

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
3 SOUTHERN DIVISION

3 WILLIAM C. PONTIUS, M.D,
4 and MOLLIE J. PONTIUS,

VOLUME 1

4 Plaintiffs,

5 Cause No.

-vs-

1:06CV749-LTS-RHW

6 STATE FARM FIRE AND CASUALTY
7 COMPANY, an Illinois corporation;
8 and JOHN AND JANE DOES 1-10,

9 Defendants.

10
11 30(b)(6) DEPOSITION

12 The 30(b)(6) Deposition of STEPHAN HINKLE, a
13 citizen of the State of Illinois, a witness of
14 lawful age; produced, sworn, and examined upon his
15 corporeal oath, at the Doubletree Inn, 10
16 Brickyard Drive, Bloomington, Illinois, at
17 1:00 P.M. on the 31st day of October, 2006, before
18 Shelley Marvin, CRR, RPR, and CSR in and for the
19 State of Illinois, CSR License No. 84-003926, as a
20 witness in a certain suit and matter now pending
21 and undetermined in the United States District
22 Court for the Southern District of Mississippi.
23
24

ORIGINAL

1 APPEARANCES

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1 (Whereupon Deposition Exhibits No. 1
2 through 13 and Group Exhibit C-1 through C-13,
3 were marked for identification by the court
4 reporter.)

5 THE VIDEOGRAPHER: This is the
6 videotaped deposition of Stephan Hinkle. My name
7 is David Wyper, representing After Image Video,
8 509 South Chaucer in Monticello, Illinois.

9 We are here today at 10 Brickyard Drive
10 in Bloomington, Illinois to take this deposition
11 for the case of William C. Pontius, M.D. and
12 Mollie J. Pontius, Plaintiffs, versus State Farm
13 Fire & Casualty Company, Defendant, case pending
14 in the U.S. Court, Southern District of
15 Mississippi, and bearing case number
16 1:06CV749-LTS-RHW. This deposition is being taken
17 on behalf of the Plaintiff and is being videotaped
18 at the instance of the Plaintiff. Today's date is
19 October 31st, 2006, and the time is now 12:57 P.M.
20 Could those in the room please identify themselves
21 for the record?

22 MR. WYATT: I'm Derek Wyatt, counsel for
23 Dr. William Pontius and his wife Mollie Pontius.

24 MS. McALISTER: I'm Meg McAlister,

1 counsel for the Plaintiffs.

2 MR. SPRAGINS: Scot Spragins, attorney
3 for State Farm Fire & Casualty Company.

4 THE WITNESS: My name is Stephan Hinkle.

5 THE VIDEOGRAPHER: Would you please
6 swear in the witness?

7 STEPHAN HINKLE,
8 the deponent herein, called as a 30(b)(6) witness,
9 after having been first duly sworn, was examined
10 and testified as follows:

11 EXAMINATION

12 BY MR. WYATT:

13 Q. Good afternoon, Mr. Hinkle. I've
14 already introduced myself. I'm Derek Wyatt. I'm
15 with the Barrett Law Office in Lexington,
16 Mississippi. You are appearing today pursuant to
17 a deposition notice issued under Federal Rule of
18 Procedure 30(b)(6), and you are being designated
19 as a corporate representative to testify; is that
20 right?

21 A. Yes.

22 Q. Have you given a deposition before?

23 A. Yes, I have.

24 Q. All right. Let me just offer some

1 suggestions to you that'll help us keep the record
2 clean. In my Direct Examination of you, which
3 will proceed first in this deposition, I will be
4 asking you questions. And if you don't understand
5 my question, I would ask that you tell me so so
6 that I may repeat it in a way that you do
7 understand it. Can you follow that?

8 A. Yes.

9 Q. Okay. And do you have any -- are you
10 under any impairment of any kind that would
11 prevent you from testifying truthfully today?

12 A. No.

13 Q. In giving this deposition, you know the
14 procedure, do you not, that it's best to answer
15 yes and no and not uh-huh or huh-uh, right?

16 A. I do.

17 Q. Because the record reflects the answer
18 clearer if you answer that way. Is that your
19 understanding?

20 A. It is.

21 Q. All right. Is there -- is there any
22 reason that you will have to interrupt or leave
23 this deposition prematurely today?

24 A. No.

1 Q. Okay. All right. If at any time during
2 this deposition you want to temporarily recess the
3 deposition for the purpose of taking a break to
4 use the restroom or get water or whatever, will
5 you let me know that?

6 A. I will.

7 Q. All right. And you are aware that it's
8 not appropriate to stop the deposition for the
9 witness to confer and formulate an answer; is that
10 your understanding?

11 A. Yes.

12 Q. Okay. So it's your understanding that
13 you're appearing today just as you might be
14 appearing in court, except that we're here in this
15 room and we're filming and taking this deposition
16 Stenographically?

17 A. Yes.

18 Q. All right. Would you please state your
19 full name for the record and please spell it for
20 us, sir?

21 A. My name is Stephan Paul Hinkle. That's
22 S-T-E-P-H-A-N, P-A-U-L, H-I-N-K-L-E.

23 Q. What is your job title?

24 A. Claim consultant.

1 Q. Who are you employed by?

2 A. State Farm Insurance.

3 Q. Which State Farm company are you
4 employed by?

5 A. State Farm Mutual Automobile Insurance
6 Company.

7 Q. You are not an employee of State Farm
8 Fire & Casualty Company?

9 A. That's correct.

10 Q. And never have been?

11 A. No, I have been in the past.

12 Q. When were you an employee of State Farm
13 Fire & Casualty Company?

14 A. From when I started in 1977 to -- until
15 I believe it was January 1st, 2005, when we
16 reorganized.

17 Q. From 2005 on, you were an employee of
18 Auto?

19 A. Yes.

20 Q. But prior to that date, from 1977
21 forward, you were an employee of Fire?

22 A. Fire & Casualty, yes.

23 Q. Uh-huh. Is it referred to as Fire by
24 State Farm employees as to differentiate it from

1 Auto?

2 A. Yes.

3 Q. Will you understand that if I refer to
4 those companies that way?

5 A. I will.

6 Q. Are you an officer of Auto?

7 A. No.

8 Q. Are you a director of State Farm Auto?

9 A. No.

10 Q. Are you a managing agent of State Farm
11 Auto?

12 A. No.

13 Q. You do not hold any officer position in
14 State Farm Auto?

15 A. I do not.

16 Q. And you do not hold any management
17 position, including the ones I just mentioned,
18 officer, director, managing agent, in State Farm
19 Fire?

20 A. I do not.

21 Q. And you never have?

22 A. I have not.

23 Q. You are testifying by consent as -- you
24 are consenting to testify as a 30(b)(6)

1 representative for State Farm Fire today?

2 A. Yes.

3 Q. I want to go back chronologically and
4 I'd like for you to tell me your job titles as
5 they began and changed from 1977 through 2005.
6 And then after that, we will take the period --
7 the brief period from 2005 to present. So the
8 first time period I'm asking for is during your
9 employment tenure with State Farm Fire.

10 A. My first job with State Farm Fire was as
11 a field claim representative. And that lasted
12 from April of 1977 until mid-1980.

13 Q. Okay.

14 A. 1980, I was promoted to a claims
15 procedures training specialist.

16 Q. All right.

17 A. 1981, claims supervisor. In 1984,
18 claims superintendent.

19 Q. Right.

20 A. 1994, divisional claims superintendent.

21 Q. Okay.

22 A. In 1999, claim consultant.

23 Q. Okay. That takes us up through '99. We
24 have about four more years in that period of time

1 unaccounted for.

2 A. Well, from 1999 'til present is claim
3 consultant.

4 Q. But for a different company?

5 A. My job hasn't changed. The company
6 reorganized a year and a half ago, and the
7 department switched to the Mutual Auto. But I'm
8 still a Fire claim consultant.

9 Q. Even though you work for the Auto
10 company, you're dealing with property and casualty
11 claims?

12 A. I'm a Fire claim consultant, yes.

13 Q. What does a claims consultant do?

14 A. Claim consultant is a representative for
15 property and casualty claims to the various zones.
16 It would be consult with the zone on claim
17 matters, procedural matters, coverage matters,
18 training and compliance.

19 Q. Would you train an adjuster as to how to
20 apply a water damage provision in an all-risk
21 homeowners policy?

22 A. I would not do a directive.

23 Q. Who would do that?

24 A. His supervisor or a trainer.

1 Q. His supervisor, did you say?

2 A. Yes.

3 Q. What input would you have, if any, in
4 the process of instructing or implementing the
5 application of a water damage provision in an
6 all-risk homeowners policy?

7 A. I would be consulted with -- in the
8 publication of the training material.

9 Q. Uh-huh. And you're speaking of training
10 material. You're using that word a lot. Let me
11 ask it this way: Let's put aside for a moment
12 training and just -- just consider this. You have
13 sold a policy. You, being State Farm, you
14 understand, has sold a policy. Now, there's a
15 provision in the policy that needs to be
16 interpreted. We're not dealing with training at
17 that point, would you agree?

18 A. No, not necessarily. I agree that we do
19 need to interpret the provisions of our policy,
20 yes.

21 Q. Okay. But the training, any training
22 regarding that issue is something separate. What
23 we're dealing with is the implementation or
24 interpretation of the policy as it's written. So

1 what I'm asking you is what is your involvement in
2 that? Aside from training, what is your
3 involvement in the actual -- the way the policy is
4 applied?

5 A. Well, I wouldn't be involved on a
6 transactional basis. I would be involved in
7 conducting, for example, claims surveys, reviewing
8 files, see that our policy provisions are being
9 followed.

10 Q. That's something you do internally is
11 claims surveys?

12 A. Yes.

13 Q. For each provision in the policy?

14 A. No, the surveys are done for general
15 compliance with every provision in the policy.

16 Q. Well, that was my question. For each
17 provision in the policy, there's a claims survey
18 conducted?

19 A. The surveys, the topic of the survey is
20 not each individual particular portion of the
21 policy.

22 Q. It's the whole policy?

23 A. It's the whole claim process, including
24 the policy interpretation.

1 Q. Uh-huh. So if the claim survey shows
2 something with regard to a particular provision,
3 how do you retain that information?

4 A. I don't understand the question.

5 Q. Do you maintain any kind of database,
6 compilation, hard copy, --

7 A. Yes.

8 Q. -- electronic or otherwise --

9 A. Yes.

10 Q. -- concerning interpretations of various
11 provisions of the policy?

12 A. The findings of the survey are recorded.

13 Q. Uh-huh. And the survey, though, is the
14 whole policy, you're telling me?

15 A. No. The survey is a process where you
16 look at several claim files and compile data.

17 Q. Okay. Well, what would we expect to
18 find if we went searching for the survey results
19 as to the water damage provision in the FP-7955?

20 A. There would be no separate report on
21 that.

22 Q. Do you know that from your personal
23 knowledge, as well as your testifying here as a
24 representative?

1 A. I do.

2 Q. And so I take it then that you have
3 conducted that type of search?

4 A. I've conducted several surveys, yes.

5 Q. Did you conduct that survey?

6 A. I don't know what you mean by that
7 survey.

8 Q. A survey to determine what information
9 exists as far as the water damage provision in the
10 7955?

11 A. I have not.

12 Q. Has there ever been a separate survey
13 for the water damage provision in the 7955?

14 A. I'm not aware of any.

15 Q. Does that mean that there hasn't been or
16 has been?

17 A. That means I don't know if there has or
18 not.

19 Q. So the right answer is you don't know?

20 A. That's correct.

21 Q. I have pre-marked the renotice of this
22 deposition, and I'm going to hand you a copy of
23 that, Mr. Hinkle. It's Exhibit 7. And I would
24 like for you to tell me -- first of all, if you

1 will just thumb through this, you will see that
2 there are 26 itemized paragraphs in this renotece
3 that go over from page 1 to page 4.

4 A. Okay.

5 Q. All right. Let's just -- what I'd like
6 for you to do is tell me which of these categories
7 in this 30(b)(6) notice you're being designated
8 for today.

9 MR. SPRAGINS: I can tell you. And
10 follow with me, if you would, Mr. Hinkle.

11 THE WITNESS: All right.

12 MR. SPRAGINS: Item 1, the specific --
13 which deal with the specific issues raised by this
14 claim. And item 2, the inclusion, interpretation
15 of the anti-concurrent and water damage provision.
16 Item number 3, which I understand is fact-specific
17 to the Dr. Pontius claim. Item 4, he would be
18 able to address the matters that are not
19 confidential. And correct me if I'm wrong,
20 Mr. Hinkle, on any of these matters if you don't
21 feel --

22 THE WITNESS: I will.

23 MR. SPRAGINS: Okay. The same would be
24 true for item number 5. The same would be true

1 for item number 6. With regard to number 7, it's
2 my understanding that there is not a means or
3 method by which claim committee recommendations
4 are centrally filed. So therefore, there's no --
5 no file for that. General claims bulletin, I
6 think it would be dealing with operational guides.
7 He can address those that might be not considered
8 to be privileged or trade -- confidential, excuse
9 me. To an extent, he will be able to talk about
10 State Farm's interpretation of the water damage
11 provision, which would be number 11.

12 MR. WYATT: Wait just a second. Is he
13 designated for 7?

14 MR. SPRAGINS: That would be the
15 induction manual, and that -- excuse me, induction
16 manuals, each of these deal with the induction
17 manuals. And -- well, 7, he can talk about the
18 OGs. But there's -- I don't think there's any
19 general claims bulletin, is there, dealing with
20 the water damage?

21 THE WITNESS: No.

22 MR. SPRAGINS: Okay.

23 MR. WYATT: Let me ask it this way,
24 Scot, is he the designee for number 7? I mean, he

1 can tell us what he knows about what's listed
2 there. But is he the designee?

3 MR. SPRAGINS: He can tell you what's
4 listed there. But there's nothing, Derek --
5 there's not a general claims bulletin. So I don't
6 know why State Farm would have anybody to testify
7 as to that. He will be able to testify as to
8 claim consultants' recommendations concerning the
9 water damage.

10 MR. WYATT: No one else would be --
11 would be designated for 7, right, except
12 Mr. Hinkle?

13 MR. SPRAGINS: I wouldn't think so.

14 THE WITNESS: That would be true, I
15 would think.

16 MR. SPRAGINS: Okay. The next three
17 items deal with a matter of confidential, so I
18 didn't -- that would be confidential and subject
19 to a protective order, if we could reach an
20 agreement on that. Number 11 --

21 MR. WYATT: But I mean, still, Scot, all
22 I'm trying to find out is he the designee for it?

23 MR. SPRAGINS: I would probably have
24 somebody else talk about the induction manual.

1 MR. WYATT: For 8, 9 and 10?

2 MR. SPRAGINS: Yes.

3 MR. WYATT: Okay. Who is that person?

4 MR. SPRAGINS: I'll designate it when we
5 get a protective order and get going on it. I
6 mean, I don't know if it would be Mr. Hinkle or
7 not. I didn't discuss it with Mr. Hinkle because
8 the production of which would be subject to a
9 protective order. So I didn't address that
10 specifically with Mr. Hinkle as to whether he'd be
11 testifying as to these matters.

12 MR. WYATT: Let me just -- let me just
13 clarify for the record that we're on the -- the
14 only thing the Plaintiffs are asking at this
15 moment is for the Defendant to identify the
16 30(b)(6) representative who will testify as to 8,
17 9 and 10.

18 MR. SPRAGINS: Okay.

19 MR. WYATT: And you're not identifying
20 anyone.

21 MR. SPRAGINS: I'm not identifying.

22 MR. WYATT: Okay.

23 MR. SPRAGINS: Okay? Number 11 appears
24 to be very much similar to number 7, and you can

1 ask him about those issues. But there may be --
2 those issues are going to be subject to a
3 protective order, and he hasn't reviewed those
4 either.

5 MR. WYATT: Is he designated for any
6 part of 11?

7 MR. SPRAGINS: You can ask him what he
8 personally knows. He hasn't reviewed the history.
9 Moving to number 12 --

10 MR. WYATT: Scot, let me -- let me --

11 MR. SPRAGINS: Don't -- I'm just going
12 to tell you what I'm designating him in. Okay?

13 MR. WYATT: I understand. And I'm going
14 to -- you know, I'm not going to stop you from
15 doing that. But I do want the record to be clear,
16 and I just want to recite this to you, that the
17 30(b)(6) rule states that the organization so
18 named -- and that in this case would be State Farm
19 Fire & Casualty -- shall designate one or more
20 officers, directors, or managing agents or other
21 persons who consent to testify. And I'll just let
22 the record stand on that, that the Plaintiffs are
23 asking that the Defendants comply with the
24 language in Rule 30(b)(6).

1 MR. SPRAGINS: As soon as there is some
2 agreement about the protective order and
3 disclosure of confidential information and trade
4 secrets, I'll be in a position to designate that
5 person.

6 MR. WYATT: Okay. We don't accept that.

7 MR. SPRAGINS: Well --

8 MR. WYATT: Okay. I'm just making the
9 record. Okay? You have a duty to do it right
10 now.

11 MR. SPRAGINS: No, I don't.

12 MR. WYATT: Fine.

13 MR. SPRAGINS: If we need to get the
14 Judge on the phone yet again ...

15 MR. WYATT: You can get the Judge on the
16 phone as many times as you want. These rules are
17 going to control what happens today. That's
18 what's going to happen. Okay?

19 MR. SPRAGINS: I guess you said this
20 morning, Derek, that the rules said that, said you
21 can do whatever you wanted to do. And obviously,
22 it didn't happen, did it? Magistrate Walker
23 clearly said otherwise.

24 MR. WYATT: I'm not sure what you're

1 referring to, but -- let's just continue.

2 MR. SPRAGINS: About where you could
3 have this deposition and when to have the
4 deposition. And we got on the phone and, within
5 30 seconds, Judge Walker said we can have it as
6 designated by State Farm.

7 MR. WYATT: That's right. And I'll read
8 to you that section of the rule. That is Rule
9 30(b)(1), and it says "the notice shall state the
10 time and place for taking the deposition and the
11 name, address of each person to be examined." And
12 that accords the party desiring to take the
13 deposition that right, not the person who's
14 defending the deposition.

15 MR. SPRAGINS: Well, obviously both
16 myself and Judge Walker disagree.

17 As to item number 12, Mr. Hinkle I
18 believe is your -- that would be an area, would it
19 not?

20 THE WITNESS: Yes.

21 MR. SPRAGINS: Item number 13, that's
22 the matter of confidential and trade secret.

23 MR. WYATT: So you will not designate?

24 MR. SPRAGINS: Not at this time. Not

1 'til we've resolved that issue.

2 Item number 14, I've asked them to
3 double check and see if there are, in fact, any
4 legal opinions. They've looked once and they
5 didn't believe that there was.

6 MR. WYATT: Is he the designee?
7 Mr. Hinkle?

8 MR. SPRAGINS: As soon as they double
9 check. It would be subject to a protective order
10 and be confidential, as we -- as your -- as the
11 Request for Production indicates.

12 MR. WYATT: I still don't understand
13 who's the designee. You can say, Scot, that he is
14 or you will not.

15 MR. SPRAGINS: When we resolve that
16 issue -- when we double check to find out if there
17 is any legal opinion. If there was any legal
18 opinion, it would be Mr. Hinkle. And I've asked
19 at -- I've asked them to double check this
20 morning.

21 Item number 15, you're asking for a
22 negative. But Mr. Hinkle can explain that.

23 MR. WYATT: So he's the designee for 15?

24 MR. SPRAGINS: Yes, sir, I believe so.

1 Is that right, Mr. Hinkle?

2 THE WITNESS: Yes.

3 MR. SPRAGINS: Item number -- as I read
4 item number 16, you want him to speak to the --
5 there was an attachment -- and Derek, it's not on
6 mine -- how the file is organized, I believe.

7 MR. WYATT: That's a page out of the cat
8 induction manual.

9 MR. SPRAGINS: Yes, sir.

10 MR. WYATT: And it's a picture of the
11 file -- a diagram of the file nomenclature?

12 MR. SPRAGINS: Yeah. And I think
13 Mr. Hinkle can speak to that.

14 MR. WYATT: Mr. Hinkle?

15 MR. SPRAGINS: Yes, sir.

16 MR. WYATT: All right.

17 MR. SPRAGINS: We've already agreed that
18 item number 17 was too expansive.

19 MR. WYATT: No one is designated on
20 that?

21 MR. SPRAGINS: No. I mean, we've
22 already agreed that that was -- in the Request for
23 Production of Documents, that that was -- that was
24 too broad.

1 MR. WYATT: What number is that that
2 you're talking about then? Number 12?

3 MS. McALISTER: 17.

4 MR. WYATT: 17? Scot, for the record,
5 I've marked as Exhibit 10 your office's e-mail to
6 us --

7 MR. SPRAGINS: Okay.

8 MR. WYATT: -- which says for that item
9 "none at this time".

10 MR. SPRAGINS: Okay.

11 MR. WYATT: That's Goodloe Lewis making
12 that statement on October 26.

13 MR. SPRAGINS: The Plaintiffs -- oh,
14 excuse me, I apologize. I read that as didn't
15 include the Plaintiffs. I just said any
16 hurricane. As I understand, there was an -- they
17 checked and tried -- and checked and there was no
18 e-mails outside or any communications between
19 State Farm concerning Dr. Pontius and his wife's
20 claim other than that's reflected in the claim
21 file. So I guess there's no need to testify as to
22 that.

23 MR. WYATT: But I mean, if you're -- if
24 I'm correct that the Defendant has to designate a

1 person as to that category, who would you be
2 designating? Even if --

3 MR. SPRAGINS: Simply to say there's
4 nothing out there?

5 MR. WYATT: That's right. Really, this
6 process --

7 MR. SPRAGINS: I didn't have Mr. Hinkle
8 specifically -- address it with him. But he can
9 make a call on a break and he will be able to
10 speak, answer that there's none for 17.

11 Number 18, that is going to be subject
12 to the confidentiality order.

13 MR. WYATT: For all those that you say
14 that about, you're declining to designate, right?

15 MR. SPRAGINS: At this time, yes, sir.

16 MR. WYATT: Okay.

17 MR. SPRAGINS: I didn't ask Mr. Hinkle
18 too, but I was just going to provide you the
19 results of the search for item number 20.

