's original inspection of that property? Do

Page 83

1 you recall that?
2 A. I don't recall the name, but I know I did finish
3 some of Manny's work.
4 Q. Okay, and on that --
5 A. And in Pascagoula.
6 Q. Okay, on that occasion did you write a report that
7 changed the conclusion of the original inspecting engineer and
8 resulted in no payment or less payment to the insured?
9 BY MR. BANAHAN: Object to the form of your
10 question.
11 BY THE WITNESS: I have no idea unless I look
12 at the case file. I don't know what the case is.
13 MR. WYATT CONTINUED:
14 Q. Okay, let me -- look at Paragraph 203, and I'm
15 showing you a copy of the Shows complaint, and this is the
16 language that we're focusing on, Paragraph 203, and just take
17 a moment and read that, and then I will have a question about
18 it.
19 A. Well I don't know what the case is. Do you have
20 pictures of house where I could see what it is? Do you have
21 the file on it?
22 Q. We certainly do, sir, but I'm asking from your
23 knowledge is that correct that you did go behind Mr. Manon?
24 You went to the Shows property. You wrote another report, and
25 that report changed the conclusion that effectively reduced or

Page 84

1 eliminated any payment to the insured?
2 A. It's possible, but I don't know unless I see the
3 file. I can't recall the case.
4 Q. All right, sir, do you recall making any statements
5 about that you should avoid talking about tornadic wind? Is
6 that something you recall stating or writing?
7 A. I recall either an e-mail -- I think it was an
8 e-mail on the case -- I think it was in Biloxi or D'Iberville
9 -- where there was a house that was damaged and -- I think
10 this is the one. I don't know if it's the one I'm thinking of
11 or not -- where there was some discussion on tornadic winds or
12 tornadic like winds, and I would have to look at the file to
13 see what I said there.
14 Q. Did you make any remarks about let's stay away from
15 the subject of tornadic winds?
16 A. I'd have to look at the file and see.
17 Q. Okay, on this occasion as far as Glenda Shows'
18 property is concerned, did you contact Ms. Shows before you
19 came out there, going behind Mr. Manon? Did you call her up?
20 A. I don't recall calling. I can't recall but what was
21 perhaps once or twice calling a homeowner before going out to
22 the site.
23 Q. How did you get permission to enter the property?
24 A. Well Adam set up the schedules and appointments, if
25 it were possible.

Page 85

1 Q. Did you ever inform any of the homeowners that you
2 were coming there to go behind the former engineer and
3 reinspect and perhaps produce a different report? Did you
4 ever say that to anyone?
5 A. No, I don't recall saying that to anybody.
6 BY THE VIDEOGRAPHER: Counsel, we have four
7 minutes on tape.
8 BY MR. WYATT: Okay, thank you. We can go
9 ahead and go off the record for a second.
10 BY THE VIDEOGRAPHER: All right, stand by.
11 This is the conclusion of Tape 2 in the continuing
12 deposition of Jack Kelly. The time is 11:37. We
13 are off the record.
14 (Off the record.)
15 BY THE VIDEOGRAPHER: We're back on the record.
16 It is 11:49.
17 BY MR. CANADA: All right, as I informed
18 counsel while we were off the record, I had made
19 a call to Judge Walker for the purpose to discuss
20 and argue with him what I believe is inappropriate
21 discovery in the Shows case introduced or
22 plaintiff's counsel had introduced the entire
23 complaint along with the exhibits. He's been
24 quoting directly from that complaint, and we would
25 like some instructions from the Judge before we

Page 86

1 continue any further along the lines in discovery in
 2 the Shows for a number of reasons, including that
 3 we're not here in the Shows case and all counsel are
 4 not for in the Shows case. So with that, in that
 5 respect until I can get the Judge on the phone,
 6 which I understand will be at about 1:15, when he
 7 gets back from lunch, I'm advising my client not to
 8 answer any further questions with relation to the
 9 Shows case until we can get some direction from the
 10 Judge.
 11 BY MR. WYATT: And, counsel, I'm requesting
 12 that you as an officer of the Court and a
 13 Mississippi licensed attorney, etc., abide by the
 14 Federal Rules of Civil Procedure and particularly
 15 abide by the rule that says that it is inappropriate
 16 to instruct a witness not to answer unless upon
 17 privilege, and then and there you must identify what
 18 the privilege is of record. So I request that you
 19 identify that for the record.
 20 BY MR. CANADA: Okay, I'm not doing it that
 21 way. If you want to go by the rules, I will seek
 22 a protective order and shut the deposition down
 23 until such time as I get one.
 24 BY MR. WYATT: That's not my question to you.
 25 I'm asking you to identify the privilege that you

Page 87

1 are relying on and instructing the witness not to
 2 answer?
 3 BY MR. CANADA: I'm instructing him not to
 4 answer, and if that's the route you want to go,
 5 then we're going to shut the deposition down till I
 6 can get a ruling from the Judge because I'm entitled
 7 to do that.
 8 BY MR. WYATT: I'm asking for the privilege
 9 that you're instructing the witness not to answer
 10 on. That's my question to you.
 11 BY MR. CANADA: All right, I'm not responding.
 12 BY MR. WYATT: You decline to respond.
 13 BY MR. CANADA: That's correct.
 14 BY MR. WYATT: Okay. All right, good enough.
 15 BY MR. BACKSTROM: Hey, Zach, can you hit mute?
 16 BY MR. SCRUGGS: It was on mute.
 17 BY MR. BACKSTROM: Okay, I heard some typing on
 18 the other end.
 19 BY MR. SCRUGGS: Okay, it's on you.
 20 BY MR. BACKSTROM: Okay.
 21 MR. WYATT CONTINUED:
 22 Q. Okay, Mr. Kelly, you remember me asking you a moment
 23 ago if you had made a statement about leaving the tornadic
 24 wind issue alone? Do you remember me saying that?
 25 BY MR. CANADA: I'm sorry. Does that have

Page 88

1 something to do with the McIntosh case?
 2 BY MR. WYATT: And I'm not here to be
 3 interrogated by you, okay?
 4 BY MR. CANADA: You're asking me questions
 5 earlier.
 6 BY MR. WYATT: So you need to --
 7 BY MR. CANADA: I have an objection. It has
 8 nothing to do with this case.
 9 BY MR. WYATT: If you will have an objection,
 10 make your objection, and all that can be taken up in
 11 due course with the Court. If what you intend to do
 12 is impede the deposition, interrupt it continuously,
 13 make up rulings from your chair over there, that's
 14 not going to work. We're not going to be able to
 15 conduct this. You know, we need to move forward
 16 with it.
 17 So I ask if you have an objection, make the
 18 objection. Of course, the Court can address it in
 19 due time, and one of us will be wrong or right.
 20 That's clear. Okay, so we can have that
 21 understanding --
 22 BY MR. CANADA: So I'm asking you, what does
 23 that have to do with McIntosh?
 24 BY MR. WYATT: Counsel, I'm not here to answer
 25 your questions about what anything --

Page 89

1 BY MR. CANADA: So you're asking questions --
 2 BY MR. WYATT: -- has to do with McIntosh.
 3 BY CANADA: You're asking questions on Shows
 4 and don't answer it.
 5 BY MR. WYATT: I'm not -- is your instruction
 6 to the witness --
 7 BY MR. CANADA: Yes.
 8 BY MR. WYATT: -- not to answer?
 9 MR. WYATT CONTINUED:
 10 Q. Mr. Kelly, do you take Mr. Canada's instruction?
 11 A. I understand I should not answer that question.
 12 Q. Okay, very good. I'm going to have another question
 13 for you about another e-mail you wrote that says does State
 14 Farm want us to redo the report and conclusions or just be
 15 willing to in the future, if needed. Same question to you,
 16 and I assume Mr. Canada is again going to instruct you not to
 17 answer, but you can do it on the record.
 18 BY MR. CANADA: Because it has to do -- you're
 19 reading from the Shows petition. It has nothing to
 20 do with McIntosh. Instruct you not to answer until
 21 we get the Judge on the phone.
 22 BY MR. WYATT: Okay. All right, I'm going to
 23 save my time, and I'm also going to reserve Motion
 24 for Cost, and what we will do is we'll go off the
 25 record at 12:00, and I understand you said what

Page 90

1 Judge Walker will be back when?
2 BY MR. CANADA: 1:15.
3 BY MR. WYATT: 1:15. Okay, so I'm going to
4 ask for an hour and 15 more minutes be tacked on to
5 the deposition in addition to the cost from the
6 deposition, and at this time I would suggest that
7 what we do is have a recess and do whatever
8 necessary, have lunch or something.
9 BY MR. CANADA: Okay.
10 BY MR. WYATT: But that's what we're going to
11 do, and once again I want to make sure, Larry, just
12 so I'm perfectly clear, you're not identifying any
13 privilege today that you're instructing the witness
14 not to answer on; is that correct?
15 BY MR. CANADA: That's correct.
16 BY MR. WYATT: Okay, thank you.
17 BY THE VIDEOGRAPHER: Stand by. We're going
18 off the record. The time is 11:54. The continuing
19 deposition of Jack Kelly. We're off the record.
20 (Off the record.)
21 BY THE VIDEOGRAPHER: We're back on the record.
22 This is Tape 3 in the continuing deposition of Jack
23 Kelly. The time is 13:25.
24 MR. WYATT CONTINUED:
25 Q. Mr. Kelly, earlier this morning when we covered some

Page 91

1 of the preliminary matters, about your employment with
2 Forensic, I believe, that you agreed that Forensic did not
3 have a Certificate of Authority during the period of time that
4 Brian Ford was gone, and you were -- you had not yet applied
5 for the Certificate of Authority or participated in that
6 process; is that right?
7 BY MR. CANADA: Objection to the form and
8 mischaracterization. Go ahead. You can answer.
9 BY THE WITNESS: No, I didn't agree to that.
10 MR. WYATT CONTINUED:
11 Q. Okay, do you contend then that Forensic did have a
12 Certificate of Authority during that period of time?
13 A. That was my understanding.
14 Q. Okay, and who was the registered professional
15 engineer that was standing in as the person necessary for that
16 process to be legal?
17 A. Brian Ford.
18 Q. I'm talking about the period Brian Ford was not
19 there?
20 A. He was there until, as I understood it, until I took
21 over.
22 Q. Okay, well do you know for a fact -- are you willing
23 to testify under oath today that Brian Ford was not relieved
24 of his responsibilities to Forensic on October 17th, 2005?
25 A. That's what I understand, yes.

Page 92

1 Q. You're suggesting that he was not; is that what
2 you're testifying to?
3 A. Yes.
4 Q. And what knowledge do you have as to that?
5 A. Well because some time after that, I think the next
6 week or two, I was told by Randy Down that Brian would no
7 longer be doing reports or investigations with State Farm.
8 So until that time, he was still on, and then I understood
9 that they were trying to find other work for him to do.
10 Q. Okay, do you have direct knowledge about his
11 termination?
12 A. Only from Randy Down.
13 Q. Well I mean direct. I'm asking do you have direct
14 knowledge about it?
15 A. Tell me what direct is.
16 Q. Were you there when he was terminated?
17 A. No.
18 Q. Did you talk to anyone immediately after?
19 A. After when?
20 Q. After his termination?
21 A. That would be Randy Down.
22 Q. You talked to Randy Down on October 17th, 2005?
23 A. No, no.
24 Q. Did you --
25 A. I don't understand he was terminated on October

Page 93

1 17th, 2005.
2 Q. Well that's what we're trying to establish. You
3 don't know, do you, that he was, whether he was terminated on
4 October 17th, 2005, right? Because you weren't involved in
5 that event; is that correct?
6 A. Well that's correct.
7 Q. Okay, so from the period of October 17th, 2005 until
8 whatever date it was that this Certificate of Authority was
9 forwarded to the licensure board, my question to you is was
10 Forensic during that period of time operating without a
11 Certificate of Authority?
12 A. I'm not sure how to answer that question because I'm
13 a little confused on it. It's my understanding that Brian was
14 an employee of the firm getting paid until such time as
15 basically I took over that position, which would have been in
16 December or -- I think it was December or early January. In
17 that time FAEC was trying to secure other work with other
18 firms to put Brian on to those insurance firms for report work
19 and continue the, his business.
20 Q. Uh huh (affirmative response).
21 A. And then at some point Randy called me and told me
22 that -- I told Randy, you know, I wouldn't take that position
23 unless -- you know, I was not going usurp Brian's job. That
24 was his position, but if anything ever worked out where he was
25 not going to be doing that, then I would look at that

Page 94

1 position.
2 Q. That, the position that you took is in -- you say,
3 in December; is that correct?
4 A. I think it was December or January.
5 Q. Okay, well -- and you also testified about the
6 documents that was sent to the licensure board earlier this
7 morning; do you recall those questions?
8 A. Yes, they were the Certificate of Authorization form
9 sent in.
10 Q. Right, and you played some part in that process,
11 correct?
12 A. In the second one, yes.
13 Q. Yeah, because you had the seal, right? You were the
14 engineer with the Mississippi seal; isn't that right?
15 A. Well so was Brian.
16 Q. Yeah, but I'm asking you if you were?
17 A. Oh, I am, yes.
18 Q. So if Mr. Ford wasn't there, you were the only
19 person that had that seal at that time, right?
20 A. That's correct, but the two don't necessarily go
21 together. That you become an authorized engineer in charge
22 for COA. Just because you're employed and have a Mississippi
23 seal.
24 Q. At the time, Mr. Kelly, that you inspected the
25 McIntosh property --

Page 95

1 A. Yes.
2 Q. -- behind Mr. Ford, do you have any direct knowledge
3 that Forensic had a Certificate of Authority?
4 A. No, I don't have direct knowledge of that.
5 Q. Okay, you testified earlier this morning that --
6 when I asked you about your e-mails, you were careful to point
7 out that those e-mails were not on your computer; do you
8 recall that testimony?
9 A. Yes.
10 Q. Did you confer with Mr. Canada and get instructions
11 from him about setting something up so that the e-mails
12 wouldn't end up on your computer?
13 BY MR. CANADA: First off, let me enter an
14 objection to the extent that that specifically asks
15 for comments that would be protected by
16 attorney/client privilege. I've given any
17 discussion that's attorney/client privilege.
18 BY MR. WYATT: Okay, so you're instructing him
19 not to answer?
20 BY MR. CANADA: That's exactly what your
21 question asks for, wasn't it? Did you talk with
22 your attorney?
23 BY MR. WYATT: That's correct.
24 BY MR. CANADA: And get instructions.
25 MR. WYATT CONTINUED:

Page 96

1 Q. Okay, Mr. Kelly, I'm going to show you a copy of
2 what I've marked as Exhibit 5, and I'm interested in this
3 e-mail at the bottom of the page. Is that your e-mail address
4 right there?
5 A. Yes.
6 Q. And this is dated May 28th, 2006. What is that 3:16
7 p.m.?
8 A. Yes.
9 Q. Okay, and the subject is what down here in the
10 e-mail?
11 A. Buoyancy cases.
12 BY THE COURT REPORTER: Say that again?
13 BY THE WITNESS: Buoyancy.
14 BY MR. WYATT: Buoyancy cases, B-U,
15 B-O-U-Y-A-N-C-Y.
16 MR. WYATT CONTINUED:
17 Q. First of all, just looking at that header, that
18 e-mail header, does that bring back a recollection to you of
19 anything? Do you remember -- before you look at the body of
20 this, do you remember writing this e-mail to Mr. --
21 A. Well that's my e-mail address.
22 BY MR. CANADA: Hold on.
23 MR. WYATT CONTINUED:
24 Q. That's what I'm saying.
25 BY MR. CANADA: Let's see the e-mail chain

Page 97

1 here. Excuse me.
2 BY MR. WYATT: Just a moment, counsel.
3 BY MR. CANADA: No. Because if that contains a
4 communication from me in anticipation of litigation,
5 and you've obtained it, and you haven't disclosed
6 it, then I move to get a protective --
7 BY MR. WYATT: No.
8 BY MR. CANADA: I just want to see whether that
9 --
10 BY MR. WYATT: Counsel, you have the e-mail.
11 You have the e-mail, okay. So once again you're
12 interfering with the taking of this deposition.
13 BY MR. CANADA: What's on the back -- what's in
14 the back of the e-mail train?
15 BY MR. WYATT: Counsel, I'm not going to be
16 here to be deposed by you. Okay, you need to
17 understand that. I'm not going to do that, okay.
18 You can make your objections. You can put them on
19 the record. I'm not deposed by you. I'm not going
20 to be, okay, and if you continue to interfere, we'll
21 just make a record and for everything that happens,
22 we'll eventually put it before the Court.
23 BY MR. CANADA: Absolutely.
24 BY MR. WYATT: Nothing else to do.
25 BY MR. CANADA: And I want to know if you have

