

Transcript of the Testimony of
**1442 State Farm Fire & Casualty
Company through Christopher John
Lapinskie**

Date taken: December 18, 2009

Vincent Brown, et al v. State Farm Fire & Casualty
Company, et al

*****Note*****

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CIVIL DISTRICT COURT
PARISH OF ORLEANS
STATE OF LOUISIANA

VINCENT BROWN AND * NO. 06-7269
JEANNE BROWN *
*
VERSUS * DIVISION "M"
*
STATE FARM FIRE AND CASUALTY*
COMPANY AND BOB NOWLIN *
* * * * *

1442 Deposition of STATE FARM FIRE AND CASUALTY COMPANY, through its designated representative, CHRISTOPHER JOHN LAPINSKIE, 212 Berry Farm Lane, St. John, Florida 32260, taken in the offices of Zaunbrecher, Treadaway, LLC, 3850 N. Causeway Boulevard, Lake II, Suite 1045, Metairie, Louisiana 70002, reported on Friday, the 18th day of December, 2009.
The deposition was videotaped and stenographically reported.

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* * *

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EXAMINATION BY MR. GISLESON9

* * *

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Party, BROWNV00000235PROD through
BROWNV00000255PROD
Exhibit No. 5139
OG 75-01, Claim Procedures - First
Party, BROWNV00000215PROD through
BROWNV00000234PROD

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20 ALSO PRESENT:
21 BRIAN SOILEAU, LEGAL VIDEO SPECIALIST
PROFESSIONAL SHORTHAND REPORTERS, INC.
22
23 REPORTED BY:
24 DIANE TEWIS CLARK, RPR, RMR, CRR
Certified Court Reporter
25

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Exhibit No. 6149
Memorandum to State Farm Claim
Associates Handling CAT PL in the
3 Central and Southern Zones from
Property and Casualty Claim
4 Consulting Services, dated
September 13, 2005,
5 BROWNV00000576PROD through
BROWNV00000578PROD
6
7 Exhibit No. 7186
Car Index: 22 RQ-20352 B 98
8 Exhibit No. 8187
Car Index: 22 RQ-20352 B 98
9 Exhibit No. 9188
26-page document with the title,
12 "View Contact Details - Brown,
Vincent"
13
14 Exhibit No. 10201
Documents titled CCF Print,
15 Coverage Lines, Activity Log,
Activity Log, System Generated Log,
16 Facts and Policy Notes, BROWN0211
through BROWN0214
17
18 Exhibit No. 11204
Copy of the draft that was issued
19 to Vincent D. and Jeannie W. Brown
in the amount of \$2,500 on 9/6/05.
20
21 Exhibit No. 12207
Flood Coding Strip, BROWN0217
22
23 Exhibit No. 13210
Payment authorization request for
24 payment of this flood claim,
BROWN0218
25

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1 Exhibit No. 14215
 2 Statement of loss for the Vincent
 Brown flood claim, BROWN0219
 3
 4 Exhibit No. 15221
 5 Flood Claim Worksheet, BROWN0220
 6 Exhibit No. 16225
 7 Flood Loss Questionnaire, BROWN0221
 through BROWN0223
 8
 9 Exhibit No. 17230
 10 Contents List, BROWN0224
 11 Exhibit No. 18234
 12 XacTotal estimate that was created
 by Dan Sullivan. BROWN0225 through
 BROWN0228
 13 Exhibit No. 19242
 14 Document entitled "Louisiana
 Exposures," BROWN0229
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 16
 17 Exhibit No. 20246
 18 CCF print of the homeowners policy,
 BROWN0008 through BROWN0011
 19
 20 Exhibit No. 21254
 21 Luling Catastrophe Office estimate,
 BROWN0017 through BROWN0020
 22
 23 Exhibit No. 22256
 24 Personal property inventory form
 for a food loss, BROWN0021
 25

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STIPULATION

1
 2 It is stipulated and agreed by and
 3 between counsel for the parties hereto that
 4 the deposition of the aforementioned witness
 5 is hereby being taken under the Louisiana
 6 Code of Civil Procedure, Article 1421, et
 7 seq., for all purposes, in accordance with
 8 law;
 9 All formalities, with the
 10 exception of the reading and signing of the
 11 transcript by the witness, are hereby
 12 waived;
 13 All objections, except those as to
 14 the form of the question and the
 15 responsiveness of the answer, are hereby
 16 reserved until such time as this deposition,
 17 or any part thereof, may be used or sought
 18 to be used in evidence.
 19
 20 * * *
 21
 22 DIANE TEWIS CLARK, RPR, RMR, CRR,
 23 Certified Court Reporter, State of
 24 Louisiana, officiated in administering the
 25 oath to the witness.

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1 Exhibit No. 23257
 2 Prohibited Use Worksheet
 3 Exhibit No. 24258
 4 Handwritten notes, BROWN0027
 5 Exhibit No. 25264
 6 Screen shot of the CSR, BROWN0055
 and BROWN0056
 7
 8 Exhibit No. 26268
 9 Image List Details Report for
 Claim, BROWN0054
 10
 11 Exhibit No. 27269
 12 Declarations Page
 13 Exhibit No. 28275
 14 Document titled "View Contact
 Details - Vincent O. Brown"
 15
 16 Exhibit No. 29289
 17 Insurance Policy
 18
 19
 20
 21
 22
 23
 24
 25

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THE VIDEOGRAPHER:

1
 2 Today is the 18th day of December,
 3 2009. The time is approximately 9:14. This
 4 is the 1442 videotaped deposition of State
 5 Farm Fire & Casualty Company through Chris
 6 Lapinskie, taken at the office of
 7 Zaunbrecher and Treadaway, LLC, located at
 8 3850 North Causeway Boulevard, Metairie,
 9 Louisiana, for the case entitled Vincent
 10 Brown versus State Farm Fire & Casualty
 11 Company, et al.
 12 Will counsel please identify
 13 themselves and which party they represent.
 14 **MR. GISLESON:**
 15 Soren Gisleson on behalf of the
 16 plaintiffs.
 17 **MR. ZAUNBRECHER:**
 18 Alan Zaunbrecher on behalf of
 19 State Farm.
 20 **MR. HENRY:**
 21 John Henry, co-counsel for State
 22 Farm.
 23 * * *
 24 **CHRISTOPHER JOHN LAPINSKIE,**
 25 after having been first duly sworn by the

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1 above-mentioned court reporter, did testify
 2 as follows:
 3 EXAMINATION BY MR. GISLESON:
 4 Q. Mr. Lapinskie, I believe I've
 5 deposed you once before and questioned you
 6 in open court.
 7 Do you remember those two times?
 8 A. Yes, I do.
 9 Q. And it's my understanding that
 10 you're being proffered today as a corporate
 11 representative of State Farm; is that
 12 correct?
 13 A. That is correct.
 14 Q. What is your understanding of
 15 being designated as a corporate
 16 representative of State Farm?
 17 A. My understanding, I'm here as
 18 1442. The answers I give are answers on
 19 behalf of State Farm.
 20 Q. Have you seen the 1442 corporate
 21 representative deposition notice?
 22 A. In preparation for my appearance
 23 here today, I have reviewed this deposition
 24 notice.
 25 Q. And as the corporate

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1 In what way is it different?
 2 MR. ZAUNBRECHER:
 3 The one I received stops, and this
 4 is the subpoena that was served, stops at
 5 No. 17. There is a third page to yours, to
 6 the one that you just gave us that goes from
 7 No. 18 to No. 23.
 8 MR. GISLESON:
 9 Let me see? Could I see the one
 10 you have, too?
 11 MR. ZAUNBRECHER:
 12 Sure. This is the one we were
 13 working off of. This is the one that was
 14 sent to us and served on me.
 15 You want to go off the record
 16 while we look at it?
 17 MR. GISLESON:
 18 Let's do some preliminary stuff
 19 before I come back to this and not try to
 20 multitask.
 21 EXAMINATION BY MR. GISLESON:
 22 Q. What is your personal address,
 23 Mr. Lapinskie?
 24 A. I reside at 212 Berry Farm Lane,
 25 St. John, Florida 32260.

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1 representative of State Farm --
 2 A. One second.
 3 Q. Sure.
 4 MR. ZAUNBRECHER:
 5 Let me say the date.
 6 THE WITNESS:
 7 That goes further than the one I
 8 was looking at.
 9 MR. ZAUNBRECHER:
 10 It goes further than the one that
 11 I have, too.
 12 MR. GISLESON:
 13 Which one are you looking at?
 14 MR. ZAUNBRECHER:
 15 The notice.
 16 MR. GISLESON:
 17 What's it dated?
 18 MR. ZAUNBRECHER:
 19 November 17th, 2009.
 20 MR. GISLESON:
 21 That one is dated --
 22 MR. ZAUNBRECHER:
 23 November 17th, 2009, but it's
 24 different from the one that I received.
 25 MR. GISLESON:

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1 Q. And how long have you resided at
 2 that address?
 3 A. I just built the house. I moved
 4 in on October 22nd of this year.
 5 Q. And where did you live before
 6 then?
 7 A. I was in a temporary residence.
 8 The address which I can't remember, it was
 9 only about three months. So we'll go with
 10 my prior residence which was in Lincoln,
 11 Nebraska, 6501 Winding Ridge Court, Lincoln,
 12 Nebraska. I can't remember the zip. Sorry.
 13 Q. Sure. That's all right. In
 14 looking at these two notices, it just
 15 appears as though the one you have is
 16 missing Page 3, that's all. That it's not
 17 anything other than you missing Page 3. I
 18 don't know why that would be -- I'm going to
 19 go ahead and attach this deposition notice
 20 along with the subpoena before -- I'm not
 21 going to get to all those areas of inquiry
 22 on the third page until later on in the
 23 deposition. So in the meantime, why don't
 24 you go ahead and look at them.
 25 MR. ZAUNBRECHER:

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1 Are you marking that?
 2 MR. GISLESON:
 3 Yes, that's going to be designated
 4 as Exhibit 1.
 5 (Exhibit No. 1 marked for
 6 identification.)
 7 MR. ZAUNBRECHER:
 8 Just for completeness of the
 9 record, I think we need to attach the one
 10 that was sent to me and I was working off
 11 of. I admit I did not note the pages going
 12 from 2 to 4.
 13 MR. GISLESON:
 14 Let's designate the 1442
 15 deposition notice you have as Exhibit 2.
 16 MR. ZAUNBRECHER:
 17 Thank you.
 18 (Exhibit No. 2 marked for
 19 identification.)
 20 MR. ZAUNBRECHER:
 21 And, again, just for completeness
 22 of the record, we spoke about this before,
 23 I'm going to attach a copy of the judgment
 24 of the court, dated June 4, 2009, pertaining
 25 to this 1442 deposition as Exhibit No. 3.
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1 (Exhibit No. 3 marked for
 2 identification.)
 3 EXAMINATION BY MR. GISLESON:
 4 Q. Is it your understanding then, we
 5 will start -- I will direct your attention
 6 to Exhibit 2. Is it your understanding that
 7 you are the person knowledgeable to testify
 8 as to all of those areas of inquiry on
 9 Exhibit No. 2?
 10 A. I'm prepared to answer the
 11 questions as outlined in Exhibit 2, yes,
 12 sir.
 13 Q. And that by answering questions
 14 relative to Exhibit No. 2, you are going to
 15 bind State Farm to those answers?
 16 A. I understand my responses are
 17 binding on State Farm, yes, sir.
 18 Q. We talked a minute ago about my
 19 having taken your deposition before in
 20 another case and your providing testimony in
 21 court in a class certification hearing.
 22 Have you provided any other
 23 depositions on behalf of State Farm as a
 24 corporate representative?
 25 A. Yes, I have provided other
 Page 14

1 depositions on behalf of State Farm.
 2 Q. In the capacity of a corporate
 3 representative?
 4 A. Yes. My depositions have been in
 5 the capacity of -- some of my depositions
 6 have been in the capacity as -- of a
 7 corporate representative.
 8 Q. Do you maintain copies of these
 9 depositions?
 10 A. No, sir.
 11 Q. Do you know somebody who does
 12 maintain copies of those depositions?
 13 A. State Farm maintains copies of
 14 those depositions.
 15 Q. Do you know who within State Farm
 16 would maintain copies of those depositions?
 17 A. No, sir.
 18 Q. Can you give, to the best estimate
 19 you can, the number of corporate
 20 representative depositions you've given for
 21 State Farm?
 22 A. I haven't kept a count, but it
 23 would be 12, 12 plus.
 24 Q. Since the time you provided
 25 testimony in open court earlier this year in
 Page 15

1 Judge Duval's courtroom in the Eastern
 2 District, have you provided any testimony in
 3 the capacity of a corporate representative?
 4 A. Since the class action hearing, I
 5 believe I participated in another 1442
 6 deposition, yes, sir.
 7 Q. Do you know the name of the
 8 insured in that case?
 9 A. The name alludes me at this time.
 10 Q. Do you remember who defense
 11 counsel was in that case?
 12 A. Redman was the defense.
 13 MR. ZAUNBRECHER:
 14 Fitz?
 15 THE WITNESS:
 16 I'm sorry, he was plaintiffs'
 17 counsel.
 18 EXAMINATION BY MR. GISLESON:
 19 Q. All right. Other than that one
 20 deposition since the class certification
 21 hearing, have you given any other
 22 depositions?
 23 A. I don't recall at this time that I
 24 have, no, sir.
 25 Q. Who was defense counsel for -- or
 Page 16

1 counsel on behalf of State Farm during that
2 last deposition?
3 A. David Persons was counsel on
4 behalf of State Farm.
5 Q. Do you know what firm he's with?
6 A. No, sir. That name alludes me at
7 this time.
8 Q. Who did you speak with to prepare
9 for today's deposition?
10 A. Part of my preparation for this
11 deposition was discussion with counsel. I
12 also spoke with our pricing specialist that
13 was working in that capacity during
14 Hurricane Katrina.
15 Q. What were the names of the counsel
16 that you spoke with to prepare for today's
17 deposition?
18 A. Counsel that I worked with was
19 Alan and Jay -- I can't remember his last
20 name, I'm sorry.
21 MR. ZAUNBRECHER:
22 I can provide it if you want,
23 counsel.
24 MR. GISLESON:
25 Sure.

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1 MR. ZAUNBRECHER:
2 McNery, I think it's
3 M-C-I-N-E-R-Y.
4 EXAMINATION BY MR. GISLESON:
5 Q. Do you know what firm Mr. McNery
6 works for?
7 A. No, I'm sorry, I don't.
8 Q. Do you know whether he was
9 in-house counsel for State Farm?
10 A. No, he's not in-house counsel for
11 State Farm.
12 Q. Do you know what city he's located
13 in?
14 A. He's out of Burlington, Alabama.
15 MR. ZAUNBRECHER:
16 Can I correct that? It's
17 Birmingham.
18 THE WITNESS:
19 Birmingham, sorry.
20 EXAMINATION BY MR. GISLESON:
21 Q. In addition to Jay and Alan, did
22 you speak with any other attorney to prepare
23 for today's deposition?
24 A. I also spoke with in-house counsel
25 and that would be Bennett Lillie.

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1 Q. Where is Bennett Lillie located?
2 A. Bennett is out of Bloomington,
3 Illinois.
4 Q. Did you speak with any other
5 attorneys to prepare for today's deposition
6 in addition to Bennett, Alan and Jay?
7 A. During one of my conference calls,
8 I spoke with Joe Consila.
9 Q. Joe Consila is out of Chicago with
10 Schiff Hardin; is that right?
11 A. I believe that's the name of the
12 firm, and, yes, he is out of Chicago.
13 Q. In addition to Jay, Alan, Bennett
14 and Joe, did you speak with any additional
15 counsel to prepare for today's deposition?
16 A. I believe that's all the counsel I
17 spoke with.
18 Q. You mentioned a minute ago about
19 speaking with a pricing specialist who is
20 employed by State Farm in that capacity at
21 the time. I assume that the Brown estimate
22 was written; is that correct?
23 A. That's correct.
24 Q. What was the name of that pricing
25 specialist?

Page 19

1 A. I'm having a little trouble with
2 names today, Soren, I'm sorry.
3 Q. Was his name Mark Richter?
4 A. Thank you. Mark Richter.
5 Q. When did you speak with Mark
6 Richter?
7 A. My discussion with Mark Richter
8 was last Friday.
9 Q. Who was present during that
10 conversation with Mark Richter?
11 A. My discussion with Mark Richter
12 was over the phone and during a conference
13 call, Bennett Lillie, Joe Consila and Alan
14 were also on that phone, on that conference
15 call.
16 Q. Was that the first time you had
17 ever spoken with Mark Richter?
18 A. I've had conversations with Mark
19 Richter before. That was the time -- the
20 conference call was specific to this case on
21 Friday.
22 Q. It seems from your earlier answers
23 that perhaps Mark Richter is no longer the
24 pricing specialist?
25 A. I didn't ask what capacity he's

Page 20

1 working in at this time. My focus was his
 2 capacity at the time of the Brown estimate.
 3 Q. You said pricing specialist.
 4 Isn't it true that Mark Richter was the
 5 pricing specialist for the State of
 6 Louisiana?
 7 A. Mark Richter is a pricing
 8 specialist -- during the time of Hurricane
 9 Katrina, Mark Richter was one of the pricing
 10 specialists for the State of Louisiana.
 11 There were other pricing specialists. Mark
 12 Richter was the one we spoke with while
 13 working claims in the Greater New Orleans
 14 area.
 15 Q. Do you know what Mark Richter's
 16 actual title was during the time of Katrina,
 17 when he was the pricing specialist for State
 18 Farm?
 19 A. His title is pricing specialist.
 20 Q. Was he in any supervisory capacity
 21 at the time?
 22 A. Mark Richter did not have any
 23 supervisory capacity at that time. He was
 24 the pricing specialist.
 25 Q. When you say the pricing

Page 21

1 estimate, but his one duty was he was our
 2 contact for pricing issues and was our
 3 pricing specialist.
 4 Q. Isn't it true that State Farm no
 5 longer uses pricing specialists in the State
 6 of Louisiana?
 7 MR. ZAUNBRECHER:
 8 Let me just enter an objection as
 9 being beyond the scope of the discovery
 10 order issued by the court.
 11 And I direct the witness not to
 12 answer.
 13 EXAMINATION BY MR. GISLESON:
 14 Q. As you sit here today, do you know
 15 whether State Farm still uses pricing
 16 specialists in the State of Louisiana?
 17 MR. ZAUNBRECHER:
 18 Same objection. I'm going to go
 19 ahead and allow the witness to answer it.
 20 For ease of future handling of this
 21 deposition and so as not to disrupt your
 22 flow, I'm going to note same objection and
 23 instruct the witness either answer or okay
 24 to answer or not. I don't want to belabor
 25 this and ruin your flow.

Page 23

1 specialist, it kind of implies that he's the
 2 only one?
 3 A. He was the pricing specialist that
 4 we worked with during Hurricane Katrina in
 5 the Greater New Orleans area.
 6 Q. Do you know whether he worked with
 7 Garrett Gaubert?
 8 A. I'm familiar with the name Garrett
 9 Gaubert, but I have no recollection as to if
 10 he reported to or worked with Garrett.
 11 Q. Have ever spoken with Garrett
 12 Gaubert?
 13 A. I do not believe I spoke with
 14 Garrett, no.
 15 Q. Have you received any e-mail or
 16 correspondence from Garrett Gaubert?
 17 A. I do not recall that -- receiving
 18 any e-mail from Garrett, no, sir.
 19 Q. Was your understanding of what
 20 Mark Richter's duties and responsibilities
 21 were around the time after Hurricane Katrina
 22 when the Brown estimate was prepared?
 23 A. I did not do an all inclusive list
 24 of what his duties and responsibilities were
 25 at the time of the creation of the Brown

Page 22

1 So here in the future in this
 2 deposition, the I will just note same
 3 objection as being beyond the scope of the
 4 court's discovery order for this deposition
 5 and tell the witness whether to answer or
 6 not.
 7 Thank you. Please answer if you
 8 can.
 9 EXAMINATION BY MR. GISLESON:
 10 Q. Do you recall the question?
 11 A. If I recall, the question was
 12 whether the State of Louisiana uses pricing
 13 specialists at this time.
 14 In preparation for this, it was
 15 not a question or an area of inquiry that I
 16 dealt into, so I do not know.
 17 Q. Just to be clear, the question was
 18 whether State Farm still uses a pricing
 19 specialist for the State of Louisiana.
 20 That's all. The way you made it sound, it
 21 sounded like Louisiana uses a pricing
 22 specialist.
 23 In addition -- well, tell me some
 24 more about Mark Richter. Was he responsible
 25 for changing any of the unit prices -- well,

Page 24

1 let me ask it this way. What is your
 2 understanding of what Mark Richter's duties
 3 were after Hurricane Katrina as it related
 4 to the Xactimate program?
 5 MR. ZAUNBRECHER:
 6 Same objection. Are your talking
 7 about limited to this claim? Or just any
 8 claim, any price?
 9 MR. GISLESON:
 10 I'm talking about what his
 11 understanding of Mark Richter's role was
 12 after Hurricane Katrina.
 13 MR. ZAUNBRECHER:
 14 Same objection.
 15 Don't answer.
 16 EXAMINATION BY MR. GISLESON:
 17 Q. In your conversation with Mark
 18 Richter, did you discuss whether he had any
 19 role or contributed in any way to the unit
 20 prices identified in the Brown estimate?
 21 MR. ZAUNBRECHER:
 22 Go ahead.
 23 THE WITNESS:
 24 In my conversation with Mark
 25 Richter, I asked him about the unit prices
 Page 25

1 contained within the Brown estimate and
 2 confirmed that the unit prices within the
 3 Brown estimate were from the State Farm
 4 price list.
 5 EXAMINATION BY MR. GISLESON:
 6 Q. Does that mean that State Farm
 7 changed the unit prices that was provided to
 8 State Farm from Xactware?
 9 MR. ZAUNBRECHER:
 10 Again limited to this claim?
 11 MR. GISLESON:
 12 Yes.
 13 MR. ZAUNBRECHER:
 14 Please answer.
 15 THE WITNESS:
 16 In review of the estimate, I noted
 17 that there were -- I confirmed with Mark
 18 Richter that the unit prices contained
 19 within the Brown estimate were State Farm
 20 unit prices.
 21 Two of the unit prices in there,
 22 one for removal of roofing, one for
 23 replacement of roofing, were adaptations
 24 that Mr. Richter had made based on
 25 information that he had received.
 Page 26

1 EXAMINATION BY MR. GISLESON:
 2 Q. It's your understanding that the
 3 way the process works is State Farm receives
 4 unit prices from Xactware; correct?
 5 A. Of the pricing list that becomes
 6 State Farm's price list is based off of a
 7 price list that we receive from Xactware,
 8 yes.
 9 Q. Just for background, what is
 10 Xactware?
 11 A. Xactware is a company that
 12 provides State Farm with estimating program
 13 that we use to estimate some of our property
 14 damage claims.
 15 Q. What is the name of that program?
 16 A. The name of the program that we
 17 use for estimating is Xactimate.
 18 Q. It's actually Xactware's program,
 19 they have the ownership rights to the
 20 computer programs, Xactimate?
 21 MR. ZAUNBRECHER:
 22 Same objection. It's beyond the
 23 scope of the discovery order and beyond the
 24 notice of deposition.
 25 If you know, you can answer.
 Page 27

1 THE WITNESS:
 2 Can I get the question again,
 3 please?
 4 EXAMINATION BY MR. GISLESON:
 5 Q. I forgot what it was.
 6 MR. GISLESON:
 7 Madam Court Reporter?
 8 MR. ZAUNBRECHER:
 9 The question was did Xactware own
 10 the software?
 11 MR. GISLESON:
 12 Okay.
 13 MR. ZAUNBRECHER:
 14 If you know, please answer.
 15 THE WITNESS:
 16 Xactware is the creator of the
 17 program. As far as ownership of the program
 18 that was used in this claim, State Farm had
 19 bought that program to use, so.
 20 EXAMINATION BY MR. GISLESON:
 21 Q. Did they buy the program or did
 22 they license the program from Xactware?
 23 MR. ZAUNBRECHER:
 24 Same objection.
 25 Answer if you know.
 Page 28

1 THE WITNESS:
 2 I believe it's licensed from
 3 Xactware.
 4 EXAMINATION BY MR. GISLESON:
 5 Q. So they licensed the software from
 6 Xactware. The software doesn't really
 7 include the price list though; does it?
 8 MR. ZAUNBRECHER:
 9 Are you talking about that was
 10 used in this claim?
 11 MR. GISLESON:
 12 I'm trying to lay some foundation
 13 so that when he answers the questions, it
 14 makes sense. Because we're working off some
 15 assumptions I think that Chris and I are
 16 aware of, but if you're reading a cold
 17 record, it's just not going to make that
 18 much sense. So I have to lay a little bit
 19 of a predicate.
 20 MR. ZAUNBRECHER:
 21 Again, I think it's beyond, but if
 22 he knows those foundational questions, I
 23 will allow him to answer it.
 24 EXAMINATION BY MR. GISLESON:
 25 Q. I will ask it this way: Isn't it

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1 we can increase, decrease or keep it the
 2 same.
 3 Q. And in relation to the Brown --
 4 A. If I can just clarify it, the list
 5 was unit prices, so it was not just a broad
 6 sweep. We have the ability to change the
 7 unit price up, down or the same.
 8 Q. And in terms of the Brown claim,
 9 and the unit items identified in the Brown
 10 claim, did State Farm keep those unit prices
 11 the same from Xactware, did they increase
 12 the unit prices or decrease the unit prices?
 13 A. There were two unit prices that
 14 were revised by State Farm. That would be
 15 the removal of roofing and replacement of
 16 roofing. In my preparation for this
 17 deposition, I asked whether that was an
 18 increase or a decrease and it was a decrease
 19 in price.
 20 Q. Did you ask -- and this is Mark
 21 Richter who told you this?
 22 A. The information that I just
 23 relayed was information I received from
 24 pricing specialist Mark Richter.
 25 Q. Did you ask Mark Richter why he

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1 true that there's Xactimate, the computer
 2 program, and then it uses price lists which
 3 are sort of separate from the program, but
 4 are used in the course of using the program
 5 that need to be updated periodically?
 6 A. The price lists that are used in
 7 the Xactimate program are updated, yes.
 8 Q. And the price lists originate from
 9 Xactware and then are sent to State Farm;
 10 correct?
 11 A. The price list that State Farm
 12 uses as their price list is based on a price
 13 list that we receive from Xactware, yes.
 14 Q. And then State Farm pursuant to
 15 its agreement with Xactware has the option
 16 of increasing the unit price, lowering the
 17 unit price or keeping the unit price the
 18 same; correct is?
 19 A. Once we receive the price list
 20 from Xactware, we have the ability to make
 21 changes to that price list, yes, sir.
 22 Q. And you can make the changes --
 23 you can increase the unit price or decrease
 24 the unit price or keep it the same, right?
 25 A. Once we have the price list, yes,

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1 decreased the unit price that came from
 2 Xactware?
 3 A. In preparation for today's
 4 deposition, I did ask that question. The
 5 unit price for roofing was revised based on
 6 information that Mark Richter was receiving
 7 from the field reps as to what the going
 8 rate was in the area and what roofers were
 9 accepting as a reasonable price for work
 10 that was being performed.
 11 Q. Okay. What information did he
 12 rely upon to decide to lower the unit prices
 13 they received from Xactware on the roofing
 14 items?
 15 A. I think your use of roofing items
 16 is a very broad statement. The two roofing
 17 items that I'm referring to is 20- to
 18 25-year shingles, remove and replace. It
 19 was not a change to all roofing items. The
 20 information that he used to revise that was
 21 information he was receiving from the
 22 offices in and around the New Orleans area
 23 from the claim reps who were in the field.
 24 Q. Did he tell you whether the
 25 information was based on any documents?

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1 A. Any documents, we were generating
 2 estimates every day. We were receiving
 3 quotes back from contractors every day so
 4 those documents -- I mean, he surveyed the
 5 claim reps receiving those documents, so
 6 that change was based on documents and
 7 information from the people on the ground
 8 doing the work.
 9 Q. And you keep using the word
 10 "information." I'm trying to figure out
 11 what that information was and the form that
 12 information came in.
 13 When he said, "I relied upon
 14 information coming to me," did he say I
 15 looked at 50 State Farm estimates that came
 16 from the Greater New Orleans area within
 17 this time frame to make that decision and I
 18 have a copy of those 50 estimates in my
 19 office?
 20 MR. ZAUNBRECHER:
 21 Same objection.
 22 Again, you can answer the question
 23 as to what Mr. Richter told you, if
 24 anything.
 25 THE WITNESS:

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1 I've relayed what Mr. Richter has
 2 told me with regards to the pricing. I did
 3 not delve into whether he did or didn't have
 4 documents on those. I can verify that I
 5 indeed was here during that time and I was
 6 one of the people that was relaying that
 7 information to Mr. Richter as to what
 8 pricing was working in the area that I was
 9 working, which was the greater Hammond area.
 10 Q. Did Mr. Richter tell you or did
 11 you ask Mr. Richter whether he relied upon
 12 any local contractors or roofers to come up
 13 with that decision to lower the unit price?
 14 A. I did not ask Mark Richter whether
 15 he did an independent survey himself of
 16 contractors, no.
 17 Q. Would you agree that the best
 18 person to ask why that unit price was
 19 lowered in the New Orleans Metropolitan area
 20 for this time frame for the Brown estimate
 21 would be Mark Richter?
 22 A. I believe I've relayed to you the
 23 information I received from Mark Richter.
 24 I've also relayed the fact that I was here
 25 during that time and can confirm that the

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1 prices that we were using at that time were
 2 was being accepted by contractors in the
 3 area.
 4 Q. Would you agree, though, that
 5 whether Mr. Richter conducted an independent
 6 survey of contractors is a question best
 7 posed to Mr. Richter?
 8 MR. ZAUNBRECHER:
 9 Let me object, one, to the form of
 10 the question, and, two, as being beyond the
 11 scope of the notice of deposition and beyond
 12 the scope of the court's discovery order and
 13 instruct the witness not to answer.
 14 EXAMINATION BY MR. GISLESON:
 15 Q. Why did you talk to Mark Richter
 16 in the first place?
 17 A. In preparation for today's
 18 deposition, I talked to Mark Richter about
 19 the prices contained within the estimate for
 20 the Browns.
 21 Q. Is it fair to say as you sit here
 22 right now, you don't know the specific
 23 information Mr. Richter relied upon to make
 24 the decision to lower the unit prices for
 25 the unit prices in the Brown estimate?

