

1 Q. Okay. It's fair to say that you were checking very
2 regularly on this engineering report, correct, Mr. Wells?

3 A. Yes.

4 Q. And you also were talking to Mrs. Weiss fairly regularly?

5 A. Yes.

6 Q. And you knew that Weisses were very frustrated by the
7 delay; correct?

8 A. Yes.

9 Q. And you knew that Mrs. Weiss was begging for a status on
10 the engineering report; correct?

11 A. She called me frequently asking if I had any additional
12 information.

13 Q. And you wouldn't disagree that she was begging you for a
14 status on that report?

15 A. Yes.

16 Q. Is it fair to say, Mr. Wells, that you did not have
17 anything to do with the processing of the Weiss' flood claim in
18 February of '06?

19 A. No.

20 Q. That's a fair statement?

21 A. Wait. Say that again.

22 Q. Okay. When FEMA and the National Flood Insurance Program
23 were provided documents by Allstate to pay the Weiss' flood
24 claim, you didn't have any involvement in that, did you?

25 A. I prepared the cover sheet.

1 Q. Okay. You understand that on a flood claim, Mr. Wells,
2 several documents must be submitted to the federal government
3 before the government can pay a claim?

4 A. Yes.

5 Q. And there's no evidence that you prepared any of the
6 processing documents submitted to the government; correct?

7 A. No.

8 Q. I want you to take a look in Exhibit 4, and I think
9 there's a book, Mr. Wells, if you ever want to reference --

10 THE COURT: How much longer do you have with this
11 witness?

12 MR. TRAHANT: I got a little while, Your Honor.

13 THE COURT: All right. I think we can quit for
14 today. It's been a long day. Everybody's been here for a long
15 time.

16 Ladies and gentlemen of the jury, if you would
17 leave your notepads on your chairs. I'm going to give you my
18 standard instruction: Don't talk to anybody about this case;
19 don't read any media accounts of this case, or listen to any
20 media accounts of this case; and don't discuss the case among
21 yourselves. We'll see you back here tomorrow morning at 9:00.

22 THE DEPUTY CLERK: All rise for the jury, please.

23 (WHEREUPON, the jury exited the courtroom.)

24 THE DEPUTY CLERK: Please be seated.

25 THE COURT: Since this witness is in mid-examination,

1 no one is to talk to him until his examination is concluded.
2 That's including counsel, representatives of counsel, no one,
3 until his examination is concluded.

4 I'd like to see counsel in chambers for a
5 moment.

6 (WHEREUPON, the Court was adjourned.)

7 *****

8 CERTIFICATE

9 I, Jodi Simcox, RMR, Official Court Reporter for the
10 United States District Court, Eastern District of Louisiana, do
11 hereby certify that the foregoing is a true and correct
12 transcript, to the best of my ability and understanding, from
13 the record of the proceedings in the above-entitled and
14 numbered matter.

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Jodi Simcox, RMR
Official Court Reporter

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1 (WHEREUPON the following proceedings were held at the
2 bench.)

3 THE COURT: I'm ordering you to give a version of
4 that tape that they can hear.

5 MR. TRAHANT: I will.

6 THE COURT: Today.

7 MR. TRAHANT: Okay. Sure.

8 THE COURT: If ours didn't open, theirs probably
9 didn't open either. I'm telling you the transcript is not
10 evidence. The tape is the evidence. Give them that today.

11 MR. TRAHANT: Yes, ma'am.

12 (WHEREUPON the following proceedings were held in
13 open court in the presence of the jury.

14 (WHEREUPON Michael Wells, having been duly sworn,
15 testified as follows.)

16 DIRECT EXAMINATION

17 BY MR. TRAHANT:

18 Q. Mr. Wells, when we left off yesterday, we were talking
19 about the processing of the Weisses' federal flood claim. Do
20 you recall that?

21 A. Yes, I do.

22 Q. By that time you had already been out of the Weiss claim;
23 correct?

24 A. Yes.

25 Q. It was mostly other folks at Pilot or Allstate who handled

1 the processing of that flood claim; correct?

2 A. Yes.

3 Q. If you look for me, Mr. Wells, this is Exhibit 4. Do you
4 recognize this flood processing document, Mr. Wells?

5 A. No, not particularly that form.

6 Q. You had nothing to do with preparing this document;
7 correct?

8 A. No, sir.

9 Q. If you go down to the bottom of that second page, 374, and
10 at the bottom it says, "Rating elevation location, three
11 floors, lowest floor 19.2, base elevation of 16 feet." Do you
12 know where they got that information from, Mr. Wells?

13 A. My recollection, Mr. Weiss told me that this base floor
14 elevation, his first floor above the garage elevation, was
15 17 feet. So if you add the difference between the two floors,
16 a couple feet there, that should have been the lowest floor
17 elevation.

18 Q. If you would look at page 376 and 377, the one we just
19 referenced, Mr. Wells, you don't have any idea by looking at
20 that document who prepared it, do you?

21 A. No, I don't.

22 Q. This is a February 15, 2006 letter, and it says, "Flood
23 Narrative." When I took your deposition, you initially thought
24 you had prepared this letter did you not?

25 A. That's a standard flood narrative form that we use.

1 Q. Initially, you thought you had prepared this letter;
2 correct?

3 A. Yes.

4 Q. Go up to 376 in the cause and origin section. Mr. Wells,
5 do you recognize what this cause and origin section is?

6 A. Uh-huh. I do.

7 Q. I want to read you the pertinent part. It says, "Cause
8 and Origin: This flood occurred on August 29, 2005. The
9 damage appears to be from the results of the general
10 conditional flooding in the area. First inspection revealed an
11 exterior waterline of 15 to 20 feet and an interior waterline
12 of 8 to 12 feet. Damage was extensive throughout the home."
13 You didn't put that in there, did you, Mr. Wells?

14 A. No. We use that form and often use cut-and-paste to
15 update the different portions of the form that relates to the
16 specific claim we're working on.

17 Q. The question is, Mr. Wells: You would not have put that
18 in there, would you?

19 A. No. No. There was no place to determine the waterline
20 from.

21 Q. That information doesn't relate to the Weiss house at all,
22 does it?

23 A. The waterline? In reference to the waterlines?

24 Q. In reference to the exterior/interior waterline and damage
25 extensive throughout the home, that certainly does not relate

1 to the Weiss house, does it?

2 A. The waterline? No. There was no place to determine a
3 waterline.

4 Q. That's right. You wouldn't know what the damage was
5 throughout the house because there wasn't any house there;
6 correct?

7 A. Correct.

8 Q. That would be an indication to you, Mr. Wells, that you
9 might not have prepared this letter that has your name on it;
10 correct?

11 A. Well, it could be, and that may have been my mistake.
12 That is a form that I have access to when we prepare the flood
13 form. I have to prepare a flood narrative.

14 Q. Is it fair to say, Mr. Wells, that the first time you ever
15 saw the language we just talked about in the cause and origin
16 section was when I took your deposition on March 12, 2007?

17 A. Yes.

18 Q. If you would have actually prepared that letter,
19 Mr. Wells, you absolutely would have signed it; correct?

20 A. I generally do. I generally sign the documents.

21 Q. You would have retained a signed copy of that letter;
22 correct?

23 A. Probably not.

24 Q. I want you to take a look in your deposition at page 86.
25 We are going to look at the question at line 8. Do you have

1 any idea as you sit here, Mr. Wells, where that signed copy of
2 the letter would have gone?

3 A. When we complete a package, we put it with other claims,
4 package it up, and send it overnight to the storm office. It
5 generally is routed to our immediate supervisor, admin, and
6 associated file examiner. Now, that was a flood claim, so it
7 would have went probably to the office where the flood office
8 was, which would have been -- I believe that office was in
9 Mobile.

10 Q. As you sit here, you don't know where a signed version of
11 that letter is; correct?

12 A. Not to my knowledge today.

13 Q. You have never seen one up until today, have you?

14 A. Not a signed version.

15 Q. You don't have any specific recall of preparing that
16 letter, do you?

17 A. Well, like I say, that is part of the package. If I
18 prepared that letter, then that was my mistake by not changing
19 that.

20 Q. You didn't prepare any other part of the package, did you?

21 A. Not the Marshall & Swift portion of it.

22 Q. I want you to take a look back on Bates 377. These
23 numbers on here, Mr. Wells, replacement costs for contents, you
24 didn't prepare those numbers either, did you?

25 A. No. You're correct. I wouldn't have prepared that

1 particular letter. I wouldn't have had access to those
2 numbers.

3 Q. That's right. You didn't prepare those numbers, did you?

4 A. No.

5 Q. As you sit here under oath, you did not prepare that
6 letter that bears your name, did you?

7 A. I did not.

8 Q. Would that indicate to you that your earlier testimony,
9 Mr. Wells, was correct and that beyond November or December of
10 2005 you had no further involvement in the Weiss claim?

11 A. Not after I turned in my note sheets, my initial scope for
12 the flood sheet.

13 Q. When was that?

14 A. It would have had to have been late November.

15 Q. I want to ask you about that cause and origin section.
16 That is not an adequate representation of what happened at the
17 Weiss property, is it, Mr. Wells?

18 A. No. It indicated waterlines.

19 Q. That's misrepresentative of what happened at the Weiss
20 house, isn't it?

21 A. Well, there's no walls to have a waterline.

22 Q. You would agree with me that is a misrepresentation in the
23 cause and origin section in the Allstate letter and one you
24 didn't make?

25 A. No, I didn't.

1 THE COURT: You have asked him two questions.

2 BY MR. TRAHANT:

3 Q. You would agree that part of the letter is a
4 misrepresentation, wouldn't you?

5 A. It's not correct.

6 Q. That letter went to the federal government; correct? It
7 would have gone with the package; correct?

8 A. I don't know if they sent that part there to the federal
9 government or not. I don't know exactly what portion goes
10 because we don't do that distribution.

11 Q. Let's move back to page 377 and talk about those contents
12 numbers again. You don't have any idea, Mr. Wells, of where
13 those numbers came from, do you?

14 A. The only information I had about the contents numbers, I
15 forwarded some blank room-by-room property sheets to Mr. and
16 Mrs. Weiss for them to list their items and their associated
17 value.

18 Q. The diary doesn't indicate that you ever processed those,
19 does it?

20 A. I don't know. I should have made a diary entry that I
21 did, but that's --

22 Q. Go ahead.

23 A. That's the protocol. That's how we do it.

24 Q. If your diary entries only indicate they turned in
25 contents for the underneath part of the house, which you

1 instructed them to do, you have no reason to dispute that, do
2 you?

3 A. No.

4 Q. Go to 378, please. Focus in on the bottom signature.
5 This is a write-your-own flood processing report. You
6 recognize the format of that document, Mr. Wells?

7 A. Yes. I've seen those documents before.

8 Q. This document is signed by a Denise Becker. It says,
9 "Interior water depth, 12 feet. Exterior water depth,
10 20 feet." You have no idea even who Denise Becker is, do you,
11 Mr. Wells?

12 A. No, sir, I don't.

13 Q. So, in the preparation of these documents on behalf of
14 Allstate to be submitted to the federal government, to your
15 recollection, nobody ever called you and said, "Mr. Wells, we
16 need some information about this claim." Isn't that correct?

17 A. They didn't call me that I remember.

18 Q. You would admit that's a pretty important document for a
19 flood submission to the federal government, wouldn't you,
20 Mr. Wells?

21 A. That's part of the package they send to the federal
22 government, yes.

23 Q. Isn't it true you had never seen that document until I
24 showed it to you during your deposition?

25 A. That particular document?

1 Q. Yes, sir.

2 A. That's true.

3 Q. Just so that the jury understands, Mr. Wells, any
4 documents that Allstate represented to the federal government
5 that there was an interior and exterior waterline and that any
6 damage within the Weiss home could have been determined would
7 be incorrect from your experience with the Weiss property;
8 correct?

9 A. Well, we had information from Mr. and Mrs. Weiss about the
10 elevation of the bottom floor. If someone had an elevation of
11 the water that would have been in the area, you could have
12 computed that.

13 Q. You don't know that anybody did that; correct?

14 A. No, I don't know.

15 Q. Certainly, you did no investigation into the water depths,
16 did you?

17 A. No.

18 Q. You were the only one at that point, to your knowledge,
19 who had gone out to the property on behalf of Allstate
20 Insurance Company; isn't that correct?

21 A. Correct.

22 Q. If they never asked you and you never did an
23 investigation, then it's a pretty fair conclusion, Mr. Wells,
24 that they just plugged those numbers in; correct?

25 A. Well, I don't know when that document was prepared unless

1 they got some information off of the cause and origin report
2 from the engineer.

3 Q. Mr. Wells, if you put a number down on a document like
4 that, which is being submitted to the federal government, you
5 would have gotten that information from somewhere; correct?

6 A. I would have done my best to make sure it was correct.

7 Q. Exhibit 4, Bates 386, this is a document called "National
8 Flood Insurance Program Final Report." Do you recognize that
9 format of that document, Mr. Wells?

10 A. Yes, I do.

11 Q. This document is signed by an "M. Hatter." Do you know
12 who "M. Hatter" is?

13 A. No, sir, I don't.

14 Q. There are some numbers in this document. It's fair to say
15 that you didn't prepare this document?

16 A. No, sir.

17 Q. Isn't it true, Mr. Wells, that until I took your
18 deposition about a month ago, you had never seen this document?

19 A. I have not, to my knowledge.

20 Q. You don't know a "Mung Hatter," do you?

21 A. No. The name is remotely familiar, but I never met
22 Mr. Hatter. I don't know that I ever talked to him.

23 Q. From your recollection, you never seen spoke to Mung
24 Hatter, did you?

25 A. No.

1 Q. You said "Mr. Hatter"?

2 A. Well, presumably, but it may not be. "Mung" could be a
3 female name.

4 Q. So, as you sit here, you don't know whether Mung Hatter is
5 a male or female; isn't that so?

6 A. I do not.

7 Q. The diary doesn't reflect anywhere, Mr. Wells, that you
8 ever spoke to this Mung Hatter, does it?

9 A. I haven't seen any diary entries that indicate that.

10 Q. It's fair to say, Mr. Wells, you have no idea who provided
11 these numbers to Mung Hatter to be given to the federal
12 government; right?

13 A. To prepare the numbers?

14 Q. That's right.

15 A. See, I sent in what they call a tick sheet that had
16 information on it that would have been used to plug into the
17 system that should have produced those numbers.

18 Q. Those numbers are different, aren't they?

19 A. Well, my numbers wouldn't have been that. My information
20 would have been the worksheet that they used to compile that.

