

*****IN THE UNITED STATES DISTRICT COURT *
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

THOMAS C. AND PAMELA McINTOSH PLAINTIFFS

VERSUS NO. 1:06-cv-1080-LTS-RHW

STATE FARM FIRE & CASUALTY COMPANY,
FORENSIC ANALYSIS & ENGINEERING
CORPORATION DEFENDANTS

VIDEOTAPED DEPOSITION OF
DAVID LEE HARRELL,
DEPUTY COMMISSIONER OF INSURANCE

Deposition Taken at the Instance of
THE PLAINTIFFS

In the Offices of
Scott, Sullivan, Streetman & Fox, P.C., PC
Ridgeland, Mississippi

On Thursday, June 7, 2007
Commencing at 9:22 a.m.

REPORTED BY: LORI P. GALLASPY
Registered Professional Reporter
MS CSR #1630

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

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Also present:

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

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

8 A Yes, sir.

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

10 A Yes, sir.

11 Q Okay. How many times?

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

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

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

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

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

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

3 A Confer with my counsel.

4 Q And who is that?

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

6 Q And who is Ms. Kelsey with?

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

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

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

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

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

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

5 A They recommended Mr. Streetman.

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

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

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

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

24 Q How long did you meet with --

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

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

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

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

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

9 A Don't know.

10 Q Hour?

11 A No, it's multiple hours.

12 Q Sir?

13 A Several hours.

14 Q Okay. What about yesterday?

15 A Several hours.

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

18 A No, sir.

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

22 A Other than the fact that it was occurring.

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

25 A Mr. Simkins.

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

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

4 Q And tell me about those conversations.

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

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

17 MR. SCRUGGS: Okay.

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

20 MR. SCRUGGS: Sure --

21 MR. STREETMAN: -- entered the room?

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

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

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

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

6 A Yes, sir.

7 Q Was that the extent of the conversation?

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

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

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

13 Q Is today June 7th?

14 MR. STREETMAN: Yeah.

15 BY MR. SCRUGGS:

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

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

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

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

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

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

7 A No, sir.

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

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

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

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

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

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

7 BY MR. SCRUGGS:

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

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

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

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

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

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

2 MR. STREETMAN: Okay.

3 MR. SCRUGGS: So --

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

5 MR. SCRUGGS: We probably --

6 MR. STREETMAN: -- less crowded --

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

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

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

18 (Short pause.)

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

20 MR. SCRUGGS: Julie?

21 JUDGE'S ASSISTANT: Hello?

22 MR. SCRUGGS: Yes, Julie?

23 JUDGE'S ASSISTANT: Yes.

24 MR. SCRUGGS: Hi, this is --

25 JUDGE'S ASSISTANT: Zach.

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

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

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

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

12 MR. SCRUGGS: This is the McIntosh case.

13 JUDGE'S ASSISTANT: McIntosh?

14 MR. SCRUGGS: Right.

15 JUDGE'S ASSISTANT: Okay.

16 MR. SCRUGGS: Civil Action No. 1080.

17 JUDGE'S ASSISTANT: Yeah.

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

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

21 MR. SCRUGGS: I thought you might.

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

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

2 JUDGE'S ASSISTANT: Just a second.

3 (OFF THE RECORD.)

4

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

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

9 LAW CLERK: Doing well.

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

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

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

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

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

3 MR. STREETMAN: This is Jim --

4 LAW CLERK: All right.

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

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

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

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

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

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

10 MR. SCRUGGS: Your Honor --

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

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

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

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

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

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

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

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

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

18 MR. STREETMAN: Can I --

19 LAW CLERK: Sure.

20 MR. STREETMAN: Can I briefly respond?

21 LAW CLERK: Yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 MR. STREETMAN: Sure.

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

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

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

16 (OFF THE RECORD.)

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

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

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

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

18 THE COURT: It probably will.

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

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

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

2 MR. SCRUGGS: Okay.

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

5 MR. SCRUGGS: Thank you, Your Honor.

6 THE COURT: Thank you.

7 MR. SCRUGGS: Give me one second.

8 (OFF THE RECORD.)

9 BY MR. SCRUGGS:

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

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

15 MR. SCRUGGS: Okay.

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

24 BY MR. SCRUGGS:

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

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

3 MR. STREETMAN: Same objection.

4 BY MR. SCRUGGS:

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

6 A Yes, sir.

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

11 A Yes, sir.

12 Q Okay.

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

16 MR. SCRUGGS: Sure.

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

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

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

25 BY MR. SCRUGGS:

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

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

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

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

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

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

2 Q And --

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

9 BY MR. SCRUGGS:

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

15 MR. WEBB: Same --

16 A In my --

17 MR. WEBB: -- objection.

18 A In my opinion, yes.

19 BY MR. SCRUGGS:

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

21 MR. WEBB: Same objection.

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

1 instruct the witness not to answer that question.

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

4 BY MR. SCRUGGS:

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

8 MR. WEBB: Same objections.

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

12 BY MR. SCRUGGS:

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

17 MR. WEBB: Same objection.

18 MR. STREETMAN: Same objection.

19 MR. SCRUGGS: Instruct him not to answer?

20 MR. STREETMAN: Yes.

21 BY MR. SCRUGGS:

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

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

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

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

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

10 MR. WEBB: Same objection.

11 A Don't know.

12 BY MR. SCRUGGS:

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

16 A Don't know.

17 Q More than one?

18 A Yes, sir.

19 Q More than ten?

20 A Yes, sir.

21 Q More than twenty?

22 A Don't know.

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

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

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

3 Q Anything else?

4 A Not to my knowledge.

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

8 A That's correct.

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

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

14 - - -

15 (Exhibit 1 marked)

16 MR. WEBB: Did you say Exhibit 2?

17 MR. SCRUGGS: Exhibit 1.

18 MR. WEBB: Oh, okay.

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

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

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

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

3 BY MR. SCRUGGS:

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

6 A It appears to be.

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

8 - - -

9 (Exhibit 2 marked)

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

13 - - -

14 (Exhibit 3 marked)

15 BY MR. SCRUGGS:

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

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

20 BY MR. SCRUGGS:

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

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

2 A It appears to be, yes, sir.

3 Q Okay. And who signed that response?

4 A Mark Haire.

5 Q And who is Mark Haire?

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

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

10 A No, sir.

11 Q Mr. Haire did. Is that right?

12 A Yes, sir.

13 Q You can put that away or --

14 MR. STREETMAN: Did you mark this?

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

17 - - -

18 (Exhibit 3 marked)

19 BY MR. SCRUGGS:

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

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

25 Q What is your educational background, college,

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

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

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

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

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

20 Q Well, tell me the difference.

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

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

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

7 A Yes, sir.

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

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

14 Q Okay. So the answer is yes?

15 A Yes, sir.

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

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

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

24 A In some capacity, yes, sir.

25 Q Okay. In 2001 you became deputy commissioner

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

2 A Yes, sir.

3 Q Okay.

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

6 - - -

7 (Exhibit 4 marked)

8 BY MR. SCRUGGS:

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

12 A Yes, sir.

13 Q Are you familiar with this document?

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

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

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

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

8 Q Okay.

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

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

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

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

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

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

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

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

15 A Yes, sir.

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

18 A Yes, sir.

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

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

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

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

8 A Okay.

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

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

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

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

25 Q Other policyholders, other third parties, the

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

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

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

10 A Yes, sir.

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

15 A Yes, sir.

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

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

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

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

2 BY MR. SCRUGGS:

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

5 A Yeah --

6 MR. WEBB: Same objection.

7 A Yes, sir.

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

9 THE COURT REPORTER: Yes.

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

14 - - -

15 (Exhibit 5 marked)

16 (OFF THE RECORD.)

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

18 BY MR. SCRUGGS:

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

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

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

1 requirements and duties of the commissioner of insurance?

2 A Yes, sir.

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

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

12 Q Do you agree with that?

13 A I agree that's what it says.

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

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

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

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

21 BY MR. SCRUGGS:

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

25 A I --

1 *****MR. WEBB: Same objection.EAD*****

2 A I believe that's what the law says.

3 BY MR. SCRUGGS:

4 Q Okay.

5 MR. STREETMAN: All right. Whose is whose?
6 Are you -- are you moving on to something else? I wanted
7 to --

8 MR. SCRUGGS: Yeah, I am.

9 MR. STREETMAN: -- make sure we get the marked
10 exhibit.

11 MR. WEBB: And there's the marked exhibit right
12 there.

13 THE COURT REPORTER: Thank you.

14 MR. STREETMAN: While you're doing that, is
15 anybody cold?

16 MR. SCRUGGS: I'm a little cold.

17 MR. STREETMAN: Can we go off the record just
18 one second?

19 MR. SCRUGGS: Sure.

20 (OFF THE RECORD.)

21 MR. SCRUGGS: Exhibit 6 to your deposition is a
22 newspaper article from Friday, January 19, 2007, titled
23 The Copeland Question.