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1 MR. ZAUNBRECHER:
 2 I object to the form of the
 3 question.
 4 If you understand it, please
 5 answer.
 6 THE WITNESS:
 7 The unit prices contained within
 8 the Brown estimate contains both Xactimate
 9 unit prices and a change to proofing prices,
 10 that was done by Mark Richter.
 11 MR. GISLESON:
 12 Madam Court Reporter, can you read
 13 my question again?
 14 (Whereupon, the requested
 15 testimony was read by the Court Reporter)
 16 "Q Is it fair to say as you sit
 17 here right now, you don't know the
 18 specific information Mr. Richter relied
 19 upon to make the decision to lower the
 20 unit prices for the unit prices in the
 21 Brown estimate?"
 22 MR. ZAUNBRECHER:
 23 Same objection. I think he
 24 answered.
 25 If you have anything to add,

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1 please do so.
 2 THE WITNESS:
 3 The information Mr. Richter used
 4 to establish the pricing that is in the
 5 State Farm price list for the roofing
 6 materials, 20- to 25-year shingles remove
 7 and replace was information that he was
 8 receiving through the various offices as to
 9 what the going rate was in those areas based
 10 on estimates that we were being generated at
 11 that time.
 12 EXAMINATION BY MR. GISLESON:
 13 Q. So you don't know if Mr. Richter
 14 relied upon any contractors's estimates to
 15 come to that decision; do you?
 16 MR. ZAUNBRECHER:
 17 I object to the form. He told you
 18 what Mr. Richter told him.
 19 EXAMINATION BY MR. GISLESON:
 20 Q. Do you know whether Mr. Richter
 21 relied upon any contractors' estimates to
 22 come to the decision to lower the unit price
 23 in the Brown estimate?
 24 MR. ZAUNBRECHER:
 25 Same objections, and I want to add
 Page 37

1 Same objection.
 2 If you can explain your answer
 3 anyway further, please do so.
 4 THE WITNESS:
 5 The information that Mr. Richter
 6 relied upon was information that he received
 7 from the claim representatives who were on
 8 the ground. That information includes
 9 interaction with contractors.
 10 Did Mark Richter have a specific
 11 estimate in front of him from a contractor
 12 to make that unit price decision? I don't
 13 know. But did Mark Richter have information
 14 from claim reps who did have specific
 15 estimates in front of them as to roofing?
 16 Absolutely.
 17 EXAMINATION BY MR. GISLESON:
 18 Q. Now, was Mark Richter the one who
 19 made the decision to lower the unit price
 20 for these unit prices or was his job --
 21 excuse me, to make the recommendation to
 22 lower the price and somebody else made the
 23 decision?
 24 MR. ZAUNBRECHER:
 25 Are you limiting it to this claim?
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1 asked and answered several times.
 2 If you have anything else to add,
 3 please do so.
 4 MR. GISLESON:
 5 I don't -- I don't -- I'm not
 6 getting an answer out of him.
 7 EXAMINATION BY MR. GISLESON:
 8 Q. Do you know whether he used any
 9 contractors' estimates to come to the
 10 decision to lower the unit price for the
 11 unit prices in the Brown estimate?
 12 MR. ZAUNBRECHER:
 13 Same objection, and he has
 14 answered that. He has told you what Richter
 15 told him he relied upon. He's told you
 16 several times.
 17 MR. GISLESON:
 18 He keeps saying information. I'm
 19 trying to find out a very specific question.
 20 EXAMINATION BY MR. GISLESON:
 21 Q. Did he rely upon a single
 22 contractor's estimate to make the decision
 23 to lower the unit prices for the unit price
 24 in the Brown estimate?
 25 MR. ZAUNBRECHER:
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1 MR. GISLESON:
 2 To this claim.
 3 MR. ZAUNBRECHER:
 4 Please go ahead.
 5 THE WITNESS:
 6 The use of the price that was used
 7 in this price list -- in this claim was the
 8 price that was established in the State Farm
 9 price list.
 10 EXAMINATION BY MR. GISLESON:
 11 Q. The question is: Who made the
 12 decision? Did Mark Richter make the
 13 decision to lower it or did Mark Richter
 14 just make the suggestion to lower it and
 15 someone else within State Farm said lower
 16 it?
 17 A. Mark Richter did not do this
 18 estimate. The claim rep did this estimate.
 19 The estimate that this claim rep did was
 20 based on a State Farm price list. There
 21 wasn't a specific this is the Browns, I'm
 22 going to lower this unit price.
 23 EXAMINATION BY MR. GISLESON:
 24 Q. We spoke earlier about Mark
 25 Richter, what you understood Mark Richter's
 Page 40

1 duties to be. Do you remember that?
 2 A. I recall us talking about what
 3 Mark Richter's duties would be, yes, sir.
 4 Q. You spoke about Mark Richter being
 5 the pricing specialist for the New Orleans
 6 Metropolitan area during the time frame of
 7 the Brown estimate. Do you remember that?
 8 A. I recall that conversation, yes,
 9 sir.
 10 Q. Was part of his duties and
 11 responsibilities to make the decision of
 12 what the State Farm unit prices would be for
 13 that area or was it to simply make the
 14 recommendation?
 15 A. As the pricing specialist, Mark
 16 Richter would gather information and would
 17 make a recommendation as to what the price
 18 could be and once receiving approval, would
 19 make that change.
 20 Q. Okay. Who would Mark Richter make
 21 that recommendation to and who had the
 22 authority to say go ahead and do it?
 23 MR. ZAUNBRECHER:
 24 Objection as being beyond the
 25 scope of not only the deposition, but the
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1 EXAMINATION BY MR. GISLESON:
 2 Q. What documents did you review to
 3 prepare for today's deposition?
 4 A. In preparation for today's
 5 deposition, I looked at the deposition order
 6 Nos. 1 through 17. I also reviewed the
 7 Brown homeowners and flood file.
 8 Q. Before I forget, did Mr. Richter
 9 ever tell you what Xactware unit prices were
 10 for the items in the Brown estimate?
 11 A. I did not ask what the Xactware
 12 prices were for the two unit prices that
 13 were changed by Mark Richter.
 14 Q. Did you ask just in general terms,
 15 you know, how much lower State Farm made
 16 those unit prices?
 17 MR. ZAUNBRECHER:
 18 I object to the form, but you can
 19 answer if you have any information that's
 20 responsive.
 21 THE WITNESS:
 22 In preparation for today's
 23 deposition, I asked what the difference, if
 24 it was -- let me try and reword that. The
 25 Brown estimate was for one square removal of
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1 discovery order.
 2 If you know, please answer.
 3 THE WITNESS:
 4 I do not recall who Mark Richter
 5 reported to.
 6 EXAMINATION BY MR. GISLESON:
 7 Q. Would you agree that Mark Richter
 8 would know who he reported to?
 9 MR. ZAUNBRECHER:
 10 I object to the form. I'm not
 11 sure any person can testify under oath as to
 12 what another person might know.
 13 Please don't answer that.
 14 EXAMINATION BY MR. GISLESON:
 15 Q. Doesn't commonsense dictate that
 16 Mark Richter would know who his supervisor
 17 was during the time frame of the Brown
 18 estimate?
 19 MR. ZAUNBRECHER:
 20 Objection. That's a different
 21 form.
 22 If you know that, please answer.
 23 THE WITNESS:
 24 I would believe Mark Richter would
 25 know who he reported to, yes.
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1 roofing and one square replacement of
 2 roofing. I asked what that difference was
 3 comparing State Farm's to what we thought
 4 Xactware's was and the total difference was
 5 less than \$20.
 6 EXAMINATION BY MR. GISLESON:
 7 Q. \$20 per unit price or \$20 total?
 8 A. \$20 in total including the
 9 material tax associated with those unit
 10 prices.
 11 Q. If you wanted to find out what
 12 Xactware -- I'm sorry, who gave you that
 13 information?
 14 A. The information that I received
 15 that I just recounted was information I
 16 received from Mark Richter.
 17 Q. Okay. Did Mark Richter tell you
 18 what he was looking at when he gave you this
 19 conclusion?
 20 A. No, I did not ask what he was
 21 looking at when he gave me that information,
 22 no, sir.
 23 Q. Did Mark Richter say he had the
 24 Xactware program open in front of him and he
 25 was checking it out?
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1 A. When I was speaking with Mark
2 Richter, he was looking at the Xactimate
3 price list. I did not ask whether he was
4 looking in the Xactware program or not.
5 Q. So is it fair to say that you
6 haven't confirmed whether the information
7 Mark Richter gave you was factually correct?
8 A. I don't know that I understand
9 that question.
10 Q. Sure. Did you go about to do
11 anything to confirm that \$20 number that
12 Mark Richter gave you?
13 MR. ZAUNBRECHER:
14 I believe he said less than \$20.
15 EXAMINATION BY MR. GISLESON:
16 Q. Less than \$20.
17 A. Did I do my own independent
18 research? No.
19 Q. So it's fair to say Mark Richter
20 knew the Xactware unit price he was basing
21 that comparison on; right?
22 MR. ZAUNBRECHER:
23 I object to the form.
24 But if you understand, please
25 answer.

1 A. The conversation was a conference
2 call, yes, sir.
3 Q. The conference call you had with
4 Mr. Richter, do you know where Mr. Richter
5 was physically located?
6 A. I believe at the time I spoke with
7 Mr. Richter last Friday, he was in
8 Shreveport.
9 Q. Does he live in Shreveport?
10 A. I didn't ask where he lived, no,
11 sir.
12 Q. Is it your understanding that he
13 lives in Shreveport?
14 A. Any answer I gave you to that
15 would be purely speculative. I don't know
16 where he resides.
17 Q. Were there any attorneys present
18 with him on his end in Shreveport during the
19 course of the conference call?
20 A. The conference call was a
21 conference call. I was not in the room with
22 attorneys, I do not believe he was in the
23 room with attorneys. The attorneys that I
24 referenced prior were on the same conference
25 call.

1 THE WITNESS:
2 If the question is did Mark
3 Richter know what the Xactware price was? I
4 don't know that he knew that. He knew what
5 his changes were.
6 EXAMINATION BY MR. GISLESON:
7 Q. Did you know what he was looking
8 at or do you know what he based the decision
9 for -- do you know what he was looking at or
10 what he based that comment on when he made
11 it to you?
12 MR. ZAUNBRECHER:
13 I assume you mean with regard to
14 the less than \$20 difference?
15 MR. GISLESON:
16 Yes.
17 MR. ZAUNBRECHER:
18 Please answer.
19 THE WITNESS:
20 I believe he was looking at the
21 State Farm price list, but I wasn't looking
22 at what he was looking at, no, sir.
23 EXAMINATION BY MR. GISLESON:
24 Q. And this conversation took place
25 over the phone?

1 Q. So is it fair to say you don't
2 know?
3 A. I didn't hear anyone else announce
4 themselves when Mark Richter got on the
5 conference call.
6 Q. And that leads you to believe
7 what?
8 A. That Mark Richter was on the phone
9 with himself.
10 Q. Do you know whether Mark Richter
11 had any conversations with anyone else
12 before he got on the conference call about
13 the subject matter you all discussed on the
14 conference call?
15 A. I don't know that I understand the
16 question. Sorry.
17 Q. Do you know if Mr. Richter talked
18 to any of the attorneys that you discussed
19 earlier before he got on the conference call
20 with you?
21 A. The conference call that I was on
22 on Friday invited Mr. Richter in. I do not
23 know that there were conversations that
24 occurred prior to that conference call with
25 Mr. Richter and other counsel, no, sir.

1 Q. Do you know what documents
 2 Mr. Richter looked at before he got on that
 3 conference call?
 4 A. In preparation for today's
 5 deposition, I did not ask what documents he
 6 looked at prior to getting onto the
 7 conference call.
 8 Q. Have you ever used the Xactimate
 9 program in the course of doing an estimate,
 10 I'm sorry?
 11 A. Can I get the question again,
 12 please?
 13 Q. Sure. Have you ever used the
 14 Xactimate program in the course of writing
 15 up an estimate?
 16 A. I've used the Xactimate program
 17 since '96 in the course of my employment
 18 with State Farm.
 19 Q. We spoke earlier about the
 20 documents you reviewed in preparation for
 21 today's deposition. You spoke of -- I think
 22 you said the insurance policy; right?
 23 A. No, but thank you. I did look at
 24 the insurance policy.
 25 Q. Maybe you said the homeowners
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1 guides for us to consult, yes.
 2 EXAMINATION BY MR. GISLESON:
 3 Q. Okay. Since you reviewed the
 4 homeowners file, why don't you tell me what
 5 is supposed to be in a claims file? Let me
 6 ask it this way: What is State Farm's
 7 policy, practice and procedure for what is
 8 supposed to comprise a claims file for a
 9 homeowners's claim?
 10 MR. ZAUNBRECHER:
 11 I object to the form -- same
 12 objection. I will allow some leeway, but
 13 it's clearly beyond the scope.
 14 I will allow some leeway and
 15 please answer his question if you understand
 16 it.
 17 THE WITNESS:
 18 The documents contained within a
 19 claim file are the documents required to
 20 proceed with that claim file.
 21 EXAMINATION BY MR. GISLESON:
 22 Q. What are those documents?
 23 A. That's an impossible question to
 24 answer, Counsel. A claim file could contain
 25 one piece of information, it could contain a
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1 claims file?
 2 A. I did look at the homeowners
 3 claims file.
 4 Q. You looked at the flood claims
 5 file?
 6 A. I did look at the flood claims
 7 file, yes.
 8 Q. There were some documents also
 9 produced in the course of discovery in this
 10 case, some OGs. Did you look at any of
 11 those OGs?
 12 A. I did not review the OGs, no, sir.
 13 Q. When I say OG, what does an OG
 14 mean?
 15 A. OG would be an acronym for
 16 operation guide.
 17 Q. And State Farm has a lot of
 18 operation guidelines for just about
 19 everything; right?
 20 MR. ZAUNBRECHER:
 21 I object to the form.
 22 You can answer it if you
 23 understand it.
 24 THE WITNESS:
 25 State Farm does have operation
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1 lot of information, depending on the
 2 complexity of that claim file.
 3 Q. Isn't there an operating guideline
 4 that talks about the document that is
 5 supposed to comprise the claims file?
 6 A. There is a document, an operation
 7 guide, that references the creation of a
 8 claim file, but it's a guide and maybe I can
 9 help this along.
 10 If I have a claim for a lost ring,
 11 I certainly wouldn't want a building
 12 estimate in there. If I have a claim that
 13 was opened in error, I certainly wouldn't
 14 expect to see anything other than a log note
 15 saying opened in error.
 16 Q. Wouldn't you agree that in terms
 17 of category of documents, there's a
 18 procedure that a certain category of
 19 documents need to be placed in the claims
 20 file; right?
 21 MR. ZAUNBRECHER:
 22 Let me note my continuing
 23 objection to this entire line of questioning
 24 as being beyond both the scope of the notice
 25 of deposition and the court's discovery
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1 order.
2 EXAMINATION BY MR. GISLESON:
3 Q. Let me narrow it then somewhat.
4 Did State Farm have a policy, practice and
5 procedure for what documents were supposed
6 to compromise a Hurricane Katrina claim file
7 for a claim arising out of the New Orleans
8 Metropolitan area?
9 MR. ZAUNBRECHER:
10 Same objection.
11 If you understand it, I will again
12 allow you to answer it even though it's
13 clearly in my view beyond the scope.
14 THE WITNESS:
15 The documents contained within the
16 Brown file are the documents that I would
17 expect to see based on the Brown loss.
18 EXAMINATION BY MR. GISLESON:
19 Q. As you sit here right now, you
20 don't -- you don't have any understanding of
21 what those documents should have been that
22 compromise a typical claims file for a
23 Katrina claim?
24 MR. ZAUNBRECHER:
25 I object to the form. I think

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1 you've gone far enough with that beyond the
2 scope and I'm going to direct him not to
3 answer further questions. He will answer
4 any questions you have about this claim
5 file, which is what the court ordered.
6 EXAMINATION BY MR. GISLESON:
7 Q. Would you agree that what the
8 insurance policy would compromise should be
9 in the claims file?
10 A. Contained within our claims file
11 is not a copy of the insurance policy, no,
12 sir.
13 Q. So then the policy, it shouldn't
14 be in the claims file?
15 MR. ZAUNBRECHER:
16 Same objection.
17 THE WITNESS:
18 I don't believe I understand what
19 your question is.
20 EXAMINATION BY MR. GISLESON:
21 Q. The Browns have a claims file;
22 right?
23 A. There is a claim file for the
24 Browns, yes.
25 Q. And as part of the claims file for

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1 Browns, does it include the Browns'
2 insurance policy?
3 A. A physical copy of their insurance
4 policy would be contained within the claims
5 file. Is that what the question is?
6 Q. Yes.
7 A. No.
8 Q. Why not?
9 A. Because the claims file references
10 what that policy is and we can reference
11 that policy.
12 Q. How does it reference the policy?
13 A. I'm assuming you have a copy of
14 the claims file?
15 Q. Yes, sir.
16 A. On Brown 0008, in the middle
17 right-hand side, it says FP7955, homeowners
18 policy. That is the policy that the Browns
19 had. It also lists the options and any
20 endorsements that the Browns had. I believe
21 on your copy, it would be where you have
22 your orange.
23 Q. So what other information -- well,
24 you've reviewed -- let's do it this way --
25 so you've reviewed the Browns' claims file;

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1 right?
2 A. In preparation for today's
3 deposition, I have reviewed the Browns'
4 file.
5 Q. Was there anything missing from
6 the claims file that you noticed that should
7 have been in the Browns' claims file?
8 A. I felt the information contained
9 within the Brown file was the information
10 needed to support the decision that was made
11 on the Brown file.
12 Q. Is that what comprises a claim
13 file, whether or not there's enough
14 information in the file that supports State
15 Farm's decision?
16 MR. ZAUNBRECHER:
17 Same objection as before. We've
18 been through this. He told you what he
19 expected -- he saw what he expected to see.
20 I mean -- I object to the form of the
21 question. Beyond the scope.
22 MR. GISLESON:
23 Are you directing him not to
24 answer?
25 MR. ZAUNBRECHER:

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1 I would ask that you repeat the
 2 question.
 3 MR. GISLESON:
 4 Madam Court Reporter, can you
 5 repeat the question please?
 6 (Whereupon, the requested
 7 testimony was read by the Court Reporter)
 8 "Q Is that what comprises a
 9 claim file, whether or not there's
 10 enough information in the file that
 11 supports State Farm's decision?"
 12 MR. ZAUNBRECHER:
 13 Just note my objection.
 14 If you can answer that, go ahead.
 15 THE WITNESS:
 16 The Brown file itself does not
 17 dictate what would be required within a
 18 claims file. The information contained
 19 within the Brown file is the information
 20 that supports the outcome of the Brown file.
 21 EXAMINATION BY MR. GISLESON:
 22 Q. What dictates what should be in
 23 the Brown file then?
 24 MR. ZAUNBRECHER:
 25 I objection to the form.

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1 A. I'm going to ask you to reword the
 2 question because I don't understand it the
 3 way it's been asked.
 4 Q. Sure. Is the claims file you
 5 reviewed for the Browns the entire Browns'
 6 claims file?
 7 A. The claims file that I reviewed
 8 for the Browns is the pre-litigation claims
 9 file.
 10 Q. Okay. That's fair enough.
 11 So there was -- was there any
 12 documents missing out of the pre-litigation
 13 claims file that you figured out should have
 14 been in the claims file, but weren't?
 15 A. My review of the claims file, I
 16 did not believe I saw anything or felt that
 17 there was something missing.
 18 Q. How is the claims file, the
 19 Browns' claim file maintained by State Farm,
 20 electronically, hard copy or both?
 21 A. At the time of Hurricane Katrina,
 22 State Farm catastrophe services was working
 23 with both an electronic and paper hybrid
 24 version of the claims file. So in answer to
 25 your question, there would be an electronic

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1 Go ahead and answer it if you
 2 think you can.
 3 THE WITNESS:
 4 The items contained within the
 5 Brown file would be the items that the
 6 handling adjusters felt were needed to
 7 support the decision that they made.
 8 MR. ZAUNBRECHER:
 9 Soren, when you reach a good
 10 breaking point in the next 10 or 15 minutes,
 11 just for two or three minutes.
 12 MR. GISLESON:
 13 And, Chris, if you ever need a
 14 break, just let us know and we will take a
 15 break.
 16 THE WITNESS:
 17 Thank you.
 18 EXAMINATION BY MR. GISLESON:
 19 Q. The question then -- well, is
 20 there any information that you reviewed
 21 on -- let me ask it this way: Is there any
 22 information related to the Browns' claim
 23 file that wasn't in the claims file that you
 24 saw that State Farm would somehow maintain
 25 in a computer database somewhere?

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1 claim file as well as paper copies.
 2 Q. Where was the Browns' electronic
 3 portions of the claims file maintained?
 4 A. The electronic claim file is
 5 maintained on the State Farm server.
 6 Q. What is the name of the State Farm
 7 server; do you know?
 8 A. I don't know the name of the State
 9 Farm server, no, sir.
 10 Q. What is the name of the State Farm
 11 claims software that the Browns' claim would
 12 have been stored on?
 13 A. We refer to it as the claims
 14 service record or CSR.
 15 Q. How -- is there a State Farm
 16 server that you log onto, an access code, to
 17 gain admittance onto the system?
 18 A. During Hurricane Katrina, there
 19 was a server that we logged onto, yes, sir.
 20 Q. And at some point, there had to be
 21 a field or a screen where you would type in
 22 information relevant to a particular
 23 insured; right? In order to get at his
 24 electronic portion of the claims file?
 25 A. If you're asking about a search

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1 function, we could search by either claim
2 number, policy number, or insured's name.
3 Q. So you log on, you want to find
4 out and you want to see everything on the
5 server related to the Browns' claim; all
6 right? You get to the screen, what items --
7 well, first off, can you print up what's on
8 that screen that you type in the search
9 functions for?
10 A. I'm certain you can do a screen
11 print of that screen, yes, sir.
12 Q. What information is located or
13 identified on that screen that would assist
14 you in eventually pulling up the Browns'
15 claim file? What options are available to
16 you?
17 A. I don't know that I can give you
18 an all inclusive list, but it would include
19 a claim number, an area to put in a claim
20 number, an area to put in a last name, an
21 area to put in a first name, an area to put
22 in a policy number, not the 7955, but the
23 actual policy number associated with the
24 Browns.
25 Q. What about address?

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1 Q. Okay. Another computer screen?
2 A. That's correct.
3 Q. And if you wanted to, you could
4 make a printout of the Browns' claims file
5 computer screen; right?
6 A. We could probably do a screen
7 print, yes, sir.
8 Q. And there are areas and fields on
9 the Browns' claims screen, right, that allow
10 you to do certain things?
11 A. The initial screen that comes up,
12 I do not believe I can edit, no, sir.
13 Q. What is on that screen?
14 A. On that screen would be their
15 name, their address, policy type, policy
16 number, data loss, catastrophe code. It's
17 not all inclusive, but that's the major
18 parts.
19 Q. Okay. So I've got this
20 information in front of me on the screen,
21 but if you wanted to see all the major
22 parts, you would just do a screen shot;
23 right?
24 MR. ZAUNBRECHER:
25 A screen what?

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1 A. I believe you can search by
2 address, but it's not very successful.
3 Q. Would that also be on the same
4 screen?
5 A. The search screen is a single
6 screen, yes.
7 Q. What if I wanted to pull up any
8 information from the Browns concerning who
9 worked on the Browns' claims file before
10 suit was filed? Could I pull up that
11 information from that screen? Which
12 adjusters?
13 A. You can pull up the claims file
14 from that screen. Contained within the
15 claim file is the names of the people that
16 worked on that claims file.
17 Q. Okay. Is there any other
18 information on the initial screen that would
19 assist you in getting to the Browns' claim?
20 A. I do not believe so, no.
21 Q. So you type in the Browns' policy
22 number, boom, it takes you to the Browns --
23 what does it take you to?
24 A. It takes me to the Browns' claim
25 file.

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1 EXAMINATION BY MR. GISLESON:
2 Q. Or you would print up the screen?
3 A. No, sir. I would just navigate
4 within the screen.
5 Q. Okay. But I'm talking about in
6 terms of this deposition. If I had that
7 printout of that screen shot in front of me,
8 I could ask you questions about every single
9 one of those various items on the screen
10 that you can't remember?
11 A. Everything that's contained within
12 that screen is contained within the paper
13 file that you have received, Counsel.
14 Q. Okay. So I've got this
15 information in front of me and let's say I
16 want to go check out the claims log. How do
17 I get to the claims log from the screen in
18 front of me, the Browns' claim log?
19 MR. ZAUNBRECHER:
20 You mean the activity log; don't
21 you?
22 EXAMINATION BY MR. GISLESON:
23 Q. Is that what you call it, the
24 activity log?
25 A. I would refer to it as an activity

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1 log, yes, sir.
 2 Q. What is the activity log?
 3 A. The activity log is where the
 4 adjuster will make notes as to their
 5 workings on the file.
 6 Q. So I've got the Browns' claims
 7 file in front of me, I've got the screen,
 8 we've pulled it up, and now I want to check
 9 out the activity log. How do I do that from
 10 that screen?
 11 A. Down at the bottom of the screen,
 12 there's a function key that you can press.
 13 I believe it's F5 that gets you to the
 14 activity log.
 15 Q. What other function keys are there
 16 for the Browns' claim?
 17 A. There would be a function key for
 18 generating a draft, there be another one for
 19 getting to the images, there would be
 20 another one for review of the policy, policy
 21 type, another one wore confirming what the
 22 deductible is, another one that would get
 23 you to a loss history, facts of the loss.
 24 Q. I'm sorry, what was that?
 25 A. Facts of the loss.

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1 Q. Facts of the loss?
 2 A. Which would be the initial
 3 reporting.
 4 Q. Is that everything that you can
 5 remember?
 6 A. You would be able to get to what's
 7 contained within this copy that you had
 8 received, sir.
 9 Q. Okay.
 10 A. Other than, I apologize, other
 11 than any file -- any documents that may have
 12 been paper only.
 13 MR. GISLESON:
 14 Let me know if you want to take a
 15 break.
 16 MR. ZAUNBRECHER:
 17 Thank you.
 18 MR. GISLESON:
 19 We will take a break and come
 20 back.
 21 THE VIDEOGRAPHER:
 22 We're off the record. It's 10:13.
 23 (Whereupon, a brief recess was
 24 taken.)
 25 THE VIDEOGRAPHER:

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1 We're back on the record. It's
 2 10:22.
 3 EXAMINATION BY MR. GISLESON:
 4 Q. Mr. Lapinskie, before we went off
 5 the record, we were discussing the various
 6 function keys on the Browns' screen shot on
 7 the State Farm database system. What was
 8 the claim -- or the State Farm claim system?
 9 Is that the right way to say it?
 10 A. CSR is what we refer to it as.
 11 Q. Is that just an internal name for
 12 it or is that the name of the actual
 13 software that's used?
 14 A. I wouldn't -- I don't know whether
 15 that's an official name or an internal name.
 16 It's the name that I've used forever.
 17 Q. Before we went off the record, we
 18 were talking about the function keys. I
 19 think you mentioned that they would be
 20 identified on the bottom of the screen; is
 21 that right?
 22 A. That's correct. The function keys
 23 are identified on the bottom.
 24 Q. The first one you mentioned was a
 25 function key for draft. What is that?

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1 A. Drafts are what we issue to our
 2 insureds when we make payment for a claim.
 3 Q. And what information would be
 4 contained in the drafts?
 5 A. The information that would be
 6 generated on the draft.
 7 Q. The next one you mentioned was
 8 images. What kind of information would be
 9 found in the images?
 10 A. Images would be where we would
 11 scan in the paper copies of information
 12 received, be it outgoing correspondence,
 13 incoming correspondence.
 14 Q. Just returning to the drafts part
 15 right quick. Let's say you wanted to check
 16 out the drafts of the Brown file, you click
 17 the function for drafts and up pops the
 18 screen concerning the drafts. What does
 19 that look like?
 20 A. It's a list of draft numbers and
 21 payments.
 22 Q. Did you see that document in the
 23 claims file when you were reviewing it?
 24 A. I saw copies of the drafts, yes.
 25 Q. Were they copies of the drafts

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1 itself or were they a copy of the printout
 2 of the screen for the drafts?
 3 A. Both, actually.
 4 Q. The next one is images. Have you
 5 actually looked on the computer screen for
 6 the Browns' file, Browns' claim?
 7 A. In preparation for today's
 8 testimony, I took a look at the same claims
 9 file as it was delivered to you. So, no, I
 10 did not look at the electronic claims file.
 11 Q. You haven't done a comparison to
 12 see if there's anything on the electronic
 13 Browns' claims file that wasn't produced in
 14 the paper claims file?
 15 A. I did not do a comparison between
 16 the two, no, sir.
 17 Q. So if I asked you what images were
 18 scanned in to the Browns' electronic claims
 19 file, you could tell me generally what those
 20 images are, but specifically as to Brown,
 21 you wouldn't be able to comment because you
 22 haven't seen the Brown electronic claims
 23 file; right?
 24 A. I would be able to generally tell
 25 you. Yeah, I wouldn't be able to tell you

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1 Browns' claims file, unless it was blocked
 2 from me, yes, I could.
 3 Q. What does that mean, blocked from
 4 you?
 5 A. We have the ability to limit
 6 access to files based on a business need.
 7 Q. Do you know if the Browns'
 8 electronic claims file has been blocked from
 9 you?
 10 A. I have no reason to believe that
 11 it is, but, no, I couldn't answer that
 12 question.
 13 Q. After images, you testified -- I
 14 think you said, if my handwriting serves me
 15 correctly, review policy type. Is that what
 16 you said after images; do you remember?
 17 A. I don't know that I used the word
 18 "review," but it would tell me what the
 19 policy type was, yes.
 20 Q. So when you pull up that screen,
 21 what does it look like?
 22 A. It lists their homeowners policy,
 23 options and endorsements.
 24 Q. In your review of the Browns'
 25 claims file, have you seen what would have

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1 in the Brown file. I don't know that I
 2 would give you a full response as to whether
 3 or not an item was imaged or not. If you
 4 have a question with regard to a specific
 5 item, based on that item, I may be able to
 6 tell you, yes, sir.
 7 Q. Can you access the State Farm
 8 claims network remotely just with a computer
 9 anywhere you happen to be?
 10 A. I have the ability to get into CSR
 11 without being hard wired, yes, sir.
 12 Q. And State Farm provided you with a
 13 laptop?
 14 A. I have a State Farm-issued laptop,
 15 yes, sir.
 16 Q. And did you bring that laptop with
 17 you on your trip to New Orleans for this
 18 deposition?
 19 A. I have that laptop with me at my
 20 hotel room, yes, sir. Was it for this
 21 deposition? No, sir.
 22 Q. But you could use that laptop with
 23 you to access the Browns' claim files if you
 24 wanted to; correct?
 25 A. If I had a need to access the

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1 been the review policy function?
 2 A. In my review of the Brown file --
 3 maybe I can help you. The screen would look
 4 very similar to Brown 42, right here
 5 (indicating).
 6 Q. Okay. Is that, in fact, the
 7 screen printout for the review policy or are
 8 you just showing me a document that would
 9 reflect the same policy that would be in
 10 your review policy?
 11 A. It's not a screen printout, no,
 12 sir.
 13 Q. The next one function you
 14 identified was confirmed deductibles?
 15 A. That's correct.
 16 Q. What information would pop up if I
 17 typed in the function key for confirm
 18 deductibles on the Brown claim?
 19 A. What you would see would be the
 20 same as in Brown 42 on the right-hand side.
 21 Q. What is the Brown deductible as
 22 identified in the document in front of you?
 23 A. I'm sorry, the deductible wouldn't
 24 show in that area that I pointed to in this
 25 document. It would be -- it would be \$500.

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1 Q. Could you identify the Bates
2 number, too, please?
3 A. I'm sorry, that's Brown 008.
4 Q. Okay. Is that the document that
5 would show up on the confirmed deductible
6 part on the computer screen?
7 A. This document?
8 Q. Yes.
9 A. No, it doesn't look the same.
10 It's the same information.
11 Q. Next we have loss history.
12 Function on the claims database. What is
13 loss history?
14 A. Whether they had prior claims.
15 Q. Did you -- what does it look like
16 when you pull it up?
17 A. For the Browns, it would be empty.
18 Q. Did you see a computer printout
19 anywhere of the empty screen shot for the
20 loss history for the Browns?
21 A. Brown 008, top right-hand corner
22 where it says "claim history."
23 Q. And that would just be for past
24 claim history with State Farm, right, not
25 with other insurance companies?

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1 A. That would be just the claim
2 history under this policy with State Farm.
3 Q. The next function you identified
4 was facts of the loss.
5 A. That is correct.
6 Q. What is that?
7 A. That is the same information as
8 you would see on Brown 008 down in the lower
9 right-hand corner.
10 Q. Is this, in fact, what would pull
11 up, though, if you want the facts of the
12 loss of the Brown claim or would it look
13 different?
14 A. Would it be the same page?
15 Q. Yes.
16 A. The entire page? No, sir. It
17 would be the lower right-hand corner, facts
18 of loss.
19 Q. Okay. Are there any other
20 function keys concerning the Brown file
21 other than the ones we just spoke of?
22 A. I don't know that I understand the
23 question.
24 Q. Sure. I asked you earlier to
25 identify other function keys that related to

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1 the Brown claim that you could think of.
2 You gave me those six, and I'm asking if
3 there are any other function keys?
4 A. There's print functions.
5 Q. Okay. Now, actually I think we
6 started this conversation with the activity
7 log. How do I get to the activity log from
8 there?
9 A. From where?
10 Q. From this screen that shows me the
11 various functions on the bottom and the
12 Brown claim information up top?
13 A. I believe the activity log is F6.
14 Q. Okay.
15 A. It might be F5. I don't know what
16 the actual function is, but it's a function
17 key.
18 Q. Okay. So now we talked about
19 seven of these types of functions. Are
20 there any other functions on the Brown
21 electronic claim file that would provide me
22 with additional information concerning the
23 claim?
24 A. There is a key to enter parties to
25 the loss.

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1 Q. Anything else?
2 A. There's a key to see the system
3 log.
4 Q. What's the system log?
5 A. The system log is -- you will see
6 the system log starting on Brown 0040 and
7 ending on Brown 0041.
8 Q. How is the system log different
9 from the activity log?
10 A. Well, the sequence associated with
11 the system log follows within the sequence
12 of the activity log and it just outlines
13 when there was electronic activity. For
14 example, system log No. 16 indicates that we
15 printed it manually on printer L199. That
16 would be on Brown 0041.
17 Q. Any other functions that you can
18 think of?
19 A. I would also be able to see policy
20 notes as contained on Brown 0043.
21 Q. Is policy notes an actual
22 function, additional function?
23 A. Yes.
24 Q. Any other functions you can think
25 of?