21 Q. Your numbers would have been --

22 A. Information.

23 Q. That the Weisses gave you; correct?

24 A. Characteristics about the house, construction
25 characteristics.

1 Q. Let me ask you specifically, Mr. Wells, about the
2 contents. We are going to look at some documents. The
3 contents list that Mrs. Weiss gave you and you had for the
4 federal flood claim, those numbers don't match up with these
5 documents, do they?

6 A. I don't remember what the totals were, but the information
7 she gave me initially, we were working on the lower floor only.

8 Q. That's right. Go to page 387. This is a Federal
9 Emergency Management Agency National Flood Insurance Program
10 Proof of Loss. You are familiar with that format of the
11 document, are you not, Mr. Wells?

12 A. Yes, I am.

13 Q. You didn't fill this one out, did you?

14 A. I don't believe so. I filled a lot of them out, but --

15 Q. But not this one?

16 A. I don't think that whole format, that form -- after I sent
17 my initial tick sheet in, those forms were produced at the
18 office.

19 Q. It's true, again, is it not, Mr. Wells, that you never saw
20 this particular document until I showed it to you in your
21 deposition?

22 A. Yes.

23 Q. Yes, I'm correct?

24 A. Yes, you're correct.

25 Q. You have no knowledge either, Mr. Wells, of who prepared

1 that document, do you?

2 A. No, I do not.

3 Q. You did not provide the numbers used in the document to
4 anybody at Allstate or the National Flood Insurance Program,
5 did you?

6 A. No. I provided a worksheet.

7 Q. Certainly, this document was not signed by Dr. or
8 Mrs. Weiss, was it?

9 A. It was not.

10 Q. To your knowledge, they never swore this document out, did
11 they?

12 A. No. There's no signatures.

13 Q. Were you aware at any point in time, Mr. Wells, of a sworn
14 proof of loss on the flood claim that my clients executed?

15 A. I was not aware.

16 Q. Go to Exhibit 4, page 393. This is a contents list that
17 was submitted to the National Flood Insurance Program,
18 Mr. Wells, and it has the adjuster listed as "Mung T. Hatten."
19 I believe that's a typo. You were the Weisses' flood adjuster,
20 weren't you, Mr. Wells?

21 A. I was.

22 Q. In terms of any assessment of damage, to your knowledge,
23 you were the only one, up until that point in February of 2006,
24 who inspected the Weiss property for flood purposes at all;
25 correct?

1 A. I don't know of anybody else that would have been there.

2 Q. You have no --

3 A. There may have been, but I didn't meet anyone else out
4 there. I don't know if there was anybody else out there or
5 not.

6 Q. Do you know what this enhanced check process, check
7 routing form is, Mr. Wells?

8 A. We had check routing forms we had to fill out as the
9 checks were prepared.

10 Q. You didn't do this one on February 22 of 2006, did you --

11 A. No, sir.

12 Q. -- verifying call agent name, your name, Mung Hatter,
13 settlement letter, claims summary, FEMA letter, and check?
14 Somebody had to approve that document in management; correct,
15 Mr. Wells?

16 A. I don't know about that particular document, but I presume
17 somebody would have had to approve the letters that were
18 attached to it.

19 Q. Certainly, that document undoubtedly establishes,
20 Mr. Wells, that somebody other than you requested the checks on
21 the flood claim; right?

22 A. Yes.

23 Q. 394, you recognize the first page of that document, do you
24 not, Mr. Wells?

25 A. Yes.

1 Q. So that the jury knows, what is that particular document?

2 A. It's a list of personal property items prepared by
3 Mrs. Weiss, or Mr. and Mrs. Weiss, or both.

4 Q. This was for the area underneath the house, storage and
5 parking; correct?

6 A. Yes.

7 Q. The handwriting on those, as you understand it, is from
8 Merryl Weiss. You made some calculations for depreciation, and
9 that's your handwriting all the way to the right; correct?

10 A. Correct.

11 Q. Go to 400. Do you recall what those numbers totaled,
12 Mr. Wells?

13 A. I don't recall the total.

14 Q. You did prepare a property loss worksheet based only on
15 those numbers, didn't you, Mr. Wells?

16 A. Yes.

17 Q. Go to 401. This is what you prepared, and that links up
18 with the handwritten stuff that we just looked at; correct?

19 A. Yes.

20 Q. The total for that, again, was what?

21 A. After the depreciation?

22 Q. Yes, sir.

23 A. \$38,348.35.

24 Q. This is a document prepared by an Ana Chen. Do you have
25 any idea who that is?

1 A. No, sir.

2 Q. Remember in your deposition, when we looked at these
3 numbers, Mr. Wells, you couldn't explain to me how the numbers
4 you prepared factored into this list; isn't that true?

5 A. Correct.

6 Q. They're different; correct?

7 A. I don't remember the specific numbers, but I do know that
8 the handwritten list that I sent in with the numbers from
9 Mr. and Mrs. Weiss should have shown up on that sheet.

10 Q. This total is \$139,582 with \$38,219.50 depreciation, which
11 brings it to \$101,342.50, less deductible, which puts it right
12 over the limits; isn't that true, Mr. Wells?

13 A. Yes. If the limit was \$100,000, yes.

14 Q. Again, that document, as the Weisses' flood adjuster, you
15 had never seen until I showed it to you in your deposition less
16 than a month ago; correct?

17 A. That is correct.

18 Q. You don't know, Mr. Wells, how the numbers you put on your
19 property loss worksheet break down into any of these numbers;
20 correct?

21 A. I didn't prepare that sheet.

22 Q. Go to 413, please. This is a fast-path contents list.
23 You didn't prepare that either, did you?

24 A. No, sir. I think that's the sheet I sent the Weisses to
25 have them fill out.

1 Q. You understand that's a completely different handwriting
2 than you saw on Meryll Weiss' submission to you; correct?

3 A. Yes.

4 Q. Do you know who filled that document out, Mr. Wells?

5 A. No, I don't.

6 Q. Do you have any diary information that would suggest that
7 any of those numbers were given to Ana Chen, Mung Hatter, or
8 anybody else by my clients?

9 A. I don't remember a diary entry. It would have been in the
10 end, some of the last entries, if this was referring to that
11 particular document.

12 Q. You have seen nothing in either the flood file or the
13 homeowners file that my clients produced any list for contents
14 for the downstairs other than what they produced to you;
15 correct?

16 A. No, other than that.

17 Q. You have seen nothing on the flood claim that my clients
18 produced anything beyond the \$38,000 that they submitted for
19 the flood claim; correct?

20 A. No.

21 Q. Were you aware, on the homeowners claim, Mrs. Weiss had
22 prepared a detailed 50-page list of contents?

23 A. 50-page?

24 Q. Yes, sir.

25 A. I don't think I saw that list.

1 Q. Go to Exhibit 29. Do you know who a Tammy Abney is,
2 Mr. Wells?

3 A. No, sir, I don't.

4 Q. These documents, the personal property inventory loss
5 form, would have been submitted with the homeowners claim, not
6 the flood claim; correct?

7 A. Correct.

8 Q. At about the same time, Mr. Wells, these documents were
9 being submitted to the federal government for the flood
10 payment, were you aware that Tammy Abney was also representing
11 to Mrs. Weiss that contents were going to be paid under the
12 homeowners policy?

13 MS. BARRASSO: Object to the form, Judge.

14 MR. TRAHANT: Are you aware of it?

15 THE COURT: It's lack of foundation?

16 MS. BARRASSO: Correct.

17 THE COURT: Sustained.

18 BY MR. TRAHANT:

19 Q. Do you know whether or not my client submitted that
20 contents list on the homeowners claim?

21 A. No. The claim number is on it. Whichever claim number
22 that is would be the claim it was associated with.

23 Q. Go to Exhibit 26, please. On February 20, which is in the
24 same time frame of 2006 -- let me ask you: Have you ever seen
25 this e-mail before?

1 MS. BARRASSO: Judge, I object. Well, let him answer
2 it.

3 THE WITNESS: I don't recall seeing that e-mail.

4 BY MR. TRAHANT:

5 Q. Were you aware, other than having seen this e-mail, that
6 Allstate, on the homeowners claim, was telling Mrs. Weiss, "I
7 will be able to pay for contents in these rooms," meaning the
8 inside rooms? Were you aware of that?

9 A. You're talking about the notation at the bottom under the
10 room list?

11 Q. Yes, sir.

12 A. Yes, that's what it says.

13 Q. As long as you were involved in this claim, Mr. Wells, my
14 clients were never paid a penny for contents under the
15 homeowners; correct?

16 A. No, not to my knowledge.

17 Q. Have you done anything since I took your deposition,
18 Mr. Wells, in further investigation of those flood documents?

19 A. No, I haven't.

20 Q. You would agree with me, Mr. Wells, that if you did not
21 prepare that contents list, meaning the one acknowledged by a
22 Mung Hatter and an Ana Chen, and the Weisses didn't prepare
23 this list, and those numbers don't match up to what you
24 submitted, somebody fabricated that contents list; correct?

25 MS. BARRASSO: I object to the form.

1 THE COURT: He can answer it.

2 THE WITNESS: I won't say that someone fabricated it.
3 It's not standard for someone just to fabricate numbers. They
4 had to have a source. Someone would have had to have a source.

5 BY MR. TRAHANT:

6 Q. That's sheer speculation, isn't it?

7 A. Well, it may be. That's not a normal procedure, just to
8 pull numbers out of the air and put them on a document.

9 Q. Sure. If somebody did that, they would be violating the
10 normal procedure, wouldn't they?

11 MS. BARRASSO: Objection. That's calling for
12 speculation.

13 MR. TRAHANT: I think he just said he knows what the
14 normal procedure is.

15 THE COURT: Overruled. He can answer as to whether
16 or not that would be a violation of normal procedure.

17 THE WITNESS: Yes.

18 BY MR. TRAHANT:

19 Q. Those documents, as far as you know, were all submitted to
20 the federal government; correct?

21 A. Most likely. I didn't submit them, but I believe that's
22 their destination.

23 Q. You also have no reason to believe that the structural
24 numbers prepared for the NFIP on those documents were accurate,
25 do you, Mr. Wells?

1 A. Well, they should have been based on my worksheet.

2 Q. Do you know whether they were?

3 A. I didn't use the software program to prepare them, but
4 that was the intention.

5 Q. Are you telling me that the numbers submitted for
6 structure are different as well?

7 A. I didn't submit numbers. All I submitted was notations.
8 I submitted square footage. I submitted characteristics of the
9 house that I got from Mr. and Mrs. Weiss. It was a worksheet.

10 Q. So whoever did the structural numbers on those documents
11 submitted to get it up to that \$250,000 didn't get those
12 numbers from you; correct?

13 A. They should have used my information off of my worksheet
14 and put it into the software program, and it produces that
15 document with those numbers.

16 Q. Can you tell me if that's what they did?

17 A. I wasn't there, no.

18 Q. I want to take a look at some documents you did prepare,
19 Exhibit 4, page 403. Now, this is a document that you filled
20 out; correct, Mr. Wells?

21 A. Yes.

22 Q. Can you tell the jury what that is?

23 A. It's a Marshall & Swift worksheet. It allows you to note
24 measurements, some specific details about the structure, the
25 actual information that one would need to input into the

1 Marshall & Swift estimating program to produce a replacement
2 cost value and an actual cash value.

3 Q. In order to get a number out of that, you have to feed
4 some numbers into that program; correct?

5 A. Yes. This information here is what you use.

6 Q. For quality, you didn't put "Very Good" or "Excellent";
7 you put "Good." Correct?

8 A. "Good," yes.

9 Q. You could have put a 5 or a 6 for "Very Good" or
10 "Excellent"; correct?

11 A. I could have. We have to use those numbers for all
12 dwellings, from the low end of the scale to multimillion-dollar
13 homes.

14 Q. You put "Good," but you would agree with me that this
15 house was actually in excellent shape from what you have seen?

16 A. All I had was photos, yes.

17 Q. It was in excellent condition; correct?

18 A. Yes.

19 Q. Go to page 404. For quality, on this page, Mr. Wells, you
20 put a 3 for "Average"; correct?

21 A. Yes.

22 Q. This wasn't an average quality construction home, was it?

23 A. No. We always start with "Average," and the components
24 above it listed are what adjust that.

25 Q. You would agree with me, Mr. Wells, that the dollar figure

1 that comes out of this software is only as reliable as the
2 information you feed into it; right?

3 A. Correct.

4 Q. At 406, "Total Building Cost New," based on the
5 information you put in, Mr. Wells, this came up with a total of
6 \$84.53 per square foot; correct?

7 A. Correct.

8 Q. You would agree with me that you had no idea what the cost
9 per square foot of building property on Treasure Isle in
10 Slidell is, did you?

11 A. Not specifically, only a range.

12 Q. Mr. Wells, the foreman of the contractor who built the
13 house on Treasure Isle would know better what it cost to
14 rebuild that house than you; correct?

15 MS. BARRASSO: Objection: Lack of foundation.

16 MR. TRAHANT: I'll back it up.

17 THE COURT: See if you can lay a better foundation.

18 BY MR. TRAHANT:

19 Q. In terms of what it would cost to rebuild this property,
20 Mr. Wells, you really don't know, do you?

21 A. I have an idea.

22 Q. You do?

23 A. I do.

24 Q. What is --

25 A. A range. I think an accurate range for houses of that

1 quality, I've seen anywhere from \$75 to \$100 a square foot.

2 Q. On Treasure Isle?

3 A. Well, not on Treasure Isle, but in the general area.

4 Q. Do you remember telling me in your deposition that you
5 didn't know what the cost per square foot would be?

6 A. Specifically, I do not know.

7 Q. You would defer, would you not, to the foreman or the
8 superintendent of the contractor who built this house as far as
9 what it would cost to rebuild that similar structure; correct?

10 MS. BARRASSO: Objection: Lack of foundation.

11 THE COURT: Overruled. He can answer that.

12 BY MR. TRAHANT:

13 Q. You would defer to the builder, wouldn't you?

14 A. We do use contractors' estimates, but you have to be
15 careful.

16 Q. Wouldn't it be fair to say that nobody would be in a
17 better position than the person who actually built this house
18 to know what it would cost to rebuild it?

19 A. You're probably correct, sir.

20 Q. Did you know, Mr. Wells, that Allstate paid two of
21 Dr. Weiss' neighbors, both within 200 feet of his house, full
22 homeowners limits?