Page 98

1 communications that are privileged, and --
2 BY MR. WYATT: Counsel, they're only privileged
3 -- then the privilege has been waived because you --
4 BY MR. CANADA: I don't think so depending on
5 how you got them.
6 BY MR. WYATT: I'm not going to answer. It's
7 nonsense.
8 MR. WYATT CONTINUED:
9 Q. Okay, Mr. Kelly, this is the body of your e-mail
10 right here. First of all, let me ask you this. Who did you
11 address this e-mail to here?
12 A. It went to, from me to Bob Kochan, that's R Kochan
13 at Forensic Analysis. Forensic is Nellie Williams.
14 Q. Uh huh (affirmative response).
15 A. Randy Down and W., Bill Forbes.
16 Q. Bill Forbes, okay, and what does your e-mail say
17 over here, and if you would just read the first part, and then
18 we'll have a question about that.
19 A. Yes.
20 BY MR. CANADA: So it has to conferences with
21 myself in preparation of information, and this is
22 exactly what I was talking about. This is
23 inadvertently disclosed.
24 BY MR. WYATT: Inadvertently disclosed?
25 BY MR. CANADA: Absolutely. Where did you get

Page 99

1 that from?
2 BY MR. WYATT: Counsel, I am not going to be
3 deposed by you.
4 BY MR. CANADA: Oh, I think you will be.
5 BY MR. WYATT: No, I'm not.
6 BY MR. CANADA: I think you will be.
7 BY MR. WYATT: It's not going to happen.
8 BY MR. CANADA: This is a violation of your
9 ethical responsibility, sir.
10 BY MR. WYATT: Well we're going -- we're going
11 to determine some ethical --
12 BY MR. CANADA: Oh, we certainly will.
13 BY MR. WYATT: -- things I can assure you
14 before the case is over. In fact we have a big plan
15 about that, and I'm not the target of it.
16 MR. WYATT CONTINUED:
17 Q. So, Mr. Kelly, this says in Friday's teleconference
18 with Mr. Larry Canada, he asked that we give him a list of all
19 cases that had buoyancy as a cause of damage. That's your
20 sentence, right? You wrote that?
21 A. Yes, sir.
22 Q. And you say you have gone through the files and
23 attached a memo on this issue, right?
24 A. That's what I said.
25 Q. Okay, and then down here you say one thing that I

Page 100

1 should mention is that we may want to keep e-mails that refer
2 to the legal issues of those cases where FAEC may be brought
3 into litigation in a separate computer zone. Did I read that
4 correctly?
5 A. Yes, sir.
6 Q. So it was your suggestion, if I understand this
7 correctly, that the -- you suggested that these e-mails be put
8 away somewhere, as you called it, in a separate computer zone;
9 is that what --
10 A. That's what I wrote down, yes.
11 Q. And you were saying that because those e-mails might
12 be involved in litigation; isn't that right?
13 A. I say it because or I'm not sure what information of
14 this type -- what am I saying? Or wherever or what every one
15 calls it. I'm not sure information of this type where it is
16 for the use of the firm's attorney is discoverable as it might
17 be considered work product. You probably want us to be
18 checked out, and I signed --
19 Q. Okay.
20 A. I mean I wrote --
21 Q. Uh huh (affirmative response), how did you get the
22 idea to put the e-mails where they couldn't be found for
23 purposes of litigation?
24 A. Because all the other e-mails that the company had
25 was in Nellie's file, and my suggestion to her or to everybody

Page 101

1 was to if there's e-mails that's going to be considered, I
2 used the word privileged, between attorney and client, should
3 we separate that out from the general field of e-mails of
4 communications for all the Katrina work.
5 Q. But where did you come up with the idea to get these
6 e-mails out of the files and put them somewhere, as you say a
7 separate computer zone, the ones that might impact litigation?
8 Where did that come from?
9 A. From my head. This is a --
10 Q. I see.
11 A. This is a privileged communication between the firm
12 and its attorney, and those I don't think should necessarily
13 be put into the general field of distributable information.
14 Q. Uh huh (affirmative response), were each of these
15 e-mails addressed to an attorney?
16 A. Each of which e-mails?
17 Q. The ones you're referring to here that you wanted to
18 put away in a separate computer zone?
19 A. At that time that's the only one I can think of.
20 Q. I understood you earlier to say you didn't have any
21 e-mails on your computer when the subpoenas came from the
22 federal and state criminal authorities, right?
23 A. That's right.
24 Q. And was that because of this right here? That in
25 another words there had been discussion about taking those

Page 102

1 e-mails and putting them in a separate computer zone the ones
2 that could be litigation?
3 A. That was for Nellie's purposes because Nellie held
4 all of the computer e-mails. Once I wrote this, I don't have
5 it any more. I have a hard copy.
6 Q. Yeah.
7 A. In a legal file.
8 Q. This is your --
9 A. Or am I saying too much here.
10 BY MR. CANADA: No, no. No, no, I think you're
11 making the case very well.
12 MR. WYATT CONTINUED:
13 Q. This is your suggestion. This is your suggestion
14 coming from you, right?
15 A. Yes.
16 Q. Where did you get the words work product? How did
17 you know about that?
18 A. I had heard that before.
19 Q. Where did you hear that before?
20 A. I think in one of the depositions I was in.
21 Q. Well this is a May 28th of '06. Had you been
22 deposed by then?
23 A. No, prior.
24 Q. Your previous litigation history?
25 A. Yes.

Page 103

1 Q. Is that what you're talking about?
2 A. Yes. I've heard that term work product.
3 Q. Oh, so that's where you came up with that?
4 A. Yes, sir.
5 Q. Not from the telephone conference that you had?
6 A. I don't recall if that was, if that term was used in
7 the telephone conference or not.
8 Q. Is it typical for you to talk about information
9 that's discoverable? As an engineer is that something you
10 normally talk about?
11 A. Not normally.
12 Q. Was this acted upon in the way that you suggested?
13 A. I don't know.
14 Q. Look above it. Here's another e-mail. This one's
15 from Forensic. Who would that be?
16 A. That would be Nellie.
17 Q. Okay, and she's talking back to you, right?
18 A. Yes.
19 Q. And then you got Kochan on here as well right?
20 A. Yes, she copied Kochan.
21 Q. This is just two days later?
22 A. Yes.
23 Q. And they're addressing you?
24 A. Yes.
25 Q. It says, Hi Jack. I created another storage area

Page 104

1 for all e-mails not directly related to case when this Terri
2 Mullins thing started. All legal matters and newspaper
3 articles as well as internal correspondence is located there.
4 No worries.
5 A. Okay, I remember that now.
6 Q. Uh huh (affirmative response). Were you the one
7 that was worrying?
8 A. I wasn't particularly worried. I was offering a
9 suggestion. They could act on it as they wanted.
10 Q. Uh huh (affirmative response), this references the
11 Terri Mullins thing started.
12 A. Yes.
13 Q. What was the Terri Mullins thing that was being
14 referred to?
15 A. When is -- let's see when this is? This is May, and
16 I think the Mullins lawsuit started in maybe February or
17 March. Somewhere around there.
18 Q. What are the words Terri Mullins thing mean to you?
19 A. Terri Mullins lawsuit.
20 Q. Over the changed report?
21 A. Over their claim of a changed report.
22 Q. Uh huh (affirmative response), that's the one where
23 you went -- we talked about it earlier today, right?
24 A. Yes.
25 Q. You changed the conclusion?

Page 105

1 A. No, I issued my own conclusion.
2 Q. Uh huh (affirmative response).
3 A. Which was different then.
4 Q. It has water moved the house is what you said.
5 A. That's right.
6 Q. Okay.
7 BY MR. BANAHAH: Derek, what exhibit are y'all
8 referring to, number?
9 BY MR. WYATT: This is Exhibit 5, John.
10 BY MR. BANAHAH: Okay.
11 BY MR. WYATT: It's just been marked, and I'll
12 pass it across if you want to look at it --
13 BY MR. BANAHAH: Please.
14 BY MR. WYATT: -- in just a second.
15 BY MR. BANAHAH: Thank you.
16 MR. WYATT CONTINUED:
17 Q. One more on this, and then I'm going to hand it to
18 Mr. Banahan, you still weren't finished with the subject on
19 May 30th when Mr. Kochan writes back to Nellie. Nels, that
20 was a great idea. Now how do each of us protect ourselves?
21 By setting up separate folders for these e-mails? Let each of
22 us know so we can all be consistent. That was part and parcel
23 of what you brought up in the first e-mail we read, right?
24 A. It appears to be.
25 Q. It's the same thing. You're still talking about how

Page 106

1 do we get these e-mails, these discoverable e-mails put away
2 in a separate computer --
3 A. Un --
4 BY MR. CANADA: Objection.
5 MR. WYATT CONTINUED:
6 Q. Excuse me. These discoverable e-mails put away in a
7 separate computer zone, as you referred to it?
8 BY MR. CANADA: Object to form.
9 MR. WYATT CONTINUED:
10 Q. Is that correct?
11 A. No, it would be undiscoverable e-mails.
12 Q. Because you were trying to make them that way?
13 A. That's correct.
14 Q. Okay.
15 A. And that's what it says where Bob says further --
16 you can go ahead and read that.
17 Q. Maybe we need some legalese in front of each to
18 create an attorney work product or attorney/client privilege
19 presumption; is that what he's talking about?
20 A. That's what I take it as.
21 Q. Uh huh (affirmative response), so that the contents
22 will be considered attorney/client privilege. He just goes on
23 and says it, doesn't he?
24 A. Yes.
25 Q. Did all that come out of the conference with Mr.

Page 107

1 Canada that started this e-mail chain?
2 BY MR. CANADA: Again don't discuss our
3 conference. We're going to take action on this
4 because this is inadvertently disclosed, and you are
5 --
6 BY MR. WYATT: And we're going to proffer --
7 BY MR. CANADA: Any way we'll deal with it.
8 BY MR. WYATT: -- that, counsel, if your file
9 reflects that you were counseling someone about how
10 to commit fraud, there's a serious problem, and I
11 won't say any more.
12 BY MR. CANADA: Right, and you're going to run
13 into serious problems making those allegations
14 because you're totally mischaracterizing this
15 e-mail.
16 BY MR. WYATT: We shall see.
17 BY MR. CANADA: And you shouldn't have it to
18 begin with.
19 BY MR. WYATT: We shall see.
20 BY MR. CANADA: How did you get it?
21 BY MR. WYATT: We shall see.
22 BY MR. CANADA: How did you get it?
23 MR. WYATT CONTINUED:
24 Q. And then this e-mail finishes with, please, discuss
25 with Larry; is that Mr. Canada?

Page 108

1 A. He's the only Larry I knew at the time.
2 Q. And let us know if that is needed or would be
3 helpful. And what he's referring to, if it's needed is that
4 you plug in something legal into the e-mail, some kind of
5 language that would color it with the presumption of
6 attorney/client privilege or work product?
7 A. That's what it appears to be.
8 Q. All right, thank you. Let me show you an e-mail,
9 Mr. Kelly, that is dated January 30th, 2006, 9:45 a.m., and
10 it's from you, right?
11 A. Uh huh (affirmative response).
12 Q. To Nellie, right? Is that correct? You have to
13 answer. I'm sorry.
14 A. Yes, I'm sorry.
15 Q. We all do it.
16 A. I was reading and answering, and I can't multi task.
17 Q. Neither can I. And also copies Down, Randy Down?
18 A. Yes.
19 Q. All right, this is about the McIntosh case, right?
20 Job No. 88?
21 A. Job 88 is McIntosh.
22 Q. Okay, by now we all know that number, if we don't
23 know any other, right?
24 A. Well I know that number.
25 Q. Okay, let me take this line by line with you.

Page 109

1 A. Yes.
2 Q. Okay, you say I'm trying to look for a precedent to
3 address the SF issue. That means State Farm?
4 A. State Farm, yes.
5 Q. On Job 12. I came across Job 88. Now you say you
6 came across it. You've long since been and rewrote the
7 McIntosh inspection report, right?
8 BY MR. CANADA: Objection to form.
9 MR. WYATT CONTINUED:
10 Q. Brian Ford was there first, and then you came on the
11 20th, October 20th? Just eight days after Brian?
12 A. A week later, right.
13 Q. Okay, so when you came across Job 88, this is
14 January, you're looking in your files?
15 A. Yes.
16 Q. Okay, I came across Job 88 in the data I have. What
17 data are you referring to there?
18 A. The case files.
19 Q. On your laptop computer?
20 A. No, in a box.
21 Q. Well hard copy?
22 A. Hard copies, yes.
23 Q. That's the same information that you later turned
24 over to the criminal authorities who served you with
25 subpoenas?

Page 110

1 A. Yes, not the hard copies, but the electronic copies.
2 Q. You did not turn over the hard copies?
3 A. To the state but the federal we copied the hard
4 copies also.
5 Q. Okay.
6 A. Of each file case.
7 Q. Refresh me a little bit. This is January. The
8 first subpoena you get is March of '06?
9 A. Yes.
10 Q. It's from the state criminal investigating
11 authority. Did you have the hard copy of this 88, file 88,
12 which is McIntosh?
13 A. Part of it, yes.
14 Q. But for whatever reason, in that March subpoena that
15 was not produced and instead these discs were produced from
16 North Carolina?
17 A. Yes, because that's what was agreed to --
18 Q. That's right.
19 A. -- by the state.
20 Q. You told me you called an investigator to set that
21 up?
22 A. Yes.
23 Q. Right?
24 A. Yes.
25 Q. And what was the reason you didn't want to give him

Page 111

1 the hard copies you had right there in your house?
2 A. Well I had a whole box full, and Nellie had -- to
3 print out all the stuff that Nellie had, would be a tremendous
4 chore, and we had very little time to get it done. So I asked
5 them, would you accept --
6 Q. The disks?
7 A. -- the disks instead of copies of all of the hard
8 copies.
9 Q. Did Nellie --
10 A. That's the state.
11 Q. I'm sorry. Yes, I understand. Did Nellie suggest
12 that to you?
13 A. I think she did because she was having a time
14 conflict on the weekend it seems to me like. It was a time
15 shortage. She was going to lose a weekend, and that didn't
16 have time. So I think she -- I think she or maybe Bob did. I
17 think it was Nellie.
18 Q. Uh huh (affirmative response), in any event you
19 followed through enough to even call up the investigator and
20 ask him if that would be a suitable --
21 A. That's separate from this.
22 Q. That is?
23 A. In March we're talking now.
24 Q. That's right.
25 A. That's right.

Page 112

1 Q. I don't mean to throw you around. I just wanted to
2 make sure.
3 A. No, I just wanted to make sure I'm on the same page.
4 In March, as I said earlier, I called the investigator.
5 Q. That's right.
6 A. I can't remember his name. Burt, I think was his
7 first name and talked to him. Explained the situation that we
8 had volumes, which would take a long time to copy. Would he
9 accept the computer disks.
10 Q. Right.
11 A. Which he agreed to, and that's what we submitted to
12 him.
13 Q. All right, but back to this e-mail, okay. You're
14 looking for precedent. And you came across the McIntosh file?
15 A. Yes.
16 Q. Now what precedent is it you're looking for?
17 A. I'd want to see the other jobs to see what we're
18 talking about here. Job 88.
19 Q. Uh huh (affirmative response). Let's read the rest
20 of it and see if this comes to you. You say, as I recall,
21 this job was done by Brian with peer review by Bob.
22 A. Uh huh (affirmative response).
23 Q. State Farm questioned the conclusions, and I was
24 sent to give a completely independent look at the case.
25 You're talking about McIntosh?

Page 113

1 A. Yes, 88 is McIntosh, correct?
2 Q. Uh huh (affirmative response). My conclusions
3 differed from the original reports, and my report was
4 submitted. I'm not aware that we've heard anything further
5 from State Farm. And then you say the question is, do you
6 have a record of how this job was handled? Did we submit a
7 revised report as a swap out of an original. So what's
8 troubling you? Why are you asking about this precedent?
9 A. I'm not sure what Job 12 is.
10 Q. Uh huh (affirmative response), but regardless of
11 what it is, you found McIntosh. You're reciting what happened
12 in McIntosh.
13 A. That's a history of that case. That's correct.
14 Q. Uh huh (affirmative response), and then you're
15 wanting to know how it was handled. Whether you submitted a
16 revised report, meaning the report and then furnished to the
17 insurer would show prominently, right, that it was revised.
18 If that's the way it was captioned; is that correct?
19 A. If it were captioned that way, yes.
20 Q. Did you ever caption a report that way?
21 A. I think there was one up in Picayune I did that had
22 a S on it, and I think there was another one that the scope
23 was expanded, and it became a B. Like an A and a B.
24 Something like that.
25 Q. You mean it conspicuously told the homeowner that

Page 114

1 this is a revised report from the original?
2 A. Well S mean supplemental.
3 Q. On the number of the report?
4 A. I'd have to look. I don't know how it was titled.
5 Q. Do you mean this kind of thing where you got your
6 FAEC number, and you have an R after the number; is that what
7 you're referring to?
8 A. No, I think there was something like an A or a B or
9 an S.
10 Q. In any event here you're inquiring about do we have
11 a record of how this job was handled? Did we submit a revised
12 report as a swap out of an original? Did we submit an
13 addendum report? Can you look and give me a call on this,
14 okay?
15 A. Uh huh (affirmative response).
16 Q. What was your concern? Why were you so concerned
17 about finding this out?
18 A. Well I guess to be consistent, I don't know what 12
19 is, but whatever we did here, I would assume we would want to
20 continued on 12. Twelve must have had a question about an
21 opinion or something. I don't know what 12 is.
22 Q. Would it help if you knew what 12 was?
23 A. Possibly. Do you have the folder, case folder?
24 Q. Twelve was the Pepperman property. You recall that
25 one?