20 MR. WYATT: Well, what about 19?

21 MR. SPRAGINS: Oh, I'm sorry, I skipped
22 that. I don't think there were any documents, but
23 I'll have Mr. Hinkle on a break to double check.

24 MR. WYATT: So he's on 19?

1 MR. SPRAGINS: He's on 19. He'll be on
2 20.

3 MR. WYATT: Okay.

4 MR. SPRAGINS: 21, I understand that
5 they were going to provide you with the loss
6 codes. And Mr. Hinkle, you can ask Mr. Hinkle
7 some questions about that.

8 MR. WYATT: So he's the designee for 21?

9 MR. SPRAGINS: Uh-huh.

10 MR. WYATT: Okay.

11 MR. SPRAGINS: It appears, Derek, that
12 this is asked in a little bit different fashion
13 than you've already asked before. It seems to be
14 within Mr. Hinkle's area on item number 22.

15 And 23 seems to be that warmed over
16 again. And if I'm reading it correct, it would be
17 23. Was there a document request with regard to
18 number 24?

19 MR. WYATT: I don't -- I don't know if
20 there was or wasn't. I can check and see. But
21 this is just a category, you know, for the
22 Defendant to produce a witness on. But I mean, we
23 can look at our document request. If your
24 question is simply did we ask the same thing, I

1 don't know.

2 MR. SPRAGINS: I didn't gather the
3 documents. I didn't know if Mr. -- because I
4 don't believe there was a corresponding request.
5 And I don't know, Mr. Hinkle, if you have any
6 documents. If you have any documents, you need to
7 have somebody look at the documents and speak to
8 them. I don't know what documents you're talking
9 about, so I can't designate somebody there.

10 Number 25, I don't think there was a
11 corresponding document request either. But
12 Mr. Hinkle, I think, can speak to -- it's not, is
13 it?

14 THE WITNESS: The what?

15 MR. SPRAGINS: Every lawsuit initiated
16 -- oh, against State Farm. We'll have him check
17 on the break. I'll double check on that, because
18 there wasn't a corresponding document request.
19 But he'll be able to speak, speak to that.

20 And Mr. Hinkle will not speak to area
21 number 27.

22 MR. WYATT: 26?

23 MR. SPRAGINS: 26, excuse me. I'll have
24 another witness available at 8 tomorrow morning.

1 MR. WYATT: And you don't want to tell
2 us who that witness is?

3 MR. SPRAGINS: I believe the name is
4 Karen Terry.

5 MR. WYATT: And what is her specialty?

6 MR. SPRAGINS: Actuarial. They're the
7 ones that actually provide the documents to the
8 Department of Insurance.

9 MR. WYATT: Okay.

10 BY MR. WYATT:

11 Q. Mr. Hinkle, where did you attend
12 college?

13 A. Ball State University, Muncie, Indiana.

14 Q. And what was your major?

15 A. Social studies.

16 Q. What year did you graduate?

17 A. 1972.

18 Q. What did you do immediately following
19 that?

20 A. I went to work for the Indiana Farm
21 Bureau Mutual Insurance Company.

22 Q. How long did you work there?

23 A. Nearly three years.

24 Q. And what was your reason for leaving?

1 A. I relocated to Michigan.

2 Q. Was that the only reason?

3 A. For family reasons. Yes.

4 Q. What did you do when you were relocated
5 to Michigan?

6 A. I went to work for Metropolitan
7 Insurance Company. I was a sales representative.

8 Q. And how long did you do that?

9 A. About a year.

10 Q. What city were you working in?

11 A. Battle Creek, Michigan.

12 Q. Did you live in that same place?

13 A. I did.

14 Q. And then what did you do after that?

15 A. I was a sales manager for Metropolitan.

16 Q. For how long?

17 A. Three or four months.

18 Q. And then what happened next?

19 A. I went to work for State Farm.

20 Q. What was the reason for leaving
21 Metropolitan?

22 A. Dissatisfaction with the job.

23 Q. Was it a voluntary severance?

24 A. Yes, it was.

1 Q. How many times have you testified?

2 A. Do you mean in court or deposition or --

3 Q. Let's take depositions first.

4 A. About a dozen.

5 Q. And all of those for State Farm?

6 A. Yes.

7 Q. And then how about in court?

8 A. Five or six times in civil court.

9 Q. So roughly 20 occasions that you've
10 testified in deposition -- excuse me, depositions
11 or in court?

12 A. And another ten probably in military
13 courts martial.

14 Q. But the 20 we talked about are all
15 State Farms?

16 A. Yes.

17 Q. So when a claims issue is the subject
18 matter of a 30(b)(6) deposition, are you
19 frequently the designee?

20 A. This is the first time I've been a
21 30(b)(6) designee.

22 Q. All of those other occasions you
23 testified because you were individually subpoenaed
24 or noticed?

1 A. Yes.

2 Q. And typically, why would you be
3 individually subpoenaed or noticed to testify in a
4 case involving State Farm?

5 A. Because I would have been involved in
6 the claim file.

7 Q. So on the occasions that you mentioned
8 to me, the 20 or so, were you personally involved
9 in the claim file?

10 A. With the exception of the last
11 deposition, I was not. I was called upon to
12 testify on the preparation of a document.

13 Q. But the others, you were personally
14 involved in the claim handling process itself?

15 A. Yes.

16 Q. As a claims consultant, do you make
17 decisions on claims?

18 A. Yes.

19 Q. And is your decision the final word?

20 A. Yes.

21 Q. And what would be the chain of command
22 beneath you in the decision-making process? Where
23 would it start first and then it ends up with you?

24 A. Our claim representatives have authority

1 to make final decisions on some matters. Other
2 matters require involvement by their team manager.
3 Other matters require involvement by the claim
4 section manager. And then those that are not
5 handled by the claim section manager, I would be
6 involved in.

7 Q. Now, let Mr. Spragins hand you a copy of
8 what has been marked there as Exhibit 7, I
9 believe, the renotice.

10 MR. SPRAGINS: You never gave it to me.

11 MR. WYATT: I was saying could you
12 please let him look at that while we go along
13 here?

14 MR. SPRAGINS: I don't have your
15 renotice.

16 MR. WYATT: You don't have a copy of the
17 deposition notice?

18 MR. SPRAGINS: No, sir, huh-uh.

19 MR. WYATT: That's fine. No problem.

20 MR. SPRAGINS: Since it was filed
21 yesterday and I was traveling.

22 BY MR. WYATT:

23 Q. You've never seen this before today,
24 Mr. Hinkle?

1 A. What is it?

2 Q. This notice where you're being
3 designated as State Farm's most knowledgeable
4 person? You've never seen this before?

5 MR. SPRAGINS: I'd object to the form.

6 BY MR. WYATT:

7 Q. But you can answer, sir.

8 A. Are you referring to the document that
9 you have in your hand?

10 Q. Right, uh-huh, the --

11 A. I'd have to look at it to know that I've
12 seen it before.

13 Q. You don't know from just your own
14 personal knowledge whether or not you've ever read
15 the Notice of Deposition where you've been
16 designated as the person most knowledgeable in
17 State Farm to appear today?

18 MR. SPRAGINS: I object to the form. We
19 don't have to designate the person who is most
20 knowledgeable.

21 BY MR. WYATT:

22 Q. You don't know?

23 A. I was told I would be the 30(6)(b) [sic]
24 witness, yes.

1 Q. Okay. But you didn't even know what
2 categories you were going to be designated for?

3 A. Well, not the final -- not the final
4 amount. I was advised of what I would be talking
5 about. But I believe we just went through this,
6 and there's not an agreement on all the
7 categories.

8 Q. But you had never read them before now?

9 A. No.

10 Q. Have you got the copy in front of you
11 there? That's Exhibit 7?

12 A. Okay.

13 Q. Okay. Mr. Hinkle, if you would read
14 with me silently, you don't have to read these
15 into the record, I'm going to go through them one
16 by one.

17 On that first item listed there, have
18 you had a chance to read that, sir?

19 A. I read the Amended -- First Amended
20 Complaint, yes.

21 Q. All right. Well, actually what I'm
22 asking you is have you had a chance to read the
23 description here?

24 A. I have, yes.

1 Q. All right. What is your knowledge of
2 what is stated in that first category there? You
3 are the designee today to testify on that. And
4 the person designated by State Farm here today to
5 testify as to that. What is your knowledge of
6 that?

7 A. Just that, I'm designated to testify on
8 the matters asserted or alleged in the First
9 Amended Complaint.

10 Q. All right. But what is your knowledge
11 of what matters are alleged in the First Amended
12 Complaint that pertain to the dwelling or dwelling
13 extension damage caused by waterborne objects,
14 material and debris?

15 A. I've read the Complaint, and I'm
16 prepared to testify on the matters in the
17 Complaint.

18 Q. Okay. And what do you understand the
19 issue to be in the Complaint?

20 A. Well, I'd have to read the Complaint.

21 Q. So --

22 A. It's several pages long. I did read it,
23 but I don't recall all of the issues.

24 Q. Right. And this particular category,

1 though, is not everything in the Amended
2 Complaint. It's limited to the things that relate
3 to waterborne objects, material or debris damaging
4 the dwelling or dwelling extension. Do you agree,
5 sir, that that's what that category speaks to?

6 A. That's what it says, yes.

7 Q. All right. So tell the Ladies and
8 Gentlemen of the Jury right now what it is you
9 know about that part of the Complaint. Not the
10 whole Complaint, but what is stated right here.

11 A. Well, there's an issue as to whether or
12 not portions of the damage in this claim involved
13 waterborne -- let me take that back. There's an
14 issue whether waterborne debris or objects are
15 covered on the insurance policy, the rainstorm
16 policy.

17 Q. And in plain language, what is the
18 issue?

19 A. The issue is the policyholder believes
20 they recover under the windstorm policy, and the
21 company says they will not.

22 Q. Uh-huh. And can you tell us what damage
23 it is that is at issue?

24 A. I can.

1 Q. What is it?

2 A. Watercraft and other debris on water
3 striking the structure.

4 Q. Watercraft and other debris?

5 A. Waterborne debris striking the
6 structure.

7 Q. Striking the structure. The dwelling?

8 A. Yes.

9 Q. Okay. Is that the sum total of your
10 understanding of that issue as it relates to item
11 number 1?

12 A. I don't understand the question.

13 Q. Is there anything else that you have
14 knowledge of as to item number 1 in the 30(b)(6)
15 notice?

16 MR. SPRAGINS: I'm going to object to
17 the form of the question. Ask him a specific
18 about the claim and he's prepared to answer those.

19 A. Well, that would be my answer, I've
20 reviewed the claim file, I'm prepared to talk
21 about it.

22 Q. Okay. We're only talking about what's
23 listed in 1 right now. Okay? I'm only trying to
24 ask you whether or not you have any more knowledge

1 about what you've stated so far about the issue of
2 waterborne objects, material or debris damaging
3 the dwelling or dwelling extensions --

4 MR. SPRAGINS: Object to the form.

5 Q. -- as they're asserted in the First
6 Amended Complaint?

7 MR. SPRAGINS: Object to the form of the
8 question. That's not a fair question. If you ask
9 him specific questions, he can give you specific
10 answers.

11 BY MR. WYATT:

12 Q. Can you answer that question,
13 Mr. Hinkle?

14 MR. WYATT: And Scot, I would -- excuse
15 me, I'm sorry, I interrupted you and I want to get
16 an objection in the record or a response before I
17 go further. I'm going to refer the court to
18 Rule 30(c) where it's stated that "all objections
19 made at the time of the examination to the
20 qualifications" -- excuse me, I'm sorry, I'm
21 reading the wrong part. I meant to refer to (d),
22 30(d), "any objection during a deposition must be
23 stated concisely and in a non-argumentative and
24 non-suggestive manner." And we would ask that

1 this deposition be conducted in compliance with
2 Rule 30(d), that particularly that there not be
3 objections made in a suggestive manner.

4 MR. SPRAGINS: What did I suggest?
5 Other than I don't think your, your question is a
6 fair question since it doesn't ask -- it doesn't
7 ask a specific question.

8 BY MR. WYATT:

9 Q. Excuse me, Mr. Hinkle, did you have
10 anything else to tell us about your knowledge of
11 item number 1?

12 A. No.

13 Q. Number 2? You are --

14 MR. SPRAGINS: Same objection.

15 BY MR. WYATT:

16 Q. You are the designee for number 2,
17 right?

18 MR. SPRAGINS: No. For portions of 2.
19 The inclusion, interpretation and implementation
20 of anti-concurrent causation and/or water damage.

21 MR. WYATT: So the only thing he's not
22 designated for in 2 is what?

23 MR. SPRAGINS: Drafting and
24 underwriting. And when you use the term

1 underwriting, I'm assuming that you mean really
2 the rate making process.

3 BY MR. WYATT:

4 Q. Mr. Hinkle, for the portions of number 2
5 that you're designated for, what is your knowledge
6 of the inclusion, interpretation and
7 implementation of the anti-concurrent causation
8 and/or water damage provisions in FP-7955?

9 MR. SPRAGINS: Same objection.

10 A. I'm prepared to answer questions about
11 that topic if you ask them.

12 Q. That's not what I'm asking.

13 MR. WYATT: I move to strike that as
14 non-responsive.

15 BY MR. WYATT:

16 Q. I'm asking what your knowledge is. I'm
17 not asking whether you're prepared to answer.

18 MR. SPRAGINS: Same objection.

19 BY MR. WYATT:

20 Q. In all fairness, sir, my question to you
21 is you are the designee. You are supposed to be
22 the most knowledgeable person concerning the
23 matters in number 2 for State Farm. You've agreed
24 that you're appearing by consent for that reason.

1 You've told me earlier today here that you
2 consented to appear here as the most knowledgeable
3 person concerning these items. And my question to
4 you is what knowledge do you have of the items
5 listed in number 2 with the exception of the two
6 that your counsel has excluded for another
7 corporate designee?

8 MR. SPRAGINS: Same objection. Go ahead
9 and answer it, Mr. Hinkle, if you understand it.

10 A. I think I understand the question. I'm
11 -- again, I'm prepared to answer questions
12 regarding interpretation and the implementation of
13 anti-concurrent causation language as pertains to
14 the water damage provisions of the policy.

15 Now, what knowledge I have about it,
16 actual practice of interpreting and implementing
17 the -- that language. And I'll speak for the
18 department in how that's done.

19 Q. I'm sorry, sir, you'll speak for what?

20 A. P&C claims department on how we
21 interpret and administer -- or I'm sorry, not --
22 implement that language.

23 Q. Mr. Hinkle, what is the -- what's the
24 copyright date of the FP-7955?

1 A. I don't know.

2 Q. Have you ever had any -- any involvement
3 in the process of drafting a policy form?

4 A. Yes.

5 Q. What form?

6 A. The personal liability umbrella policy.

7 Q. Issued by who?

8 A. State Farm Fire & Casualty Company.

9 Q. And what did you draft in that?

10 A. I didn't draft it. I was involved in
11 the drafting.

12 Q. Of what part of that policy?

13 A. I was on a committee that was involved
14 in the drafting of the whole policy.

15 Q. Okay. And what is your expertise in
16 drafting the provisions of such an insurance
17 policy?

18 A. I don't have any expertise in drafting
19 provisions.

20 Q. Well, what was your purpose in being
21 included on the committee?

22 A. To review the provisions as drafted, to
23 provide input from the claims department as to how
24 it might be implemented.

1 Q. So in other words, once it was drafted
2 in draft form, you would look at it to determine
3 if it was good for claims purposes?

4 A. Yes. Along with other people.

5 Q. Uh-huh. And so is that your only
6 incident -- only event that you believe you were
7 involved in the drafting of a policy?

8 A. I can think of one other.

9 Q. And what would that be?

10 A. Canadian boat owner policy.

11 Q. Canadian boat owner policy?

12 A. The Canadian boat owner policy.

13 Q. Is that a State Farm policy?

14 A. It is.

15 Q. And what does that policy cover?

16 A. It's for -- we write business in Canada,
17 and it has its own separate policies, one of which
18 is a boat owner policy for personal watercraft.

19 Q. Did you draft the policy?

20 A. I did not.

21 Q. What was your involvement?

22 A. My involvement was to serve as a
23 representative from claims, comment on the draft
24 of the draft -- drafting of the policy.

1 Q. And any other instances that you had any
2 involvement in the drafting of an insurance policy
3 of any -- of any type or species?

4 A. No.

5 Q. How long ago were those two that you
6 just mentioned to me?

7 A. The Canadian boat owner policy was two
8 years ago.

9 Q. And then the umbrella policy?

10 A. It was recently released. So the
11 drafting was over a three-year period up 'til now.

12 Q. I'm sorry, sir, I --

13 A. Over a three-year period up until
14 recently. It's just now being released.

15 Q. It was three years in the making?

16 A. I -- my involvement was in the three
17 years, yes. In the last three years.

18 Q. Did you have any role in the
19 anti-concurrent causation provision as it exists
20 in the FP-7955?

21 A. Do you mean in the drafting of it?

22 Q. Anything having to do with it.

23 A. I'm involved in the interpretation and
24 implementation of that provision.

1 Q. As a claims consultant?

2 A. Yes.

3 Q. And what is your understanding of that
4 provision as far as it relates to the Katrina
5 litigation? Is it -- is the provision valid or
6 invalid, as far as you understand?

7 A. Well, we take the position that it's
8 valid. However, there is a federal -- in the
9 Tupker case, Tupker versus State Farm, the federal
10 judge has ruled that it's ambiguous.

11 Q. And what about the water damage
12 provision? What is your involvement in that as it
13 exists in the FP-7955?

14 A. My involvement would be interpretation
15 and implementation of that provision.

16 Q. You have made claims decisions
17 concerning that?

18 A. That is correct.

19 Q. And have you ever made a claims decision
20 where waterborne objects, material or debris was
21 an issue?

22 A. No.

23 Q. Did you confer with anyone within
24 State Farm to determine who had made a claims

1 decision concerning waterborne material, objects
2 or debris?

3 A. Yes.

4 Q. And what did you learn from that?

5 A. Nobody is aware of anybody having done
6 so.

7 Q. How many claims does State Farm
8 Fire & Casualty have in a year?

9 A. Hundreds of thousands. I don't know how
10 many.

11 Q. And this FP-7955, what is the
12 distribution of that policy?

13 A. It's pretty much company-wide in the
14 United States, with three or four states that
15 don't use it.

16 Q. The majority of states by far?

17 A. The vast majority.

18 Q. Uh-huh. And so -- and it's been in
19 existence since at least August of '96 --

20 A. Yes.

21 Q. -- as it exists right now?

22 A. I say that to say that several states
23 have certain amendments and endorsements to it.
24 But the policy form itself is the same.

1 Q. Let me offer you a copy -- I'm sure
2 you've read it many times -- I'm going to show you
3 pre-marked Exhibit 12 and 13.

4 MR. WYATT: Scot, pre-marked 12 is the
5 full face page. And 13 is the certified copy of
6 the policy.

7 BY MR. WYATT:

8 Q. The reason we have a separate page
9 there, Mr. Hinkle, is because there's a little bit
10 of a copying error here on the face page that
11 eliminated some print down here at the bottom.

12 A. I see.

13 Q. So this has been copied separately.

14 Now, in looking at that policy, you can
15 see that there is a -- a copyright date on the
16 policy itself that would indicate 8/96, which
17 would be August of '96, correct? I think it's
18 probably over into the policy itself rather than
19 on that page.

20 A. (Reviewing)

21 Q. I believe if you look in the lower
22 left-hand corner, you can find --

23 A. I see that, yes.

24 Q. Uh-huh. So the FP-7955, the one that

1 you're holding there, Exhibit 13, is, in fact, a
2 copyright form dated 8/96, right?

3 A. That's the date of the form, yes.

4 Q. Okay. And that form is still in use,
5 isn't it?

6 A. Yes.

7 Q. So that form was in use and was sold and
8 marketed throughout all of the hurricanes that
9 have impacted the United States coastal regions at
10 least from that date up until present date, right?

11 A. I'm not sure if it was in effect in all
12 the -- I don't know what states it's not in effect
13 in.

14 Q. Well, excusing the states that it's not
15 in effect in, and I understand your answer to be
16 two or three, perhaps four, but other than that,
17 that policy form has been marketed and sold in
18 those other states at least since 8/96?

19 A. It has been in Mississippi. I can
20 testify to that. I believe Florida used a
21 different form.

22 Q. Uh-huh. Do you know that this policy is
23 -- is used in the majority of states?

24 A. Yes.

1 Q. I understood you to say that a moment
2 ago.

3 A. It is.

4 Q. All right. So from at least that date
5 forward, that policy form would have been used --
6 in use during the hurricanes that impacted the
7 coastal regions of the U.S. from at least that
8 date up until the present, right, with the
9 exception of the few states that it's not used in?

10 A. With that exception, yes.

11 Q. Okay. And when you conferred with this
12 other individual, you were told that State Farm
13 has never had an occasion where a claim was made
14 for waterborne objects, material or debris that
15 impacted a dwelling or dwelling extension?

16 A. We don't keep track of claims by subject
17 matter. So there's no document or record. And no
18 one that I talked to has any recollection of such
19 a claim.

20 Q. Who did you talk to?

21 A. Other claim consultants, two other claim
22 consultants.

23 Q. And who would that be?

24 A. Mike Tucker and Mike Sebald.

1 Q. Sebald?

2 A. Yes.

3 Q. And how do you spell that name?

4 A. S-E-B-A-L-D.

5 Q. They're both here in Bloomington?

6 A. Yes.

7 Q. So you have not conferred with any
8 claims consultant located in a coastal region?

9 A. All claims consultants are in
10 Bloomington, with the exception of California
11 claims consultant.

12 Q. Have you conferred with any claims
13 personnel whatsoever in a coastal region to ask
14 that question?

15 A. No.

16 Q. And have you personally conducted any
17 search at all to determine whether or not there
18 have been claims made since August of '96 for
19 waterborne objects, material or debris impacting a
20 dwelling or dwelling extension?

21 A. I have not.

22 Q. And to your knowledge, no one has done
23 that, right?

24 A. No one has done that, to my knowledge.

1 Q. Okay. Now, you know how to do that,
2 don't you, Mr. Hinkle?

3 A. There would be no way to do that without
4 individually -- individually examining every
5 file --

6 Q. Okay.

7 A. -- that's coded to windstorm.

8 Q. All right. Now, if you in your job as a
9 claims consultant want some information about how
10 a provision of the policy is being applied, what
11 would you do?