23 A. No, sir, I didn't.

24 Q. Do you know who Dr. John Schutte is?

25 A. No, sir.

1 Q. Do you know who William Dekemel is?

2 A. No, I don't.

3 Q. Is today the first time you are hearing that two of the
4 Weisses' neighbors were paid full homeowners limits?

5 A. Unless you mentioned it during the deposition. No, I
6 don't remember it.

7 Q. Isn't it true, Mr. Wells, that, as a claims adjuster, you
8 try to give the customer the benefit of the doubt?

9 A. When in a position to do so, yes.

10 Q. Just so the record is clear, Mr. Wells, you don't
11 subscribe to this wind-versus-water theory, do you?

12 A. Explain that, please.

13 Q. In your job as a claims adjuster, you often see wind and
14 water damage; correct?

15 A. Yes.

16 Q. So, as a practical matter, this wind versus water is not
17 in your mind when you're going out to adjust a claim; correct?

18 A. Well, I have to look at both perils. It could be wind
19 loss; it could be water loss; it could be a combination of the
20 two.

21 Q. Sure. In this case you more than likely thought it was a
22 combination of the two, although you didn't know the
23 percentages?

24 A. Exactly.

25 Q. You have no idea, Mr. Wells, as you sit here, what

1 percentage of this loss was related to wind damage as opposed
2 to rising water, do you?

3 A. No, I don't.

4 Q. But you do know, Mr. Wells, that from the beginning of the
5 claim Dr. Weiss and Mrs. Weiss filed claims under both their
6 homeowners and their flood policy; correct?

7 A. Yes.

8 Q. You understand, Mr. Wells, that if the conclusion is that
9 storm surge destroyed the property, the federal government, not
10 Allstate, pays the majority of the claim; right?

11 A. Yes, the federal government pays the flood claim.

12 Q. You know in this case that the homeowners limits were
13 higher, did you not?

14 A. I did.

15 MR. TRAHANT: I tender the witness.

16 THE COURT: Ms. Barrasso.

17 CROSS-EXAMINATION

18 BY MS. BARRASSO:

19 Q. Good morning, Mr. Wells.

20 A. Good morning.

21 Q. Let's clear up some inaccuracies here.

22 MR. TRAHANT: Objection.

23 THE COURT: Sustained. Just ask him questions.

24 BY MS. BARRASSO:

25 Q. Let me take you back, Mr. Wells, and ask you a couple

1 questions about the beginning. When did you first start
2 handling Hurricane Katrina claims?

3 A. I was deployed two days before the storm struck. I went
4 through Mobile, spent a day and a half, probably, offsite
5 waiting on the storm to subside. We came back into town. I
6 was put in a call center, if I remember correctly, about two
7 weeks before I was released to the field for claims.

8 Q. During those first two weeks, you were working a call
9 center that's outside of the New Orleans area?

10 A. Yes. In Mobile.

11 Q. Was that because access was denied to the New Orleans
12 area?

13 A. Well, we couldn't get in the area for some time, so they
14 set us up a place to work outside of New Orleans.

15 Q. So, during those two weeks, were you working on claims,
16 just not physically able to come into town to inspect?

17 A. Correct. Correct.

18 Q. Now, you're not an engineer; correct?

19 A. I'm not.

20 Q. Prior to coming to work on the claims here for Hurricane
21 Katrina, had you ever had to deal with a situation where you
22 were trying to figure out if the property damage of a claim was
23 caused by storm surge versus wind?

24 A. No, not before Katrina.

25 Q. Prior to going out and starting looking at claims, did you

1 personally start looking at weather data to figure out what
2 were the wind speeds in certain areas?

3 A. No. No, I didn't.

4 Q. Would you agree that would be something you would need to
5 know to figure out what happened in some of these claims?

6 A. Yes.

7 Q. Prior to going out to visit any of the claims, did you
8 have occasion to look at data regarding the height of the storm
9 surge and the wave action?

10 A. Some of the claims had waterlines. I could get an
11 indication of how high the water was in that area from the
12 waterlines. Other than that, news and radio.

13 Q. Other than the news or the radio, did you get a chance to
14 look at like the official data coming out from FEMA or the
15 National Hurricane Center about what was the height of the
16 storm surge?

17 A. No, no.

18 Q. Again, that would be something you might need to know in
19 certain claims to figure out whether storm surge caused the
20 damage?

21 A. To be accurate, you would.

22 Q. Now, prior to starting to go out to visit properties, what
23 instructions were you given as to how to handle those claims
24 where a house was totally destroyed and had disappeared?

25 A. "Severely damaged" is how they categorized it, and that

1 included total loss or anything that we couldn't determine
2 without any reasonable doubt that it was wind or flood.

3 THE COURT: I don't understand what you said. Could
4 you repeat that, please.

5 THE WITNESS: The term they used was "significantly
6 damaged." It could have been that the structure was racked,
7 knocked off its square foundation. It could have been just
8 significantly damaged to the point that you couldn't look at it
9 and say, okay, the water did this or the wind did this. If it
10 was in that category, we were instructed to talk to our field
11 supervisor and have a cause and origin engineer brought in.

12 THE COURT: Thank you.

13 BY MS. BARRASSO:

14 Q. Just to make sure we understand, the instruction was, in
15 the situation where the house, as you said, may have been
16 totally gone or -- you were to call out a cause and origin
17 engineer to determine what happened?

18 A. Exactly.

19 Q. That was something that you were instructed before you
20 went out on any claims; correct?

21 A. Yes. That was explained to us in orientation.

22 Q. For example, when you went out to the Weiss house,
23 Dr. Weiss' house, on the first visit, was it your job for you
24 personally to even figure out what the cause was on that visit?

25 A. No, it wasn't. For that particular claim, there was

1 nothing there for me to make much of an assumption about. The
2 structure was completely gone and I knew then -- as a matter of
3 fact, I knew before then that I would have to have a cause and
4 origin engineer request because Mrs. Weiss had told me on the
5 phone that the structure was completely gone.

6 Q. That's something you told Dr. Weiss and Mrs. Weiss while
7 were out there on that visit?

8 A. Yes, ma'am.

9 Q. When you were talking to them on October 7 at their house,
10 you told them, "We are calling out the cause and origin
11 engineer because I'm not here to figure it out"?

12 A. I told them I have to do that.

13 Q. Is it fair to say, Mr. Wells, that your job as the
14 adjuster on these claims was to be the eyes, ears, and legs and
15 gather information and take it back?

16 A. Yes. On this particular claim, I couldn't make any
17 definitive observations. I could relay the information, the
18 fact I saw photos, measurements of what was left. Other than
19 that, I didn't have any concrete evidence on exactly what
20 happened.

21 Q. If you look here, this is the entry you made on October 7
22 about your meeting at the Weiss home; correct?

23 A. Okay.

24 Q. On this very first entry, you note that you requested the
25 cause and origin engineer.

1 A. Yes, I did.

2 Q. So the very first day you go out there, you come back and
3 put in your diary, "I have to have a cause and origin
4 engineer."

5 A. Yes, I did.

6 Q. We talked about this. You do note that you say, "It
7 appears wind may have destroyed the structure and floodwater
8 washed it away." You were not making a determination as to
9 cause at that point in time, were you, Mr. Wells?

10 A. No. It was a general comment. I knew there was wind and
11 water both involved. I had no idea what exactly took the house
12 down.

13 Q. At that visit, did you make any determination of how much
14 to pay on the claim?

15 A. No.

16 Q. Why not?

17 A. We weren't near that point. We had to come up with some
18 evaluation as to what the loss was. I had no idea what it
19 would cost to replace the house. We hadn't done any of those
20 calculations.

21 Q. On these claims that you were adjusting for Hurricane
22 Katrina, did you have authority to go out on a claim and make a
23 decision as to how much to actually pay?

24 A. Only up to \$5,000.

25 Q. If a claim involved more than \$5,000, tell the jury what

1 the procedure was.

2 A. If it was over \$5,000, I had to prepare the estimate and
3 contact the file examiner by phone. Sometimes we would get
4 some field authority of a thousand or two; but generally, if it
5 was in excess of that, the file had to go into the office for
6 review.

7 Q. Again, you were the eyes, ears, and legs, gathering the
8 information to pass on to people inside to make that decision?

9 A. Yes.

10 MR. TRAHANT: Objection: Asked and answered.

11 BY MS. BARRASSO:

12 Q. Now, you were asked some questions yesterday about the
13 prior adjuster. In connection with this storm, Mr. Wells, did
14 you notice that some adjusters who came to work on the storm
15 didn't stick around?

16 A. Yes. I heard quite a bit of that.

17 THE COURT: Don't tell us what you heard.

18 BY MS. BARRASSO:

19 Q. Right. I'm asking if you know personally that adjusters
20 just didn't stick around?

21 A. Correct.

22 MR. TRAHANT: Objection. It has to be knowledge
23 based on hearsay.

24 THE COURT: Overruled.

25

1 BY MS. BARRASSO:

2 Q. Let me ask you this, Mr. Wells: You have worked on
3 catastrophes before; correct?

4 A. Correct.

5 Q. How many years have you worked on catastrophes?

6 A. I guess my first catastrophe was summer of 2002.

7 Q. By "catastrophe" --

8 A. Summer of 2002.

9 Q. Tell the jury what we mean when we say "catastrophes."

10 A. Well, generally, the term catastrophe, if it's a
11 large-enough storm, it's -- the federal government will declare
12 it a disaster area and it's assigned a cat number.

13 Q. A catastrophe number; right?

14 A. A catastrophe number.

15 Q. When we say "catastrophes," these are huge disasters?

16 A. Large, large storms.

17 Q. How many would you say you have worked on before you came
18 here to Hurricane Katrina?

19 A. Five, probably six, named catastrophes.

20 Q. Did you find, Mr. Wells, that this experience trying to
21 handle the Hurricane Katrina claims was more stressful or
22 difficult than any of those other ones you have been involved
23 with?

24 A. Yes.

25 Q. Tell us, what are some of the reasons you experienced that

1 made that job so much harder in this storm?

2 A. The extent of the damage; the fact that there was a lot of
3 combination claims; claim load; lots, lots of claims.

4 Basically, just the scope of the whole event. We had new
5 procedures in place. A lot of things you had to deal with that
6 weren't just normal on a smaller claim.

7 Q. Was there difficulty, Mr. Wells, finding housing in the
8 area?

9 A. Definitely. That was our first hurdle, to find a place to
10 stay.

11 Q. Were there communications problems because some of the
12 phone systems --

13 A. Most of us had to work strictly on cellphones. Cell
14 towers were down so we had -- a lot of times I didn't have any
15 communication for a day, day and a half, and it would come
16 back. It was in and out.

17 Q. Were there other problems created by the lack of access to
18 the area --

19 A. Some areas --

20 Q. -- because of curfews or lack of power?

21 A. Some areas we could not get into; they were closed off,
22 barricaded. Curfew was in place. You had to get out, I think,
23 before 6:00.

24 Q. So is it fair to say that trying to adjust a claim on this
25 storm just took a little longer -- maybe not even just a little

1 longer, but it took longer than working on other storms?

2 A. Yes. It wasn't near as organized as we would like for it
3 to be.

4 Q. You mentioned you were first assigned the homeowners claim
5 on Treasure Isle 13; Dr. Weiss' home, right, on 13?

6 A. Correct.

7 Q. Then you also ended up handling the flood claim on
8 Treasure Isle 13; correct?

9 A. Correct.

10 Q. Did you also handle a claim under their landlord package
11 policy on Treasure Isle 14?

12 A. 14, correct.

13 Q. And also handle a flood claim on Treasure Isle 14?

14 A. 14, correct.

15 Q. Did Dr. Weiss request that you try to handle all those
16 claims together?

17 A. Yes. I told him I would -- they assigned me the wind
18 claim first, and I told him I would be glad to request a flood
19 assignment. Sometimes that was feasible; sometimes it wasn't.

20 Q. So you were not initially assigned that flood claim; that
21 was something they requested?

22 A. Yes.

23 Q. In connection with the claims on Treasure Isle 14, which
24 is the property next-door, was it your understanding that
25 Dr. Weiss received a flood payment on that claim?

1 A. No, I didn't know that.

2 Q. You didn't work that one to conclusion?

3 A. To conclusion.

4 Q. When you went out to the property, you did look at both
5 properties; correct?

6 A. Yes, I did.

7 Q. I think you told us you took some photos and drew a
8 diagram --

9 A. Yes.

10 Q. -- and talked to Dr. and Mrs. Weiss.

11 A. Yes.

12 Q. While you were out there inspecting both 13 and 14, did
13 either Dr. or Mrs. Weiss tell you they wanted to make a claim
14 for a boathouse?

15 A. A boathouse? I don't recall anything about a boathouse.

16 Q. I know you have been looking over your diary entries. Did
17 you see any entry in your claim diary entries that you made for
18 a boathouse claim?

19 A. No, I did not.

20 Q. When you went out to Dr. Weiss' house on October 7, you
21 didn't know what the wind speeds had been out there; correct?

22 A. I had no technical information to tell me that.

23 Q. The same for the water; correct?

24 A. Correct.

25 Q. We saw where you asked for the cause and origin engineer.

1 Did you talk to your technical adviser? First of all, what is
2 a technical adviser?

3 A. A "TA" is what we call them, technical adviser, field
4 support personnel. They are there to help us on logistics,
5 contacts. If we have questions about the claim that we feel a
6 little uncomfortable with, we can always ask for help.

7 Q. This is your diary entry for October 16. Is this where
8 you spoke to your technical adviser, Ted Stevens?

9 A. Yes.

10 Q. That's when you were instructed to go ahead and request
11 that cause and origin engineer?

12 A. Correct.

13 Q. Why did it take you from October 7 to October 16 actually
14 to have this conference with Mr. Stevens?

15 A. The protocol told us to contact our technical adviser when
16 we determined we needed or thought we needed a cause and origin
17 report.

18 Q. Were you the only one reporting or contacting that
19 particular technical adviser or were there other adjusters --

20 A. I think he had maybe 50 adjusters assigned to him at that
21 time.

22 Q. Did you also speak to what's called a file examiner?

23 A. Yes.

24 Q. Tell us what that file examiner does.

25 A. A file examiner, he actually is an Allstate personnel that

1 actually approves the claim. Once you turn in the claim, he
2 reviews it and approves it; or if he has questions, he calls
3 you.

4 Q. I'm looking at your entry on October 17. What was your
5 reason on October 17 for talking to the file examiner, Milton
6 Bourassa?

7 A. To request the cause and origin report for that property.

8 Q. Did you tell Mr. Bourassa what your view of the claim at
9 that point was?

10 A. Well, I told him what I knew: It was either high water or
11 high wind.

12 Q. In this entry, it says, "Adjuster states that some homes
13 remain. However, our insured's home was destroyed. Adjuster
14 believes that cause of damage may be either high winds,
15 tornado, or by floodwater. Adjuster is requesting an engineer
16 to determine." Is that an accurate description of your
17 conversation with Mr. Bourassa?