24 - - -

25 (Exhibit 6 marked)

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

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

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

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

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

14 Q Please, sir.

15 A Okay. I'm sorry.

16 Q Please, sir. I'm sorry.

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

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

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

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

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

8 Q Okay. Thank you.

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

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

12 MR. STREETMAN: -- the article?

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

16 MR. STREETMAN: Sure.

17 MR. SCRUGGS: Exhibit 7.

18 - - -

19 (Exhibit 7 marked)

20 BY MR. SCRUGGS:

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

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

2 A Yes, sir.

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

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

10 Q Please, sir.

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

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

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

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

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

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

4 BY MR. SCRUGGS:

5 Q With the provisions of this statute.

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

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

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

17 MR. STREETMAN: I am.

18 BY MR. SCRUGGS:

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

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

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

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

3 Q Okay.

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

8 BY MR. SCRUGGS:

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

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

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

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

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

25 A It's my understanding he does.

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

3 A I don't know that.

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

6 A I don't know.

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

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

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

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

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

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

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

12 (Question read)

13 BY MR. SCRUGGS:

14 Q The answer, sir?

15 MR. WEBB: Same objection.

16 A I don't see any conflicts there.

17 BY MR. SCRUGGS:

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

23 MR. WEBB: Same objections.

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

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

3 Q Okay.

4 A Don't see a conflict.

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

7 BY MR. SCRUGGS:

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

13 MR. WEBB: Same --

14 Q And --

15 MR. WEBB: -- objection.

16 BY MR. SCRUGGS:

17 Q -- excuse me --

18 MR. WEBB: I'm sorry.

19 BY MR. SCRUGGS:

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

22 MR. WEBB: Same objection.

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

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

2 Q The answer?

3 A I stand by my previous answer.

4 Q Which was what?

5 A The one I just stated.

6 Q What did you just state?

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

10 Q Okay.

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

19 MR. WEBB: And I --

20 MR. STREETMAN: -- in any way.

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

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

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

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

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

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

15 THE COURT REPORTER: Yes.

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

18 - - -

19 (Exhibit 8 marked)

20 BY MR. SCRUGGS:

21 Q Do you recognize this document?

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

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

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

3 A Yes, sir.

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

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

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

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

22 A Yes.

23 Q -- is that correct?

24 A Yes, sir.

25 Q Okay. Does the commissioner of insurance

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

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

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

5 A No, sir.

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

9 A Yes, sir.

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

16 A No, sir.

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

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

21 Q Okay. Thank you.

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

23 MR. SCRUGGS: Yeah --

24 MR. STREETMAN: I just want to --

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

1 *****MR. STREETMAN: -- pass it along.*****

2 MR. SCRUGGS: Okay. Exhibit 9.

3 - - -

4 (Exhibit 9 marked)

5 BY MR. SCRUGGS:

6 Q Mr. Harrell, I've handed you Exhibit 9, which
7 is a Mississippi Code provision 83-1-7 deputy
8 commissioner that purports to set out the requirements
9 and qualifications of the deputy commissioner of
10 insurance. Is that accurate?

11 A Yes, sir.

12 Q Okay. And you indeed are the deputy
13 commissioner of insurance pursuant to this statute
14 provision. Is that correct?

15 A Yes, sir.

16 Q Okay. The first sentence of this statutory
17 provision says, "The commissioner shall have authority to
18 appoint, with the consent of the Governor, a deputy
19 commissioner..." When were you appointed deputy
20 commissioner, Mr. Harrell?

21 A To the best of my knowledge, I think it was
22 probably January of 2001.

23 Q Did the governor of Mississippi at the time
24 consent to your appointment?

25 A I would assume so. I'd have to check.

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

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

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

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

10 Q Okay. Thank you. Put that aside.

11 MR. SCRUGGS: Exhibit 10.

12 - - -

13 (Exhibit 10 marked)

14 BY MR. SCRUGGS:

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

20 A Yes, sir.

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

24 A The first paragraph or first sentence?

25 Q First paragraph, sir.

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

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

14 A Yes, sir.

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

17 A That division reports to me.

18 Q It reports to you.

19 A Yes, sir.

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

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

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

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

3 A Yes, sir.

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

6 A Yes, sir.

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

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

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

22 A Does not prohibit it, no, sir.

23 Q That was --

24 MR. SCRUGGS: Move to strike.

25 BY MR. SCRUGGS:

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

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

10 ***CHECK OBJECTION WITH HEATHER***

11 BY MR. SCRUGGS:

12 Q Sir?

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

16 Q So the answer is no.

17 A Not under this particular requirement.

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

21 A That along --

22 MR. WEBB: Same objection.

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

25 BY MR. SCRUGGS:

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

2 A -- would be the answer.

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

6 MR. WEBB: Same objection.

7 A That particular one does not.

8 BY MR. SCRUGGS:

9 Q That particular one. That particular statute?

10 A That statute.

11 Q 83-1-7?

12 A Yes, sir.

13 Q All right.

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

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

19 BY MR. SCRUGGS:

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

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

25 Q Well, that wasn't my question.

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

2 BY MR. SCRUGGS:

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

7 MR. WEBB: Objection, asked and answered.

8 BY MR. SCRUGGS:

9 Q You can answer.

10 A I'm not aware of a statute.

11 Q Thank you.

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

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

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

17 (OFF THE RECORD.)

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

19 BY MR. SCRUGGS:

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

23 A Ron Hanna.

24 Q Hanna?

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

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

2 A No, sir.

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

7 A Mr. Hanna was not an attorney.

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

15 A The state personnel board.

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

18 A Yes, sir.

19 Q What was that?

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

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

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

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

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

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

17 Q Well --

18 A -- a form.

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

22 A In this particular one, yes, sir.

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

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

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

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

8 A Yes, sir.

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

13 A I have no idea.

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

16 A I have no idea.

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

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

22 Q That helps.

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

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

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

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

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

10 Q Okay.

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

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

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

16 BY MR. SCRUGGS:

17 Q George Jones?

18 A Joel, Joel Jones.

19 MR. STREETMAN: Joel.

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

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

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

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

9 A Yes, sir.

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

12 A Yes, sir.

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

17 A If required, yes, sir.

18 Q What do you mean by if required?

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

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

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

10 A I think so, yes, sir.

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

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

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

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

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

23 BY MR. SCRUGGS:

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

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

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

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

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

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

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

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

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

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

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

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

6 A Yes, sir.

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

10 A The second paragraph, first sentence?

11 Q Yes, sir.

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

16 Q Okay.

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

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

21 BY MR. SCRUGGS:

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

24 A Yes, sir.

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

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

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

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

8 BY MR. SCRUGGS:

9 Q And then what would happen after that?

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

13 Q What actions could the commissioner take?

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

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

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

23 Q Well, let's do a Katrina.

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

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

5 Q But --

6 A I'm sorry. Go ahead.

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

12 A Yes, sir.

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

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

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

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

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

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

19 BY MR. SCRUGGS:

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

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

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

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

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

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

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

12 BY MR. SCRUGGS:

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

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

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

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

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

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

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

25 They would contact the department of insurance.

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

12 Q My question --

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

15 MR. SCRUGGS: Yeah.

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

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

19 MR. STREETMAN: -- your question.

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

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

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

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

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

2 BY MR. SCRUGGS:

3 Q Yeah. My question was --

4 A I didn't understand --

5 Q -- a lot more --

6 A -- that question.

7 Q -- fundamental than --

8 A I misunderstood the question. I apologize.

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

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

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

24 Q Well --

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

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

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

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

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

14 BY MR. SCRUGGS:

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

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

21 MR. STREETMAN: You can answer.

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

25 BY MR. SCRUGGS:

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

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

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

7 A Yes, sir.

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

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

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

14 MR. SCRUGGS: On what grounds?

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

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

20 BY MR. SCRUGGS:

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

23 A Yes, sir.

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

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

2 A Yes, sir.

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

6 A Yes, sir.

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

11 MR. WEBB: Same objection.

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

19 MR. SCRUGGS: Well --

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

23 BY MR. SCRUGGS:

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

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

7 MR. SCRUGGS: Is that a Mississippi statute?

8 MR. STREETMAN: Yes.

9 MR. SCRUGGS: What's the statute?

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

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

13 MR. STREETMAN: I am.

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

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

17 MR. SCRUGGS: -- discovery --

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

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

25 MR. STREETMAN: Okay.

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

4 MR. STREETMAN: It's noted.

5 MR. SCRUGGS: Okay.

6 BY MR. SCRUGGS:

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

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

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

18 MR. SCRUGGS: Other than --

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

21 MR. SCRUGGS: That's correct.

22 MR. STREETMAN: Okay.

23 BY MR. SCRUGGS:

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

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

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

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

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

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

3 A I couldn't tell you.

4 BY MR. SCRUGGS:

5 Q Okay. Were there any?

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

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

11 A I'm sure they do.

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

15 A Except for the ongoing examination you
16 referenced.

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

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

22 Q Mark Haire --

23 A Yes, sir.

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

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

4 A Yes, sir.

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

7 A Yes, sir.

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

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

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

15 (OFF THE RECORD.)

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

18 BY MR. SCRUGGS:

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

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

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

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

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

17 Q Well, who are they?

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

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

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

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

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

9 MR. SCRUGGS: Okay.

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

12 BY MR. SCRUGGS:

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

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

18 Q Would October 2006 sound about right?

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

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

22 BY MR. SCRUGGS:

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

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

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

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

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

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

25 BY MR. SCRUGGS:

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

6 MR. WEBB: Same objection.

7 A They would be involved, yes, sir.

8 BY MR. SCRUGGS:

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

15 MR. WEBB: Same objection.

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

19 BY MR. SCRUGGS:

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

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

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

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

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

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

12 BY MR. SCRUGGS:

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

17 A Yes, sir.

18 Q Okay. Tell me about that.

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

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

22 A Yes, sir.

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

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

2 A Yes, sir.

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

9 A Yes, sir.

10 Q Okay. Who are these outside consultants?

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

13 Q Who is he?

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

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

21 A Yes, sir.

22 Q What is his background?

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

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

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

12 A He owned his own company.

13 Q And what -- what company is that?

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

16 Q What is --

17 A -- the company name.

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

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

21 Q What did they do? Well --

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

1 financial examinations for the department of insurance.