Page 115

1 A. I recall the name, but I don't recall any details.
2 Q. Okay.
3 A. If you have the file, I could look through it --
4 Q. Well the file is attached right here. It's right
5 here. You really can't answer that question well without
6 looking at this, can you? Looking at the Shows exhibit, which
7 is Exhibit 2?
8 A. No, I would have to look at Job 12 case file.
9 Q. So in order to answer this question about McIntosh
10 correctly and fully, you need to consult what is attached here
11 that refers to Pepperman?
12 A. I don't know if everything in there is everything
13 that was in the Pepperman file. I would have to see the
14 Pepperman file that I would have, which you should have a copy
15 of. It would be a full file folder.
16 Q. Okay, but what I'm getting at is in order to answer
17 this question about McIntosh, you feel you need to see that
18 file?
19 A. I would need to see the Job 12 file.
20 Q. And that's Pepperman?
21 A. If that's Pepperman, yes.
22 Q. Yeah.
23 A. You told me that.
24 Q. Okay, did you ever have, come across an incidence
25 where the first report got in the hands of the homeowner, and

Page 116

1 you had to address that problem while you were writing a
2 subsequent report?
3 A. I can't recall that that happened.
4 Q. Okay, I want mark this. Oh, here's one right here.
5 Number?
6 BY THE COURT REPORTER: Six.
7 BY MR. WYATT: Six.
8 MR. WYATT CONTINUED:
9 Q. Take a look at this with me, if you will just a
10 second, Mr. Kelly.
11 A. Yes.
12 Q. You see the first sheet here on this Exhibit 6, I've
13 marked is the 88 file number, right?
14 A. Yes.
15 Q. Do you recognize the writing?
16 A. No, I don't recognize that. I'm turning over to the
17 first page of this, which might also be a copy of a file
18 jacket. I'm not sure. It is.
19 Q. It is?
20 A. Yes, sir.
21 Q. Whose writing is this that's up there?
22 A. I don't know whose this, the numbers are.
23 Q. The numbers on the side, you don't know?
24 A. I don't know who that is. I don't know who wrote
25 noon. Which I -- I don't know who wrote noon, and this is my

Page 117

1 writing. Question mark, where is the signed report.
2 Q. Uh huh (affirmative response), and why were you
3 asking -- first of all, who were you asking that question to?
4 A. Myself.
5 Q. Okay, does yourself answer?
6 A. Myself inquired.
7 Q. Okay.
8 A. I don't mean to be facetious.
9 Q. No, I understand. You're just making a note to
10 yourself?
11 A. I'm making a note.
12 Q. Okay, and what did you -- the first thing you were
13 looking for, I take it, is you wanted to find Brian Ford's
14 signed report about the McIntosh property?
15 A. No.
16 Q. Okay, tell me what it was then.
17 A. First thing -- first of all, I did not get these
18 records until Adam left, which would have been mid December,
19 I'm going to guess. Files were transferred to me. I wanted
20 to see where we had the complete file of each report in the
21 case file.
22 Q. Let's see. Where are the case files? Where are
23 they kept?
24 A. In these folders at my house.
25 Q. You got them?

Page 118

1 A. I got them --
2 Q. Okay, so from --
3 A. -- from Adam.
4 Q. Okay, let me get the chronology correct, and I
5 didn't mean to interrupt you.
6 A. No, that's fine.
7 Q. Just so the record's good.
8 A. That's fine.
9 Q. Adam leaves. He takes the RV back to North
10 Carolina?
11 A. No, he left it.
12 Q. Oh, he left the RV here?
13 A. Yes.
14 Q. Did you then take the first chair in the RV; so to
15 speak?
16 A. No, Bob came down and got it at the end of December.
17 Q. Okay, but who occupied the RV during the time period
18 after Adam left?
19 A. Nobody, it was vacant --
20 Q. Vacant, I see.
21 A. -- for two weeks.
22 Q. Okay, and then Bob came and got it and took it back
23 to North Carolina?
24 A. Yes, that's correct.
25 Q. Okay, he took the Adam laptop with him when he did

Page 119

1 that?
2 A. Yes.
3 Q. Was there another laptop in there, too?
4 A. I'm not sure, but Manny might have been given one to
5 use while he was living in the trailer also.
6 Q. Okay.
7 A. But mine wasn't there. Mine has always been in my
8 office.
9 Q. Yours is your own?
10 A. Right.
11 Q. Kochan never bought -- Mr. Kochan never bought you a
12 laptop?
13 A. No.
14 Q. And neither did Forensic? Neither did Forensic?
15 A. No, no, that's correct.
16 Q. So there was some files in the RV? There were some
17 physical files in there?
18 A. Yes.
19 Q. Okay, and when Adam left, it left the RV vacant, and
20 the files came to you?
21 A. Yes.
22 Q. How did they get there? Did you go get them?
23 A. Yes, I think I picked up the files before Adam left
24 from, him at the mobile home office, and if there were any
25 outstanding jobs, which I can't recall if there were any, but

Page 120

1 I would have had those also to finish up.
2 Q. I see. By that time, this date is it December 18th?
3 A. I don't know when it was. It was mid-- I think it
4 was mid December.
5 Q. Mid December?
6 A. I don't know when.
7 Q. By that time most of the inspections had been done,
8 or in the case of redoing, they had been redone, right?
9 A. All the work was essentially completed.
10 Q. Complete.
11 A. Even the writing also.
12 Q. So now at this point, you had in your possession the
13 hard copied files. You call them case files?
14 A. Right, or job files.
15 Q. Job or case?
16 A. Right.
17 Q. And that were in the RV, you had them in your
18 possession at your home in Ocean Springs?
19 A. Yes, sir.
20 Q. And that would have been the vast majority of all
21 the inspections done because they were mostly completed at
22 that point?
23 A. That's correct. I think Bob had done a few over
24 Thanksgiving, and he had some of those files with him up at
25 Raleigh, but that was a minimal amount of folders.

Page 121

1 Q. Right. All right, so we're back to where is this
2 signed report.
3 A. Right. I looked in here and could not find the
4 signed report.
5 Q. In the case file?
6 A. The full report in the case file, and this was true
7 in a number of cases.
8 Q. Why were you looking for it?
9 A. Well I wanted to make sure we had copies of all of
10 the reports that were issued.
11 Q. Was that part of your job? Did somebody
12 specifically assign you that task?
13 A. No, but at this point I think it would have fallen
14 to look into that.
15 Q. Okay, you just considered that was part of your
16 responsibility?
17 A. I consider I should look for them and have them, and
18 then what I found was that we did not have a full copy of -- a
19 copy of the full report in all the files. When I found that
20 then, I asked Nellie, when you're sending me all these reports
21 for a signature, send me a copy, or I'll copy it here because
22 I want a copy in the file.
23 Q. You were just doing some housekeeping, and you
24 wanted to get these signed copies back in those case files?
25 A. That's correct.

Page 122

1 Q. And you found that the McIntosh report, somehow the
 2 signed report was not that in the case file? Still about
 3 this?
 4 A. Right, but I'm assuming it's my report. My report's
 5 not in there.
 6 Q. Okay, let's take a look --
 7 A. The whole signed report.
 8 Q. Okay, here is, of course, a report dated October 12,
 9 2005?
 10 A. Yes, sir.
 11 Q. And we know that to be Brian Ford's report of the
 12 McIntosh property?
 13 A. Yes, sir.
 14 Q. And the one that is attached here does not have
 15 Brian Ford's signature on it?
 16 A. That's correct.
 17 Q. But it has Mr. Kochan's signature on it?
 18 A. Yes.
 19 Q. Is that what you were referring to when you said
 20 where is the signed report?
 21 A. I'm thinking it was my own.
 22 Q. Okay.
 23 A. Which is several pages following what you just
 24 showed me.
 25 Q. And so yours is October the 20th ultimately?

Page 123

1 A. Yes.
 2 Q. You made remark to Adam, please, change to 20th, the
 3 date I stamped and signed letter?
 4 A. Letter or report.
 5 Q. You called it sometimes letter? A report a letter?
 6 A. Apparently I did right there.
 7 Q. So is it true then that your note about the signed
 8 report, it refers to either one? You didn't have either one;
 9 is that correct?
 10 A. No, I think it was mine. I was referring to mine.
 11 Q. You were referring to yours?
 12 A. I believe so. And it was not in there.
 13 Q. Referring to this Exhibit 6, a statement is made
 14 that FAEC performed a field investigation of the subject
 15 insured residence October 18th, 2005?
 16 A. Yes, sir.
 17 Q. FAEC is you, right?
 18 A. Well it's the company.
 19 Q. I mean you were the person in the --
 20 A. I was the person within the company that did that
 21 field investigation.
 22 Q. You were the only Forensic person who did that on
 23 that date?
 24 A. On that date, that's correct.
 25 Q. Okay, and it states in here that Mr. McIntosh was

Page 124

1 present during, and again it says FAEC's inspection, again we
 2 know that's you?
 3 A. Yes, sir.
 4 Q. Is that a true statement?
 5 A. That's an error.
 6 Q. So it's untrue?
 7 A. It's an error. My draft did not have that. My
 8 draft had the owner was not present during the investigation.
 9 Q. Well what went into your final report? Did you make
 10 a statement that he was present or not present?
 11 A. This is the final report, and the statement is that
 12 Mr. McIntosh was present, when in fact that's in error. He
 13 was not present, and I didn't catch that when I signed the
 14 report.
 15 Q. And I believe you testified earlier that you never
 16 even talked to Mr. McIntosh?
 17 A. That's correct.
 18 Q. You had read Brian Ford's report by the time you
 19 went on October 18th to the McIntosh property, correct?
 20 A. No, I had not.
 21 Q. And tell me about that. What was the reason that
 22 you had not read that report?
 23 A. I was not given it.
 24 Q. Did you ask for it?
 25 A. I didn't ask for it.

Page 125

1 Q. Is that true with all of the other instances where
 2 you went behind another engineer, and you wrote a different
 3 report that came out with a different conclusion. Did you not
 4 acquaint yourself with the previous report before you went on
 5 the subsequent inspection?
 6 A. No, I think on -- take the Mullins case, for
 7 example. It's a good example. I was given that work because
 8 it was incomplete, and whatever Manny had written down, I used
 9 that information if it were useable. As I went to the site
 10 myself to make my own conclusions. So probably -- what was
 11 the question again?
 12 Q. The question was did you never request and review
 13 the previous report for all of these properties that you went
 14 behind another engineer and you wrote a report changing the
 15 conclusion?
 16 A. I think I asked for any work that they had done so I
 17 could use it.
 18 Q. Okay.
 19 A. If it was, you know, an incomplete report.
 20 Q. But for some reason you didn't do that with
 21 McIntosh?
 22 A. Right, I was -- I think this was the first report I
 23 wrote.
 24 Q. But you were told -- what were you told about the
 25 previous McIntosh report?

Page 126

1 A. You mean in terms of conclusions?
2 Q. No, about requesting it and wanting to see it. What
3 were you told? It was not available?
4 A. No, I was not given it. I didn't ask for it.
5 Q. Okay, I'm sorry. You didn't ask for it, and nobody
6 offered it to you?
7 A. That's correct.
8 Q. You just went to the McIntosh property?
9 A. That's correct.
10 Q. And --
11 A. It was more or less as a fresh look on it, a second
12 set of eyes so to speak.
13 Q. And then later you wrote the e-mail about what's the
14 precedent here that we just covered a minute ago?
15 A. Yes.
16 Q. So you were curious about how do I handle this?
17 A. That's what that e-mail implies.
18 Q. So it won't be inconsistent?
19 A. That's correct.
20 Q. And you personally did not make any effort to
21 contact the McIntoshes even to tell them that there was
22 another inspection that you were going to do, right?
23 A. No, I did not make an effort to contact them. I was
24 not assigned that in my tasks.
25 Q. So as far as you knew, did Forensic even have

Page 127

1 permission from the property owners to come and conduct
2 another inspection?
3 A. I don't know the answer to that question. I don't
4 know.
5 Q. Okay, now when was the first time that you ever saw
6 Brian Ford's October 12th McIntosh report?
7 A. When I got the files in December.
8 Q. And that's when you were asking for signed copies?
9 This is consistent with this date.
10 A. Right, I wrote this in December.
11 Q. Yes.
12 A. Where is the signed report? It wasn't in there.
13 Q. Why did you say noon? What does that have to do?
14 Do you recall if that had to do with anything?
15 A. I don't know who wrote that, but when Adam would
16 initially make a scheduling appointment with a owner or
17 whoever, we would have the folder to take with us, which
18 included directions to the house, the assignment tasks and so
19 on. Assignment sheet and on the front you would write the
20 time of the scheduled appointment. So I'm assuming that this
21 being consistent with what he did with me, this would probably
22 be the time of the original appointment that Brian had.
23 Q. I understand. Did you -- did Nellie get you the
24 signed McIntosh reports?
25 A. Yes. I had -- well let me see. I don't know if

Page 128

1 it's Nellie or not. I got a copy of all of the final reports
2 what, by, in addition. And I also at some point started
3 getting copies, once my reports that I wrote and I was
4 receiving them, on the receiving end, not Adam, but it came to
5 me, there would be a copy in there. Or if there were not one,
6 I would make a copy because now I have a copy machine where I
7 can copy all this stuff. McIntosh would have been done
8 earlier, and I don't think I had that copy until I had the
9 disk copying coming, which I think was this year.
10 Q. This year?
11 A. Or else I think late last year. This year or late
12 last year.
13 Q. And that's the first time that you had the signed
14 copies of the McIntosh property report?
15 A. No, I'm getting a little confused here. I don't
16 know that I actually have a signed copy of the McIntosh
17 report. Because if I did, it would have been in here, and
18 Page 4 would have been the signature page, but I don't have
19 it. Page 6 would have been pictures, and I made this note in
20 October of 6.
21 Q. October 11th of '06?
22 A. Right. And so apparently I don't have -- well if
23 Adam -- no, let's see in October. If Adam did not make a copy
24 of the signature page, we don't have a copy of the signature
25 page in the file with our signatures on it.

Page 129

1 Q. Okay, during the period that you were working out of
2 the RV, so to speak, Adam was there?
3 A. Yes, sir.
4 Q. And then Adam was the -- he had the laptop where the
5 reports went to, right?
6 A. That's right.
7 Q. You had your storage device?
8 A. Right, he would take my draft and then massage it.
9 Q. And he put it in there?
10 A. Right.
11 Q. And then -- and the time period that we're talking
12 about here is -- for you is October 17th, 2005 and post?
13 A. Yes, up to -- up to mid December when he left, but
14 prior to him leaving, I started putting my drafts and pictures
15 that I wanted to use on to the FTP site. So Nellie would pick
16 them up; so we had Nellie working some, and Adam working some
17 trying to -- I was ahead of them on report writing.
18 Q. Right, did you ever see Adam carry the reports out
19 of the RV? Hand carry them?
20 A. For delivery you mean?
21 Q. I'm assuming that's what he was doing.
22 A. I don't recall him ever, seeing him, but I know he
23 told me he would deliver some after I signed them.
24 Q. And where was he taking those?
25 A. One of two places. Either the State Farm office on

Page 130

1 Cedar Lake Road, which is just off of I-10. Not far from the
2 mobile office. Or I understood he also brought some over to a
3 State Farm office over in Gulfport somewhere. I don't know
4 where that place is.
5 Q. And at one point you started delivering reports over
6 there to State Farm?
7 A. To State Farm, that's correct.
8 Q. And who would you take them to?
9 A. I would take them to the State Farm office on Cedar
10 Lake Road. If you're not familiar, it's about one exit to the
11 east of where the mobile office was and go south a quarter
12 mile, and it's a big office complex there, and that's where
13 State Farm was headquartered, so to speak.
14 Q. When did you start taking those reports? Hand
15 taking those reports to State Farm?
16 A. It would have been after Adam left, and reports were
17 coming directly to me for signature and delivery. So I would
18 say in mid December or thereabouts.
19 Q. And do you know -- let's see you took reports to
20 what person at State Farm?
21 A. I didn't take them to any person. I took them. I
22 signed in at the door. Went to the first door on the right,
23 and there was a reception person there or something, and I
24 would give them the reports.
25 Q. Did you ever talk with David Haddock for the purpose

Page 131

1 of trying to find out if a report had gotten into circulation
2 or not?
3 A. I did talk to David Haddock about a report that he
4 had called me on, and --
5 Q. Which -- do you recall what property it was?
6 A. No, I don't recall what property it was, job number,
7 but it was a case where the conversation did come up that that
8 report was, had not been distributed.
9 Q. And so why was that important to you? Why did you
10 want to know that?
11 A. Well he asked questions about are we going to submit
12 an addendum to this report. They had some note in their files
13 to that effect. And whatever job that was, I looked at it,
14 and I had been around the area, and I don't know I went to it
15 or not, but prior to talking to him. And I couldn't come to
16 the same conclusion that was in the report, and there was
17 addendum that they show was to be issued, and so I asked
18 around in house does anybody know anything about an addendum,
19 and nobody knew anything. So Haddock told me that that report
20 had not been circulated, and I told him that the decision was
21 made that we would review that and give him a report. So the
22 question was do we make a revision like, you know, an S or do
23 we give them a new one and retrieve the old one.
24 Q. Was all that discussion after the Mullins report
25 that leaked out and gotten in the hands of a homeowner?