12 A. That question is too broad for me to
13 even try to answer.

14 Q. Well, I beg your pardon, sir, but as a
15 claims consultant for State Farm, do you believe
16 it's important that you be able to access the
17 company's history of claims handling so you can
18 determine whether you're being consistent in the
19 way you treat policyholders?

20 A. I have access to every claim.

21 Q. But my question is do you believe it's
22 important that you be able to do that so that you
23 treat policyholders fairly?

24 A. Yes. That's the purpose of our surveys

1 that I mentioned earlier.

2 Q. Okay. So for that reason, and for
3 others perhaps, State Farm compiles vast volumes
4 of information, don't they?

5 A. We have a lot of information.

6 Q. Don't you have an intranet?

7 A. We do.

8 Q. And if you wanted to know, Mr. Hinkle,
9 for example, a fundamental question about, for
10 example, additional living expense, tell us the
11 steps that you would take in order to tap into
12 this information and determine what the company's
13 claims procedures are.

14 MR. SPRAGINS: I'm going to object to
15 the form of the question and Mr. -- this is not an
16 area of designation. But what I will do is in
17 this particular area, Derek, you can certainly ask
18 him what he would do. And State Farm may do
19 something different.

20 MR. WYATT: Subject to his objection,
21 Mr. Hinkle, would you please answer my question?

22 A. If I had a question on how to interpret
23 additional living expense coverage, first of all,
24 I'd read the policy. Secondly, I would confer

1 with our operation guides, which are the documents
2 we use to state our coverage positions. And
3 thirdly, I would confer with counsel to see if
4 there were exceptions in the particular
5 jurisdiction involved.

6 Q. You wouldn't want to know if there were
7 any memorandums that claims consultants had
8 written on the subject?

9 A. Those are incorporated in the operation
10 guides. That's what their purpose is.

11 Q. The operation guide is the formal
12 company procedure, isn't it?

13 A. And procedures and positions, yes.

14 Q. But I'm asking wouldn't you want to know
15 if a claims consultant had written something
16 specifically on that subject before?

17 A. If a claim consultant writes something
18 on a subject and it changes or modifies or somehow
19 alters our company position, then we incorporate
20 that change in the operation guide. That's the
21 purpose of the operation guide. We don't catalog
22 or document individual memos.

23 Q. You specifically don't catalog or
24 document individual memos?

1 MR. SPRAGINS: Object to the form.

2 A. If there's a memo by a claim consultant
3 on a coverage issue concerning the claim, it's in
4 the claim file.

5 Q. The claim file for that claim?

6 A. Yes.

7 Q. And it doesn't go any further than that?

8 A. That's where we keep the documents, is
9 in the claim file.

10 Q. Uh-huh. But if it's a matter that has
11 general interest that impacts a lot of claims, it
12 doesn't go anywhere further than that individual
13 claim file?

14 A. There are other memos, and I've --
15 there's some here in the production. In Hurricane
16 Katrina, we produced coverage memos.

17 Q. Uh-huh. A wind/water protocol?

18 A. That is one.

19 Q. Uh-huh. That's not in the OGs, is it?

20 A. No.

21 Q. That's a pretty important memo, isn't
22 it?

23 A. Yes.

24 Q. Wasn't it handed out to all the field

1 representatives who were adjusting in Katrina?

2 A. In southern and central zones, yes.

3 Q. For Katrina, I'm speaking of.

4 A. I don't think we did it in Florida.

5 Q. Okay. But that's not incorporated in an
6 OG?

7 A. That's right, it's not.

8 Q. Okay. Well, using the same example, my
9 question is you told me what you'd do: Read the
10 policy, go find the OGs, confer with counsel. And
11 I was asking wouldn't you also want to know what
12 memos or bulletins or claims consultants' writings
13 or whatever they may be called, wouldn't you want
14 to know what those things say?

15 A. I would confer with our technical
16 consultant who would know these things. That's
17 his job.

18 Q. And who is that?

19 A. Michael Sebald.

20 Q. Now, why would a technical -- technical
21 consultant know that and you wouldn't? You're the
22 claims consultant, you're going to make the
23 decision.

24 A. I'm the claim consultant for the

1 southern zone. Mr. Sebald has the capacity
2 company-wide.

3 Q. Well, but you said he's a technical
4 consultant?

5 A. That's his job title, yes.

6 Q. Technical claims consultant?

7 A. Yes.

8 Q. So in other words, Mr. Sebald would
9 really be better qualified to answer the question
10 I'm asking about whether any other documents exist
11 that speak to the issue of waterborne objects,
12 material or debris?

13 MR. SPRAGINS: Object to the form.

14 A. I don't think he would be any better
15 qualified to answer that than I would.

16 Q. Well, I understand you just to say that
17 you are regional.

18 A. I didn't say that.

19 Q. Did you say you were the southern
20 region?

21 A. No. I said I'm the southern zone
22 consultant.

23 Q. Excuse me, I'm sorry, I misunderstood
24 you. I thought you said region.

1 A. I did not.

2 Q. But you said zone.

3 A. I did.

4 Q. All right. In any event, Mr. Sebald is
5 not limited to a zone, is he?

6 A. No, he has responsibilities
7 company-wide.

8 Q. Okay. Did you -- well, strike that.
9 Now, what else would you do, Mr. Hinkle, in the
10 process of trying to make this determination of
11 whether or not there's information within
12 State Farm's possession or control that you want
13 to see in order to make sure that you have the
14 full -- - the full spectrum before you make your
15 claims decision?

16 A. Your question assumes that there's other
17 information that doesn't necessarily exist.

18 Q. Okay. Are you -- you're saying the
19 question is confusing to you; is that right?

20 A. I am.

21 Q. Okay. Let me rephrase the question.
22 When I asked you to tell me what you would do to
23 make this determination, if any information out
24 there is going to shed any light on the issue and

1 specifically, in this case, we're talking about
2 you have a water damage provision in an FP-7955
3 policy, and you want to know has this provision
4 ever been brought into play in the context of
5 waterborne objects, material or debris such as
6 boats, trees, anything that could be water or
7 wind-driven into a dwelling or dwelling extension,
8 you want to find out the whole company archive on
9 this information the way these claims decisions
10 have been handled. Have you -- have you told me
11 everything that you would do? I have three things
12 listed. Read the policy --

13 A. Uh-huh.

14 Q. -- consult the OG, confer with counsel.

15 A. Yes.

16 Q. Okay. So then is it fair to say that
17 within the entire claims history of State Farm,
18 which is distributing the FP-79 in perhaps as many
19 as 45 states, there is no incident, no other
20 information, no other way that you could make a
21 determination about how that provision has been
22 applied in that context?

23 A. Well, I think it's important to point
24 out that each case is handled on its own merits.

1 And what happened in another case is not
2 necessarily material to what happened in yet
3 another case because the fact scenario may be
4 different.

5 Q. The facts may be different?

6 A. Yes.

7 Q. Uh-huh. Okay. Well, what I understand
8 you to say is each claim is handled separately.

9 A. That's what I said.

10 Q. Fair enough. But the information flow
11 is not, is it?

12 A. I don't know what you mean.

13 Q. Doesn't State Farm have specific
14 reporting requirements about individual claims, in
15 fact, that compel people to bring this information
16 into your system?

17 MR. SPRAGINS: Object to the form.

18 BY MR. WYATT:

19 Q. Let me ask you, Mr. Hinkle, are you
20 familiar with all of the OGs that State Farm has?
21 Are you familiar with the different series
22 numbers?

23 A. Yes, I am.

24 Q. Is there none of the -- none of the OGs

1 that State Farm has, none of those mandate that
2 claims handling report to State Farm central the
3 information about that particular claim? None of
4 those mandate that?

5 A. Each claim's handled on an individual
6 basis. I mean, there is -- exactly. If you've
7 made a coverage decision, there's no requirement
8 to report that up the chain.

9 Q. There is no requirement for you to
10 report that?

11 A. Right.

12 Q. So anything that exists in your OGS,
13 forms for reporting claims, coding, comment codes,
14 bar coding, all of that, what would be the reason
15 for that, if there's no requirement that it be
16 reported to State Farm's database?

17 A. Perhaps I'm not understanding what you
18 mean by it. Statistical data is kept.

19 Q. Okay. What kind of --

20 A. I'm sorry, I misunderstood your
21 question. I thought you asked me if when you made
22 a specific coverage position as say a claim team
23 manager, you'd have to report that to somebody,
24 the answer is no. But that's not to say we don't

1 keep statistical data on every single claim.

2 Q. Uh-huh. You keep more than just
3 statistical data, don't you?

4 A. We keep the claim file.

5 Q. Uh-huh.

6 A. It's of record.

7 Q. Okay. You keep the claim file and the
8 statistical data?

9 A. Right.

10 Q. But you're saying you don't keep any
11 other information about the occurrence of claims?

12 A. I don't -- that's kind of broad. What
13 do you mean any other information? I guess maybe
14 what we need to talk about is what statistical
15 data is.

16 Q. I'll just let the record stand as it is
17 so long as I'm comfortable that you're clear about
18 my question. I want to make sure that what you're
19 telling us today is that State Farm has no way of
20 determining how the water damage provision has
21 been interpreted by looking at past claims
22 handling?

23 A. Well, again, I'll say that we do claim
24 surveys and we examine our files on a random

1 select basis.

2 Q. Well, where do you get the information
3 to put into the survey?

4 A. We pull the claim file and review the
5 file.

6 Q. Okay. And so that would be the only
7 thing; is that right? Would that be the only way?
8 In response to my question just now, the claim
9 survey would be the only thing that you could
10 possibly access to determine how you've handled a
11 particular claim in the past?

12 A. Exactly, review of the file.

13 Q. Well, claims survey, right? You would
14 look at the claim survey?

15 A. Claim survey and other reviews. The
16 files are routinely reviewed by the supervisor, as
17 well. So I'm a claim representative, I close the
18 file. It's subject to review by my manager.

19 Q. Right. But Mr. Hinkle, you can't find
20 the water damage files that have been handled
21 because you don't keep the information to locate
22 those, do you?

23 A. Now, you asked me about water --
24 water-driven debris.

1 Q. Uh-huh. Well, I'm asking you about the
2 water damage provision specifically. And if you
3 would, why don't we just turn to that. You take a
4 look at that so we'll know exactly what we're
5 talking about and there won't be any question
6 here. Would you look at page 10 of that FP-7955?

7 A. Okay.

8 Q. Item C there in the left column, that is
9 the water damage named peril in this policy, isn't
10 it?

11 A. No. That is in the category losses not
12 insured, and it would be an exclusion.

13 Q. Would you find the word exclusion
14 written anywhere above the water damage provision?
15 And please point it out to me and the Ladies and
16 Gentlemen of the Jury.

17 A. Yes, it's the losses -- it's a category
18 under losses not insured. The word exclusion is
19 not there.

20 Q. All right. So Mr. Hinkle, it's a loss
21 that's not insured, isn't it?

22 A. Yes.

23 Q. And so it's a peril, isn't it?

24 A. Water -- yes.

1 Q. All right. So it's a peril for which
2 State Farm is not insuring?

3 A. The entire paragraph, C-1, cites the
4 type of water damage that's not covered, yes.

5 Q. Well, okay. I'm not sure I understood
6 your answer. Maybe you answered me, but I'm not
7 sure. The water damage provision we looked at on
8 page 10 is a peril for which State Farm is not
9 insuring under this policy, right?

10 A. State -- I'll read it. "State Farm does
11 not insure water damage, meaning floods, surface
12 water, waves, tidal water, tsunami, seiche,
13 overflow of a body of water, or spray from any of
14 these, all whether driven by wind or not." Other
15 types of water damage would be covered. These
16 particular types are not.

17 Q. I understand. I'm just asking you the
18 question, any of these things listed under
19 section I, losses not insured, beginning on page
20 9, any of these listed --

21 A. They're not insured. They're losses not
22 insured.

23 Q. They're losses not insured. And they're
24 perils under the policy which are not insured,

1 there's no coverage for?

2 A. There's no coverage for the particular
3 type of water damage that I just read.

4 Q. Right. But are you -- do you have a
5 problem saying that that's a peril? If you do,
6 just tell me and tell me what your basis for that
7 is.

8 A. Well, there's -- water damage is covered
9 under certain circumstances. That's the problem.
10 I don't know that I would characterize it as a
11 problem. I'm just -- that's my statement.

12 Q. I understand. I'm just saying what is
13 defined right here. Let's just look at it,
14 section C. Water damage and then the next word
15 says meaning, right?

16 A. Yes.

17 Q. So State Farm has defined in this policy
18 what water damage is, right?

19 A. Water damage is mentioned elsewhere in
20 the policy. This is not the exclusive definition
21 of water damage.

22 Q. All right. Where is it mentioned?
23 Let's look at that.

24 A. Several places (reviewing). Under the

1 named perils, named peril 12 and 13 refer to water
2 damage.

3 Q. What page are you on, sir?

4 A. I'm on page 8.

5 Q. On page 8, Mr. Hinkle, point out to us
6 where the words water damage occur.

7 A. The word damage is not there. The word
8 water is there several places.

9 Q. All right. So it's not water damage;
10 it's just the word water?

11 A. Sudden and accidental discharge or
12 overflow of water or steam.

13 Q. That's not water damage.

14 A. It would result in water damage, yes.

15 Q. But the words water damage -- you're
16 very sensitive to words, aren't you, when you read
17 an insurance policy?

18 A. Absolutely.

19 Q. Isn't that what it's all about, is
20 parsing the words?

21 MR. SPRAGINS: Object to the form of the
22 question.

23 A. Words are important.

24 Q. They're very important, aren't they? I

1 mean, sometimes you can go for three years
2 debating a sentence, isn't that right, before you
3 draft a policy?

4 A. Words are important, yes.

5 Q. Right. Well, the words -- just for
6 clarity sake, would you agree with me, sir, the
7 words water damage are nowhere on page 8, right?

8 A. The two words together are not on page
9 8.

10 Q. Okay. Do you find the words water
11 damage anywhere else in the policy?

12 A. (Reviewing) No. Not the two words
13 together, I do not.

14 Q. So when you said a moment ago -- and
15 this is not to make light of it, but so we both
16 understand each other -- I believe your remark was
17 that water damage is covered elsewhere in the
18 policy. Wasn't that your statement?

19 A. Well, the policy covers water damage in
20 certain circumstances. That's probably one of our
21 major perils.

22 Q. Uh-huh. But you've defined -- not you
23 personally, of course -- State Farm has defined
24 water damage; otherwise we'd have an ambiguity in

1 the policy, wouldn't we, if we had water damage
2 covered in one place and not covered somewhere
3 else and we haven't defined it? Isn't that
4 correct, sir?

5 A. Well, the way I would read it would be
6 that water damage is covered, except this type of
7 water damage.

8 Q. But the first time the words water
9 damage occur in the policy is where we looked at
10 it on page 10 under losses not insured, right,
11 sir?

12 A. Yes.

13 Q. All right. And it is clearly defined
14 there, isn't it?

15 A. It says what it says. Water damage,
16 meaning, and then it says what that means, the
17 words water damage.

18 Q. But it undertakes to define it, is my
19 point.

20 A. But the purpose of the definition is to
21 explain water damage -- this type of water damage
22 is excluded.

23 Q. Okay. I'm only asking the question that
24 is the phrase water damage defined on page 10 of

1 the FP-7955?

2 A. I'm not going to cut hairs with you. It
3 just says what it says, water damage means, and
4 outlines what it says.

5 Q. Do you have some reason to dispute that
6 the word meaning refers to defining water damage?

7 A. Yes.

8 Q. Okay. Tell us what that is.

9 A. The purpose of this number 1 here is to
10 explain the type of water damage that's not
11 covered. That's not -- that differs from being
12 the definition of water damage.

13 Q. Uh-huh. You're referring to section 1,
14 losses not covered?

15 A. Section 1(c), paragraph 1.

16 Q. Uh-huh. But I'm asking you this
17 question, Mr. Hinkle, specifically: Do you
18 believe the word meaning does not mean defined as?

19 A. There's a -- well, I'll say it again. I
20 don't know how to say it other than the way I say
21 it. This says water damage, meaning, and
22 describes the type of water damage that's not
23 covered.

24 Q. Uh-huh. But do you believe the word

1 meaning means something different than defined as?

2 A. Well, if they wanted to say defined as,
3 that's what it would say.

4 Q. So you do believe that? You quibble
5 with whether the word meaning --

6 A. No, sir, I'm not quibbling. I'm just
7 trying to answer the question.

8 Q. Okay, let me finish it first. That's
9 the best way to do this. Here's the question:
10 It's real easy. Do you dispute that the term
11 meaning is the equivalent of defined as?

12 A. Yes.

13 Q. And what is your basis for disputing
14 that?

15 A. Defined as, in my view -- this is just
16 my own personal view -- would be an attempt to
17 describe everything that word means -- those
18 words, water damage, mean. Meaning in this case,
19 however, only attempts to say this particular type
20 of water damage is not covered.

21 Q. Okay. So then you conclude that water
22 damage is not defined in the FP-7955?

23 A. It's not in the definitions.
24 Absolutely.

1 Q. I'm sorry, wait.

2 A. I just said it's not in the definitions
3 part.

4 Q. Okay.

5 A. Right.

6 Q. Okay. No, but that's not my question to
7 you. I understand that. I didn't ask you about
8 the definitions part. We're not even there.
9 We're on page 10.

10 A. Okay.

11 Q. My question to you is you conclude that
12 the terms water damage are not defined in the
13 FP-7955?

14 MR. SPRAGINS: Object to the form. Go
15 ahead and answer.

16 A. It's my conclusion that we talk about
17 water damage and we talk about the type of water
18 damage that is not -- that is not included -- is
19 included in losses not insured.

20 MR. WYATT: I move to strike as
21 non-responsive.

22 BY MR. WYATT:

23 Q. Do you conclude that the term water
24 damage is not defined in the FP-7955 policy form?

1 MR. SPRAGINS: Same objection. The same
2 instruction.

3 A. That's not a definition.

4 Q. What is that?

5 A. Paragraph c(1) is not a definition.

6 Q. On page 10?

7 A. On page 10.

8 Q. Do you find a definition anywhere else?

9 A. I looked in the definitions section and
10 there's no definition of water damage.

11 Q. So based on that interpretation you just
12 gave us, the terms water damage are not defined in
13 the FP-7955?

14 A. They are not defined.

15 Q. Thank you, sir. Now, Mr. Hinkle, I
16 started asking these questions about this because
17 you referred to claims surveys. Remember?

18 A. Okay, I do.

19 Q. Uh-huh. And how does the company keep
20 track of mold claims?

21 A. We didn't used to. A few years ago we
22 had a -- we created a comment code for mold.

23 Q. Comment code?

24 A. Yes.

1 Q. Okay. So there's a comment code for
2 mold, but there's no comment code for water
3 damage?

4 A. Well, there's a cause of loss code for
5 water damage.

6 Q. Oh. What's a cause of loss code?

7 A. It's a code that is assigned to a claim
8 to describe what the cause of loss is.

9 Q. Okay. And what happens -- who assigns
10 the code?

11 A. The claim representative.

12 Q. And then what happens after it's
13 assigned?

14 A. It becomes statistical data.

15 Q. Mr. Sebald, right?

16 A. No.

17 Q. He can access all that, can't he?

18 A. Well --

19 Q. Um --

20 A. Okay. Cause of loss codes are -- the
21 purpose of them is to quantify the amount spent or
22 not spent in a certain peril.

23 Q. So if we're sitting up here in
24 Bloomington and we've just got to know how many

1 times this water damage provision here on page 10
2 has been involved in a claim in the last five,
3 seven, ten years, we can do it --

4 A. That's not true.

5 Q. -- because we can look at the cause of
6 loss codes?

7 A. Well, this -- that's not true. This
8 particular claim in question was assigned a cause
9 of loss code of windstorm.

10 Q. So it all starts with whether the right
11 code is assigned?

12 A. The code is assigned -- well, the right
13 code needs to be assigned, yes.

14 Q. If it's not, we'll never find it; would
15 you agree?

16 A. I don't understand the question.

17 Q. If the wrong cause of loss code, COL
18 code is assigned, we're never going to know about
19 that claim? We don't have any statistical thing
20 to consult because it didn't go into the
21 statistics, did it?

22 A. This claim that we're talking about
23 right now statistically is assigned -- there's two
24 claims: One is a flood claim and one is a

1 windstorm claim. Statistically, it's going to
2 show that we paid whatever we paid on the
3 windstorm, cause of loss code 35 and it's going to
4 show what we paid under flood, cause of loss code
5 17. There's nothing in there about water damage.

6 Q. Right. But we're not talking about this
7 claim. We're talking about water damage claims.

8 A. That's what I was trying to get at
9 earlier. A leaky roof is a water damage claim and
10 it's coded to cause of loss 37.

11 Q. Uh-huh. All water damage claims are
12 coded 37?

13 A. All covered water damage claims.

14 Q. Well, what about ones that are not
15 covered? This one --

16 A. Okay. In and of -- if all you have is
17 an excluded water damage claim, nothing else, it
18 would be coded 37, which is water damage to
19 building, and then there would be CWP.

20 Q. Which is what?

21 A. Closed without payment.

22 Q. Okay. So what's that code, closed
23 without payment? Is that a separate code?

24 A. That's a payment code.

1 Q. Well, it's another code, right?

2 A. Yes.

3 Q. All right. What code is it?

4 A. It's a payment code.

5 Q. Does it have a number?

6 A. No.

7 Q. Just CWP?

8 A. Yes.

9 Q. So we run 37 and we run CWP, and we come
10 up with all the water damage claims that were
11 closed without payment?

12 A. No, you wouldn't.

13 Q. Well, why couldn't we get that?

14 A. Because you have a whole bunch of claims
15 that you paid another coverage on and they
16 wouldn't show 37.

17 Q. I'm not clear on that, sir.

18 A. Well --

19 Q. Explain that to me.

20 A. All right. You have a claim that's
21 primarily a windstorm claim. A portion -- and
22 it's paid under windstorm. A portion of the
23 windstorm claim is denied under this water damage
24 language. Statistically, that claim is going to

1 show in the system as a paid windstorm claim.