2 Q Is that all he does?

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

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

6 A No, sir.

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

10 A Yes, sir.

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

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

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

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

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

24 BY MR. SCRUGGS:

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

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

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

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

12 (OFF THE RECORD.)

13 BY MR. SCRUGGS:

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

17 - - -

18 (Exhibit 11 marked)

19 BY MR. SCRUGGS:

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

25 A No, sir.

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

4 A No, sir.

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

8 A No, sir.

9 Q Have you ever heard of the McIntoshes before?

10 A When I was --

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

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

13 BY MR. SCRUGGS:

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

19 A No, sir.

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

22 A No, sir.

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

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

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

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

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

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

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

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

15 A Yes, sir.

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

19 A Yes, sir.

20 Q Okay.

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

23 - - -

24 (Exhibit 12 marked)

25 BY MR. SCRUGGS:

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

5 A No, sir.

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

8 A You talking about --

9 Q If you can.

10 A -- the section right here?

11 Q Yes, sir.

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

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

16 A No, sir.

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

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

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

6 Q And the last bullet point?

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

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

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

12 BY MR. SCRUGGS:

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

15 - - -

16 (Exhibit 13 marked)

17 BY MR. SCRUGGS:

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

21 A Yes, sir.

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

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

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

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

19 MR. WEBB: Object --

20 MR. STREETMAN: I'm going --

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

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

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

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

13 MR. STREETMAN: I instruct --

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

17 MR. WEBB: Same objection.

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

19 MR. SCRUGGS: Okay.

20 BY MR. SCRUGGS:

21 Q Are you not going to answer that question?

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

23 Q Which counsel?

24 A My only counsel, Mr. Streetman.

25 Q Okay. Is the information about altered or

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

4 A Yes, sir.

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

8 MR. WEBB: Objection --

9 MR. STREETMAN: Instruct him not to answer.

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

11 BY MR. SCRUGGS:

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

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

17 - - -

18 (Exhibit 14 marked)

19 BY MR. SCRUGGS:

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

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

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

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

5 BY MR. SCRUGGS:

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

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

13 BY MR. SCRUGGS:

14 Q Is that --

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

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

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

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

22 A Okay.

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

25 A (Complies.)

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

2 A Yes, sir.

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

7 A Yes, sir.

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

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

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

23 MR. STREETMAN: I understand.

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

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

3 BY MR. SCRUGGS:

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

8 MR. WEBB: Renew the objection.

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

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

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

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

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

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

7 BY MR. SCRUGGS:

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

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

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

15 BY MR. SCRUGGS:

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

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

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

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

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

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

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

6 A Yes, sir.

7 BY MR. SCRUGGS:

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

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

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

15 BY MR. SCRUGGS:

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

19 MR. WEBB: Objection to the form --

20 MR. STREETMAN: I'm --

21 MR. WEBB: -- of the question.

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

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

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

6 BY MR. SCRUGGS:

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

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

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

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

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

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

2 Q What law enforcement officials?

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

5 Q Anybody else?

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

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

8 A Mr. Lampton.

9 Q Dunn Lampton?

10 A Yes, sir.

11 Q Who else?

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

14 Q John Dowdy?

15 A Yes, sir.

16 Q Who else?

17 A Don't recall.

18 Q But you recall those two.

19 A Yes, sir.

20 Q Anybody from the attorney general's office?

21 A That was attorney general.

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

24 A You mean the Mississippi Attorney General?

25 Q That's the one.

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

2 Q Okay. Was Mr. Haire there?

3 A No, sir.

4 Q Was Mr. Dale there?

5 A In one of the meetings.

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

8 A Yes, sir.

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

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

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

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

25 Q Were one of those issues and concerns that were

1 out there altered or changed engineering reports?

2 A Yes, sir.

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

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

7 Q Did any particular claims come up?

8 A Not any particular claim.

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

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

15 Q Okay. Just that that was out there?

16 A Yes, sir.

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

19 A We did not discuss any specific names.

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

22 MR. WEBB: Objection to the form.

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

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

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

2 BY MR. SCRUGGS:

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

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

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

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

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

21 A No, sir.

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

23 A No, sir.

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

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

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

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

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

8 BY MR. SCRUGGS:

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

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

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

20 A I don't know.

21 Q Would it have been the year 2006?

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

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

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

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

4 Q About Cori and Kerri Rigsby?

5 A About the whole Katrina issue.

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

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

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

13 A Yes, sir.

14 Q -- fair to say?

15 A Yes, sir.

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

19 A Yes, sir.

20 Q What'd you do?

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

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

25 A Yes, sir.

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

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

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

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

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

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

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

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

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

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

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

4 Q What were those concerns?

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

7 Q Were you cooperating and sharing information?

8 A Yes, sir. We still are today.

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

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

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

19 A No one has law enforcement authority.

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

24 MR. WEBB: Objection to --

25 MR. STREETMAN: He's already --

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

2 MR. STREETMAN: -- testified to that.

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

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

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

8 BY MR. SCRUGGS:

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

13 MR. STREETMAN: Would it be alleged?

14 A Yeah, that --

15 MR. STREETMAN: Hold on just a second.

16 A I'm sorry.

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

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

25 MR. WEBB: I'm --

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

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

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

5 BY MR. SCRUGGS:

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

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

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

16 A Yes, sir.

17 BY MR. SCRUGGS:

18 Q That would be useful.

19 A Yes, sir.

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

25 MR. WEBB: Objection to the form of the

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

3 A Yes, sir.

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

6 THE COURT REPORTER: That was 14.

7 MR. SCRUGGS: Okay.

8 - - -

9 (Exhibit 15 marked)

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

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

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

19 MR. SCRUGGS: This is Exhibit 15?

20 THE COURT REPORTER: Yes, sir

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

23 MR. WEBB: That's fine.

24 BY MR. SCRUGGS:

25 Q Exhibit 15 to your deposition is also from the

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

4 A Yes, sir.

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

7 A I don't know.

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

10 A Probably 13, looks like from this picture.

11 Q And who heads this division?

12 A Cathy Vernon.

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

15 A The top right-hand picture?

16 Q Yeah.

17 A Yes, sir.

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

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

23 Q Was that their role during Hurricane Katrina?

24 A Yes, sir.

25 Q And there are basically 13 people in this

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

2 A Yes, sir.

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

7 A The mission paragraph?

8 Q Yeah.

9 A I'm sorry.

10 Q That's okay.

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

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

23 A Yes, sir.

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

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

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

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

11 A Yes, sir.

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

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

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

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

22 Q Okay. Get some water.

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

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

4 A They were one of them.

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

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

12 Q How long did that go on?

13 A A month or more.

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

17 A Very few.

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

20 A Yes, sir.

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

24 A Yes, that's their primary responsibility.

25 Q Okay. How would this division go about

1 determining whether corrective action would be*
2 appropriate?

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

6 Q Let's stick with Katrina.

7 A Okay.

8 Q I apologize.

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

14 Q How often did that happen after Katrina?

15 A Briefly.

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

18 A I don't know.

19 Q More than 100?

20 A Oh, yes, sir.

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

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

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

9 A In some instances.

10 Q Okay. How many instances?

11 A I couldn't tell you.

12 Q More than ten?

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

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

17 (OFF THE RECORD.)

18 BY MR. SCRUGGS:

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

21 THE COURT REPORTER: Yes.

22 - - -

23 (Exhibit 16 marked)

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

25 Somebody just handed it to me.

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

2 MR. SCRUGGS: This is a different one.

3 A Yeah.

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

5 MR. WEBB: 16. Right?

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

7 BY MR. SCRUGGS:

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

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

19 Q Okay. Who heads this decision?

20 A John Wells.

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

22 A Let's see. I think five.

23 Q What is this division's responsibility?

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

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

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

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

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

9 A Sure. Yes, sir.

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

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

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

17 A Yes, sir.

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

20 A No, sir.

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

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

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

2 A Yes, sir.

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

6 A Yes, sir.

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

11 A Yes, sir.

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

16 A Yes, sir.

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

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

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

22 A No, sir.

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

25 MR. WEBB: Objection to form.

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

2 BY MR. SCRUGGS:

3 Q Who might that be?

4 A Mr. Wells and his employees.

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

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

11 Q He's been in what industry before?

12 A The insurance industry.

13 Q Okay. And that's your basis for testifying
14 that he's qualified to read and interpret insurance
15 contracts?

16 A He has other qualifications that would probably
17 be in his personnel file. I'm not familiar with those.

18 Q No -- well, the only qualifications I'm asking
19 about now are those related to his ability to read and
20 interpret provisions in insurance contract. So I'll --
21 with that moniker, I'll ask the question: What
22 qualifications does this man, Mr. Wells, have to read and
23 interpret insurance provisions in insurance contracts?

24 A I believe he has a college degree, and he has
25 many years of experience in the insurance industry.

1 Q****Doing what?T -- NOT PROOFREAD*****

2 A I'd defer you exactly to Mr. Wells, but he
3 worked in the insurance industry.

4 Q Okay. Do you know what he did in the insurance
5 industry?

6 A No, sir.

7 Q Okay. But he's not a lawyer.

8 A No, sir.

9 Q Okay.

10 MR. SCRUGGS: Mark this as Exhibit 17 to your
11 deposition. This is one of the things I didn't clip.

12 - - -

13 (Exhibit 17 marked)

14 BY MR. SCRUGGS:

15 Q I marked as Exhibit 17 to your deposition
16 Mississippi Code Annotated 83-2-11 disapproval of rates;
17 interim rates. Does that look accurate to you?