Page 132

1 A. I would have to look at the dates on that when
2 Haddock called me, but I think it was real close to the same
3 -- real close to the same time. I can't recall which came
4 first.
5 Q. That started with State Farm being unhappy with the
6 conclusion in the report, right?
7 A. I don't know what prompted the note there would be
8 an addendum issue.
9 Q. Well you came up with a different conclusion again,
10 right?
11 A. Yes, sir.
12 Q. And your conclusion was water damage, right?
13 A. Well I would have to look at that report, but I
14 would suspect so.
15 Q. Do you remember Sandra Simpson? Is that a familiar
16 name?
17 A. That name doesn't strike --
18 Q. Well in any event didn't you discuss with Mr.
19 Haddock that once you had discovered the report was still in
20 house that he should mail it back to you? Isn't that the way
21 you all agreed to handle that?
22 A. That discussion was had. I don't know if he offered
23 it. I think he offered to do that.
24 Q. And in fact he did mail that report back to you,
25 right?

Page 133

1 A. Yes, sir.
2 Q. So then the report was -- you knew then that the
3 report couldn't be disclosed any further because you had it in
4 your possession at that point, right?
5 A. I would assume so, yes.
6 Q. Okay, and then you came forth with a new report that
7 changed the conclusion from the first one?
8 A. No, I issued a new report that had my own conclusion
9 that was different from the first one.
10 Q. And the difference was, as we talked about earlier
11 today, from a homeowners point of view, one would resolve in
12 terms of payment to the insured, and the other one didn't?
13 A. Based on what you're telling me of homeowners
14 policy, yes, I would say that's correct.
15 Q. Let me run through the rest of this right here, this
16 Exhibit 6 with you, Mr. Kelly.
17 BY THE VIDEOGRAPHER: Counsel, we got three
18 minutes. Do you want me to change real quick?
19 BY MR. WYATT: Yeah, that's fine.
20 BY THE VIDEOGRAPHER: All right, standby we're
21 going off the record. It's 14:18.
22 (Off the record.)
23 BY THE VIDEOGRAPHER: All right, back on the
24 record. The time is 14:18.
25 MR. WYATT CONTINUED:

Page 134

1 Q. Okay, Mr. Kelly, we're looking at an e-mail here.
2 This is one of yours, right?
3 A. From JKelly.
4 Q. Can you see it from where you are?
5 A. Yeah, from JKelly.
6 Q. And it's 88. You know it's McIntosh?
7 A. Yes, sir.
8 Q. Okay, April 4, 2006, military time is what? 2:04 in
9 the afternoon?
10 A. Yes.
11 Q. Something like that. And then you copy -- you send
12 this to Nellie; is that right?
13 A. Yes.
14 Q. And she's got that Forensic address, right?
15 A. Yes, sir, that's correct.
16 Q. Now the first statement in here is you saying to
17 Nellie, I looked in the file of this job. Okay, now at this
18 point, what file are you referring to that you're looking
19 into?
20 A. This one that we have in front of us.
21 Q. Okay, this case file?
22 A. This case file.
23 Q. Okay, and I remember the job, you say?
24 A. Yes.
25 Q. There are no records or notes indicating any

Page 135

1 additional scope of work than covered by the Job Assignment
2 Sheet. The Job Assignment Sheet was really the initial
3 inspection that Brian Ford did, right?
4 A. No, the Job Assignment Sheet is an in house sheet
5 that we used to identify case numbers and all this stuff, and
6 it has the scope of what we were suppose to do.
7 Q. Yes, and not to --
8 A. That may be in here.
9 Q. Here's an example. I just -- is that a Job
10 Assignment Sheet?
11 A. Yes, sir, it says so at the top.
12 Q. Yes. Okay, so what I am getting at is, was it a new
13 Job Assignment Sheet created when you went behind these
14 engineers and redid these reports, or was it just the original
15 Job Assignment Sheet that existed?
16 A. For the most part, I think just the original Job
17 Assignment Sheet.
18 Q. I understand. So that's exactly what you're saying,
19 isn't it? You're saying that there's no additional scope of
20 work other than that covered by the job assignment sheet?
21 A. Yes, sir.
22 Q. All right.
23 BY MR. BANAHAH: What is that exhibit y'all are
24 referring to?
25 BY MR. WYATT: This is Exhibit 6. Excuse me.

Page 136

1 BY MR. BANAHAH: Thank you.
2 MR. WYATT CONTINUED:
3 Q. And why did you feel the need to point that out to
4 Nellie?
5 A. Well I think we're going at this, if I can --
6 Q. Yes, sir, go right ahead.
7 A. I think we're were going at it the wrong way. We
8 should start at the bottom and read this, and then read that.
9 Q. Fair enough.
10 A. Because that's the direction of communications.
11 Q. Okay, if that'll help you, let's do that. Let's see
12 we're April 4, 2:00. This is later than that.
13 A. Yeah, I think this is the page. I would have
14 printed it out one and one, and so this is the initial at
15 9:43.
16 Q. March.
17 A. And I responded -- March 31.
18 Q. Right.
19 A. And I responded April 4th at two in the afternoon.
20 So it says here that I received a call from -- shall I read
21 this?
22 Q. Yes, sir, please.
23 A. I received a call from Lisa Washer from SF, State
24 Farm, regarding this case. She says back in January they
25 requested us to comment on the structure and integrity of the

Page 137

1 house. New inspector, which is me. This is from Nellie. Not
2 to replace but to add an addendum. The claim has already been
3 settled. The homeowner is trying to sell the house, and the
4 new buyer is concerned. She will call you on Monday regarding
5 this one. I have already packed my notes and sent them on to
6 Reno; so I don't know if you already addressed -- if you
7 already addressed -- I guess that's suppose to be this
8 particular issue. Thanks. That's her note to me that should
9 we be looking at the structural integrity of the house. So my
10 response is, I looked in the file. I remember the job, but I
11 don't have any notes in there indicating any additional scope
12 of work.
13 Q. That's exactly what I thought, and you confirmed it.
14 What you did was a little due diligence on the file, and you
15 went in and determined that there was only one scope of work
16 that ever existed, and that was on that Job Assignment Sheet?
17 A. That's correct because I could not find anything
18 else, a note or a memo or anything that addressed an
19 additional scope of work. And then we go on further to
20 address this particular structural integrity issue.
21 Q. Let me see. And this next e-mail dated April 4th,
22 2006 at 5:40 p.m. is your further elaboration on that subject
23 to Nellie discussing this issue about an evaluation for
24 structural integrity?
25 A. Yes, sir.

Page 138

1 Q. And essentially you told her you had insufficient
2 information to address the issue?
3 A. Yes, that's what's in the second paragraph of my
4 response to Nellie.
5 Q. And that's your statement that you made?
6 A. Yes, sir.
7 Q. And that's a true statement?
8 A. Yes, sir.
9 Q. So you had been there before? This is the McIntosh
10 property?
11 A. Yes, sir.
12 Q. So you had not evaluated the structural integrity
13 before?
14 A. That's correct.
15 Q. These hand-written notes, Mr. Kelly, have that
16 your's or Brian Ford's writing?
17 A. It's not mine, and I believe it's Brian's.
18 Q. Okay, let me look at the -- okay, we're looking at
19 Exhibit 6, and we've already identified this as your writing
20 to Adam. Change the date?
21 A. That is correct.
22 Q. Because you've got the date of your inspection up
23 here, and you want it to be the date your report goes out?
24 A. Well the date I sign the report.
25 Q. The date you signed it?

Page 139

1 A. Yes, sir.
2 Q. Okay, and what brought you in contact with Mr. Craig
3 Robertson, who is the owner's yard man, as you referenced on
4 Page 2 of the report?
5 A. Yes, when I got to the site, this fellow was doing
6 some clean-up work and so I spoke to him and, about some of
7 the things that I stated in there, and I asked if, you know,
8 if he would mind if I went and took a look around. He said,
9 no, go ahead. So I did, and I took some pictures upstairs of
10 the site.
11 Q. Did anybody tell you about him before this?
12 A. No, he was just there working when I drove up.
13 Q. So it was just mere coincidence that you bumped into
14 Mr. Robertson out there?
15 A. Yes, sir.
16 Q. And there was no communication between you and
17 another State Farm person or Mr. Kochan or Nellie or anyone
18 about you trying to get yourself in contact with Mr.
19 Robertson when you went out there?
20 A. No, sir.
21 Q. And here it says that Mr. Robertson -- it attributes
22 the statement to him, right?
23 A. Yes.
24 Q. Shortly after the storm, he was at the house and had
25 found that some of the upstairs doors, which lead out to a

Page 140

1 balcony, had blown open and allowed the water to enter the
2 second floor, which damaged the floor and ceiling. Did I read
3 that right?
4 A. You read that right. Ceiling below.
5 Q. That's what he told you, right?
6 A. That's what he told me.
7 Q. Okay, do you remember when Mr. Kochan got fired for
8 Forensic -- excuse me. Remember when Forensic got fired by
9 State Farm?
10 A. I've read about that, yes.
11 Q. You were on duty. You were on board then, right?
12 A. I am not sure the exact date on that.
13 Q. Okay.
14 A. But I came on the 17th, October 17th.
15 Q. Okay, do you remember Mr. Kochan having a conference
16 call and all of you got on the phone?
17 A. Yes, sir.
18 Q. And he told you about he had flown down here to meet
19 with Lecky King?
20 A. I don't recall him mentioning that in his phone
21 conversation.
22 Q. Did he mention to you that he had met with Lecky
23 King at all?
24 A. I don't recall that.
25 Q. Do you recall being told not to rely on

Page 141

1 eyewitnesses?
2 A. No, I can't recall that because I have relied on
3 eyewitnesses.
4 Q. Okay, do you remember being told any time not to use
5 the word predominant?
6 A. No, I recall being urged to the use the word
7 predominant.
8 Q. Okay, do you remember being told not to percentage,
9 allocate water and wind damage?
10 A. Yes, sir, I recall that.
11 Q. Okay, so on October the 18th, is it true that
12 Mr. Robertson was an eyewitness, as far as you knew from
13 talking to him?
14 A. He told me what I state there, and I looked at the
15 observations that I made, and they were consistent with his
16 comments.
17 Q. Okay, and then you say there were abrasion marks on
18 a column inside the French doors that lead from the dining
19 room to the first floor to the front porch, and you questioned
20 Mr. Robertson about those, right?
21 A. Yes, sir.
22 Q. And he said he was unsure, but there was a brick
23 wall on the south end of the room that had blown into the
24 house, and there was lumber in that room after the storm. Did
25 you make notes about what he was telling you, or how did you

Page 142

1 get this down so --
2 A. I made some notes. These are my notes.
3 Q. Okay, I don't see Mr. Robertson's -- oh, sorry.
4 Here it is up here. He's referred to as the gardener up here,
5 right?
6 A. That's what I called him.
7 Q. Okay. All right, and then after that you say this
8 is consistent with part of a roof structure rubbing against
9 the columns while being carried by water?
10 A. Yes, sir.
11 Q. Did Mr. Robertson tell you that?
12 A. No.
13 Q. And, of course, it goes without saying that
14 everything you were writing here has to be necessarily after
15 the event; so it couldn't have been your personal observation?
16 A. That's correct. It was my observations on that day
17 of the 18th.
18 Q. That's right.
19 A. Yeah, 18th. Right.
20 Q. And then you went and talked to a neighbor to find
21 out how much water they had in their house, right?
22 A. Yes, I ran into him as I was on the north side of
23 the building.
24 Q. Now this statement by this bullet point, the window
25 and doors at the back or west side of the house were not

Page 143

1 present.
2 A. Yes.
3 Q. Their condition after the storm was not determined.
4 A. Yes.
5 Q. You don't make any statement about water or wind as
6 far as those doors are concerned?
7 A. No, I don't.
8 Q. So you didn't draw a conclusion about that, correct?
9 A. No, not necessarily. I might not have stated it,
10 but I think that somewhere in here I address the damage to the
11 downstairs.
12 Q. We haven't gotten to conclusion, but --
13 A. Oh, okay.
14 Q. And I understand --
15 A. I am sorry. I am ahead of myself.
16 Q. That's perfectly okay. As far as the observations
17 are concerned though, whereas here above we have shown that
18 you drew conclusions about, for example, the columns while
19 being carried by water. You weren't told that by
20 Mr. Robertson. You just concluded that based on your
21 observations?
22 A. Yes, that's correct.
23 Q. And here you're observing that the windows and doors
24 are not there?
25 A. Yes.

Page 144

1 Q. And the condition after the storm is undetermined.
2 You can't tell anything, right?
3 A. Yes.
4 Q. But there's no statement following that observation
5 about whether or not wind or water produced the damage?
6 A. Could have caused that damage, that's correct.
7 Q. And then here we're again on the third bullet point
8 of the conclusions now, and your lead in here is you're saying
9 based on the information that have been presented, and that is
10 that information we just talked about?
11 A. Yes, sir.
12 Q. And the evidence gleaned during your inspection, you
13 conclude concerning the damage to the structure as follows,
14 and you lay 'em out bullet point?
15 A. Yes, sir.
16 Q. And the third one is the damage to the first floor
17 and walls appears to be predominantly caused by rising water
18 from the storm surge and waves?
19 A. Yes, sir.
20 Q. Fairness, in fairness, Mr. Kelly, what made you
21 attribute this to rising water and storm surge when your
22 observations, you don't indicate anything about the cause of
23 it?
24 A. Well No. 1, I can't see what those windows were. I
25 don't know what they were. Window, walls, or whatever. So I

Page 145

1 did not address that, but based on all of the damage I saw
2 from the abrasion marks on the front columns, it would be east
3 columns, the covered driveway columns and the minimal amount
4 of wind damage that I could see. They were flood lights above
5 the porch way in the corners that were still there. Windows
6 around the kitchen area, I believe, were still there. Minimal
7 shingle loss that I could observe. That I thought the damage
8 to the downstairs floor and walls appears to be predominantly
9 caused by rising water from the storm surge and waves.
10 Q. Another person might just as easily, based on the
11 information you had, conclude that it was not caused by water,
12 right?
13 A. They could have.
14 BY MR. BANAHAN: I am going to object to the
15 form of the question.
16 MR. WYATT CONTINUED:
17 Q. Sir, you can answer.
18 A. I got distracted. What was the question again?
19 Sorry.
20 Q. Another person, another engineer, perhaps Mr. Ford
21 let's say just to use a person, don't get hung up on that.
22 A. Yes. No, I understand.
23 Q. Could have just as easily concluded that that damage
24 was caused by wind?
25 A. Somebody could conclude that, yes.

Page 146

1 Q. And since neither have the definitive answer, both
2 are equally plausible?
3 BY MR. BANAHAN: Object to the form.
4 BY THE WITNESS: I'm confusing plausible with
5 probable.
6 MR. WYATT CONTINUED:
7 Q. Okay.
8 A. Could you define the difference here?
9 Q. Sure. When we don't know, we're in the realm of
10 possibility, right?
11 A. Yes.
12 Q. I mean will you agree with me on that?
13 A. Yes, sir.
14 Q. So my first question is just simply, and you've
15 already answered it, that another engineer looking at the same
16 circumstances, which is essentially the absence of windows and
17 doors and nothing to forensically look at to determine, you
18 know, what may have removed the windows and doors and so
19 forth, and another person might easily conclude that wind
20 produced that damage?
21 A. Yes, sir.
22 BY MR. BANAHAN: I object to the form again.
23 MR. WYATT CONTINUED:
24 Q. And since there's no definitive answer to it, either
25 conclusion has the same likelihood of being correct?

Page 147

1 A. I wouldn't say that.
2 Q. Okay.
3 A. I don't say -- it wouldn't have the same likelihood.
4 Q. Okay.
5 A. One could conclude that, but I think it's more
6 probable that water did the damage based on what I saw.
7 Q. I understand, and that just happens to be what you
8 particularly thought?
9 A. Yes, sir, exactly.
10 Q. You wouldn't take another person to task if their
11 conclusion was different, right?
12 A. I think if it were, you know, if I were challenged
13 on it, I would.
14 Q. You would?
15 A. I think so.
16 Q. Okay, do you feel that Mr. Ford had at least equal
17 capability as yourself in conducting Forensic hurricane
18 investigations?
19 A. Well let me say this. I had not done any. I don't
20 know if he has, but he was in charge of the emergency
21 operations of Mississippi Power; so he probably saw a lot of
22 hurricane damages, I would think, with the power company.
23 Q. So would that be a yes?
24 A. What was the question again?
25 Q. Equal capability with yourself?