18 A. Yes.

19 Q. Based on that and your conversation with Mr. Stevens, you
20 went ahead and started trying to process to get that engineer;
21 correct?

22 A. Correct.

23 Q. Did you personally have any role in selecting which
24 engineer was going out to the property?

25 A. Oh, no.

1 Q. On October 22, the engineer was assigned and contacted to
2 inspect the loss; right?

3 A. That was the diary entry made by apparently whoever made
4 contact with the engineer.

5 Q. You personally weren't charged with calling up that
6 engineer?

7 A. No. We didn't have that authority.

8 Q. Did you ever meet the engineer?

9 A. No, I did not.

10 Q. You didn't go out to the site with him; right?

11 A. No, I did not.

12 Q. The engineer is asked to go out on his own and do their
13 assessment without the adjuster or anybody being there to
14 influence them; correct?

15 A. Exactly. Unless we are specifically asked to go, we
16 generally don't go for that very reason.

17 Q. Now, in connection with the visit, you were also making
18 some diary entries on the flood claim side; right?

19 A. Yes.

20 Q. You talked a little bit about this earlier. Did you also
21 do a calculation on Marshall & Swift?

22 A. Yes.

23 Q. Can you tell us briefly: What is this Marshall & Swift
24 Residential Estimator?

25 A. It's a software program using that type of information,

1 square footage, specifics about the construction of the home,
2 construction materials, the number of floors, bathrooms, that
3 kind of stuff. It produces a replacement cost value and,
4 depending on depreciation and age, an actual cash value of the
5 home.

6 Q. This estimator determines that replacement cost and actual
7 cash value for the whole house?

8 A. Correct.

9 Q. This is your handwriting; correct?

10 A. Yes, it is.

11 Q. When you prepared this estimator on October 7, where did
12 you get this information?

13 A. From measurements, the square-footage measurements from
14 the home. The rest of the information I got from -- I think I
15 talked to Mrs. Weiss. I may have talked to Mr. Weiss.

16 Q. First of all, in making this estimate, you determined that
17 10 percent of the house was the bottom floor; correct?

18 A. Correct.

19 Q. 90 percent was the top two floors?

20 A. Correct.

21 Q. That was based on information you had gotten from the
22 Weisses; correct?

23 A. Yes. All I had was the photo, and I did the best I could
24 to determine the size of the room on the bottom floor. So I
25 gave it 10 percent.

1 Q. Then you made a determination about the quality and
2 condition as being 4?

3 A. Correct.

4 Q. There's a little handwritten note. Does that say, "See
5 photo"?

6 A. Yes.

7 Q. That was based on information you had gotten from the
8 Weisses in the photo?

9 A. Correct.

10 Q. At the time was it your understanding Dr. Weiss had built
11 this home back in 1994?

12 A. I remember us discussing how old it was. I don't remember
13 what he told me, but I knew it wasn't within the last year or
14 so.

15 Q. Actually, you have down here "eight years" at that point.

16 A. Okay.

17 Q. Did you note anywhere whether any renovations or additions
18 had been done since it was built back in '94?

19 A. No, I don't think I did.

20 Q. That wasn't anything anybody told you about; correct?

21 A. No.

22 Q. It wasn't a brand-new house at the time you --

23 A. No, it wasn't brand-new.

24 Q. Tell the jury why you chose number 4, the "Good" category.

25 A. Well, "Average" is generally where we start, like I said

1 before, and we add the components. This house, from the photo
2 and the discussion with the Weisses, they had some upgrades
3 from your average-type construction, so I selected number 4,
4 which would have been one step above.

5 Q. Then, in addition, did you also add components?

6 A. Those were the components you add in. I didn't have the
7 house to look at. I had to get the information from Mr. and
8 Mrs. Weiss. We went through the list. They noted specifics.

9 Q. You add these components in on top of, I guess, the base
10 price that's coming from the "Good"?

11 A. Exactly.

12 Q. Those are upgrades?

13 A. Well, you can see they're typical items in a home. If you
14 don't put those in, the program would have produced a very low
15 number. It has to know what's in the house in order to produce
16 a number.

17 Q. Mr. Wells, did you have any reason to low-ball this
18 estimate you were coming up with?

19 A. Not at all. We just went down the list. I wrote down
20 what they told me.

21 Q. These three pages, is this what you refer to as the
22 Marshall & Swift tick sheet?

23 A. Yes.

24 Q. That information then goes in to prepare this, the actual
25 appraisal form?

1 A. That's correct.

2 Q. So this information that's in this square-foot appraisal
3 form came from your tick sheet?

4 A. Correct.

5 Q. Then it's put into the program, and the replacement cost
6 is calculated from that; correct?

7 A. Yes.

8 Q. This appraisal, this estimate, these components that are
9 also included, come from your tick sheet; correct?

10 A. Yes, they should.

11 Q. The number that came out, the building cost new, was
12 calculated to be \$318,245; correct?

13 A. Yes.

14 Q. The next line is the depreciation, physical and
15 functional. Now, what is that?

16 A. Well, generally, they add a depreciation factor. Unless
17 it's a brand-new home or it's been completely upgraded
18 recently, there's a depreciation factor for aged conditions.
19 Unless you know specifics, I think the average applied is 1 to
20 2 percent a year on a structure.

21 Q. Then that takes you down to the total depreciated cost or
22 actual cash value; right?

23 A. Correct.

24 Q. At that point it was \$299,148?

25 A. Correct.

1 Q. At the time you did this, were you aware that the
2 homeowner limits on Dr. Weiss' home was \$343,000?

3 A. Yes, I knew what the policy limit was.

4 Q. You have adjusted claims for other insurance companies?

5 A. Correct.

6 Q. During your career, you haven't been just doing claims for
7 Allstate?

8 A. Not only Allstate.

9 Q. In adjusting claims, do you look at claim files of other
10 insureds, or do you just handle the claim of the insured's
11 house you are working on? Do you want me to rephrase that?

12 A. Would you, please.

13 Q. When you are adjusting a claim, is it your practice just
14 to adjust a claim based on that particular claim?

15 A. Yes. Yes.

16 Q. You don't go out looking at other claims?

17 A. To compare or to influence that claim?

18 Q. Right.

19 A. No, no.

20 Q. That's your practice, no matter what?

21 A. That's standard practice. The insurance companies often
22 speak to us about that.

23 Q. After October 22, the engineering report was ordered. At
24 that point, could the claim be finished before that engineering
25 report came back?

1 A. On this particular claim, no, ma'am. Someone with
2 authority would have to --

3 Q. What did you do, Mr. Wells, to try to get that engineering
4 report in hand?

5 A. I made numerous calls. Once the heavy loss unit was set
6 up, I called them. Before that, I called my administrator, and
7 he would attempt to get in touch with whoever the powers-to-be
8 were there that had their finger on the ability to pull that
9 report as often as I could. Sometimes Ms. Weiss would call,
10 and I agreed to call again.

11 Q. So practically almost every week during the months of
12 November and December and January, you were doing what you
13 could to get that report back?

14 A. Yes. Yes.

15 THE COURT: We are going to take the morning break at
16 this point, Ladies and Gentlemen of the Jury. If you will,
17 leave your notepads on your chairs. Don't discuss the case
18 among yourselves. Don't talk to anybody connected with the
19 case. We'll come back in 20 minutes.

20 THE DEPUTY CLERK: All rise for the jury, please.

21 (WHEREUPON the Court took a brief recess, after which
22 the following proceedings were held in chambers.)

23 THE COURT: One of the jurors told Jay, my courtroom
24 deputy, that he woke up in the middle of the night and realized
25 one of the names of one of the witnesses may be somebody he

1 knows. Jay didn't pursue it with him. What I can do is ask
2 him who it is. If he knows him, it makes a difference.

3 MR. DENENEVA: How close of a relationship?

4 THE COURT: It may not even be the same person.

5 MS. BARRASSO: Which juror is it? Do we know?

6 THE DEPUTY CLERK: Juror 4, Mr. Rodrigue.

7 THE COURT: I don't know if you want to get involved
8 in this, because the juror is going to feel singled out. I
9 think it's probably better if you can let me talk to him and
10 I'll tell you what he says. We'll have Toni record it in case
11 you don't believe me --

12 MR. TRAHANT: That would be a mistake.

13 THE COURT: -- then you can determine for yourselves
14 if you want to object to my decision on what to do.

15 MR. TRAHANT: He is No. 4; right?

16 THE COURT: Yes.

17 THE DEPUTY CLERK: He is the fourth seat in the box.

18 MS. BARRASSO: It's Rodrigue; right?

19 THE COURT: Can we agree that is the way we are going
20 to proceed on this juror?

21 MR. TRAHANT: Yes.

22 MS. BARRASSO: Yes.

23 (WHEREUPON counsel were excused and Juror Rodrigue
24 entered the conference room.)

25 THE COURT: How are you, Mr. Rodrigue? I understand

1 that you remember that you might know one of these witnesses?

2 JUROR RODRIGUE: Yes, I think I do.

3 THE COURT: Which one?

4 JUROR RODRIGUE: Danny Burns.

5 THE COURT: How do you know Danny Burns?

6 JUROR RODRIGUE: Hunting. Years ago I was in a
7 club -- I'm not sure it's the same one -- with a Danny Burns.

8 THE COURT: What does the Danny Burns you know do?

9 JUROR RODRIGUE: He was a dairy farmer. He lost his
10 farm. He started building cabinets for a company, the last I
11 heard, out of Hammond.

12 THE COURT: He lives across the lake somewhere?

13 JUROR RODRIGUE: Somewhere in the Kentwood area.

14 THE COURT: When was the last time you saw him?

15 JUROR RODRIGUE: It was quite a few years. I haven't
16 seen Danny -- I could recognize him, but I haven't seen Danny,
17 no contact with him.

18 THE COURT: Did you socialize with him?

19 JUROR RODRIGUE: Well, in a hunting club.

20 THE COURT: You were in the same hunting club?

21 JUROR RODRIGUE: Yes, ma'am.

22 THE COURT: Do you consider him a friend?

23 JUROR RODRIGUE: I guess.

24 THE COURT: I don't mean a friend as opposed to an
25 enemy, but is he somebody in your circle of friends currently?

1 JUROR RODRIGUE: No. No. Not then. It would just
2 have been the years we hunted together, might have been one or
3 two years.

4 THE COURT: Can you tell me approximately how long
5 ago that was?

6 JUROR RODRIGUE: 15 years ago.

7 THE COURT: That's why it took so long.

8 JUROR RODRIGUE: At 3:00 in the morning the name --
9 it was when Dr. Weiss' lawyer mentioned his name, one time you
10 mentioned it -- it was mentioned about three times, but that
11 just --

12 THE COURT: Now, did you ever have any business
13 dealings with him?

14 JUROR RODRIGUE: No, ma'am.

15 THE COURT: Did he ever build anything for you?

16 JUROR RODRIGUE: No, ma'am.

17 THE COURT: Anybody in your family?

18 JUROR RODRIGUE: No, ma'am.

19 THE COURT: If he got up and testified in this case,
20 would you be able to give his testimony the same weight you
21 would give any other witness?

22 JUROR RODRIGUE: Yes, ma'am. Yes, ma'am.

23 THE COURT: Would you be biased in his favor because
24 you had known him 15 years ago?

25 JUROR RODRIGUE: No.

1 THE COURT: Thank you, sir.

2 JUROR RODRIGUE: I just felt you needed to know this.

3 THE COURT: I'm glad you told me. That's the right
4 thing to do. We just want to make sure that everybody has an
5 open mind in there. I appreciate you telling me.

6 JUROR RODRIGUE: Thank you.

7 THE COURT: I'm glad somebody else beside me was up
8 at 3:00.

9 JUROR RODRIGUE: That's every morning.

10 THE COURT: Thank you so much.

11 JUROR RODRIGUE: Thank you for the breakfast.

12 (WHEREUPON Juror Rodrigue was excused to return to
13 the jury room and counsel returned.)

14 THE COURT: The person that he thinks he recalls is
15 Danny Burns, whom he described to me as somebody who used to be
16 a dairy farmer in the Hammond area, whose dairy farm failed,
17 and he started building cabinets. He knew him because they
18 were in the same hunting club together. This was 15 years ago.
19 He is not currently in his circle of friends. He has never
20 done any work for him or for anybody in his family.

21 When I asked him "Do you consider him a friend?"
22 he said, "Well, I guess."

23 I said, "I don't mean friend versus enemy. Is
24 he in your circle of friends?" He said, "Oh, no." Or maybe I
25 said, "Is he currently in your circle of friends?"

1 Then I said, "Would the fact he is a witness
2 affect you? Would you be biased in his favor?" He said, "No."

3 I said, "Would you be able to give his testimony
4 the same weight as any other witness?" He said, "Yes." He
5 said, "I just wanted you to know because I woke up at 3:00 this
6 morning and, after I heard that name three times, it occurred
7 to me I might know who this person is."

8 MR. TRAHANT: It doesn't sound like the same guy.

9 THE COURT: At this point, even if it is, I don't
10 think it matters.

11 MS. BARRASSO: Where is Mr. Burns from?

12 MR. TRAHANT: He is from Hammond.

13 THE COURT: I said, "So you knew this person lived
14 across the lake somewhere?" He said, "Yeah."

15 I don't think it's a problem because, if he had
16 told me that in voir dire, I wouldn't have excluded him for
17 cause.

18 MS. BARRASSO: Then the question comes in, I'm
19 thinking, whether we would have struck him. I don't know. I
20 would have to think for a second. We don't need him, right,
21 because we have eight?

22 THE COURT: We have eight people.

23 MR. DENENEVA: We don't even know if it's the same
24 guy. Why don't we make a quick call to Danny Burns and find
25 out if he was ever a dairy farmer.

1 THE COURT: Why don't you do that.

2 MR. TRAHANT: This is the subpoena, Judge. I just
3 want you to know we have it in the works.

4 MS. BARRASSO: Which address are you using?

5 MR. DENENEA: The one Mr. Crosby gave me.

6 THE COURT: I don't want to deal with the subpoena.
7 I want to deal with this. Ask him, also, if he was in a
8 hunting club.

9 (OFF THE RECORD)

10 MR. TRAHANT: I spoke to Danny Burns. I called him
11 first on his cellphone, was not able to get in touch with him.
12 After that I called him and was able to locate him at Savoie
13 Construction [phonetic], which is where he works. I asked him
14 if he knew a Roland Rodrigue. His response was, "I don't think
15 so."

16 I said, "Have you ever been a dairy farmer?"

17 He said, "No, I have not."

18 I said, "Have you ever been in a hunting club in
19 Hammond?"

20 He said, "No, I have not."

21 I said, "Have you ever been a cabinetmaker?"

22 He said, "No," and laughed.

23 THE COURT: So that's the end of that. Thank you.

24 * * *

25

1 (WHEREUPON the following proceedings were held in
2 open court.)