18 A Yes, sir.

19 Q Okay. Can you read for me subsection 1 and
20 subsections A and B of one of that statute, please.

21 A Excuse me. "The commissioner shall disapprove
22 a rate or policy form or endorsement if the commissioner
23 finds that the rate is unjustified, or the policy form or
24 endorsement: (a) Is in any respect in violation of or
25 does not comply with this code; or (b) Contains or

1 incorporates by reference any inconsistent, ambiguous or
2 misleading clauses or exceptions and conditions which
3 unreasonably or deceptively affect the risk purported to
4 be assumed in the general coverage of the contract."

5 Q Okay. Would the rating division that we've
6 been talking about be the one to determine whether a
7 provision in an insurance contract is inconsistent,
8 ambiguous, or misleading?

9 A They would -- yes, sir, they would be the one
10 reading the policy.

11 Q So the answer would be that division would be
12 the one to -- responsible for determining whether a
13 clause is inconsistent, ambiguous, or misleading.

14 A Yes, sir.

15 Q Okay. What qualifications does Mr. Wells and
16 the other people in this division have to be able to
17 determine whether a clause is inconsistent, ambiguous, or
18 misleading?

19 A The job titles have certain job qualifications,
20 and they must meet those job qualifications to be able to
21 even apply for the position.

22 Q What are those qualifications?

23 A I don't know.

24 Q And I don't want to misstate your answer, but
25 is it fair to say that your testimony is that there --

1 you believe they're qualified to determine whether the
2 clauses are inconsistent, ambiguous, or misleading
3 because they're in that division?

4 A Yes, sir.

5 Q Okay. And that's the only thing you can base
6 that testimony on?

7 A Yes, sir.

8 Q Okay. To your knowledge, does anybody --
9 excuse me. To your knowledge, does anybody in the
10 property or casualty division of the insurance department
11 review judicial opinions interpreting various clauses of
12 these insurance contracts that you approve?

13 A The legal division would summarize judicial
14 opinions or statutes and provide summaries of those to
15 the respective divisions.

16 Q Okay. So there's someone in the legal division
17 whose job it is to read judicial opinions and interpret
18 the clauses that you approve as the insurance department?

19 A Yes, sir.

20 Q Who is that?

21 A There's no one particular person. That's part
22 of the duties of the legal division.

23 Q Okay. Is there any particular person in the
24 legal division who has that responsibility or that
25 primary responsibility, even if he or she are not the

1 only ones that exercise it?OT PROOFREAD*****

2 A No, sir.

3 Q Okay. That's just a general thing these guys
4 do.

5 A Mr. Haire would assign somebody, go read that
6 case and summarize it and get us a summary of what it
7 means.

8 Q But nobody in the property and casualty rating
9 division would be reading cases interpreting these
10 clauses. They would just rely on summaries given to
11 them?

12 A They would -- they would have a copy of the
13 case attached in some instances.

14 Q How does either the property and rating
15 division or the legal division track legal opinions and
16 interpret these clauses? Do they do research or do they
17 just get cases as they come to their attention?

18 A They get the cases as they come down from the
19 courts.

20 Q Okay. Does that include courts other than
21 Mississippi?

22 A Primarily Mississippi and Fifth Circuit.

23 Q Okay. Do they -- does either the property or
24 casualty rating division or the legal division do
25 research on whether courts in other parts of the country

1 have struck down clauses or helped -- found them
2 inconsistent, ambiguous, or misleading?

3 A I'd have to refer you to the legal department.

4 Q Okay. Who in the legal department would you
5 refer me to?

6 A Mr. Haire.

7 Q Okay. To your knowledge has the rating -- the
8 property and casualty rating division or anybody else in
9 the department of insurance ever done this, found a
10 clause inconsistent, ambiguous, or misleading?

11 A There were clauses that we've had removed from
12 policies, yes, sir.

13 Q From property and casualty policies?

14 A Excuse me. Yes, sir.

15 Q And what clauses were those?

16 A Don't, you know, specifically. I just know
17 it's happened because I've been involved in discussions
18 with legal counsel. But the specific policy or specific
19 insurance company I don't recall. There were issues with
20 punitive damages at one time. There were issues with
21 binding arbitration provisions at one time. The
22 department, on binding arbitration, did not allow it.
23 The Fifth Circuit sometime a couple years ago opined that
24 the commissioner of insurance nor the attorney general
25 could prohibit an insurance company from utilizing that.

1 *****AndUthe same with punitive damages. We -- at
2 one time we did not allow punitive damages to be excluded
3 under insurance policies. The attorney general opined
4 saying they could during Mr. Moore's tenure. Then soon
5 thereafter he issued a different opinion that superseded,
6 reversed or whatever, the first opinion. That issue was
7 ultimately litigated by an insurance company, and the
8 attorney general opinion basically was held valid and the
9 insurance companies could exclude punitive damages.

10 Those are two instances that jump out at me.
11 There are -- there are instances, you know, not on a
12 daily basis, but there are instances throughout the
13 operations of the department of insurance where language
14 is amended and modified at the request of the department.

15 Q Well, that's what I'm trying to get to,
16 examples where the department found a clause in an
17 insurance contract inconsistent, ambiguous, or misleading
18 and it was taken out. And tell me about those instances.

19 A For specific examples, I'm going to have to
20 refer to Mr. Wells. That's his primary responsibility.
21 I'm not involved in that on a daily basis. I just know
22 of certain examples that I just discussed. But, you
23 know, on a daily basis I'm going to, like I said earlier,
24 refer you to Mr. Wells.

25 Q Well, Mr. Wells would report to you, would he

1 not? *****ROUGH DRAFT -- NOT PROOFREAD*****

2 A Yes, sir.

3 Q Okay. Don't you think Mr. Wells would consult
4 with you before he found a clause in an insurance
5 contract inconsistent, ambiguous, or misleading?

6 A There are instances where he instructs the
7 company to take that language out. If they voluntarily
8 do so, then the problem is resolved. If they don't, then
9 it would be brought up the ladder, so to speak, to myself
10 or the attorneys or the commissioner.

11 Q But your testimony is that Mr. Wells, if he
12 instructed an insurance company to take out a provision,
13 that he wouldn't check with you first or at least report
14 to you that he was instructing them to do that?

15 A Depends on what, you know, the issues are.
16 Some of them are mundane issues of whether, you know,
17 they don't use this word. Some of them are not familiar
18 with the particular statutes in Mississippi, and they
19 would have the address those on a case-by-case position.

20 Q Okay. Well, you -- circle back to an earlier
21 question and answer. Before becoming deputy
22 commissioner, you were the head of the legal and
23 investigative division, were you not?

24 A Yes, sir.

25 Q Okay. Did you read and interpret cases that

1 interpreted insurance clauses that were in contract that
2 the department was approving in your tenure?

3 A I may have.

4 Q Do you remember a specific example?

5 A No, sir. There were other lawyers in the
6 division. I would normally have them handle that.

7 Q Okay. Well, do you remember during your tenure
8 as -- as counsel to the insurance department finding that
9 a clause in the insurance contract that the department
10 approved was ruled to be inconsistent, ambiguous, or
11 misleading or the like?

12 MR. STREETMAN: Are you talking about other
13 than the ones that he's -- that he just -- that he
14 testified to earlier?

15 MR. SCRUGGS: I'm talking about during his
16 tenure as special attorney general.

17 A There were issues in the '90s involving
18 uninsured motorist and underinsured motorist. That was a
19 evolving creature. I think every time the Mississippi
20 Supreme Court addressed that issue I think they came out
21 with a little different opinion than they had the week
22 before or the month before. That was an issue that the
23 department's legal division tracked. Back then they came
24 out with the old paper slips. It was pre all the
25 Internet stuff, and you had to read the paper slips on

1 a -- whenever they came out to see what, if anything, the
2 Supreme Court had done on underinsured motorist stacking,
3 things like that. That's one instance that I --

4 Q Sure.

5 A -- was involved in.

6 MR. SCRUGGS: Mr. Webb remembers all that.

7 MR. WEBB: Implying I'm old?

8 MR. SCRUGGS: No. No. That would've been
9 something you'd have been involved in.

10 A Seasoned veteran.

11 MR. WEBB: Thank you.

12 BY MR. SCRUGGS:

13 Q Other than the stacking examples, do you
14 remember specific instances as special counsel and head
15 of the legal and investigative division where you were
16 interpreting judicial opinions that were interpreting
17 clauses of insurance contracts that the department was
18 approving?

19 A Off the top of my head, no, sir.

20 Q Okay. And I assume -- I can't assume that. Do
21 you recall in your tenure both as a special assistant
22 attorney general and as deputy commissioner finding or it
23 being brought to your attention that a particular clause
24 in a contract you approved had been held to be
25 inconsistent, ambiguous, or misleading by some court?

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

2 Q Okay. How would this division, the property
3 and casualty division, go about determining whether a
4 clause was inconsistent, ambiguous, or misleading?

5 A They would read it themselves initially. If
6 they have any questions or concerns, they are to consult
7 with the legal department.

8 Q And again, you're not a -- you don't know what
9 the qualifications are of the people in this rating
10 division to interpret and determine whether a provision
11 is inconsistent, ambiguous, or misleading. Is that fair
12 to say?