2 Q. The only time closed without payment
3 code goes in is when no part of the claim is paid?

4 A. The cause of loss coding is -- I think
5 you'll find that you're supposed to identify the
6 most predominant cause. You can only have one
7 cause of loss code, so you have to identify the
8 one that's the most important to the loss.

9 Q. Uh-huh. But you're saying that if we
10 ran all the code 37s and we looked for CWP, we
11 still wouldn't know what claims involved the water
12 damage provision on page 10?

13 A. You would find some of them, but not all
14 of them, yes.

15 Q. And the ones we would be missing would
16 be why?

17 A. Ones that where other damages have been
18 paid.

19 Q. So if there's any payment made, the
20 CWP's not assigned?

21 A. Right.

22 Q. But you don't segregate those two?

23 A. No.

24 Q. Is there a claims consultant memo in

1 Dr. Pontius's file?

2 A. No.

3 Q. Has one been prepared? Has a claims
4 consultant memo been prepared?

5 A. You're going to have to tell me what a
6 claim consultant memo is.

7 Q. A writing by a claims consultant.

8 A. There was no claim consultant
9 involvement in that file.

10 Q. So one has not been prepared and there
11 won't be one prepared?

12 MR. SPRAGINS: Let me see if we're clear
13 about something. You mean pre-litigation?

14 MR. WYATT: At any time.

15 MR. SPRAGINS: Okay, well, I would
16 instruct you not to answer with regard to
17 post-litigation on this.

18 THE WITNESS: All right.

19 MR. SPRAGINS: Okay. You can go ahead
20 and answer.

21 MR. WYATT: And what's the ground for
22 that?

23 MR. SPRAGINS: Because it would be -- it
24 would involve attorney-client privilege. Now,

1 he's not been assigned Dr. Pontius's claim. But
2 you asked is there any claim consultant
3 memorandum, been any writing of a claim
4 consultant. And I am -- I'm not privy to any, but
5 I am sure that the claim consultant assigned to
6 this file has.

7 BY MR. WYATT:

8 Q. You're not an attorney, are you,
9 Mr. Hinkle?

10 A. No.

11 Q. Who is the claims consultant assigned to
12 the Pontius file?

13 MR. SPRAGINS: If you know.

14 A. Mike Tucker.

15 Q. Did you -- in answering my question
16 about what you would do to access all the
17 information to make sure that you're going to make
18 a real informed and good claims decision, you
19 remember you said read the policy, look at the
20 OGS, confer with counsel, and then we got off on
21 claims surveys. Did you -- did you do all those
22 things with regard to the preparation for this
23 deposition today?

24 A. No.

1 Q. So you've really never done all those
2 things before appearing here today to testify,
3 right?

4 A. Well, I've -- I've read the OGs, yes.
5 I've read the policy.

6 Q. For this reason?

7 A. But not specifically to prepare for this
8 deposition.

9 Q. You mean just in general, you've read
10 them?

11 A. I have, yes.

12 Q. But you didn't do those things before
13 coming here today to testify to give us the best
14 knowledge that State Farm could offer about the
15 subject matters in this deposition notice?

16 MR. SPRAGINS: I'm going to object to
17 the form. Go ahead and answer.

18 A. I familiarized myself with the policies
19 and OGs. To sit down and read them in their
20 entirety, I did not.

21 Q. Okay. Did you find any OGs, Mr. Hinkle,
22 that would assist the policyholder or the claims
23 consultant in arriving at an informed decision
24 about how the claim should be handled?

1 MR. SPRAGINS: Object to the form of the
2 question. You can answer.

3 A. I don't -- you're going to have to
4 describe better what you mean by handle. Was the
5 claim handled procedurally correctly? Was the
6 coverage interpretation correct? I need more of a
7 definition for --

8 Q. You need a definition of the term
9 handled?

10 A. Yes.

11 Q. Well, have you ever read what --
12 State Farm calls people claims handlers?

13 A. Have I read that?

14 Q. Yes.

15 A. That term is used sometimes.

16 Q. I mean, haven't you actually seen that
17 printed on documents that State Farm itself
18 produces?

19 A. Yes.

20 Q. They refer to people as claims handlers,
21 don't they?

22 A. Sometimes. It's a generic category.

23 Q. All right. Well, what do you understand
24 it to mean in that context?

1 A. All right. Please rephrase the
2 question.

3 Q. Sure. Did you find any OGs, operation
4 guides, that would shed light on the issue in this
5 lawsuit that we're here about today that would
6 help the policyholder or you as a claims
7 consultant arrive at the most informed decision
8 about how the claim was handled?

9 A. All right. The way I did it is I looked
10 at the claim file and I saw oh, geez, they're
11 broad, and then they cover all kinds of topics.
12 There's no specific topic that stands out that
13 pertains to this claim file.

14 Q. No specific topic of OG --

15 A. All right.

16 Q. -- is that what you're answering?
17 There's no specific topic in the OGs that pertain?

18 A. There's no OG that in and of itself
19 describes every process in this claim file.

20 Q. Okay. Let me help you. First of all,
21 let's not talk about the claims file itself. If I
22 can help you -- In fact, let's do this, if you
23 don't mind. I think this'll speed us up. I'm
24 going to show you some photos, C-1 through C-13,

1 which have been attached to a deposition of one of
2 the adjusters and they're also appended to the
3 Amended Complaint filed in the case.

4 Take a moment and look through them and
5 then familiarize yourself with what's depicted in
6 those photographs.

7 A. (Reviewing) Okay.

8 Q. All right. Mr. Hinkle, have you ever
9 seen Dr. Pontius's property personally yourself?

10 A. No.

11 Q. Okay. Is that the first time you've
12 ever seen the photographs of the property
13 post-Katrina?

14 A. I saw them yesterday for the first time.

15 Q. So yesterday would have been the first
16 time?

17 A. Yes.

18 Q. All right. Do you have any question
19 about the damages that are depicted in those
20 photographs and whether or not that damage that's
21 circled there is related to waterborne objects,
22 material or debris? Of course, the first
23 photograph, you understand, is just to identify
24 Dr. Photo [sic] -- Dr. Pontius's house, C-1. But

1 looking at the individual photographs, you'll see
2 things that are circled.

3 A. Yes.

4 Q. Do you identify those? All right. Do
5 you have any question in your mind as to whether
6 or not the items that are circled identify places
7 where the dwelling was damaged as a result of the
8 impact between a sailboat or other vessel and the
9 dwelling?

10 A. Well, that would appear to be the cause,
11 although I wouldn't limit it to that without other
12 information. Just from examining the photographs,
13 I would think there was evidence that the impact
14 of these vessels did damage to the structure.

15 Q. Uh-huh. And those areas that are
16 circled show you the damage, the particular and
17 specific damage that was caused, right?

18 A. No. There's a roof circled here. That
19 has nothing to do with it.

20 Q. Okay.

21 A. Some of them do, some of them don't.

22 Q. Some do and some don't?

23 A. Right.

24 Q. Okay. Certainly some of them do

1 identify where the vessel impacted the dwelling?

2 A. Yes.

3 Q. And the ones that do, you don't have any
4 question about that, do you? Do you dispute that?

5 A. There's nothing that causes me concern,
6 although I would want to look at all the evidence
7 specifically in the adjuster's report.

8 Q. Have you looked at that?

9 A. Yes.

10 Q. Okay. Now still, after having looked at
11 that, do you dispute that those circled areas, at
12 least the ones that appear to be the --

13 A. From everything I've seen in the claim
14 file, my review of the claim file, I -- which was
15 not exhaustive, but I did review it -- I don't
16 think there's any -- there is no dispute that
17 there was damage to the structure caused by impact
18 of these boats.

19 Q. As depicted in those photographs C-1
20 through C-13?

21 A. There's other damage that's not depicted
22 in the photographs.

23 Q. But some of them, as you said?

24 A. Yes.

1 Q. We don't quibble about that. I think we
2 can easily agree that some of the circles are the
3 roof damage, right?

4 A. Yes.

5 Q. And other things. But certainly some of
6 the items circled in there are clearly the damage
7 caused by the vessel impacting the dwelling,
8 right?

9 A. I don't dispute that.

10 Q. We don't disagree with that. And you've
11 reviewed the claims file?

12 A. I have.

13 Q. Uh-huh. And did you look in the claims
14 file to see where it was stated that the boats
15 impacted the dwelling?

16 A. It's in the flood file in the claim
17 activity log.

18 Q. Okay. We're not here today on the flood
19 file. We might better clarify that issue. But
20 you do understand and we are clear, aren't we,
21 together, the two of us, that what you're
22 testifying about here today is the policy that's
23 sitting in front of you? Do we have any -- do you
24 doubt that or do you have any misunderstandings

1 about that?

2 A. I have -- no, I don't.

3 Q. Okay. And that policy's not a flood
4 policy, is it?

5 A. No, it's a homeowner policy.

6 Q. Okay. Now, there's a claim file for
7 that policy, isn't there?

8 A. Yes.

9 Q. Now, did you find in that claim file any
10 reference to what's shown in those photographs,
11 those boats ramming into the house?

12 A. I looked at both files. And to testify
13 just to the wind file, the wind file concentrated
14 on the wind damage.

15 Q. I'm not sure that's an answer, sir. Did
16 you find in the homeowner claims file, homeowner
17 policy claims file any reference to what's shown
18 in those photographs clearly of the boats
19 impacting the dwelling and causing damage?

20 A. Can I look at the file?

21 Q. Sure. Maybe we could take a brief break
22 and we will give you a copy of it.

23 A. All right.

24 THE VIDEOGRAPHER: The time is 2:43 and

1 we're going off the record.

2 (A break was taken from 2:43 to
3 2:45 P.M., and the deposition continued as
4 follows:)

5 THE VIDEOGRAPHER: The time is 2:45 and
6 we're back on the record. This concludes
7 videotape number 1 of the deposition of Stephan
8 Hinkle, October 31st, 2006 in Bloomington,
9 Illinois. The time is 2:46, and we are going off
10 the record.

11 (A break was taken from 2:46 to
12 3:01 P.M., and the deposition continued as
13 follows:)

14 THE VIDEOGRAPHER: This begins videotape
15 number 2 of the deposition of Stephan Hinkle,
16 October 31st, 2006 in Bloomington, Illinois. The
17 time is 3:01 and we're back on the record.

18 MR. WYATT: Before we go any further, as
19 a housekeeping matter -- I will forget this if I
20 don't do this right now -- I want to go ahead and
21 offer what's been pre-marked as Exhibits 1, 2, 3,
22 4, 5. And Scot, for the record, these exhibits
23 are correspondence by and between us concerning
24 the time and place of the deposition and the

1 subject of the hearing earlier today. So it's
2 pretty routine.

3 MR. SPRAGINS: Okay.

4 MR. WYATT: You're welcome to look
5 through those as you see fit. And then also
6 Exhibits 6, 7, 8, 9, and 10 -- excuse me, and 11.
7 And one of those is the Renotice of Deposition
8 that Mr. Hinkle has been referring to earlier.
9 All right?

10 Yeah, there's one more housekeeping
11 matter. There was a page missing from our
12 document list, which is the page out of the cat
13 manual that describes your filing system at
14 State Farm. So we've made a copy of that for you
15 to look at that was omitted from a previous
16 exhibit. It should be attached to the list of
17 documents that we requested.

18 BY MR. WYATT:

19 Q. All right. Mr. Hinkle, the last
20 question I asked you was did you find any evidence
21 in the claim file of anyone inputting information
22 that -- about the boats impacting the dwelling?

23 A. It's not referenced in the homeowner
24 file. But the flood file is referenced in the

1 homeowner file. And the inference is -- the
2 reference is you refer to that for that
3 information.

4 Q. Let's look together. And what does the
5 term CSR mean to you?

6 A. That's claims service record.

7 Q. And is that the claims file?

8 A. That's the electronic portion of the
9 claims file.

10 Q. This document that we just looked at,
11 the 5.8 out of the cat manual, you know, the
12 depiction of the files as they're to be set up --

13 A. Right.

14 Q. -- nomenclature. Is that correct?

15 A. It was in 1999, before we had electronic
16 claim files.

17 Q. So electronic claim files really
18 superseded this?

19 A. Yes.

20 Q. This is outdated information?

21 A. Yes.

22 Q. Okay. Thank you. All right. So the
23 claim file consists of the electronic portion of
24 the claim file and what else?

1 A. Well, there's a paper element of it,
2 too. And in this particular case, it would be the
3 letters, the correspondence, the estimates.

4 Now, the photographs are digital, so
5 they're in the electronic part, I believe,
6 although -- it's hard to tell from these copies,
7 but I believe they're all digital. So in answer
8 to your question, a portion of this file is a
9 print of the electronic file and other portions is
10 that original paper file.

11 Q. Uh-huh. And the claim service record is
12 the electronic file?

13 A. Well, it's part of it, yes.

14 Q. There's other parts of the electronic
15 file besides the claim service record?

16 A. We've got like three systems merged
17 together. Some of it's called the electronic
18 claim file. That's the images. That's where the
19 photographs and things are. The CSR itself, these
20 pages that look like this (indicating), consists
21 of parties to the loss, owing office, activity
22 log, correction history. And this stack I'm
23 looking at here of the CSR is 22 pages. This part
24 here is what we would call the CSR.

1 Q. Actually, you and I are looking at --
2 let's do this. Let's look at the first page under
3 your yellow sheet. And if you would just read off
4 the -- do you know what the Bates number is down
5 there? Actually, it's -- you see that?

6 A. Yeah.

7 Q. Okay. Would you just read that off all
8 the way and then we're going to go to the last one
9 after that.

10 A. 24Z456573 HO10001.

11 Q. And then the last page?

12 A. 24Z5465 --

13 Q. Excuse me, 456?

14 A. I'm sorry, 456573 HO100346.

15 Q. Okay. So we have 345 pages in this
16 Bates marked material, right, sir?

17 A. Yes.

18 Q. And this -- is this, as you know it, is
19 this the Pontius's homeowner claim file?

20 A. It is.

21 Q. Is it the complete file?

22 A. Yes.

23 Q. Now, there are two claim service records
24 in here, aren't there?

1 A. Yes.

2 Q. Okay. Is that correct, Mr. Hinkle?

3 A. There are two in here, yes.

4 Q. There are two claims service records?

5 A. Yes.

6 Q. And you're looking at the one in the
7 back or the front?

8 A. I'm looking at the one in the front.

9 Q. Okay. Would you identify the pages
10 inclusive that the first claim service record
11 consist of?

12 A. Bates 100010 to 100031.

13 Q. And the next part, the next CSR is what?

14 A. 100307 to 100333.

15 Q. Now, why is there -- why are there two
16 parts, Mr. Hinkle, two claim service records?

17 A. I don't know.

18 Q. That's not typical, is it?

19 MR. SPRAGINS: Object to the form.

20 A. There's no need to have two. I -- you
21 never know what you see when you copy files
22 nowadays.

23 Q. It means that someone actually created
24 one electronic claim service record, that was

1 closed, and then they went back and created a new
2 one on the same claim?

3 A. They just printed it twice, is what it
4 looks to me like. Run the same thing twice.

5 Q. But one has got more information than
6 the other --

7 A. I didn't examine --

8 Q. -- clearly?

9 A. I thought they were identical.

10 Q. I think in giving me the page numbers
11 you just gave me, one of them greatly exceeds --

12 A. Well, I don't -- I might have read them
13 wrong. They're both 27 pages. I stand corrected,
14 one's only 22. Let me see if I can find the
15 difference. All right. Here's the difference.
16 Part of the difference is in the activity log.
17 One of them was printed on July 2nd and another
18 one was printed on August 28th. And August 28th
19 has subsequent entries on the activity log.

20 Q. Okay. Mr. Hinkle, have you isolated the
21 two? Have you got them separated --

22 A. Yes.

23 Q. -- sufficiently? Let's go through those
24 Bates numbers again. The first one is -- I'm

1 going to read it off to you and you tell me if I'm
2 right.

3 A. All right.

4 Q. 100010 --

5 A. Yes.

6 Q. -- through 100031?

7 A. Yes.

8 Q. That's 21 pages. What's the date of
9 that one?

10 A. It's printed on 7/2/06.

11 Q. July 2nd, 2006.

12 A. Yes.

13 Q. And the second one is -- begins on Bates
14 page?

15 A. 100307 and the last page is 100333.

16 Q. So it's a little bigger, 26 pages?

17 A. Yes.

18 Q. And that one's dated August 28th, 2006?

19 A. Yes.

20 Q. So the difference in the two claim
21 service records is what?

22 A. The entries between July 2nd and
23 August 28th.

24 Q. And but there's a -- it's actually a new

1 claim service record created, isn't it?

2 A. It's not new. It's an expanded. It's
3 the same information.

4 Q. My question would be you see the first
5 page, it says fire claims service record full?

6 A. Yes.

7 Q. Well, that's on both, right?

8 A. Yes.

9 Q. Why would you duplicate that? Why
10 wouldn't you just continue the claim service
11 record that exists?

12 A. It's a function of what's in the system
13 on the day you print it. Apparently this was
14 printed on July 2nd, and then when the file was
15 subpoenaed, they went in and printed it again and
16 there was stuff subsequent to July 2nd. Now, why
17 it does this -- why the system's designed to do it
18 this way, I don't know. That's just the way it
19 does.

20 Q. So there's only one claim service
21 record?

22 A. Yes, but it's not static. It changes
23 daily.

24 Q. Right. But it's been printed twice?

1 A. Yes.

2 Q. And look at either one.

3 A. All right.

4 Q. But identify the page by Bates for me,
5 please. And I want you to find the part called
6 facts.

7 A. Yes.

8 Q. You're pretty familiar with these
9 things, aren't you?

10 A. I am.

11 Q. In the years that you've worked at
12 State Farm, whether Auto Or Fire, how many of
13 these things do you suppose you've seen?

14 A. Thousands.

15 Q. How long has this particular system been
16 in place?

17 A. Well, this original CSR was 1985.

18 Q. And there have been some modifications
19 since then?

20 A. Yes.

21 Q. Refinements?

22 A. Yes.

23 Q. Every State Farm person can -- who's in
24 claims, can access these things?

- 1 A. Well, if they have a need to, yes.
- 2 Q. Now, you know the part called facts
3 here?
- 4 A. Right.
- 5 Q. Which page are you looking at, Bates
6 page?
- 7 A. 100307.
- 8 Q. 307. Would you read what is typed in in
9 that -- on that page? 100307 is the Bates number.
- 10 A. In facts?
- 11 Q. Yes, please. Uh-huh.
- 12 A. Wind D-M-G roof and windows blown out.
- 13 Q. And D-M-G stands for damage?
- 14 A. Yes.
- 15 Q. Now, look at the other run date for the
16 same claim service record and compare the fact
17 section.
- 18 A. It's the same.
- 19 Q. All right. How does that information
20 get in there?
- 21 A. Agent puts it in. Or whoever took the
22 loss report. Most likely the agent. It probably
23 says in here.
- 24 Q. Page 320?

1 A. No. I'm looking for activity log entry
2 number 1. I'm not finding it.

3 Q. I've got a number 1 on page 320. But
4 it's system-generated.

5 A. That's the system log. That's not the
6 activity log. I don't know where it is. I don't
7 know. Log entry number 1 is not in there, and I
8 don't know why.

9 Q. Number 2 is in there.

10 A. Yes.

11 Q. This kind of thing when somebody taps
12 into it, they don't have a choice about whether it
13 goes into the system, do they?

14 A. No, they don't. And that's -- they do
15 not. But --

16 Q. And you can't change it once it's in
17 there, can you?

18 A. Well, you can change it. But if you do,
19 it goes into documented changes.

20 Q. So it'll show up?

21 A. It'll show up, yeah. Here it is.

22 Here's the log.

23 Q. What's the page there?

24 A. 100333. No, wait, I'm sorry, that's a

1 correction. All right. System log -- generated
2 log, I'm sorry, that's a different thing. See,
3 the activity logs are printed by office, so you
4 might have entry 1, 7 and 11 out of one office and
5 the next, the numbers that don't fit in there are
6 in the activity log, but they're categorized by
7 office. So what I'm looking for is the other
8 office (reviewing).

9 MR. SPRAGINS: Is who reported a claim,
10 is that -- I mean, can we skip that and maybe we
11 can find it for you overnight or something like
12 that? Because it's going to be a matter of
13 searching the record.

14 MR. WYATT: Well, we certainly would
15 want it to be located. But --

16 MR. SPRAGINS: Sure. I mean --

17 MR. WYATT: There's a -- the question is
18 that this electronic claim service record, that
19 every time someone inputs data, it must be there.
20 And so what we're finding is there's data that's
21 inexplicably not there.

22 MR. SPRAGINS: Well, if that's the only
23 thing that's missing, I'll have somebody that will
24 be able to testify as to who opened this log and

1 how and why it's not there, if it's not there.
2 But sitting here going through about who opened a
3 claim, I'd be glad to figure that out for you.

4 MR. WYATT: Scot, maybe Mr. Hinkle is
5 the most qualified person to answer that question,
6 having seen thousands of these.

7 MR. SPRAGINS: I would think somebody
8 that knows something about the data system would
9 probably be the person.

10 THE WITNESS: Well, it didn't print. I
11 don't know why.

12 A. The answer to your question, though, and
13 to augment what counsel says, if you just go in
14 and look at the actual electronic thing, it would
15 be in there. Why it didn't print, I don't know.

16 Q. Well, but that's the electronic thing.

17 A. That's a print of the electronic thing.
18 The electronic thing exists in the computer
19 system.

20 Q. But it can't be changed. If
21 that printed --

22 A. The question is did they print the whole
23 thing.

24 Q. Oh, you mean that --

1 A. Whoever produced this might have missed
2 a page or something. I don't know. I don't know
3 the answer. It's just not here. But I think we
4 can find it.

5 Q. Mr. Hinkle, we don't know who put those
6 facts in that claim service record, do we?

7 A. No.

8 Q. Well, from your experience here, let's
9 take a catastrophic loss because it's right on
10 point --

11 A. Okay.

12 Q. -- you have a blank claim service record
13 and it hadn't gotten created yet. And the first
14 event is going to be the report of a loss, isn't
15 it?