3 THE DEPUTY CLERK: All rise.

4 Court is in session. Please be seated.

5 THE COURT: Sorry for the delay, everybody, but it
6 was unavoidable. I hope you had time to eat your snacks.

7 Proceed.

8 BY MS. BARRASSO:

9 Q. Mr. Wells, before the break, I was asking you about what
10 you had done to try to find out what was going on with the
11 Rimkus engineering report, and I think you told me that
12 practically every week you were calling on that. I just want
13 to show you a couple of your entries here. Looking right here,
14 this is the entry for you on November 18; correct?

15 A. Yes.

16 Q. You note that you have "Contacted admin regularly,
17 including this a.m., checking status on engineer's report. No
18 mention of report received to date."

19 A. Correct.

20 Q. Why were you checking on that?

21 A. At that time I still had control of the file. When that
22 report came in, that would have allowed me to continue with
23 finishing the claim.

24 Q. Let me show you another one. This is on December 13,
25 2005. Again, that's your entry, correct, up here?

1 A. Yes.

2 Q. "Received reply from heavy loss unit today; report not on
3 file yet. Mrs. Weiss called; said she spoke to Rimkus
4 engineer. Report has been sent to Rimkus admin for review.
5 Awaiting response."

6 Then below it, another entry from you: "Requested
7 status on engineer's report from heavy loss unit again today."

8 A. Correct.

9 Q. These were all the instances you were calling trying to
10 get that report. To your knowledge, Mr. Wells, did Allstate do
11 anything to delay that Rimkus report getting returned to it?

12 A. Not to my knowledge. Every time I called and requested
13 information, whoever I spoke to offered to contact Rimkus and
14 get the status.

15 Q. Did you explain to Mrs. Weiss what the problem was?

16 A. I tried to.

17 Q. Here's an e-mail from you to Mrs. Weiss dated December 8,
18 2005. Let me ask you this: Mrs. Weiss e-mailed you a bunch,
19 didn't she?

20 A. Yeah. I received several e-mails from her.

21 Q. In this e-mail you are apologizing for the delays and then
22 telling her "Please do not feel singled out. These engineering
23 reports are delaying many claims just because of the huge
24 volume. I keep checking on the report status every few days."

25 Was that your understanding of what was going on?

1 A. Yes.

2 Q. Was this the only engineering report that wasn't coming
3 back as quick as everyone might have liked?

4 A. No. In communication with other adjusters, there were
5 many adjusters waiting on reports; files held up, waiting on
6 those reports.

7 Q. Primarily due just to the huge volume from Hurricane
8 Katrina?

9 A. To the volume.

10 Q. You stayed on the homeowners file until, I think you told
11 us, the file was transferred to the heavy loss unit; correct?

12 A. Correct.

13 Q. Were you leaving the storm --

14 A. Well, it was kind of a combination of two things. They
15 were working to set up the heavy loss unit to handle the
16 severely damaged claims. In my opinion, they would have pulled
17 those from us anyway. But in my particular case, I was
18 planning to move over to what they call maintenance, or
19 cleanup, and handle supplement files. Any time you move over
20 to that department and do those claims, they take open claims
21 that you have and transfer those to another adjuster, which in
22 this case was the heavy loss unit. That's all I had left was
23 the heavy loss claims.

24 Q. What do you mean by moving over to handle supplemental
25 claims?

1 A. Well, it's not a physical move. They just start sending
2 you supplements. When a homeowner calls in and says, "I have
3 received my check. I've got a contractor, and you missed part
4 of my roof" -- or you missed the spare shingles, or missed the
5 bedroom carpet, whatever -- we go back out, reinspect it, and
6 adjust the claim accordingly.

7 Q. Was that unusual, Mr. Wells, for adjusters to be moved
8 from one unit to -- let me back up and ask you this: Before
9 you went to the supplemental claims unit, you were handling, I
10 guess, original claims?

11 A. Yeah, the original claim.

12 Q. As the months wore on, is it fair to say there were less
13 and less original claims to be handled, so people moved over to
14 do other things?

15 A. Correct.

16 Q. Then Dr. Weiss' claim got transferred to what you call the
17 heavy loss unit?

18 A. Yes.

19 Q. Now, that happened in January 2006?

20 A. Yes.

21 Q. I think there was a little confusion in the dates earlier.
22 Let me show you what is part of Exhibit 4, and it has a number
23 of page 384. Is this part of your claim activity report? Can
24 you see that?

25 A. Yes. Yes, it appears to be mine.

1 Q. This top entry that is January 24, 2006, is that the date
2 that the homeowners file went from you to the heavy loss unit?

3 A. Yes. I'm not sure which file that is, but it's one of the
4 two. There should be a claim number at the top of that sheet
5 which would indicate which one it was.

6 Q. Then the next entry is February 7. Let me ask you this:
7 You kept the flood file for Treasure Isle 13; correct?

8 A. Yeah. Well, it wasn't actually my function to keep it.
9 When I sent a list in of all the claims I had left, they
10 transferred apparently all of them except that one flood file.
11 We don't have any way of seeing our pending claims, what's left
12 open, our assignments, unless we request them. So that flood
13 file was in there amongst my daily supplement claim files that
14 I was also working.

15 Q. So you were still handling --

16 A. It was still there.

17 Q. -- the flood file even after January 24, 2006; correct?

18 A. Yes. It was still there.

19 Q. So on February 7 -- and this is an entry from you;
20 correct?

21 A. Yes.

22 Q. This is in the flood file. I can show you that claim
23 number.

24 A. If it has an "F" up there at the top, that would have been
25 one of the flood files.

1 Q. So, on February 7, is that when you learned of the
2 conclusion from the Rimkus engineering report?

3 A. Yes.

4 Q. What did you find out at that point?

5 A. Well, they just called and told me that the Rimkus report
6 had designated the cause of loss as flood.

7 Q. Then what did you do, as the flood adjuster, at that
8 point?

9 A. That told me I could go ahead and complete the file, put
10 the documents together, make the fast-track sheets, the tick
11 sheet for the Marshall & Swift report, and turn them in.

12 Q. On this entry that you have on February 7, this is when
13 you learned of the Rimkus report conclusion that the primary
14 cause of loss was flood, covered by the flood policy. It said,
15 "Recommended I complete fast-path flood claim." Tell the jury
16 what that means.

17 A. Well, in an effort to get the claims closed more
18 expediently, they were trying to reduce the paperwork load, or
19 at least consolidate that paperwork load into an office where
20 they could move it faster. So, instead of the adjuster in the
21 field having to prepare all the documents, we had shortcut
22 forms that we put the pertinent information on, which included,
23 as you saw earlier, that Marshall & Swift report cover sheet
24 and contents documents, the file claim number, any pertinent
25 information, put that together and ship that off.

1 Q. So was it part of the process for the fast-path flood
2 claim that the outside adjusters -- let me clear this up. By
3 "outside adjuster," is that somebody who goes into the field?

4 A. That's us. We were the guys in the field.

5 Q. The inside adjusters are the people in the office; right?

6 A. In the office.

7 Q. As part of this fast-path flood claim, was it the normal
8 process -- I think this is what you just explained -- that you
9 would gather up your paperwork -- you would complete it, gather
10 up what you had, and you would send it to the inside adjusters
11 and office people to finish processing the claim?

12 A. Correct.

13 Q. As part of the fast-path flood claim, you weren't the guy
14 that was supposed to be cutting the checks or getting the
15 checks cut or any of those things?

16 A. Oh, no. We had no authority to do anything with the flood
17 claim checks.

18 Q. I'm going to show you again some of the documents, but
19 those documents like the National Flood Insurance Program Final
20 Report, the proof of loss, those documents, according to the
21 process, were to be completed by the inside adjuster; correct?

22 A. By the inside adjusters. It left us more time to work the
23 field.

24 Q. Was it your understanding, also, Mr. Wells, as part of
25 this fast-path process, that insureds were not being required

1 to sign a proof of loss before they could get their money?

2 Correct?

3 A. I don't think so.

4 Q. That they didn't have to sign a proof of loss?

5 A. I didn't have any signatures -- anyone sign any proof of
6 loss.

7 Q. That was done to expedite the process?

8 A. Expedite the paperwork process.

9 Q. They were being sent a proof of loss with their checks;
10 correct?

11 A. Yes. I was trying to think of where I got that
12 information from, but I do know that the proof of loss had to
13 accompany the check even though we didn't send the checks out.

14 Q. After you learned on February 7 that the Rimkus report had
15 come back with that conclusion and that the decision was made
16 to pay the flood claim, was it your understanding at that
17 point, based on the Rimkus report finding that the primary
18 cause of total loss of the house was flood, the limits were
19 going to be paid?

20 A. Yes.

21 Q. Looking at your entry on February 10, this is the
22 information you gathered up; correct?

23 A. Yes, ma'am.

24 Q. Now, you first say on February 10 "AA," and that's payment
25 for the dwelling; right?

1 A. The dwelling.

2 Q. You refer to the Marshall & Swift tick sheet.

3 A. Correct.

4 Q. That's what you were sending in to get the payment
5 calculated on; correct?

6 A. Yes. The Marshall & Swift tick sheet was a tool they used
7 to complete the formation of the RCB and ACB values.

8 Q. We showed you this before, but just to make sure we are
9 all on the same page here, this is your Marshall & Swift tick
10 sheet; right?

11 A. Yes.

12 Q. We went over that a minute ago, that your Marshall & Swift
13 tick sheet was used to, again, come up with what's called the
14 Marshall & Swift appraisal form; correct?

15 A. Yes.

16 Q. This is page 406 of Exhibit 4. As we talked about a
17 minute ago, this is the document or the calculation that is
18 done based on the Marshall & Swift tick sheet you sent in?

19 A. Yes, it is.

20 Q. In fact, it says up here "Surveyed by Mike Wells."

21 A. Yes, that's correct.

22 Q. That's accurate, isn't it, Mr. Wells?

23 A. Yes. I did the survey.

24 Q. Then the numbers that were calculated, which we looked at
25 a minute ago, which were the building costs new at \$318,245 and

1 the total indicated value after depreciation of \$299,148, came
2 from your tick sheet, your estimate?

3 A. Yes. It was composed of the components that I put on my
4 handwritten tick sheet.

5 Q. Wasn't that the normal process, Mr. Wells, that you, as
6 the outside adjuster, would send in your estimate and the
7 inside adjuster runs the numbers, so to speak?

8 A. Yes, he does.

9 Q. We looked at this flood narrative that was dated
10 February 15, 2006; right?

11 A. Yes.

12 Q. Looking down here at the bottom, the replacement cost for
13 the dwelling, that number, "Total RCV with O&P" -- that's
14 overhead and profit; right?

15 A. Overhead and profit; correct.

16 Q. That number of \$318,245 is the same number that comes from
17 your calculation; correct?

18 A. Correct.

19 Q. Let me ask you about this narrative while we're looking at
20 it. This is a document you adjusters fill out?

21 A. Normally, we do.

22 MR. TRAHANT: Objection.

23 THE COURT: What is the basis of your objection?

24 MR. TRAHANT: It was unclear, "you adjusters." I'm
25 not sure to whom Ms. Barrasso is referring.

1 BY MS. BARRASSO:

2 Q. You have filled out this kind of form before, haven't you?

3 A. Yes, I have.

4 Q. I think you have told us before you are cutting and
5 pasting to save time; correct?

6 A. Yes.

7 Q. You then send it to the inside to be completed; correct?

8 A. Correct.

9 Q. I think you told us it might have been your error that, on
10 the cause and origin here, your cut-and-paste didn't make it;
11 right?

12 A. Yeah. It's very apparent there that, had I been correct,
13 if I produced that page, I wouldn't have put that in there.

14 Q. What would you have put if you had been correct and not
15 made an error?

16 A. I just wouldn't have noted "waterline." I would have made
17 a note there about the structure being completely destroyed and
18 there being a clean slab.

19 Q. You would have put what your conclusion was from this
20 other page; correct?

21 THE COURT: Ask one question at a time.

22 MR. TRAHANT: I object to the extent there has been
23 no foundation that he saw the Rimkus report.

24 THE COURT: Sustained.

25

1 BY MS. BARRASSO:

2 Q. Looking back at your entry on February 7, you're entering
3 into the diary what your understanding of the engineering
4 report is; correct?

5 A. Well, just -- yeah. I didn't see the engineering report,
6 so I was basing it on the flood claim.

7 Q. Based on what you were told?

8 A. Right.

9 Q. In correcting the cause and origin section of this flood
10 narrative, would you have put into that section the same
11 conclusion, that flood was the primary cause of this loss?

12 A. Yes, because there was no standing walls to indicate a
13 waterline. In that section right there in the flood claim, we
14 generally indicate a waterline and try to determine what the
15 base elevation was and how high the water was up in the
16 dwelling and, naturally, that particular line doesn't apply.

17 Q. Let me ask you this: Would your conclusion have been
18 different as to the cause of loss of this property?

19 A. No. I prepared that after I was informed that the cause
20 and origin report indicated it was flood.

21 Q. If this cause and origin part had been cut and pasted or
22 corrected and had the correct information based on the Rimkus
23 report, would the decision to pay the flood claim have been the
24 same?

25 A. Yes.

1 Q. There was nothing that you know that was left out of this
2 narrative that would call for a different decision on that
3 flood claim; right?

4 A. No. It still would have been a flood claim -- I mean a
5 flood loss.

6 Q. Your intention, in filling out your diary and sending in
7 the Marshall & Swift tick sheet, was that the flood claim was
8 paying for the whole house; correct?

9 A. Yes. The policy limits.

10 Q. In this document that you were asked about earlier, for
11 example, the National Flood Insurance Program Final Report, is
12 that one of the documents that we were talking about that are
13 prepared as part of the regular process by the inside
14 adjusters?

15 A. Yes. In this particular case, the heavy loss unit was an
16 inside adjuster.

17 Q. The number that is used on this document as the
18 replacement cost value is \$318,255.45; correct?

19 A. Correct.

20 Q. The actual cash value is \$299,148; correct?

21 A. Correct.

22 Q. Those are the same numbers that are on the Marshall &
23 Swift estimate based on your calculations?

24 A. Yes.

25 Q. The proof of loss that went to the Weisses, again, this is

1 a document prepared by the inside adjusters as part of this
2 process we were talking about; correct?

3 A. Correct.

4 Q. It's not a document that you were supposed to prepare?

5 A. Not in this case.

6 Q. The actual cash value is the \$299,160.12, which is again a
7 number coming from your calculations; correct?

8 A. Yes.

9 Q. Now, let me show you this document. This claims summary,
10 this is a document that typically goes to the insured; correct?