13 A I personally don't. That's something the
14 personnel department would handle.

15 Q Okay. Does this department have an archive of
16 the forms that -- approved forms that it's approved for
17 these contracts?

18 A The department, pursuant to a record retention
19 program, does retain documents for a said amount of time.
20 And after that, pursuant to department archives, those
21 records have to be purged.

22 Q What's that time period?

23 A As it relates to the property and casualty
24 division, I'm -- I'm not sure off the top of my head.
25 It's all said in writing on that.

1 *****Sir, could you -- could I inconvenience you to
2 pour me a glass of water? I don't think I can reach that
3 far.

4 Q Sure.

5 (OFF THE RECORD.)

6 BY MR. SCRUGGS:

7 Q You were saying that there's documents --

8 MR. WEBB: You're going to have to move --

9 A That's not going to go. She's giving us an
10 evil look down there.

11 (OFF THE RECORD.)

12 BY MR. SCRUGGS:

13 Q Is it your testimony that there's something in
14 writing that sets out the document retention policy for
15 property and casualty approved forms?

16 A Yes, sir.

17 Q Where would I get that?

18 A Request the department of insurance, and
19 they'll -- we'll produce it.

20 Q Okay. Just any -- to Joe Citizen, to anybody,
21 I can call them up or write them a letter and --

22 A Yes, sir, write them, and we'll be glad to
23 produce it.

24 Q Who would I write it to?

25 A You can send it to --

1 *****MR. STREETMAN: Well, if you're asking pursuant
2 to this deposition, if you want to send it to me, we'll
3 get it for you, whatever's available.

4 MR. SCRUGGS: Okay. Thanks.

5 Okay. Exhibit 18.

6 - - -

7 (Exhibit 18 marked)

8 MR. STREETMAN: Zach, why don't you do this
9 just to make sure, just send me a -- it can be an e-mail
10 or a short letter and just say, "This is what we want,"
11 so we can make sure, and we'll see what we can do.

12 MR. SCRUGGS: Sure.

13 MR. WEBB: And, of course, provide us a copy.

14 MR. STREETMAN: Absolutely.

15 BY MR. SCRUGGS:

16 Q Okay. Marked as Exhibit 18 to your deposition,
17 State Farm homeowners policy Form 7955, McIntosh Bates
18 numbers 138 through 152, and I'll represent to you that
19 this would have been the policy form that the McIntoshes,
20 the plaintiffs in this case, would've had with State
21 Farm. Is that -- do you accept that representation?

22 A Yes, sir.

23 Q Okay. Are you familiar with this homeowners
24 policy form?

25 A Not this particular one the McIntoshes had.

1 Q****Well, let me -- let me -- my question is more
2 general. Are you familiar with the State Farm policy --
3 homeowners policy 7955?

4 A I've read State Farm's -- some of their
5 homeowner policies. This particular number may or may
6 not have been that particular policy.

7 Q Well, yeah, I understand you might not have
8 looked at the McIntoshes' particular insurance policy.
9 My question is more general. You're familiar with a
10 State Farm homeowners policy 7955.

11 A I have read a State -- some State Farm
12 insurance policies, homeowners policies. I'm not sure if
13 it was this particular -- they have more than one
14 homeowners filing. I'm not sure if it was FP-7955 or
15 not.

16 Q Okay. Do you know when this policy form
17 FP-7955 was approved by the Mississippi Department of
18 Insurance?

19 A No, sir, I do not.

20 Q Okay. Who would've approved this policy form?

21 A The rating division.

22 Q Okay. The rating division that you testified
23 about earlier?

24 A Yes, sir.

25 Q That's headed by Mr. Wells?

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

2 Q Okay. What did the -- what actions did this
3 rating division undertake to determine whether this was
4 an appropriate -- actually, strike that. If you can,
5 turn with me to page 10 of it, this policy form, which is
6 also Bates No. 144.

7 A (Complies.)

8 Q Are you there?

9 A Yes, sir.

10 Q Okay. If you could, read to me under Section
11 I-Losses Not Insured, subsection 2 right there. If you
12 could, read that right there for me.

13 A "We do not insure under any coverage" --

14 THE WITNESS: Let me get it a little closer,
15 Jim.

16 A "We do not insure under any coverage for any
17 loss which would not have occurred in the absence of one
18 or more of the following excluded events. We do not
19 insure for such loss regardless of: (a) the cause of the
20 excluded event; or (b) other causes of the loss; or (c)
21 whether other causes acted concurrently or in...sequence
22 with the excluded event to produce the loss; or (d)
23 whether the event occurs suddenly or gradually, involves
24 isolated or widespread damage, arises from natural or
25 external forces, or occurs as a result of any combination

1 of these."*ROUGH DRAFT -- NOT PROOFREAD*****

2 Q Okay. What actions did the rating division
3 undertake to determine whether that provision you just
4 read was a valid policy form?

5 A I'd have to defer you to the rating division.

6 Q And Mr. Wells?

7 A Yes, sir.

8 Q Okay. Did the rating division, to your
9 knowledge, conduct any analysis to determine whether the
10 provision you just read was ambiguous, inconsistent, or
11 misleading?

12 A I don't know.

13 Q Okay. Who would know the answer to that?

14 A Mr. Wells or his predecessors.

15 Q Who was his predecessor?

16 A Nellie Mitchell or another gentleman -- Bob
17 Gibson.

18 Q Okay. And how long has Mr. Wells been the head
19 of this rating division?

20 A I don't know off the top of my head.

21 Q Within the last six years?

22 A He was -- he's been named that -- he was in
23 that position before I became a deputy.

24 Q Okay. So at least prior to 2001.

25 A Yes, sir.

1 Q****Okay. Now, the head of the rating division
2 reports to you. Is that fair to say?

3 A Yes, sir.

4 Q Okay. But it's your testimony you're not aware
5 of any particular analysis that this rating division
6 conducted to determine whether this particular policy
7 provision was proper or whether it was ambiguous,
8 inconsistent, or misleading.

9 A I'm not aware of any.

10 Q Okay. Did the rating division undertake any
11 analysis to determine whether this provision could be
12 used to deny an entire loss if there were multiple
13 causes?

14 A It's the -- can you clarify your question?

15 Q I'll try. Did the rating division, the one
16 that approved this particular policy provision we've been
17 reading, undertake any analysis or determination to
18 determine whether this provision could be used by an
19 insurance company to deny an entire loss with multiple
20 causes?

21 MR. WEBB: Objection to the form of the
22 question.

23 BY MR. SCRUGGS:

24 Q Some excluded and some not.

25 MR. WEBB: Same objection.

1 A****The department's interpretation of that
2 provision was, has been, and is that when you have a
3 combination of multiple causations -- for example, if you
4 were to have wind and water -- that the insurance
5 contract as we read it is the insurance company would owe
6 any damage caused by wind. However, under the exclusion
7 provisions, they would not owe any damage caused by the
8 water.

9 Q Was that the -- was that a determination that
10 was made by the rating division and the insurance
11 department when this provision was approved?

12 A I'm not sure when this provision was approved.

13 Q But would that have been a -- an interpretation
14 that the insurance department did whenever it was
15 approved?

16 A I don't know.

17 Q Okay. If you look on -- if you can go back to
18 the first page, which is 138, I think you'll see up in
19 the top right corner it says FP-7955, and then under it
20 says 8 slash 96. Would that determine the date that this
21 policy provision was approved?

22 A Don't know.

23 Q You don't know. You don't know what they would
24 mean?

25 A It means something was filed in 8/96.

1 Q****Okay. So it's the -- your testimony, is it
2 fair to say, that it's been and is and always has been
3 the insurance department's interpretation of this
4 provision that it can exclude damage caused by water but
5 not damage caused by both wind and water.

6 MR. WEBB: Objection to the form of the
7 question.

8 A Repeat your question again.

9 BY MR. SCRUGGS:

10 Q Sure. Is it your testimony, as I understood it
11 from just before, that it's the insurance department's
12 interpretation of this anticoncurrent clause provision
13 we've been reading that it can exclude damage caused by
14 water, but it doesn't exclude damages caused by wind and
15 water?

16 MR. WEBB: Same objection.

17 A It could under that -- under our interpretation
18 of that policy language in question, the damage caused by
19 water could be excluded; the damage caused by wind is
20 covered.

21 BY MR. SCRUGGS:

22 Q Okay. So this provision -- under the
23 department's interpretation, this provision couldn't be
24 used to exclude damage just because there was water also
25 involved if there was wind involved.

1 *****MR. WEBB: Objection to the form of the
2 question.

3 A The company would have to pay the wind portion.

4 BY MR. SCRUGGS:

5 Q Okay. Even if there was also water.

6 A Yes, sir.

7 MR. WEBB: Objection to form.

8 BY MR. SCRUGGS:

9 Q Your answer?

10 A Yes, sir.

11 Q Okay. What representations did State Farm make
12 to the commissioner or the rating division about how this
13 particular anticoncurrent cause clause would be
14 interpreted and applied to losses?

15 MR. STREETMAN: Are you talking about if the --
16 when it was proposed as a -- as this policy in whatever
17 year that may be that we don't know or --

18 MR. SCRUGGS: Well, at the time of approval or
19 subsequently.

20 A I don't know what representations were made
21 whenever the policy was originally filed with that
22 language in it. As it relates to Katrina issues, the
23 department issued some bulletins soon after the storm
24 made landfall regarding how we thought companies should
25 be adjusting the claims and paying the claims.