16 A. Yes.

17 Q. And that's what those -- that's what
18 that fact section describes, right?

19 A. Yes.

20 Q. How does that typically happen?

21 A. Almost -- all right. Almost exclusively
22 the policyholder calls the agent and the agent
23 puts that information there.

24 Q. Now, when you say agent, what

1 specifically do you mean by that?

2 A. The State Farm agent.

3 Q. The sales agent?

4 A. Yes.

5 Q. And in this case, who would that be?

6 Mr. Effinger?

7 A. Yes, Robert G. Effinger.

8 Q. E-F-F-I-N-G-E-R?

9 A. Right.

10 Q. And once that call is made to that
11 agent, the words that go under the fact section,
12 that gets there because the agent puts that in
13 there, right?

14 A. It gets there when whoever puts it in
15 there puts it in there. Now, for cat, sometimes
16 people can't get ahold of their agent and they
17 call the call center. In that scenario, the
18 person receiving the call in the call center would
19 put that in there. In any event, it's whomever
20 the insured reported the claim to is who puts that
21 in there.

22 Q. And if you had say a flood policy,
23 WYO-type flood policy --

24 A. Right.

1 Q. -- and an HO flood policy --

2 A. Right.

3 Q. -- that information is going to go into
4 both of those, isn't it?

5 A. It would be separate entries.

6 Q. Separate entries, but the same
7 reported --

8 A. Yes.

9 Q. -- facts?

10 A. Uh-huh.

11 Q. One further question, Mr. Hinkle, the
12 system generated log that shows the agent
13 acknowledgment sent --

14 A. Yes.

15 Q. -- that's something else, right? That
16 doesn't have to do with what we're talking about?

17 A. Well, it's an electronic message sent to
18 the agent when the claim -- just acknowledging the
19 claim department now has the claim. It's an
20 automatic thing.

21 Q. It's going to go -- even if the insured
22 called the agent himself, it's still going to go
23 to the agent?

24 A. Right.

1 Q. Mr. Hinkle, do you want to take a moment
2 to review that and try to find that entry for us?
3 Or are you pretty well satisfied it's just not
4 there?

5 A. Well, give me another minute
6 (reviewing).

7 MR. SPRAGINS: If it would help in time,
8 I believe I know the explanation now, if you want.

9 MR. WYATT: I don't believe you're under
10 oath, but if you want to.

11 MR. SPRAGINS: Well, if you don't want
12 to know what the explanation is and want to waste
13 some time, I'll be glad to.

14 MR. WYATT: I'm -- you're welcome to
15 narrate anything you want onto the record.

16 MR. SPRAGINS: Okay. I think if you
17 look, I think maybe the flood policy was opened
18 first, and I think this may have been an adjuster
19 generated -- opened the claim.

20 THE WITNESS: I don't know.

21 MR. SPRAGINS: Now, that's my
22 recollection now.

23 THE WITNESS: Okay, I'm done looking.

24 A. I don't know where that activity

1 log 1 --

2 Q. Entry number 1?

3 A. Right.

4 Q. And entry number 1 is the one that
5 documents how the claim was reported and what was
6 reported?

7 A. It may be.

8 Q. I mean, typically?

9 A. Yes.

10 Q. All right. All right. Mr. Hinkle,
11 you're -- you are familiar with other large
12 insurance companies that market and sell similar
13 policy forms as State Farm 7955, right?

14 A. I do know of other companies market and
15 sell homeowner policies. I haven't seen their
16 forms lately.

17 Q. But in the years, many years that you've
18 been doing this in the insurance industry, you're
19 aware, of course, that there's a handful or more
20 of companies that market similar homeowner policy
21 forms as State Farm?

22 A. That's true. In fact, I used to teach
23 insurance and we use ISO forms. I know basic
24 forms, yes.

1 Q. Right. And in that homeowner form
2 world, so to speak, we could say there's two broad
3 classifications. There's others. But one is a
4 form called a named perils form, right?

5 A. Yes.

6 Q. And your years with Farm Bureau might
7 have brought you into contact with that?

8 A. Yes.

9 Q. And then there's another form that
10 State Farm uses which is generally referred to as
11 an all-risk form, right?

12 A. That's the generic term used by the
13 industry. We like to refer to it as accidental
14 direct physical loss.

15 Q. Okay. But you've heard it referred to
16 as all-risk, right?

17 A. Yes.

18 Q. And, in fact, if you've had occasion to
19 read some legal opinions, you've seen the words
20 all-risk used in reference to it?

21 A. It's a term of art.

22 Q. Okay. And what does it mean when you
23 say all-risk as opposed to named perils?

24 A. Generally the concept is it starts out

1 with understanding that all-risk, everything is
2 covered unless otherwise excluded. The named
3 peril has the concept that nothing's covered
4 unless specifically named.

5 Q. What is the 7955?

6 A. Well, coverage A is accidental direct
7 physical loss. And coverage B is named peril.

8 Q. So when we're talking about dwelling and
9 dwelling extension, it's an all-risk policy?

10 A. I don't -- that's your term. It covers
11 accidental direct physical loss, yes.

12 Q. Okay. When you're talking about
13 personal property, it's a named perils policy?

14 A. Yes.

15 Q. Okay. And just so we're both perfectly
16 clear about that, let's look at that language
17 together and get it in the record here. Page 7 --
18 what is the exhibit number, Mr. Hinkle, on your
19 copy of that, the stamp on the front, exhibit
20 number in the green?

21 A. 13.

22 Q. 13, sorry. Okay. So we find the
23 language on page 7, right?

24 A. Yes.

1 Q. All right. So how do we determine
2 whether State Farm's policy is one of those
3 policies that everything is covered unless it's
4 excluded or nothing is covered unless it's named?

5 A. Coverage A dwelling says we insured for
6 accidental direct physical loss to coverage
7 described in coverage A except as provided in
8 section 1, losses not insured.

9 Q. And that means then that everything is
10 covered unless it's in section 1, losses not
11 insured, insofar as the dwelling is concerned?

12 A. Everything as long as it's accidental
13 direct physical loss, yes.

14 Q. Right.

15 A. Yes.

16 Q. It must meet that?

17 A. Yes.

18 Q. But a hurricane's an accidental direct
19 physical loss, isn't it?

20 A. Yes, it is.

21 Q. Okay. So everything's covered as long
22 as it's accidental direct physical loss, unless
23 it's in section 1, losses not insured?

24 A. Yes.

1 Q. Which is over on page 10?

2 A. Right.

3 Q. Okay. Nationwide, have you ever seen an
4 HO-23-A --

5 A. I have not.

6 Q. -- policy form?

7 A. I haven't.

8 Q. Okay. Would -- and given your
9 experience, would you know how to tell us pretty
10 quickly if this is an all-risk type policy as the
11 7955?

12 A. Yes.

13 Q. Would you please take a look at that?
14 And we'll have it marked in a minute.

15 A. (Reviewing) It says we cover accidental
16 direct physical loss to property described in
17 coverage A and B for losses -- except for losses
18 excluded under section 1, property exclusions.

19 Q. What page are you reading from?

20 A. I'm reading page Charlie 1, C-1.

21 Q. C-1, all right. Let me put a little
22 Post-It on the front of yours, your copy. Just
23 put it on the front page here.

24 A. Okay.

1 Q. And we're just going to mark it for the
2 time being as Exhibit 14, and we'll have the court
3 reporter mark it in a minute.

4 Okay. Exhibit C -- I mean, excuse me,
5 page C-1 of Exhibit 14, and it's the same language
6 as the State Farm, isn't it? Accidental direct
7 physical loss?

8 A. Yes.

9 Q. And it even says unless -- or except,
10 rather, anything that's in losses excluded under
11 Section 1, but they call it property exclusions.

12 A. That's what it says.

13 Q. And State Farm says losses we just don't
14 insure for.

15 A. Losses not insured, right.

16 Q. Right. So the difference is semantic.
17 Nationwide refers to them as exclusions, and you
18 refer to them as something that falls under losses
19 we don't insure for?

20 A. Yes.

21 Q. Okay. Now, look over to page D-1, and
22 what we're trying to do here is we want to see if
23 water damage -- you remember we went through the
24 exercise of looking at the State Farm policy about

1 water damage.

2 A. Right.

3 Q. We want to find whether or not
4 Nationwide also has a water damage provision in it
5 similar to State Farm's water damage provision.
6 We already know that in the lead in language, it
7 covers accidental direct physical loss unless it's
8 excluded under this policy.

9 A. Uh-huh.

10 Q. Under yours, it's unless it's
11 something -- a loss we don't insure for. But does
12 this one have water damage, too?

13 A. This says water or water [sic] caused by
14 waterborne material.

15 Q. It says water or damage caused by
16 waterborne material?

17 A. Yes.

18 Q. Okay. So that's on page D-1?

19 A. Right.

20 Q. All right. Now, look at the photographs
21 that I've shown you marked as Exhibit C-1 through
22 C-13. Let's look at C-2 first. And excluding the
23 blue tarp, because you've already said that's a
24 wind damage item, what we're looking for is boat

1 impact. You see these circles on C-2 are
2 numbered? Someone's written numbers to the side,
3 1, 2, 3, so forth?

4 A. I see that, yes.

5 Q. Yes, sir. All right. Can you -- are
6 you able to see those damaged areas on the
7 dwelling good enough in that picture? Or would
8 you like a more zoomed in version?

9 A. Well, I can see damage, but yes, a
10 zoomed in version would be preferable.

11 Q. Okay. Flip through these C-1, C-2, C-3
12 and find a page that you're satisfied that it
13 clearly shows boat impact to the dwelling.

14 A. (Reviewing) C-5 shows that.

15 Q. Okay. And what is the number by the
16 circled item on that photograph?

17 A. I don't see a number.

18 Q. Let's see it. Let me help you with that
19 for a second.

20 A. (Handing)

21 Q. I'll try to speed this up a little bit,
22 if you'll allow me. Now, you tell me if you can't
23 tell from the boat damage in this one. I'm going
24 to look at C-7. Look at C-7, and we've got

1 circles and numbers that are pretty easy to see.

2 A. Yes.

3 Q. Okay. Now, are you able to see boat
4 damage on the dwelling there?

5 A. Knowing the file as I do, I wouldn't say
6 just from this photograph. But I would be
7 persuaded that that damage was caused from impact
8 from a boat to that dwelling.

9 Q. I'm sorry. Okay, I thought we had
10 covered this earlier and I had asked you if you
11 had any doubt about any of those areas circled,
12 other than the things we excluded, as to whether
13 those damaged areas were caused by boat impact.
14 Now, I understood you to say that you didn't have
15 any doubt. Is that still true?

16 A. Yes, that's what I just said.

17 Q. Okay, I'm sorry. I'm sorry.

18 Miscommunication on my part probably. Okay.

19 Now, you see these circled things that
20 are numbered 1, 2, 3, 4 and so forth?

21 A. Right.

22 Q. Let's take number 1. It circles damage
23 to columns on the exterior of the dwelling, right?

24 A. Yes.

1 Q. Now, I'd like for you to look at
2 Exhibit 14, the Nationwide policy HO-23-A. And
3 being a claims consultant with over 25 years
4 experience in property/casualty, I'd like for you
5 to tell us whether or not this damage depicted in
6 Exhibit C-7 would be covered, a covered claim
7 under Exhibit 14?

8 A. It's not covered.

9 Q. And why would it not be covered?

10 A. Because this policy excludes water
11 damage -- water or damage caused by waterborne
12 material.

13 Q. And so what part of that exclusion is
14 applicable to what's depicted in Exhibit C-7?

15 MR. SPRAGINS: Object to the form of the
16 question. Go ahead and answer.

17 A. All right. Flood, wave, tidal waves,
18 overflow of a body of water, whether driven by
19 wind or not. Whether driven by wind or not, I'm
20 sorry. I'm sorry, you said whether or not driven
21 by wind. So the policy says that if the damage is
22 caused by either water or waterborne material,
23 it's excluded if that -- if it was as a result of
24 flood, surface water, waves, tidal waves, overflow

1 of body of water, whether or not driven by wind.

2 Q. All right. So it would be your claim
3 and determination that the sailboats constitute
4 waterborne material?

5 A. Yes.

6 Q. And that's the reason your decision
7 would be no coverage under this policy for what's
8 depicted in Exhibit C-7?

9 A. Yes.

10 Q. Now, look at the 7955.

11 A. Okay.

12 Q. That's State Farm's policy. Find the
13 words waterborne material on page 10.

14 A. (Reviewing) Waterborne material's not
15 in this policy.

16 Q. Are waterborne object in there?

17 A. No.

18 Q. Waterborne debris?

19 A. No.

20 Q. State Farm chose to write its water
21 damage provision unlike Nationwide, right?

22 A. It's different, yes.

23 Q. And the difference is Nationwide did
24 exclude waterborne material damage?

1 A. They mentioned it in their policy, yes.

2 Q. Well, we don't talk about insurance
3 policies as mentioning things. Words have power,
4 don't they? I mean, there are dollars riding on
5 every word, aren't there?

6 A. It speaks for itself.

7 Q. I understand. But I mean, this is the
8 Bible, right? We don't -- we don't -- we don't
9 assume things outside of what's here, right? What
10 this thing says is what controls; isn't that
11 correct?

12 A. If your question is Nationwide specifies
13 that waterborne material is excluded, my answer is
14 yes.

15 Q. Okay. Now, in any of these pictures,
16 C-1 through C-13, Mr. Hinkle, all of those items
17 that are circled with the exception of the roof
18 damage and the things you identified that are
19 purely wind, such as the blue tarp area and so
20 forth, each of those circled items represent what
21 you just identified on C-7? In other words,
22 damage caused by waterborne material, right?

23 A. Yes.

24 Q. Okay. What then is the basis of

1 State Farm's refusal to pay Dr. Pontius under its
2 7955 policy which does not include any language
3 about damage by waterborne material?

4 MR. SPRAGINS: Object to the form of the
5 question. Go ahead and answer.

6 A. The answer to the question is that this
7 is damage -- waterflood includes not only the
8 water, but the water and anything in the water.

9 Q. Look at water damage and explain to me
10 where that's stated, what you just said.

11 A. It doesn't say that. It's just -- I'm
12 telling you, you asked us why we do it this way.
13 Our interpretation of this is water damage means
14 flood, surface water and the like. And we take
15 the word flood broadly. Flood means the water
16 plus anything associated with the flood, including
17 debris.

18 Q. Do you see the word debris anywhere?

19 A. The word debris is not in there.

20 Q. Do you see the word saying flood and
21 anything associated with flood?

22 A. I -- no, it's not in there. No.

23 Q. So would you agree with me, Mr. Hinkle,
24 that what you just told us is not stated in the

1 policy?

2 MR. SPRAGINS: Object to the form of the
3 question. Go ahead and answer.

4 A. The word flood is not defined in the
5 policy, that's correct.

6 Q. No, you told us just a moment ago that
7 you say that flood includes anything associated
8 with flood. And my question to you is would you
9 agree with me that what you said there is not
10 stated in the policy?

11 A. Yes.

12 Q. So the basis of the denial then is the
13 decision was made upon something not stated in the
14 policy?

15 MR. SPRAGINS: Object to the form. Go
16 ahead and answer.

17 A. The decision to deny the claim was
18 because we felt the damage was caused by flood,
19 surface water, waves, and so forth. We cited the
20 exclusion in the letter that we denied the claim.

21 Q. State Farm's denial of the damage caused
22 by these boats is within, according to State Farm,
23 is under this provision right here on page 10,
24 paragraph 2(c)(1)?

1 A. Yes.

2 Q. Mr. Hinkle, in these photographs, C-1
3 through C-13, the items that are circled other
4 than the roof, are you able to show me evidence of
5 water damage?

6 A. No. Not in this photograph here.

7 Q. Would you look through the rest of them,
8 please?

9 A. (Reviewing) There's no closeup of
10 isolated water damage. However, the photo
11 indicates that there obviously was water in the
12 house.

13 Q. Okay. But other than the water being in
14 the house, my question's limited to those circled
15 things, the things that are circled. These
16 circles were made, for your information, by the
17 adjuster who's been deposed.

18 A. Right.

19 Q. And I asked him I want you to circle
20 everything where a boat impact occurred on the
21 dwelling, and that's what he's done and he
22 numbered them. Okay? Now, what I wanted you to
23 do, if you can, is to identify for me in any of
24 those circled items on any of these pictures, C-1

1 through 13, what you say is evidence of water
2 damage.

3 A. I can't do that.

4 MR. SPRAGINS: Object to the form. I
5 mean --

6 A. But I will tell you this: I mean, the
7 photo doesn't have the specificity I would need to
8 answer that question. But I do know that this
9 material is artificial stucco, and it was
10 submerged under water, which it indicates that it
11 was, it may have damage. But there's no close up
12 to verify that.

13 Q. Well, then, you really can't say; is
14 that right?

15 A. From these photos, I can't say that
16 there's -- I can't describe the water damage to
17 the house other than to tell you there was water
18 damage.

19 Q. Here's another better copy of C-2. Do
20 you see these chips out of this cornice around the
21 roof --

22 A. I do.

23 Q. -- that correspond with sailboat masts?

24 A. Yes.

1 Q. Okay. Can you show me on any of those
2 chipped areas where the cornice is broken or
3 busted? Can you show me evidence of water damage?

4 MR. SPRAGINS: Let me object to the form
5 of the question.

6 A. No.

7 Q. Here's a better -- better shot. This is
8 C-3. Do you see the portion of the roof that's
9 knocked away, the cornice.

10 A. I do.

11 Q. Okay. There's no evidence of water
12 damage there, is there?

13 MR. SPRAGINS: Object to the form of the
14 question, please.

15 A. The damage, as we've said many times, is
16 caused by this boat striking the house.

17 Q. That's right. And what I'm asking you
18 to show me is point out to us any water damage
19 that you can identify.

20 MR. SPRAGINS: Object to the form of the
21 question.

22 A. All right. There's no direct water
23 damage. But the damage is caused by the force of
24 the water taking the boat in there. So it falls

1 within the definition -- it falls within the
2 meaning of water damage within the policy.

3 Q. You just used the word definition.

4 A. I corrected myself.

5 Q. Mr. Hinkle --

6 A. Sorry. I corrected myself.

7 Q. Do you want to -- do you want to correct
8 yourself earlier when you denied that the word
9 meaning is the equivalent of definition?

10 MR. SPRAGINS: I want if -- go ahead.
11 Go ahead. I object to the form of the question.

12 A. Well, I want to use the word meaning,
13 because that's what the policy says.

14 Q. Mr. Hinkle, is it fair to say that,
15 again as to those circled items, you're unable to
16 show us evidence of water damage on those circled
17 items; is that right?

18 MR. SPRAGINS: Object to the form of the
19 question. It's not what he said.

20 A. It's water damage to the extent that it
21 was caused by the water and the debris on the
22 water, specifically the boat, striking the house.

23 Q. The waterborne materials?

24 A. Yes.

1 Q. Mr. Hinkle, if the -- if a sailboat
2 rammed into the house and punched out the window,
3 causing the interior of the house to be
4 compromised and thereby subjecting it to the
5 forces of wind and water and whatever else can be
6 driven in there, how would that be handled under
7 the 7955?

8 A. You'd have to figure out why the
9 sailboat did just that.

10 Q. I'm sorry?

11 A. You'd have to figure out what caused the
12 sailboat to do that.

13 Q. Okay. Well, let's say that what caused
14 the sailboat to do that was a hurricane.

15 A. All right. If the sailboat got onto the
16 property because of the rising water -- the flood,
17 the surface water, the waves, the tidal water,
18 whatever -- and ran into the house, even if it was
19 in conjunction with wind, because -- it would be
20 excluded, there's another -- there's other
21 language in the policy that says if it's -- an
22 excluded event causes damage in conjunction
23 concurrently with a covered event, the event --
24 the damage is excluded.

1 Q. That's the anti-concurrent cause --

2 A. Yes.

3 Q. -- that you've told us earlier in the
4 Tupker decision has been declared invalid.

5 A. All right. I told you in the Tupker
6 decision that we believe that we're interpreting
7 that language as Judge Senter thinks it should be
8 interpreted. His concern with that, as I
9 understand it -- and I'm not a lawyer -- is the
10 before and after and all that. I'm talking about
11 it happened at the same time. I don't know if
12 there's any ambiguity there.

13 Q. Let me see if I understand your
14 statement. If the sailboat impacts the house
15 because the hurricane caused the sailboat to do
16 that, and it compromised the structure of the
17 house by knocking out a window and thus exposing
18 the house to the elements, your claims treatment
19 of that is nothing is covered because the
20 anti-concurrent cause provision applies, and you
21 have an included peril and an excluded peril, and
22 therefore, State Farm pays nothing?

23 MR. SPRAGINS: Object to the form of the
24 question, please.

1 A. My interpretation would be but for the
2 water, had the boat not been there, it would be
3 covered. But if the water's there, it's excluded.
4 In other words, it's conceivable that the wind
5 could have picked the boat up from anywhere, land
6 or anywhere else, if water's not involved and blew
7 it into the house, that would be a covered loss.
8 But if water is what caused the boat to be there,
9 it's excluded.

10 Q. I understand. So if the sailboat blew
11 off of its trailer and went through the window,
12 it's covered?

13 A. Yes.

14 Q. For interior damage, too?

15 A. Once you got wind damage striking the
16 house, all resulting damage would be covered.

17 Q. All right. But if the sailboat was ever
18 in the water, no coverage?

19 A. I wouldn't go that far. If it was in
20 the water at the time of the loss, no coverage.

21 Q. That's what I mean.

22 A. Yeah, right.

23 Q. Similarly, a vehicle braking mechanism
24 fails and it rolls into the side of the house,

1 coverage or no coverage?

2 A. That would be covered.

3 Q. Okay. And if the vehicle did that
4 because a storm surge had affected the braking
5 mechanism causing it to fail, coverage or no
6 coverage?

7 A. Well, that's too hypothetical. Are you
8 saying it was in the storm surge and they went out
9 and they were driving it later and that happened?
10 Is that what you're asking me?

11 Q. A parked vehicle, storm surge, braking
12 mechanism fails, car rolls into house.

13 A. If the storm surge caused it to happen,
14 it's excluded. I don't -- I fail to see how the
15 braking mechanism would be involved in that.

16 Q. All right. Tree, large tree, root ball
17 becomes saturated, tree falls, impacts the house.
18 Coverage or no coverage?