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1 A. And you would also be able to see
 2 documented changes as contained within Brown
 3 0047.
 4 Q. What are documented changes?
 5 A. That is when there is a
 6 reassignment from an office to another
 7 office, a change from -- change in status
 8 from either open to closed, documents on
 9 contact dates, inspection dates,
 10 reassignments to other individuals, other
 11 claim handlers.
 12 Q. And the documented changes is its
 13 own separate function key?
 14 A. In order to see it, there is a
 15 separate function key that you would hit,
 16 yes, sir.
 17 Q. The any other function keys for
 18 the Browns' claim?
 19 A. I believe that covers it.
 20 Q. What about e-mails from the
 21 adjuster to sort of the internal claims
 22 person? Let's assume that -- let me ask you
 23 this way: Was the wind estimate for the
 24 Brown claim e-mailed to State Farm as an
 25 attachment?

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1 A. The estimate for the Brown file is
 2 a printed estimate. That was the question
 3 and that was the answer.
 4 Q. How do you know it was printed and
 5 then submitted?
 6 A. Because when it's printed, there's
 7 a date indicating when it was printed. That
 8 was 11/21/2005.
 9 Q. Is that the only indication to you
 10 that it was a printed estimate as opposed to
 11 being e-mailed or uploaded to the claims
 12 file?
 13 A. The adjuster does not have the
 14 ability to upload the Xactimate estimate to
 15 the claims file. During Hurricane Katrina,
 16 the adjuster printed off that estimate. The
 17 estimate may be imaged into the claims file,
 18 but the estimate was generated in paper form
 19 for the claim file.
 20 Q. Why?
 21 A. Because that's relative to the
 22 claim file.
 23 Q. But why wouldn't Brown adjuster --
 24 well, the Brown adjuster had access to the
 25 activity log; right? He could go into the

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1 MR. ZAUNBRECHER:
 2 E-mailed from the claims rep?
 3 MR. GISLESON:
 4 Yes.
 5 EXAMINATION BY MR. GISLESON:
 6 Q. Yeah, was it e-mailed? Was it
 7 uploaded? How does that work?
 8 A. During the time of Hurricane
 9 Katrina, the estimate was printed for the
 10 claim file.
 11 Q. So the adjuster would go out and
 12 do his Xactimate estimate and he would go to
 13 the nearest Kinko's and he would print it up
 14 and e-mail it to State Farm?
 15 MR. ZAUNBRECHER:
 16 I object to the form.
 17 But can answer the question.
 18 THE WITNESS:
 19 The adjusters were provided with a
 20 printer that would allow them to print out
 21 that estimate and that estimate would be
 22 delivered to a State Farm office.
 23 EXAMINATION BY MR. GISLESON:
 24 Q. They wouldn't upload it to the
 25 system, to the claims file?

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1 system on his laptop and he could make notes
 2 on the activity log; right?
 3 A. The Brown adjuster, the adjuster
 4 that worked on the Brown claim did have
 5 access to the electronic activity log, yes.
 6 Q. Then why does he have access to
 7 the electronic activity log and can't just
 8 simply upload or e-mail his Xactimate
 9 estimate on to the same electronic claims
 10 file for the Browns?
 11 MR. ZAUNBRECHER:
 12 I object to the form.
 13 You can answer it if you --
 14 THE WITNESS:
 15 Because that is scanning, it's
 16 scanned into the file and that's not a
 17 function that we give to the adjuster.
 18 That's done through our COS.
 19 EXAMINATION BY MR. GISLESON:
 20 Q. Who did the adjuster send his
 21 Brown estimate to?
 22 A. Who did he send it to? Are you
 23 asking if it was e-mailed? Is that what
 24 you're asking?
 25 Q. No. I mean, somebody else put it

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1 in the claims file, the Brown estimate in
 2 the claims file; right?
 3 MR. ZAUNBRECHER:
 4 Soren, just for clarification, are
 5 you talking about the scanning in or the
 6 paper copy?
 7 EXAMINATION BY MR. GISLESON:
 8 Q. Do me a favor, take the Brown
 9 estimate, the adjuster finishes the Brown
 10 estimate. You testified he printed it up.
 11 Who did he hand it in to?
 12 A. When -- when Dekievit completed
 13 his estimate, he noted on 11/27/05, he gave
 14 it to Carrie Demane, that would be the claim
 15 file in total. Not -- okay, the estimate is
 16 part of the claim file. When Dekievit was
 17 finished with his part of the claim
 18 handling, he gave the claim file, which also
 19 contained the estimate to Demane.
 20 Q. Could he spell that?
 21 A. D-E-M-A-N-E.
 22 Q. What is the Bates number of the
 23 document?
 24 A. Brown 0038.
 25 Q. And when did the adjuster give it
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1 estimate to the State Farm server. That
 2 State Farm server can be accessed by
 3 Xactimate.
 4 Q. Can you tell at all from the
 5 documents you looked at when the Brown
 6 estimate was uploaded to the State Farm
 7 server?
 8 A. From the documents contained
 9 within the claim file, I do not know when
 10 that was loaded to the server.
 11 Q. Can you tell -- well, do you know
 12 at all based on the documents that you've
 13 seen or just from whatever source, when the
 14 Brown estimate was uploaded to the State
 15 Farm server?
 16 A. I do not know when the Brown
 17 estimate was uploaded to the server, no,
 18 sir.
 19 Q. If you wanted to find out when the
 20 Brown estimate was loaded to the State Farm
 21 server, how would you do that?
 22 A. I would have to access that server
 23 and look.
 24 Q. What server is it?
 25 A. That would be -- the way I would
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1 to Demane?
 2 A. He noted on 11/27/05, the scope of
 3 the loss and an estimate from the scope,
 4 there was not a lot of wind damage to this
 5 loss. What I found was damage to the roof
 6 and the front door that was kicked in after
 7 the flood. I've covered A, B, and C.
 8 Please mail checks to policyholder and close
 9 the claim. That's what he noted on 11/27.
 10 On 11/28 he noted a mailing address, and on
 11 12/9, Carrie reviewed that claim.
 12 Q. Pursuant to the document you're
 13 looking at, can you tell whether the Brown
 14 Xactimate estimate ever made it into the
 15 electronic claim system of State Farm?
 16 A. The electronic paper copy of the
 17 estimate is contained within the paper file
 18 that I'm looking at. Whether that estimate
 19 was scanned into images, I would only
 20 speculate.
 21 Q. Do you know whether the Brown
 22 estimate was sent to the State Farm server
 23 and then fed back to Xactware?
 24 A. Part of the approach once
 25 generating an estimate is to upload that
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1 find that out is through the XactAnalysis
 2 program.
 3 Q. How does the XactAnalysis
 4 program -- well, how does the Brown estimate
 5 find its way into the -- how can I use the
 6 XactAnalysis program to find out information
 7 about the Brown claim?
 8 A. The information that you would
 9 gain from the XactAnalysis program is
 10 information about the estimate. It would
 11 not have any other information about the
 12 claim. The information that you would have
 13 is about the estimate.
 14 Q. What information about the Brown
 15 estimate can I get from the XactAnalysis
 16 program?
 17 A. You would be able to get the
 18 estimate. You would see a stamp as to when
 19 that estimate was loaded down, loaded up,
 20 and created.
 21 Q. But would I be able to find out
 22 whether any changes were made to the Brown
 23 estimate?
 24 MR. ZAUNBRECHER:
 25 You mean within the XactAnalysis
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1 program?
 2 MR. GISLESON:
 3 Uh-huh (indicating affirmatively).
 4 MR. ZAUNBRECHER:
 5 Go ahead and answer.
 6 THE WITNESS:
 7 Within the XactAnalysis program, I
 8 can not make changes to an estimate.
 9 EXAMINATION BY MR. GISLESON:
 10 Q. But the question is: Can you use
 11 the XactAnalysis program to see if any
 12 changes were made to the Brown estimate?
 13 MR. ZAUNBRECHER:
 14 I just object to the form of the
 15 question. I'm confused. Changes -- I'm not
 16 sure what you mean by that.
 17 But if you understand, please
 18 answer.
 19 THE WITNESS:
 20 If any changes -- with the
 21 XactAnalysis program, I can see how -- I can
 22 see the generation of that estimate, when it
 23 was started, when it was loaded. So the
 24 answer to your question would be -- I
 25 believe it would be, yes, but I don't know
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1 Q. How long would it take you to run
 2 an XactAnalysis report for the Brown
 3 estimate?
 4 A. I don't understand your definition
 5 of report.
 6 Q. Can't you run a report from an
 7 XactAnalysis that shows you how an estimate
 8 has changed over time?
 9 A. It would take me, depending on
 10 connectivity, about a minute to pull the
 11 estimate down from XactAnalysis.
 12 Q. Which would include all the
 13 information about whether there was any
 14 changes to Brown estimate; right?
 15 A. Once I brought it -- once I
 16 brought it down, I would be able to choose
 17 from a series of reports that would tell me
 18 document changes.
 19 Q. Okay. Is there any other -- in
 20 addition to the XactAnalysis, in addition to
 21 the claim system, electronic claim system,
 22 we discussed a minute ago, is there any
 23 other information related to the Brown
 24 claim, stored or saved electronically by
 25 State Farm?
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1 that that's the question you're really
 2 asking.
 3 EXAMINATION BY MR. GISLESON:
 4 Q. In seeing the generation of a
 5 particular estimate, could you also see
 6 whether a particular estimate was added or
 7 something was added to the estimate or taken
 8 away from the estimate at certain points?
 9 MR. ZAUNBRECHER:
 10 Note my objection to that. The
 11 same objection I've made several times. If
 12 you're limiting it to this estimate, of
 13 course.
 14 MR. GISLESON:
 15 I'm limiting it to Brown.
 16 MR. ZAUNBRECHER:
 17 Thank you.
 18 THE WITNESS:
 19 Would I be able to see if there
 20 was changes to the estimate? Yes, I would
 21 be able to see when that estimate was
 22 generated, what was added to it, and I would
 23 also be able to see if there was something
 24 removed.
 25 EXAMINATION BY MR. GISLESON:
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1 A. I don't know that I understand
 2 your question.
 3 Q. Okay. Is there any other
 4 electronic information relative to the Brown
 5 claim stored by State Farm that we haven't
 6 discussed today?
 7 A. Information relative to the Brown
 8 claim, I'm struggling with your question,
 9 counsel.
 10 Q. Okay. You testified earlier that
 11 there is -- because this is a Hurricane
 12 Katrina claim, there is sort of a Brown
 13 electronic claim file, electronic claim
 14 information, and there is Brown paper claim
 15 information; right?
 16 A. At the time that the claim was
 17 being handled, it was both an electronic and
 18 paper copy, yes, sir.
 19 Q. And you testified so far about the
 20 electronic portion of the Browns' claims
 21 file; right?
 22 A. Our discussion discussed both the
 23 electronic and the paper.
 24 Q. Okay. I'm focusing just on the
 25 electronic right now. Is there any other
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1 electronic information relative to the
2 Browns' claim that saved, stored or
3 maintained by State Farm?
4 MR. ZAUNBRECHER:
5 I will object to the form of the
6 question.
7 But go ahead.
8 THE WITNESS:
9 The electronic information
10 relative to the Brown claim is stored within
11 the Brown file.
12 EXAMINATION BY MR. GISLESON:
13 Q. Okay. And it's only stored as
14 to -- did you say CSR?
15 A. The Brown claim is stored within
16 the a claim service records CSR, yes, sir.
17 Q. Is there anything within CSR
18 related to the Browns that we haven't
19 discussed?
20 A. Is there anything within CSR
21 related to the Browns that we haven't
22 discussed? Absolutely.
23 Q. Okay. What else is in the CSR
24 related to the Browns that we haven't
25 discussed?

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1 State Farm?
2 A. Full claims service record or fire
3 claims service record full, Brown 0028.
4 Q. What does CCF stand for?
5 A. Might be -- I used different
6 terminology. The acronym would be FCSR,
7 fire claim service record full.
8 Q. I'm sorry, FCSR?
9 A. FCSR.
10 Q. Fire --
11 A. Claim.
12 Q. Claim.
13 A. Service record.
14 Q. Okay. Why is the word "fire" used
15 if we're talking about a homeowners policy?
16 A. State Farm Fire Company is the
17 company that handles homeowners claims.
18 Q. Does State Farm refer to its
19 homeowners policies as fire policies?
20 MR. ZAUNBRECHER:
21 I object to the form and beyond
22 the scope.
23 MR. GISLESON:
24 You're directing him not to
25 answer?

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1 A. There's the underwriting
2 information as you see in the premiere copy.
3 Q. How do you get to the underwriting
4 information for the Browns in CSR?
5 A. As a claims representative or
6 management person, the access to the
7 underwriting information is gained only by
8 using a print function.
9 Q. What does that mean?
10 A. Generating the same copy as you've
11 received.
12 Q. But when you say -- you can only
13 get it from a print function, I don't
14 understand.
15 A. You do not get to see it
16 electronically. I have to request the print
17 and when I request that print, which is
18 called a full CCF, as you received, I see
19 additional underwriting information.
20 Q. I'm sorry, you said full CCF?
21 A. Yes, sir.
22 Q. What is full CCF?
23 A. In the Brown file, the full CCF is
24 -- Brown 0028 to Brown 0053.
25 Q. Is full CCF a term of art within

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1 MR. ZAUNBRECHER:
2 I am.
3 MR. GISLESON:
4 All right.
5 EXAMINATION BY MR. GISLESON:
6 Q. Does State Farm refer to the
7 Browns' homeowners policy as a fire policy?
8 MR. ZAUNBRECHER:
9 I object to the form.
10 You can answer it if you can.
11 THE WITNESS:
12 I refer to the Browns' policy as a
13 homeowners policy form FP7955.
14 EXAMINATION BY MR. GISLESON:
15 Q. Is FCSR a term of art within State
16 Farm?
17 A. FCSR stands for fire claims
18 service record.
19 Q. Is there a document somewhere
20 within State Farm that says the fire claims
21 service record shall be compromised of the
22 following documents?
23 A. If there is, I'm not aware of that
24 document.
25 Q. In addition to CSR and Xact --

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1 well, staying with CSR, is there anything
 2 else -- any other electronic information
 3 within CSR related to the Brown claim that
 4 we haven't discussed?
 5 A. I don't believe so, no, sir.
 6 Q. Can the XactAnalysis program be
 7 run to determine any other information
 8 concerning the Brown claim that is neither
 9 in the claims file, the electronic claims
 10 file or the paper claims file?
 11 A. The XactAnalysis program is an
 12 evaluation of the estimate itself. The
 13 estimate is pertinent to the claim file.
 14 The XactAnalysis program is not.
 15 Q. Return to the paper portion of the
 16 Browns' claims file. Why don't you tell me
 17 what part of the Browns' claims file that
 18 you reviewed in preparation for today that
 19 by its nature was maintained by State Farm
 20 in a paper format?
 21 A. The use of the terminology
 22 "paper," the paper that was contained within
 23 the Brown file would be, for example, the
 24 letter that we received from the SBA which
 25 would be Brown 0057, 0058, 0059, 0060, 0061;
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1 would also be the copies of letters as in
 2 Brown 0077; the return envelope, 0078; back
 3 of that envelope 0079; the other letter,
 4 Brown 0080; paper would also include the
 5 faxed cover sheet, 0015, 0012; paper would
 6 also include 0087, which is the estimate,
 7 0088, 0089, 0090; the paper would also
 8 include 0091, 0092; 0086, statement of loss;
 9 0082 is another copy of the estimate, 0083,
 10 0084, 0085; the fire claim message, 0013 is
 11 a paper form; 0023, fire claim message;
 12 another fax copy sheet, 0026, 0025; another
 13 statement of loss, 0093, 0094, 0110, 0109,
 14 and a copy of the estimate, 0017, 0018,
 15 0019, 0020; the estimate received from the
 16 contractors, 0095, 0096, 0098, 0100, 0102,
 17 0104, 0106; contents inventory list, 0021;
 18 the additional living expense calculation,
 19 0022; the scope notes as taken by our
 20 adjuster, 0027. That would be -- it would
 21 have originated as paper. Some may have
 22 been scanned in to images.
 23 Q. Where is the Browns' paper claim
 24 file maintained?
 25 A. At this time, I believe the paper
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1 file is with counsel.
 2 Q. Pre-litigation, where was it
 3 maintained?
 4 A. Pre-litigation, the paper file was
 5 with our service unit and I believe that was
 6 stored in Dallas.
 7 Q. At the time of -- from the time
 8 the Brown claim was made until litigation,
 9 was it the policy, practice and procedure
 10 for all the correspondence, or anything
 11 originated in writing sent to State Farm to
 12 be uploaded into the system?
 13 A. From the time of the creation of
 14 the claim file to the time of litigation,
 15 there was a -- we were transitioning from
 16 paper file to electronic file. So the
 17 answer to that is both yes and no.
 18 Q. Could you explain a little bit
 19 more what you mean by yes and no?
 20 A. At the onset, paper was maintained
 21 as paper.
 22 Q. Do you know or have any knowledge
 23 as to whether anyone related to this case,
 24 ever went to look at the paper portion of
 25 the Brown file to make copies and produce
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1 this litigation?
 2 A. I don't know that I understand the
 3 question.
 4 MR. ZAUNBRECHER:
 5 I object to the form.
 6 EXAMINATION BY MR. GISLESON:
 7 Q. Somewhere out there there is a
 8 Browns' paper file; right?
 9 MR. ZAUNBRECHER:
 10 It's right here.
 11 EXAMINATION BY MR. GISLESON:
 12 Q. Let me ask you this way: What was
 13 the procedure for a claim where a suit had
 14 been filed and part of the claim file was
 15 paper claim?
 16 MR. ZAUNBRECHER:
 17 I object. It's beyond the scope.
 18 You can ask about this claim and just for
 19 the record, I have the original claims file.
 20 I've had the original claims file. I have
 21 it here today since litigation.
 22 EXAMINATION BY MR. GISLESON:
 23 Q. Do you know if anyone with State
 24 Farm requested the paper file from Houston
 25 to --
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1 MR. ZAUNBRECHER:
 2 It's Dallas.
 3 EXAMINATION BY MR. GISLESON:
 4 Q. It's Dallas, from Dallas?
 5 MR. ZAUNBRECHER:
 6 I object to the form of the
 7 question.
 8 If you understand it, please
 9 answer.
 10 THE WITNESS:
 11 Can I get the question again?
 12 EXAMINATION BY MR. GISLESON:
 13 Q. Sure. Do you know, do you have
 14 any firsthand knowledge whether anybody on
 15 behalf of State Farm requested the Brown
 16 paper file from Dallas?
 17 A. The paper file is in possession of
 18 counsel. Counsel is here in Louisiana. It
 19 was previously stored in Dallas. By that
 20 fact, we got it here some how.
 21 Q. Have you ever seen the paper file
 22 that came from Dallas?
 23 A. I have not looked at the original
 24 paper file, no, sir.
 25 Q. Has anyone told you that the paper
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1 file was sent from Dallas to counsel in this
 2 case?
 3 A. I did not. In preparation for
 4 today's testimony, I did not ask how the
 5 paper file got to counsel.
 6 Q. But did you ask that the paper
 7 file that counsel has is, in fact, the paper
 8 file that was stored in Dallas?
 9 A. I did not ask where the paper file
 10 originated from, no, sir.
 11 Q. Did anyone tell you, well, we just
 12 printed up everything from the computer
 13 system and we're going to maintain that
 14 that's the Brown claim file?
 15 A. I did not -- in preparation for
 16 today's testimony, I did not ask about the
 17 origins of the claim file.
 18 Q. If you wanted to find out whether
 19 the Brown paper file was sent from Dallas to
 20 anyone else in this case, who would you go
 21 ask?
 22 MR. ZAUNBRECHER:
 23 Just for a clarification, you mean
 24 besides counsel? Was the Brown file sent to
 25 anyone from State Farm besides counsel? Is
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1 that what you're asking?
 2 MR. GISLESON:
 3 No.
 4 MR. ZAUNBRECHER:
 5 I'm sorry, please clarify the
 6 question.
 7 MR. GISLESON:
 8 Could you ask my question again,
 9 Madam Court Reporter.
 10 (Whereupon, the requested
 11 testimony was read by the Court Reporter)
 12 "Q If you wanted to find out
 13 whether the Brown paper file was sent
 14 from Dallas to anyone else in this
 15 case, who would you go ask?"
 16 MR. ZAUNBRECHER:
 17 I object to the form.
 18 Answer it if you can.
 19 THE WITNESS:
 20 If I wanted to find out how my
 21 counsel received the paper file, I would ask
 22 my counsel.
 23 EXAMINATION BY MR. GISLESON:
 24 Q. I mean, but as you sit here today,
 25 you've never seen the original paper file
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1 from Dallas; right?
 2 A. As I've said previously, I've not
 3 looked at the original paper file, no, sir.
 4 Q. So since you haven't, you can't
 5 tell that the file that was presented to you
 6 was, in fact -- contained the original paper
 7 file from Dallas; can you?
 8 A. I've not done a comparison of what
 9 I received, as well as you received, with
 10 the original paper file, no, sir.
 11 Q. What is FileZilla?
 12 A. I have absolutely no idea.
 13 Q. Does State Farm use a computer
 14 program known as FileZilla in maintaining
 15 the Brown claim?
 16 A. FileZilla is a terminology that
 17 I'm not familiar with.
 18 Q. Before I forget, if we could go
 19 through your background. You have a college
 20 education?
 21 A. I have an university education,
 22 yes, sir.
 23 Q. From where?
 24 A. University of Calgary, Canada.
 25 Q. What year?
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1 A. I graduated in 1998 -- I'm sorry,
2 1988.
3 Q. And what is -- what was your
4 degree in?
5 A. I have a BA in economics as well
6 as a BA in history.
7 Q. And at what point after you
8 graduated from Calgary, did you start work
9 for State Farm?
10 A. I started my employ with State
11 Farm in 1993, July.
12 Q. What did you do in between July
13 of '93 and graduation from Calgary?
14 A. Prior to joining State Farm, I
15 worked as a -- the term was a replacement
16 broker. I bought and sold commodities for
17 insurance companies. I serviced insurance
18 companies on stolen items, items damaged in
19 fires, water damaged items, in Calgary.
20 Q. Maybe I don't know what a
21 replacement broker is. Is it like what we
22 would consider an insurance agent in the
23 States?
24 A. No, sir. No, sir. What it would
25 be is if you had a fire and you lost your

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1 inspections on site, yes, sir.
2 Q. And how long were you a claims rep
3 for State Farm?
4 A. My employ as a claims rep was
5 between 1993 and -- July '93 until March
6 of '96.
7 Q. And what happened in March of '96?
8 A. In March of 1996, I was promoted
9 in to catastrophe services as a reinspector
10 trainer.
11 Q. What is a reinspector trainer?
12 A. My job functions as a reinspector
13 trainer were to go out and reevaluate a loss
14 that was adjusted by an adjuster for quality
15 control and devise training plans based on
16 deficiencies I may have found.
17 Q. And you said you worked for
18 catastrophe services; is that right?
19 A. That's correct.
20 Q. That is a division within State
21 Farm?
22 A. That is a part of State Farm, yes,
23 sir.
24 Q. What is catastrophe services
25 within State Farm?

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1 stereo equipment, you filed your claim with
2 your insurance company. Your insurance
3 company would contact us and tell me what
4 stereo equipment you had and I would
5 determine what replaced it now and I would
6 sell it to you at a reduced price.
7 Q. Excuse me, when you began work
8 with State Farm in July of '93, where did
9 you work?
10 A. I started my employ with State
11 Farm in Calgary.
12 Q. And what was your job title at the
13 time?
14 A. My job title was claim
15 representative.
16 Q. And what were your duties and
17 responsibilities as a claims representative
18 on behalf of State Farm?
19 A. As a claims representative, I
20 handled claims for State Farm on the
21 homeowners side.
22 Q. Were you a field adjuster; in
23 other words, would you be the one going out
24 and scoping and pricing the loss?
25 A. Part of my duties included

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1 A. As a member of catastrophe
2 services, I traveled throughout the country,
3 including Canada, handling a catastrophic
4 event such as hail, tornado, flooding,
5 hurricane, weight of ice and snow. When we
6 receive a large amount of claims in a short
7 period of time, the offices aren't staffed
8 for that kind of event. We come in, we pick
9 that up. We handle it for them.
10 Q. How long were you a reinspector in
11 the catastrophe services department of State
12 Farm?
13 A. My position was a reinspector
14 trainer.
15 Q. Sorry.
16 A. And I was in that position until
17 December of 1996.
18 Q. What happened in December of '96?
19 A. In December of 1996, I was
20 promoted to team manager position.
21 Q. Was it a team manager within
22 catastrophe services?
23 A. That is correct.
24 Q. What were the duties and
25 responsibilities of a team manager?

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1 A. As a team manager, I had a group
2 of claim representatives who reported to me
3 that I had administrative and operational
4 responsibility for.
5 Q. Did you oversee or have settlement
6 authority as team manager?
7 A. I did have settlement authority as
8 a team manager, yes, sir, and I do.
9 Q. What is settlement authority?
10 A. Settlement authority is the dollar
11 amount at which -- up to which I can issue
12 settlement without further approval.
13 Q. What was your settlement authority
14 as team manager in '96?
15 A. In 1996, my settlement authority,
16 I believe, was a hundred and fifty thousand.
17 Q. And how long were you a team
18 manager for State Farm?
19 A. My position as team manager still
20 continues. The job title may have changed.
21 My position is team manager.
22 Q. Okay. And currently how many
23 claim representatives do you supervise?
24 A. My team is comprised of ten claim
25 representatives currently.

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1 in?
2 A. Jacksonville, Florida is in the
3 Florida zone.
4 Q. Florida has its own zone?
5 A. That's correct.
6 Q. What zone is Louisiana in?
7 A. Louisiana, I believe, is in the
8 central zone.
9 Q. From your role as team manager
10 from 1996 to the present, have you ever been
11 assigned to the central zone?
12 A. I have worked claims within the
13 central zone, but I am a corporate
14 representative.
15 Q. Have you ever been -- you're
16 assigned to the Jacksonville, Florida;
17 right? You're assigned to the Florida zone?
18 A. Absolutely not.
19 Q. No?
20 A. No.
21 Q. Is it -- why isn't it you're not
22 assigned to a particular zone?
23 A. Because I'm catastrophe services
24 which is a corporate entity. We worked out
25 of the Florida zone.

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1 Q. And what part of the country are
2 these claim representatives situated?
3 A. Claim representatives that I
4 supervise currently are housed in the
5 Jacksonville operations center with me.
6 Q. That's Jacksonville, Florida?
7 A. Jacksonville, Florida, yes.
8 Q. And State Farm has carved up the
9 United States in different geographical
10 areas; right?
11 MR. ZAUNBRECHER:
12 I object to the form, but answer
13 it if you can. I think divided would be
14 better than curved up.
15 THE WITNESS:
16 We have divided the country into
17 13 different zones -- not the country,
18 because we also have Canada.
19 EXAMINATION BY MR. GISLESON:
20 Q. So North America?
21 A. No, because we don't have Mexico.
22 Q. So just the U.S. and Canada is
23 divided into 13 zones?
24 A. Thirteen zones, that's correct.
25 Q. What zone is Jacksonville, Florida

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1 Q. You just happen to be located in
2 Florida, but you don't -- you're not
3 restricted to adjusting claims within a
4 particular zone of State Farm?
5 A. No. I am still catastrophe
6 services. I handle claims throughout the
7 United States as well as Canada.
8 Q. Did you personally adjust
9 Hurricane Katrina claims?
10 A. My position during Hurricane
11 Katrina was as a team manager. I
12 co-adjusted -- I co-adjusted and did not
13 have file assignments myself.
14 Q. Have you ever spoken with
15 anyone -- well, have you ever spoken with
16 the Browns, the plaintiffs in this case?
17 A. I do not believe I've spoken with
18 the Browns, no, sir.
19 Q. Have you ever seen or inspected
20 that house in person?
21 A. I have not seen or inspected their
22 house, no, sir.
23 Q. Have you ever spoken with anyone
24 who adjusted the Brown claim?
25 A. I did not speak with anyone who

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1 adjusted the Brown claim, no, sir.
 2 Q. So you didn't speak with anyone
 3 who went out and prepared the Xactimate
 4 estimate?
 5 A. I did not speak with the preparer
 6 of the Xactimate estimate, no, sir.
 7 MR. GISLESON:
 8 I've got a pretty decent stopping
 9 point right now because I'm about to go into
 10 the documents itself, which should take
 11 about two hours. So I don't know if you
 12 want to take a break and then early lunch or
 13 something or you want to push on for 15
 14 minutes and then do a lunch?
 15 MR. ZAUNBRECHER:
 16 Let's go off the record for a
 17 second and talk about it.
 18 THE VIDEOGRAPHER:
 19 We're off the record. It's 11:14.
 20 (Whereupon, a brief recess was
 21 taken.).
 22 THE VIDEOGRAPHER:
 23 Back on the record. It's 11:23,
 24 the beginning of Tape 2.
 25 EXAMINATION BY MR. GISLESON:

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1 Q. Mr. Lapinskie, when we went off
 2 the record, I sort of indicated I wanted to
 3 start moving on to the documents in this
 4 case. But before I get to the claims file,
 5 I wanted to get to some of the operational
 6 guidelines that were produced in this case.
 7 I would like you to take a look at
 8 this document and identify it if you can.
 9 For the sake of the record, I would like to
 10 identify it by Bates stamp number which is
 11 235 to 255.
 12 Can you identify that document,
 13 Mr. Lapinskie.
 14 A. This document is OG, operation
 15 guide 7501, claim procedures first party.
 16 Q. And there's a date in the
 17 left-hand corner in the box. Do you see
 18 that?
 19 A. The date of 11/17/04.
 20 Q. What does that date represent to
 21 you?
 22 A. That date would be the creation
 23 date of this document.
 24 Q. Would this --
 25 A. I would like to clarify. The

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1 creation date of this iteration of this
 2 document.
 3 Q. And is this the -- is the subject
 4 of this OG claims procedure first party?
 5 A. The subject is claims procedures
 6 first party, yes, sir.
 7 Q. And is this the claims procedure
 8 that would have been in effect after
 9 Hurricane Katrina?
 10 MR. ZAUNBRECHER:
 11 I object to the form. The only
 12 claims --
 13 EXAMINATION BY MR. GISLESON:
 14 Q. Is this the claims procedure first
 15 party OG that would have applied to the
 16 Browns' adjustment?
 17 A. I do not believe there is another
 18 iteration of this pre-Hurricane Katrina.
 19 It's based on that information, I believe
 20 so, yes.
 21 Q. It's your testimony that whatever
 22 adjusters were assigned to the Browns' claim
 23 should have abided by the procedures set
 24 forth in this document in front of you?
 25 MR. ZAUNBRECHER:

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1 I object to the form, but go
 2 ahead.
 3 THE WITNESS:
 4 The operation guides are operation
 5 guides. What the adjusters abide by are the
 6 policies. The guides are there to assist
 7 them, but the guides aren't to change the
 8 policy.
 9 EXAMINATION BY MR. GISLESON:
 10 Q. Are you aware of any document
 11 after Katrina that would have changed the
 12 procedures in this OG guide to deal with
 13 Hurricane Katrina issues that would have
 14 applied to the Brown case?
 15 MR. ZAUNBRECHER:
 16 I object to the form.
 17 Please answer.
 18 THE WITNESS:
 19 I'm not aware of a document that
 20 usurped or took this away, no, sir.
 21 EXAMINATION BY MR. GISLESON:
 22 Q. What about any document that would
 23 have changed or altered any of the
 24 requirements procedure in this document?
 25 MR. ZAUNBRECHER:

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1 Limited to the Brown claim, I'm
2 sure?
3 MR. GISLESON:
4 Uh-huh (indicating affirmatively).
5 THE WITNESS:
6 Any documents that would change
7 these procedures? There's some procedures
8 that are in this document that don't pertain
9 to the policy in force on the Brown case, so
10 the policy itself is the one that's going to
11 establish the approach that should be taken.
12 EXAMINATION BY MR. GISLESON:
13 Q. So are you aware of any of -- any
14 changes to the policies in this operating
15 guidelines?
16 A. I don't know that I understand the
17 question, Counsel.
18 Q. I was just pausing. Let me
19 restart it.
20 Are you aware of any changes to
21 this operating guideline after Katrina would
22 have affected in any way the adjustment
23 practices or policies for the Brown claim?
24 A. I'm not aware of any changes
25 that -- I really don't understand the