11 A. Yes. Normally, they send a copy.

12 Q. So this would have been a document, based on your
13 understanding, to go with the checks, or the letter telling you
14 you are getting the checks, and went to Dr. Weiss?

15 A. Correct.

16 Q. This document, again, the replacement cost, the \$318,245,
17 that's coming from your calculations, isn't it, Mr. Wells?

18 A. Correct.

19 Q. The \$299,148 on the actual cash value is your calculation?

20 THE COURT: How many times are you going to ask him
21 if that's his calculation?

22 MS. BARRASSO: I'm just going over the different
23 documents to show there's nothing --

24 THE COURT: It's just the same number.

25 MS. BARRASSO: I'll move on, Judge.

1 BY MS. BARRASSO:

2 Q. This document, which is page 391, which is part of the
3 claims summary, is that the sketch that you did?

4 A. That's the sketch of the foundation of the structure, the
5 remaining foundation.

6 Q. It contains the same numbers, which I won't repeat?

7 A. Yes, it does.

8 Q. The final page of this claims summary that goes to
9 Dr. Weiss explains that this calculation is based on replacing
10 the dwelling per Marshall & Swift evaluation; correct?

11 A. Correct.

12 Q. Again, the same numbers?

13 A. Correct.

14 Q. This document that went to Dr. Weiss is telling him, with
15 this check, "You're being paid for the whole house for flood"?

16 A. Yes.

17 Q. Now, I want to talk to you about the contents part of
18 this. You sent in the contents part that you had; correct?

19 A. Yes, I did.

20 Q. This was, again, back to February 10. I think you told us
21 that you sent the Weisses some forms to fill out. That's your
22 recollection?

23 A. Individual room forms, yes.

24 Q. Is this the form that you sent them?

25 A. Yeah. That's the standard form. That's part of the

1 fast-track program that we were using.

2 Q. Is that part of the standard process in this fast-path
3 process, that the forms are sent to the insured to fill out and
4 then they go back to the inside adjuster?

5 A. Yes. Sometimes we send them to the insured; sometimes
6 it's a telephone conversation.

7 Q. The inside adjusters handle that on this fast path?

8 A. On the fast path, they do.

9 Q. So there was nothing unusual at all about the fact that
10 you weren't involved in finalizing the content payment on this?

11 A. No, not after they took -- the claim was transferred to
12 the heavy loss unit.

13 Q. This is the flood claim that was on the fast path; right?

14 A. Yes.

15 Q. Now, on your diary entry -- this is, again, still on
16 February 10 -- you say that you called the insured to explain
17 all the policy provisions, settlement, deductible, address, and
18 answer all questions. So did you have a conversation with
19 Dr. Weiss about the flood payment he could expect on or around
20 February 10?

21 A. Yes. To the best of my knowledge, that's a standard note
22 we put at the end of the closing summary.

23 Q. In that conversation, did you tell Dr. Weiss, "You're
24 going to get paid your flood limits on dwelling and contents"?

25 A. Yes. The flood claim would have included the dwelling and

1 the contents for a total loss.

2 Q. Did either Dr. or Mrs. Weiss ever claim to you that they
3 were getting overpaid by their federal flood policy?

4 A. No.

5 Q. We talked about you had gotten lots of e-mails from
6 Mrs. Weiss. Did she ever e-mail you after they got their
7 \$350,000 on flood payments and say, "Hey, Mike what's this for?
8 I didn't mean to get this much"?

9 A. No. I don't remember --

10 Q. You never heard that?

11 A. -- that conversation.

12 Q. I showed you a minute ago you had estimated that the
13 ground floor of this house was 10 percent of the house.

14 A. Yes.

15 Q. Did ever tell Dr. Weiss or Mrs. Weiss that that \$250,000
16 payment they were getting was just for the ground floor?

17 A. No. That was total structure.

18 Q. Let me ask you this question on that ground floor: To
19 your knowledge, does the federal flood policy cover property
20 damage below the base elevation?

21 A. Only if it's in an enclosed space.

22 Q. So the most on the ground floor that would have been
23 covered by flood would have been --

24 A. Inside --

25 Q. -- that little shed?

1 A. -- that enclosed room.

2 Q. About 400 square feet?

3 A. Yes.

4 Q. That wouldn't be a \$250,000 payment?

5 A. No, I don't think so.

6 Q. You were shown a handwritten contents list Mrs. Weiss sent
7 you. You got that from her to try to get an advance for the
8 Weisses?

9 A. Yes. We knew that the wind policy would not pay ALE until
10 it was determined that it was a wind claim or a wind loss. So
11 the only other way to get an advance would be to request an
12 advance based on the contents involved in the flood, if we knew
13 there was flood damage to the contents.

14 Q. When you sent the Weisses those fast-path contents forms I
15 just showed you, was it your instruction to them "This is for
16 the rest of the house"?

17 A. Other than the --

18 Q. Yes. The fast-path contents, were you trying to find out
19 about the rest of the house?

20 A. -- rest of the house?

21 THE COURT: You can't talk over each other. We need
22 a question, then an answer, a question and an answer, so the
23 court reporter can get it.

24 MR. TRAHANT: Your Honor, I have no idea what counsel
25 is making reference to.

1 THE COURT: Are you objecting to a particular
2 question?

3 MR. TRAHANT: I'm objecting to the last one because I
4 don't know that we have seen anything to indicate that
5 Mr. Wells sent my clients that fast path or that they sent it
6 back.

7 THE COURT: Lay a foundation for the question.

8 BY MS. BARRASSO:

9 Q. Mr. Wells, I think you have testified to this, but did you
10 send the Weisses the fast-path contents form to fill out?

11 A. Yes. It's a blank form.

12 Q. Your purpose in sending that was to gather information
13 about the rest of the house?

14 A. Yes.

15 Q. Now, we talked just a little bit about 14. I just wanted
16 to ask you this: The claims that were submitted on Treasure
17 Isle 14, they involved different insurance policies; correct?

18 A. It was a separate policy.

19 Q. There was a separate flood policy; right?

20 A. Yes.

21 Q. And a landlord-package policy; right?

22 A. Yes.

23 Q. Now, you were asked about a contents list by Mr. Trahant.
24 Let me ask you: Did you ever see a contents list that was
25 submitted by the Weisses in connection with their claim under

1 the homeowners policy?

2 A. On the main --

3 Q. On the homeowners, yes.

4 A. No.

5 Q. The list you were being asked about, do you know whether
6 or not it was ever submitted to Allstate?

7 A. The contents list?

8 Q. Right.

9 A. I presumed it was submitted after the heavy loss unit had
10 the file.

11 Q. But as we sit here, you don't have any personal knowledge
12 that it was submitted?

13 A. No. I don't remember seeing it.

14 Q. Because you quit handling the wind claim, I think you
15 said, January 24, 2006?

16 A. Yes.

17 Q. At that point in time, I take it you had not seen a
18 contents list from the Weisses for anything other than the
19 downstairs?

20 A. Yes.

21 MS. BARRASSO: I tender the witness, Judge.

22 THE COURT: Is there redirect?

23 MR. TRAHANT: Yes, ma'am.

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REDIRECT EXAMINATION

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BY MR. TRAHANT:

Q. Mr. Wells, I want to get a few things cleared up. You had testified --

THE COURT: Don't preface. Just ask the question.

BY MR. TRAHANT:

Q. Were you or were you not involved in this claim past October/November of 2005?

A. It remained in my pending list until they called me and told me the report had come back indicating it was loss by flood, and I completed my portion of the paperwork and sent it in.

Q. How was that indicated to you that it was loss --

A. Phone call.

Q. Who was that from?

A. I don't know the particular individual, but it was from the flood office.

Q. You don't have an indication of who that was in your diary, do you?

A. I think I diaried that I had received a call from the heavy loss unit or the flood office -- I don't remember which -- had called me and said that the report was in and it was indicated that it was a flood loss.

Q. I want you to take a look at a document Ms. Barrasso just showed you, Exhibit 13, page 384. Now, on February 7, it was

1 your understanding this had been designated as a flood loss; is
2 that correct?

3 A. Correct.

4 Q. Do you have any idea of when that report was received by
5 Allstate?

6 A. No, I don't. I don't know.

7 Q. I want you to take a look. This is the Rimkus report,
8 Mr. Wells, relative to 13 Treasure Isle. It's addressed to
9 "Allstate Large Loss Unit" and it is stamped "Received,
10 February 10, 2006." Do you see that?

11 A. Yes.

12 Q. I ask you to presume that that document was not received
13 by Allstate until February 10, according to what's been
14 produced to me.

15 A. It depends on which department stamped that.

16 Q. That's what I'm going to ask you, sir. Do you have any
17 reason to believe that Allstate received that report before
18 February 10?

19 A. Well, no. But I don't know who stamped that, put that
20 stamp on there. I don't know if that's the mail-opener of the
21 specific department that received it, and when they received it
22 they stamped it. It doesn't say.

23 Q. Is it your testimony maybe they received it on the 6th or
24 7th and it wasn't stamped until three days later?

25 A. It's possible.

1 Q. You have absolutely no information one way or another, do
2 you, sir?

3 A. I do not know.

4 Q. Mr. Wells, you certainly did not ever tell Dr. or
5 Mrs. Weiss regarding their flood payment that "This is all you
6 can get, and this is for the entire house and contents," did
7 you?

8 A. No. It's the policy limit.

9 Q. So, based on what you testified to earlier, it certainly
10 was not your position conveyed to Dr. and Mrs. Weiss that
11 "Here's yours payment and that satisfies everything," was it?

12 A. No. Policy limit is policy limit.

13 Q. The documents we talked about earlier, the \$139,000 in
14 contents, that wasn't your number, was it? I didn't hear you
15 talk about that on cross-examination. That wasn't your number,
16 was it?

17 A. The contents? Other than the ground floor?

18 Q. That's right.

19 A. Underneath?

20 Q. On the flood claim.

21 A. No.

22 Q. You would have never cut and pasted untrue information to
23 something as important as a letter going to the federal
24 government, would you?

25 A. No -- well, I'm not perfect. If I did not cut and paste

1 that correctly, that little piece of information there, cause
2 and origin, may have been from another flood claim.

3 Q. You just don't know, as you sit here, whether you prepared
4 that letter or not?

5 A. That's correct.

6 Q. Those contents were certainly something you didn't
7 approve; correct?

8 A. No.

9 Q. You didn't approve those, did you?

10 A. I don't think I saw that contents list.

11 Q. The one that's in the letter that says "Michael Wells" on
12 it, I think we established, sir -- and you can correct me if
13 I'm wrong -- that those were not your calculations.

14 A. That's correct.

15 Q. Which would be a further indication that you did not
16 prepare that letter. You would agree with that, wouldn't you?

17 A. Yes.

18 Q. Is it true, Mr. Wells, that from your perspective as the
19 Allstate adjuster on this claim, that the word of the engineer
20 was gospel and that's what the claim would be determined on?

21 MS. BARRASSO: Objection, Judge: Beyond the scope of
22 cross.

23 MR. TRAHANT: I think he talked plenty about --

24 THE COURT: He didn't say that. He didn't get into
25 that.

1 BY MR. TRAHANT:

2 Q. Well, you did talk about other claims, did you not?

3 A. Other claims?

4 Q. Yes, sir. Neighboring properties.

5 A. Did I talk --

6 THE COURT: Point him to specific testimony.

7 BY MR. TRAHANT:

8 Q. I think you were talking about the assessment of other
9 properties in the area and how each property more or less
10 stands on its own based on construction.

11 A. Yes. Yes.

12 Q. I think we talked earlier you were unaware of the fact
13 that two of Dr. Weiss' neighbors had gotten paid full
14 homeowners limits; is that correct?

15 A. I was not aware of that.

16 Q. I want to show you a diary entry out of Dr. John
17 Schutte's --

18 MS. BARRASSO: Judge, I have an objection. May we
19 approach?

20 (WHEREUPON the following proceedings were held at the
21 bench.).

22 MS. BARRASSO: My objection is this witness has
23 already testified he has no idea about any other claims or, in
24 particular, these claims. Now Mr. Trahant wants to show him
25 documents that he has never seen in the claim file that

1 occurred after he had left handling those kind of claims.

2 THE COURT: I think the witness on cross-examination
3 said that he adjusts claims only on that claim, that they don't
4 look at other claims, and that it's standard practice not to
5 look at other claims, so I think he can answer. Proceed. The
6 objection is overruled.

7 (WHEREUPON the following proceedings were held in
8 open court.)

9 BY MR. TRAHANT:

10 Q. Do you remember saying, Mr. Wells, that you adjust claims
11 on that claim without consideration of other claims?

12 A. Yes. We try to let the structure stand on its own merit
13 and not apply, if the neighbor got damage, why didn't this
14 house get damaged.

15 Q. It was your understanding that that was Allstate's
16 practice and procedure, not to consider what somebody else got
17 payment for; correct?

18 A. Well, it wouldn't be fair.

19 Q. This I will represent now, Mr. Wells, comes from the
20 claims file of a Dr. John Schutte. You don't know anything
21 about the Schutte claim, do you?

22 A. No, I do not.

23 Q. Let's go through what the Allstate adjuster on the Schutte
24 claim had to say. Dr. Schutte, incidentally, is at 10 Treasure
25 Isle, which is 200 feet away from the Weisses. Would you agree

1 with that if these were 100 --

2 MS. BARRASSO: Judge, I object to the testimony.

3 THE COURT: Sustained.

4 BY MR. TRAHANT:

5 Q. You know that Dr. Weiss' property was 13 and 14; correct?

6 A. Yes, I do.

7 Q. Now, on Dr. Schutte's claim, it says:

8 "The residence at 11 Treasure Isle, Allstate claim
9 5113531791, was also destroyed. The report of findings by
10 MACTEC Engineering and Consulting (see file materials -
11 attachment 7) for the residence at 11 Treasure Isle determined
12 'that the most probable cause(s) for structural damage to the
13 properties are as follows...it is our opinion that the wind
14 forces caused total failure of the frame down to the slab and
15 wind forces destroyed these structures (boathouse and shop).'

16 Then it says, Mr. Wells, "Basis of Estimate: Based
17 on the Rimkus report, consideration of the report of findings
18 for adjacent residence and giving the benefit of the doubt to
19 the insured, settlement of this claim is based on the
20 assumption" -- and I won't read the rest to you because I want
21 to ask you about this.

22 This is just the opposite of what you just testified
23 to with respect to Allstate's position on neighboring
24 properties, is it not, Mr. Wells?

25 A. Yes. I don't understand what this is. Is this a diary

1 entry or a copy of a report?