1 BY MR. SCRUGGS:H DRAFT -- NOT PROOFREAD*****

2 Q Yeah, and we'll get into those in just a
3 second, and thank you. But my question is maybe a little
4 more -- more general. What representations did State
5 Farm ever make to the commissioner or the rating
6 department at any time, approval or subsequently, about
7 how this particular clause was going to be interpreted
8 and applied to losses?

9 MR. WEBB: Objection to form.

10 A State Farm after -- I'm dealing in after
11 Katrina. After Katrina made landfall State Farm
12 representatives made representations to the Mississippi
13 Department of Insurance, specifically myself, regarding
14 how they were adjusting and adjudicating claims. It was
15 my understanding of their representations that they were
16 paying the wind portions of the claim, but they were not
17 paying the water portions of the claim.

18 Q Okay. Did State Farm make any representations
19 about this anticoncurrent cause clause prior to Katrina
20 to the department or the rating division?

21 A If they did, I was not involved in that.

22 Q Okay. But just so I'm clear: The department
23 doesn't read this interpretation to exclude losses just
24 because one of the causes was excluded.

25 MR. WEBB: Objection to form.

1 A****You would still owe a portion of the damage
2 that was done by wind.

3 BY MR. SCRUGGS:

4 Q Okay. And would you agree with me that a
5 clause that acted to exclude an entire loss just because
6 one of the causes was excluded would be misleading,
7 inconsistent, or ambiguous?

8 MR. WEBB: Objection to form.

9 A I'm not aware of a clause that the department
10 interprets that way.

11 BY MR. SCRUGGS:

12 Q Interprets what way?

13 A Are you saying that's what that provision says?

14 Q No, let me --

15 A I'm sorry.

16 Q -- let me rephrase the question and see if I
17 can do it this way. Would you agree with me that a
18 provision in an insurance policy that did exclude an
19 entire loss just because one of the causes was excluded
20 under a policy would be an ambiguous, misleading, or
21 inconsistent policy provision?

22 MR. WEBB: Objection to form.

23 A I'd have to see the particular policy in
24 question and read it.

25 BY MR. SCRUGGS:

1 Q****Okay. Well, you just read what we call the
2 anticoncurrent cause clause. Is that correct?

3 A Yes, sir.

4 Q Would you agree with me that that policy form
5 acted to exclude an entire loss just because one of the
6 causes was excluded, that that would be an ambiguous,
7 misleading, or inconsistent form?

8 MR. WEBB: Objection to form.

9 A That's not how the department interprets that
10 provision.

11 BY MR. SCRUGGS:

12 Q Well, yeah. And that's not my question.

13 A Okay.

14 Q My question is that that's what the provision
15 acted to do or if that was -- if that was how the --
16 strike that. Maybe we can get there this way. If this
17 interpreta- -- if this particular policy provision that
18 you just read, the anticoncurrent cause clause was being
19 applied to exclude an entire loss just because one of the
20 causes was excluded under the policy, that that would be
21 an inconsistent, ambiguous, and misleading interpretation
22 of that provision.

23 MR. WEBB: Object to the form.

24 A I don't think -- that's not how we interpret
25 it, and we would not know whether it's ambiguous. I

1 don't know. That's not how the department interpreted
2 that provision or any of the provisions similar to that,
3 and that's why we instructed the companies to pay the
4 wind portions of the claims in our bulletins --

5 Q No, I understand, and I'm not asking how the
6 department interprets this provision. You've
7 testified --

8 A And I apologize. Restate your question and
9 let's see if we can --

10 Q That's fine. Yeah, yeah, you've testified how
11 the department interprets it, and I appreciate it. But
12 my question is: If this policy provision was interpreted
13 in this manner or the effect of this provision was to
14 exclude the ACC provision, the anticoncurrent clause
15 provision, if the effect of that provision was to exclude
16 an entire loss just because one of the causes was
17 excluded, that that would be misleading, inconsistent, or
18 ambiguous.

19 MR. WEBB: Objection to form of the question.

20 A Then I think it'd be appropriate. Now, whether
21 it's ambiguous, I'm not sure I can answer that question,
22 but that would not be appropriate under the department's
23 interpretation of the policy limits.

24 BY MR. SCRUGGS:

25 Q It wouldn't be appropriate?

1 A****Yeah.H DRAFT -- NOT PROOFREAD*****

2 Q Well, would that be inconsistent with other
3 policy provisions? Do you know that?

4 MR. WEBB: Objection to form.

5 A Don't know.

6 BY MR. SCRUGGS:

7 Q Would that be an ambiguous application of that
8 provision?

9 MR. WEBB: Same objection.

10 A Could be.

11 BY MR. SCRUGGS:

12 Q Okay. And would it be a misleading application
13 of that provision?

14 A Could be.

15 MR. WEBB: Objection to form.

16 Q Okay.

17 THE WITNESS: Doesn't somebody have a
18 conference call at 2:00?

19 MR. SCRUGGS: I don't know. Do you want --

20 MR. WEBB: I do.

21 THE WITNESS: No, I thought one of y'all said
22 that --

23 MR. WEBB: I do have a conference call at 2:00,
24 but they're supposed to call me, so I'm assuming --

25 MR. SCRUGGS: All right. Okay.

1 ***** (OFF THE RECORD.) OT PROOFREAD *****

2 BY MR. SCRUGGS:

3 Q Follow up on your last answer, I think it's
4 fair to say your testimony was that the anticoncurrent
5 cause clause could be ambiguous or misleading if it was
6 applied in a way that would exclude an entire loss just
7 because one of the causes is excluded. Can you elaborate
8 on why your answer was it could be?

9 MR. WEBB: Objection to form of the question.

10 A It depends how else the answer is -- the
11 policy...

12 MR. WEBB: Hello? It's the judge.

13 MR. SCRUGGS: Are we going to go off --

14 MR. WEBB: Yeah. Yes, sir, I'm here.

15 MR. SCRUGGS: Are we going to go off the record
16 or is -- I didn't know if -- if you were going to jump in
17 or if we're going off the record. Let's go off the
18 record just for a minute.

19 (OFF THE RECORD.)

20 MR. SCRUGGS: Back on the record.

21 BY MR. SCRUGGS:

22 Q Strike the previous question. I want to circle
23 back to something --

24 THE WITNESS: Before you get there, do we want
25 to wait for Ms. Kelsey?

1 *****MR. STREETMAN: We can go ahead.*****

2 BY MR. SCRUGGS:

3 Q Does the department, the insurance department,
4 Mr. Harrell, have a file containing all the proof forms
5 for a particular company? Is it categorized by company?

6 A It's my understanding that's the way they have
7 it categorized.

8 Q Okay. So I could -- if I asked -- put in a
9 request for the insurance department, they could produce
10 all the files they had in their possession on approved
11 forms for State Farm, for instance?

12 A Yes, sir, I --

13 Q Okay.

14 A -- believe so. Just let Mr. Streetman know
15 what you're -- what you need, and we'll get it for you.

16 Q Sure. And other than the policy forms, would
17 there be anything else in these files?

18 A I don't know if the policy forms are kept in
19 the same filing system as rates. There'd be rating
20 files, but I don't know if they're in the same file or
21 not.

22 Q Would -- does the department, and I assume it
23 would be the rating division, when they initially approve
24 a form, is there anything they put in the file, do they
25 do a memo to the file on the issues involved and why they

1 approved it or anything like that? Is there any
2 commentary or discussion, documentation anywhere other
3 than the fact that a form was approved?

4 A Under the current electronic filing system --
5 it's called SERF -- that would all be tracked
6 electronically, any commentary from the rating division
7 back to State Farm or Allstate, whoever, it would be
8 tracked back and forth. And all that's in a -- it would
9 be in some type of captured data format regarding policy,
10 you know, one, two, three, whatever the policy number
11 would be.

12 Q So hypothetically, any -- any communications
13 are between the department and State Farm and vice versa
14 on -- well, this provision is okay but take out this word
15 or add this word or we got problems with this -- the way
16 this is worded, that would all be captured. So tell me
17 where I could find that information.

18 MR. WEBB: Objection to the form.

19 A Under the -- under the current electronic
20 filing system, SERF, it's my understanding all that's
21 captured electronically. You can just -- if you ask --
22 ask for it, we'll -- give Mr. Streetman what you're
23 wanting, we'll be glad to try to get that or give you
24 access to it.

25 Q What about before y'all put all this on

1 electronic -- in electronic form, how would I go about
2 finding that information, that information being, you
3 know, any memos or documentation as to the rating
4 division's comments about a particular form or
5 communications between State Farm back and forth on the
6 provisions?

7 A Any communications that were -- that are there,
8 we'd have them and we'd be glad to produce them.

9 Q Okay. Where would those be located?

10 A They'd be stored in the rating division.

11 Q Okay. Would they be -- would they be stored in
12 the same file that the proof forms would be in or would
13 they be in a different file?

14 A I would assume they're in the same -- same
15 file. Don't know.

16 Q How long back -- how far back would State --
17 would the insurance department have forms on State Farm,
18 approved forms and documentation related to those
19 approved forms?

20 A Each division -- each division regarding each
21 particular type of records that they maintain has a
22 record retention program that the department of archives
23 reviews, approves, rejects, whatever they do with it.
24 And we would only have them pursuant to that time period
25 that the department of archives allows us to keep them.