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1 question. Sorry.
2 Q. Okay. You testified earlier that
3 this OG7501 was the claim procedures first
4 party guidelines that would have been in
5 place at the time the Browns' claim was
6 adjusted; correct?
7 A. The operation guide 7501 is
8 entitled claims procedures first party, and
9 the document that we have in front of us is
10 the document that was available at the time
11 of Hurricane Katrina, yes, sir.
12 Q. And this establishes the
13 guidelines that should have applied or that
14 the adjuster should have applied in
15 adjusting the Brown claim; right?
16 MR. ZAUNBRECHER:
17 He's already answered that.
18 MR. GISLESON:
19 He kind of did and he kind of
20 didn't. That's what I'm trying to get at.
21 THE WITNESS:
22 This operation guide establishes
23 guidelines and procedures for handling
24 first-party structural and personal property
25 losses, for specific types of losses such as

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1 crime, water, et cetera, refer also to the
2 OG under that title.
3 So if your question is is this an
4 all inclusive document that bound us as to
5 how we should handle the Brown claim, the
6 answer is, no. Is this a document that we
7 could reference in the review of the Brown
8 claim? Absolutely.
9 MR. GISLESON:
10 Before I forget, I'm going to mark
11 this version of OG7501 as Exhibit 4.
12 (Exhibit No. 4 marked for
13 identification.).
14 EXAMINATION BY MR. GISLESON:
15 Q. Is there any other OGs -- I
16 thought you testified -- I thought you said
17 a minute ago, there might be other OGs that
18 would apply to the adjustment of the Browns'
19 claim?
20 MR. ZAUNBRECHER:
21 I thought he said a policy.
22 Correct us if we're wrong.
23 THE WITNESS:
24 I'm sorry.
25 MR. ZAUNBRECHER:

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1 Go ahead.
2 THE WITNESS:
3 For specific types of losses such
4 as crime, water, et cetera, refer also to
5 the OG under that title. We had water
6 associated with this. You may want to
7 reference that water OG.
8 EXAMINATION BY MR. GISLESON:
9 Q. What was that water OG? Is that
10 identified there?
11 A. That water OG is not identified
12 here, no, sir.
13 Q. Other than the water OG, can you
14 think of any other OGs that would apply as
15 any type of guideline for the adjustment of
16 the Browns' claim?
17 A. In my review of the Browns' claim,
18 I don't know that I would refer to an OG for
19 the handling of it. I would stick with the
20 policy itself.
21 Q. Why is that?
22 A. The OGs are there when I have a
23 question as to policy. It can provide me
24 additional guidance. I don't know that
25 there was additional guidance required in

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1 the handling of this claim.
 2 Q. Is it fair to say you drew that
 3 conclusion from your review of the claims
 4 file?
 5 A. That is the conclusion I drew from
 6 the review of the claims file.
 7 Q. Because you didn't speak with any
 8 of the adjusters; correct?
 9 A. I did not speak with any of the
 10 adjusters, no.
 11 Q. You never spoke with Mr. and
 12 Mrs. Brown; correct?
 13 A. I did not speak with Mr. and
 14 Mrs. Brown.
 15 Q. I want to direct your attention to
 16 what appears to be a subsequent version of
 17 OG7501. It has a later date in the top left
 18 corner of March 28th, 2007. Do you see
 19 that?
 20 A. I do.
 21 MR. GISLESON:
 22 And, again, for the record, I
 23 would like to identify this document as
 24 being Bates stamped 215 to 234.
 25 EXAMINATION BY MR. GISLESON:
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1 Q. Have you seen this document
 2 before?
 3 A. I believe I have, yes, sir.
 4 Q. Do you know what the difference is
 5 between this version of the document and the
 6 preceding one that was identified as
 7 Exhibit 4?
 8 A. I've not done a side-by-side
 9 comparison recently that I recall seeing
 10 what the differences are. If you would like
 11 me to do that, I could.
 12 Q. Well, is there -- as you sit here
 13 right now, do you remember there being any
 14 differences between the two OGs?
 15 A. There must be a difference;
 16 otherwise, we wouldn't release another one.
 17 Q. Okay.
 18 MR. GISLESON:
 19 Maybe we can go off the record for
 20 a couple of minutes and you can take a look
 21 at them, if that's okay.
 22 MR. ZAUNBRECHER:
 23 I'm willing to let him do that,
 24 but I will enter a continuing objection.
 25 This document, even though it was produced
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1 in general pursuant to your request, it's
 2 clearly post litigation and I will object to
 3 the relevance.
 4 I'm assuming we're reserving all
 5 objections and I'm happy to let him look at
 6 it and see if there is anything.
 7 With that, we can go off the
 8 record.
 9 THE VIDEOGRAPHER:
 10 We're off the record. It's 11:33.
 11 (Whereupon, an off-the-record
 12 discussion was held.)
 13 THE VIDEOGRAPHER:
 14 We're back on the record. It's
 15 11:37.
 16 EXAMINATION BY MR. GISLESON:
 17 Q. Mr. Lapinskie, just before we went
 18 off the record, you were going to do a
 19 comparison between the two versions of
 20 OG7501 to determine whether or not there
 21 were any differences. Did you, in fact,
 22 find any differences?
 23 MR. ZAUNBRECHER:
 24 Let me enter an objection to any
 25 line of questioning regarding the 2007
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1 revisions to 75 -- OG7501 as being beyond
 2 the scope of the deposition. It can't
 3 possibly relate to the handling of the Brown
 4 claim because it was generated after this
 5 litigation had started and if you would
 6 like, I will give you an opportunity to lay
 7 a foundation, but, otherwise, if there is no
 8 foundation, I'm going to have to direct the
 9 witness not to answer.
 10 MR. GISLESON:
 11 You're directing the State Farm
 12 corporate representative not to testify
 13 about a document that State Farm produced in
 14 this case?
 15 MR. ZAUNBRECHER:
 16 Correct, because it's clearly
 17 beyond the scope of the court's discovery
 18 order which we attached as Exhibit No. 3.
 19 Just because it's been produced, does not
 20 mean it's the subject -- an appropriate
 21 subject for this deposition. If it were an
 22 open 1442 deposition, yes, but this is not.
 23 And, again, if you can lay a foundation as
 24 to its possible relation to the handling of
 25 the Browns' claim, I invite you to do so and
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1 I will withdraw my objection and
 2 instruction.
 3 EXAMINATION BY MR. GISLESON:
 4 Q. Did you object to interrogatory
 5 No. 14 -- I'm sorry, area of inquiry No. 14,
 6 which stated a deponent to testify to any
 7 and all documents produced through
 8 discovery?
 9 MR. ZAUNBRECHER:
 10 Yes, we did object to it.
 11 EXAMINATION BY MR. GISLESON:
 12 Q. Isn't it true that State Farm has
 13 the duty -- owes a duty to its insured to
 14 fairly and timely adjust the claim?
 15 MR. ZAUNBRECHER:
 16 I object to the form of the
 17 question. If you're talking about the
 18 Browns, please answer the question.
 19 EXAMINATION BY MR. GISLESON:
 20 Q. Do you understand the question?
 21 A. Can I get the question again,
 22 please?
 23 Q. Isn't it true that State Farm owes
 24 the Browns the duty to fairly and timely
 25 adjust their claim?

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1 circumstances surrounding Hurricane Katrina,
 2 yes, sir.
 3 EXAMINATION BY MR. GISLESON:
 4 Q. No. The question is: State Farm
 5 has a duty that it owes to the Browns to
 6 timely and fairly adjust the Hurricane
 7 Katrina claim; right?
 8 MR. ZAUNBRECHER:
 9 I object as calling for a legal
 10 conclusion, but you can answer it if you
 11 understand it.
 12 THE WITNESS:
 13 It complies with my agreement with
 14 the insureds, I try to handle those claims
 15 as quickly and expeditiously as I could,
 16 yes, sir.
 17 EXAMINATION BY MR. GISLESON:
 18 Q. But you agree that State Farm owes
 19 the Browns a duty, not the fact that you did
 20 or did not, in fact, do it, but that State
 21 Farm owes the Browns that duty to timely and
 22 fairly adjust their claim?
 23 MR. ZAUNBRECHER:
 24 Same objection. It is calling for
 25 a legal conclusion from a lay witness. What

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1 A. When we receive a claim, we try to
 2 handle it as quickly and expeditiously as we
 3 can, yes, sir.
 4 Q. And isn't it true that the duty to
 5 fairly and timely adjust the claim persists
 6 past the filing of a lawsuit against State
 7 Farm?
 8 MR. ZAUNBRECHER:
 9 I object to the form. Beyond the
 10 scope.
 11 Answer it if you can.
 12 THE WITNESS:
 13 I don't know that I understand the
 14 question.
 15 EXAMINATION BY MR. GISLESON:
 16 Q. Well, do you agree with me that
 17 State Farm does, in fact, have the duty to
 18 timely and fairly adjust the Browns' claim?
 19 MR. ZAUNBRECHER:
 20 Asked and answered, but go ahead
 21 again.
 22 THE WITNESS:
 23 When we receive the Browns' claim,
 24 we handled it as quickly and as
 25 expeditiously as we could under the

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1 duty State Farm will be determined in this
 2 case.
 3 If you can answer it based on your
 4 understanding of the question, please do so.
 5 THE WITNESS:
 6 We want to handle the Browns'
 7 claim, yes, sir.
 8 EXAMINATION BY MR. GISLESON:
 9 Q. So you have no understanding as to
 10 whether or not State Farm owes a duty to the
 11 Browns to timely and fairly adjust their
 12 claim?
 13 MR. ZAUNBRECHER:
 14 Just note a general continuing
 15 objection. Keep going.
 16 THE WITNESS:
 17 I don't understand your use of the
 18 terminology "duty." Did we inspect the
 19 Browns' claim? Yes, we did. Did we
 20 evaluate the Browns' claim? Yes, we did.
 21 Did we make payment based on that
 22 evaluation? Yes, we did.
 23 EXAMINATION BY MR. GISLESON:
 24 Q. So as you sit here today, you
 25 don't have an understanding of what it means

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1 to owe a duty to the insured?
 2 A. I believe that my -- my struggle
 3 with regards to that question is you're
 4 eliminating the conditions that we're
 5 working in during Hurricane Katrina and are
 6 going to bind me to some other definition of
 7 duty that doesn't really meet the definition
 8 of a Hurricane Katrina claim.
 9 Q. So whether you have a duty depends
 10 on the situation of the claim that's being
 11 adjusted?
 12 MR. ZAUNBRECHER:
 13 I object to the form.
 14 Go ahead.
 15 THE WITNESS:
 16 Post Hurricane Katrina, there was
 17 no access to the Browns' claim. Could you
 18 get there as quickly as I wanted to? No.
 19 EXAMINATION BY MR. GISLESON:
 20 Q. What is State Farm's position as
 21 to how quickly it needs to go about
 22 adjusting an insured's claim like the
 23 Browns?
 24 MR. ZAUNBRECHER:
 25 I object to the form of the

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1 THE WITNESS:
 2 If you're asking for a legal
 3 definition of proof of loss, I don't feel
 4 qualified to comment on what the legal
 5 definition of proof of loss is.
 6 EXAMINATION BY MR. GISLESON:
 7 Q. Have you ever given any testimony
 8 of what you understood a proof of loss to
 9 mean outside of what the insurance policy
 10 says?
 11 MR. ZAUNBRECHER:
 12 I object as beyond the scope of
 13 discovery.
 14 Don't answer that.
 15 MR. GISLESON:
 16 It goes straight towards his
 17 credibility. If there's another deposition
 18 out there that he testified and gave this
 19 exact testimony on, that's relevant to this
 20 case, and now he's saying I can't do it,
 21 then it definitely goes toward his
 22 credibility.
 23 MR. ZAUNBRECHER:
 24 You make a good point.
 25 Go ahead and answer if you can

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1 question.
 2 You can answer it if you
 3 understand it.
 4 THE WITNESS:
 5 State Farm's position is to handle
 6 the claim as quickly and expeditiously as we
 7 can under the circumstances surrounding the
 8 particular claim.
 9 EXAMINATION BY MR. GISLESON:
 10 Q. Does State Farm have any sort of
 11 policy, practice or procedure -- let's do
 12 this: Do you have an understanding of what
 13 a proof of loss is?
 14 A. Contained within the Brown
 15 claim -- I'm sorry, contained within the
 16 Brown policy is a reference to proof of
 17 loss, yes, I do.
 18 Q. Other than the reference to the
 19 proof of loss in the Brown claim, do you
 20 have any other independent understanding of
 21 what proof of loss means?
 22 MR. ZAUNBRECHER:
 23 He said the Brown policy.
 24 MR. GISLESON:
 25 Policy.

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1 answer the question.
 2 THE WITNESS:
 3 Have I been questioned on proof of
 4 losses in prior depositions? Yes.
 5 EXAMINATION BY MR. GISLESON:
 6 Q. Have you provided testimony as to
 7 what your understanding was of proof of loss
 8 in prior depositions?
 9 A. My understanding of proof of
 10 losses as defined within the policy, I've
 11 also referenced proof of loss as a document
 12 that I received in compliance with
 13 requirements associated with flood policies.
 14 Q. Have you ever testified as proof
 15 of loss being State Farm's understanding of
 16 what the claim is and the value of the
 17 claim?
 18 A. I don't recall using those words
 19 to establish a definition of proof of loss,
 20 no, sir.
 21 Q. Have you ever used or defined the
 22 term "proof of loss" outside of the context
 23 of what's written in the homeowners policy
 24 and referenced in the flood policy?
 25 MR. ZAUNBRECHER:

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1 Has he ever used the term or has
2 he ever defined it?
3 MR. GISLESON:
4 Both.
5 MR. ZAUNBRECHER:
6 Well, then I object to the
7 multiple-part question.
8 EXAMINATION BY MR. GISLESON:
9 Q. You can answer the question.
10 A. May I receive the question again?
11 (Whereupon, the requested
12 testimony was read by the Court Reporter)
13 "Q Have you ever used or defined
14 the term 'proof of loss' outside of the
15 context of what's written in the
16 homeowners policy and referenced in the
17 flood policy?"
18 MR. ZAUNBRECHER:
19 Please read my comment and
20 counsel's response about both.
21 (Whereupon, the requested
22 testimony was read by the Court Reporter)
23 "MR. ZAUNBRECHER:
24 Has he ever used the
25 term or has he ever defined it?"

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1 inspection by an adjuster could be
2 considered proof of loss?
3 MR. ZAUNBRECHER:
4 Again, I object to the form. If
5 you have some testimony you want to show him
6 in a certain context, reference a case? Is
7 that a direct quote?
8 Without further foundation, I
9 object to the form and direct the witness
10 not to answer that question.
11 If you lay a foundation and define
12 in quotations has he ever testified a quote,
13 he can certainly answer that.
14 EXAMINATION BY MR. GISLESON:
15 Q. When the adjuster in this case
16 inspected the Browns' property, was that
17 proof of loss?
18 A. When Dekievit inspected the
19 property, he was continuing with claim
20 handling.
21 Q. When the adjuster completed his
22 estimate and sent that estimate in to State
23 Farm and requested payment, was that proof
24 of loss?
25 MR. ZAUNBRECHER:

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1 "MR. GISLESON:
2 Both.
3 "MR. ZAUNBRECHER:
4 Well, then I object to
5 the multiple-part question."
6 MR. ZAUNBRECHER:
7 If you can answer, then please do
8 so.
9 THE WITNESS:
10 I do not recall providing any
11 other definition of proof of loss.
12 EXAMINATION BY MR. GISLESON:
13 Q. Could inspection by an adjuster be
14 considered proof of loss under the Browns'
15 policy?
16 MR. ZAUNBRECHER:
17 I object to the form.
18 Answer. Just inspection.
19 THE WITNESS:
20 Could be inspection -- inspection
21 on itself provide or be termed a proof of
22 loss under the definition under the policy?
23 I do not believe so, no.
24 EXAMINATION BY MR. GISLESON:
25 Q. Have you ever testified that the

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1 I object to the form.
2 Answer, if you can.
3 THE WITNESS:
4 If I am looking at the definition
5 of proof of loss within the policy, no.
6 EXAMINATION BY MR. GISLESON:
7 Q. Is that the only place State Farm
8 looks to to determine proof of loss of a
9 claim is what's written in the policy?
10 A. If the policy is in conflict with
11 legal terms, then the legal terms will
12 prevail. That's outlined within the policy.
13 Q. Are there any legal terms in the
14 State of Louisiana that define or concern
15 proof of loss that preempt any term of proof
16 of loss in the policy that you're aware of?
17 MR. ZAUNBRECHER:
18 I object to the form. Beyond the
19 scope. Calls for a legal conclusion.
20 Direct not to answer.
21 EXAMINATION BY MR. GISLESON:
22 Q. Does State Farm have a position
23 that the Browns ever provided State Farm
24 with satisfactory proof of loss?
25 A. I do not believe I received

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1 satisfactory proof of loss from the Browns.
 2 Q. Did State Farm, pursuant to its
 3 even adjustment at some point come across
 4 anything that could be considered
 5 satisfactory proof of loss?
 6 MR. ZAUNBRECHER:
 7 Same objection.
 8 Please answer.
 9 THE WITNESS:
 10 We proceeded with claim handling
 11 and made a payment. I believe we received
 12 the information that we felt we needed to
 13 establish our payment and our decision.
 14 Whether that meets the definition of proof
 15 of loss under legal definition, that's for
 16 you all to decide.
 17 EXAMINATION BY MR. GISLESON:
 18 Q. Has State Farm ever looked to
 19 Louisiana law to assist it in providing
 20 instruction to its adjusters concerning the
 21 timeliness of an adjustment?
 22 MR. ZAUNBRECHER:
 23 I object. Beyond the scope of
 24 this deposition. Beyond the course of the
 25 discovery order and instruct the witness not
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1 provided or that State Farm received
 2 satisfactory proof of loss of the Brown
 3 claim the date the adjuster inspected the
 4 property?
 5 A. On the date that the -- that
 6 Dekievit inspected the property, he was
 7 continuing with claim handling. I do not
 8 believe that that meets -- I do not believe
 9 that that is satisfactory proof of loss. He
 10 was evaluating his claim.
 11 Q. Isn't it true that State Farm
 12 received satisfactory proof of loss when the
 13 adjuster completed his report and submitted
 14 it for payment to State Farm?
 15 MR. ZAUNBRECHER:
 16 I object to the form.
 17 You can answer.
 18 THE WITNESS:
 19 Satisfactory proof of loss is a
 20 legal term of which I'm not qualified to
 21 respond to. During the handling of the
 22 claim, the adjuster performed their
 23 adjustment, and when he was able to get
 24 access to the house, he put his estimate
 25 together and recommended payment based on
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1 to answer.
 2 EXAMINATION BY MR. GISLESON:
 3 Q. Isn't it true that State Farm
 4 routinely provides instructions to its
 5 adjusters based upon its understanding of
 6 Louisiana law.
 7 MR. ZAUNBRECHER:
 8 Same objection. Same instruction.
 9 EXAMINATION BY MR. GISLESON:
 10 Q. Isn't it true under the policy and
 11 duty State Farm owes its insureds, it's
 12 required to provide that instruction to its
 13 adjusters when they adjust a claim in
 14 Louisiana?
 15 MR. ZAUNBRECHER:
 16 Same objection. Same instruction.
 17 EXAMINATION BY MR. GISLESON:
 18 Q. Isn't it true that Louisiana has a
 19 30-day requirement that a claim must be paid
 20 within 30 days of the insurance company
 21 receiving satisfactory proof of loss?
 22 MR. ZAUNBRECHER:
 23 Same objection. Same instruction.
 24 EXAMINATION BY MR. GISLESON:
 25 Q. Isn't it true that the Browns
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1 that estimate.
 2 EXAMINATION BY MR. GISLESON:
 3 Q. Is it State Farm's position that
 4 satisfactory proof of loss is always a legal
 5 of term?
 6 MR. ZAUNBRECHER:
 7 Same objection as before and
 8 direct not to answer.
 9 EXAMINATION BY MR. GISLESON:
 10 Q. Is it State Farm's position that
 11 you can't figure out what satisfactory proof
 12 of loss is without hiring an attorney?
 13 MR. ZAUNBRECHER:
 14 Same objection. Add an objection
 15 to the form of the question.
 16 Instruct not to answer.
 17 EXAMINATION BY MR. GISLESON:
 18 Q. At some point, State Farm paid the
 19 Browns some amount of money; right?
 20 A. There was a payment to the Browns,
 21 yes, sir.
 22 Q. Is it State Farm's position that
 23 they made the payment even though there was
 24 never a satisfactory proof of loss made by
 25 the insureds or discovered on behalf of
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1 State Farm?
 2 MR. ZAUNBRECHER:
 3 I object to the form.
 4 Answer if you can.
 5 THE WITNESS:
 6 The use of the terminology "proof
 7 of loss" in your question sounds to me like
 8 a legal term. We continued with claim
 9 handling. We estimated, we evaluated, we
 10 made payment based on that evaluation in
 11 compliance with our policy.
 12 EXAMINATION BY MR. GISLESON:
 13 Q. Was State Farm aware that it had a
 14 duty to timely adjust and pay the Browns'
 15 claim within 60 days of receiving
 16 satisfactory proof of loss?
 17 MR. ZAUNBRECHER:
 18 I object to the form.
 19 Answer it if you can.
 20 THE WITNESS:
 21 I do not believe that we received
 22 any document that would meet the definition
 23 of proof of loss as contained within the
 24 policy; however, we did make payment.
 25 EXAMINATION BY MR. GISLESON:
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1 proof of loss is defined as in that policy.
 2 MR. GISLESON:
 3 Before I forget, let me identify
 4 the March 2000 OG as Exhibit 5. I can get
 5 that exhibit from you so that I can put the
 6 sticker on it.
 7 THE WITNESS:
 8 Did you say 2005?
 9 MR. GISLESON:
 10 I don't think so. March of 2007
 11 as Exhibit 5.
 12 (Exhibit No. 5 marked for
 13 identification.).
 14 THE WITNESS:
 15 On page 13 of FP79552E, it
 16 outlines: "Submit to us within 60 days
 17 after the loss your signed sworn proof of
 18 loss which sets forth to the best of your
 19 knowledge and belief, the time and cause of
 20 loss, interests of the insured and all
 21 others on the property involved and all
 22 encumbrances on the property, other
 23 insurance which may cover the loss, change
 24 in title or occupancy of the property during
 25 the term of this policy, specifications of
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1 Q. What type of document, in your
 2 opinion, would satisfy or would qualify as
 3 satisfactory proof of loss?
 4 A. I referenced proof of loss as
 5 outlined within the policy and it's outlined
 6 within that policy. That's what would meet
 7 my definition.
 8 Q. As you sit here today, you don't
 9 have an understanding of what proof of loss
 10 means under Louisiana law?
 11 MR. ZAUNBRECHER:
 12 I object to the form. Same
 13 objection as before.
 14 Instruct him not to answer.
 15 EXAMINATION BY MR. GISLESON:
 16 Q. And as you sit here today, you
 17 don't have an understanding of what
 18 satisfactory proof of loss means in the
 19 context of the Browns' policy?
 20 MR. ZAUNBRECHER:
 21 I object to the form.
 22 You can answer if you can.
 23 THE WITNESS:
 24 If I could be provided with a copy
 25 of the Browns' policy, I could outline what
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1 any damage, building and detailed estimates
 2 for repair of the damage and inventory of
 3 damaged or stolen personal property
 4 described in 2C."
 5 2C states: "Prepare an inventory
 6 of damaged or stolen personal property
 7 showing detailed quantity, description, age,
 8 replacement cost and amount of loss.
 9 Attached to the inventory, all bills,
 10 receipts and related documents that
 11 substantiate the figures in the inventory.
 12 Receipts for additional living expenses
 13 incurred and records supporting the fair
 14 rental value loss and evidence or affidavits
 15 supporting a claim under the credit card
 16 bank fund transfer card, forgery and
 17 counterfeit money coverage stating the
 18 amount and cause of loss."
 19 EXAMINATION BY MR. GISLESON:
 20 Q. Is that the only proof of loss
 21 that State Farm considers applicable under
 22 the Browns' insurance policy?
 23 A. As previously stated, if the
 24 policy is in conflict with Louisiana law, on
 25 the Brown, then the Louisiana law policy
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1 will prevail.
 2 Q. Is the Browns' policy in conflict
 3 with Louisiana law?
 4 MR. ZAUNBRECHER:
 5 Same objection as before. He's
 6 not a lawyer. You're asking for a legal
 7 opinion. He's not going to answer that.
 8 EXAMINATION BY MR. GISLESON:
 9 Q. Isn't it true that the Browns'
 10 policy is in conflict with Louisiana law?
 11 MR. ZAUNBRECHER:
 12 Same objections.
 13 Instruction not to answer.
 14 EXAMINATION BY MR. GISLESON:
 15 Q. Isn't it true that State Farm was
 16 supposed to adjust the Browns' claims
 17 pursuant to the requirements of Louisiana
 18 law?
 19 MR. ZAUNBRECHER:
 20 Same objection. You're calling
 21 for a legal opinion of a lay witness.
 22 EXAMINATION BY MR. GISLESON:
 23 Q. Isn't it true that State Farm was
 24 supposed to adjust this claim in good faith
 25 as set forth in Louisiana statutes?

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1 MR. ZAUNBRECHER:
 2 Same objection.
 3 If you can understand as a
 4 layperson, please answer, not giving a legal
 5 opinion.
 6 THE WITNESS:
 7 We received notice of the claim
 8 from the Browns. Once we were able to gain
 9 access to the area that the Brown residence
 10 was at, we gained that access, we evaluated
 11 that claim, we made payment on that claim
 12 and we provided the Browns with any policy
 13 interpretations that may be applicable and
 14 we settled accordingly.
 15 EXAMINATION BY MR. GISLESON:
 16 Q. Are you aware of any time limit
 17 requirements that would apply to the Browns
 18 as set forth in Louisiana law?
 19 MR. ZAUNBRECHER:
 20 I object to the form.
 21 You can answer, if you can, as a
 22 layperson.
 23 THE WITNESS:
 24 My answer would be nothing but
 25 speculation.

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1 EXAMINATION BY MR. GISLESON:
 2 Q. Did State Farm provide any
 3 guidance to the Browns' adjuster by e-mail
 4 as to how to adjust the Browns' claim?
 5 A. I'm not aware of any e-mail
 6 between the adjuster and anyone from State
 7 Farm specific to the Browns' claim.
 8 Q. Did you look?
 9 A. Did I physically do a search? No,
 10 sir.
 11 Q. Is it possible to do a search?
 12 A. Not by me, no, sir.
 13 Q. Who can do the search?
 14 A. We have the ability of reviewing
 15 the e-mail. As for a name, I don't know.
 16 Q. If you wanted to find something
 17 that said I need to do a search to see if
 18 this adjuster for the Brown property ever
 19 sent or received e-mails relative to the
 20 Brown claim, who would you go ask how that
 21 gets done?
 22 A. With regard to the Browns' claim,
 23 I would put that request through my counsel.
 24 MR. ZAUNBRECHER:
 25 And, again --

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1 EXAMINATION BY MR. GISLESON:
 2 Q. Before suit got filed --
 3 MR. ZAUNBRECHER:
 4 I'm voicing an objection. I
 5 object to the line of questioning. All
 6 e-mails, as requested, have been produced.
 7 There was a privilege log that has not been
 8 contested for counsel communications, but
 9 e-mails have been produced in this case.
 10 EXAMINATION BY MR. GISLESON:
 11 Q. Has anyone told you that they did
 12 an e-mail search to find out if any of these
 13 e-mails exist?
 14 A. In my preparation for this
 15 deposition, I did not request information on
 16 e-mail searches, no, sir.
 17 Q. And, in fact, if there were
 18 e-mails going back and forth, they're not
 19 required to be placed in the claims file;
 20 are they?
 21 A. If there is an e-mail that is
 22 specific to the claims file that cannot be
 23 summarized elsewhere, then I think that
 24 e-mail would be in the claims file.
 25 Q. The e-mail should be in the claims

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1 file; right?
 2 A. During Hurricane Katrina, it was
 3 very, very difficult for that to happen, so
 4 it may be in that claims file.
 5 Q. As a matter of policy, practice
 6 and procedure, any e-mail related to the
 7 Browns' claim should be in the Browns'
 8 electronic claims file; right?
 9 A. I don't think I can use that
 10 terminology, no, sir.
 11 Q. So it's not a violation of State
 12 Farm policy if there's an e-mail related to
 13 the Brown claim that's not in the Browns'
 14 claim file?
 15 MR. ZAUNBRECHER:
 16 I object to the form.
 17 Answer if you can.
 18 THE WITNESS:
 19 Your use of the terminology
 20 related is very, very broad. If there is an
 21 e-mail from the agent to his underwriters
 22 with regards to the Brown policy, that could
 23 be deemed as related to the claim file. But
 24 I don't believe that that would be something
 25 that would be required to be in the claim
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1 file.
 2 Q. I'm talking about the adjuster or
 3 anyone with authority to pay on this claim.
 4 MR. ZAUNBRECHER:
 5 Is there a question?
 6 EXAMINATION BY MR. GISLESON:
 7 Q. Would it violate State Farm
 8 policy, practice and procedure, if there was
 9 an e-mail sent or received by the adjuster
 10 on that claim or anyone else that never made
 11 its way to the electronic claims file or the
 12 paper claims file of State Farm?
 13 MR. ZAUNBRECHER:
 14 I object to the form. It calls
 15 for speculation.
 16 Answer it if you can.
 17 THE WITNESS:
 18 I can't think of a situation
 19 contained within the Brown claim file where
 20 an e-mail would be used.
 21 EXAMINATION BY MR. GISLESON:
 22 Q. Before I forget, Mark Richter
 23 still is employed by State Farm; right?
 24 A. Mark Richter is still an employee
 25 of State Farm, yes, sir.
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1 Q. How does the Outlook program --
 2 well, for every single person who has
 3 touched the Brown claims file, before a suit
 4 was filed, you can actually type their name
 5 into the Outlook system and it gives you
 6 where they're located; right?
 7 A. Not necessarily, no.
 8 Q. What does it give you? What
 9 information does it provide to you?
 10 A. For every single person, it
 11 depends on if that's an external or external
 12 employee. The information that it will give
 13 me is their name, their sign-on ID, any
 14 other information is particular to that
 15 individual and the scope of their employ.
 16 Q. Including their supervisor?
 17 A. Including their supervisor.
 18 Q. Including the area of the country
 19 with which they work?
 20 A. I think you need to clarify what
 21 your question is. Because if they're a
 22 State Farm employee, then I can see the
 23 hierarchy as to who they report to. If they
 24 are an external employee, I would not see
 25 the hierarchy. So your use of the word
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1 "included" I think would show on the record
 2 could be interpreted either way.
 3 Q. I was talking about internal
 4 employees.
 5 A. I need your question again,
 6 Counsel.
 7 Q. If you type in the name of an
 8 internal employee who worked on the Browns'
 9 claim, the Outlook system will reflect their
 10 supervisor; correct?
 11 A. If I was to do that today, it
 12 would reflect -- their supervisor today.
 13 Q. Would it also reflect where
 14 they're located?
 15 A. It may reference where they're
 16 located, depending on whether they work out
 17 of their house or not.
 18 Q. And would it reflect their title
 19 within the firm, their job title?
 20 A. For an internal employee, it would
 21 reference their job title, yes, sir.
 22 Q. How would State Farm go about
 23 conducting a search for any e-mail related
 24 to the Brown claim sent before suit was
 25 filed?
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1 MR. ZAUNBRECHER:
2 I object to the form and as beyond
3 the scope of the court's discovery order.
4 But if you know, feel free to tell
5 counsel.
6 THE WITNESS:
7 I do not know.
8 EXAMINATION BY MR. GISLESON:
9 Q. Do you know who within State Farm
10 would know?
11 A. I do not know.
12 Q. And is it fair to say you don't
13 know if that was ever done in this case?
14 A. In preparation for this testimony,
15 I did not ask if there was a review of
16 e-mail traffic.
17 Q. I would like to direct your
18 attention to this document. Can you
19 identify that?
20 A. Do you want to number this
21 document now?
22 (Exhibit No. 6 marked for
23 identification.)
24 EXAMINATION BY MR. GISLESON:
25 Q. I'm going to identify it as

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1 Exhibit 6, but what I handed you is Bates
2 stamped 576 through 578.
3 A. The document that you placed
4 before me is entitled wind and water
5 claim-handling protocol.
6 Q. Have you ever seen it before?
7 A. Yes, I have seen this document
8 before.
9 Q. Okay. When was the first time you
10 saw this document?
11 A. The first time I saw this document
12 was on or around September 13th, 2005.
13 Q. And who -- well, would this
14 document apply at all to the Browns' claim?
15 A. There are portions contained
16 within this document that could be given a
17 casual relationship between this document,
18 yes.
19 Q. Which part would, in your opinion,
20 would apply to the Brown claim?
21 A. The damage caused by windstorm on
22 Page 577, damage to separate portions with
23 distinguishable wind or excluded water, the
24 inclusion of policy wording, losses not
25 insured to, which is midway down that page.