19 A. Again, if the -- if the direct cause of
20 the tree going down is flood, it's excluded. And
21 if it's saturated because of rain, and flood's not
22 an issue, then the structure -- the tree structure
23 itself just becomes weak and wind blows it over
24 into the house, that's covered.

1 Q. So you have to go back to the source of
2 the water. Top-down water, you get coverage.
3 Flood, you get none?

4 A. Flood is excluded. Rain is not.

5 Q. Right. Now, would you show me in the
6 policy, the 7955, all of what we just talked
7 about, show me language that covers that?

8 A. The tree ball thing?

9 Q. Everything. The vehicle rolling into
10 the house, the root ball becoming saturated, the
11 failure of a vehicle -- I mean, the vehicle
12 failing, the brake mechanism failing. Where's the
13 language that addresses those things?

14 A. Well, as we discussed earlier, it's --
15 the language is it's accidental direct physical
16 loss. So in your examples, accidental direct
17 physical loss occurred. And then nothing as you
18 described it is outlined in the losses not
19 insured. Therefore, it's covered.

20 Q. I'm not -- I'm not understanding your
21 answer, okay? In the scenarios that we just went
22 through, what I'm asking you is to show me or
23 point me to the language in the policy that would
24 support the decision of no coverage in those

1 instances.

2 A. Well, you gave me several examples.

3 Q. Well, take the --

4 A. Let's take the vehicle running into the
5 house.

6 Q. All right. Let's do that.

7 A. That's accidental direct physical loss.

8 Q. So it's covered unless what?

9 A. Unless it's listed in losses not
10 insured.

11 Q. Okay. So now we want to find in losses
12 not insured?

13 A. And it's not there, therefore it's
14 covered.

15 Q. Even if the -- even if flood --

16 A. Now wait a minute.

17 Q. -- contributed to --

18 A. We're talking about the example where
19 the car just drove into the house. You asked me
20 that.

21 Q. Sorry. I'm sorry, I misled you. Okay.
22 You gave me that example. Now let's use the one
23 that has to do with the flood impacting the
24 braking mechanism then, the car.

1 A. Okay. Thank you. So flood is listed
2 under the paragraph losses not insured. So
3 therefore, it would be not -- it is not covered.

4 Q. So you would write that up -- if the
5 vehicle rolled into the house, you would write
6 that up as the cause of loss was flood?

7 A. It would be no different -- it doesn't
8 matter what it is. If it's floating on the water
9 and impacts the house, it's as a result of flood.

10 Q. Mr. Hinkle, the tree -- example of the
11 root ball becoming saturated from flood waters and
12 the tree gives way and hits the house and I
13 believe you told me no coverage, right?

14 A. No, I told you that would be coverage,
15 unless it's the result of a flood.

16 Q. That's what I'm telling you. I'm
17 telling you it is the result of a flood.

18 A. All right.

19 Q. I'm using the example where the flood
20 saturated the root ball of the tree and the tree
21 fell and hit the house.

22 A. All right.

23 Q. All right. Your decision again was no
24 coverage, right?

1 A. Let me explain that. In Hurricane
2 Katrina, in Mississippi we had about 80,000
3 homeowner claims. I would say a fair percentage
4 of them were a result of what you just said, but
5 not as a result of the flood. In other words, in
6 Hattiesburg, they got too much rain, tree balls
7 became saturated and the wind blew the tree over
8 on the house. That's a covered loss. But if the
9 tree ball -- root ball became saturated as a
10 result of the flood, the water being on the land
11 and staying, then that would be excluded.

12 Q. So you excluded all the tree falling
13 events where they were coastal and the water had
14 inundated the land and then the tree fell?

15 A. If we could prove flood was the cause of
16 the loss, yes.

17 Q. But you have to prove that, don't you?

18 A. Yes.

19 Q. And you have the burden of that, not the
20 homeowner?

21 A. Yes, we have to -- we have the
22 obligation to prove the exclusion, yes.

23 Q. And how would you go about doing that?

24 A. We -- you handle each case on its merits

1 and you look at all the evidence.

2 Q. All right. But you come to an area that
3 is totally blighted, it's devastated. Nothing in
4 some instances left but slabs. You're going to
5 determine forensically whether the tree fell
6 because of inundation on the land or top-down
7 water, rain, at that point, that's what you're
8 going to do. How are you going to do that?

9 A. Well, again, that's -- there's too many
10 hypotheticals there. You just said there wasn't
11 anything there to damage. The house was gone. So
12 I don't understand what it is -- the tree itself's
13 not covered. What did it damage when it fell down
14 if the house wasn't there?

15 Q. Let me ask the question. Okay? Here's
16 the question: How would you, State Farm,
17 forensically determine whether the root ball of
18 the fallen tree was saturated by inundation on the
19 land or immense rain that dropped from the
20 hurricane?

21 MR. SPRAGINS: Let me object.

22 BY MR. WYATT:

23 Q. How do you do that?

24 MR. SPRAGINS: Let me object to the form

1 of the question. Go ahead and answer, if know or
2 understand.

3 A. I can't think of a scenario where that
4 situation came up. And I don't know that it -- I
5 don't know how to answer that. I mean, you look
6 at the scene -- you're asking me generally generic
7 questions about the whole inundated coastal area.
8 My observation was that in a lot of cases where
9 the house was totally gone, the trees were intact.
10 I don't recall any root balls, seeing any root
11 ball situations.

12 Q. Okay. But Mr. Hinkle, let's not go into
13 what you saw so much, because I'm only asking a
14 question that's really hypothetical.

15 A. Yeah.

16 Q. And it's based on this: You explained
17 quite well that trees that fell in Hattiesburg
18 fell because of top-down water, rain. You know
19 the words top-down, right?

20 A. I do.

21 Q. Okay. But on the coastal area, you
22 would be looking for trees that fell from two
23 possible causes: One would be top-down water,
24 rain. The other might be land inundation, what

1 we're talking about in the water damage provision,
2 right? Okay. Are you with me so far?

3 Okay. So my only question is this: Not
4 what you saw or anything. How would you,
5 State Farm, determine which of those occurred that
6 made the tree fall?

7 A. You do a scene inspection and you try to
8 find out where the water line was and you try to
9 determine was this tree, in fact, inundated with
10 water. And you examine the wind damage from the
11 area and the other wind damage. And you take all
12 those facts into consideration and you make a
13 decision.

14 Q. But you really can't ever say, can you?

15 MR. SPRAGINS: Object to the form.

16 Q. How would you ever say?

17 A. Well, a decision has to be made on
18 everything. I suppose if an issue were -- that
19 come into question, you would hire an expert to
20 look at it.

21 Q. And have you ever done that?

22 A. Hired an expert?

23 Q. To do that, what we just talked about?

24 A. We hired experts that examined the

1 scene, yes.

2 Q. Have you ever hired an expert to tell me
3 how the tree fell?

4 MR. SPRAGINS: Let me stop you right
5 there. All right? Please tell me how that's
6 remotely related to -- discovery at this time is
7 limited to the underwriting of the flood exclusion
8 insurance policy form FP-7955 that excludes damage
9 to dwellings by waterborne materials, objects or
10 debris. And I've let this kind of go on for a
11 little while because I don't want to limit it.
12 But we're going to have to limit it to what the
13 Judge's order says.

14 MR. WYATT: Well, I'm willing to do
15 that. Of course, the disagreement is that I'd
16 like for you to show me that a fallen tree is not
17 a waterborne object, material or debris in the
18 description that your witness said.

19 MR. SPRAGINS: Okay, let me just say
20 this: This is the scenario that he gave you, and
21 maybe you all weren't communicating. You said
22 that the area, in your hypothetical, is
23 devastated. Okay? The tree itself is not a
24 covered. All right? If a tree was laying over on

1 its side and there was a big root ball on a
2 coastal area, Derek, there wouldn't be a coverage
3 decision to make because the house is gone. Okay?
4 There's no -- there's no issue there. So y'all
5 are talking about something that doesn't have
6 anything. You haven't said and what happens if
7 this tree starts floating, you know.

8 BY MR. WYATT:

9 Q. Mr. Hinkle --

10 MR. WYATT: I defer to the witness.

11 Q. That's a good point counsel made. What
12 happens if the tree starts floating and impacts
13 the house? Then what's your coverage decision
14 under State Farm's policy?

15 A. Well --

16 MR. SPRAGINS: The water's rose --

17 THE WITNESS: Yeah.

18 MR. SPRAGINS: -- enough to float the
19 tree.

20 MR. WYATT: Excuse me, Scot, please let
21 the witness answer.

22 MR. SPRAGINS: Well, if you're going to
23 use my example, use it correctly. You know, the
24 water -- there's no flood water to ruin the root

1 ball of the tree. And then there's enough water
2 for it to float off.

3 A. As I mentioned before, I think flood
4 includes the water and anything in the water
5 that's floating in the water. And that tree would
6 be in that category.

7 Q. Uh-huh. And you've also told me before
8 that that's not in the policy?

9 MR. SPRAGINS: Object to the form of the
10 question. I instruct you not to answer.

11 Q. Right, Mr. Hinkle?

12 MR. SPRAGINS: I'm instructing him not
13 to answer, and he's not going to answer. Don't
14 ask him a question I've instructed him not to
15 answer. It's been asked and answered before.
16 Okay?

17 MR. WYATT: Asked and answered?

18 MR. SPRAGINS: Yeah.

19 MR. WYATT: Mr. Hinkle, do you adopt
20 your counsel's statement there, that you have
21 answered that question?

22 MR. SPRAGINS: Yeah, he doesn't have to.
23 I'm instructing him not to.

24 MR. WYATT: Okay. That's good enough.

1 MR. SPRAGINS: It is.

2 BY MR. WYATT:

3 Q. Looking -- have you got your 30(b)(6)
4 notice? And we'll notice -- tell us what the
5 exhibit number is so we're all on the same page.
6 And if you don't mind, Mr. Hinkle, would you hand
7 that over to Ms. Court Reporter so she can mark it
8 as Exhibit 14?

9 A. (Handing)

10 Q. Thank you. All right. Looking at
11 number 3, you're the designee for that item.

12 (Whereupon Deposition Exhibit No. 14 was
13 marked for identification by the court reporter.)

14 A. Yes.

15 Q. Okay. All right. And have you told us
16 what the grounds, reasons or bases for paying or
17 not paying the claim as indicated in number 3 is?

18 A. I have.

19 Q. And what is that?

20 A. It's our interpretation that flood
21 includes not only water, but the debris or
22 anything else in the water.

23 Q. Thank you, sir. Number 4?

24 A. Yes.

1 Q. There's one further question before we
2 move onto that. Let me make sure I understand
3 this. The word flood is not defined in the 7955,
4 is it?

5 MR. SPRAGINS: Object to the form. It's
6 been asked and answered. But go ahead and do it
7 again.

8 BY MR. WYATT:

9 Q. You can answer. Is it, Mr. Hinkle?

10 A. No, it's not.

11 Q. Okay, thank you. Number 4?

12 A. Uh-huh.

13 Q. Did you find any operation guide that
14 spoke to the question we've been discussing, which
15 is the water damage provision found on page 10 of
16 the 7955?

17 A. I'm not sure, but I believe 75-100
18 speaks to that. Operation guide 75-100.

19 Q. Do you have a copy or would you like for
20 me to provide it?

21 A. I don't have a copy of anything.

22 Q. Counsel didn't provide you copies of the
23 operation guide?

24 MR. SPRAGINS: No. You didn't ask you

1 me to.

2 MR. WYATT: My goodness. They belong to
3 State Farm, don't they? They won't even let us
4 have them.

5 MR. SPRAGINS: If it's not a
6 confidential document -- if it hadn't been marked
7 as confidential, then we've given it to you. And
8 I would have thought if you wanted to question him
9 about it, then you would have had it. I don't
10 think 75-100 -- I think 75-100 is one of the ones
11 that's been designated confidential.

12 MS. McALISTER: It was produced?

13 MR. WYATT: Scot, did you all produce
14 that?

15 MR. SPRAGINS: What? We did some of it.

16 BY MR. WYATT:

17 Q. Which one did you say, Mr. Hinkle?
18 79-105?

19 A. 75-100.

20 Q. 75-100?

21 A. And I'm not -- I'd like -- I'd have to
22 look at it to testify for sure that that's in
23 there.

24 Q. Well, then there's an operation guide

1 that you believe applies, but it hasn't been
2 tendered to us?

3 MR. SPRAGINS: It has been tendered with
4 the understanding that you will enter into a
5 protective order. And we're meeting with the
6 judge at 9:30 tomorrow morning so we can talk
7 about it then.

8 MR. WYATT: We're meeting with the
9 judge? What do you mean?

10 MR. SPRAGINS: Status conference.

11 MR. WYATT: Is he flying up here?

12 MR. SPRAGINS: No. There's a status
13 conference.

14 MS. McALISTER: In this case?

15 MR. SPRAGINS: Yes, there is.

16 MR. WYATT: I don't know anything about
17 that.

18 MR. SPRAGINS: Well, we need to bring --
19 we obviously need to bring it up to him.

20 MR. WYATT: Well, Scot, for purposes of
21 expediting this deposition, you have a letter from
22 us saying we're going to keep everything
23 confidential until the court rules appropriately.

24 MR. SPRAGINS: You haven't said what

1 the --

2 MR. WYATT: Excuse me, let me just
3 finish, okay?

4 MR. SPRAGINS: All right.

5 MR. WYATT: Do you have 75-100? Is it
6 even here?

7 MR. SPRAGINS: I don't know if I have it
8 or not. I haven't looked.

9 BY MR. WYATT:

10 Q. Mr. Hinkle, do you have it?

11 A. I didn't bring anything, sir.

12 Q. We're wasting one another's time, I
13 guess.

14 A. Well --

15 MR. SPRAGINS: Go on to something else
16 then.

17 BY MR. WYATT:

18 Q. Well, while Ms. McAlister is looking for
19 that, Mr. Hinkle, State Farm started operation
20 guides in 1960, didn't they?

21 A. I think so.

22 Q. And the books would just consume this
23 whole table if we had them up here?

24 A. Actually not.

1 Q. But -- they wouldn't run the length of
2 this whole table?

3 A. No.

4 Q. But pretty close.

5 A. No.

6 Q. Half of it?

7 A. All right. The operation guides, the
8 claims ones --

9 Q. No. No, sir. The operation guides. I
10 didn't say claims ones.

11 A. Well, I don't --

12 Q. Excuse me?

13 A. There's a lot of them, yes.

14 Q. Well, yes, sir. There's -- there's the
15 5 series, there's the 10 series, the 30, the 50.

16 A. I'm sorry, I thought you meant the
17 claims ones.

18 Q. No.

19 A. If you put them all together --

20 Q. Do you want to see all the topics? Do
21 you know all the topics?

22 A. No. I know the claims ones.

23 Q. They would cover this entire conference
24 table, wouldn't they, sir?

1 A. There's a lot of them. I can --

2 Q. Well --

3 A. They're all electronic now, that's why
4 I'm --

5 Q. Okay, okay. They provide a formal means
6 of communicating company policies, operational
7 details, and other information, correct?

8 A. Yes.

9 Q. They establish uniformity in practices?

10 A. That's the purpose.

11 Q. That includes claim practices?

12 A. Yes.

13 Q. They reduce operational errors?

14 A. Yes.

15 Q. They promote good organizational
16 management?

17 A. I don't know what document you're
18 reading from, but I have heard that, yes. I mean,
19 that's our position.

20 Q. Compliance with the guides is necessary?

21 A. Yes.

22 Q. And that's so State Farm can uniformly
23 discharge its responsibilities to its
24 policyholders?

1 A. Right.

2 Q. So a policyholder would be entitled to
3 know how State Farm uniformly discharged its
4 responsibilities to him or her?

5 MR. SPRAGINS: Object to the form.
6 That's not the purpose.

7 A. The policyholder -- I mean, the purpose
8 of the operation guide is to make sure that the
9 claims people in claims cases apply our policies
10 uniformly.

11 Q. And they're not given the choice. The
12 operation guides are there for them to follow?

13 A. I think you'll find in one of the lead
14 in paragraphs that that's generally true, unless
15 there's an exception in the jurisdiction --

16 Q. Uh-huh.

17 A. -- by law.

18 Q. If you do something contrary to the
19 operation guides, you better tell somebody,
20 shouldn't you?

21 MR. SPRAGINS: Object to the form.

22 A. We expect people to comply with the
23 operation guides.

24 Q. And you wouldn't want to keep secret

1 from the policyholder how you adjusted their
2 claim, would you?

3 MR. SPRAGINS: Object to the form.

4 A. Well, no. I mean, we try to do
5 everything open and explain every aspect of the
6 claim and explain the policy, the facts of the
7 loss, how we interpret it and apply them to the
8 policy.

9 Q. And if I've paid my premium, I'm
10 entitled to know how State Farm adjusted my claim?

11 MR. SPRAGINS: Object to the form.

12 A. You're entitled to an explanation of the
13 claim decision, yes.

14 Q. And State Farm doesn't want to keep
15 secret from its policyholders that process?

16 MR. SPRAGINS: Object to the form. Go
17 ahead and answer.

18 A. It's our stated purpose to explain in
19 full in every detail with the policyholder the
20 reason for the decision.

21 Q. So if an operation guide is pertinent to
22 the claim disposition, the policyholder would want
23 to see that?

24 A. Some of them.

1 MR. SPRAGINS: Let me object to the form
2 of the question.

3 THE WITNESS: All right.

4 MR. SPRAGINS: Go ahead and, you know,
5 answer that hypothetical.

6 A. Some of the operation guides are
7 proprietary and confidential and we're not --

8 Q. By whose definition proprietary and
9 confidential?

10 A. I don't know. The legal people.

11 Q. For State Farm?

12 A. Yeah.

13 Q. Okay. That's what I thought. Okay.
14 All right. We're looking at the list that we were
15 given which was only for the 70 series --

16 A. Okay.

17 Q. -- which is a very small part of the
18 overall operation guides, and it's another issue.

19 MR. WYATT: In any event, 75-100 was
20 something we asked for, Scot.

21 MR. SPRAGINS: Uh-huh.

22 MR. WYATT: It's called Claim
23 Interpretations, First Party Losses Insured.
24 We're not going to be able to examine Mr. Hinkle

1 on that subject matter, obviously, without the OG.

2 So --

3 MR. SPRAGINS: Was it designated as
4 confidential and trade secret by State Farm?

5 MR. WYATT: I'm not even -- I don't know
6 what you're referring to as designated by
7 State Farm.

8 MR. SPRAGINS: Well, did we indicate to
9 you in any of these other exhibits that we -- that
10 you have -- you have here, did we indicate to you
11 that it would -- it would be marked and considered
12 to be confidential?

13 MR. WYATT: Scot, I think that would be
14 a question that you'd ask yourself better than you
15 ask me.

16 MR. SPRAGINS: I didn't look, and I
17 don't intend to look. We have produced the OGs
18 that have not been designated as confidential. We
19 have indicated to you that we would provide you
20 with the balance of those as soon as you would
21 enter into a protective order. We have -- we have
22 suggested a form of a protective order. And over
23 two weeks ago, I asked you if there was any
24 problems with it or if you had any other

1 suggestions about one, about the form of one, that
2 I would be glad to review it with State Farm
3 Fire & Casualty. And to-date, I haven't received
4 any.

5 MR. WYATT: Okay, Scot. Thank you for
6 that oration. We now have it.

7 MR. SPRAGINS: Well, good.

8 MR. WYATT: So nicely stated, though.
9 Please mark that, Ms. Court Reporter, as
10 Exhibit 15.

11 (Whereupon Deposition Exhibit No. 15 was
12 marked for identification by the court reporter.)

13 BY MR. WYATT:

14 Q. Okay, now we can do business,
15 Mr. Hinkle. And I appreciate your patience. I
16 know this is tedious for you. It's tedious for
17 us, too.

18 Do you want to just take us straight to
19 the section here that would address water damage?
20 There's a lot of material. It looks like to me
21 it's a -- it goes from --

22 A. Yes, it's --

23 Q. -- Bates number 395 to 422. So it's a
24 good 30 pages, or close to that.

1 A. XIV, sub -- the subject is water loss
2 perils.

3 Q. Do you see a Bates page? When you get
4 to it, just give us a Bates page.

5 A. All right. Well, it's on Bates page --
6 where's the numbers?

7 Q. It's down at the bottom. Little bitty
8 thing. It's 416, right?

9 A. Oh, yeah.

10 Q. Page 416?

11 A. Right, okay.

12 Q. All right.

13 A. All it says is refer to OG 75-1. So ...

14 Q. The only information in here is it says
15 XIV, water loss perils, see OG 75-20, water damage
16 losses. I thought for a minute we were looking at
17 the tax code or something there. All right.

18 So let's go to 75-20, And we'll mark
19 that as exhibit next. That would be 16, I
20 believe.

21 (Whereupon Deposition Exhibit No. 16 was
22 marked for identification by the court reporter.)

23 BY MR. WYATT:

24 Q. First question I have for you on this is

1 page 148, the first page.

2 A. Yes.

3 Q. You see the -- first of all, this
4 particular OG is designed specifically to tell us
5 how to -- there's that word again -- handling
6 water damage claims, right?

7 A. Yes.

8 Q. Okay. So if a person is dealing with a
9 water damage claim, this is where they're supposed
10 to go, right?

11 A. Certain water damage claims.

12 Q. Okay. Look at --

13 A. Yes.

14 Q. You see general on page 148?

15 A. Yes.

16 Q. All right. It says building structures
17 are covered for accidental direct physical loss,
18 and then it says unless specifically excluded,
19 while personal property is covered on a named
20 peril basis.

21 A. Yes.

22 Q. That's a correct statement, right?

23 A. Well, yes.

24 Q. So what that's telling us is water

1 damage is an accidental direct physical loss,
2 right, as you indicated earlier?

3 A. Unless it's --

4 MR. SPRAGINS: Object to the form.

5 Q. Right?

6 MR. SPRAGINS: Go ahead and answer.

7 A. Unless specifically excluded.

8 Q. But it's not covered unless it's --
9 well, the word is specifically excluded, right?

10 A. (Nods head) Yes.

11 Q. Okay. So if we refer -- if we take the
12 OG that we're looking at, 75-20, and we just
13 overlay that language we just saw on paragraph C,
14 water damage, where is the specifically excluded
15 part that specifies the damage depicted in C-1
16 through C-13?