1 After that we have to purge them.OFREAD*****

2 Q Well, what's that time period?

3 A As it relates to the rating division, do not
4 know.

5 Q You don't know?

6 A I do not know.

7 Q Well, what proof would you have -- or the
8 rating division have that it ever approved a form? For
9 instance, if -- when did this form get approved or that
10 form get approved? How would you go back and find out
11 the original form that was approved and any documentation
12 relating to it?

13 A That's part of the problem. The department has
14 requested money from the legislature to be able to
15 electronically image -- or other type of electronic
16 storage database of not just these records, all the
17 records of the department of insurance utilizes, comes in
18 the possession of. The problem with the -- the state of
19 Mississippi does not have sufficient funds to do so.

20 Q Well, how would I go back, whether I was asking
21 Mr. Streetman or -- or the department directly, how would
22 I go back and find the files that relate to the initial
23 approval of this anticoncurrent cause clause that we've
24 been talking about?

25 A You can ask as to when it was -- when do the

1 department's records reflect it was first approved, and
2 we will -- I do not know the answer, but we will be glad
3 to get you the answer.

4 Q Okay. And that request -- well, the request
5 will be the request. I'll send it in or e-mail it or
6 whatever but --

7 MR. STREETMAN: However you want to do it.

8 MR. SCRUGGS: Right.

9 BY MR. SCRUGGS:

10 Q But the -- would that also be the case for any
11 communications or documentation relating to the approval
12 of the anticoncurrent cause clause, whenever it was
13 approved?

14 A I apologize, I'm not following your question.

15 Q Okay. We're talking about the anticoncurrent
16 cause clause you just read. If I put in a request for
17 the initially approved form, would there also be in that
18 file or a file information about -- relating to the
19 approval of that form, whether it's memos in the file or
20 correspondence back and forth, that kind of thing? Would
21 that also be something that would be kept?

22 A If the records are still being kept pursuant to
23 the record retention schedule, then we would have them.
24 If it's already passed the time period that the
25 department of archives allows the department to retain

1 them, then the department would not have them.*

2 Q Let me ask a simple question. How do -- how do
3 you know as deputy commissioner of insurance that this
4 policy provision you just read was ever approved?

5 A I personally would not. Mr. Wells would have
6 to represent that to me.

7 Q Okay. So as you sit here today, you're not --
8 you don't know one way or the other that this provision,
9 the anticoncurrent cause clause was ever approved by the
10 insurance department.

11 A There was an anticoncurrent cause provision
12 approved by the Mississippi Department of Insurance that
13 relates to State Farm's homeowners insurance policies.

14 Q There was?

15 A Yes, sir.

16 Q How do you know that?

17 A Mr. Wells advised me of that.

18 Q What else did he advise you of related to that?

19 A As it relates to what issues? There were --

20 Q Well, let me -- let me just stick with what you
21 just testified to. I think you testified that Mr. Wells
22 advised you that the Mississippi Department of Insurance
23 approved the anticoncurrent cause clause we just read.
24 Is that fair to say?

25 A Yes, sir.

1 Q****All right. Tell me aboutRthe sum and substance
2 of that conversation.

3 A After the storm made landfall, the department
4 of insurance somewhere after that started receiving
5 inquiries, complaints, whatever you want to couch them --
6 some of them couch different things -- but from different
7 consumers regarding anticoncurrent causation. The
8 department of insurance had a meeting, and best of my
9 knowledge, I can't specify who all was there. In the
10 meeting was myself, and somewhere in the meeting was --
11 were some of the attorney general lawyers, side of the
12 department of insurance, and rating individuals -- and
13 individuals from the rating division.

14 Q Okay. And what did y'all discuss?

15 A The anticoncurrent causation language.

16 Q What about it?

17 A What it means and how the department
18 interpreted it.

19 Q Well, what did it mean?

20 A The department's interpretation of it at that
21 time and when they reviewed the policy, as I stated
22 earlier, is that the language does allow an insurance
23 company to exclude water or to -- however, it did not
24 allow them to exclude any damage caused by wind,
25 whether -- regardless of whether the house would've

1 washed away afterDthe wind came through. The portion
2 that was originally caused by the wind damage was owed
3 under the terms and conditions of the policy as the
4 department of insurance determines them.

5 Q Well, what did the department base that
6 interpretation on?

7 A Reading the policy.

8 Q Okay. Well, let me ask you this question.
9 We'll just -- we're still on -- sorry about that.

10 A That's fine.

11 Q Exhibit 17.

12 THE COURT REPORTER: Eighteen.

13 BY MR. SCRUGGS:

14 Q Eighteen, excuse me. Why did -- why was this
15 provision necessary, Mr. Harrell? There is a provision
16 down here called the water damage exclusion that excludes
17 damage caused by water. Is that correct?

18 A Yes, sir.

19 Q Okay. So why was a provision needed to exclude
20 water but not wind if that's already excluded down here?

21 A As to why State Farm put in there, I would have
22 to refer you to State Farm. I'm not sure why the
23 companies put it in there.

24 Q But it's the department's interpretation that
25 damage caused by wind is covered and damage caused by

1 water is not. UGH DRAFT -- NOT PROOFREAD*****

2 MR. WEBB: Object to the form.

3 A Correct.

4 BY MR. SCRUGGS:

5 Q Okay. But there's a provision down here that
6 excludes water damage. Right?

7 A Yes, sir.

8 Q Okay. And these policies cover wind damage.
9 Is that right?

10 A Unless it's excluded. Unless they X the wind.

11 Q Right. Aside from -- aside from an X wind
12 policy --

13 A Yeah.

14 Q -- these policies cover wind damage.

15 A Yes, sir.

16 Q Okay. So why was this provision put in there?

17 MR. STREETMAN: He just testified to that.
18 You'd have to ask State Farm.

19 MR. WEBB: Same objection.

20 BY MR. SCRUGGS:

21 Q Okay. Well, let me ask a follow-up question,
22 then. Why would a provision like this have been approved
23 whenever it was approved?

24 A The way the department reads the policy is that
25 it doesn't -- it says if we -- if you have wind and

1 water, whichever -- regardless of which one comes first,
2 this contract makes you pay the wind. However, you
3 wouldn't -- if, say, the roof blew off, okay, five
4 seconds later, five hours later, it's irrelevant how
5 long, if water came in and washed the rest of the house
6 away, they would -- this contract would make them be
7 obligated to pay the damage to the roof and any
8 subsequent damage that occurred as a result of no roof
9 being there.

10 Q Okay. Well, and that's the department's
11 interpretation.

12 A Yes.

13 Q But that's not what this provision says, does
14 it?

15 A That's the department's interpretation, and
16 that was State Farm's representation as to the department
17 of insurance regarding how they were interpreting it and
18 applying it.

19 Q After Katrina.

20 A Yes, sir.

21 Q Okay. And you don't know about any
22 representation they made to the department prior to
23 Katrina.

24 A No, sir.

25 Q But again -- and please read this provision

1 again. I want to be fair. What you just said, the
2 interpretation you just gave me for how the department
3 interprets this provision, is not what's stated in that
4 provision, is it?

5 MR. STREETMAN: The provision says what it
6 says. He's testified to what -- to what his
7 interpretation and the department's interpretation is.

8 MR. SCRUGGS: I understand, but what -- the
9 anti -- let me be heard on that. The anticoncurrent
10 cause clause is extremely important to this litigation
11 and probably a lot of other ones, and it doesn't -- it's
12 certainly important how the department interpreted it.

13 MR. STREETMAN: And he's --

14 MR. SCRUGGS: But it's also --

15 MR. STREETMAN: -- explained it.

16 MR. SCRUGGS: It's also important how it -- how
17 it reads regardless of how the department interprets it.

18 MR. STREETMAN: And it reads the way it reads,
19 and that's not going to change now or in the future or
20 when it was approved. And he has said that this is
21 the -- he has testified as to the way the department of
22 insurance interprets it.

23 BY MR. SCRUGGS:

24 Q Well, the question is: Does that policy --
25 does that provision, the ACC clause, read differently

1 from how you interpreted it? I mean, does it -- is that
2 consistent -- does that provision state the provisions in
3 the ACC clause -- strike that. I can answer it a better
4 way. The anticoncurrent cause clause you just read, is
5 that consistent with how you interpreted it, you being
6 the department of insurance?

7 A The department's interpretation of it is
8 consistent with the way we read it, now and then.

9 Q I'm going to read this to you. "We do not
10 insure for such loss regardless of...the cause of the
11 excluded event...other causes of the loss...or whether
12 other causes acted concurrently or in any sequence with
13 the excluded event to produce the loss..." Reading
14 straight from the provision.

15 Now, isn't that inconsistent with how the
16 department construes this provision, which is it covers
17 wind and not covers water?

18 A No, sir.

19 Q It's not.

20 A No, sir.

21 Q You think that what I just read is consistent
22 with how the department's interpreting it.

23 A Not only is it consistent with the way we
24 interpreted it at the time that it was reviewed, it's
25 consistent with how we read it now. And that is our

1 interpretation is consistent with what State Farm
2 represented to the department after Katrina made
3 landfall.

4 Q I'm sorry. Say that last part again?

5 A It's consistent with how the department
6 interpreted it when -- before Katrina, it's consistent
7 with how the department interpreted it after Katrina, and
8 still to this day and our interpretation is consistent
9 with how State Farm represented their interpretation of
10 that to the department of insurance.