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1 Damage caused by floodwaters with available
2 flood policy may also apply.
3 Q. Is that everything?
4 A. I believe so, yes, sir.
5 Q. Okay. So who wrote this document?
6 A. This document came to us from
7 property and casualty claim consulting
8 services.
9 Q. What is that?
10 A. P and C claims which is the
11 acronym that I would use for property and
12 casualty claim consulting services is a
13 department within State Farm that consults
14 with claims on the handling of claims.
15 Q. Where are they located?
16 A. P and C claims is located within
17 Bloomington -- within the offices located in
18 Bloomington, Illinois.
19 Q. Do you have a name of an actual
20 person who wrote this or contributed to
21 writing this?
22 A. This document is the result of
23 committee work. There is no one author to
24 this document.
25 Q. Who was on the committee?

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1 A. I do not know the names of all the
2 people involved in the committee so I could
3 not answer that question.
4 Q. Do you know the name of anybody
5 involved on the committee?
6 MR. ZAUNBRECHER:
7 I'm just going to enter a
8 continuing objection as beyond the scope of
9 the handling of the Browns' claim. Again,
10 I'm allowing some leeway and some foundation
11 and will continue to do so.
12 So if you know, go ahead and
13 answer, but just note my objection for the
14 record. Thank you.
15 THE WITNESS:
16 I believe one of the people
17 involved in the creation of this document
18 was a consultant, claims consultant, Mike
19 Tucker.
20 EXAMINATION BY MR. GISLESON:
21 Q. Who is Mike Tucker?
22 A. A claims consultant.
23 Q. Is that his title?
24 A. I believe that is his title, yes,
25 sir.

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1 Q. Do you know where he's located?
 2 A. Mike Tucker resides in
 3 Bloomington, Illinois.
 4 Q. What makes you think that Mike
 5 Tucker was to committee that drafted this
 6 memo?
 7 A. Mike Tucker is the consultant for
 8 Louisiana during the time of Hurricane
 9 Katrina.
 10 Q. Who else was on the committee who
 11 helped draft this memo?
 12 A. As previously stated, I do not
 13 know who was on the committee associated
 14 with the generation of this draft. It came
 15 to us from property and casualty claims
 16 consulting. It is my understanding that
 17 Mike Tucker was a contributor to the
 18 creation of this document.
 19 Q. Okay. As you sit here today, do
 20 you remember the names of anyone else who
 21 helped contribute to create this document?
 22 A. No, I do not.
 23 Q. How was this document circulated?
 24 A. We initially received this
 25 document from our section manager in paper
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1 format as well as in an e-mail format.
 2 Q. Would it have been sent by e-mail
 3 to the adjuster working on the Browns'
 4 claim?
 5 A. It's possible it could have. I do
 6 not know.
 7 Q. Were any other written materials
 8 concerning the adjustment of Katrina claims
 9 in Louisiana sent to the adjuster who
 10 adjusted the Browns' claim?
 11 A. I do not know if there was any
 12 other written material outlining practices
 13 or procedures that was sent to the adjuster
 14 that handled the Brown claim.
 15 Q. If I wanted to know that
 16 information, who would I ask?
 17 A. As previously discussed, I do not
 18 know who I would reference to determine the
 19 e-mail traffic received by that adjuster.
 20 Q. It makes sense to you though to
 21 ask the adjuster himself; right?
 22 MR. ZAUNBRECHER:
 23 I object to the form. If there is
 24 a request for documents, it should go
 25 through counsel.
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1 EXAMINATION BY MR. GISLESON:
 2 Q. Doesn't it make sense to you that
 3 if I want to find out what e-mails the
 4 adjuster received concerning how to adjust
 5 Katrina claims, I should ask that particular
 6 adjuster?
 7 MR. ZAUNBRECHER:
 8 I object to the form of the
 9 question.
 10 Answer it if you can.
 11 I'm not sure what you mean by
 12 makes sense, but answer it if you can.
 13 THE WITNESS:
 14 We're four years from this event.
 15 I don't know if that would be a good source
 16 or not.
 17 EXAMINATION BY MR. GISLESON:
 18 Q. What's the name of the State Farm
 19 adjuster who inspected the Browns' premises
 20 again? I don't have it on me. Do you know?
 21 A. The adjuster who performed the
 22 work, the initial inspection was independent
 23 and his last name is Dekievit.
 24 Q. I will never be able to pronounce
 25 that or spell it.
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1 MR. GISLESON:
 2 Can we get --
 3 MR. ZAUNBRECHER:
 4 As long as we get it consistent.
 5 As long as we call it -- I think Dekievit is
 6 the -- D-E-K-I-E-W-I-T.
 7 MR. GISLESON:
 8 According to our activity log,
 9 it's D-E-K-I-E-V-I-T.
 10 MR. ZAUNBRECHER:
 11 It's in as W some places, too. I
 12 can tell you that.
 13 EXAMINATION BY MR. GISLESON:
 14 Q. Dekievit was not a State Farm
 15 adjuster?
 16 A. There was a question by the court
 17 reporter which one we're going to agree
 18 with.
 19 MR. GISLESON:
 20 I'm sorry, I can do Dekievit, now
 21 that I've written it down and it's in front
 22 of me.
 23 (Whereupon, an off-the-record
 24 discussion was held.)
 25 EXAMINATION BY MR. GISLESON:
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1 Q. At the time, Mr. Dekievit adjusted
2 the Browns' claim, was he a State Farm
3 employee?
4 A. At the time he adjusted the claim
5 he was not a State Farm employee, no, sir.
6 Q. Is he currently a State Farm
7 employee?
8 A. He is not a State Farm employee,
9 no.
10 Q. Who did Mr. Dekievit work for at
11 the time he adjusted the Browns' claim?
12 A. The company that he worked for was
13 David Morse & Associates, Inc.
14 Q. Do you know where David Morse &
15 Associates, Inc. is located?
16 A. I have a mailing address of P.O.
17 Box 26004, Glendale, California 91222-6004.
18 Q. Have you made an attempt to
19 contact Mr. Dekievit?
20 A. I personally have made no attempt
21 to contact Mr. Dekievit.
22 Q. Are you aware of whether any other
23 State Farm employee has made any effort to
24 contact Mr. Dekievit?
25 A. I do not know the answer to that

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1 cases?
2 A. The adjustment of the -- I will
3 just double-check -- the adjustment of the
4 flood claim was done over the phone.
5 Q. What do you mean the adjustment of
6 the flood was done over the phone?
7 A. Review of the facts of loss was
8 done over the phone and based on those facts
9 of loss plus information from -- a review of
10 those facts with the policyholder resulted
11 in an issuance of \$8,200 for building and
12 \$2,800 for contents.
13 Q. So how was State Farm able to
14 adjust the Browns' flood claim over the
15 phone?
16 A. During Hurricane Katrina, the NFIP
17 had received a number of claims and the
18 handling of those claims, we received
19 authority from the NFIP to streamline the
20 handling of those claims in an effort to get
21 money into the policyholders's hands
22 quickly.
23 Q. What were the procedures that the
24 NFIP said you don't need to worry about
25 because of Katrina?

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1 question.
2 MR. GISLESON:
3 I'm going to attach the
4 wind/water-handling protocol dated
5 September 13th, 2005 as Exhibit 6.
6 EXAMINATION BY MR. GISLESON:
7 Q. Do you have a copy in front of
8 you?
9 A. (Handing).
10 Q. All right.
11 MR. ZAUNBRECHER:
12 Can we go off the record just a
13 second?
14 THE VIDEOGRAPHER:
15 Off the record. It's 12:21.
16 (Whereupon, a recess was taken for
17 lunch.)
18 THE VIDEOGRAPHER:
19 Back on the record. It's 1:13.
20 EXAMINATION BY MR. GISLESON:
21 Q. Mr. Lapinskie, I want to sort of
22 start talking about the flood adjustment in
23 the Brown case.
24 What is your understanding of how
25 the flood adjustment proceeded in the Brown

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1 MR. ZAUNBRECHER:
2 I object on the form.
3 You can answer it.
4 THE WITNESS:
5 It's not that they said we didn't
6 need to worry about something, they said
7 what we could do was adjust certain areas
8 based on satellite imagery and with
9 verification of certain policy information
10 over the phone.
11 EXAMINATION BY MR. GISLESON:
12 Q. So State Farm then was able to
13 perform the entire flood adjustment process
14 for the Brown property without sending
15 anyone out there to actually inspect it; is
16 that correct?
17 A. The payment for the flood policy
18 of the Browns, the flood claim of the Browns
19 was done over the phone without a site
20 inspection, yes, sir.
21 Q. Not only the payment, but just
22 about everything else that had to do with
23 the flood claim was done over the phone;
24 right?
25 MR. ZAUNBRECHER:

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1 I object to the form.
 2 Answer it if you can.
 3 THE WITNESS:
 4 The settlement of the flood claim
 5 was done without a site inspection.
 6 EXAMINATION BY MR. GISLESON:
 7 Q. But the homeowners claim did have
 8 a site inspection?
 9 A. The homeowners claim was settled
 10 based on the site inspection, yes, sir.
 11 Q. Why did you do a site inspection
 12 of the homeowners claim, but adjust the
 13 flood claim over the phone?
 14 A. 10/10/05, log note 8, Brown 0039,
 15 CR attempted to complete an estimate for the
 16 wind damages over the phone -- that's
 17 implied, not listed in the actual activity
 18 log -- but insured insisted on a field
 19 inspection. Insured believes the entire
 20 roof needs replacement, gutters, exteriors,
 21 doors, so the file was moved to the field
 22 war handling.
 23 So it was handled with a field
 24 inspection at the insured's request on
 25 10/10/05.

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1 do a homeowners claim over the phone and in
 2 what situation did they say, no, we need to
 3 send somebody out there?
 4 A. In situations such as the Browns,
 5 we will attempt -- we were attempting to try
 6 and settle this one over the phone.
 7 Q. Where can you tell that you were
 8 trying to settle it over the phone
 9 initially?
 10 A. Log note 8 on Brown 0039.
 11 Q. Could you read what part of log
 12 note No. 8?
 13 MR. ZAUNBRECHER:
 14 He already has. He just read it.
 15 Read it again.
 16 THE WITNESS:
 17 Received call from Vincent Brown.
 18 See companion flood claim, 18-R 355-619.
 19 Discussed damages resulting from wind. CR
 20 attempted to complete estimate for wind
 21 damages, but insured insisted on field
 22 inspection. Insured believes the entire
 23 roof needs replacement, gutters, exterior
 24 doors. Moved claim to field for handling.
 25 EXAMINATION BY MR. GISLESON:

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1 Q. So if the insured wouldn't have
 2 requested a field inspection, State Farm
 3 wouldn't have done them?
 4 A. There's a possibility that this
 5 could have been handled over the phone, yes,
 6 sir.
 7 Q. Under what situations does State
 8 Farm do a homeowners adjustment over the
 9 phone without sending anyone out to inspect
 10 the property?
 11 MR. ZAUNBRECHER:
 12 I object to the form. Beyond the
 13 scope of the discovery order.
 14 If you can answer, please do so.
 15 THE WITNESS:
 16 In a situation such as the Browns
 17 in this claim, we attempted to handle over
 18 the phone. They asked for a field
 19 inspection. Might this have been settled
 20 over the phone? I don't know. They
 21 requested a field inspection.
 22 EXAMINATION BY MR. GISLESON:
 23 Q. The question was a little bit more
 24 than that. The question was: Under what
 25 situations does State Farm say, oh, we can

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1 Q. So is it fair to say then that
 2 before October 10th, 2005, State Farm had
 3 not assigned a field inspector to inspect or
 4 field adjuster to inspect the Browns'
 5 property?
 6 A. I don't believe that there was a
 7 field adjuster assigned prior to 10/10/05.
 8 Q. You said there was or was not?
 9 A. I said I do not believe that there
 10 was, no, sir.
 11 Q. What was the date that the claim
 12 was made or received by State Farm?
 13 A. On the 31st of August, there is an
 14 entry from our claims response center or
 15 call response center: Insured is currently
 16 staying at her sister's home -- I'm sorry,
 17 at her sister's home in Tyler. So on or
 18 around August 31st of 2005.
 19 Q. So on August 31st, 2005, State
 20 Farm was noticed of the Browns' claim;
 21 correct?
 22 A. I'm sorry, I didn't hear the
 23 question.
 24 Q. Sure. On or about August 31st,
 25 2005, State Farm was put on notice of the

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1 Browns' claim; correct?
 2 A. So August 31, 2005, we received --
 3 there was a claim filed by the Browns, yes.
 4 Q. And on October 10th, 2005, State
 5 Farm for the first time assigned a field
 6 adjuster to inspect the Browns' premises;
 7 right?
 8 A. On October 10th, 2005, State Farm
 9 at the insured's request moved the file to
 10 the field for a field inspection.
 11 Q. For the first time?
 12 A. That was the first time that the
 13 insured insisted on a field inspection, yes,
 14 sir.
 15 Q. When was -- when did the
 16 inspection actually take place?
 17 A. Photos of the Brown loss are dated
 18 11/15/2005 at 2:00 p.m.
 19 Q. And do we know -- how do you
 20 know -- how do you know the date on the
 21 photographs is the date of the inspection?
 22 A. That's the date that's on the
 23 photos.
 24 Q. Is there anywhere else, any other
 25 document other than the time-stamped
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1 top right-hand corner which states, John, I
 2 do not see anything that states his full
 3 name.
 4 EXAMINATION BY MR. GISLESON:
 5 Q. Was this document scanned into the
 6 electronic claims file or is this part of
 7 the paper file?
 8 A. This would be part of the paper
 9 file. As to whether it was scanned into the
 10 images, I do not know.
 11 Q. Can you read Mr. Dekievit's
 12 handwriting as to the one, two, three, four,
 13 five numbering?
 14 A. I believe so, yes.
 15 Q. Could you please read 1 through 5
 16 for me?
 17 A. One: 17 shingles missing/damaged;
 18 two, 82 feet five-inch aluminum seamless
 19 gutter; three, reset one soffit vent; four,
 20 six panel exterior front door and frame
 21 damaged for access.
 22 Q. Is there anything written next to
 23 No. 5?
 24 A. No. 5 is a notation of an area, 10
 25 foot 2 by 20 foot 2.
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1 photographs that would show you when the
 2 inspection took place?
 3 A. Brown 0027 up at the top
 4 right-hand corner, inspected 11/15/05.
 5 Q. So what is Brown 0027?
 6 A. Brown 0027 is Dekievit's scope
 7 notes, rough notes, based on his inspection
 8 performed on 11/15/05.
 9 Q. How do you know those are
 10 Dekievit's notes?
 11 A. The file was assigned to Dekievit
 12 at this time. He has log notes outlining
 13 that he inspected it. There is no reason
 14 not to believe that those are Dekievit's
 15 notes.
 16 Q. What's Dekievit's first name?
 17 A. Johnathan.
 18 Q. Does his name appear anywhere on
 19 this document?
 20 MR. ZAUNBRECHER:
 21 You're talking about 0026?
 22 MR. GISLESON:
 23 Yes.
 24 THE WITNESS:
 25 Other than the reference of the
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1 Q. What does that reference?
 2 A. I do not know.
 3 Q. There appear to be some notations
 4 on the right-hand of the side -- right-hand
 5 side of the page. Do you see that?
 6 A. Yes, I do.
 7 Q. Can you read those?
 8 A. Three hundred to \$400 -- \$300 for
 9 trip, looks like \$400 for trip, Hotel
 10 Renaissance in Dallas, \$150 per day, five
 11 days total. \$750. Food for our family of
 12 four, \$60 a day equals three hundred.
 13 Jennifer Brown, Vincent Brown, Eldridge
 14 Simms, Ashante Simms. Gas expense looks
 15 like three hundred, then a one added to it,
 16 so thirteen hundred. Food in freezer, six
 17 hundred. Total nineteen hundred. Hotel
 18 fee, seven fifty. Hotel food -- actually
 19 that twenty-six fifty is the addition of the
 20 nineteen and the seven fifty. \$300, that
 21 would be the trip cost, twenty-nine fifty.
 22 Q. What trip cost for that \$300
 23 amount?
 24 A. That trip cost would be the
 25 expenses associated with traveling from
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1 here, Louisiana to the hotel that they were
 2 residing at in Dallas.
 3 Q. What is the date of the Xactimate
 4 report that was generated?
 5 A. The Xactimate report was printed
 6 on November 21st, 2005.
 7 Q. Could you direct me to a Bates
 8 stamp number, please?
 9 A. Brown 0017.
 10 Q. And what's the date you're
 11 referring to, where is it located on that
 12 piece of paper?
 13 A. It would be at the top center of
 14 the page, 11/21/2005.
 15 Q. Okay. Can I direct your attention
 16 to the price list on the right-hand corner.
 17 (Whereupon, an off-the-record
 18 discussion was held.)
 19 EXAMINATION BY MR. GISLESON:
 20 Q. As to the price list, can you read
 21 that for me?
 22 A. LANO5F5D3.
 23 Q. And what does that stand for?
 24 A. Louisiana New Orleans, the version
 25 of Xactimate, it's the third quarter -- I'm
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1 sorry, fourth quarter, third version.
 2 Q. What does the five stand for?
 3 MR. ZAUNBRECHER:
 4 There are two fives.
 5 EXAMINATION BY MR. GISLESON:
 6 Q. The first five stand for?
 7 A. I believe that's the date, 2005.
 8 Q. And what does the F stand for?
 9 A. Going by memory, I believe the 5F
 10 or F5 references the version of Xactimate
 11 used.
 12 Q. What do you mean the version used?
 13 A. Xactimate issues new versions as
 14 they do new updates. This is the new
 15 version.
 16 Q. Meaning this is the update,
 17 updated version within what?
 18 A. It's like Windows '95; Windows
 19 '97.
 20 Q. So then explain to me what the 5F
 21 or the F5 means then? You said it's a
 22 version, but which version? Does the F5
 23 tell you which version it is?
 24 A. As we sit here today, I do not
 25 recall how those letters relate to a
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1 version.
 2 Q. Do you know what the D or the
 3 three means?
 4 A. D is the fourth quarter, three is
 5 the third version.
 6 Q. Do you have any reason to believe
 7 that Mr. Richter would know the full meaning
 8 of the interpretation of this price list?
 9 A. I believe Mr. Richter could give
 10 me that information, yes. I believe I knew
 11 it at one time as well. I just don't recall
 12 it at this time.
 13 Q. Could you read to me what is
 14 listed underneath the price list?
 15 A. Restoration/service/remodel with
 16 service charges broken out.
 17 Q. What are service charges?
 18 A. The base service charges are
 19 additional allowances contained within the
 20 estimate for trip time set up.
 21 Q. Why were they factored out for the
 22 Brown estimate?
 23 A. In the Brown estimate, you will
 24 note that Page 2 has the unit cost based on
 25 the quantities being estimated for. On
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1 Page 3, you will see an adjustment for base
 2 service charges. So they're just broken out
 3 to show how that price is arrived at.
 4 Q. But they are, in fact, included in
 5 the final number?
 6 A. The base service charges are
 7 included in the settlement process, yes,
 8 sir.
 9 Q. So whether it's broken in or
 10 factored -- whether it's broken out or
 11 factored in doesn't matter because the end
 12 number is going to be the same regardless.
 13 It's just a different format for the
 14 Xactimate?
 15 A. I don't know where you got that
 16 definition from, but that's not anything
 17 near to what my response was.
 18 Q. So you testified on the Brown
 19 estimate the base service charges are broken
 20 out; right?
 21 A. Yes, the base service charges are
 22 broken out on the Brown estimate.
 23 Q. And so what that means is that
 24 there's simply an additional line item that
 25 identifies what the base service charges
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1 are, but that they're still factored in and
 2 applied to the ultimate amount that was paid
 3 to the Browns; right?
 4 A. The base service charges are shown
 5 as an additional line item and those
 6 additional line items are added together
 7 with the other line items to come to the
 8 line item total as seen on Brown
 9 00017226578.
 10 Q. So the Browns were paid for the
 11 base service charges?
 12 A. Included in the estimate is the
 13 base service charges. Those base service
 14 charges were included in the settlement,
 15 yes.
 16 Q. If I can direct your attention two
 17 lines down on Brown 17 where it says date
 18 inspected. What date is right there?
 19 A. The date inspected shows
 20 10/10/2005.
 21 Q. But that can't be right; right?
 22 A. I can't see how that date
 23 inspected would be the right date, no.
 24 Q. Any idea why somebody -- why the
 25 adjuster put the wrong date down as the date
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1 inspected on his report?
 2 A. 10/10/2005 is the same date of
 3 which this claim was assigned to
 4 Mr. Dekievit. I'm assuming that -- anything
 5 else would be an assumption.
 6 Q. So it would just be best to ask
 7 Mr. Dekievit?
 8 A. That's correct.
 9 Q. I note that there wasn't any
 10 depreciation taken out of this estimate; is
 11 that correct?
 12 A. In the Brown estimate, there is no
 13 deduction for depreciation, that's correct.
 14 Q. Why is there no deduction for
 15 depreciation?
 16 A. The Browns' policy is endorsed
 17 with a -- has an endorsement attached to it
 18 that allowed for replacement cost benefits
 19 to be paid up front.
 20 Q. What's the name of that
 21 endorsement? I think you have the policy to
 22 your left.
 23 A. Are we going to mark the policy?
 24 Q. Yeah. I just hadn't gotten to the
 25 line of questioning, so I was going to wait
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1 until I got to that before I marked it.
 2 A. Loss settlement endorsement
 3 FE5273.
 4 Q. And what was the date that the
 5 Browns were paid pursuant to the 11/15/05
 6 inspection?
 7 A. A draft was generated on
 8 December 12th, 2005, two drafts.
 9 Q. In what amounts?
 10 A. One draft was in the amount of
 11 \$1,868.16; the second draft was in the
 12 amount of \$2,370.12.
 13 Q. And who approved that payment?
 14 MR. ZAUNBRECHER:
 15 I'm sorry, I didn't hear the tail
 16 end of that question.
 17 MR. GISLESON:
 18 Who approved the payments?
 19 MR. ZAUNBRECHER:
 20 Okay.
 21 THE WITNESS:
 22 On 12/9/05, Carrie Demane stated
 23 it was -- this is on Brown 0038, log note
 24 14, stated it was okay to pay based on the
 25 adjustments statement of loss. In the
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1 activities log, it says SOL.
 2 EXAMINATION BY MR. GISLESON:
 3 Q. Can you spell that person's name?
 4 A. D-E-M-A-N-E, first name, Carrie,
 5 C-A-R-R-I-E.
 6 Q. Did the adjuster have any
 7 authority to pay this claim?
 8 MR. ZAUNBRECHER:
 9 I just object to the form of the
 10 question. I'm not sure what you mean.
 11 You mean write a check on the
 12 spot? I'm not sure what you mean.
 13 If you understand the question, go
 14 ahead and answer it, sir.
 15 THE WITNESS:
 16 Mr. Dekievit chose to submit the
 17 estimate to Carrie Demane for approval.
 18 Carrie approved that. I don't know whether
 19 it was within or not within his authority
 20 levels.
 21 EXAMINATION BY MR. GISLESON:
 22 Q. Isn't it true that since
 23 Mr. Dekievit was not a State Farm adjuster,
 24 he actually had no settlement authority;
 25 right?
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1 A. That would be a false statement.
2 Q. Okay. Why is that?
3 A. Independent adjusters were given
4 file authority to handle claims out in the
5 field, but they were not forced to handle
6 claims out in field. If they chose to
7 discuss a claim further, they had that
8 ability.
9 Q. So as you sit here today, you
10 don't know Mr. Dekievit had settlement
11 authority or not have settlement authority?
12 MR. ZAUNBRECHER:
13 You mean within this amount?
14 MR. GISLESON:
15 For this claim.
16 MR. ZAUNBRECHER:
17 Okay.
18 THE WITNESS:
19 As I sit here today, I know that
20 Mr. Dekievit sent the claim in to Carrie for
21 approval to pay.
22 EXAMINATION BY MR. GISLESON:
23 Q. Does that tell you he didn't have
24 authority? Does that tell you he did have
25 authority, but chose not to use it?

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1 A. It tells me neither.
2 Q. So you don't know if Mr. Dekievit
3 had any settlement authority whatsoever?
4 A. I do not know what his authority
5 levels were.
6 Q. Or if he had any at all?
7 A. I do not know what his authority
8 levels were.
9 Q. Which would include the fact that
10 he might not have had any settlement
11 authority?
12 A. I would find that rather unusual,
13 but I would have to entertain your response,
14 yes.
15 Q. Do you know anything about
16 Mr. Dekievit?
17 MR. ZAUNBRECHER:
18 I object to the form.
19 Go ahead.
20 EXAMINATION BY MR. GISLESON:
21 Q. Do you know whether Mr. Dekievit
22 is a state certified contractor in
23 Louisiana?
24 A. I do not know.
25 Q. Do you know whether Mr. Dekievit

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1 has any contracting experience whatsoever?
2 A. I do not know.
3 Q. Do you know whether Mr. Dekievit
4 has any roofing experience whatsoever?
5 A. I do not know.
6 Q. Do you know whether Mr. Dekievit
7 had any adjusting experience before he went
8 out and adjusted the Browns' claim?
9 MR. ZAUNBRECHER:
10 I object to the form. I'm not
11 sure what you mean by adjusting experience.
12 Go ahead and answer if you know.
13 THE WITNESS:
14 I don't know what adjusting he did
15 prior to seeing the Brown claim, no, sir.
16 EXAMINATION BY MR. GISLESON:
17 Q. If you wanted to find out if he
18 had any experience or find out about his
19 background, what would you do?
20 A. One of the places I may go to find
21 out further information about Mr. Dekievit's
22 background is with his employer.
23 Q. His employer was David Morse &
24 Associates; right?
25 A. David Morse & Associates was his

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1 employer at that time, yes, sir.
2 Q. You?
3 MR. ZAUNBRECHER:
4 Soren, you want to take two
5 minutes?
6 MR. GISLESON:
7 Sure.
8 THE VIDEOGRAPHER:
9 We're off the record at 1:43.
10 (Whereupon, a brief recess was
11 taken.)
12 THE VIDEOGRAPHER:
13 We're back on the record. It's
14 1:49.
15 EXAMINATION BY MR. GISLESON:
16 Q. Mr. Lapinskie, I want to go
17 through some documents with you. The
18 question is going to be pretty standard, but
19 I just need you to identify them, where
20 they're found on your system.
21 But I guess before I do that, I
22 need to ask are the Browns' flood documents
23 and flood claim file maintained separately
24 from the homeowners claim file?
25 A. The flood claim is a separate

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1 claim with a separate claim number and the
 2 documents for the flood claim are separate
 3 from the homeowners claim.
 4 Q. Are they in the same system that
 5 we discussed earlier?
 6 A. The claim itself is both
 7 electronic and paper. CSR is where the
 8 electronic copy would be found.
 9 Q. Is the format, is the Browns'
 10 flood claim formatted the same in the
 11 electronic format within the CSR database as
 12 the homeowners claims file?
 13 A. Taking a broad -- broad
 14 interpretation of formatting, yes. The
 15 flood claim itself has additional items that
 16 we're required to report on for the NFIP, so
 17 would it look different within CSR? Yes,
 18 because it's a flood policy versus a
 19 homeowners policy.
 20 Q. At some point you extracted
 21 through -- the flood claim information from
 22 the Browns and you submitted it pursuant to
 23 reporting requirements to the NFIP; correct?
 24 A. There is -- the entire flood claim
 25 is available to the NFIP for review.

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1 properly?
 2 A. Yes, you did.
 3 Q. Do you have any idea what that
 4 refers to?
 5 A. No, I do not.
 6 Q. What about in the bottom left-hand
 7 corner, do you see where it reads source:
 8 Echo agent.
 9 A. Yes, I do.
 10 Q. What does Echo mean; do you know?
 11 A. Echo would be the system that the
 12 agent has.
 13 Q. Are you able to make any kind of
 14 conclusion that these documents came from
 15 State Farm concerning Bob Nowlin's file or
 16 whether they came from Bob Nowlin?
 17 A. As I'm not familiar with this
 18 document, I'm not familiar with the Echo
 19 system that the agents use, I can make no
 20 conclusion.
 21 Q. Does State Farm use the Echo
 22 system?
 23 A. The Echo system is used by State
 24 Farm agents.
 25 Q. Obviously State Farm has got to

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1 Q. But you're still required to
 2 report, at least in summary fashion, the
 3 Browns' claim to the NFIP?
 4 A. The Browns' claim is reported to
 5 the NFIP, yes.
 6 Q. I'm going to use what I have in
 7 front of me because it's probably in a
 8 different order, but I would also like to
 9 note that when the flood claim was provided
 10 to me, it wasn't Bates stamped, although the
 11 homeowners claim file was, so that's another
 12 reason I do it this way.
 13 If you can, identify that
 14 document.
 15 A. I do not recall seeing this
 16 document. So, no, I can't.
 17 Q. Does this document look like
 18 something that came from State Farm's
 19 system?
 20 A. As this is a document I'm not
 21 familiar with, I cannot provide you with
 22 that information.
 23 Q. I direct your attention to the top
 24 left-hand corner of the document. It says
 25 car index: 22RQ-20352V98. Did I read that

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1 use a system that's compatible with Echo in
 2 order to communicate with the State Farm
 3 agent's systems; right?
 4 A. I believe the two systems talk to
 5 each other, yes, sir.
 6 Q. Have you ever used the Echo
 7 system?
 8 A. No, I have not. I'm taking a look
 9 at this document that was put before me and
 10 I notice an effective date of 5/23/07 and
 11 5/23/07 as a receive date, a written date of
 12 5/22/07 and a time of 1:11P. I'm struggling
 13 with what this has to do with the flood
 14 claim.
 15 Is this truly a document that was
 16 submitted to us? I'm struggling with a lot
 17 about this, Counsel. This is not Bates
 18 stamped. You're asking me to identify a
 19 document that I do not believe was submitted
 20 to us through counsel in compliance with
 21 any -- anything. I would like to know the
 22 source of this document.
 23 Q. Sure. The source of this document
 24 is defense counsel.
 25 MR. ZAUNBRECHER:

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1 I would think the entire
2 underwriting file, flood and homeowners came
3 to you and it was not our practice to Bates
4 stamp underwriting files and that's where
5 this is from.
6 MR. GISLESON:
7 Okay.
8 MR. ZAUNBRECHER:
9 It didn't come from the flood
10 claims file.
11 MR. GISLESON:
12 It came from your attorney.
13 MR. ZAUNBRECHER:
14 It came from the underwriting file
15 produced in response to your discovery
16 request.
17 MR. GISLESON:
18 Okay.
19 EXAMINATION BY MR. GISLESON:
20 Q. So does that assist you at all in
21 identifying that record anymore? That
22 document anymore?
23 MR. ZAUNBRECHER:
24 I have to say, that is an
25 assumption on my part.

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1 MR. GISLESON:
2 That's fine.
3 I will identify it as Exhibit 7,
4 so that at least we know what we're talking
5 about. Could you hand that to me?
6 THE WITNESS:
7 (Handing)
8 (Exhibit No. 7 marked for
9 identification.)
10 MR. GISLESON:
11 I think you're right, this is
12 probably all underwriting.
13 MR. ZAUNBRECHER:
14 It is all underwriting.
15 EXAMINATION BY MR. GISLESON:
16 Q. Is it fair to assume that your
17 answers to your ability to identify this
18 document would be the same as your answer to
19 Exhibit 7?
20 A. This is not part of a flood claim
21 file.
22 Q. Okay. Are you able to identify
23 that document?
24 A. No, sir, I am not.
25 Q. Is the underwriting information

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1 maintained by State Farm in the Echo
2 database of the Echo system?
3 A. I'm not familiar with the
4 underwriting information.
5 MR. GISLESON:
6 I'm going to identify that
7 document as Exhibit 8.
8 (Exhibit No. 8 marked for
9 identification.)
10 EXAMINATION BY MR. GISLESON:
11 Q. Okay, do you know what these
12 documents are, these 26 pages?
13 A. I'm not familiar with these
14 documents.
15 Q. Do you know what format they're
16 in?
17 A. No, sir. I'm not familiar with
18 these documents.
19 Q. Do you know what Necho entry
20 means?
21 A. I'm not familiar with the Necho
22 system.
23 Q. Necho is another system?
24 A. Necho and Echo, I believe, are
25 part of the same system. I do not -- I'm

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1 not familiar with this system at all. This
2 is on the agency side.
3 Q. But it's your understanding that
4 the Browns -- you agree that these
5 documents -- well. But it's your
6 understanding that the Necho system is a
7 system maintained by State Farm pertaining
8 to agent documents?
9 A. My familiarity with the Necho
10 system is limited to the point where I do
11 not feel qualified to make or agree with
12 that statement.
13 Q. Okay.
14 MR. GISLESON:
15 I will attach all 26 pages as
16 Exhibit 9.
17 (Exhibit No. 9 marked for
18 identification.)
19 EXAMINATION BY MR. GISLESON:
20 Q. Is it fair to say that you can not
21 authenticate any of these documents?
22 A. I cannot authenticate any of these
23 documents, no, sir.
24 Q. I guess I better make that clear.
25 Is the same true for Exhibit 7 and 8, you

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1 are not able to authenticate these
 2 documents?
 3 A. I cannot authenticate those
 4 documents, no, sir.
 5 Q. I hand you a four-page document.
 6 Can you identify that document?
 7 A. The document that you gave to me
 8 Bates stamped Brown 211, 212, 213, and 214
 9 are part of the flood file.
 10 Q. What part of the flood file is it?
 11 A. Coverage information associated
 12 with the flood file as well as activity
 13 logs, system-generated logs, initial facts,
 14 policy notes.
 15 Q. And what State Farm system --
 16 A. I'm sorry, I wasn't finished.
 17 Q. I'm sorry.
 18 A. And the flood underwriting
 19 information.
 20 Q. What State Farm system, computer
 21 system is this saved under?
 22 A. This would be a printout from CSR.
 23 Q. There is a handwritten name on the
 24 top of Brown 211. Do you see that? It
 25 appears to be Dan Sullivan?