2 Q. Do you recognize that document in its format?

3 A. Yeah. It's a diary entry. Now I can see the top.

4 Q. You recognize that as an Allstate claims diary entry, do
5 you not?

6 A. Yes, I do.

7 Q. Now, if that's correct, Mr. Wells, what Allstate did was
8 to consider the adjacent property in paying Dr. Schutte, you
9 wouldn't dispute that, would you?

10 A. No, not according --

11 MS. BARRASSO: Objection.

12 THE COURT: That statement is permissible for
13 impeachment to show a different statement was made. Proceed.
14 The objection is sustained.

15 BY MR. TRAHANT:

16 Q. In this situation, Mr. Wells, you could have considered
17 other structures, could you not?

18 A. I would not have.

19 Q. Is it your testimony, sir, that what Allstate did, in
20 considering paying Dr. Schutte based on an adjacent property,
21 would have been a violation of their own procedure?

22 A. I wouldn't say that. I don't make the policies. My
23 personal adjusting experience, I like to leave -- use what
24 information I can gather on the property I'm adjusting to make
25 a determination of what the cause of loss was.

1 Q. This courtroom is probably more than 100 feet. Would you
2 give me that?

3 A. Yes.

4 Q. Don't you think it would be wise, Mr. Wells, to consider
5 what happened to the adjacent properties?

6 A. Well, in this close proximity, yes, you could do that.

7 MR. TRAHANT: Thank you, sir.

8 THE COURT: Thank you, sir. You may step down.

9 MR. TRAHANT: May we approach, Your Honor?

10 (WHEREUPON the following proceedings were held at the
11 bench.)

12 MR. TRAHANT: We can get started on the next witness,
13 but I think he is going to be relatively long.

14 THE COURT: Who is it?

15 MR. DENENEVA: I would rather get the video taken care
16 of at lunch and --

17 MS. CUNNINGHAM: The video is not right.

18 MR. DENENEVA: We'll take a shot at it.

19 THE COURT: No, no, no. You are going to get the
20 video straight. I don't want to waste the jury's time.

21 MR. TRAHANT: The problem with the video, as the guy
22 told me, is that there's so many objections and objections to
23 questions that it's not going to be perfect. It can't be.

24 MS. CUNNINGHAM: That's not the problem. Nugent is
25 in there, which is supposed to be out.

1 MR. TRAHANT: I thought that was excerpted and put on
2 a separate disk?

3 MS. CUNNINGHAM: It's still on the originals.

4 THE COURT: You don't have somebody you can start?
5 We were dealing with the juror issue earlier. How about if we
6 go to 12:30.

7 MR. TRAHANT: We are going to call their engineer as
8 a fact witness because he was so listed as a fact and expert.
9 I'm not going to qualify him and not going to elicit an expert
10 opinion, but I am going to ask him questions on facts relative
11 to whether he went to the property before.

12 THE COURT: You don't need to give me all that. Who
13 do you want to call now?

14 MR. TRAHANT: I'll call Mr. Rogers right now.

15 THE COURT: Is he here?

16 MS. CUNNINGHAM: I'll check.

17 THE COURT: If he is here, you can call him.

18 (WHEREUPON the following proceedings were held in
19 open court.)

20 THE COURT: Call your next witness.

21 MR. TRAHANT: Plaintiffs call Craig Rogers.

22 (WHEREUPON Craig Rogers, having been duly sworn,
23 testified as follows.)

24 THE DEPUTY CLERK: Please state your full name and
25 correct spelling for the record.

1 THE WITNESS: Craig Dwayne Rogers.

2 DIRECT EXAMINATION

3 BY MR. TRAHANT:

4 Q. What's your current address, Mr. Rogers?

5 A. 1109 Gatewood Circle, Shreveport, Louisiana.

6 Q. By whom are you employed?

7 A. Rimkus Consulting Group.

8 Q. What is your position with Rimkus?

9 A. I am central region assistant property manager.

10 Q. In that capacity, you work mostly out of your house in
11 Shreveport; is that correct?

12 A. Yes. I have a home office.

13 Q. How many engineering jobs, Mr. Rogers, were you involved
14 following Hurricanes Katrina and Rita?

15 A. More than 300 or 400.

16 Q. Isn't it true, Mr. Rogers, that for the majority of the
17 nearly 300 or 400 reports you wrote for the hurricane, you
18 didn't inspect the property?

19 A. Probably more than half, I didn't inspect the property
20 personally.

21 Q. That's a majority, isn't it, sir?

22 A. Yes.

23 Q. So you wrote, revised, and stamped reports over half of
24 the time on properties that you never stepped foot on; isn't
25 that correct?

1 A. That's correct.

2 Q. Do you know in this case, Mr. Rogers, that a team of two
3 engineers, Jim Neva and Tao Xiong, inspected the Weiss
4 property?

5 A. Yes.

6 Q. At the time you were not in communication with Mr. Xiong
7 and Mr. Neva, were you?

8 A. I'm sorry?

9 Q. At the time that they inspected this property.

10 A. No, I hadn't talked to Jim Neva or Mr. Xiong by telephone
11 prior to that.

12 Q. You hadn't talked to them in person about this case
13 either, had you?

14 A. No, I had not.

15 Q. Certainly, you were not out there supervising their work,
16 were you, Mr. Rogers?

17 A. We were following a procedure which I had preapproved.

18 Q. Listen to my question. Certainly, you were not out there
19 supervising their work, were you?

20 A. No, I was not at the site supervising their inspection.

21 Q. You were not on the telephone supervising their inspection
22 either, were you?

23 A. No, I was not.

24 Q. Do you know what day Mr. Neva and Mr. Xiong did their
25 report? Do you know what day they did their inspection on the

1 Weiss property?

2 A. No. I don't recall the exact date offhand.

3 Q. Do you have your file materials in front of you,

4 Mr. Rogers?

5 A. No, I do not. They are in my bag to the rear.

6 Q. It's fair to say that you had no personal supervision over
7 any aspect of the actual inspection of this property; correct?

8 A. Correct. I was not at the inspection site.

9 Q. In fact, you weren't even supposed to be the engineer
10 relative to the Weiss claim at the time they made this
11 inspection, were you?

12 A. I don't know if it had been assigned to me at that point.

13 Q. You have seen this letter before, have you not?

14 A. Yes.

15 Q. The first time you saw this letter was when I showed it to
16 you in your deposition; correct?

17 A. It may have been. I may have seen it before that. I
18 don't recall.

19 Q. You didn't recall in your deposition seeing it before, did
20 you?

21 A. Yes, that's fair.

22 Q. In fact, Mr. Rogers, the very day after Mr. Neva and
23 Mr. Xiong visited the Weiss property, Rimkus was telling you
24 that the Rimkus engineer who would be managing the project was
25 a Corey Green; isn't that correct?

1 A. That's correct.

2 Q. Is it correct, Mr. Rogers, that the Rimkus billing records
3 reflect that your first involvement on the Weiss claim was on
4 January 19, 2006, some five months after Hurricane Katrina?

5 A. I believe that's correct.

6 Q. So it's fair to say that, specifically regarding the Weiss
7 claim, Mr. Rogers, you knew nothing about it until five months
8 after Hurricane Katrina; isn't that correct?

9 A. No. As I recall, it was actually transferred from
10 Corey Green into my control around December 15, 2005.

11 Q. Around December 15? Do you have anything that would
12 indicate that you did any work on this prior to January 19?

13 A. No. I didn't do any actual work prior to that, but around
14 December 15 is when it was transferred from Corey Green into my
15 control.

16 Q. Just so the jury understands, as the engineer who signed
17 and stamped the report in this case, you didn't do anything on
18 it until five months after the hurricane; correct?

19 A. That's correct. January 19.

20 Q. You knew, Mr. Rogers, did you not, that Jim Neva had
21 included in his report the fact that the columns were scattered
22 in different directions?

23 A. His initial observations, he mentioned that they were
24 scattered in multiple directions, I believe might have been his
25 exact terms.

1 Q. In the report that you stamped, you removed that
2 conclusion, did you not?

3 A. After talking to Jim, that was removed it.

4 Q. You removed it; correct?

5 A. Yes.

6 Q. Let me ask you this: Do you know the date that you signed
7 and stamped the report?

8 A. February 1, 2006.

9 Q. Do you have reason to believe that that report was
10 received on or about February 10, 2006?

11 A. Yes. I believe you showed me a stamped "Received" copy at
12 one point.

13 Q. Which was a document you had not seen before I showed it
14 to you?

15 A. I had not seen it prior.

16 Q. So, certainly, Mr. Rogers, you would agree that you signed
17 and stamped a report and Allstate received it before you ever
18 stepped foot on my clients' property; correct?

19 A. Yes, correct.

20 Q. It's true, is it not, Mr. Rogers that after the report was
21 stamped, signed, and Allstate received it, you then paid a
22 visit to 13 Treasure Isle?

23 A. Yes. On February 13, 2006.

24 Q. On February 13, 2006, Mr. Rogers, you went on my clients'
25 property without their permission to do so; isn't that correct?

1 A. Yeah. I never contacted the Weisses to go onto the
2 property.

3 Q. By what authority did you go onto my clients' private
4 property without permission?

5 A. At the request of Allstate.

6 Q. Do you think Allstate has a greater authority over who
7 goes on my clients' property than they do?

8 A. That's a legal conclusion. I'm not familiar with all the
9 laws about trespassing. I was under the assumption that
10 Allstate wished us to inspect the property and had a right to
11 inspect the property they insured.

12 Q. You know Mr. Neva and Mr. Xiong personally met with my
13 clients? You knew that, didn't you?

14 A. Yes, I knew that.

15 Q. Rimkus doesn't customarily go on people's private property
16 without permission, do they?

17 A. Not customarily. In Katrina, there were some extenuating
18 circumstances and it did happen.

19 Q. The jury heard that the same happened with their adjuster,
20 Mr. Wells, that they met him at the property. Were you aware
21 of that?

22 A. No.

23 Q. Did you ever think to call my client, Mr. Rogers, before
24 you went on their property and started taking measurements and
25 photographs?

1 A. No.

2 Q. That was just something that never crossed your mind, "I'm
3 going on people's private property to take some measurements
4 and photographs, but I don't let them know"? Is that what I'm
5 to understand?

6 A. No. It was, essentially, the property is open. It wasn't
7 intrusive. There weren't fences or even a house or structure.
8 When I approached a property where there may be a trailer, a
9 FEMA trailer in place, then clearly I would contact the people.

10 Q. So you thought because the house had been taken away that
11 you had no obligation to get their permission to go on that
12 property; is that right?

13 A. They had previously granted permission, obviously, when
14 Mr. Neva had been out there. I wasn't aware of any reason that
15 they wouldn't want us further to go ahead and inspect again.

16 Q. Were you aware that, before you did that, Allstate had
17 told my clients it's going to be a flood claim?

18 A. No.

19 Q. You knew that Mr. Neva's name was on the final report, but
20 that he didn't sign his name on the report; isn't that correct?

21 A. One of our secretaries signed on his behalf.

22 Q. So the answer to the question is: No, Mr. Neva did not
23 sign the final report. Correct?

24 A. No. He had one of our secretaries sign on his behalf.

25 Q. You didn't know that, Mr. Rogers, until I showed you his

1 deposition testimony just a few weeks ago; isn't that correct?

2 A. I'm sorry? I didn't know what?

3 Q. You didn't know that Mr. Neva hadn't signed the report?

4 A. No. The report I issued had my signature on it. When I
5 sent that on to our New Orleans office to do the final
6 processing, from that point I didn't really have any more
7 involvement with the processing of the report.

8 Q. Mr. Rogers, you knew that I had issued a subpoena to
9 Rimkus for documents relative to the Weiss claim, did you not?

10 A. I've heard that, yes.

11 Q. You heard that. Well, you actually gathered some
12 documents responsive to that subpoena, didn't you?

13 A. Yes, but I never actually saw the subpoena.

14 Q. I didn't ask you if you saw it, Mr. Rogers. You were
15 aware of it, weren't you?

16 A. Yes.

17 Q. You were aware that you were gathering some documents in
18 response to that, weren't you?

19 A. Yes.

20 Q. You know that Jim Neva, who inspected the property with
21 Tao Xiong, who was the -- wasn't he a licensed professional
22 engineer, Mr. Xiong?

23 A. Not in Louisiana.

24 Q. That's not my question. Wasn't he a licensed professional
25 engineer?

1 A. I believe in Washington.

2 Q. You knew, Mr. Rogers, that Mr. Neva had prepared a report,
3 didn't you?

4 A. He had prepared his draft, yes.

5 Q. Do you know he billed for finalizing that report? You
6 knew that, didn't you?

7 A. I saw that on his bill.

8 Q. So Mr. Neva drafted and finalized the report, and that
9 report came to a far different conclusion than the one you
10 ultimately reached, didn't it?

11 A. Yes.

12 Q. When you gathered documents, Mr. Rogers, in response to
13 our subpoena, you would have had access to Mr. Neva's report;
14 isn't that correct?

15 A. I'm sorry? Say that again. I didn't have a copy of
16 Mr. Neva's -- you're talking about the original draft that he
17 submitted?

18 Q. I'm asking you if you had access to that report.

19 A. The only report that I had in my files was the final
20 report.

21 Q. I'm going to ask you again, sir: You had access to that
22 report from the Rimkus server, didn't you?

23 A. No. There was no other report on the Rimkus server.

24 Q. I want you to take a look. Do you have your deposition
25 there? Do you recall taking an oath before your deposition,

1 Mr. Rogers?

2 A. Yes.

3 Q. Swearing to tell the truth, as you just did here?

4 A. Yes.

5 Q. On page 26, line 16, I asked a question:

6 "Q. When you got Jim Neva's initial report, was that
7 e-mailed to you?

8 "A. I don't recall. It wouldn't have been e-mailed
9 to me. It probably would have been placed on our server.

10 "Q. Is that something that you would have had access
11 to when you gathered the documents for the production
12 pursuant to my subpoena, sir?"

13 Your answer was what?

14 A. It was:

15 "A. I had access to the server. Is that the
16 question?

17 "Q. Yes.

18 "A. I have access to the Rimkus server."

19 But that file you're looking for, there's no file on
20 the Rimkus server that was some original copy. We use the same
21 electronic file, and it's a Word document. You just type over
22 it.

23 Q. When you're e-mailed a Word document, or if it's e-mailed
24 into the Rimkus server, that attachment always exists, doesn't
25 it?

1 A. If you don't delete it, but usually you delete older files
2 as they get -- it fills up your mailbox.

3 Q. You know, if you delete that document, it's still there?

4 A. No, I don't know it. Let me change that. When I delete
5 off of Outlook, it goes into a deleted items file, and
6 eventually you have to clear that out or it just builds up the
7 size of your mailbox so large that our system sends us a
8 warning saying that we need to delete these empty files.