Page 148

1 A. I don't know how to answer that question. I don't
2 know.
3 Q. Well is there anything that you know particularly
4 you would, could test that Mr. Ford had the capability to
5 conduct a Forensic hurricane investigation?
6 A. No, I wouldn't think so.
7 BY MR. WYATT: Can we take a short break?
8 BY THE VIDEOGRAPHER: Stand by. We're going
9 off the record. The time is 14:40.
10 (Off the record.)
11 BY THE VIDEOGRAPHER: We are back on the
12 record. This Tape 4 in the continuing deposition of
13 Mr. Jack Kelly. The time is 15:05.
14 MR. WYATT CONTINUED:
15 Q. Okay, Mr. Kelly, I am handing you a copy of a e-mail
16 that I'm going to mark as -- first of all, let me just
17 housekeeping wise, I'm offering Exhibit 7, a cake, a case log,
18 excuse me, and Exhibit 8 is combined Forensics spreadsheet,
19 those two documents, and I'll get to those in a minute. And
20 this is Exhibit 9, which is an e-mail dated January 31st,
21 2006, and it is Mr. Kelly's e-mail to Bill Forbes. If you
22 would, take a look at this with me for a moment. I got a
23 couple of the quick questions about this one, and I want to
24 hand you at the same time what's marked as Exhibit 8, this
25 combine Forensic spreadsheet.

Page 149

1 A. Uh huh (affirmative response).
2 Q. And just for instructional purposes so we can get
3 oriented. Of course, it has lots of information. It has
4 dates over here of assignment. It has the contact meaning
5 whether it was a Renfro adjuster or some other. It has a
6 customer. That's listed as Forensic, and then we have got
7 case numbers, and we've got insured names.
8 A. Okay.
9 Q. This is what we're interested in, insured names and
10 the case number.
11 A. Okay.
12 Q. So for example we can take No. 6, and we can
13 determine on here who No. 7 is, and we know it's Belsom?
14 A. Yes, sir.
15 Q. Okay, see --
16 A. Seven, yes, Belsom.
17 Q. I'm reading on that center number because it's the
18 only one that's important.
19 A. That's right.
20 Q. Okay.
21 A. That's right.
22 Q. For example, let's just while we're on this subject.
23 We see that Belsom has two entries here. It has a Forensic
24 file number, and then it's got one that's followed by an R.
25 It's got another. Same property but it's got the same file is

Page 150

1 listed twice with an R after the second one.
2 A. Uh huh (affirmative response).
3 Q. And then if we run that back to the left, we see
4 that this corresponds with your initials, right? Is that
5 correct?
6 A. Yes, sir.
7 Q. Okay, so this tell us that Manny did the Belsom
8 report, and then you come back behind Manny and did another
9 report, right?
10 A. That's what that look like, yes.
11 Q. Okay, and every time we see that R -- I'm going to
12 hand you what's marked as Exhibit 7, the Cat Case Log, and
13 I've just taken for purposes of trying to speed this up.
14 A. Yes.
15 Q. Which will make everybody in the room happy. I have
16 orange highlighted the R's, the R files so to speak.
17 A. Yes, sir.
18 Q. So looking at these with me for a moment, would it
19 be true that if we counted these R files up on this Exhibit 7,
20 it would total up to the number of times that you went behind
21 another engineer and wrote subsequent report?
22 A. That's what it would appear to be, yes.
23 Q. And if we wanted to, we could even take those
24 Forensic file numbers and find the name of the insureds by
25 looking Exhibit 8?

Page 151

1 A. Yes, I would say so.
2 Q. Could you take a quick look at this Exhibit 7 just,
3 if you can just tell me how many times that occurred? Look at
4 the first page, and let's just take it through that way.
5 A. The first page I'll give you the credit that oranges
6 are my only names.
7 Q. Okay.
8 A. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13. There's
9 13 on Page 1.
10 Q. Thirteen?
11 A. Yes, sir.
12 Q. Okay, Page 2.
13 A. There's 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 on Page 2.
14 Q. So that's 23 so far?
15 A. Twenty-three. There's 1, 2, 3, 4, 5 on Page 3.
16 Q. So we're 28?
17 A. Twenty-eight, and there's one on page 4, which would
18 be 29.
19 Q. Twenty-nine, so that represents 29 times that you
20 went behind another engineer and wrote a subsequent report?
21 A. Yes, if that engineer had done the report.
22 Q. Okay, judging by the list, of course, we know that
23 the first time the file number is mentioned it has an
24 engineer's initial by it?
25 A. Yes, sir.

Page 152

1 Q. So then yours followed that?
2 A. Yes, sir.
3 Q. Okay. All right. So 29?
4 A. Yes, sir.
5 Q. Now this e-mail that we're looking at for seven,
6 Belsom?
7 A. Uh huh (affirmative response).
8 Q. I'm reading selectively in here.
9 A. Yes.
10 Q. This is you speaking to Bill Forbes. I reworted the
11 observation about the witness because there are no notes on
12 that. The only reason I left it in is because I think State
13 Farm has the earlier draft about wind damage, and the witness
14 statement is in that report. Did I read that correctly?
15 A. You read that correctly.
16 Q. All right, so you sought to ascertain whether or not
17 the previous report mentioned this eyewitness or not, correct?
18 A. I really couldn't tell you unless I looked at that
19 whole file, I think, cause what we're doing is pulling part of
20 something out of the whole job, and I don't want to mistakenly
21 answer you for not having my file.
22 Q. I don't want you to either.
23 A. But for what we've got right now, just the words
24 themselves, I left this in. I left it in because I think
25 State Farm has the earlier draft about wind damage.

Page 153

1 Q. In other words you're referring to the fact that in
2 Manon, if he is in fact the author he is of the first Belsom
3 report, Manon's report, which attributes the loss to wind
4 damage. You've already determined that. You looked that up
5 to determine that, right?
6 BY MR. BANAHAN: Derek, let me object and ask
7 you how does this not contravene Judge Walker's
8 order --
9 BY MR. WYATT: Because -- and I wanted to make
10 sure myself because I don't want to run afoul of it.
11 He said the overall adjusting practices of Forensic.
12 I don't know, John, except to interpret that, as I
13 said on the phone, the overall adjusting practices
14 of Forensic are an issue in this case. I think the
15 Court -- it doesn't matter that I think this, but I
16 think he's right on with that ruling, and the only
17 way we can talk about the overall adjusting
18 practices of Forensic is to specifically bring into
19 the record here what we know about.
20 BY MR. BANAHAN: My only concern, and I think
21 it's a legitimate one, is I don't know is Belsom a
22 case? Is it Belsom?
23 BY MR. WYATT: Belsom, yeah.
24 BY MR. BANAHAN: Is it in litigation? Do you
25 know?

Page 154

1 BY MR. WYATT: No. No, it's not.
2 BY MR. BANAHAN: Is it a resolved claim?
3 BY MR. WYATT: I do not know. I don't know.
4 BY MR. CANADA: Is it a Shows matter or Shows
5 or whatever?
6 BY MR. WYATT: I don't know. I mean it's not a
7 case. I mean it's not named in the Shows complaint.
8 BY MR. CANADA: Okay.
9 BY MR. WYATT: So --
10 BY MR. BANAHAN: I don't know from that
11 standpoint. Again if it's a case that's in
12 litigation, there are other attorneys that ought to
13 be here to ask questions in follow up to that.
14 BY MR. WYATT: You know I'm really unclear
15 about that myself about -- in other words where you
16 have a fraud pattern and practice claim, every time
17 you take a deposition, you have to bring every
18 attorney for every -- I don't know. I have a hard
19 time processing that. However, I'm trying to stay
20 clear with what Judge Walker ruled, and I did just
21 -- that's why I had her play it back. Overall
22 adjusting practices of Forensic.
23 BY MR. CANADA: All right, he also said --
24 BY MR. WYATT: I just don't know how else --
25 BY MR. CANADA: -- limit the questions to

Page 155

1 McIntosh.
2 BY MR. WYATT: Yeah, but he said --
3 BY MR. BACKSTROM: Well the McIntosh case, and
4 we're certainly not asking about Shows here or
5 Mullins, which were cases.
6 BY MR. CANADA: I've given some latitude.
7 BY MR. BANAHAN: That's a new one I don't know
8 about.
9 BY MR. BACKSTROM: We haven't filed some yet.
10 BY MR. BANAHAN: Okay.
11 BY MR. WYATT: John, I would expect that all
12 those issues, honestly, could be taken up on motion,
13 if we need to.
14 BY MR. BANAHAN: I'm not in a position to do
15 anything other than object; so I'm going to object.
16 BY MR. WYATT: Okay, that's all right.
17 MR. WYATT CONTINUED:
18 Q. Back to this. I kind of lost what we were talking
19 about here, but what I was saying is that you went to the
20 trouble to look back to Manon's report, and Manon's report
21 concluded wind damage. That's what you say. You say the
22 earlier draft has wind damage. It attributes wind damage, and
23 then you say that the only reason you're leaving that witness
24 information in here is because State Farm has that report.
25 You remember the issue we talked about earlier when you talked

Page 156

1 with Mr. Haddock?
2 A. Yes.
3 Q. To determine if the report was in distribution yet?
4 A. Is this the one I talked to Haddock about?
5 Q. Well I'm only alluding to that to give you a cue as
6 to what the issue is. You're saying the same thing here,
7 aren't you? That you went to the trouble to check and see if
8 that report was in State Farm hands before you took that
9 witness statement out of your new report?
10 A. No, there is a draft that went to State Farm also.
11 Q. Uh huh (affirmative response).
12 A. So I don't know if this is a draft that had draft
13 written across it that went to State Farm, or if this is -- I
14 don't see how they would have had anything but that draft.
15 Q. Did you turn over your reports to State Farm for
16 review before they were sealed and signed?
17 A. No, but if they cancelled then I guess, you know,
18 home office decided to submit the work that was done to date
19 with photographs with draft written across it, and they would
20 bill them for the time spent.
21 Q. But here you're saying this State Farm has one of
22 your drafts?
23 A. Well that could be a, the draft. Was this a
24 cancelled job?
25 Q. Well --

Page 157

1 A. If it was a cancelled job -- you've seen that in the
2 documents production, I'm sure. You've seen a report that
3 says draft in shadow across it. When a job got cancelled and
4 work had been done on it to the extent that even a report had
5 been done but not signed, home office put draft on it. Sent
6 the draft to State Farm with the bill.
7 Q. So you turned over engineering reports in raw form
8 to State Farm for their approval or disapproval before you did
9 the final report?
10 A. No, sir.
11 Q. Okay, correct me on that. Regardless --
12 A. Let me correct you on it.
13 Q. Okay, regardless of cancellation --
14 A. No, it's because of cancellation.
15 Q. Okay, well do you see anything in here that talks
16 about cancellation? This is your own --
17 A. Well it says -- yeah, it says this is job that Manny
18 had done, and then it was cancelled by State Farm.
19 Q. Okay, okay.
20 A. So State Farm then reactivated it. Blah, blah,
21 blah. So I assume without looking at the case file that this
22 is a report that draft was in the shadows written across the
23 pages submitted with a bill so they could get paid.
24 Otherwise, they had work done -- got so much work done on a
25 report, and then -- excuse me. Then the job gets cancelled.

Page 158

1 They wanted to give them something to get paid.
2 Q. Let me understand this. I'm still unclear. Manny
3 did a report, and the report, while not completed, went to
4 State Farm for review?
5 BY MR. CANADA: Objection.
6 BY THE WITNESS: I have already answered this
7 twice.
8 MR. WYATT CONTINUED:
9 Q. Well I don't understand your statement that the
10 reason you left the eyewitness in is because the State Farm
11 has the earlier draft?
12 A. Yes.
13 Q. What are your referring to; if not that?
14 A. Okay, the easiest way to explain this is as follows.
15 Take me as an example. I go out to a house. I make my notes.
16 I spend time. I put those notes into a draft. That's in
17 house draft. That draft is compiled into a report. By the
18 time it's compiled into a report, State Farm cancels that
19 work.
20 Q. But you're saying they have the draft?
21 A. No, no. You didn't let me finish.
22 Q. Okay.
23 A. Excuse me.
24 Q. But --
25 A. No.

Page 159

1 Q. Just --
2 A. That's step one. The job is now cancelled and FAEC
3 has spent all this time on it and resources on it: time,
4 mileage, film, whatever, expense. So now FAEC wants to get
5 paid; so the work is to the state that it could be a report,
6 but it's not; so it's a work in progress. Draft is written
7 across it. In those computer methods, you can write draft on
8 a slant in dot matrix form; so it looks like draft. That
9 document is sent with the final bill on a cancelled job.
10 State Farm can look at it. They can do whatever they want.
11 It's not for their review and approval. It's to get paid.
12 Q. I see. So they cancel the investigation is what
13 you're saying?
14 A. They cancel the case. It says here it was canceled
15 by State Farm.
16 Q. Yeah, so they said we don't need an engineering
17 report here?
18 A. I guess at some point, yes.
19 Q. But then they told you go back and write an
20 engineering report, and yours comes out to be not wind but
21 water. And you check to see whether that witness is mentioned
22 in the first report?
23 A. Well I'm making a lot of assumptions here because I
24 don't have that file in front of me. I'm telling you what is
25 probable, and what's probable is that I went there and looked

Page 160

1 at that case. Could not agree with Manny's solution or
2 conclusions, and that's what I sent in an e-mail.
3 Q. Okay.
4 A. But I would like to see the case because I would
5 know then how I could respond.
6 Q. I'd like to show it to you, but we covered that
7 earlier today. I can't do it, but I would love to show it to
8 you.
9 A. I can only tell you what -- I don't want to answer
10 on some incomplete material.
11 Q. I understand.
12 A. Can we look at the next one that's under it or maybe
13 that might show some --
14 Q. Sure, but I have one more question about that
15 before. Regardless of your explanation of the cancellation,
16 and I appreciate what you're saying, they didn't cancel it
17 forever, did they?
18 A. Not in this case apparently.
19 Q. They sent you right back out, did they not? Sent
20 you right back out to write a report that incidentally comes
21 up with a completely different conclusion?
22 BY MR. CANADA: I object to the form.
23 BY MR. BANAHAN: I object to the form of those
24 questions as well.
25 BY THE WITNESS: I can't say they sent me right

Page 161

1 back out. I don't know without looking at the cases
2 of what.
3 MR. WYATT CONTINUED:
4 Q. If we look at seven, isn't Belsom seven?
5 A. That's what you said.
6 Q. All right, let's see what we got here. Manny goes
7 on October 10th to investigate, and a report is delivered to
8 State Farm on November the 15th. You see that right there?
9 A. Yes, sir.
10 Q. Okay, now it doesn't say canceled. It says it was
11 delivered that date, right? But then right below that, you
12 were sent -- you call it reactivate. That's a funny term, but
13 you said --
14 A. Well I don't call it that.
15 Q. Well the e-mail, that's what the term is used,
16 right?
17 A. Did I use that? Oh, yes. Reactive. Right.
18 Q. That's an interesting term. They reactivate an
19 inspection, and you go back on December 12th.
20 A. Okay.
21 Q. Write a new report and want to know whether or not
22 the witness that's in the first report should be carried over
23 into your report or not. That's the whole subject of this
24 e-mail, isn't it? You're saying you checked to find out about
25 that witness, and you determined the witness was in that first

Page 162

1 report; so that's why you left him in here in yours?
2 A. Well that's what that says.
3 Q. Okay, and then your report was delivered to State
4 Farm on February the 10th?
5 A. Yes, and when did I go out?
6 Q. You went on the 12th of December.
7 A. And when did Manny go out?
8 Q. The 10th of October.
9 A. Okay, so that's -- you know, that's two months.
10 It's not right after.
11 Q. I stand corrected.
12 A. Is my point. That's at the end of the jobs for me
13 pretty much.
14 Q. Okay. All right. Okay, this is an e-mail from you
15 to Nellie and Randy and Kochan, Mr. Kochan, December 29th,
16 Thursday. And you're saying --
17 BY MR. BANAHAH: Derek, what exhibit? I'm
18 sorry.
19 BY MR. WYATT: I am sorry. I apologize, John.
20 It's Exhibit 9. Just keep reminding me. I'm sorry.
21 BY MR. CANADA: The second page.
22 MR. WYATT CONTINUED:
23 Q. In this you remark -- you say, I would also mention
24 that if the report was different than the date I was in Biloxi
25 to review and sign report, I would ask that Adam to make the

Page 163

1 date current?
2 A. Yes.
3 Q. Why would the report date be different than the date
4 you were in Biloxi?
5 A. Well you need to understand the procedure of the
6 developing of the report. I'll briefly describe it. I give
7 Adam a draft. He compiles that into a report. It's sent off
8 to somebody for review, and Adam put a date on there. That's
9 when he did them. When it comes through the channels and back
10 to me, it could be two days later. It could be week later,
11 and I wanted the report date to equal the date that I signed
12 my signature. So like we had in the McIntosh case, on that
13 first sheet, you would -- I asked change the 18th to the 20th,
14 that's because the 18th is when I wrote the draft, but the
15 20th is when I reviewed and signed the report and stamped it.
16 Q. Okay, this again is an e-mail that you wrote after
17 the Mullins incident had come to your attention, right?
18 A. I don't -- I thought Mullins came to our attention
19 in January or February.
20 Q. Let's see if we can determine that from our Exhibit
21 8.
22 A. Your question is the Mullins incident?
23 Q. Uh huh (affirmative response).
24 A. Which is?
25 Q. The report leaking out to the insured.