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1 A. Brown 211, there is a handwritten
 2 Dan Sullivan, yes, sir.
 3 Q. Do you know who Dan Sullivan is?
 4 A. Dan Sullivan is an independent
 5 adjuster that worked for State Farm during
 6 Hurricane Katrina.
 7 Q. Why would his name appear on this
 8 document?
 9 A. On 10/6/05, Dan Sullivan -- I'm
 10 sorry, Dan Sullivan, S-U-L-L-I-V-A-N, was
 11 attempting to progress the file as per the
 12 log note in the homeowners claim, 10/6/05,
 13 Brown 0039, and the flood claim Brown 212,
 14 log note 10.
 15 Q. Why would someone print out this
 16 page on 211 and handwrite their name at the
 17 top; do you know?
 18 MR. ZAUNBRECHER:
 19 Printed the front -- oh, you
 20 weren't giving a date, you were giving the
 21 Bates stamp number.
 22 THE WITNESS:
 23 I'm sorry, I was hearing that
 24 date, too. This is a print that was
 25 generated for the creation of the paper file

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1 and then Dan Sullivan was the person that
 2 was working on it.
 3 EXAMINATION BY MR. GISLESON:
 4 Q. Is Document 211 a completely
 5 different document from 212 or are they a
 6 continuation of the same document?
 7 A. That would be a continuation of
 8 the same document.
 9 Q. So in the top right-hand corner of
 10 212 where it says Page 2, and there's no
 11 similar page identifying Page 1, would Bates
 12 stamp 211 be considered Page 1 of that
 13 document?
 14 A. I would agree with that statement,
 15 yes, sir.
 16 Q. The upper right-hand corner, a
 17 couple of lines underneath Dan Sullivan,
 18 there is a rep: QK50. What does that stand
 19 for?
 20 A. As an individual who works for
 21 State Farm, we're given a four-digit
 22 identifier. That four-digit identifier,
 23 QK50, I believe, refers to Tiffany Simmons.
 24 Q. What is your identifying number?
 25 A. My four digit is H as in Harry, P

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1 as in Paul, V as in Victor, E as in Edward.
 2 Q. Does the name in the top left-hand
 3 corner after the word route, Rachel, I
 4 guess, Crochet, C-R-O-C-H-E-T, do you know
 5 what that is?
 6 A. I do not know who that is, no.
 7 Q. Do you know what that means,
 8 Route: Her name?
 9 MR. ZAUNBRECHER:
 10 Counsel, it's no mystery. I will
 11 be happy to stipulate on the record that the
 12 person that's usually up there is the person
 13 that prints out the request for a claims
 14 file on a certain date and the date this was
 15 requested. A lot of the claims files have a
 16 different person, route, colon, and that's
 17 who prints out the claims file, but please
 18 correct me if I'm wrong.
 19 THE WITNESS:
 20 I was looking to see if there was
 21 anything that would be able to confirm that
 22 for me, but I can't confirm that, but, yes,
 23 I believe that's the person who printed the
 24 initial claims --
 25 MR. GISLESON:

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1 Is there a date that they would
 2 have printed this out?
 3 THE WITNESS:
 4 Yes. There's the log I was
 5 looking for, system-generated logs No. 15,
 6 Brown 0147, Rachel Crochet, C-R-O-C-H-E-T,
 7 or Rachel.
 8 EXAMINATION BY MR. GISLESON:
 9 Q. Where are you looking?
 10 A. Brown 0147.
 11 MR. ZAUNBRECHER:
 12 That's the total log or the
 13 complete?
 14 THE WITNESS:
 15 System-generated logs.
 16 EXAMINATION BY MR. GISLESON:
 17 Q. Okay.
 18 A. And 10/10/05 at 8:53, requested a
 19 print on printer L825. And that mirrors the
 20 current date that you would see on Brown
 21 0211 of 10/10/05.
 22 Q. Is there any indication why they
 23 would want to print that up on October 10,
 24 2005?
 25 A. On 10/6/05, the payment was issued

1 Q. Just underneath that to the left,
 2 it says S-T-A-T, R-P-T Unit. Do you know
 3 what that means?
 4 A. State reporting unit, no, sir.
 5 Q. Do you know what the No. 40
 6 underneath there refers to?
 7 A. No, sir.
 8 Q. Next to it is S-C-C. Do you know
 9 what that means?
 10 A. That's section.
 11 Q. Underneath that A, do you know
 12 what that means?
 13 A. The Section A.
 14 Q. Section A of what?
 15 A. In CSR, we have a hierarchy and
 16 that hierarchy for this claim was Section A,
 17 Unit NN, Team D.
 18 Q. What does it tell you? Does it
 19 tell what team or person is ultimately
 20 responsible for the Brown flood claim?
 21 A. I would struggle with the name
 22 ultimately. What this tells me, what this
 23 tells me is at the time of this printing,
 24 this file belonged to Section A, Unit NN
 25 Team D.

1 and that I'm taking that from Brown 146 or
 2 the payment was requested to be issued.
 3 On a flood file, once we issue a
 4 payment, flood files are maintained paper.
 5 Paper is the master file, per se. So once
 6 we have finished our claim handling, that
 7 claim is printed.
 8 Q. The top right-hand corner of 211,
 9 there is some other -- it looks like some
 10 abbreviations with some indicators
 11 underneath it. One is T-R-A-N and
 12 underneath it is BBBB. Do you know what
 13 that means?
 14 A. No, sir.
 15 MR. ZAUNBRECHER:
 16 Help me just a second, where you
 17 are.
 18 MR. GISLESON:
 19 211.
 20 MR. ZAUNBRECHER:
 21 Oh, now. Thank you.
 22 EXAMINATION BY MR. GISLESON:
 23 Q. Next to that is C-N-T-Y. Do you
 24 know that what is?
 25 A. That is a county code.

1 Q. I guess somewhere State Farm
 2 maintains a key or a table that tells me in
 3 plain English who they were in this
 4 particular team, unit and section; is that
 5 right?
 6 A. I don't know that I understand the
 7 question.
 8 Q. I mean, they're just letters;
 9 right? And so at some point, there's got to
 10 be -- the letters have to match up to
 11 somebody or somebody or someplace; wouldn't
 12 they?
 13 A. In all likelihood, it matches up
 14 to a place.
 15 Q. Okay.
 16 A. And that would be -- I would just
 17 have to speculate. I don't know.
 18 Q. As you sit here today, you don't
 19 who -- well, let's do this: Who authorized
 20 the payment on the Browns' flood claim?
 21 A. Ultimately the NFIP is the author
 22 of that payment.
 23 Q. Who at State Farm authorized the
 24 payment of the Browns' flood claim?
 25 A. Dan Sullivan authorized the

1 payment.
2 Q. Is Dan Sullivan a State Farm
3 employee at this time?
4 A. I believe Dan Sullivan was an
5 independent.
6 Q. Who did Dan Sullivan work for?
7 A. In the claim file, I do not know
8 who he reported to or who he -- which firm
9 he worked for.
10 Q. Would those letters we discussed a
11 minute ago, the Section A, Unit NN, Team D,
12 inform us as to who Dan Sullivan worked for
13 at the time?
14 A. I do not believe so, no.
15 Q. If you wanted to find out who Dan
16 Sullivan worked for at the time, who would
17 you ask?
18 A. I believe I could look that up on
19 the system and find out who he worked for.
20 Q. How would you go about doing that?
21 A. I would go back to the record that
22 I had for that office that Dan was in and I
23 could find out who he worked for at that
24 time.
25 Q. And that sort of outlook method of

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1 finding out where someone is wouldn't work
2 because he was an outside employee?
3 A. If he was an outside employee, it
4 would show that he was an independent
5 adjuster. It may not signify what firm he
6 was reporting to at that time.
7 MR. ZAUNBRECHER:
8 Counsel, I will agree to get that
9 information and forward it you to.
10 MR. GISLESON:
11 I think the judge ordered that I
12 take the deposition of the flood adjuster.
13 MR. ZAUNBRECHER:
14 He said claims adjuster and I
15 don't know whether that included flood or
16 not.
17 MR. GISLESON:
18 The document, this isn't the
19 judgment.
20 MR. ZAUNBRECHER:
21 "Following the completion of the
22 State Farm adjuster assigned to the claim."
23 That's what the wording says.
24 MR. GISLESON:
25 This is the June 4th Order. No,

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1 I'm talking about the one we got the month
2 or the month before that. That specifically
3 said flood adjuster, claims adjuster.
4 MR. ZAUNBRECHER:
5 Oh, oh, oh, that one.
6 MR. GISLESON:
7 And the corporate rep.
8 MR. ZAUNBRECHER:
9 All I can assure you is I will
10 give you whatever contact information we
11 have.
12 MR. GISLESON:
13 It's my understanding that this is
14 your last involvement in the case. From
15 here on out --
16 MR. ZAUNBRECHER:
17 That may not be. My involvement
18 in the case will be to comply with the
19 things that I agree to here today, at least,
20 and I can assure you I will give you -- I
21 will get you that information. I will get
22 you whatever contact information State Farm
23 has with regard to him individually and his
24 employer and provide it to you as promptly
25 as possible.

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1 EXAMINATION BY MR. GISLESON:
2 Q. What makes you think Dan Sullivan
3 was the one who authorized the payment?
4 A. On Brown 0209, it says,
5 "Authorized by Dan Sullivan." That is the
6 payment, as well as on Brown 0210, it says,
7 "Authorized by Dan Sullivan." That is the
8 other payment.
9 Q. So we can tell from these
10 documents that Dan Sullivan, although he was
11 he an outside adjuster or independent
12 adjuster, however you want to say it, had
13 authority to settle the flood claim, at
14 least in this amount?
15 A. In reference to these documents,
16 which documents would you be referring to?
17 The documents that you had or the ones that
18 I referenced?
19 Q. The one you just referenced.
20 A. That would tell me that Dan
21 Sullivan authorized and paid these claims.
22 It does not tell me whether he is an
23 independent or a staff adjuster.
24 Q. I'm sorry. He's not an
25 independent adjuster?

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1 A. I would be going strictly by
2 memory. I do not know whether he's
3 independent or staff.
4 Q. Oh. So as you sit here right now,
5 you don't know whether Dan Sullivan is
6 currently a State Farm employee?
7 A. I do not know Dan Sullivan. I do
8 not know whether he works for State Farm or
9 if he's an independent adjuster working for
10 State Farm.
11 Q. And that's true of the time that
12 he was dealing with the Browns' flood claim,
13 too?
14 A. That is correct. I do not know
15 Dan Sullivan.
16 MR. GISLESON:
17 I want to attach the four pages I
18 handed you, Brown 211 through Brown 214 of
19 as Exhibit 10.
20 (Exhibit No. 10 marked for
21 identification.).
22 MR. ZAUNBRECHER:
23 No. 10?
24 MR. GISLESON:
25 Yes.

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1 provide advances to our insureds. Insureds
2 were displaced throughout the country.
3 Those advances would be applied to the
4 contents portion of the claim, if there was
5 contents available.
6 Q. Why did you apply it to the
7 contents portion of it, but not the building
8 portion of it?
9 A. Under the building portion, we may
10 have to protect a lienholder which would
11 make it kind of pointless in the receiving
12 an advance.
13 Q. So you're saying, if you issued it
14 under property coverage, then you might have
15 to put the mortgage company's name on the
16 check which would delay, if not completely
17 thwart, the insured's ability to get a quick
18 payment?
19 A. Your use of the term "property"
20 implies building or contents, so I wouldn't
21 say that.
22 Q. Could you fix my statement then
23 to --
24 A. We applied it to the contents
25 because the lienholder did not have an

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1 MR. ZAUNBRECHER:
2 Okay.
3 EXAMINATION BY MR. GISLESON:
4 Q. I ask that you take a look at
5 that.
6 A. (Complying).
7 Q. Can you identify that?
8 A. The document marked Brown 0216 is
9 a copy of the draft that was issued to
10 Vincent D. and Jeannie W. Brown in the
11 amount of two thousand five hundred on
12 9/6/05.
13 Q. Was this an advance of some sort?
14 A. This was an advance that was
15 issued, yes, sir.
16 Q. Was it -- this was an advance on
17 the flood claim; right?
18 A. This advance was applied to the
19 personal property claim under the flood
20 claim, yes.
21 Q. Why was it applied to the personal
22 property and not the business -- not the
23 coverage A?
24 A. At the time of Hurricane Katrina,
25 State Farm made the business decision to

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1 interest in the contents.
2 MR. GISLESON:
3 I mark this as Exhibit 11, Brown
4 216.
5 (Exhibit No. 11 marked for
6 identification.).
7 EXAMINATION BY MR. GISLESON:
8 Q. Can you identify this document?
9 A. The document marked Brown 0217 is
10 what's classified as the flood coding strip.
11 Q. What is a flood coding strip?
12 A. It's a piece of paper that would
13 be completed by the adjuster based on
14 information gathered during claim handling.
15 Q. Would it have been filled out --
16 well, do you know who filled out this
17 document?
18 A. I do not know who filled out this
19 document.
20 Q. Could I direct your attention
21 underneath where it says, R-replacement
22 cost, A-actual cast value. Why is the A
23 circled; do you know?
24 A. Because the flood policy was at an
25 actual cash value based on insurance to

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1 value.
 2 Q. Do you see the water depth? Right
 3 above that there is FICO-654. Do you see
 4 that?
 5 A. Yes.
 6 Q. What does that mean?
 7 A. That is a code that we receive
 8 from the NFIP. I don't know what it
 9 references to, but it is a code that we code
 10 specifically to this event.
 11 Q. Underneath it it says water depth.
 12 What is the water depth there?
 13 A. The NFIP has a rating system, two
 14 digits for the depth of the water. This is
 15 rated at plus 04, which means it's above the
 16 foundation and as for the depth, I would
 17 need to see the coding reference to see what
 18 height that was.
 19 Q. Well, it looks like somebody wrote
 20 in there four feet, three inches.
 21 MR. GISLESON:
 22 Let's switch tapes real quick.
 23 THE VIDEOGRAPHER:
 24 We're off the record. It's 2:24.
 25 (Whereupon, an off-the-record
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1 coding system 01, 02, 00, 99. So that would
 2 be scratched out to correct it to the right
 3 coding system. The reason why the other
 4 numbers were scratched out, I do not know.
 5 Q. At the bottom of the page, it
 6 reads Rob Bruce, BNYN?
 7 A. No.
 8 Q. Do you know BNYN?
 9 A. I'm assuming that is Robert
 10 Bruce's four-digit sign on.
 11 MR. GISLESON:
 12 I would like to attach Brown 217
 13 as Exhibit 12.
 14 (Exhibit No. 12 marked for
 15 identification.)
 16 EXAMINATION BY MR. GISLESON:
 17 Q. Can I get the copy that I handed
 18 you?
 19 A. (Handing).
 20 Q. I direct your attention to this
 21 document. Can you identify this?
 22 A. Document received March -- marked
 23 Brown 0218 is a payment authorization
 24 request for payment of this flood claim.
 25 Q. And if I can direct your attention
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1 discussion was held.)
 2 THE VIDEOGRAPHER:
 3 We're back on the record. It's
 4 2:28, the beginning of Tape 3.
 5 EXAMINATION BY MR. GISLESON:
 6 Q. Mr. Lapinskie, returning to Brown
 7 217, it appears as though there are a number
 8 of items in which numbers are written in and
 9 scratched out. Do you see that?
 10 A. Yes, do I.
 11 Q. Do you know have knowledge as to
 12 who scratched out those numbers?
 13 A. No, I do not.
 14 Q. Do you know why those numbers are
 15 scratched out?
 16 A. No, I do not.
 17 Q. In order to find out who wrote
 18 these numbers in and who scratched it out,
 19 how would you find that out?
 20 A. Dan Sullivan is the person who
 21 handled this claim. My assumption is Dan
 22 Sullivan would have filled out this form.
 23 The reason for scratching out the water
 24 depth is because the NFIP does not recognize
 25 four foot three inches. They have this
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1 to payee, INS, what does that stand for?
 2 A. INS is an abbreviation for
 3 insured.
 4 Q. And what does MTG mean?
 5 A. That an abbreviation for
 6 mortgagee.
 7 Q. Do you see the X right above that?
 8 A. Yes, sir.
 9 Q. Is that a handwritten X with a
 10 circle?
 11 A. I believe so, yes, sir.
 12 Q. Do you know why that's done?
 13 A. Those are specific areas that
 14 needed to be filled out for this payment
 15 authorization to not be routed back with
 16 questions asking what needed to be
 17 completed.
 18 Q. So I direct your attention
 19 underneath where it says, cause/line?
 20 A. Yes, sir.
 21 Q. What does underneath that 17-001
 22 mean?
 23 A. On 17 is the cause of loss, flood.
 24 001 is the line that that coverage is
 25 available under CSR, so the payment would go
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1 through.
 2 Q. Two lines underneath that is
 3 18/000. What does that mean?
 4 A. Eighteen is cause of loss, flood,
 5 for contents. If I can clarify, 17 is cause
 6 of loss, flood, for building.
 7 Q. What does the IM mean with a
 8 circle around it?
 9 A. That's the insured and mortgagee.
 10 Q. What does the I underneath that
 11 mean?
 12 A. Insured.
 13 Q. To the regular box, it says
 14 transaction. He's got the D circled. What
 15 does that mean?
 16 A. D is a payment code.
 17 Q. D circled means you're going to
 18 make payment?
 19 A. That is correct. Oh, it means
 20 make the payment, yes, sir.
 21 Q. It means make the payment. And --
 22 A. Let me just clarify before we --
 23 Q. Yes.
 24 A. This entire payment authorization
 25 says make the payment. In order to make the
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1 payment, the person issuing the draft, the
 2 person authorizing the draft needs to tell
 3 the person issuing the draft what type of
 4 transaction code it is? It's a D. What the
 5 amount is? It's eighty-two hundred. Who
 6 that's being issued to? Insured and
 7 mortgagee. Under which line? 001. For
 8 what cause? 17.
 9 I'm assuming your next question is
 10 payment Code 1. Payment code 1 means this
 11 is a final payment.
 12 MR. GISLESON:
 13 I would like to attach that as
 14 Exhibit 13.
 15 (Exhibit No. 13 marked for
 16 identification.)
 17 EXAMINATION BY MR. GISLESON:
 18 Q. I would like to direct your
 19 attention to this document. Can you
 20 identify that document?
 21 A. That document put before me marked
 22 Brown 20 -- sorry, 219 is a statement of
 23 loss for the Vincent Brown flood claim.
 24 Q. And who filled out this document?
 25 A. The document was completed by Dan
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1 Sullivan.
 2 Q. And the date it was completed?
 3 A. 10/6/05.
 4 Q. There is a description under
 5 coverage A. Do you see that?
 6 A. I do see a description under
 7 coverage A, yes.
 8 Q. Could you read that for me?
 9 A. Description: "XacTotal valuation
 10 equals \$147,604. Valuation exceeds policy
 11 limits. Deductible would be absorbed.
 12 Dollar deductible will be absorbed."
 13 Q. What is XacTotal?
 14 A. XacTotal is a part of the
 15 Xactimate program that streamlines the --
 16 that we use in establishing a value for the
 17 property that we're evaluating.
 18 Q. What kind of value?
 19 A. Just a value.
 20 Q. How is XacTotal different than
 21 Xactimate?
 22 A. The estimate that you receive from
 23 XacTotal is a rather generic estimate based
 24 on generic assumptions: Three bedrooms, two
 25 garages, percentages of vinyl, percentages
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1 of brick, percentages of carpet. It's just
 2 a -- I'm looking for the right word. It's
 3 an educated estimate as to the value of the
 4 house, but it's not something that provides
 5 the details that you could say you could
 6 rebuild the house for that amount.
 7 Q. Does it tell me the value of the
 8 house or the value of the damage to the
 9 house?
 10 A. It's telling me the value of the
 11 house.
 12 Q. Okay.
 13 A. And it's not a -- I wouldn't hold
 14 myself to that value.
 15 Q. So that \$147,604 is XacTotal's
 16 printout as to what that house is worth?
 17 It's not what the value of the claim is?
 18 A. That's not what the value of the
 19 claim is, no, sir.
 20 Q. Underneath it, it reads:
 21 "Valuation exceeds policy limits"?
 22 A. That is correct.
 23 Q. Is that valuation of the damage or
 24 is that valuation of the house?
 25 A. Valuation of the damage.
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1 Q. How do you know valuation of the
2 damage exceeds policy limits if there's no
3 valuation of the damage, if the \$147,000
4 number just refers to the value of the
5 house?
6 A. We have a house that we've insured
7 under the homeowners policy for a specific
8 amount. We know that there's floodwaters at
9 a depth of seven feet to this house and we
10 have a coverage A limit, coverage A being
11 building of \$8,200. It's not much of a
12 stretch, it's not much of a jump to assume
13 that \$8,200 will not cover the total damage
14 created by the floodwaters.
15 Q. You can max out the flood policy
16 without doing a damage estimate?
17 A. As previously discussed, we were
18 given latitude by the NFIP to establish or
19 to evaluate damage to the home over the
20 phone. That's exactly how this one was
21 done.
22 Q. Is there any estimate that details
23 the property damage to the Browns' home
24 caused by flood?
25 A. There is not an estimate for the

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1 property damage caused by flood, no.
2 Q. And it's State Farm's position
3 that the NFIP is okay with the State Farm
4 maxing out its flood policies, without
5 coming up with any estimate as to the flood
6 damage to the property?
7 MR. ZAUNBRECHER:
8 I just object to the form. If
9 you're limiting it to this claim, fine. If
10 not, it's beyond the scope of the court's
11 discovery order and I will -- I will ask him
12 not to answer. If it's with regard to this
13 claim, answer away.
14 EXAMINATION BY MR. GISLESON:
15 Q. You can answer as to this claim.
16 A. I'm looking to see if I have
17 anything else that I may have overlooked.
18 Yes, I did. There was a flood loss
19 questionnaire that was filled out over the
20 phone.
21 Q. Okay.
22 A. I'm looking at Brown 221. I'm
23 assuming that is a document that we will
24 look at later. Do you want to bring it
25 forward now?

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1 Q. No. We will look at it later.
2 A. So we didn't just throw the money
3 out. We went through this document. This
4 document was accepted by the NFIP.
5 Q. And is this statement of loss in
6 front of you something that would have been
7 submitted to the NFIP?
8 A. The statement and loss itself may
9 not have been submitted to the NFIP as that
10 information was contained in the flood
11 coding strip plus the request for
12 reimbursement based on the payments made.
13 MR. GISLESON:
14 We will attach that statement of
15 loss as Exhibit 14.
16 (Exhibit No. 14 marked for
17 identification.)
18 EXAMINATION BY MR. GISLESON:
19 Q. Let me direct your attention to
20 Brown 220. Stated at the top, flood claim
21 worksheet. Do you see that?
22 A. Yes, do I.
23 Q. What is this document?
24 A. This document is a worksheet that
25 is used to establish whether the policy will

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1 be covered based on an ACV or RC value.
2 Q. Let me direct your attention to
3 the age of the building. It's on the top
4 left-hand side.
5 A. Yes, sir.
6 Q. It identifies the building as 20
7 years?
8 A. Yes, sir.
9 Q. The age?
10 A. Yes, sir.
11 Q. And it identifies a depreciation
12 per year of a half of a percent. Do you see
13 that?
14 A. Yes, sir.
15 Q. How is that calculated?
16 A. I do not recall how we established
17 the depreciation paid per year or applied
18 per year.
19 Q. Well, isn't this a standard
20 formula for depreciation?
21 MR. ZAUNBRECHER:
22 I object to the form.
23 Answer it if you can. I'm not
24 sure what you mean.
25 THE WITNESS:

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1 I do not recall how that
 2 depreciation was established.
 3 EXAMINATION BY MR. GISLESON:
 4 Q. Isn't there a depreciation
 5 standard within the industry of age of the
 6 property divided by the lifespan of the
 7 property?
 8 MR. ZAUNBRECHER:
 9 I object to the form. Beyond the
 10 scope. I direct him not to answer, but the
 11 standard of the industry is.
 12 EXAMINATION BY MR. GISLESON:
 13 Q. Would you agree that the -- that
 14 formula was not used for this flood claim
 15 worksheet?
 16 MR. ZAUNBRECHER:
 17 What formula are you referring to?
 18 MR. GISLESON:
 19 The one I just said, Alan.
 20 EXAMINATION BY MR. GISLESON:
 21 Q. Do you agree?
 22 A. I don't agree with a standardized
 23 formula. I don't agree with that statement
 24 in total. I also don't -- based on the
 25 flood limits that we have applicable to

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1 this, the application of depreciation as
 2 applied here has no effect on the outcome of
 3 this flood claim.
 4 Q. Does State Farm have any internal
 5 documents concerning how to calculate
 6 depreciation -- let me ask you this way.
 7 Does State Farm calculate depreciation for a
 8 flood claim the same way it calculates
 9 depreciation for homeowners claim?
 10 MR. ZAUNBRECHER:
 11 I object to the form. Beyond the
 12 scope.
 13 If you're limiting it to this
 14 claim, answer it. If there's no limitation,
 15 don't.
 16 MR. GISLESON:
 17 I will limit it to this claim.
 18 MR. ZAUNBRECHER:
 19 Thank you.
 20 Go ahead.
 21 THE WITNESS:
 22 The application of depreciation in
 23 the handling of this claim has no bearing on
 24 the depreciation that you have me
 25 referencing to right now.

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1 EXAMINATION BY MR. GISLESON:
 2 Q. Isn't it true that State Farm
 3 habitually used lower depreciation rates on
 4 adjusting flood claims than it used on the
 5 homeowners claims after Hurricane Katrina?
 6 MR. ZAUNBRECHER:
 7 I object to the form. Beyond the
 8 scope of the discovery order.
 9 Do not answer.
 10 EXAMINATION BY MR. GISLESON:
 11 Q. Isn't it true that State Farm
 12 would submit those deflated depreciation
 13 rates on the flood claim to the federal
 14 government in order to increase the amount
 15 that it would pay out on flood coverage?
 16 MR. ZAUNBRECHER:
 17 Same objection.
 18 Same instruction.
 19 EXAMINATION BY MR. GISLESON:
 20 Q. Isn't it true that that would be a
 21 fraudulent claim to the United States
 22 Government?
 23 MR. ZAUNBRECHER:
 24 Same objection.
 25 Same instruction.

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1 EXAMINATION BY MR. GISLESON:
 2 Q. Was the flood claim worksheet
 3 identified in front of you submitted to the
 4 federal government for payment?
 5 A. I believe the information
 6 contained within the flood claim worksheet
 7 was used to support the payment that was
 8 made.
 9 Q. So is your answer, yes, it was
 10 submitted to the federal government for
 11 payment?
 12 A. I do not know that this specific
 13 document was sent to the NFIP.
 14 Q. If you wanted to the find out who
 15 sent it to the NFIP, who would you ask?
 16 MR. ZAUNBRECHER:
 17 I object to the form. He said he
 18 didn't know if it was sent to the NFIP.
 19 You can ask him who would you ask
 20 to find out if it was sent. I think that's
 21 what you wanted to ask probably.
 22 EXAMINATION BY MR. GISLESON:
 23 Q. If you wanted to find out whether
 24 this document was submitted to the NFIP, who
 25 would you ask?

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1 MR. ZAUNBRECHER:
 2 Thank you.
 3 THE WITNESS:
 4 I do not have the name of an
 5 individual that I would be able to ask.
 6 MR. GISLESON:
 7 We will attach the flood claim
 8 worksheet as Exhibit 15.
 9 (Exhibit No. 15 marked for
 10 identification.)
 11 EXAMINATION BY MR. GISLESON:
 12 Q. I direct your attention to Brown
 13 221, titled "Flood Loss Questionnaire." Do
 14 you see that?
 15 A. Yes, sir.
 16 Q. What is this document?
 17 A. Flood loss questionnaire was a
 18 questionnaire that was completed while
 19 talking about the loss with the insureds
 20 over the phone.
 21 Q. Okay. And how do you know this
 22 was completed while -- well, who filled this
 23 out, though?
 24 A. On 10/6/05, Brown 0146, Dan
 25 Sullivan phone scoped the flood damage to
 Page 221

1 the dwelling coverage A, eighty-two hundred,
 2 coverage B, twenty-eight hundred, log note
 3 10. By that, that would imply that Dan
 4 Sullivan completed this form while phone
 5 scoping with Vincent Brown.
 6 Q. Could you really figure out who
 7 filled out the flood questionnaire or to
 8 confirm one way or the other, we would
 9 probably have to ask Dan Sullivan; right?
 10 A. There are no other identifiers on
 11 here to state that this is in Dan Sullivan's
 12 hand.
 13 Q. Do you know Dan Sullivan's hand?
 14 A. No, sir.
 15 Q. Well, you said this was in Dan
 16 Sullivan's hand.
 17 A. I said there are no identifiers in
 18 here to support that this is in Dan
 19 Sullivan's hand; in other words, he hadn't
 20 put his name on this thing.
 21 Q. I've got you. Is this particular
 22 document dated, though?
 23 A. There's a date on this document of
 24 9/27/2005.
 25 Q. You're looking at the top
 Page 222

1 left-hand corner?
 2 A. That's correct.
 3 Q. Do you know how it was that the
 4 entire document is handwritten out, but the
 5 date is computer generated?
 6 A. I do not know.
 7 Q. Could I direct your attention to
 8 the question -- I don't know if this is a
 9 misprint, or whatever, it appears to read:
 10 "Here you received any flood advance
 11 payments."
 12 A. That is indeed what it reads.
 13 Q. Should it be have you received any
 14 flood advance payments?
 15 A. That's what I would say, yes, sir.
 16 Q. Can you read the handwriting
 17 underneath it?
 18 A. Homeowners-ALE, advance applied to
 19 homeowners 18R359672.
 20 Q. It's asking about a flood advance
 21 payment. Why would there be information
 22 concerning a homeowners ALE advance; do you
 23 know?
 24 A. At the time of Hurricane Katrina,
 25 we were issuing an advance to policyholders.
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1 If for some reason we could not find that
 2 there was a flood policy, that advance may
 3 be coded to the homeowners claim. At the
 4 time that we found a flood policy and we
 5 knew that there was flood damage to that,
 6 that advance would be recoded toward the
 7 flood policy.
 8 Q. Is that what happened in this
 9 case?
 10 A. At the time the draft was created,
 11 9/6/05, Draft No. 108545767, Bates stamped
 12 Brown 0216, it was coded to the flood
 13 policy.
 14 Q. Did Mr. Brown receive any advance
 15 on some of the policy?
 16 A. There is a log note on Brown 0146
 17 which indicates a draft 108904231F was
 18 issued on September 6th, 2005, in the amount
 19 of \$2,500.
 20 In my review of the claim file, I
 21 did not see that that draft was ever coded
 22 to this flood -- to this homeowners policy
 23 and I have requested that we look to find
 24 that draft to see if that indeed did occur.
 25 Q. I'm trying to figure out if what I
 Page 224

1 gave you, that 221, is a one-page document
2 or a multipage document?
3 A. The document that you gave me is
4 right here.
5 Q. But what I mean --
6 A. I understand. The document is a
7 three-page document.
8 Q. So the other two pages would be
9 Brown 222 and Brown 223?
10 A. That is correct.
11 Q. Just confirm that by looking at
12 these.
13 A. Oh, I'm sorry.
14 Q. That's all right. What about
15 Brown 224, is that not part of it?
16 A. I do not believe Brown 224 is part
17 of this questionnaire.
18 Q. Okay.
19 MR. GISLESON:
20 I will attach Brown 221 through
21 223 as Exhibit 16.
22 (Exhibit No. 16 marked for
23 identification.)
24 EXAMINATION BY MR. GISLESON:
25 Q. And we do come to Brown 224

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1 (handing). Can you tell from looking at the
2 document who filled this out?
3 A. No, I can not.
4 Q. Do you know whether this was a
5 document saved electronically in the file or
6 not?
7 A. This would not be an electronic
8 document. It may have been imaged into the
9 file, but, no, this would not be something
10 that's in CSR.
11 Q. How can you tell?
12 A. Because I'm familiar with the
13 format of CSR. I'm familiar with handling
14 flood claims in CSR. And this is not a CSR
15 document.
16 Q. Do you see the depreciation
17 percentages in the middle?
18 A. Yes, I do.
19 Q. Do you know how those were
20 calculated?
21 A. The depreciation figures were
22 calculated on bulk.
23 Q. Do you know how they came up with,
24 say, clothing 20 percent depreciation?
25 A. No, I do not.