17 MR. SPRAGINS: I'm going to object to
18 the form. It's been asked and answered.

19 THE WITNESS: Do you want me to answer
20 it?

21 MR. WYATT: Yes, sir.

22 MR. SPRAGINS: Yeah, go ahead.

23 MR. WYATT: He's just doing that to
24 break up the question and answer with you.

1 MR. SPRAGINS: No, I'm not either. But
2 I'm going to tell you this, if we're going over
3 the same thing repeatedly, Derek, I'm going to
4 instruct him not to answer. So I'll let you ask
5 these same questions a couple of times. But
6 beyond that, we're going to move on.

7 A. Well, as you mentioned before, that
8 damage there is a result of flood, surface water,
9 waves, tidal water and so forth.

10 Q. I thought you said waterborne objects.
11 I thought we had that clear.

12 MR. SPRAGINS: No.

13 Q. I thought we went through the HO-23-A.
14 We looked at the sailboats. We said that's
15 waterborne. Wasn't that right?

16 A. I said also that flood -- in our
17 interpretation, flood and these other terms is the
18 whole thing. The water, the debris in the water,
19 whatever. If it's associated with the water, it's
20 specifically excluded.

21 Q. Do you find anything specific in
22 paragraph C, as this OG requires, specific, that
23 excludes what's circled in the photographs?

24 MR. SPRAGINS: Same objection. Go ahead

1 and answer quickly.

2 A. Well, you mentioned earlier words are
3 words. And I guess we're arguing about what the
4 word specific means. I'm telling you that the
5 water damage exclusion is clear to me that it
6 excludes all damage caused by the water, to
7 include the debris and anything else in the water.

8 Q. But you can't point us to anything
9 specific, can you, Mr. Hinkle?

10 MR. SPRAGINS: I'm going to object to
11 the form. Answer it quickly, but this is the last
12 time. Okay?

13 MR. WYATT: He's appointed himself as
14 director, producer and et cetera. So ...

15 MR. SPRAGINS: Okay, then what I'm going
16 to do right now is I'm going to instruct you not
17 to answer.

18 MR. WYATT: Okay. That's -- and we're
19 going to have to read rules again.

20 MR. SPRAGINS: Look, I don't -- you
21 know, it's not going to -- your reading me a rule
22 is not going to change what I've instructed him to
23 do. Okay, Derek?

24 MR. WYATT: It may not.

1 MR. SPRAGINS: Okay.

2 MR. WYATT: But we're going to make a
3 record of it because someone who is going to apply
4 the law is going to look at this.

5 Rule 30(d)(1), "a person may instruct a
6 deponent not to answer only when necessary to
7 preserve a privilege, to enforce a limitation
8 directed by the court, or to present a motion
9 under Rule 30(d)(4)." And further, that if the
10 fair examination of the deponent under Rule 30 is
11 being impeded or delayed, we are accorded certain
12 rights, additional time, for example, to the
13 deposition.

14 MR. SPRAGINS: Okay. And how much time
15 do you have left, by the way?

16 MR. WYATT: Scot --

17 THE VIDEOGRAPHER: You're at about three
18 hours and 15 minutes.

19 MR. SPRAGINS: So you've got about
20 another 45 minutes, I think.

21 BY MR. WYATT:

22 Q. Okay. I'm going to ask the question and
23 Mr. Spragins can instruct you not to answer or he
24 may object, as he wishes. But I'm going to ask

1 you the question very clearly.

2 A. All right.

3 Q. And I would like for you to answer me
4 because I believe that I'm entitled to an answer.

5 I'm looking at State Farm's operation
6 guide. And we've already read and you've agreed
7 with me what the purpose of operation guides are,
8 both in general and as to this one. This one is
9 specific as to water damage claims.

10 And I'm finding in here that it tells us
11 unless the accidental direct physical loss is
12 specifically excluded, that it's covered. So I've
13 asked you to find in the water damage provision of
14 the policy the specific exclusion for what's
15 depicted in the photographs.

16 MR. SPRAGINS: I'm going to object to
17 the form. It's been asked and answered. Answer
18 it very quickly.

19 A. The specific exclusion is floods,
20 surface water, waves, tidal water and so forth.

21 Q. And that's the sum total of it?

22 A. Yes.

23 Q. Thank you. Okay. Now, Mr. Hinkle, look
24 over to page Bates 154. Excuse me a second.

1 Let's see. I'm sorry. We got to this 75-20 by
2 reference to 75-100, remember?

3 A. Yes.

4 Q. Well, do you find anything in here, in
5 this 75-20 that sheds any more light on the issue
6 that we're dealing with?

7 A. No. I do not.

8 Q. If we were -- if it were in here, it
9 would be on page 150, right, under IV?

10 A. That would be the logical place to put
11 it. But it's not in there, so ...

12 Q. Okay. Look at the last page, 153.

13 A. Okay.

14 Q. You see that language, "top of page" and
15 for "internal use only, nothing in this site shall
16 be disclosed outside State Farm," and so on?

17 A. Yes.

18 Q. What's been redacted from this document?

19 A. This is -- as far as I can -- as far as
20 I know, this is the document. Nothing's been
21 redacted.

22 Q. What does this mean when it says "top of
23 page, for internal use only, nothing contained in
24 this site shall be disclosed outside State Farm"?

1 A. This is an electronic document. So when
2 you click on "top of page", it just runs you right
3 back up there on your screen. That's what "top of
4 page" means. The latter part just speaks for
5 itself. We're not to give these out to anybody
6 outside of the company unless it's properly
7 authorized.

8 Q. Just so I understand this, this
9 statement, "top of page" --

10 A. Yeah.

11 Q. -- this is not the top of any page, is
12 it?

13 A. No. When you get done reading the OG,
14 this is on the computer screen now, and you hit
15 "top of page" and it simply runs you back up to
16 the first part here.

17 Q. Uh-huh. That's a prompt in the
18 computer?

19 A. Exactly.

20 Q. Uh-huh. But it prints out on this page?

21 A. Yeah.

22 Q. Your prompt prints out on the page of
23 the document itself?

24 A. Yeah.

1 Q. What's the reason for that?

2 A. Well, I don't know.

3 MR. SPRAGINS: Because if we didn't
4 include it, you'd complain about it.

5 A. I guess the answer to the question is
6 the electronic document is the document. And this
7 is just simply a print of the electronic document
8 and everything that's on the screen prints out.

9 Q. What is proper authorization?

10 A. I don't know. It's a pretty broad term.
11 I don't know. I don't have a definition for that.
12 I mean, a claim rep would go to his manager person
13 and then he would go to his manager person and
14 they would decide that.

15 Q. These things are how you make claims
16 decisions, these documents?

17 MR. SPRAGINS: Object to the form of the
18 question.

19 A. They're an element of it, yes.

20 Q. I mean, you gave me several things.
21 Read the policy?

22 A. Right.

23 Q. OGs, go to legal, claims surveys?

24 A. Yes.

1 Q. Okay. This is one of the big ones,
2 right, in the claims decision-making process?

3 A. Well, there's --

4 MR. SPRAGINS: Let me object to the form
5 of the question.

6 THE WITNESS: All right.

7 MR. SPRAGINS: Go ahead and answer.

8 A. All the stuff that we're talking about
9 is only utilized in cases where there's a
10 question. As far as the vast majority of any
11 claim decision is there's no decision, you just
12 figure out how much the claim is and pay it.
13 These are utilized when that doesn't take place,
14 when there is a question somehow.

15 Q. All right. Okay. Are there any more
16 OGs that you found that you thought were --

17 A. No.

18 Q. No. Out of all those OGs, these perhaps
19 thousands and thousands of pages of paper, that's
20 it, right?

21 A. Yes.

22 Q. Okay. Would you expect anything to be
23 in the 71 through 75 series, claim handling?

24 A. 71 is flood. It pertains to flood

1 policies.

2 Q. National flood?

3 A. Yes. 74 is procedural. How do you fill
4 out the drafts, that kind of thing. And then the
5 75 is -- would be first party claim
6 interpretations, and we just went through I think
7 the two that would be applicable in water cases.

8 Q. What about 76 through 78, coverages and
9 interpretation?

10 A. 76 would be third party casualty losses.
11 It would have no applicability to this.

12 Q. Interpretations, 76, 77, 78. What's 77,
13 78?

14 A. I'm not sure. I'd have to see the
15 index. We don't use those.

16 Q. 76 through 78, coverages and
17 interpretations. Now, wouldn't some of those OGS
18 have applicability?

19 A. 76? Okay. We use 76. I've -- I don't
20 recall ever having seen 77 series or 78 series.

21 Q. According to this, it's an
22 interpretations of coverage.

23 A. Well, -- the -- interpretations of
24 coverage -- all right. I think one of them's

1 worker's -- 76 through 78 is all third party
2 coverage interpretations. One of them's -- 76 is
3 casualty. I'm not sure what -- 77 and 78, I'm not
4 familiar with them, but I think one of them's
5 worker's compensation and I forget what the other
6 one is. It's not first party.

7 Q. Is there any reason why State Farm would
8 not want to tell us all of that, what these
9 numbers correspond to?

10 MR. SPRAGINS: Let me object to the form
11 of the question and instruct you not to answer.
12 If you want a better definition, I'll get you a
13 better definition, okay? I mean, this is the
14 first time you brought it up to me, and I'll get a
15 more defined for you description.

16 MR. WYATT: Item number 5, which
17 corresponds to a document request, states the
18 complete operation guides utilized or, if not
19 utilized, applicable to the handling and/or
20 adjusting of the Hurricane Katrina claims which
21 Plaintiff says they related and/or pertained in
22 any way to any concurrent causation and/or water
23 damage provisions in policy form FP-7955. And
24 then number 4 is even broader. So we've asked for

1 them. And I'm simply trying to voir dire the
2 witness and find out why we have not been produced
3 the other series if, in fact, they apply. So --

4 MR. SPRAGINS: I told you he doesn't
5 think they apply. I don't know how clear it can
6 be. Now, you wanted a better definition of what
7 would be in that series, and I told you I'd get
8 you one. Okay?

9 MR. WYATT: All right.

10 MR. SPRAGINS: I mean, it's that simple.
11 We asked the people at State Farm to respond to
12 that. One part of the response was to provide you
13 with an index. Now, you have indicated that an
14 index, it may be vague to you with regard to 76,
15 77 and 78 and 79. And I told you clearly that I
16 would get you a more detailed description about
17 what they include.

18 MR. WYATT: The index you provided is
19 called -- it's not an index, by the way.

20 MR. SPRAGINS: Whatever.

21 MR. WYATT: It's called chapter list.

22 MR. SPRAGINS: Okay.

23 MR. WYATT: And it says series 70.

24 MR. SPRAGINS: Okay.

1 MR. WYATT: Okay. Series 70 is one very
2 small part of operation guides. Operation guides
3 are immense. The only question we're having for
4 this witness, which is a perfectly legitimate
5 question, is gosh, since we only got the series 70
6 topic list, wonder if the other tens of thousands
7 of series might have something to say about --

8 MR. SPRAGINS: And you've identified --

9 MR. WYATT: -- our problem.

10 MR. SPRAGINS: -- four and I have said I
11 will give you a more descript description about
12 what those four chapters include. Okay?

13 MR. WYATT: We can identify more. 79,
14 catastrophe operations.

15 MR. SPRAGINS: 76 through 79. All
16 right? I'll give you a more descriptive -- it
17 looks like you already got it, Derek.

18 A. I'll answer your question, though, if
19 you --

20 Q. Sure.

21 A. No, there is no coverage interpretation
22 information anywhere other than in the 70 series.

23 Q. Series 300, homeowners?

24 A. That's -- anything other than the 70

1 series does not have claim interpretation in it.
2 That might be an underwriting. I don't know what
3 it is. But it's not a claim interpretation.

4 Q. Underwriting's 200.

5 A. I don't know what 300 is. But I do know
6 for a fact that all coverage interpretation
7 information is contained in the 70 series.

8 Q. Claim procedures accounting, 700 series?

9 A. That's is exactly what it says. How do
10 you fill out the form and that. It does not say
11 this is covered and that's not covered.

12 Q. Accounting tracks the way the claims
13 come in, right? How they're coded?

14 A. It's kept track of, yes.

15 Q. So if we want to go hunting for water
16 damage, we need to know what those OGs say, don't
17 we?

18 MR. SPRAGINS: Object to the form of the
19 question.

20 A. The question I answered was the coverage
21 interpretation are all in the 70 series.

22 Q. I know. You mentioned claims surveys.
23 We talked about that. If we want to go hunting
24 water damage cases, claims, we've got to know

1 about the coding, we've got to put in some kind of
2 query, we've got to go looking. We've only got
3 about 44 states of claims we're going to be
4 looking at, right? So why would the 700 series
5 dealing with accounting's claims procedures not
6 tell us something about water damage if we were
7 trying to find out how the company handled them?

8 A. If you just want to know coding, it's
9 74-04. It's in the 70 series.

10 Q. 74-04?

11 A. Drafts and coding is the name of that
12 OG.

13 MR. WYATT: Do we have 74-04?

14 MS. McALISTER: Give me a minute.

15 74-04.

16 MR. SPRAGINS: Want to take a quick
17 break while you all look for that?

18 MR. WYATT: Sure, sure. Let's go off
19 the record.

20 THE VIDEOGRAPHER: The time is 4:43 and
21 we're going off the record.

22 (A break was taken from 4:43 to
23 4:45 P.M., and the deposition continued as
24 follows:)

1 THE VIDEOGRAPHER: The time is 4:45, and
2 we're back on the record. This concludes
3 videotape number 2 of the deposition of Stephan
4 Hinkle, October 31st, 2006, in Bloomington,
5 Illinois. The time is 4:45, and we're going off
6 the record.

7 (A break was taken from 4:45 to
8 4:58 P.M., and the deposition continued as
9 follows:)

10 THE VIDEOGRAPHER: This begins videotape
11 number 3 of the deposition of Stephan
12 Hinkley [sic] -- Hinkle, excuse me. And this is
13 October 31st, 2006 in Bloomington, Illinois. And
14 the time is 4:58 and we are back on the record.

15 BY MR. WYATT:

16 Q. Mr. Hinkle, you're looking at OG 74-04,
17 which has been Bates marked as 326 through 350 --

18 A. Okay.

19 Q. -- at the bottom.

20 A. Right.

21 Q. All right. Let's go straight to what
22 you would help us identify as the payments and
23 coding pertaining to water damage.

24 A. Well, the cause of loss code section I

1 -- no, VII-I. It just simply refers to the fact
2 that there are cause of loss codes. I thought it
3 had it in the operation guide itself, but then
4 they refer you to the fire claim code manual. So
5 the listing of codes is not in this operation
6 guide.

7 Q. So here we go again. In other words, we
8 don't have the fire code -- fire claim code
9 manual, do we?

10 A. I don't believe it's in the material.

11 MR. SPRAGINS: It wasn't produced.

12 MR. WYATT: So --

13 MR. SPRAGINS: Okay.

14 BY MR. WYATT:

15 Q. We don't know how to find the payment
16 code for water damage, do we?

17 A. You can do it by my testimony. It's 35
18 for windstorm to building, 36 to windstorm to
19 contents, 37 to water to building, and 38 to water
20 to contents.

21 Q. Does that cover water damage as depicted
22 in Dr. Pontius's case?

23 A. No. And the file reflects his payment
24 was coded a 35, which is windstorm.

1 Q. That doesn't cover the sailboats hitting
2 the house, though?

3 A. Well, there was no payment for that.
4 These are payment codes.

5 Q. So I thought you said closed without
6 payment creates a code.

7 A. If there's no payment on the file at
8 all, it's closed without payment.

9 Q. What's the code for that?

10 A. CWP.

11 Q. Okay. Well, but if any payment occurs
12 at all, then CWP doesn't go on there?

13 A. Right.

14 Q. So it works out kind of convenient that
15 we can't find the water damage claims, right?

16 MR. SPRAGINS: I'm going to object to
17 the form of the question and instruct you not to
18 answer that. It's argumentative.

19 THE WITNESS: Okay.

20 BY MR. WYATT:

21 Q. Do you have any idea, Mr. Hinkle, how
22 many hurricane -- how much dollar of hurricane
23 loss State Farm incurred between the years 1996
24 and 2005?

1 A. No.

2 Q. Would it be a fair statement to say that
3 it was in the hundreds of millions?

4 A. Yes. We have more than that from
5 Katrina --

6 Q. Alone?

7 A. -- in Mississippi alone.

8 Q. Uh-huh. And so we're talking about
9 hurricane losses that geographically cover vast
10 areas of the southeastern region of the United
11 States coastal areas, right?

12 A. No. We've had them in Hawaii and -- I
13 mean, they're all over the place. They go up into
14 Long Island and -- it's not limited to
15 southeastern United States.

16 Q. So it's even bigger than that, right?

17 A. Yes.

18 Q. Okay. So you're not suggesting here
19 today that it's never happened, that a hurricane
20 has caused boats to break loose and be driven into
21 dwellings; is that right?

22 A. I would not suggest that.

23 Q. Okay. And you're not suggesting that
24 State Farm never had a policy where that occasion

1 arose?

2 A. No, I'm sure -- I would assume it has
3 happened before, yes.

4 Q. In fact --

5 A. I'm not aware of it, though.

6 Q. I understand. Based on the numbers, the
7 gross numbers of what you're talking about, it
8 probably happened thousands of times, didn't it?

9 A. Well, I wouldn't go that far.

10 Q. You don't think that --

11 A. I don't know, I mean, is my answer. I
12 just assume it has happened.

13 Q. Uh-huh.

14 A. But I don't know how many times.

15 Q. Okay. But you are saying to us today
16 that State Farm just has no way at all of finding
17 out how those claims were handled?

18 A. Well, first of all, it is covered in the
19 flood policy. It almost is never a moot point
20 because you pay that damage, this damage is paid
21 under the flood policy. So what's the point in
22 even worrying about the wind policy in most cases.
23 You asked me about most cases.

24 Q. You would agree with me, wouldn't you,

1 Mr. Hinkle, that this policy, 7955 here marked as
2 Exhibit 13, is sold in situations where the
3 property's not located in any floodplain?

4 A. That's true in some cases, yes.

5 Q. It's true in the majority of cases,
6 isn't it?

7 A. I can't give you the exact numbers, but
8 it's probably the majority.

9 Q. I mean, you wouldn't suggest that the
10 firms -- the Federal Insurance Administration's
11 flood maps cover a greater area land-wise than the
12 number of policies that you've sold where there is
13 no floodplain?

14 A. I don't suggest that.

15 Q. So we both know, don't we, that this
16 policy outnumbers -- situations where this policy
17 and the flood policy are sold together vastly
18 outnumbers it? In other words, where this policy
19 is sold and there is no other policy?

20 A. That -- yes, that would be true. I
21 wouldn't say vastly, but it certainly does
22 outnumber it.

23 Q. Okay. Well, there's 47, 44 or '5
24 states, they don't all have coast lines and a lot

1 of them don't have any flood.

2 A. Well, the majority of the flood's from
3 rivers.

4 Q. Okay, fair enough. In those situations
5 where there's no flood policy, this policy has to
6 be adjusted on its own four corners, doesn't it?

7 A. It does irrespective of a flood policy.

8 Q. That's right. That's my point. In
9 other words, it really doesn't matter if there's a
10 flood policy on the same property as this 7955;
11 this policy has to be adjusted mutually exclusive
12 of that flood policy?

13 MR. SPRAGINS: Object to the form. Go
14 ahead and answer.

15 BY MR. WYATT:

16 Q. Isn't that correct?

17 A. The policy speaks for itself. It's a
18 contract. And it has to be --

19 Q. That's right. You don't interpret this
20 policy differently because there's a flood policy
21 on this same property, do you?

22 A. No.

23 Q. That wouldn't be proper, would it?

24 A. With one exception.

1 Q. What's the exception?

2 A. The sewer and drain endorsement.

3 Q. I'm sorry, sir?

4 A. The sewer and drain endorsement.

5 Q. The sewer and drain endorsement.

6 A. Makes reference to the flood policy.

7 That's it.

8 Q. Okay. And that's not our problem here?

9 A. That's not an issue.

10 Q. Okay. Excluding that one issue, it
11 wouldn't ever be proper to interpret this policy
12 differently simply because there's a flood policy
13 on the same property?

14 MR. SPRAGINS: Object to the form. Go
15 ahead and answer.

16 A. The policy stands on its own.

17 Q. So it wouldn't be?

18 MR. SPRAGINS: Same objection.

19 Q. Would you agree with me?

20 MR. SPRAGINS: Same objection.

21 A. Exactly. You adjust that policy based
22 on what that policy says, irrespective of whether
23 or not there's a flood policy.

24 Q. Okay, fine. Now, you told me a minute

1 ago that you didn't need to find out the
2 statistical data about water damage claims because
3 it's paid under the flood policy. But of
4 course --

5 A. Well, wait a minute, Counselor, you
6 asked me if it was an issue. I said it's normally
7 not an issue because. That's --

8 Q. Right. But Mr. Hinkle, this policy is
9 sold tens of thousands, hundreds of thousands of
10 times where there's no flood policy anywhere in
11 sight, right?

12 MR. SPRAGINS: Object to the form. Go
13 ahead and answer.

14 A. It is. And in those scenarios, we would
15 hope not to find a flood. It wouldn't be an
16 issue.

17 Q. Okay. Well, anyway. Mr. Hinkle, my
18 question to you is that whether there's a flood
19 policy or not, your representation to us today is
20 simply that State Farm has no way, period, of
21 accessing any statistical information that would
22 show how it handled water damage claims?

23 MR. SPRAGINS: Object to the form.
24 That's not what he said.

1 A. We have a peril called water damage. We
2 have statistics on it. But what maybe I'm not
3 stating clearly is that there is water damage in
4 other perils. For example, wind peril. You asked
5 me earlier if a portion of the roof was damaged by
6 a tree and water gets in the house, is that
7 covered. Yes, that's covered. And it's water
8 damaged, but it's covered under the windstorm
9 peril, so it's statistically coded to windstorm.

10 Q. But we've already been through the
11 policy, and you couldn't find that phrase water
12 damage anywhere in there for me earlier.