Page 164

1 A. Okay.
2 Q. Manny Manon's report.
3 A. Okay. Manny Manon's incomplete report.
4 Q. What was incomplete about it, Mr. Kelly, if he
5 concluded that wind moved the house to the middle of the
6 street?
7 A. It's my understanding that from the e-mails you'll
8 see in that file that Bob had reviewed it and asked Manny to
9 take a look at it, a second look at it, because he didn't see
10 how that would be possible with the minimal amount of damage
11 done to the surrounding houses via roof shingles and so on
12 and --
13 Q. You're referring --
14 A. -- and that never got back in the system.
15 Q. You're referring to Mr. Kochan's e-mail about that
16 to take another look and so forth?
17 A. On his conclusion, yes.
18 Q. All right, and that e-mail would be seven days after
19 Brian Ford was terminated?
20 A. I don't know when it was.
21 Q. How did you know about that e-mail if in fact it was
22 seven days after Brian Ford was terminated?
23 A. I was given a copy when information was given to the
24 insurance company when the Mullins filed the lawsuit.
25 Q. You were on the conference call where Mr. Kochan

Page 165

1 said that we've had some trouble with State Farm. We're going
2 to be doing things -- everybody has got to play by the same
3 guidelines and so forth?
4 A. I was on a conference call prior to going out to the
5 McIntosh case, yes.
6 Q. Okay, and the business with the Mullins report,
7 there being two reports, and the insured getting, without
8 State Farm's knowledge, getting possession of the Manon report
9 that said wind moved the house. All that took place before
10 your December 29th e-mail here where you're trying to make
11 sure the date on the report is right; isn't that true?
12 BY MR. CANADA: Let me just enter an objection
13 to form, and also I'm not sure how this falls into
14 the general adjusting practices of FAEC because
15 you're getting very case specific here, which I
16 believe is contrary to the Judge's orders.
17 BY MR. WYATT: So noted, counsel.
18 BY MR. CANADA: And we're also going to be
19 filing motions if you continue.
20 BY THE WITNESS: Can I read this whole thing?
21 MR. WYATT CONTINUED:
22 Q. Yes, sir.
23 A. I don't want to start picking out a sentence, and I
24 don't think it's correct.
25 Q. Take your time.

Page 166

1 A. And I also -- you know, this is very general. I'm
2 sorry.
3 Q. Okay.
4 A. Okay, I think this is when I had a discussion with
5 Bob when he came down to pick up the motor home. And I told
6 him that, at least as best I can recall, we don't have a copy
7 of the reports in the files, the final copy. Many files had
8 partial copies or some just had the signature page. So when
9 the -- when the -- when Adam's computer went back to Raleigh,
10 Nellie was going to go through and pick out the final report
11 that went to State Farm of every job and send me a copy. I
12 don't believe that ever transpired. I alerted her to the fact
13 of just like the McIntosh case, there are cases where it might
14 be a week or ten days from the date on that report, which Adam
15 did when he put it together, until I would sign it, cause
16 that's how long processing took.
17 Q. Okay.
18 A. And I didn't -- I wanted to have the date on the
19 report match as close as possible the date of my signature.
20 Q. But my only question was that all that discussion
21 occurred after the Mullins matter?
22 A. They're not connected.
23 Q. No, not suggesting they are, but chronologically
24 speaking it occurred after the Mullins matter. Is that a
25 correct statement, or am I just --

Page 167

1 A. Well I don't know when the draft was gotten out to
2 the Mullins people. I don't have a date on that.
3 Q. Let's see, Mr. Kelly. You did your investigation on
4 November 9th of Mullins; so just eyeballing the calendar here,
5 well over a month before this e-mail, the December 29th e-mail
6 was written, right? Is that right?
7 A. When's the -- two is Mullins?
8 Q. Yes, sir, No. 2 is Mullins, and we can determine
9 that by looking at Exhibit 8.
10 A. Yes.
11 Q. And we see that it's file No. 2.
12 A. So two is Mullins.
13 Q. Uh huh (affirmative response).
14 A. So I went to the site November 9. A month later I
15 gave the report draft to -- no, this must have been Manny, I
16 guess. I don't know.
17 Q. It's got your initials by it, Mr. Kelly.
18 A. Yes, it does. Yes, it does.
19 Q. You went out on November the 9th, didn't you?
20 A. I guess I did, yes.
21 Q. Okay, so the only question we've got about this
22 right here, and we can finish this, is Mullins was already --
23 what had happened on Mullins was already known at the time
24 this e-mail, December 29th was written?
25 BY MR. CANADA: Object to form.

Page 168

1 BY THE WITNESS: Well on January 3rd is when
2 that report went to State Farm.
3 MR. WYATT CONTINUED:
4 Q. Yes, sir, but you had gone behind Mr. Manon and
5 written a completely different conclusion.
6 A. But it's not shown here.
7 Q. Well your date of your report is December the 14th,
8 isn't it?
9 A. No, that's when the information went to Adam for
10 processing or somebody for process. My draft is what he calls
11 received engineering.
12 Q. Okay, okay.
13 A. And then it went through processing over the
14 holidays, excuse me. It went through processing over the
15 holidays to January 3rd. It might have been there earlier,
16 but I was out over Christmas so.
17 Q. Okay.
18 A. So that's after this.
19 Q. So you questioned whether you knew about -- here's
20 your testimony. Let's make sure we're clear. You questioned
21 and doubt that you knew anything about the Mullins report and
22 the leaking of Manon's report to the Mullins and they're
23 discovering it and all that went into that. You questioned
24 whether or not you knew any of that when you wrote this e-mail
25 on December 29th, 2005?

Page 169

1 A. Yes, sir, because I don't know all of those problems
2 came until January is my recollection.
3 Q. Fair enough. Let's see the next exhibit is ten, I
4 believe. Okay, Mr. Kelly, I'm showing you an e-mail from
5 Randy Down to Nellie, Wednesday, February 10th, '06, and the
6 subject is you, right?
7 A. That's what it says, yes.
8 Q. Okay, and Nellie says, had a good conversation with
9 Jack this morning. That's you?
10 A. Yes.
11 Q. Regarding one of Manny's reports that had claimed
12 wind damage versus water despite much of the evidence
13 indicating water was the primary cause. Apparently State Farm
14 had raised an issue concerning our findings, and they're
15 saying this on February the 1st.
16 A. February 1, yes.
17 Q. And how many inspections had y'all done for State
18 Farm by that time? Over 100, right?
19 A. I would think so, yes.
20 Q. And then here is the statement I'm curious about,
21 and this, I think, came from yours. That's a question I'm
22 going to have. We are using the out of our standard
23 disclaimer at the end of the report along with updated weather
24 data that we receive later to justify our changing the report
25 findings. Did I read that correct?

Page 170

1 A. Yes, sir.
2 Q. And that is part and parcel of the discussion you
3 had with Randy, is how are y'all going to explain how you were
4 changing the report findings, right?
5 A. Well our standard -- the firm's standard disclaimer
6 allowed a change of opinion if anything new came along, and
7 this is what -- this is what that says.
8 Q. But my point, my question is you and Randy discussed
9 how are we going to explain changing these reports because we
10 already know that you changed 30 of them, 29 of them?
11 A. Well, no, I had different opinions than the other
12 engineers on 29 of them apparently.
13 Q. Okay, well you discussed that with Randy. This is
14 way over in February.
15 A. Yes.
16 Q. All the reports are done.
17 A. Yes.
18 Q. Everything is done.
19 A. Yes.
20 Q. We're finished. The RV's gone back to Raleigh.
21 Adam's gone. Files are at your house. It's wrapped up.
22 A. Pretty much, yes.
23 Q. Now the question is -- a subpoena is fixing to come
24 in about 30 days, but now the question is how do we explain
25 these changes, and that is what you discussed with Randy,

Page 171

1 right?
2 A. No, not --
3 Q. And y'all concluded --
4 A. There had to be a specific job here that we were
5 talking about.
6 Q. Well you're the subject, Jack?
7 A. Yes.
8 Q. There's no job. It's Jack, right?
9 A. Yes, that's what it says.
10 Q. All it is is Nellie saying that she had a good talk
11 with you about you talking with Randy about how y'all were
12 going to explain these changes, right?
13 A. Nellie--
14 BY MR. CANADA: Objection, mischaracterization.
15 Hold on. Mischaracterization. You're totally
16 mischaracterizing that e-mail. Stop it.
17 MR. WYATT CONTINUED:
18 Q. I'm going to read your sentence again, Mr.
19 Kelly.
20 BY MR. CANADA: It's not his sentence.
21 BY MR. WYATT: We are using --
22 BY MR. CANADA: He did not author that.
23 MR. WYATT CONTINUED:
24 Q. Read the sentence in the e-mail, Mr. Kelly. We are
25 using the out of our standard disclaimer at the end of the

Page 172

1 report. We being who? You?
2 A. It had to be me and Randy.
3 Q. Along with the updated weather data, that's what the
4 weather data that was bought by State Farm, wasn't it? The
5 one that was commissioned from the company called Weather Data
6 Inc.?
7 A. That's the only weather data, weather data report
8 that I'm aware of.
9 Q. Okay.
10 A. Is the one from Weather Data Inc.
11 Q. And you remember that that wasn't a public source of
12 weather data. That was State Farm hiring a firm to furnish
13 you all weather data that they liked and wanted to go in the
14 reports, right?
15 BY MR. BANAHAN: Object, to the form of the
16 question.
17 MR. WYATT CONTINUED:
18 Q. Is that your understanding of it? It was not public
19 weather data, was it?
20 A. No they gave us that information to use as we saw
21 fit.
22 Q. And they purchased it; am I correct?
23 A. Well I don't -- I assume so, but I don't know. They
24 gave it to us.
25 Q. So the two ways that you're going to explain why you

Page 173

1 changed the reports, the out of your standard disclaimer.
2 That's the boiler plate at the end of the report?
3 A. Yes.
4 Q. And the other is the weather data that State Farm
5 commissioned and paid for from the private company, right?
6 A. That's what that says, yes.
7 Q. Okay, and this is the consistent, what Nellie is
8 saying with the discussion you had with Randy?
9 BY MR. CANADA: Objection.
10 MR. WYATT CONTINUED:
11 Q. You can answer.
12 A. Nellie is not telling me anything. This is from
13 Randy to Nellie.
14 Q. Yes.
15 A. Nellie is not addressing me.
16 Q. Well she's saying she had a conversation with you.
17 A. No, she's not.
18 Q. Had a good conversation with Jack this morning.
19 A. That's Randy telling Nellie.
20 Q. Excuse me. Randy telling Nellie.
21 A. Yes.
22 Q. It's consistent with the conversation that you had?
23 A. Yes.
24 Q. Okay, that's all right. Then it says, hopefully
25 there are not too many more of those types of reports lurking

Page 174

1 out there. Well wait a minute. I missed a sentence. Before
2 that it says, I suggested, Randy?
3 A. Yes.
4 Q. Randy suggested that approach, and Jack was fine
5 with it?
6 A. Yes, that's what it says.
7 Q. That approach is what we just talked about?
8 A. Yes.
9 Q. The explanation for how you were going to justify
10 changing reports?
11 A. Yes.
12 BY MR. BANAHAN: Eleven?
13 BY MR. WYATT: Eleven.
14 MR. WYATT CONTINUED:
15 Q. All right, Mr. Kelly, this is your e-mail, Monday,
16 February 6th, to Nellie, right?
17 A. Yes.
18 Q. And it's Belsom, right?
19 A. Job 7.
20 Q. Belsom.
21 A. Yes.
22 Q. All right.
23 BY MR. BANAHAN: I won't interrupt you all the
24 way through this, but if it's on this other file
25 that we've talked about earlier, I'm just going to

Page 175

1 object now, and if you can agree every question you
2 ask about this, I would interpose an objection to
3 without interrupting you.
4 BY MR. WYATT: I do.
5 BY MR. BANAHAN: Okay.
6 BY MR. WYATT: And I -- the Court's, you know
7 -- as I said earlier, you know, the Court's ruling
8 was the overall adjusting practices, and so we can't
9 just take the name off the file just because it has
10 a name on it. So anyway, I understand our dispute.
11 MR. WYATT CONTINUED:
12 Q. Now you recall just a moment ago, we talked about
13 this business of cancellation and so forth?
14 A. Yes.
15 Q. Of the Belsom report?
16 A. Yes.
17 Q. And here you tell Nellie that your notes on the job
18 indicate State Farm wanted the report finalized, and as you
19 looked in the job log, it appeared that a report was delivered
20 to State Farm November of 2005, November 15, 2005?
21 A. Yes, sir.
22 Q. Is that a correct statement?
23 A. I would assume so because I wrote it.
24 Q. And you actually checked into it before you wrote
25 it?

Page 176

1 A. Yes, sir.
2 Q. You asked her do your records, show that the report
3 was one with a watermark draft across it?
4 A. Yes, that's what that says.
5 Q. And why did you want to know that?
6 A. Because that was not a report. That was a draft.
7 If that report had draft on it, it was unsigned and not a
8 final report.
9 Q. What difference does it make if it had draft or
10 whether it was a final report?
11 A. Draft was not final. Two different words. And this
12 was submitted for the purpose of getting paid for the work
13 done, as I explained before.
14 Q. You're saying that State Farm wanted the report
15 finalized? You're getting ready to write another report?
16 A. I'm getting ready to finalize that report
17 apparently.
18 Q. Well your own report, right?
19 A. I don't know if I wrote that originally or not.
20 Q. Well didn't we look at Belsom and see that there's
21 an R, and it's got a JK?
22 A. Yes, that's right. So the first one was done by --
23 Q. Manny.
24 A. Manny, yes, and it shows here it was submitted the
25 15th of November.

Page 177

1 Q. Right.
2 A. Of '05.
3 Q. Right.
4 A. Which is what this says.
5 Q. Right. But my question to you is, why does it make
6 any difference to you? Why are you so curious about wanting
7 to know if the report that State Farm has in its possessions
8 is draft or not?
9 A. Well if we go on down, I have nothing in the file
10 but a copy of an unsigned report dated 10/23/05 by Manny with
11 myself as peer review, which I do not recall reviewing
12 originally. The only notes I have on this job are incomplete,
13 and I'm concerned about even mentioning some witness when I
14 have no knowledge or notes. Please, let me know what we think
15 State Farm has in their possession, and I will give Bill an
16 e-mail to discuss it with him. That covers the conversation
17 pretty readily. I didn't know what was going on.
18 Q. I see. This e-mail was written after the Mullins
19 matter, correct?
20 A. February 6th, you know, without looking in my file,
21 I can't be sure, but I think Mullins came to light or the
22 problem with the Mullins receiving this unauthorized report
23 came to light in January, but I'm not real sure. I think
24 that's the case in which case this would come in after that.
25 BY THE VIDEOGRAPHER: Counsel, I'm going to

Page 178

1 change tapes, if you don't mind.
2 BY MR. WYATT: Yes.
3 BY THE VIDEOGRAPHER: I'm sorry to interrupt.
4 BY MR. WYATT: No problem.
5 BY THE VIDEOGRAPHER: Off the record. The time
6 in 15:44.
7 (Off the record.)
8 BY THE VIDEOGRAPHER: Okay, back on the record
9 at 15:45.
10 MR. WYATT CONTINUED:
11 Q. Okay, based on what you've seen on Exhibit 8 about
12 Mullins and what we've covered earlier about your inspection
13 date November 9th and so forth and so forth.
14 A. Yes.
15 Q. Your best answer is this February 6th e-mail after
16 the Mullins events?
17 A. To my best estimate, yes.
18 Q. And it's also after the conference call that you had
19 with Mr. Kochan and the rest of the Forensic people when State
20 Farm called and terminated Forensic's contract?
21 A. I didn't have a conference call where I was told
22 that. Termination.
23 Q. You were on the conference call with Mr. Kochan and
24 Randy Down and the others that --
25 A. On the 18th, yes?