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1 Q. Is this something that was filled
2 out by the insureds?
3 A. This would be a document that was
4 filled out on or around the same time as the
5 phone scope that was occurring, so, no, it
6 would not be something that would be filled
7 out by the insured.
8 Q. Do you know how they got any of
9 this -- whoever filled out this document
10 came to any of the figures on this page?
11 A. Any response I gave to you on that
12 would be speculative.
13 Q. Okay. Do you know what that other
14 category is?
15 A. It appears the creator of this
16 document broke the contents down to four
17 identifiable items: Clothing, electronics
18 appliances, furnishing. The other would be
19 a catchall for all other items that may not
20 fall under the first four categories.
21 Q. Would this be an acceptable
22 contents list for the Browns to submit to
23 you on their homeowners claim, broken down
24 by five categories?
25 MR. ZAUNBRECHER:

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1 I object to the form of the
2 question. I'm not sure what you mean by
3 acceptable contents list.
4 EXAMINATION BY MR. GISLESON:
5 Q. Do you understand the question,
6 Mr. Lapinskie?
7 A. Would I make payment based on this
8 under the homeowners claim?
9 Q. Yes.
10 A. Maybe yes, maybe no. It depends
11 on the situation.
12 Q. What about in the Browns'
13 situations?
14 A. I did make payment.
15 Q. On the homeowners claim pursuant
16 to a contents list like that?
17 MR. ZAUNBRECHER:
18 Do you understand the question?
19 EXAMINATION BY MR. GISLESON:
20 Q. If the Browns submitted to you a
21 contents list in just about this same format
22 where it wasn't broken down and it just said
23 here is everything that we think was damaged
24 by wind and rain, would you make payment
25 based on that?

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1 MR. ZAUNBRECHER:
 2 I object to the form.
 3 If you can answer it, answer it.
 4 I think he already has answered
 5 it, frankly.
 6 THE WITNESS:
 7 Well, look, we're overcomplicating
 8 the issue here. We have \$2,800 in contents
 9 coverage. The fact that you, Counsel, would
 10 delay my insured's receiving money to the
 11 tune of \$2,800 when we know that their
 12 contents was under seven feet of water may
 13 be acceptable to you. It's not acceptable
 14 to State Farm, nor was it acceptable to the
 15 NFIP.
 16 We've documented what we needed to
 17 document in order to issue the payment that
 18 they had the right to because they suffered
 19 a covered loss to the amount of \$2,800.
 20 So is this acceptable for
 21 homeowners's claim? I would need to know
 22 the cause of loss especially under Hurricane
 23 Katrina, especially under the Brown claim.
 24 But is this acceptable and sufficient enough
 25 documentation to support a \$2,800 payment
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1 for the flood loss that the Browns suffered?
 2 Absolutely.
 3 Q. This document was submitted to
 4 FEMA for payment?
 5 A. This document -- I'm sorry.
 6 MR. ZAUNBRECHER:
 7 I think you misspoke. You didn't
 8 mean FEMA.
 9 MR. GISLESON:
 10 NFIP is FEMA, there's no building
 11 out there that is NFIP or anything. It's
 12 just a program. It's all actually run by
 13 FEMA.
 14 EXAMINATION BY MR. GISLESON:
 15 Q. Is this something that was
 16 submitted to the NFIP or FEMA for payment?
 17 A. I do not know that this particular
 18 document was submitted to support payment.
 19 This document is contained within the claims
 20 file that the NFIP or FEMA has access to.
 21 MR. GISLESON:
 22 I'm going to attach the contents
 23 list as Exhibit 17.
 24 (Exhibit No. 17 marked for
 25 identification.)
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1 EXAMINATION BY MR. GISLESON:
 2 Q. You I show you Brown 225 through
 3 228. Can you identify that document?
 4 A. The document submitted to, this is
 5 an XacTotal estimate that was created by Dan
 6 Sullivan.
 7 Q. And what is the date where it says
 8 date inspected?
 9 A. October 6th, 2005.
 10 Q. This property was never inspected
 11 by Dan Sullivan; right?
 12 A. This property was inspected over
 13 the phone by Dan Sullivan on 10/6/2005.
 14 Q. So when you put a date down as
 15 date inspected, that could be date inspected
 16 by phone or date inspected in person?
 17 A. Yes, it can.
 18 Q. So this is the XacTotal estimate
 19 you referenced earlier in your deposition?
 20 A. This would be an XacTotal, yes.
 21 Q. And where would Mr. Sullivan have
 22 received all of this information on the
 23 left-hand side of Pages 1 and 2.
 24 A. Through the phone interview with
 25 Mr. or Mrs. Brown.
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1 Q. So when it comes to square foot,
 2 do you understand that Dan Sullivan would
 3 have gotten that information from Mr. Brown?
 4 A. That information is also the same
 5 information that's contained in Brown 0222,
 6 the document that we previously reviewed,
 7 flood loss questionnaire. The interview was
 8 with Vincent Brown.
 9 My assumption is that information
 10 came through that interview with Mr. Brown.
 11 Q. What about the roof type,
 12 100 percent gable. Is it your understanding
 13 that Dan Sullivan got that information from
 14 Mr. Brown?
 15 A. In an effort to complete the
 16 XacTotal estimate that was done during the
 17 interview with Mr. Brown, I would say that
 18 that's where that information came from.
 19 Q. What about the room information on
 20 the bottom of 225, is it your understanding
 21 that Mr. Sullivan got all that information
 22 from the insureds?
 23 A. As previously stated, the XacTotal
 24 estimate has its limitations. One of those
 25 limitations is sometimes it will stipulate
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1 rooms that may not necessarily have been
 2 contained within the house, but we move on
 3 on those because we're just trying to
 4 establish a value for the house to proceed
 5 with the payment that we could make under
 6 the flood policy.
 7 That information that we received
 8 is information as a result of the interview
 9 that was conducted with the Browns over the
 10 phone.
 11 Q. Is that true of all the
 12 information on this document, you believe
 13 that the Browns gave Mr. Sullivan all the
 14 information on these three pages?
 15 A. That would be a question that you
 16 would have to ask Mr. Sullivan.
 17 MR. ZAUNBRECHER:
 18 Did you say on all three pages or
 19 just the first two?
 20 EXAMINATION BY MR. GISLESON:
 21 Q. Can I direct your attention to
 22 Brown 227. Do you know the percentage of
 23 overhead and profit that's applied to this
 24 XacTotal?
 25 MR. ZAUNBRECHER:

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1 On a value?
 2 I object to the form. I don't
 3 think it's been established that any
 4 overhead and profit was applied or
 5 necessary, but you answer his question if
 6 you can answer.
 7 THE WITNESS:
 8 I don't know what the percentage
 9 was. The overhead and profit that's noted
 10 on the XacTotal estimate is \$24,606.82.
 11 MR. GISLESON:
 12 I will attach Brown 225 through
 13 228 -- I'm sorry.
 14 EXAMINATION BY MR. GISLESON:
 15 Q. Was this document submitted to the
 16 federal government for payment?
 17 A. This document is contained within
 18 the claims file and is available to the
 19 federal government. As to whether it was
 20 submitted to support payment, I do not know.
 21 MR. GISLESON:
 22 I will attach Brown 225 through
 23 Brown 228 as Exhibit 18.
 24 (Exhibit No. 18 marked for
 25 identification.)

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1 EXAMINATION BY MR. GISLESON:
 2 Q. Can you identify that document?
 3 A. The document marked Brown 0229 is
 4 titled "Louisiana Exposures."
 5 Q. Have you ever seen it before?
 6 A. I saw it contained within the
 7 claims file, but I'm not familiar with it,
 8 no.
 9 Q. Do you know what its purpose is?
 10 A. I do not know.
 11 Q. Do you know who created it?
 12 A. No, I do not.
 13 Q. Do you know how it's saved?
 14 A. No, I do not.
 15 Q. Do you know if it's part of the
 16 flood file or the homeowners file?
 17 A. It is part of the flood file.
 18 Q. How do you know that?
 19 A. Because it's contained within the
 20 flood file.
 21 Q. But there's flood information and
 22 homeowners information on this file, on this
 23 document?
 24 MR. ZAUNBRECHER:
 25 I object to the form.

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1 If you can answer, go ahead.
 2 THE WITNESS:
 3 I don't understand a the question.
 4 EXAMINATION BY MR. GISLESON:
 5 Q. Sure. If I could show -- direct
 6 your attention on the top on the right-hand
 7 corner where it says PRI risk amount, eleven
 8 thousand. Do you see that?
 9 A. Yes, sir.
 10 Q. What does PRI stand for?
 11 A. I do not know.
 12 Q. Okay. If I direct your attention
 13 a couple of lines down, it says policy code,
 14 PRS flood. Do you see that?
 15 A. Yes, sir.
 16 Q. Does that indicate to you that
 17 this is information concerning the flood
 18 policy?
 19 A. My answer would be speculative.
 20 Q. Does the policy number above the
 21 policy code identify the flood policy
 22 number?
 23 A. Yes, it does.
 24 Q. Okay. I direct your attention
 25 below that, sort of below the two double

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1 lines, there is another PRI risk amount, one
 2 hundred ninety-eight six twenty-five. Do
 3 you see that?
 4 A. Yes, sir.
 5 Q. And two lines underneath that, it
 6 says policy code, HO-W. Do you see that?
 7 A. Yes, sir.
 8 Q. Is the \$198,625 number the
 9 homeowners policy limits?
 10 MR. ZAUNBRECHER:
 11 You mean the combined or single
 12 coverage? I don't --
 13 EXAMINATION BY MR. GISLESON:
 14 Q. Do you understand the question,
 15 Mr. Lapinskie?
 16 MR. ZAUNBRECHER:
 17 I don't. Are you asking if that's
 18 any particular coverage or the total amount
 19 of coverage?
 20 EXAMINATION BY MR. GISLESON:
 21 Q. Mr. Lapinskie, do you understand
 22 the question?
 23 A. I'm seeing if I can understand the
 24 question. I do not know what that number
 25 represents.

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1 Q. Do you know what the policy number
 2 underneath that represents?
 3 A. That policy No. 18CZ0736 is the
 4 homeowners policy number.
 5 Q. Okay. Do you know why State Farm
 6 would create a document that's got both the
 7 insured's homeowner and flood policy
 8 information on it?
 9 MR. ZAUNBRECHER:
 10 I object to the form.
 11 Go ahead and answer it if you can.
 12 THE WITNESS:
 13 I do not know that State Farm
 14 created this form. This is a document
 15 that's contained within the flood file. I
 16 note in the bottom, the date on this
 17 document is Thursday, October 6th, 2005.
 18 And it's entitled FEMA policy, Page 1 of 1.
 19 EXAMINATION BY MR. GISLESON:
 20 Q. So is it possible this is a FEMA
 21 document?
 22 A. Any response I give to you, as I'm
 23 not familiar with this document, would be
 24 speculation.
 25 Q. Excuse me. I'm sorry, did you say

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1 earlier, you didn't know where this was
 2 saved or where it originated?
 3 A. I do not know where it originated.
 4 It is contained within the flood file.
 5 Q. Who would you ask if you wanted to
 6 find out who created the document, what its
 7 purpose is, why it's called Louisiana
 8 exposures?
 9 A. The first place I would go to find
 10 out about this is I suspect this has
 11 something to do with the computerized
 12 handling of the flood claims in the blue
 13 zone, would be people who had worked or in
 14 the office. Dan Sullivan might be a good
 15 source.
 16 Q. What's the blue zone?
 17 A. The blue zone is an area that we
 18 refer to based on -- because it showed up in
 19 blue on our computer screens, of claims that
 20 could be handled with approval or we
 21 received approval from FEMA to handle those
 22 claims over the phone.
 23 Q. How much did State Farm get paid
 24 by FEMA for adjusting the Browns' flood
 25 claim?

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1 A. I do not know what the
 2 reimbursement was for the handling of the
 3 Browns' flood claim.
 4 Q. If you wanted to find out how much
 5 State Farm got paid for adjusting the
 6 Browns' flood claim, who would you ask?
 7 A. I do not know.
 8 Q. Who is your superior?
 9 A. I report to Mary Lou Piel.
 10 Q. What's the last name?
 11 A. Piel, P-I-E-L.
 12 Q. What's her title?
 13 A. The Lou Piel is a section manager.
 14 Q. She's the manager of what section?
 15 A. The section that I'm in.
 16 Q. Does the section -- is it called
 17 anything?
 18 A. Lou Piel section.
 19 Q. That's it?
 20 A. There's no official title, sir.
 21 Q. But it's within the catastrophe
 22 division?
 23 A. It's within catastrophe services.
 24 Q. Who is Mary Lou Piel's supervisor?
 25 A. Lou Piel's supervisor -- Lou Piel

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1 reports to Guerry, G-U-E-R-R-Y, Wooten,
 2 W-O-O-T-E-N.
 3 Q. What is his title?
 4 A. Claims manager.
 5 Q. He's a claims manager within the
 6 catastrophe services?
 7 A. Yes, he is.
 8 Q. Where is he physically located?
 9 A. Gary Wooten resides in
 10 Bloomington, Illinois.
 11 Q. I direct your attention to the top
 12 right-hand corner of Brown 229. It reads:
 13 "Two policies exposed." There's a \$209,625
 14 number. Do you see that?
 15 A. Yes, I do.
 16 Q. What does that number represent?
 17 A. I do not know.
 18 Q. Does that number represent the
 19 combined limits of the flood and the
 20 homeowners?
 21 A. Based on the quick math that I did
 22 in my head, no.
 23 Q. Let me ask it a different way, I
 24 guess. Is it the combined risk amount for
 25 the building coverage or limits under the

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1 flood of the homeowners?
 2 A. No.
 3 Q. Okay. Why not? What would be the
 4 combined limit as identified on
 5 Document 229?
 6 A. Are you asking me to assume that
 7 PRI risk amount, eleven thousand and PRI
 8 risk amount, one ninety-eight six
 9 twenty-five, are those combined limits? Is
 10 that what you're asking me to assume?
 11 Q. I'm asking you not to maybe assume
 12 it, but I'm asking if the two-oh-nine six
 13 twenty-five number on the top right-hand
 14 corner represents the addition of those two
 15 numbers you just stated?
 16 A. It does. It does.
 17 MR. GISLESON:
 18 I will attach Brown 229 as
 19 Exhibit 19.
 20 (Exhibit No. 19 marked for
 21 identification.).
 22 MR. ZAUNBRECHER:
 23 Could we take a brief break?
 24 MR. GISLESON:
 25 Sure.

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1 MR. ZAUNBRECHER:
 2 Two, three minutes?
 3 MR. GISLESON:
 4 Sure.
 5 MR. ZAUNBRECHER:
 6 Thank you.
 7 THE VIDEOGRAPHER:
 8 We're off the record. It's 3:18.
 9 (Whereupon, a brief recess was
 10 taken.)
 11 THE VIDEOGRAPHER:
 12 We're back on the record. It's
 13 3:25.
 14 EXAMINATION BY MR. GISLESON:
 15 Q. Mr. Lapinskie, I would like to
 16 direct your attention to a four-page
 17 document, Bates stamped Brown 8 through
 18 Brown 11.
 19 Can you identify this document?
 20 A. The documents that I received
 21 marked Brown 8, 9, 10, and 11 is a CCF print
 22 of the homeowners policy.
 23 Q. Is that what we talked about
 24 earlier in the deposition, the CCF print?
 25 A. No. I used a wrong acronym

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1 previously when I was referring to the fire
 2 claim service record full report. This is a
 3 CCF print.
 4 Q. And if I could direct your
 5 attention to the top right-hand corner where
 6 it says rep?
 7 A. Yes, sir.
 8 Q. You see Johnathan Dekievit's name?
 9 A. Yes, sir.
 10 Q. And there seems to be a four
 11 letter -- four letters preceding his name,
 12 QNEJ?
 13 A. Yes, sir.
 14 Q. Does that lead you to believe that
 15 that is his State Farm identify, number,
 16 designation, whatever your call it?
 17 A. That is his four digit, yes.
 18 Q. Does that tell you that
 19 Mr. Dekievit is, in fact, a State Farm
 20 employee?
 21 A. That does not tell me that, no,
 22 sir.
 23 Q. So even when State Farm hires an
 24 independent contractor, an independent
 25 agent, it designates it with a -- what did

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1 you call it?
 2 A. Four digit.
 3 Q. Four digit State Farm
 4 identifying -- what did you called it
 5 earlier?
 6 A. Four-digit ID.
 7 Q. So they get a four-digit ID, they
 8 being independent adjusters?
 9 A. Yes, they do.
 10 Q. When his name is identified as the
 11 rep, what does that mean?
 12 A. His being Johnathan Dekievit.
 13 Q. Yes, sir.
 14 A. He's the rep assigned this claim.
 15 Q. If I could direct your attention
 16 to the lower right-hand corner, there seems
 17 to be forms and titles and it lists a bunch
 18 of forms and titles. Do you see that?
 19 A. Yes, sir.
 20 Q. We spoke earlier about the
 21 endorsement which basically provided for
 22 replacement coverage for the Browns' policy;
 23 remember that?
 24 A. Yes, sir.
 25 Q. Which one of these forms and

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1 titles, what's it?
 2 A. If I can see a copy of the policy.
 3 Q. You can't tell from what's in
 4 front of you? I think you still have a
 5 policy to the left of you?
 6 A. (Reading) The form is FE5273.
 7 Q. What's the name of it?
 8 A. Coverage A, loss settlements
 9 endorsement.
 10 Q. And, again, we're sort of back to
 11 an activity log where the subsequent pages
 12 are numbered 2, 3, 4, but no Page 1
 13 identified.
 14 Is it fair to say that Brown 08 is
 15 the first page of this four-page document?
 16 A. That is a fair assessment, yes,
 17 sir.
 18 MR. GISLESON:
 19 I will identify as Brown 8 through
 20 Brown 11 as Exhibit 20.
 21 (Exhibit No. 20 marked for
 22 identification.).
 23 EXAMINATION BY MR. GISLESON:
 24 Q. You can you identify this for me?
 25 I have no idea what it is.

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1 A. Brown 12 is a faxed confirmation
 2 of the document that is Brown 15. It's
 3 confirmation that the fax went through.
 4 Q. I've got you. What is Brown 15?
 5 Do you need a copy of it?
 6 A. Brown 15 is a faxed cover sheet.
 7 Q. Oh, I see. What was being faxed?
 8 A. Seven pages.
 9 Q. Do you know what seven pages?
 10 A. I believe the pages that were
 11 faxed were Brown 87, Brown 88, Brown 89,
 12 Brown 90, Brown 91, and Brown 92 and
 13 Brown 86.
 14 Q. Who is it faxed from and who is it
 15 faxed to?
 16 A. This is from our centralized
 17 office. I recall an activity log. I'm
 18 looking for that activity log. You will
 19 have to give me some latitude on that,
 20 please.
 21 Q. That's fine.
 22 A. At this time, I can't find what I
 23 was referencing. It is from our centralized
 24 office to the field office.
 25 Q. Where is the centralized office

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1 located?
 2 A. Dallas.
 3 Q. And the field office?
 4 A. Luling catastrophe office. I'm
 5 sorry, I have that reversed. It is to our
 6 centralized office from the Luling
 7 catastrophe office.
 8 Q. I'm not going to attach that
 9 document.
 10 I show you a four-page document,
 11 Brown 17 through 20.
 12 A. You want this?
 13 Q. I'm not going for attach that.
 14 Can you identify this document?
 15 A. It's a document marked Brown 17,
 16 18 --
 17 Q. Yes. I had it backwards.
 18 A. -- 19, and 20 is a -- is the
 19 estimate printed on 11/21/2005.
 20 Q. This is the document we discussed
 21 earlier; correct?
 22 A. I believe this is the document
 23 that we discussed earlier, yes.
 24 Q. I direct your attention to Brown
 25 18. You spoke earlier about the unit cost

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1 of certain items and how State Farm's
 2 lowered the unit price that came from
 3 Xactware. Do you remember that testimony?
 4 A. Yes, I do.
 5 Q. And there were -- you were very
 6 specific though as to which unit items,
 7 which unit costs State Farm lowered from
 8 Xactware. I just direct your attention to
 9 Brown 18. Can you identify for me and for
 10 the record, which items those were?
 11 A. The first item was remove, tear
 12 off, haul and dispose of comp shingles, 20
 13 to 25 years. The unit cost on the State
 14 Farm price list is \$40.
 15 Q. And it's your understanding that
 16 that unit price is lower than the Xactware
 17 unit cost?
 18 A. It's my understanding that the
 19 combined unit cost for removal and the
 20 replacement of one ninety is lower than what
 21 the Xactware price list would indicate at
 22 that same time.
 23 Q. And what about the -- one
 24 underneath, that's three tab, 20-year
 25 composition shingle roofing including the
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1 felt?
 2 MR. ZAUNBRECHER:
 3 That's what he just said.
 4 EXAMINATION BY MR. GISLESON:
 5 Q. Is that one also lower?
 6 A. Your use of the term also would
 7 imply that I was only referring to the first
 8 unit cost. My response referred to both the
 9 remove and the replacement which would be
 10 the first two lines.
 11 Q. Okay.
 12 A. The first one being 40, the second
 13 one being one 50, the two combined adds up
 14 to one-ninety. That combined price of
 15 one-ninety would be lower than the combined
 16 price contained within the Xactware price
 17 list on the same date.
 18 Q. Did you have a conversation with
 19 Mr. Lapinskie about the unit cost for the
 20 repair, replace the gutter downspout --
 21 aluminum?
 22 MR. ZAUNBRECHER:
 23 I'm sure you meant Mr. Richter.
 24 MR. GISLESON:
 25 What did I say?
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1 MR. ZAUNBRECHER:
 2 You said with Mr. Lapinskie.
 3 EXAMINATION BY MR. GISLESON:
 4 Q. I'm sorry, Mr. Lapinskie, did you
 5 have that conversation with Mr. Richter?
 6 A. About whether those prices had
 7 been revised?
 8 Q. Yes.
 9 A. I did ask whether if there were
 10 any other prices contained within this
 11 estimate that had been revised, yes.
 12 Q. And what did he tell you about the
 13 third one, R and R gutter?
 14 A. That price was an acceptance of an
 15 Xactimate price, or Xactware price.
 16 Q. What about the one on the bottom,
 17 repair and replace the exterior door, eight
 18 foot --
 19 A. That price was an acceptance of
 20 the Xactware price.
 21 Q. When you say accepted, you mean
 22 not to change the Xactware price?
 23 A. There was no change to that unit
 24 cost made by State Farm.
 25 Q. If I could direct your attention
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1 to Brown 19. There is a bolded line item
 2 that reads: "Adjustments for base service
 3 charges. And then at the end of that line
 4 it says, "Adjustment." Do you see?
 5 A. Yes, sir.
 6 Q. What does that mean, adjustment
 7 for Bates service charges?
 8 A. As we previously discussed on
 9 Brown 17, underneath price list it says
 10 restoration service remodel with service
 11 charges broken out because service charges
 12 are broken out. The estimate is generated
 13 with the base service charges broken out at
 14 the end of the estimate. Those base service
 15 charges were carpenter refer and siding
 16 installer.
 17 Q. Have you ever heard anyone say
 18 that what base service charges broken out
 19 really means is that they're not included in
 20 the estimate at all?
 21 MR. ZAUNBRECHER:
 22 I object to the form. I'm not
 23 sure what you mean.
 24 THE WITNESS:
 25 I'm sorry.
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1 MR. ZAUNBRECHER:
 2 Go ahead, you can answer if you
 3 understand it.
 4 THE WITNESS:
 5 With regard to this claim the base
 6 service charges are included in the final
 7 settlement that was issued.
 8 EXAMINATION BY MR. GISLESON:
 9 Q. I direct your attention to Brown
 10 20.
 11 A. (Complying).
 12 Q. What is this document?
 13 A. Included with our estimate is a
 14 copy of the structural damage claim policy
 15 which outlines our -- it gives an outline of
 16 the estimate reconciliation process or
 17 provides further instruction for the
 18 policyholder.
 19 Q. Was this something that was
 20 done -- well, let me ask you this way: Was
 21 this something that was attached to the
 22 Browns' estimate and then sent to the
 23 Browns?
 24 A. This is Page 4 of the Browns'
 25 estimate.

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1 in freezer \$600," on the right-hand side of
 2 the page right under gas expense.
 3 Q. Do you know who filled out this
 4 document?
 5 A. Who filled out which document are
 6 you referring to?
 7 Q. Brown 21.
 8 A. The document itself does not
 9 identify who the completer of that document
 10 was.
 11 Q. If I can direct your attention to
 12 the lower right-hand corner. It says by
 13 MJB. Do you see that?
 14 A. Yes, I do.
 15 Q. Do you know who MJB is?
 16 A. No, I do not.
 17 Q. I imagine that this document would
 18 have been saved and made part of the
 19 electronic claims file; right?
 20 A. This is not a CSR document. This
 21 is a document that would be contained within
 22 the paper file. Whether it was scanned in
 23 images on the electronic file, I do not
 24 know.
 25 Q. But it appears as though it was

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1 Q. So then this is something that
 2 would have been sent to the Browns?
 3 A. This is Page 4 of the estimate,
 4 yes.
 5 Q. And so the estimate would have
 6 been sent to the Browns; right?
 7 A. The estimate should have been sent
 8 to the Browns with a copy of the drafts,
 9 yes.
 10 MR. GISLESON:
 11 I'm going to attach Brown 17
 12 through Brown 20 as Exhibit 21.
 13 (Exhibit No. 21 marked for
 14 identification.)
 15 EXAMINATION BY MR. GISLESON:
 16 Q. Can you identify this document?
 17 A. Hold on one second.
 18 Q. Sure. It's Brown 21?
 19 A. The document that was put before
 20 me marked Brown 21 is a personal property
 21 inventory form for a food loss.
 22 Q. Do you know how that \$600 amount
 23 was calculated?
 24 A. On Brown 0027 the document that
 25 notes inspected 11/15/05, it states: "Food

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1 filled out on the computer; right?
 2 A. Yes, it is a computer-generated
 3 form.
 4 Q. So it's your testimony that they
 5 would have filled it out on the computer,
 6 printed out the document and scanned it into
 7 to the computer?
 8 A. That could have been what
 9 happened, but I don't know whether it was
 10 scanned in or not.
 11 MR. GISLESON:
 12 I will attach Brown 21 as
 13 Exhibit 22.
 14 (Exhibit No. 22 marked for
 15 identification.)
 16 EXAMINATION BY MR. GISLESON:
 17 Q. I will show you Brown 22. Can you
 18 identify this document?
 19 A. The document Brown 0022 is a
 20 prohibited use worksheet.
 21 Q. Do you know who filled this out?
 22 A. This document was filled out by
 23 QNEJ. That would be Johnathan Dekievit.
 24 Q. And does this document appear to
 25 be a computer-generated document?

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1 A. This is a computer-generated
 2 document, yes, sir.
 3 Q. Would it have been saved to the
 4 electronic claims file?
 5 A. I do not know whether this was
 6 scanned in to CSR. This is not a CSR
 7 document.
 8 MR. GISLESON:
 9 I will attach Brown 22 as
 10 Exhibit 23.
 11 (Exhibit No. 23 marked for
 12 identification.)
 13 EXAMINATION BY MR. GISLESON:
 14 Q. We spoke earlier about the
 15 handwritten notes made by the adjuster,
 16 identified on Brown 27. I don't think my
 17 copies are as legible as you were looking at
 18 because you were reading some things I
 19 couldn't see.
 20 MR. ZAUNBRECHER:
 21 They call them field notes instead
 22 of adjuster's notes.
 23 MR. GISLESON:
 24 What's that?
 25 MR. ZAUNBRECHER:

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1 I think he called them field
 2 notes. I have the original.
 3 EXAMINATION BY MR. GISLESON:
 4 Q. Is that a better description of
 5 this document?
 6 A. This is his scope notes.
 7 MR. ZAUNBRECHER:
 8 Scope notes.
 9 EXAMINATION BY MR. GISLESON:
 10 Q. And is this, in fact, the document
 11 that you were reading from earlier in the
 12 deposition?
 13 A. Yes, this was.
 14 MR. GISLESON:
 15 Brown 27, as Exhibit 24.
 16 (Exhibit No. 24 marked for
 17 identification.)
 18 MR. ZAUNBRECHER:
 19 May I provide a better copy?
 20 MR. GISLESON:
 21 Yes, please.
 22 MR. ZAUNBRECHER:
 23 If the court reporter will note,
 24 I'm going to make a better copy of Brown 27
 25 for the exhibit.

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1 MR. GISLESON:
 2 I'm just going to put an exhibit
 3 sticker on it now.
 4 THE VIDEOGRAPHER:
 5 And we will replace it with a
 6 better copy.
 7 MR. ZAUNBRECHER:
 8 Do you want to look at the
 9 original?
 10 MR. GISLESON:
 11 At a break.
 12 MR. ZAUNBRECHER:
 13 I was hoping we wouldn't have any
 14 more breaks.
 15 MR. GISLESON:
 16 I'm actually winding down.
 17 MR. ZAUNBRECHER:
 18 And I will tell you because there
 19 was a misread earlier on the document. It
 20 was minor, but I will point it out to you if
 21 you will allow me to even if it's off the
 22 record.
 23 MR. GISLESON:
 24 You tell me now.
 25 MR. ZAUNBRECHER:

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1 Earlier, Mr. Lapinskie read food
 2 in freezer, \$600, and the document actually
 3 says food in fridge, freezer, fridge and
 4 freezer. Fridge and freezer and it's
 5 impossible to see -- well, actually it's not
 6 too bad on some of the copies, but the
 7 pencil writing on your copy is -- didn't
 8 copy well. I will get a better copy.
 9 EXAMINATION BY MR. GISLESON:
 10 Q. Could I direct your attention to
 11 Brown 55. You spoke earlier about printing
 12 sort of screen shots from the claims file.
 13 Do you remember that?
 14 A. Yes, sir.
 15 Q. Is that what Brown 55 is?
 16 A. Brown 55 is a screen -- sorry.
 17 Brown 55 is a screen shot of the CSR, yes.
 18 Q. And we've got, it sort of -- looks
 19 like it's in a format where the various
 20 files for the Brown file. Do you see that?
 21 A. I don't understand your question.
 22 Q. Sir, at the bottom, it's got the
 23 identifying information, the CSR
 24 information, the prints, activities. What
 25 is PILR theft?

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1 A. PILR theft does not relate to this
2 specific claim. It's if we had a theft
3 claim, there would be additional information
4 that we would fill out.
5 Q. What is PILR fire?
6 A. The same as if it was fire.
7 Q. Where do you save it for -- as a
8 wind claim, where is that information found?
9 A. Within CSR. There is no save
10 function in CSR. The minute I type
11 something in, it's in.
12 Q. Can you delete it once you type it
13 in?
14 A. No, sir.
15 Q. Well, somebody can delete it,
16 somebody with authority can go in there and
17 delete it; right?
18 A. Let me clarify. If it was insured
19 information, I can change it. I can change
20 addresses. I can change parties to the
21 loss. I can delete or add parties to the
22 loss. But if your question is with regard
23 to activity logs, no, I can not.
24 Q. When you say, no, you can't change
25 it, is it the computer program doesn't allow

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1 a change or is it -- it's just the policy of
2 State Farm that once it's in there, you
3 don't touch it?
4 A. It doesn't allow a change.
5 Q. How does the computer program
6 distinguish between the two entries?
7 A. If I'm in activity logs, I'm in
8 activity logs. If I'm in parties to the
9 loss, I'm in parties to the loss.
10 Q. What's the send and close?
11 A. It's a button on the bottom.
12 Icon.
13 Q. Do you see the send and close?
14 A. I do.
15 Q. What does that do?
16 A. This is a screen just to send CSR
17 instructions to print the file. This has
18 nothing to do with the claim file. This is
19 in compliance with your request.
20 Q. So this isn't a snapshot of the
21 claims file?
22 A. A snapshot of the instructions
23 saying that we're generating the paper copy
24 in compliance with your request.
25 Q. What is that number on the bottom,

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1 the R1-SHU-514922?
2 A. That would be the tool bar
3 contained within windows that's part of this
4 screen shot. It has nothing to do with CSR.
5 Q. SHU stands form special handling
6 unit?
7 A. I believe that does stand for
8 special handling unit.
9 Q. Why would the special handling
10 unit be involved in the Vincent Brown claim?
11 A. On 9709, on Brown 0032, log note
12 57, the file was moved -- moving file to the
13 field for fire SHU handling, per request
14 from Peggy Bordelon.
15 Q. I'm going to also show you Brown
16 56. Are Brown 56 and Brown 55 related in
17 some way?
18 A. These are event logs that aren't
19 really a part of the claim file. It's just
20 showing that we did what was asked. These
21 are not screen prints that the adjuster
22 would see in the handling of the claim.
23 MR. GISLESON:
24 I will attach Brown 55 and Brown
25 56 of as Exhibit 25.