9 Q. You know I don't have that report, don't you?

10 A. Correct.

11 Q. You know that report was not given to plaintiffs in
12 response to that subpoena; correct?

13 A. There's no report that you're talking about.

14 Q. I want you to answer my question first. You know that we
15 were not given Jim Neva's report in response to that subpoena;
16 correct?

17 A. That's my understanding, yes.

18 Q. Who deleted that report off of the Rimkus server?

19 A. It wasn't deleted. It's simply rewritten. It's the same
20 Word document. When I open the Word document, it's titled
21 "ROF" and then the file number. You simply -- there may be a
22 word in there that you don't like -- a word or semantics, a
23 sentence. You just simply delete and type over.

24 Q. Or the fact that the columns all fell different ways?

25 A. The formatting adjustment and those kind of things are

1 just -- they're right there on the computer.

2 Q. You overwrote your version of that report, didn't you?

3 A. What do you mean, "overwrote"? I don't know if I quite
4 understand what you mean.

5 Q. I want you to take a look at your deposition at page 27.
6 Starting at line 6, I asked you the question:

7 "Q. But it's fair to say that you had Jim Neva's
8 report in order to revise it and amend the conclusions,
9 correct?

10 "A. The initial draft?

11 "Q. Yes.

12 "A. Yes, at some point I had an electronic copy of
13 the initial draft.

14 "Q. Is that in your file?

15 "A. No.

16 "Q. Do you know why not?"

17 What was your response, Mr. Rogers?

18 A. "It was overwritten. I took that electronic -- it's a
19 Word document. We use Microsoft Word. When I get an initial
20 draft of a report, I go through and work on it in an electronic
21 format.

22 Q. "Overwritten," that was your word; right? That wasn't my
23 word.

24 A. No. "Overtyped," "typed over," might be a better choice
25 of words.

1 Q. "Overwritten" was your word in the deposition, Mr. Rogers.

2 It wasn't mine. I'm right, aren't I?

3 A. Yeah. I used the word "overwritten," yes.

4 Q. That document absolutely would have been on the Rimkus

5 server, wouldn't it?

6 A. The report was on the Rimkus server, and we gave a copy of

7 that report. It's the same report that was issued.

8 Q. After I took your deposition, sir, did you go back and ask

9 anybody to go into the server or into deleted e-mails and

10 attempt to find me a copy of that report?

11 A. No, I didn't.

12 MR. TRAHANT: Can I have 10 seconds, Your Honor?

13 THE COURT: Sure.

14 BY MR. TRAHANT:

15 Q. Is it your testimony you deleted the e-mail that was sent

16 to the server with the report?

17 A. No. It was my testimony that I wouldn't have gotten an

18 e-mail with that attachment, that they would have sent --

19 Pacific International, who we were contracting the inspection

20 through, was delivering, presumably through e-mail, I think is

21 what you had said, to our New Orleans office, and our

22 New Orleans office would then send me an e-mail saying, "This

23 is a list of the various reports we have on your plate." I

24 would then go to the server and work with the electronic file

25 there.

1 Q. Since we had this almost identical discussion less than a
2 month ago in your deposition, it's your testimony that neither
3 you or anyone at Rimkus has made an attempt go back and find
4 that version of the report as it was placed on the server by
5 Jim Neva?

6 A. No. I wouldn't know how to do that.

7 Q. You didn't ask anybody to do that?

8 A. No.

9 Q. To your knowledge, nobody did that in response to the
10 plaintiffs' subpoena for records from Rimkus in this case;
11 correct?

12 A. I don't know of anybody who tried to do that, no.

13 MR. TRAHANT: In the event that this witness is
14 qualified as an expert by the Court on behalf of Allstate in
15 this case, plaintiffs reserve the right to cross-examine him
16 relative to that expert opinion. We tender the witness.

17 THE COURT: Is there any examination on this aspect
18 of his testimony, or do you want to reserve it?

19 MS. BARRASSO: Yes, Judge. We will take a few
20 minutes.

21 THE COURT: Whatever is gone into now will not be
22 gone into when he is called again.

23 MS. BARRASSO: We'll reserve the right to bring him
24 back as our expert.

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CROSS-EXAMINATION

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BY MS. BARRASSO:

Q. Mr. Rogers, was Jim Neva an engineer?

A. No. I believe he is a licensed surveyor in the state of Washington, and he has had various positions like building manager, supervising construction, and those sort of positions.

Q. Was Mr. Neva allowed, under Louisiana regulations, to issue a report in Louisiana?

A. No. He did not have any sort of license as a professional engineer in Louisiana. Because of that, he would be prohibited from issuing an engineering opinion.

Q. So was Mr. Neva even preparing final reports?

A. No. No. He was preparing kind of initial assessments, doing our field investigations, essentially the same kind of work that some of our engineering interns do.

Q. Let me back up and ask you about that. In connection with Hurricane Katrina and the handling of various claims, what process did Rimkus put in place to deal with all the claims you said that they had?

A. Initially, during the first month or two, we simply had our own engineers going out, doing inspections, and then coming back into the field office, writing reports, and going through our normal review process. Quickly, it became apparent we simply did not have enough personnel to conduct all of the field inspections ourselves with our engineers, and at that

1 point we started hiring some subcontractors like Jim over at
2 Pacific International. They came in, started doing the field
3 inspections, preparing kind of their initial observations and
4 so forth. Our engineers, who were more experienced in the
5 forensic analysis, actually prepared the final report and made
6 the final conclusions.

7 Q. Is it fair to say that folks like Mr. Neva, who was a
8 field inspector --

9 A. Yes.

10 Q. -- that his job was to go out again, gather the
11 information and draft the report, but then turn it over to the
12 Louisiana licensed professional engineer to finalize?

13 A. That's correct.

14 Q. Is it your understanding, under the Louisiana regulations
15 governing engineers, that it's perfectly proper for you to sign
16 and stamp a report that you approve of even if you didn't visit
17 the site?

18 A. Yeah. Yeah, it's common. Ideally, you would want to be
19 able to go out there, but in certain situations -- sometimes
20 simply locations or sometimes because the property is going to
21 be affected so quickly because they are going to tear it down
22 and you can't get out in time.

23 In this case, Jim had passed his engineering intern
24 exam years ago when he first got out of the college. We had an
25 established protocol for these contract engineers to go out and

1 follow this protocol and make sure they were looking for the
2 right information on site.

3 Q. Let me just make sure that you have answered my question.
4 So is it your understanding it was proper for you to sign and
5 stamp a report even if you didn't personally visit the site?

6 A. Yeah. The key was that I had responsible charge, that all
7 of the final decisions were my own, and that I had the complete
8 authority to change those. Where it would not be proper would
9 be had someone written a report, but I would not have the
10 authority to change those decisions and change that analysis.

11 Q. So is it proper for you to simply rubber-stamp a draft
12 report that had been given to you by a field inspector from the
13 state of Washington?

14 A. No, and that's the key. Sometimes, particularly on the
15 design side, there's concerns when these large -- a large
16 corporation may come in with a big structure and they have had
17 their own engineers from Chicago -- who may be perfectly suited
18 for engineering. They have already predesigned the structure,
19 and they just pass it through a local engineer who --
20 rubber-stamps is the term we use, just puts a stamp on it,
21 signs it, never runs a calculation, never looks at any of the
22 information. In this case, he didn't truly have responsible
23 charge because he didn't have control over that final product.

24 Q. That's not what happened here?

25 A. That's not what happened here.

1 Q. We are going to bring you back, so I don't want to get too
2 much into that, everything you did before you signed and
3 stamped that report. Let's talk a little bit about supervision
4 because Mr. Trahant was asking you why you didn't go to the
5 site with Mr. Neva.

6 Is it your understanding that, to supervise one of
7 these field inspectors and one of these guys that's going out
8 to gather information for you, that means you have to
9 physically go to the site with them?

10 A. No. No. It's not the same kind of supervision in terms
11 of you have a foreman who watches people pour concrete.

12 MR. TRAHANT: Your Honor, I'm going to object. I
13 think the witness is going into expert territory now. I think
14 the jury knows what supervision is. If is going to give an
15 engineering --

16 THE COURT: I think he can explain that answer.

17 MS. BARRASSO: He went into it on direct.

18 THE COURT: I just said he could explain it.

19 THE WITNESS: In this case, the supervision is tied
20 into the responsible charge, which is defined in the LAPELS
21 rules -- Louisiana Professional Engineers and Land Surveyors --
22 and it gives you a list of things. One of those is to make
23 sure that the manner and method with which things are being
24 performed have already been approved by the engineer.

25 It's akin to the licensed surveyors. A licensed

1 surveyor doesn't always go out into the field with the
2 instruments. He will typically have a survey crew that goes
3 out and measures the various points. He reviews the
4 information, makes sure it's accurate, and then puts his stamp
5 on those drawings.

6 BY MS. BARRASSO:

7 Q. This process that you described that Rimkus set up to deal
8 with all these Hurricane Katrina claims, where you bring in
9 these guys from outside to help, was that something that was
10 approved by the Louisiana authorities?

11 A. It's my understanding that someone in management -- I
12 think we have an attorney in our Houston corporate office --
13 had talked, but I didn't hear that personally.

14 THE COURT: Don't volunteer --

15 MS. BARRASSO: We can get that from the next guy.

16 THE WITNESS: I was comfortable that it fell within
17 my understanding of the rules.

18 BY MS. BARRASSO:

19 Q. Mr. Trahant was asking you about the fact that you made
20 some revisions to Mr. Neva's report before you signed it and
21 stamped it. Did you talk to Mr. Neva about his draft report?

22 A. Yes. I verbally talked to him on the telephone. We both
23 sat at the computer with the report in front of us, and we went
24 through all the photographs and kind of discussed all the
25 issues before a final report was put together.

1 After I had completed my report -- essentially, a
2 draft -- again, I ran it through Jim to make sure Jim agreed
3 with that. He, you know, told me yes, he had no problems with
4 it, and then that's the report that went out.

5 Q. So let me make sure I have the time frame. You get his
6 draft report. You talk with him about it and review whatever
7 is on your computer. Would that include the photographs and --

8 A. The photographs and observations. I wanted to make sure
9 that -- obviously, he had actually been on the site. What I
10 saw on the photographs depicted particular information, and I
11 wanted to make sure that what I was seeing was accurately
12 depicted.

13 He didn't say, "Oh, no, not in this photograph, is
14 something completely different right here," and that wasn't the
15 case here. He agreed that "Yeah, these photographs accurately
16 depict it. This was the situation I saw when I was out there."
17 Once I kind of went through how we got to our decisions, he
18 agreed with that.

19 Q. He saw your report, the revised version of your report --
20 he saw your report and agreed with it; is that correct?

21 A. Yes. He saw the report before the final went out.

22 Q. If Mr. Neva had not agreed with your conclusion, was there
23 a process in place to deal with that?

24 A. Yeah. Whenever we have a situation where there's a
25 disagreement between the various parties involved on the job,

1 what they will generally do is kind of go to a third party,
2 another engineer, another supervisor, kind of bump it up the
3 ladder. That person then reviews all the information.
4 Essentially, he acts as a judge and says, "I agree with this
5 person, not this person, and so this is the direction we need
6 to go."

7 Q. Did that process come into play with this report?

8 A. No, this didn't come into play here. Again, Jim and I
9 came to an agreement. We agreed that everything -- that all
10 the conclusions were accurate.

11 Q. During this process, the preparation of the Rimkus report,
12 did you personally ever talk with anybody from Allstate?

13 A. No.

14 MS. BARRASSO: I have no further questions at this
15 time, Judge.

16 THE COURT: Redirect.

17 REDIRECT EXAMINATION

18 BY MR. TRAHANT:

19 Q. When you're talking about bumping it up the ladder,
20 Mr. Rogers, are you referring to some type of manual? Is there
21 a manual that tells you about this peer review?

22 A. I believe in our Rimkus operations manual we have -- this
23 is a manual that's been around for a long time. I forget the
24 exact wording offhand. It's been a while since I've gone
25 through the manual. But it says when there are two

1 professionals -- it probably says "engineers" because now we
2 have other professionals besides just engineers on staff --
3 when there's a disagreement, that they would go to another kind
4 of a deciding party within the company. Usually it's somebody
5 who has more experience, who has seen a lot more, should there
6 be an issue there.

7 Q. Was there a Rimkus manual dealing specifically with
8 Hurricane Katrina?

9 A. We had a specific protocol printed out.

10 Q. Was there a manual?

11 A. No, we didn't have a formal manual.

12 Q. The one thing that never did reappear in the final version
13 of the report was the fact that these columns were facing in
14 different directions; correct?

15 A. Yeah. Jim and I talked about that. Essentially, there
16 were two columns -- initially, his impression when he got out
17 there, he was a little awe-struck, I guess. There were two
18 columns on the south side of the structure that were actually
19 kind of pointing in a south direction. All of the other
20 columns were to the north and east of the structure.

21 Q. They didn't all fall the same way, and that's one of the
22 things that was removed from Mr. Neva's report; correct?

23 A. Yeah. Those two columns fell in a different direction.

24 MR. TRAHANT: Thank you.

25 THE COURT: You may step down, sir, for now. You

1 will probably be called later.

2 Ladies and Gentlemen, we will take a break for
3 lunch. We'll come back at 1:30 since we kind of got
4 interrupted this morning. Leave your notepads on your chairs.
5 Standard instructions.

6 THE DEPUTY CLERK: All rise.

7 (WHEREUPON the jury exited the courtroom.)

8 THE DEPUTY CLERK: Court is in session. Please be
9 seated.

10 MR. DENENEVA: I would like to address one question
11 with regard to the requirements of Rule 26 based on what this
12 gentleman's testimony was and based on the case of Zubulake. I
13 know Your Honor is familiar with the digital and electronic
14 data production, and I want to --

15 THE COURT: File a motion.

16 MR. DENENEVA: Yes, Your Honor. We have the subpoena
17 prepared.

18 THE COURT: I'm signing an order directing the
19 marshals to immediately serve the trial subpoena on one
20 Mung Hatter at the address shown on the trial subpoena. See
21 you at 1:30.

22 THE DEPUTY CLERK: All rise, please.

23 (LUNCHEON RECESS)

24 * * *

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CERTIFICATE

I, Toni Doyle Tusa, CCR, FCRR, Official Court Reporter for the United States District Court, Eastern District of Louisiana, do hereby certify that the foregoing is a true and correct transcript, to the best of my ability and understanding, from the record of the proceedings in the above-entitled and numbered matter.

Toni Doyle Tusa, CCR, FCRR
Official Court Reporter