Page 179

1 Q. Of October?
2 A. Of October.
3 Q. And the statement in here, you're asking that Nellie
4 tell you this. Let me know what we think State Farm has in
5 their possession. That's what you really wanted to know,
6 right?
7 A. Apparently cause I couldn't figure out what was
8 going on. I didn't know whether they had a draft or a report.
9 Q. I understand. Why was State Farm canceling your
10 report?
11 BY MR. BANAHAN: Object to the form of the
12 question.
13 BY THE WITNESS: I don't know. I didn't deal
14 in that aspect of it.
15 MR. WYATT CONTINUED:
16 Q. No one ever told you what the reason for that was?
17 A. I don't recall anybody telling me about it. Just
18 this is canceled. That's canceled. Whatever.
19 Q. I think this is Exhibit 11. I'm marking it as such.
20 I'm sorry 12. This may clear up the question about the timing
21 of the Mullins event.
22 A. Yes, sir.
23 Q. And your knowledge of that event?
24 A. Yes, sir.
25 Q. Now an e-mail from you to Nellie and others, January

Page 180

1 the 5th, 2006.
2 A. Yes.
3 Q. And it's been marked as Exhibit 12, and you say in
4 the second paragraph, this is a job that Manny had originally
5 investigated when I was assigned the follow-up. I came to a
6 completely different conclusion than Manny did. He concluded
7 the wind caused the movement of the building. I concluded the
8 water floated the building and that the wind or currents your
9 moved it across the street relatively undamaged. That I was
10 told was what State Farm had concluded also. Did I read that
11 correctly?
12 A. Yes, sir.
13 Q. So your conclusion was consistent with State Farm's
14 conclusion about how the --
15 A. They told me that they had gone there also, and they
16 had made that conclusion. So we had made independent
17 conclusions of a similar.
18 Q. And someone had communicated to you what State Farm
19 thought about how the house ended up?
20 A. Yes, this, apparently this lady here, Rana Linch.
21 Cause this is after I submitted a report.
22 Q. And your report just happened to be consistent with
23 what State Farm thought about how the house --
24 A. That's what she told me.
25 Q. And then you go on to say, the problem arises in

Page 181

1 that the client has a copy of what must be a draft. Although,
2 it's not stamped draft, correct?
3 A. That's what it says, yes.
4 Q. So you knew at least as of this date. You're
5 telling Bob Kochan and others here that the problem is the
6 insureds got a report, and it's not even stamped as draft?
7 A. The insured has a copy of at least several pages of
8 a report that's not signed and does not have draft across it.
9 Q. After that y'all made sure that these reports that
10 you went back and redid had draft written on them?
11 A. No, I think draft was well in advance of this.
12 Q. So the Mullins just didn't have -- it was not a
13 draft? It was not marked as draft?
14 A. It was not marked as draft, as it went out.
15 Q. But that report states that wind was the cause of
16 the house movement?
17 A. Right.
18 Q. Now the owner will get my official report that
19 states otherwise?
20 A. Yes.
21 Q. Which would be to the detriment of the homeowner?
22 A. Yes.
23 Q. Now you remember earlier we talked about whether you
24 knew what the consequences were of a conclusion that said
25 water or one that said wind; do you remember that?

Page 182

1 A. Yes.

2 Q. Is it -- isn't it true, Mr. Kelly, in fairness, you

3 knew that all along what the consequences were of writing a

4 water conclusion versus a wind conclusion?

5 A. I did later on in this case. I don't know if this

6 lady told me this or not. But early on I was not well versed

7 in insurance policies, even my own.

8 Q. When did you learn that?

9 A. Along the way. Probably within the first month, I

10 would say. Or the first several weeks.

11 Q. And how did you learn that? Who schooled you on

12 that?

13 A. Well I heard some of it from Mark Wilcox when I met

14 him at a -- the case I was telling you about in Long Beach,

15 and he talked about concurrency and homeowner policy, with as

16 best I can recall, would cover wind. Unless they had flood,

17 they might not get covered by water damage. Something along

18 that line.

19 Q. Now let me get that chronologically right. This is

20 you and Mr. Wilcox going out together to do an inspection?

21 A. I was to meet him there. We didn't stay together

22 the whole time. Just for a little bit.

23 Q. Mr. Wilcox works for State Farm?

24 A. Yes, sir.

25 Q. And this happened -- is it October the 24th?

Page 183

1 A. I don't know when I went to that job. I thought it

2 was the week or so after I started.

3 Q. Okay.

4 A. So maybe the week of the 24th or late that week or

5 earlier the next week. I'm not sure.

6 Q. And Mr. Wilcox explained to you the consequences of

7 what a conclusion finding water was versus what a conclusion

8 finding that wind did the damage was.

9 A. I think what the policy, what the policies would

10 cover. I don't think he tried to influence my conclusions, if

11 that's what you're leading to. I don't know.

12 Q. Well aside from what I'm leading to, I really want

13 to know your conversation with Mr. Wilcox as he tells you that

14 water is excluded to these homeowner policies?

15 A. That's what -- I guess that's what I understood from

16 him as well as about this business of concurrency. He tried

17 to explain that to me, which I told him, I didn't care to know

18 anything about that. None of that was affecting my task.

19 Q. Well at that point, now you've only been at work

20 seven days, right?

21 A. Or 10 or 14. Within a week or two.

22 Q. If it's the 24th, it's seven days?

23 A. Yes, sir.

24 Q. What did he tell you about this concurrency

25 business?

Page 184

1 A. A general comment that if a homeowner had just wind

2 insurance and damage was caused by flood within a certain

3 period of time -- I don't know that he addressed a specific

4 period of the time -- that the damage would be -- there would

5 be a question as to whether or not wind damage even would be

6 paid, as I understood it.

7 Q. Okay.

8 A. But what I told him was that, you know, I'm

9 addressing the task given to us, and I will continue doing

10 that specifying wind where I see it and water where I see it.

11 Q. Who set the meeting? Who set it up that you were to

12 go out there with Mr. Wilcox?

13 A. Adam.

14 Q. Adam Sammis?

15 A. Adam Sammis, yes.

16 Q. And was that at Mr. Kochan's request?

17 A. I don't know. I was given that assignment. I don't

18 know who set it up.

19 Q. Did Adam give y'all assignments? Is that how that

20 works?

21 A. Yes, sir.

22 Q. Okay, so if he said, for example, you need to go out

23 with Mark Wilcox today. He wants to go on an inspection with

24 you and show you how this is done. That's what you would do,

25 right?

Page 185

1 A. Yes, whatever he said, you know, he gave me

2 assignments, and I would go to the case or the job.

3 Q. And before that time, the only other time you had

4 done anything even remotely like that was you went with Brian

5 Ford on an inspection?

6 A. Yes, I called a tag along.

7 Q. Tag along.

8 A. While he was doing his work, right.

9 Q. But this time it was with a State Farms claims

10 person himself?

11 A. Yes, I met him there.

12 Q. Okay. Okay, this is a -- I'll mark this as Exhibit

13 13. This is an e-mail from you to Bob Kochan and to Nellie,

14 excuse me, May 31st, '06. It's 4:52 p.m. Subject is report

15 request from State Farm. Just to get this in context. You

16 had been served a grand jury criminal investigation subpoena

17 within two months of this, previous to this?

18 A. Yes, two months prior.

19 Q. Two months prior?

20 A. Yes, sir.

21 Q. All right, you say I'll be back in the office. I'd

22 like -- Friday. I'd like to see what the report is before I

23 discuss anything in detail with Scott Randell. Who is that

24 person?

25 A. I don't know. He had to be somebody with State

1 Farm.
 2 Q. Okay, but I would not want to keep him waiting
 3 without some response; so I propose I give him a ring in the
 4 morning to advise him that I'm out of town, and I will get
 5 back with him when I return. In the mean time he could write
 6 me a letter of what he wants done. What particularly was it
 7 that Scott Randell wanted done?
 8 A. I would have to look at the string of e-mails. Is
 9 it continued over here, or this earlier?
 10 Q. That was the 31st -- this?
 11 A. Is May 31.
 12 Q. Okay, here's a May 30 e-mail over here.
 13 A. Okay.
 14 Q. Here's -- on this page anyway it goes down to May
 15 30, 9:50, and that's -- that would be this one; so this would
 16 be the first e-mail, right?
 17 A. So shall I read this?
 18 Q. Yes, sir. Starting -- just go ahead.
 19 A. Yes. Hi Jack. This is from Bob to me. I hope you
 20 had a nice holiday weekend. State Farm called Raleigh today
 21 and asked for a report for a previously canceled case. Scott
 22 Randell from SF, that's State Farm, phone number given, called
 23 asking for the report. This was the case where Manny did some
 24 work. Then drafted an initial report before the case was
 25 canceled. We did send State Farm the attached report with an

1 invoice, which they paid. Could you give Scott a call and get
 2 any additional details for this case? You should have a file
 3 in your possession. So I don't see the file number.
 4 Q. There's no notation what file you're talking about,
 5 right?
 6 A. Right.
 7 Q. And then?
 8 A. And then -- so this is from Bob Kochan to me, Jack.
 9 Please -- so this -- let's see. This is at 9:50, and this is
 10 at 10:40. Bob, be sure -- this is Bob to me and others, I
 11 guess. Please, be sure to get everything in writing and pass
 12 it on to Larry Canada before we proceed with any further
 13 investigations. Don't mention that we wanted to get it
 14 cleared with our attorney to State Farm because we don't want
 15 to raise any flags with them and open any needless boxes at
 16 this time. I just think that we need to be sure that we
 17 should continue to perform work for State Farm while all this
 18 is going on. Plus a few more days to get a report out will
 19 not make any difference. I am sure. I asked Larry in a
 20 telephone conversation --
 21 Q. Who is Larry?
 22 A. That would be Larry Canada. -- if State Farm was
 23 going to hold FAEC and each of us guys harmless in this
 24 matter.
 25 Q. Now wait just a minute. This is Mr. Kochan telling

1 you that he asked Larry, Mr. Canada, about you guys being held
 2 harmless in this matter. Is that correct?
 3 A. That's correct. That's what it says.
 4 Q. And what did you understand the hold harmless from
 5 what?
 6 A. Well I would say you'd have to ask him that
 7 question, but my interpretation would be from lawsuits.
 8 Q. By this time you had a grand jury subpoena delivered
 9 to you at your house in Ocean Springs, and the Mullins case
 10 had been reduced to a formal lawsuit and served, right?
 11 A. Yes, sir.
 12 Q. Okay, so is that what the whole harmless is about?
 13 A. That's what I would think, yes.
 14 Q. Okay, sorry to interrupt you.
 15 A. No, that's fine. He said that he would check it out
 16 for us. If they won't agree to that, then I will assume it is
 17 possible that they might turn around and push back at us for
 18 helping them to get in the jam they are in.
 19 Q. Let me stop you for a second. When it says he said
 20 he would check it out for us, who is the he?
 21 A. Well since the prior sentence says he talked to
 22 Larry, I assume it would be Larry would be he.
 23 Q. Mr. Canada?
 24 A. Yes, sir.
 25 Q. And then it says if they won't agree to that,

1 meaning if State Farm won't agree to hold y'all harmless; is
 2 that right?
 3 A. That's how I take that.
 4 Q. Then I assume, and that's Bob Kochan talking?
 5 A. Yes, sir.
 6 Q. I assume it's possible they might turn around and
 7 push back at us for helping them get into the jam they are in.
 8 That's what it says and what did you take that to mean? That
 9 first of all the push back part? What's Mr. Kochan -- he's
 10 discussing this with you, right? I mean this is a
 11 conversation, it's an e-mail conversation?
 12 A. Yes.
 13 Q. It's between you and him?
 14 A. Yes.
 15 Q. And in the same sense, you and Randy had a
 16 discussion about how to justify the report changes. This is
 17 another discussion. This time it's between you and Mr. Kochan
 18 about hold harmless and so forth, right?
 19 A. Yes, sir.
 20 Q. What does this mean about that they might turn
 21 around and push back at us?
 22 BY MR. BANAHAN: Object to the form.
 23 BY THE WITNESS: I would assume that means that
 24 would they try to litigate against FAEC.
 25 MR. WYATT CONTINUED:

Page 190

1 Q. For getting them into the jam they are in?
2 A. Yeah. That I'm not sure.
3 Q. Excuse me. I'm sorry. I misread it. I apologize.
4 For helping them get into the jam they are in.
5 A. Yes.
6 Q. Okay, what did you take that to mean?
7 A. I'm not sure what I take that to mean.
8 Q. If that worse case happens, I just don't want to
9 keep giving them any more ammunition, so to speak. What does
10 that mean?
11 A. I would say that would -- well you would have to ask
12 him that question. You want my speculation on it?
13 Q. Well your interpretation of this conversation
14 written form between you and Mr. Kochan e-mail. What are you
15 --
16 A. I would say that --
17 BY MR. BANAHAN: Let me object. If it is
18 speculation, I'm going to object to speculation.
19 MR. WYATT CONTINUED:
20 Q. You can answer.
21 A. I would say that is, could be considered to be
22 another case where a change was made from a draft or an
23 earlier report.
24 Q. Okay, a report alteration issue?
25 BY MR. CANADA: Object to the form?

Page 191

1 BY THE WITNESS: Not necessarily. It's a
2 change in conclusions, for example. Not necessarily
3 an alteration.
4 MR. WYATT CONTINUED:
5 Q. In any of these change in conclusions, did you ever
6 change a water finding to a wind finding?
7 A. I can't recall that.
8 Q. This is Exhibit 14. Jumping around a little bit on
9 you, Mr. Kelly. In terms of the chronology here, and I don't
10 particularly like to do that, but you remember us talking
11 earlier today about October 18th and the significance of that
12 date?
13 A. Yes, sir.
14 Q. And that's one day after you went to work, and it's
15 the day that you all got on the conference call, and
16 Mr. Kochan related to y'all how things were going to be
17 different, right?
18 A. Well I remember some conversation about this
19 predominant thing and so on, and I don't know different from
20 what because I only just started.
21 Q. The day before?
22 A. The day before.
23 Q. That's pretty early to jump into the fire, isn't it?
24 A. But to have something different from something.
25 Q. What do you recollect today about that conversation?

Page 192

1 Particularly what? Mr. Kochan was more or less the speaker,
2 right?
3 A. Yes, that's what I recall.
4 Q. And what do you recollect he told y'all?
5 A. I recall that there was -- well let me say, I had
6 been to a couple of jobs the day before, my first day. And
7 then I came in with some questions. So I had questions on my
8 mind, two questions, and then we started this. I thought it
9 was gratuitous as a conference call. I can ask my questions.
10 The gist of what I recall in brief summary here is some
11 conversation about it was a concern about a conclusion drawn,
12 a concern by State Farm about a conclusion drawn in a report.
13 And that Bob had told them, State Farm, that he would send
14 another engineer out there to give a second set of eyes on or
15 another look. It ended up that was me.
16 Q. And that was McIntosh?
17 A. And that was McIntosh. I was selected at the end of
18 the conference call. As far as I recall, eyewitness accounts
19 were good to use so long as we had substantiations by
20 observations. And then I brought up a couple of questions.
21 One being the use of percentages of damage, and then Bob
22 mentioned that we should be using the word predominant versus
23 percentages. And the last question -- the second question I
24 had dealt with the amount of detail we should go into from an
25 engineering standpoint to try to evaluate losses. In other

Page 193

1 words was it our job to go and get the house plans. Look at
2 it from a wind load standpoint. Assume the connection is
3 there or what's shown, if at all. How much should we do of
4 that type of work, which I would call engineering work, for
5 lack of a better term. And Bob said that kind of detail
6 analysis was outside of the scope of our work; so we wouldn't
7 be doing that. And that's the gist of what I recall the
8 conversation.
9 Q. I see. The eyewitness information you said that
10 your understanding was it was permitted if you independently
11 verified it?
12 A. If our observations were consistent with what was
13 being said.
14 Q. So you had to corroborate? You personally had to
15 corroborate what the eyewitness said, or you weren't allowed
16 to use it?
17 A. Well I took that in that if an eyewitness told me
18 --- let's give an example might be the easy way to say it. If
19 an eyewitness told me that a roof blew off of that building
20 and damaged the corner of this house, I would look at that
21 house and say could a roof have blown off -- not necessarily
22 could a roof -- had a roof blown over there. Could it cause
23 this damage. That's the way I would look at it as
24 substantiating an eyewitness account, and I did that on a
25 number of reports.

Page 194

1 Q. What if you were looking at a slab, and an
2 eyewitness told you I saw the roof blow off that house? What
3 then?
4 A. I would look around and see what I could find out
5 and give it the weight I thought it might be worth.
6 Q. But you were not permitted to use the eyewitness
7 account as the sole justification for the fact that the roof
8 blew off, right?
9 A. Yes, that's how I understood it.
10 Q. Okay, and that came to you via Mr. Kochan's
11 conference call?
12 A. Conference call, yes.
13 Q. In the first part of this e-mail, and let's see it
14 says Kochan to Lecky King and Nellie Williams is here. Status
15 of our revisit, site revisiting efforts as promised. That's
16 the subject matter, right?
17 A. Yes, sir.
18 Q. That's -- did you know that? That Mr. Kochan has
19 promised State Farm at that point to quote, revisit sites?
20 A. One site, which was McIntosh.
21 Q. Okay, and then Mr. Kochan says, as we discussed --
22 as discussed, we've assigned another of our qualified
23 professional structural engineers to inspect Thomas and Pamela
24 McIntosh, your insureds property, and I presented under, and
25 he gives the claim number and so forth. You are that

Page 195

1 qualified, professional, structural engineer?
2 A. Yes, I was selected to go out there.
3 Q. Designated one day after you came to work?
4 A. Yes, sir.
5 Q. And by that time, how many inspections had you done?
6 This is October 18th, 12:01 p.m. You went to the RV on the
7 17th. You went with Brian once before this, right? Right
8 before this?
9 A. Yes, one day, which was a couple of jobs.
10 Q. And you had not yet had your Mr. Wilcox and you
11 going out to talk about concurrent clauses and the effect of
12 the water finding versus wind finding?
13 A. That's correct.
14 Q. So at this point how many inspections had you done?
15 A. Well that would have been however many I did on
16 Monday?
17 Q. The 17th?
18 A. The 17th, and I would estimate between three and
19 four probably.
20 Q. By yourself?
21 A. By myself.
22 Q. And those were --
23 A. That's my first day.
24 Q. That's your first day?
25 A. Yes.