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1 (Exhibit No. 25 marked for
2 identification.).
3 EXAMINATION BY MR. GISLESON:
4 Q. Does the claims file have the
5 photographs in electronic format?
6 A. The electronic claims file --
7 during the handling of claims during
8 Hurricane Katrina, photos were uploaded to
9 the CSR, yes.
10 Q. And would those photographs be in
11 color?
12 A. The photographs that we would be
13 able to view in CSR would be in color, yes.
14 Q. Can you identify --
15 A. If I may, if you will allow me
16 some latitude.
17 Q. Sure.
18 A. Previously you had asked me what
19 items were scanned into CSR on the images,
20 on Brown 0054 is a description of those
21 items that are scanned into images. I did
22 not recall that at the time.
23 MR. ZAUNBRECHER:
24 54.
25 THE WITNESS:

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1 54. The documents that you have
 2 before you are the CSA instructions. CSAs
 3 do not handle the claim. That's just the
 4 instruction sheet saying this is what you
 5 need to do.
 6 EXAMINATION BY MR. GISLESON:
 7 Q. We might want to look under 54?
 8 A. Yes, sir.
 9 Q. Do you have a better copy than
 10 what I have? I've got the description, part
 11 of the description copied off of it.
 12 MR. ZAUNBRECHER:
 13 You're welcome to use mine. I'm
 14 sorry, but the copy was bad.
 15 EXAMINATION BY MR. GISLESON:
 16 Q. So Brown 54 is a list of documents
 17 that were scanned and then uploaded into the
 18 electronic claims filing system?
 19 A. This is an image list detailed
 20 report for this claim, yes.
 21 MR. GISLESON:
 22 I will attach this one.
 23 MR. ZAUNBRECHER:
 24 Let me make you a better one of 27
 25 and 54 and I will give it to you before we
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1 leave today. Mark your bad one -- your not
 2 as clear one of Brown 54 as Exhibit 26, and
 3 I will replace it with the court reporter
 4 before we leave.
 5 Can we take a brief break?
 6 MR. GISLESON:
 7 Yeah, that's fine.
 8 MR. ZAUNBRECHER:
 9 And I will get 54 and 27, better
 10 copies made.
 11 THE VIDEOGRAPHER:
 12 Off the record. It's 4:01.
 13 (Whereupon, a brief recess was
 14 taken.).
 15 THE VIDEOGRAPHER:
 16 We're back on the record. It's
 17 4:12.
 18 THE WITNESS:
 19 In further reflection after
 20 recognizing that I did have this image list
 21 details report, prior responses I may have
 22 gave were I could not verify whether this
 23 was imaged into the file or not. This
 24 report will tell you whether it was imaged
 25 into that file.
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1 EXAMINATION BY MR. GISLESON:
 2 Q. Does this Exhibit 26, Brown 54,
 3 also identify when documents are uploaded to
 4 the system, not simply scanned and placed in
 5 the system?
 6 A. The assigned date, just a second
 7 here, let me get this right, the assigned
 8 date is the date and the time that it is put
 9 into CSR. The reviewed date is the date and
 10 time that it is accessed in CSR and labeled.
 11 Some of them are labeled automatically based
 12 on the way that they're scanned in.
 13 For example, the photos, you will
 14 note that the assigned date and the reviewed
 15 date and time will be exactly the same
 16 because when we upload photos, we've already
 17 labeled them so that we don't have to review
 18 them when they get into CSR, but the
 19 assigned date for the document marked
 20 returned mail will show that it says 2006,
 21 7/29 at 11:34, but it wasn't reviewed until
 22 15:12 of the same date, so someone went into
 23 CSR and reviewed that image and labeled it.
 24 That's a long-winded answer to say, yes.
 25 Q. Can you identify that document?
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1 A. The document placed before me is
 2 not Bates stamped. It appears to be a copy
 3 of the declarations page for Vincent and
 4 Jeannie Brown.
 5 Q. And would this declarations page
 6 have been for the policy in effect at the
 7 time of Katrina?
 8 A. No, I'm sorry, I got my dates
 9 wrong. The effect date, May 23rd, 2005 to
 10 May 23rd, 2006, yes.
 11 MR. GISLESON:
 12 I attach that as Exhibit 27.
 13 (Exhibit No. 26 marked for
 14 identification.).
 15 MR. ZAUNBRECHER:
 16 So I'm clear -- oh, Exhibit 26 was
 17 Brown 54.
 18 MR. GISLESON:
 19 Yes, in case that wasn't put on
 20 the record.
 21 MR. ZAUNBRECHER:
 22 Okay.
 23 THE WITNESS:
 24 The declarations page shows some
 25 amendments that were made post-Katrina,
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1 January 5th, 2006. You will note about a
 2 third of the way down on the right-hand
 3 side, it's a location of premises added or
 4 insured's address and/or name change, but I
 5 don't believe there's any change. I will go
 6 back to the homeowners's claim which is
 7 truly the question is the policy forms in
 8 effect at the time. Is that correct?
 9 Q. Yes.
 10 A. Okay.
 11 MR. GISLESON:
 12 Okay. I will attach that as
 13 Exhibit 27.
 14 (Exhibit No. 27 marked for
 15 identification.)
 16 EXAMINATION BY MR. GISLESON:
 17 Q. Isn't it true, Mr. Lapinskie, that
 18 you do not have any experience as an
 19 insurance agent?
 20 A. That would be a correct statement.
 21 I have not worked as an insurance agent.
 22 Q. At any point in time has, based
 23 upon your review of the claims file, has
 24 State Farm employed the anticoncurrent
 25 clause cause to deny coverage to the Browns?
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1 MR. ZAUNBRECHER:
 2 I object to the form. I'm not
 3 sure what you're asking. At any time in the
 4 claims file?
 5 EXAMINATION BY MR. GISLESON:
 6 Q. Based upon your review of the
 7 claims file, has State Farm invoked the
 8 anticoncurrent cause clause to deny
 9 coverage?
 10 MR. ZAUNBRECHER:
 11 I object to the form.
 12 You can answer it if in the claims
 13 file you saw any evidence of any concurrent
 14 causation.
 15 THE WITNESS:
 16 If your reference to the
 17 anticoncurrent causation is a reference to
 18 losses not insured to, I see no
 19 correspondence that was sent out from State
 20 Farm to the Browns during the claim handling
 21 that quotes that policy wording.
 22 EXAMINATION BY MR. GISLESON:
 23 Q. Do you know whether State Farm put
 24 together any kind of report that concerned
 25 the weather conditions in the New Orleans
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1 East area during Hurricane Katrina?
 2 MR. ZAUNBRECHER:
 3 I object to the form. Beyond the
 4 scope.
 5 Don't answer.
 6 EXAMINATION BY MR. GISLESON:
 7 Q. Isn't it true that State Farm put
 8 together weather reports concerning the
 9 impact Hurricane Katrina had in the
 10 New Orleans Metropolitan area?
 11 MR. ZAUNBRECHER:
 12 Same objection.
 13 Same instruction.
 14 EXAMINATION BY MR. GISLESON:
 15 Q. Isn't it true that State Farm
 16 mapped out the wind speeds of the -- from
 17 Katrina in the New Orleans Metropolitan area
 18 at the time Hurricane Katrina came through
 19 the city?
 20 MR. ZAUNBRECHER:
 21 Same objection.
 22 Same instruction.
 23 EXAMINATION BY MR. GISLESON:
 24 Q. Isn't it true that State Farm also
 25 created a graph and a chart to demonstrate
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1 the amount of rainfall in the New Orleans
 2 Metropolitan area at the time of Hurricane
 3 Katrina landfall?
 4 MR. ZAUNBRECHER:
 5 Same objection.
 6 Same instruction.
 7 EXAMINATION BY MR. GISLESON:
 8 Q. Isn't it true that State Farm
 9 developed protocols on how to adjust claims
 10 in the New Orleans East area?
 11 MR. ZAUNBRECHER:
 12 Same objection.
 13 Same instruction.
 14 EXAMINATION BY MR. GISLESON:
 15 Q. Isn't it true that the Browns'
 16 property is located in the New Orleans East
 17 area of the city?
 18 A. I believe the Browns are in the
 19 east area. How that may be defined, it's
 20 east of here. Is that right? I believe
 21 it's east of here.
 22 Q. Isn't it true that State Farm
 23 distributed e-mails concerning adjustment
 24 issues related to Hurricane Katrina
 25 specifically concerning the New Orleans East
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1 area?
2 MR. ZAUNBRECHER:
3 Same objection.
4 Same instruction.
5 EXAMINATION BY MR. GISLESON:
6 Q. Isn't it true you had no
7 involvement in the adjustment of the Browns'
8 claim?
9 A. I was not involved in the
10 adjustment of the Browns' claim.
11 Q. What is the State Farm's office at
12 the time of Hurricane Katrina or the
13 adjustment office that would have sort of
14 encompassed the Browns' house?
15 MR. ZAUNBRECHER:
16 You're talking about the claims,
17 cat claims or agents?
18 EXAMINATION BY MR. GISLESON:
19 Q. Do you know what I mean?
20 A. If your question is where was the
21 location that we officed during the
22 adjustment of the Browns' claim?
23 Q. Yes.
24 A. The Browns' claim was handled out
25 of the Luling office.

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1 Q. Does that office still exist?
2 A. The Luling office does not exist.
3 It was a temporary location.
4 Q. Who was the team manager for the
5 Brown claim?
6 A. The team manager that Dekievit
7 reported to was Carrie Demane, D-E-M-A-N-E.
8 Q. Where is she located?
9 A. I believe Carrie is based out of
10 either New York or New Jersey.
11 Q. Have you ever spoken with her
12 about the Browns' claim?
13 A. I've not spoken with Carrie with
14 regard to the Browns' claim, no.
15 Q. Do you know what document that is
16 (handing)?
17 A. The document that was handed to me
18 is not Bates stamped. It looks very similar
19 to other documents that I previously was
20 unable to identify.
21 Q. Can you authenticate that document
22 at all?
23 A. I cannot. I'm not familiar with a
24 document of this type at all.
25 MR. GISLESON:

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1 I will attach it as Exhibit 28.
2 (Exhibit No. 28 marked for
3 identification.).
4 EXAMINATION BY MR. GISLESON:
5 Q. Specifically what I'm attaching is
6 a one-page document which reads at the top,
7 view contact details dash Vincent O. Brown
8 and with comments dated December 2005.
9 Have you ever bought construction
10 materials or paid for labor in the
11 New Orleans Metropolitan area after
12 Hurricane Katrina?
13 MR. ZAUNBRECHER:
14 Objection to the form. Beyond the
15 scope. I'll grant some latitude if you're
16 laying a foundation for something.
17 I can see where you may say it
18 goes to his qualifications, so go ahead and
19 answer it, subject to my objection.
20 THE WITNESS:
21 I may have purchased a tape
22 measure, a scraper, a level. I don't think
23 that I would qualify that as answering your
24 question. I do not believe I have.
25 EXAMINATION BY MR. GISLESON:

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1 Q. Are you familiar with the
2 principle of demand surge?
3 MR. ZAUNBRECHER:
4 Same objection.
5 Same instruction.
6 THE WITNESS:
7 Any response I gave to defining
8 demand surge would be speculative.
9 EXAMINATION BY MR. GISLESON:
10 Q. Who is Mike Tucker?
11 A. Mike Tucker is a claims consultant
12 housed in Bloomington, Illinois.
13 Q. Was he involved in the preparation
14 of the three-page wind/water protocol that I
15 showed you earlier?
16 MR. ZAUNBRECHER:
17 It's been asked and answered.
18 EXAMINATION BY MR. GISLESON:
19 Q. You can answer the question if you
20 understand it.
21 A. As previously stated, Mike Tucker
22 was one of the individuals in the committee
23 that put together the wind and water
24 protocols.
25 Q. Who is Susan Hood?

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1 A. Susan Hood is our vice president,
 2 claims, State Farm.
 3 Q. At the time of Hurricane Katrinas?
 4 A. At the time of Hurricane Katrina,
 5 she was in that position, yes.
 6 Q. Who is Reed Richards?
 7 A. The name Reed Richards rings a
 8 bell, but I cannot identify it at this time.
 9 Q. Who is Mike Entwistle,
 10 E-N-T-W-I-S-T-L-E?
 11 A. Mike Entwistle is the section
 12 manager in catastrophe services. He had
 13 oversight over all the offices in the
 14 New Orleans area.
 15 Q. At the time of Hurricane Katrina?
 16 A. Thank you for that clarification.
 17 At the time of Hurricane Katrina, yes.
 18 Q. Who is Jim Damm, D-A-M-M?
 19 A. Jim Damm is our -- I always get
 20 his title wrong. I haven't got his title,
 21 I'm sorry.
 22 Q. Is he a director?
 23 A. I do not believe that's a correct
 24 title.
 25 Q. Who is John Fouert, F-O-U-E-R-T?
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1 I know of no involvement that he had with
 2 regards to the handling of the Brown claim.
 3 EXAMINATION BY MR. GISLESON:
 4 Q. Does the estimate in the Brown
 5 claim constitute an acknowledgment by State
 6 Farm of an amount due to the policyholder?
 7 A. Yes. Contained within the Brown
 8 claim is the estimate that we paid on to the
 9 Browns.
 10 Q. So would you agree with the
 11 statement that the estimate does constitute
 12 an acknowledgment by State Farm that that is
 13 the amount due to the policyholder?
 14 A. I would agree that that was an
 15 estimate that was generated and payment was
 16 made, yes.
 17 Q. If we can take a very quick break,
 18 the sun is going down and you're becoming
 19 silhouetted.
 20 (Whereupon, an off-the-record
 21 discussion was held.)
 22 EXAMINATION BY MR. GISLESON:
 23 Q. Are you familiar with the term
 24 "all risk policy"?
 25 A. I've heard the -- sorry.
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1 A. John Fouert is who Jim Damm
 2 reports to. He is vice president, claims.
 3 Q. Was he the VP of claims at the
 4 time of Katrina?
 5 A. Yes, sir.
 6 Q. Who is Rick Rasmussen,
 7 R-A-S-M-U-S-S-E-N?
 8 A. Rick Rasmussen is a team manager
 9 in catastrophe services.
 10 Q. What were his duties and
 11 responsibilities after Katrina?
 12 MR. ZAUNBRECHER:
 13 Same objection.
 14 Same instruction.
 15 If it's a foundation for
 16 something -- my instruction is to allow him
 17 to answer, but I've allowed you to go on and
 18 on about foundation for something I hoped
 19 was relevant. I've let you go on for quite
 20 a while and I think he's already talked
 21 about Mr. Rasmussen, but answer it again if
 22 you know.
 23 THE WITNESS:
 24 Rick Rasmussen is a peer. He
 25 worked alongside me in the Hammond office.
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1 MR. ZAUNBRECHER:
 2 Note my objection to the form of
 3 the question and beyond the scope.
 4 Again, I will allow some latitude
 5 even though it's beyond the scope.
 6 THE WITNESS:
 7 I've heard the use of the word or
 8 the terminology "all risk policy," yes.
 9 EXAMINATION BY MR. GISLESON:
 10 Q. What is your understanding of the
 11 term?
 12 A. I've heard it used in many
 13 contexts.
 14 Q. Do you have an understanding of
 15 what all risk policy means?
 16 A. I'm familiar with all risk policy,
 17 yes.
 18 Q. What is your understanding of the
 19 term "all risk policy"?
 20 A. What I'm familiar with with
 21 regards to all risk policy is that it was a
 22 term that was sometimes used to reference a
 23 homeowners policy with broad coverage.
 24 I also am familiar that it has
 25 been knocked around in the legal system to
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1 the point where I would not define the
 2 Browns' policy as an all risk policy if
 3 that's the question you're going to.
 4 Q. So is it my understanding you're
 5 relying on your understanding of Louisiana
 6 law to define whether or not the Browns'
 7 policy is an all risk policy or not?
 8 MR. ZAUNBRECHER:
 9 I object to the form.
 10 THE WITNESS:
 11 My definition of the Browns'
 12 policy is a homeowners, State Farm
 13 homeowners FP7955, with the endorsements
 14 attached.
 15 EXAMINATION BY MR. GISLESON:
 16 Q. Do you still have the policy next
 17 to you?
 18 A. Yes, sir.
 19 Q. First off, can you identify that
 20 document?
 21 A. This is a certified copy of the
 22 Browns' policy in effect on the date of
 23 loss.
 24 Q. Is the word "damaged" defined in
 25 that policy?

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1 MR. ZAUNBRECHER:
 2 Objection. The document speaks
 3 for itself. If you're asking him to define
 4 something -- I object to the form of the
 5 question.
 6 THE WITNESS:
 7 Contained within the homeowners
 8 policy is a series of definitions. I note
 9 that damages is not one of those
 10 definitions.
 11 EXAMINATION BY MR. GISLESON:
 12 Q. Have you reviewed that document
 13 before today, that policy?
 14 A. I have reviewed the FP7955 before
 15 today, yes, sir.
 16 Q. So based on your review of the
 17 policy, is the word "damage" defined in the
 18 policy?
 19 MR. ZAUNBRECHER:
 20 Asked and answered. I object to
 21 the form of the question.
 22 Don't answer it again.
 23 EXAMINATION BY MR. GISLESON:
 24 Q. Well, was your earlier statement
 25 that the word "damage" is not found in the

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1 definition section of the policy or was your
 2 earlier testimony that the word "damage" is
 3 not defined anywhere in the insurance
 4 policy?
 5 MR. ZAUNBRECHER:
 6 I'm not sure there's a difference,
 7 but if you can answer the question, go
 8 ahead.
 9 THE WITNESS:
 10 The term "damage" is not under the
 11 definitions in the insurance policy;
 12 therefore, I would say it is not defined in
 13 this policy, 7955.
 14 EXAMINATION BY MR. GISLESON:
 15 Q. Was there an instruction to any of
 16 the adjusters who handled the Browns' claim
 17 instructing them not to use the phrase
 18 hurricane damage or the phrase damage from
 19 Hurricane Katrina in the course of adjusting
 20 the claim?
 21 MR. ZAUNBRECHER:
 22 I object to the form.
 23 You can answer.
 24 THE WITNESS:
 25 I have not spoke to the adjusters

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1 working this claim. That would be a
 2 question that I would defer to them for
 3 response.
 4 EXAMINATION BY MR. GISLESON:
 5 Q. In the course of your Hurricane
 6 Katrina work, did you ever receive a
 7 directive from anyone within State Farm that
 8 said we do not want you telling the State
 9 Farm insureds in Louisiana not to refer to
 10 damage as Hurricane Katrina damage, but
 11 refer to all damage as either flood damage
 12 or wind damage?
 13 MR. ZAUNBRECHER:
 14 I object to the form. Beyond the
 15 scope of the discovery order.
 16 Don't answer.
 17 EXAMINATION BY MR. GISLESON:
 18 Q. Is it your position that the
 19 Browns violated any terms of the insurance
 20 policy in front of you?
 21 MR. ZAUNBRECHER:
 22 I object to the form.
 23 Go ahead and answer.
 24 THE WITNESS:
 25 In my review of the pre-litigation

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1 file, I saw nothing that I would say would
 2 be a violation of that policy.
 3 EXAMINATION BY MR. GISLESON:
 4 Q. Is the term "uninhabitable"
 5 defined in the policy before you?
 6 MR. ZAUNBRECHER:
 7 Objection. The policy speaks for
 8 itself.
 9 You can answer it if you're able.
 10 THE WITNESS:
 11 The use of the word
 12 "uninhabitable" is -- "uninhabitable" is
 13 used within the 7955 homeowners policy. It
 14 is not in bold in that policy, therefore, I
 15 would say it is not defined within the
 16 policy.
 17 EXAMINATION BY MR. GISLESON:
 18 Q. What is the difference between ALE
 19 and prohibited use in that policy before
 20 you?
 21 A. In your reference to ALE, I assume
 22 you're referring to additional living
 23 expense, which is under coverage C, loss of
 24 use, No. 1, prohibited use is found under
 25 that same coverage, but it is defined under
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1 living expense, or prohibited use, he's not
 2 going to do it.
 3 MR. GISLESON:
 4 So you're directing him not to
 5 answer based on privilege?
 6 MR. ZAUNBRECHER:
 7 No. I'm directing him not to
 8 answer because the form of the question is
 9 improper. It's beyond the scope of the
 10 discovery order and I'm instructing him not
 11 to answer. It's an improper question to ask
 12 him to interpret a defined term in an
 13 insurance policy. Interpretation of defined
 14 terms are for the courts.
 15 MR. GISLESON:
 16 You know, I'm going to move to
 17 compel and get sanctions and have
 18 Mr. Lapinskie brought down here to explain
 19 the insurance policy.
 20 MR. ZAUNBRECHER:
 21 Then do what you need to do
 22 because I'm telling you that's an
 23 inappropriate question. He's pointed out to
 24 you where those terms are defined in the
 25 policy. I've given you great leeway away
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1 No. 3.
 2 Q. So what is your understanding of
 3 the difference?
 4 MR. ZAUNBRECHER:
 5 The document speaks for itself.
 6 He's not going to interpret the policy for
 7 you. I object to the form.
 8 Instruct him not to answer.
 9 EXAMINATION BY MR. GISLESON:
 10 Q. Is it State Farm's position that
 11 the Browns can interpret the policy the way
 12 that the Browns read the policy?
 13 MR. ZAUNBRECHER:
 14 I object to the form.
 15 MR. GISLESON:
 16 Are you honestly seriously
 17 instructing the State Farm representative
 18 not to discuss or explain any of the terms
 19 in the State Farm Insurance policy?
 20 MR. ZAUNBRECHER:
 21 He's provided you, he cited you in
 22 the policy where the terms you asked him to
 23 define are defined. He's not going to
 24 provide an interpretation of those. A legal
 25 analysis of what constitutes an additional
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1 from the -- beyond the discovery order.
 2 If you have an appropriate
 3 question, I will continue to allow him to
 4 answer.
 5 EXAMINATION BY MR. GISLESON:
 6 Q. Isn't it true that in other
 7 depositions you've given on behalf of State
 8 Farm as a corporate representative, you've
 9 described the difference between ALE and
 10 prohibited use?
 11 MR. ZAUNBRECHER:
 12 I object to the form. Whether
 13 he's giving testimony in other depositions,
 14 not subject to discovery orders, is not at
 15 issue in this case.
 16 I'm instructing him not to answer
 17 that question.
 18 EXAMINATION BY MR. GISLESON:
 19 Q. Isn't it true that you've given
 20 other depositions has a corporate
 21 representative concerning issues like the
 22 anticoncurrent cause clause?
 23 MR. ZAUNBRECHER:
 24 Same objection.
 25 Same instruction.
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1 EXAMINATION BY MR. GISLESON:
 2 Q. Does State Farm have a policy,
 3 practice, or procedure of making sure the
 4 insureds get paid within 30 days of
 5 receiving an adjuster's report?
 6 MR. ZAUNBRECHER:
 7 Same objection.
 8 Same instruction.
 9 EXAMINATION BY MR. GISLESON:
 10 Q. Are there any time limits in the
 11 guidelines maintained by State Farm as to
 12 when to issue payment after it receives a
 13 copy of its own adjuster's report?
 14 MR. ZAUNBRECHER:
 15 Same objection.
 16 Same instruction.
 17 MR. GISLESON:
 18 Let me look at my notes. I will
 19 attach the insurance policy as Exhibit 29.
 20 (Exhibit No. 29 marked for
 21 identification.)
 22 MR. ZAUNBRECHER:
 23 Let's go off the record for a
 24 second while you look at your notes.
 25 MR. GISLESON:

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1 evaluated that claim and paid based on that
 2 evaluation. The adjuster did not feel that
 3 they needed the assistance of any outside
 4 experts in order to perform that duty.
 5 EXAMINATION BY MR. GISLESON:
 6 Q. And you feel comfortable
 7 discussing and testifying as to what the
 8 adjuster felt like having never spoken with
 9 him?
 10 A. I've reviewed the claim file. I
 11 believe the claim file speaks for itself as
 12 to coverages and damage.
 13 MR. GISLESON:
 14 That's all the questions I have
 15 for today.
 16 MR. ZAUNBRECHER:
 17 Thank you. I have no questions.
 18 THE VIDEOGRAPHER:
 19 That concludes our deposition. It
 20 is 4:47.
 21 (Whereupon the deposition was
 22 concluded.)
 23 * * *
 24
 25

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1 Okay.
 2 THE VIDEOGRAPHER:
 3 Off the record. It's 4:43.
 4 (Whereupon, a brief recess was
 5 taken.)
 6 THE VIDEOGRAPHER:
 7 We're back on the record. It's
 8 4:45.
 9 EXAMINATION BY MR. GISLESON:
 10 Q. Why didn't State Farm employ the
 11 services of an engineer on the Brown claim?
 12 A. We were able to go out to the
 13 Brown claim, we were able to evaluate the
 14 coverages available, the damage that was
 15 incurred, and we made our claims decision.
 16 The use of an engineer did not seem to be
 17 needed on this loss.
 18 Q. What guidelines did State Farm
 19 look to to make that determination that no
 20 engineer was needed on the Brown claim?
 21 MR. ZAUNBRECHER:
 22 I object to the form.
 23 You can answer it if you can.
 24 THE WITNESS:
 25 The adjuster handling the claim

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1
 2
 3 WITNESS' CERTIFICATE
 4
 5 I have read or have had the foregoing
 6 testimony read to me and hereby certify that
 7 it is a true and correct transcription of my
 8 testimony with the exception of any attached
 9 corrections or changes.
 10
 11
 12
 13
 14
 15 _____
 16 CHRISTOPHER JOHN LAPINSKIE
 17
 18
 19
 20 PLEASE INDICATE
 21 () NO CORRECTIONS
 22 () CORRECTIONS; ERRATA SHEET(S) ENCLOSED
 23
 24
 25

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1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	<p style="text-align: center;">REPORTER'S CERTIFICATE</p> <p>I, Diane Tewis Clark, RPR, RMR, CRR, Certified Court Reporter, State of Louisiana, do hereby certify that above-named witness, after having been duly sworn by me to testify to the truth, did testify as hereinabove set forth;</p> <p>That this testimony was reported by me in the stenotype reporting method and transcribed thereafter by me on computer, and that same is a true and correct transcript to the best of my ability and understanding;</p> <p>That I am not of counsel, nor related to counsel or the parties hereto, and in no way interested in the outcome of this matter.</p> <hr style="width: 20%; margin-left: auto; margin-right: auto;"/> <p style="text-align: center;">Diane Tewis Clark, RPR, RMR, CRR Certified Court Reporter</p> <p style="text-align: right;">Page 293</p>	

<p style="text-align: center;">A</p> <p>abbreviation 208:2,5</p> <p>abbreviations 194:10</p> <p>abide 112:5</p> <p>abided 111:23</p> <p>ability 30:20 31:6 70:10 71:5 79:14 143:14 177:8 186:17 203:17 293:13</p> <p>able 66:6 69:21 69:24,25 70:5 76:19 77:1 84:17,21 86:19 86:21,23 87:16 135:23 142:8 155:24 159:13 160:12 183:13 186:22 189:1 192:21 221:5 264:13 285:9 290:12,13</p> <p>above-mentio... 9:1</p> <p>above-named 293:6</p> <p>absolutely 39:16 89:22 100:12 107:18 115:8 230:2</p> <p>absorbed 211:11 211:12</p> <p>acceptable 227:21 228:3 229:13,13,14 229:20,24</p> <p>acceptance 251:14,19</p> <p>accepted 35:2 215:4 251:21</p> <p>accepting 32:9</p> <p>access 60:16 70:7,23,25 71:6 79:24</p>	<p>80:5,6 83:22 90:6 125:17 135:24 142:9 142:10 167:21 230:20</p> <p>accessed 83:2 267:10</p> <p>acknowledgm... 279:5,12</p> <p>acronym 50:15 91:6 151:11 243:25</p> <p>action 16:4</p> <p>activities 176:1 260:24</p> <p>activity 4:15,16 64:20,24,25 65:2,3,9,14 75:6,7,13 76:9 76:12,13 79:25 80:2,5,7 156:8 161:17 189:12 246:11 247:17 247:18 261:23 262:7,8</p> <p>actual 21:16 61:23 67:12 75:16 76:21 151:19 161:17 204:25</p> <p>ACV 216:1</p> <p>adaptations 26:23</p> <p>add 36:25 37:25 38:2 136:14 261:21</p> <p>added 86:6,7,22 168:15 173:6 269:3</p> <p>addition 18:21 19:6,13 24:23 87:20,20 92:25 168:19 242:14</p> <p>additional 19:14 75:22 76:22 90:19 94:18 116:24,25</p>	<p>140:12 171:19 172:24 173:5,6 181:15 261:3 285:22 286:25</p> <p>address 11:22 12:2,8 61:25 62:2 63:15 82:10 157:16 269:4</p> <p>addresses 261:20</p> <p>adds 250:13</p> <p>adjust 108:8 121:14,25 122:5,18 123:6 123:22 124:11 134:13 137:14 141:16,24 143:4 155:4 159:14 160:7 161:12 272:9</p> <p>adjusted 103:14 108:24 109:1 114:6 125:11 154:10 157:1,4 157:11 179:8</p> <p>adjuster 65:4 77:21 78:11 79:13,16,23,24 80:3,3,17,20 81:9,25 94:20 102:22 103:14 114:14 130:13 131:1,15,21 135:3,13,22 143:3,6,18 146:2,9 154:3 154:9,13,19,21 155:4,6,19,21 156:15 164:4,7 165:6 173:25 176:6,23 190:5 198:5,12,14,22 199:3,3 200:11 200:12,23,25 201:9 204:13 257:15 263:21</p>	<p>290:25 291:2,8</p> <p>adjusters 58:6 62:12 78:19 111:22 112:5 117:8,10 133:20 134:5 134:13 177:3 245:8 283:16 283:25</p> <p>adjuster's 257:22 289:5 289:13</p> <p>adjusting 108:3 114:15 125:22 179:7,11,14 219:4 239:24 240:5 283:19</p> <p>adjustment 111:16 113:22 115:18 116:15 133:3,21 135:23 154:8 158:22,25 159:2,3,5 160:13 162:8 172:1 252:4,6 272:23 273:7 273:10,13,22</p> <p>adjustments 175:25 252:2</p> <p>administering 7:24</p> <p>administrative 105:3</p> <p>admit 13:11</p> <p>admittance 60:17</p> <p>advance 202:13 202:14,16,18 203:12 223:10 223:14,18,20 223:22,25 224:2,6,14</p> <p>advances 203:1 203:3</p> <p>affidavits 140:14</p> <p>affirmatively</p>	<p>85:3 113:4</p> <p>aforementioned 7:4</p> <p>age 140:7 216:3 216:9 217:5</p> <p>agency 188:2</p> <p>agent 101:22 145:21 183:8 183:12 188:8 244:25 269:19 269:21</p> <p>agents 183:19,24 273:17</p> <p>agent's 184:3</p> <p>ago 14:18 19:18 87:22 115:17 197:11</p> <p>agree 34:17 35:4 42:7 52:16 54:7 122:16 123:18 156:17 188:4,11 191:14 198:8 199:19 217:13 217:21,22,23 279:10,14</p> <p>agreed 7:2</p> <p>agreement 30:15 123:13</p> <p>ahead 12:19,24 23:19 25:22 40:4 41:22 57:14 58:1 85:5 89:7 112:2 116:1 122:20 125:14 127:25 152:12 176:14 178:19 179:12 218:20 236:1 238:11 253:2 275:18 283:8 284:23</p> <p>al 8:11</p> <p>Alabama 18:14</p> <p>Alan 2:9 8:18 17:19 18:21 19:6,13 20:13</p>
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