13 A. We're talking about codes.

14 MR. SPRAGINS: Objection.

15 BY MR. WYATT:

16 Q. Yeah. So when you come to codes, in
17 other words, you start using those words water
18 damage and not as terms of art. You just start
19 using it generically, that's what you're saying;
20 is that correct --

21 MR. SPRAGINS: Object to the form.

22 Q. -- when it comes to coding?

23 A. You've got to understand, I mean, this
24 is a business that's been around for a long time.

1 And the coding system was put in before all the
2 physical damage and it doesn't necessarily line up
3 that well. But --

4 Q. All right. Page 340, we would have to
5 have the fire claim code manual to find the cause
6 of loss code, right?

7 A. Other than my testimony that I just gave
8 you.

9 Q. Yeah. But to see it in writing, we've
10 got to have that, don't we?

11 A. Yes.

12 Q. Okay. You can have that back.

13 How about the legal opinions that you
14 mentioned, did you check to see if there are any
15 of those on the water damage provision?

16 MR. SPRAGINS: We said that was in the
17 area of confidentiality. We'll be glad to get
18 those to you, if any, once we reach an agreement
19 on that.

20 MR. WYATT: I'm asking if he checked on
21 them. I'm not asking him what the content of it
22 is.

23 MR. SPRAGINS: Okay.

24 A. Okay, make sure I understand your

1 question.

2 Q. Sure.

3 A. Did I consult with counsel to see if
4 there's a legal opinion on this type of loss?

5 Q. That's one of the things you mentioned
6 in your list --

7 MR. SPRAGINS: Okay.

8 Q. -- along with reading the policy, find
9 the OGs, find claims surveys, and legal. So --

10 A. In preparation for -- are you asking me
11 in general or in preparation for the deposition?

12 Q. Either one.

13 A. I'm confused.

14 Q. Either one, Mr. Hinkle.

15 A. I discussed this with counsel in
16 preparation for the deposition.

17 Q. Did you check to see if there were any
18 legal opinions, written opinions on the exclusion,
19 on the provision?

20 A. I didn't personally check, no.

21 Q. Did anyone tell you whether there were
22 or not?

23 A. I was told that there were no opinions
24 on it in Mississippi.

1 Q. What about elsewhere?

2 A. I didn't check elsewhere.

3 Q. You just checked for Mississippi?

4 A. Yes. I didn't check. I had -- well, I
5 don't know whether I'm supposed to be talking
6 about what I talked to counsel about.

7 Q. Has -- to your knowledge, has
8 Dr. Pontius's claim been reevaluated since the
9 date that Judge Senter declared the
10 anti-concurrent causation provision to be invalid
11 and unenforceable?

12 MR. SPRAGINS: Object to the form of the
13 question. You can answer, if you know. And I
14 don't know if that's outside the designation. But
15 you can answer, as you personally know.

16 MR. WYATT: He's not here personally,
17 Counsel.

18 MR. SPRAGINS: Well, then it's outside
19 the designation and he can't answer. I'm trying
20 to be helpful. If he personally knows.

21 A. Well, if I'm not mistaken, the decision
22 on the claim was made after the decision. So
23 there would be no reason to evaluate it.

24 Q. Well, I'm not asking you when it was

1 made. I'm asking you whether it has been
2 reevaluated or reopened.

3 A. The claim was reopened for subsequent
4 damage. There was a supplemental payment on the
5 claim. It had nothing to do with Judge Senter's
6 decision.

7 Q. So the answer would be no?

8 MR. SPRAGINS: With those stipulations,
9 if you personally know. Okay?

10 A. The answer to the question is that Judge
11 Senter's decision has had no -- no effect on this
12 claim that I'm aware of.

13 Q. All right. Mr. Hinkley [sic], has the
14 claim been reopened or reevaluated since the time
15 that Judge Senter declared the anti-concurrent
16 cause provision to be unenforceable and invalid?

17 MR. SPRAGINS: Let me interpose --

18 MR. WYATT: It's a -- excuse me, but --

19 MR. SPRAGINS: Okay.

20 MR. WYATT: -- if I may, it's a yes or
21 no question.

22 MR. SPRAGINS: Hang on.

23 MR. WYATT: And then you can explain.

24 MR. SPRAGINS: No. I'm going to first

1 object to the form of the question, and this is
2 outside the scope of the designation. And if you
3 personally know, you are certainly -- I'm not
4 certainly instructing you not to answer. But on
5 behalf of State Farm, I don't -- he's not handling
6 the claim, so how could he know if it's been
7 reevaluated?

8 A. I don't have any direct knowledge on
9 that.

10 Q. Your answer was?

11 A. I don't know.

12 Q. Are you aware of any documents that
13 State Farm furnished to the Mississippi Insurance
14 Department relating or pertaining to the water
15 damage provision in the FP-7955 policy?

16 MR. SPRAGINS: Him personally? I told
17 you, I had another designee on that issue. But if
18 you personally know, Mr. Hinkle.

19 A. There was a letter from the commissioner
20 to the claim manager asking us to outline our
21 position on the water -- wind versus water, and we
22 responded.

23 Q. You're referring to the wind/water
24 protocol?

1 A. No, I'm not. It's a letter from
2 Commissioner Dale to -- it was addressed to Alan
3 McGwin, who's counsel, requesting that we outline
4 our position. And we responded.

5 Q. On?

6 A. I don't know the dates.

7 Q. Mr. Hinkley [sic] --

8 MR. SPRAGINS: Hinkle.

9 MR. WYATT: I'm sorry. I apologize.

10 MR. SPRAGINS: Hinkley is the one that
11 shot Reagan.

12 MR. WYATT: I'm sorry. I may have said
13 that several times. And I assure you that was --
14 it's been a long day. I apologize for that.
15 Hinkle. Excuse me.

16 BY MR. WYATT:

17 Q. How do you characterize a boat dock
18 under the coverages under homeowner's policy?

19 A. It would be an appurtenant structure, I
20 believe.

21 Q. Appurtenant structure?

22 A. Yeah. Where's my policy?

23 Q. Is that the same as a dwelling
24 extension?

1 A. I think so. Let me look here.

2 Q. This is Section 1 coverage, right?

3 A. Yes. It's a dwelling extension.

4 Q. What page are you referring to?

5 A. It's page 3.

6 Q. And you're looking at what exhibit?

7 A. Exhibit 13.

8 Q. And where specifically on page 3?

9 A. Item 2, dwelling extension. It's in
10 other structural.

11 Q. So a boat dock is just treated as a
12 dwelling extension?

13 A. Yes.

14 Q. And dwelling extensions are under the
15 all-risk portion of the policy, just like the
16 dwelling itself?

17 A. They're part of coverage A, yes.

18 Q. So there's no distinction really in
19 terms of coverage, right?

20 A. Exactly. Except there are certain
21 limitations for boat docks that are listed.

22 Q. And where would those be?

23 A. Exclusion -- I'm sorry, losses not
24 insured, 1(c).

1 Q. That page is?

2 A. Page 9.

3 Q. If a boat dock is damaged as a result of
4 wind under the policy form that we're looking at
5 today, 7955, coverage or no coverage?

6 MR. SPRAGINS: Object to the form. Go
7 ahead and answer.

8 A. Direct wind damage is covered, yes.

9 Q. What would be the only time that the
10 boat dock would not be covered?

11 MR. SPRAGINS: Same objection. I'm
12 going to object again. Sorry.

13 A. Say that again.

14 Q. What would be the only circumstance
15 where the boat dock would not be covered?

16 MR. SPRAGINS: Let me object to the
17 form.

18 A. Well, there could be more than one
19 circumstance.

20 Q. Well, but I thought you've already told
21 me that it's all -- all-risk, anything, unless
22 it's excluded.

23 A. I didn't say that. I said accidental
24 direct physical loss. So if it's not accidental

1 direct physical loss, you don't have any coverage.
2 So if a person goes out and lights a fire on his
3 deck, that's not covered.

4 Q. That's intentional, though.

5 A. You said all cases.

6 Q. All right. Let me rephrase my question.
7 I thought you understood that we'd clarified
8 earlier that a boat dock is coverage A, right? I
9 mean, it's Section 1 coverage --

10 A. Right.

11 Q. -- just like a dwelling?

12 A. So it has to be a result of an
13 accidental direct physical loss.

14 Q. I'll repeat that every time if you want
15 me to. I thought you already knew that.
16 Accidental direct physical loss. We're never
17 going out -- Mr. Hinkle, I'm never going to take
18 you outside accidental direct physical loss,
19 today, okay? We're going to work in that world
20 the whole time. So that's our universe.

21 My question to you is very simply tell
22 me any other circumstance when the damage to the
23 boat dock would be excluded.

24 MR. SPRAGINS: Object to the form. Go

1 ahead and answer.

2 BY MR. WYATT:

3 Q. Please, sir.

4 A. Well, there's several.

5 Q. All right.

6 A. Do you want me to read the policy?

7 Q. Well --

8 A. Earthquake, landslide. I mean, do you
9 want me to go through all the losses not insured?

10 Q. Okay. Anything under Section 1, losses
11 not insured?

12 A. Yes.

13 Q. Okay. And you've shown me where boat
14 dock is mentioned in C. Do you find it anywhere
15 else?

16 A. All the other ones apply to boat dock,
17 and then C adds even more to the dock.

18 Q. Okay. Okay. If the boat breaks loose
19 in a windstorm and damages the dock, coverage or
20 no coverage?

21 MR. SPRAGINS: Object to the form. Go
22 ahead and answer.

23 A. If a boat collides with a boat dock,
24 there would be coverage.

1 Q. That's what I thought. Thank you, sir.
2 Just a couple more questions and we'll wrap it up
3 for today.

4 Did you use State Farm's intranet to see
5 if you found any -- to do a search and see if you
6 found any material concerning waterborne objects,
7 waterborne debris, waterborne materials?

8 A. No.

9 Q. No one asked you to do that?

10 A. No.

11 Q. Would that yield something if we did
12 that?

13 A. Most likely not.

14 Q. And the reason for that would be what?

15 A. It would search the operation guides and
16 we didn't find it in the operation guides.

17 Q. So you conclude from that it wouldn't be
18 anything in the intranet either?

19 A. There would be -- exactly, there would
20 be no other documents in the intranet responsive
21 to the coverage issues.

22 Q. General claims, what's that mean to you,
23 general claims?

24 A. The department I work for historically

1 was called general claims. The name was changed
2 to property and casualty claims in this
3 reorganization that I mentioned earlier.

4 Q. When was that? 2005?

5 A. Yeah. January 1st, 2005.

6 Q. Changed to property and casualty claims?

7 A. Yes.

8 Q. You just did away with the time-honored
9 name general claims for what reason?

10 MR. SPRAGINS: Object to the form of the
11 question. And don't answer.

12 BY MR. WYATT:

13 Q. What was the reason, Mr. Hinkle, that
14 they decided suddenly to change the name?

15 MR. SPRAGINS: Not suddenly. And
16 object. If you'll quit commentating and just
17 asked a question, Derek --

18 MR. WYATT: I'm asking the question,
19 Mr. --

20 MR. SPRAGINS: I'm going to instruct him
21 not to answer with the commentary right there. If
22 you want to answer, if you know why they changed
23 the name --

24 BY MR. WYATT:

1 Q. Skip my commentary, Mr. Hinkle. Why did
2 they change the name?

3 A. They did it on all of them. They did it
4 in underwriting. They did it in claims. They
5 wanted -- apparently the reason was to expand the
6 role of -- make it more user-friendly, more
7 customer-friendly.

8 Q. Thank you, sir. I needed that bit of
9 levity for the afternoon.

10 A. Well, actually, there's some merit in
11 that. I mean --

12 Q. No, I appreciate your answer.

13 MR. SPRAGINS: No, they don't want to
14 hear the good part, you know.

15 THE WITNESS: Yeah.

16 MR. SPRAGINS: So let's, you know --

17 BY MR. WYATT:

18 Q. You're still a general claims
19 consultant, though?

20 A. I'm a property and casualty claims
21 consultant, Fire.

22 Q. Okay.

23 A. And the answer is, I do -- there are
24 things done in the department that are applicable

1 to both Fire and Auto, where when we were general
2 claims, Fire was Fire and Auto was Auto. That's
3 the reason for the change. But we still have Fire
4 consultants and Auto consultants.

5 Q. You're a Fire consultant?

6 A. I'm a Fire consultant, yes.

7 Q. Do you know of anything, Mr. Hinkle,
8 that is utilized in interpreting this insurance
9 policy other than the things you've told me about
10 today?

11 A. Sometimes we'll use the PLRB, Property
12 Loss Research Bureau, which is an industry-wide
13 body of information on coverage issues in general.
14 But we specifically instruct our people to be
15 mindful of the fact that our forms are -- our
16 policy forms differ from the Bureau forms in a lot
17 of cases. So we just use those as an assist, but
18 not -- we don't rely on them definitive.

19 Q. Uh-huh. That's a consortium of
20 insurance companies --

21 A. Yes.

22 Q. -- that contribute to that?

23 A. Yes. And it's an Internet site and you
24 can do searches on coverage issues.

1 Q. But I can't do it, can I?

2 A. Not unless you're a member.

3 Q. I can't get in. I'm -- I've got to have
4 a secret code, don't I, to get in?

5 A. You've got to send them some money.

6 Q. Is that it?

7 MS. McALISTER: Is that all?

8 Q. Would you expect if we could access the
9 PLRB and we put in the word waterborne, we might
10 get some hits?

11 MR. SPRAGINS: Object to the form. Go
12 ahead and answer.

13 A. I don't know. I mean, I really don't
14 know.

15 Q. You just don't -- do you use it very
16 often?

17 A. Actually, maybe two or three times a
18 month.

19 Q. Uh-huh. And is there anything else
20 besides that? ISO, do you -- is there some way
21 that you can access ISO that other people can't?

22 A. I don't know exactly what the
23 relationship, but there is a relationship between
24 ISO and PLRB. PLRB only operates on the ISO

1 stuff, so I don't know exactly how that works.

2 But I think they're like one and the same

3 actually.

4 Q. Do you ever go to that site separately
5 and do something?

6 A. No, I just -- but when -- when you ask
7 for homeowner policy on PLRB, it gives you the ISO
8 policy.

9 Q. State Farm's policy's not an ISO policy?

10 A. It is not.

11 Q. It's an in-house?

12 A. It is.

13 Q. Do you know anything about Computer
14 Services [sic] Corporation?

15 A. No.

16 Q. Never heard of that?

17 A. No.

18 MR. WYATT: Okay. I'm going to adjourn
19 for today and we will -- tomorrow, the court
20 reporters have asked us to state on the record
21 what time we'll be here. I'm wanting to be here
22 between 8:30 and 9.

23 MR. SPRAGINS: I've got a lady coming at
24 8.

1 MR. WYATT: I'm sorry?

2 MR. SPRAGINS: We've got the lady coming
3 at 8.

4 MR. WYATT: The lady?

5 MR. SPRAGINS: Uh-huh.

6 MR. WYATT: Who is the lady?

7 MR. SPRAGINS: Karen Terry.

8 MR. WYATT: Okay. Well, I don't expect
9 that she's going to take very long, especially
10 since she's bringing one letter with her. But --

11 MR. SPRAGINS: She's got the submissions
12 that -- well, she will have available the
13 submissions, it would be the areas that she -- her
14 submissions on the rating information.

15 MR. WYATT: We didn't request rating
16 information, but --

17 MR. SPRAGINS: Okay. Excuse me.

18 MS. McALISTER: We're not through.

19 MR. WYATT: We need to make it clear on
20 the record, we're not releasing Mr. Hinkle at all.

21 MR. SPRAGINS: Well, I'm first going to
22 ask you how much longer we're going to be, because
23 we're both already above the time.

24 MR. WYATT: Okay. Well, one thing

1 that's holding me up a whole lot on that is you're
2 not giving us the documents.

3 MR. SPRAGINS: As soon as you submit --

4 MR. WYATT: And so, without that, you
5 know, we --

6 MR. SPRAGINS: As soon as you submit to
7 a reasonable -- if you don't like ours, I suggest
8 you submit one.

9 MR. WYATT: Yeah.

10 MR. SPRAGINS: And I'm going to say this
11 for the record. We're not going to submit just on
12 your good word. And that's because you've been
13 using a document that was obviously not generated,
14 you know -- that was probably generated -- I
15 suspect generated under a confidentiality
16 agreement in another case when you were examining
17 Mr. Hinkle. And I just choose not to --

18 MR. WYATT: Counsel, let me tell you
19 something. You don't have the right to threaten
20 anybody about what document --

21 MR. SPRAGINS: I didn't threaten.

22 MR. WYATT: You don't know what
23 documents I've got and don't have.

24 MR. SPRAGINS: Exactly. All I can tell

1 you is this. All I can tell you is this: That
2 you were sitting here holding a document and
3 Mr. Hinkle went to look at it and co-Counsel even
4 pulled you back up off the thing.

5 Now, if you want to -- if I was mistaken
6 about that impression, if you want to produce the
7 document --

8 MR. WYATT: Let me ask you this. Let me
9 ask you this: Are you accusing -- are you
10 accusing me on the record right here in this
11 deposition today of violating a confidentiality
12 agreement?

13 MR. SPRAGINS: No. I tell you what I
14 just did. I just described --

15 MR. WYATT: You shouldn't do that.
16 Counsel, let me tell you something, you shouldn't
17 do that unless you've got grounds, because if you
18 don't have grounds, I'm coming after you.

19 MR. SPRAGINS: You just do that.

20 MR. WYATT: I'm coming after you with
21 the Bar. You understand that?

22 MR. SPRAGINS: I've just described
23 accurately --

24 MR. WYATT: I will, I will. You need to

1 know that.

2 MR. SPRAGINS: And you need to know if
3 you're sitting around holding documents and then
4 questioning him and then when he goes to ask and
5 you back up like this, you're going to leave
6 others with the reasonable perception --

7 MR. WYATT: I don't care what your
8 perceptions are. I don't have to disclose
9 anything to you other than what you ask for in
10 discovery.

11 MR. SPRAGINS: So how much longer you
12 got? Because you're over your time now.

13 MS. McALISTER: No, we're not.

14 MR. WYATT: I don't have to tell you how
15 much longer we've got. We've got seven hours.

16 MR. SPRAGINS: Seven hours.

17 MR. WYATT: And that's what we're going
18 to take.

19 THE VIDEOGRAPHER: Is this deposition
20 going to continue?

21 MR. WYATT: This deposition is going to
22 continue.

23 THE VIDEOGRAPHER: This concludes
24 videotape number 3 of the deposition and the

1 testimony for October 31st, 2006 of Stephan Hinkle
2 in Bloomington, Illinois. This deposition will be
3 continued. The time is 5:38, and we're going off
4 the record.

5 (Off camera.)

6 MR. SPRAGINS: All right.

7 MR. WYATT: All right, we'll put this on
8 the record tomorrow.

9 MS. McALISTER: I want to tell Scot
10 right now, Scot, tomorrow please produce all
11 requested documents not listed on your privilege
12 log.

13 MR. SPRAGINS: I will give you a
14 privilege log.

15 MS. McALISTER: You gave me a privilege
16 log already.

17 MR. SPRAGINS: I gave you --

18 THE VIDEOGRAPHER: You're off the
19 record.

20 MS. McALISTER: If you can get it on the
21 record, that's fine.

22 MR. SPRAGINS: No, that's all right. I
23 hear what you're saying.

24 MS. McALISTER: Are you going to

1 tomorrow morning to produce all requested
2 documents not listed --

3 MR. SPRAGINS: Meg, let me just talk
4 again slow, all right? Very slow.

5 MS. McALISTER: Don't do it for my
6 benefit, Scot.

7 MR. SPRAGINS: Okay. I am not going to
8 produce any documents that are considered to be
9 confidential or a trade secret of State Farm
10 unless and until we enter into some stipulated,
11 agreed protective order.

12 MS. McALISTER: And those documents
13 appear on the privilege log that you have
14 submitted to Plaintiffs.

15 MR. SPRAGINS: I will -- I will -- I
16 will make sure hopefully within -- by tomorrow
17 morning, I will either dictate in the record or I
18 will have a printed document about what those
19 documents are. Okay?

20 MR. WYATT: Counsel, you don't continue
21 -- you continue not to produce these documents and
22 I'll tell what you we're going to do. We're going
23 to file a motion to default you. It's that
24 simple. Okay? You think you can blackmail people

1 by all this crap, you're not going to get away
2 with it.

3 MR. SPRAGINS: I don't blackmail.

4 MR. WYATT: It's that simple.

5 MR. SPRAGINS: Come on, Mr. Hinkle.
6 That's enough.

7 MR. WYATT: We'll just default you. So
8 far you've managed to do some pretty awful stuff
9 and get away with it.

10 MR. SPRAGINS: Awful stuff?

11 MR. WYATT: Just keep at it.

12 MR. SPRAGINS: What's awful?

13 MR. WYATT: Keep at it.

14 MR. SPRAGINS: I will.

15 MR. WYATT: Work yourself into a default
16 situation. Fine with me.

17 (Whereupon the deposition adjourned at
18 5:38 P.M.)

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1 STATE OF ILLINOIS)
) SS
2 COUNTY OF McLEAN)

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4 I, SHELLEY MARVIN, CRR, RPR, and CSR in and
5 for the State of Illinois, do hereby certify that
6 STEPHAN HINKLE, the deponent herein, was by me
7 first duly sworn to tell the truth, the whole
8 truth and nothing but the truth, in the
9 aforementioned cause of action.

10 That the foregoing deposition was taken on
11 behalf of the Plaintiffs, on the 31st day of
12 October, 2006.

13 That said deposition was taken down in
14 stenograph notes, afterwards reduced to
15 typewriting by me, and is a true and accurate
16 transcription of the testimony; and that it was
17 agreed by and between the witness and attorneys
18 that said signature on said deposition would not
19 be waived.

20 I do hereby certify that I am a disinterested
21 person in this cause of action; that I am not a
22 relative of any party or any attorney of record in
23 this cause, or an attorney for any party herein,
24 or otherwise interested in the event of this
25 action, and am not in the employ of the attorneys
26 for either party.

27 IN WITNESS WHEREOF, I have hereunto set my
28 hand this 3rd day of October, 2006.

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SHELLEY MARVIN, RPR, CRR, CSR