Page 196

1 Q. And those reports had not even been written yet,
2 right?
3 A. No.
4 Q. So really there was no report bearing your seal or
5 signature at the time that this particular document was
6 written?
7 A. That's correct.
8 Q. Let's see. Then it goes on to talk about the
9 Pepperman property, and it says the same thing, right? They
10 are going to reexamine the report, right?
11 A. That's what it says, yes.
12 Q. And you were also designated to go rewrite that
13 report, right?
14 BY MR. CANADA: Object to form.
15 BY THE WITNESS: If I did, it would be on the
16 log. I would be assigned it.
17 MR. WYATT CONTINUED:
18 Q. We know that Pepperman is 12. We covered that one
19 today.
20 A. Okay.
21 Q. And so we have you showing up as -- oh, this is one
22 I missed. We're over the 29. We're up to 30, right? Because
23 I didn't put an orange --
24 A. That's what that says.
25 Q. Okay, I messed up. You did -- you redid the

Page 197

1 Pepperman report as well.
2 A. Well that's --
3 BY MR. BANAHAN: Object to the form of the
4 question.
5 MR. WYATT CONTINUED:
6 Q. Is that -- according to what I'm seeing on Exhibit
7 7.
8 A. And on Exhibit 8. Okay, seven, yes. My name's
9 there.
10 Q. Okay.
11 A. My initials rather are there.
12 Q. Yes. So we show Mr. Kochan nominated you to go redo
13 the Pepperman report after the State Farm, your call where
14 they terminated Forensic, and you had this conference call?
15 A. I don't know --
16 BY MR. BANAHAN: Objection to the form.
17 BY THE WITNESS: I don't know if he did, but I
18 ended up going there. I don't know whether Adam
19 picked me or whatever, but I went there.
20 MR. WYATT CONTINUED:
21 Q. Now you see at the end of this -- first of all
22 you've seen this before, haven't you? This Exhibit 14.
23 A. It's not addressed to me, but I may have seen it
24 with production of documents somewhere. I can't recall
25 offhand if I have or I haven't.

1 Q. Okay, at the end Mr. Kochan, and the way he words it
2 to Lecky King is, I would kindly ask that you send an e-mail
3 to our Ms. Nellie Williams, Director of Operations, at her
4 e-mail address, as you agreed to do that rescinds your
5 previous directive to return all assignments to you. Did I
6 read that right?

7 A. Yes, sir.

8 Q. Okay, but you have no recollection after being on
9 this conference call that Mr. Kochan related that Lecky King
10 demanded that all of the files be returned, and Forensic do no
11 more work for State Farm?

12 A. I didn't recall that conversation at all on the
13 conference call.

14 BY MR. WYATT: Let me take about a five minute
15 break and just kind of gather and see where we are
16 and see if we can start approaching third base.

17 BY THE VIDEOGRAPHER: All right. Stand by.
18 We're going off the record at 16:17.

19 (Off the record.)

20 BY THE VIDEOGRAPHER: Stand by. We are back on
21 the record at 16:27.

22 MR. WYATT CONTINUED:

23 Q. Mr. Kelly, I'm going to try to wrap this up, and
24 thank you for your patience. Just a few more questions, and
25 that's always famous last thing from a lawyer, but I'm really

1 going to try to limit it here. First is, I don't think I've
2 asked you, why did you leave Forensic? What was your reason
3 for that?

4 A. Yes, at the end of '06, I did not feel that I was
5 spending enough time with Forensic, Forensic Analysis
6 Engineering Company to maintain my position as the engineering
7 representative for the firm with the Certificate of Authority
8 in the state of Mississippi. It requires a full time person,
9 and so I discussed this with Bob, and he was -- we came to the
10 agreement that I would end my employment as an employee end of
11 December of '06.

12 Q. Now do you recall Mr. Kochan writing you an e-mail
13 asking if you wanted to jump to the dark side? Do you
14 remember those words?

15 A. I saw that in one of the last depositions, yes.

16 Q. Who was he referring to as the dark side?

17 A. I will give you the same answer I gave in that
18 deposition is you would ask have to ask him.

19 Q. What did you take it to mean?

20 A. I don't know. I don't recall what I took it to
21 mean. I passed it over or did not dwell on it.

22 Q. In any event you rejected Mr. Kochan's overture?

23 A. No, I think the dark -- do you have the e-mail?

24 Q. You know, I think we do have the e-mail. I think
25 it's in this --

1 A. I think I was shown that, and I think if I'm not
2 mistaken it took me a minute to get back in time here. I
3 think it was referring to attorneys. Should we contact
4 perhaps plaintiffs' attorneys. Something along that line. As
5 I recall from that last document I was shown.

6 Q. Okay, so your recollection is Mr. Kochan used that
7 phrase the dark side to refer to attorneys who represent
8 homeowners?

9 A. I think that's what was on that document I was
10 shown.

11 Q. And he was querying you to say now that we have
12 worked for State Farm, do you think we should go to the other
13 side and see if we can hire ourselves to them? Is that what
14 you took it to mean?

15 A. Well, no, I had been approaching some attorneys,
16 excuse me, for work for the firm, and I gave them a list of
17 everybody I contacted, when I did and who I met with and so
18 on. And I would have to see that document again to refresh my
19 memory, but I think it was referring to some attorneys.

20 Q. Did that precede Mr. Kochan's e-mail to you about
21 the dark side? You're going to meet with these attorneys?

22 A. Do you know the date of that e-mail? It had to be
23 because I was already meeting attorneys and having
24 conversations with some about doing work for them. So maybe
25 when I ran out, he sent that to me to drive another avenue of

1 attorneys.

2 Q. Do you recall those attorneys names that you were
3 meeting with?

4 A. A few.

5 Q. Who was that?

6 A. Phelps Dunbar over here just north of the
7 courthouse. I did not meet with them, but I sent a packet of
8 information up to Butler, Snow, O'Mara, Stevens and Cannada in
9 Jackson, and I had a phone conversation with Deutsch Kerrigan
10 and some other names. Deutsch Kerrigan and Stiles or
11 something.

12 BY THE COURT REPORTER: Say that again. I
13 can't hear you.

14 BY THE WITNESS: Uh -- Deutsch, Kerrigan and
15 Stiles.

16 BY MR. WYATT: Deutsch, Kerrigan and Stiles.

17 BY THE COURT REPORTER: Thank you.

18 BY THE WITNESS: And I can't recall if I talked
19 to any other attorneys or not.

20 MR. WYATT CONTINUED:

21 Q. Did Mr. Kochan prompt you to conduct that, those
22 marketing conversations with those attorneys, or did you do
23 that on your own?

24 A. No, we had talked about trying to get additional
25 work, and I told him I knew a couple of attorneys, and I could

Page 202

1 approach those to see if, you know, they might be receptive to
2 us doing some work from, for example, accident investigations,
3 structural problems, that kind of thing.
4 Q. I see, and then later he wrote this e-mail that used
5 the phrase, the dark side?
6 A. Well sometime in there, yes. I don't know the date.
7 Q. But in any event, you rejected his overture, I'll
8 call it, about jumping to the dark side?
9 A. Yes, I don't know if we talked about that any more
10 or not, but I don't recall contacting any more attorneys.
11 Q. Okay, how much money did you make during the time
12 you were doing these investigations for Forensic and State
13 Farm?
14 A. Yes, I was paid \$400 a day.
15 Q. And how much did that turn out to be overall?
16 A. Oh, for the month, for the -- let's see for the '05
17 year, I can only estimate, but I'd estimate maybe \$20,000, and
18 then in the '06 year, I think it was less.
19 Q. Was that your primary source of income during the
20 '05 period that you just referenced?
21 A. That was my primary source of income in late '05,
22 yes.
23 Q. So you mentioned you had your consulting engineering
24 office?
25 A. Yes.

Page 203

1 Q. But you really weren't getting your income from
2 that. You were drawing your income from the State Farm
3 Forensic work?
4 A. Most of my income was coming from that; that's
5 correct.
6 Q. And is that true in early '06 as well and up until
7 the time that Mr. Kochan sent you the dark side e-mail, and
8 y'all kind of severed your relationship?
9 A. Oh, we didn't sever our relationship till after
10 that.
11 Q. Till December. I'm sorry. I misstated that. It
12 was all the way into December of '06?
13 A. Yes, I would say I made more in, with Forensic than
14 I did in my own business.
15 Q. Okay, so it's a fair statement then that Forensic
16 and State Farm was your primary source of income?
17 A. No, Forensic was my primary source of income, and
18 their client was State Farm.
19 Q. Right. Speaking of client, what was the property
20 owner to you? How would you refer to them? Your client --
21 you're going out to inspect someone's property. It belongs to
22 them. You're there. They're allowing you to be there, right?
23 A. The homeowner?
24 Q. Yeah, the homeowner.
25 A. Yes.

Page 204

1 Q. What are they to you? If State Farm was your
2 client, what was the homeowner?
3 A. The owner of a site that was being investigated.
4 Q. All right, in that regard did you -- do you
5 personally think it's important that you be candid with the
6 homeowner under those circumstances?
7 A. Candid in what way?
8 Q. In what you're doing?
9 A. Yes, I think I told the people I was doing a report
10 on the damage.
11 Q. But generally you feel it's important that you
12 maintain candor with that person who lost their home in this
13 hurricane, and you're there inspecting their property, right?
14 A. Yes, I was there.
15 Q. By the same token, do you think it's unfair to
16 conceal something material from the homeowner?
17 A. I would think that -- I'm not sure how I would
18 relate that to a case. Can you give me an example to clarify
19 that?
20 Q. Maybe this will help. You're the homeowner. What
21 would you want to know? Do you think You would want to know
22 from the person who is inspecting if he were, he or she, were
23 concealing something that was material to your hurricane loss?
24 A. Yes, I would want to know that.
25 Q. Do you feel that the homeowner that you're

Page 205

1 inspecting is entitled to the same as you're saying you would
2 want to know, too?
3 A. Yes, I would think so.
4 Q. When was the last time that you had a conversation
5 with Bob Kochan?
6 A. It was a few weeks ago, I think.
7 Q. And what was the circumstances of that?
8 A. I hadn't spoken to him for a long time; so I just
9 gave him a ring to see how he was doing.
10 Q. Just a hello?
11 A. A hello, friendly type.
12 Q. How's it going?
13 A. Right.
14 Q. What -- did y'all talk about the litigation?
15 A. I might have mentioned that -- I don't know if I
16 mentioned or not because I e-mail him -- that this deposition
17 was coming up. I don't know if we discussed that or not. I
18 can't recall that we talked about any case matters.
19 Q. How long were you on the phone with him?
20 A. Oh, probably half an hour.
21 Q. And the call was made from your phone to
22 Mr. Kochan's phone?
23 A. Yes.
24 Q. At your home?
25 A. No on a cell phone.

Page 206

1 Q. Cell phone. Okay, but you don't remember whether
2 you discussed the McIntosh case at the time?
3 A. I can't recall because I knew when we were setting
4 up deposition dates, I copied him on the dates that I had
5 available. And I can't recall if we specifically talked about
6 it or not.
7 Q. You still --
8 A. I don't think so.
9 Q. Do you still correspond with him regularly?
10 A. Well not really but on occasion with these matters
11 going on.
12 Q. Y'all still keep up a stream of correspondence about
13 the litigation? The Katrina litigation?
14 A. Well I copy him on everything that I am involved in
15 with Katrina; so he's aware of it.
16 Q. Do you send him notes and impressions and other
17 things that you happen to take note of after say for example
18 this deposition has occurred?
19 A. I think I will call him and tell him how long it
20 took.
21 Q. Okay, do you write anything to him?
22 A. No, I don't write anything to him.
23 Q. Okay, has anybody told you not to do that?
24 A. No.
25 Q. You just don't do it?

Page 207

1 A. I don't do it.
2 Q. Okay, what about Nellie Williams? When's the last
3 time you talked with Ms. Nellie?
4 A. It would have been just, just after I found out she
5 was leaving the company. I called up to wish her well in her
6 new endeavor, and I'm not sure when that was. I think that --
7 you want me to guess?
8 Q. That's okay.
9 A. I'm thinking it was in '06 sometime. Maybe --
10 Q. July.
11 A. -- mid '06 or something like that.
12 Q. Okay, what is Nellie doing?
13 A. As I understand it she's manager of a wood working
14 store in Reno.
15 Q. I see. What about Randy Down? When was your last
16 conversation with Randy?
17 A. I'd have to say probably right after I found out he
18 was leaving also, which would have been I'm going to guess
19 summer of '06 or so. I'm not sure when he left.
20 Q. Okay, do you know what Randy is doing now?
21 A. I understand through Bob that he's doing his
22 consulting business.
23 Q. The same thing?
24 A. Basically the same thing he was doing for Bob on his
25 own.

Page 208

1 Q. Is he competing with Mr. Kochan's business?
2 A. That I don't know.
3 Q. What about Bill Forbes? When was the last time you
4 talked with him?
5 A. Some time last year. I don't recall talking to him
6 this year.
7 Q. And do you remember the subject matter of that
8 discussion?
9 A. I don't know what we talked about.
10 Q. Okay, Brian Ford. When was the last time you talked
11 with Brian?
12 A. I spoke with Brian on August 1st of this year.
13 Q. And what was the occasion for that? Did you call
14 him, or did he call you?
15 A. No, I met him coincidentally.
16 Q. Just by chance?
17 A. By chance.
18 Q. And where was that?
19 A. Up in Jackson, Mississippi.
20 Q. And where were y'all when you ran into each other?
21 A. We were at U. S. Courthouse up there.
22 Q. At the grand jury proceedings?
23 A. Yes, sir.
24 Q. That's more than a coincidence.
25 A. Well I did not know he was going to be there; so to

Page 209

1 me it was a coincidence.
2 Q. I understand, sir. It turns out that you and Brian
3 were both subpoenaed to testify before a grand jury; is that
4 correct?
5 A. Yes, sir.
6 Q. Federal grand jury?
7 A. U. S. Attorney grand jury. I guess that's federal.
8 Q. Okay, and there at that time you encountered Mr.
9 Ford, who you had not seen for a long time?
10 A. A long time, yes.
11 Q. Would it be at all the way back to the time he moved
12 to Georgia?
13 A. Yes.
14 Q. What did you and Mr. Ford discuss on that occasion?
15 A. Family, his work, my work. Nothing to do with
16 Katrina stuff.
17 Q. Nothing?
18 A. Nothing.
19 Q. And not -- certainly not your testimony before the
20 grand jury?
21 A. No, sir.
22 Q. Have you had any other conversations with Brian Ford
23 recently?
24 A. No, sir.
25 BY MR. WYATT: Just one second.

1 BY MR. BANAHAN: No, that's good. Wrap it up.
 2 BY MR. WYATT: That's all the questions I have,
 3 and I thank you for your patience. Thank you. I
 4 tender the witness.
 5 BY MR. BANAHAN: Nothing.
 6 BY MS. LIPSEY: I have no questions.
 7 BY MR. CANADA: All right. Do you want to read
 8 and sign like before?
 9 BY THE WITNESS: Yes, I'd like to read and
 10 sign.
 11 BY THE VIDEOGRAPHER: All right, this is the
 12 conclusion of the deposition of Mr. Jack Kelly.
 13 Court reporter has been Nancy Farris. Videographer,
 14 Bill Miller. Time is 16:44. We're off the record.
 15 *****Deposition was concluded.*****
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1
 2 CERTIFICATE OF REPORTER
 3
 4 I, NANCY L. FARRIS, Court Reporter and Notary Public for
 5 the State of Mississippi, do hereby certify that the above and
 6 foregoing pages contain a full, true and correct transcript of
 7 the proceedings had in the aforementioned case at the time and
 8 place indicated, which proceedings were recorded by me to the
 9 best of my skill and ability.
 10 I also certify that I placed the witness under oath to
 11 tell the truth and that all answers were given under that
 12 oath.
 13 I certify that I have no interest, monetary or otherwise,
 14 in the outcome of this case.
 15
 16 This the 20th day of September 2007.
 17
 18
 19 NANCY L. FARRIS
 20
 21 My Commission Expires:
 22 March 23, 2011
 23
 24
 25