11 Q Okay. A provision that excludes a loss
12 regardless of whether other causes acted concurrently or
13 in any sequence is consistent with your interpretation --

14 MR. STREETMAN: He's --

15 BY MR. SCRUGGS:

16 Q -- that wind --

17 MR. STREETMAN: -- testified --

18 BY MR. SCRUGGS:

19 Q -- regardless --

20 MR. STREETMAN: -- and I --

21 MR. SCRUGGS: No, he's not.

22 MR. STREETMAN: -- no, I instruct him not to
23 answer. He's not going to answer any more questions --
24 you've asked him over and over and over about
25 interpretation, reading it. Submit it to the judge. If

1 we're wrong, then we'll do -- PROOFREAD*****

2 MR. SCRUGGS: Well, it's not a proper objection
3 and -- or --

4 MR. STREETMAN: That's fine.

5 MR. SCRUGGS: -- instruction not to answer that
6 you think he's answered it because he's answered it about
7 three different ways --

8 MR. STREETMAN: I'm --

9 MR. SCRUGGS: -- and I'm entitled to get into
10 this. He's the deputy commissioner of insurance. This
11 is a provision at issue in this lawsuit.

12 MR. STREETMAN: You've been into it and over it
13 and over it and over it. He's not going to answer any
14 more questions about it.

15 MR. WEBB: And I object to the form because it
16 calls for a conclusion that I think is ultimately up to
17 the judge in this or some other court.

18 MR. SCRUGGS: It's certainly not what y'all are
19 saying in court, and we're going to get into this a
20 little more.

21 BY MR. SCRUGGS:

22 Q You're not going to answer the question?

23 A I'm following the advice of Mr. Streetman.

24 Q Okay.

25 MR. SCRUGGS: We're definitely going to be

1 back.*****ROUGH DRAFT -- NOT PROOFREAD*****

2 Exhibit 19. See how this fits.

3 - - -

4 (Exhibit 19 marked)

5 (OFF THE RECORD.)

6 MR. SCRUGGS: Okay. Exhibit 19?

7 THE COURT REPORTER: (Nods head affirmatively.)

8 BY MR. SCRUGGS:

9 Q Okay. Do you recognize this letter, sir?

10 A Yes, sir.

11 Q And what is this letter?

12 A It is a letter from me to Allen McGlynn at
13 State Farm Fire and Casualty.

14 Q Okay. Dated March 24, 2006.

15 A Yes, sir.

16 Q Okay. Read me the first sentence.

17 A "The Mississippi Department of Insurance,
18 ('Department') is continuing to receive complaints from
19 insureds of State Farm Fire and Casualty Company ('State
20 Farm' or 'Company') concerning the Company's
21 interpretation and application of the concurrent
22 causation provision found in Section I -- or Section" --
23 maybe that's I 2 maybe -- "of State Farm's standard
24 Homeowners Policy. Period."

25 Q Okay. When did the department first determine

1 that the anticoncurrent cause provision that we've been
2 talking about was being interpreted to exclude an entire
3 loss if there was a non-covered event?

4 MR. WEBB: Objection to the form of the
5 question.

6 A It would've been when we first hear of the
7 allegation or when we confirm it? I mean, restate the
8 question for me.

9 BY MR. SCRUGGS:

10 Q The first paragraph in your letter stated that
11 the department of insurance is continuing to receive
12 complaints from insureds about the application of the
13 concurrent cause provision.

14 A Yes, sir.

15 Q The one we've been reading about. When did the
16 department first start learning of these complaints
17 regarding State Farm's interpretation of that provision?

18 A We first started hearing allegations of that
19 sometime in early part of 2006.

20 Q Early 2006?

21 A Yes, sir.

22 Q None prior to that date?

23 A Not prior to -- sometime in early 2006.

24 Q Okay. Well, how did the department learn of
25 these complaints?

1 A****Either by phone calls, consumer complaints, in
2 personal meetings with consumers, meeting with --
3 meetings with consumers on the Mississippi Gulf Coast in
4 town hall type meetings and homeowner association type
5 meetings.

6 Q Okay. When did all those take place?

7 A Sometime prior to March 24th, 2006.

8 Q Okay. Any of that occur in 2005?

9 A Don't recall specifically.

10 Q Is it your testimony you don't recall a
11 specific complaint related to the State Farm
12 interpretation of this concurrent cause provision in
13 2005?

14 A I don't recall one either way.

15 Q Okay. Read for me the second sentence.

16 A Picking up with "more specifically"?

17 Q Uh-huh.

18 A Okay. "More specifically, we are hearing from
19 your insureds who have slab claims as a result of
20 Hurricane Katrina who complain that State Farm is
21 supposedly taking the position that even if a dwelling
22 suffered wind damage prior to the arrival of storm surge,
23 no claim payment for wind damage is due since the water
24 would have washed the structure away anyway,
25 notwithstanding the damage caused by wind. Period."

1 Q****Okay. Isn't that exactly what that provision
2 says?

3 MR. WEBB: Objection --

4 BY MR. SCRUGGS:

5 Q The ACC provision?

6 A No, sir, not --

7 Q That's not what it says?

8 MR. WEBB: Objection to form.

9 A Not the department's interpretation of it.

10 BY MR. SCRUGGS:

11 Q Not asking about the department's
12 interpretation of a provision. I'm talking about what
13 the provision actually says.

14 MR. STREETMAN: We've been through that. He
15 has testified to it. It says what it says.

16 MR. SCRUGGS: That's not an appropriate answer
17 or objection, it says what it says.

18 BY MR. SCRUGGS:

19 Q The -- the question is: Isn't -- isn't the
20 position that you're contending State Farm might be
21 taking exactly what the provision says?

22 A Not in our opinion.

23 Q Well, what is your opinion?

24 MR. STREETMAN: He's already given his opinion.
25 You're going back and wanting him to comment with regard

1 to the ACC --UGH DRAFT -- NOT PROOFREAD*****

2 MR. SCRUGGS: Well, he hadn't --

3 MR. STREETMAN: -- and then --

4 MR. SCRUGGS: -- answered the question yet,
5 Jim, because --

6 MR. STREETMAN: Well, we're --

7 MR. SCRUGGS: You can instruct him to answer
8 and not answer every single question, but I'm here and
9 this is a --

10 MR. STREETMAN: I understand that.

11 MR. SCRUGGS: -- deposition, and he wrote a
12 letter about this provision. None of those objections
13 are valid. They're not just not. I mean, he wrote the
14 letter about the ACC provision, and I'm --

15 MR. STREETMAN: I understand that --

16 MR. SCRUGGS: -- and he's saying how it's
17 interpreted.

18 MR. STREETMAN: -- says -- you want him to --
19 you keep going back and want him to say -- he says, if
20 you'll go to page 2, how they interpret it. He says in
21 the next sentence how it's interpreted in this thing.
22 You know, ask him about those things. To keep going back
23 and asking him about the language in the -- in the ACC,
24 which says what it says, is -- he has testified there 's
25 an interpretation.

1 *****MR. SCRUGGS: I understand there's an
2 interpretation. We've been -- we've certainly been over
3 that, and that's not the root of any of my questions.
4 The question is: Isn't the interpretation that he's
5 charging State Farm might be taking exactly what the
6 provision says?

7 BY MR. SCRUGGS:

8 Q Is that true?

9 MR. STREETMAN: He's testified to that. We've
10 been --

11 MR. SCRUGGS: No --

12 MR. STREETMAN: -- over that.

13 MR. SCRUGGS: -- he hadn't.

14 MR. STREETMAN: Can you answer that question?

15 MR. WEBB: I'm going to object to form.

16 A You two -- repeat what the question was.

17 BY MR. SCRUGGS:

18 Q I'll just -- I'll say -- I'll try to put it the
19 best way I know how, Mr. Harrell. You just read about --
20 you referenced complaints that State Farm was
21 interpreting this anticoncurrent cause clause a
22 particular way. Is that right?

23 A Yes.

24 Q You just read that, and you wrote it.

25 A Yes, sir.

1 Q****Okay. Now, isn't that what the provision
2 itself says?

3 A No, sir.

4 Q Well, what's your basis for saying that?

5 A The department's reading and interpretation of
6 the provisions.

7 Q I know how you interpreted it and how you
8 wanted it to be applied. But you would agree with me
9 that the provision, if you read it, says exactly what you
10 just wrote.

11 MR. STREETMAN: I'm instructing him not to
12 answer this question or any other questions -- we're
13 going back over and you're wanting to argue with him
14 about the interpretation versus the reading. They read
15 it one way, and they interpreted it that way.

16 MR. SCRUGGS: Okay.

17 BY MR. SCRUGGS:

18 Q Read the last sentence in that paragraph for
19 me, Mr. Harrell.

20 A "If this is State Farm's position, it is
21 contradictory to representations made by State Farm to
22 Department representatives."

23 Q Why do you say "if this is State Farm's
24 position"?

25 A In previous meetings and discussions with State

1 Farm representatives as the result of complaints the
2 department was receiving, we asked State Farm
3 representatives how are you applying that anticoncurrent
4 causation. The representations back to the department of
5 insurance were consistent with the department's
6 interpretation that they owed the wind; they did not owe
7 any water damage.

8 Q So if State Farm was interpreting this
9 provision in a way that would exclude the wind and water
10 if wind was -- excuse me, if water was involved, then
11 that would be an improper interpretation under the
12 department's view.

13 A Yes.

14 MR. WEBB: Objection to form.

15 BY MR. SCRUGGS:

16 Q Answer?

17 A Yes, sir.

18 Q If you'll turn the page for me, Mr. Harrell, on
19 your letter, read for me the -- sometimes it's easier if
20 I just -- this paragraph here.

21 A Okay.

22 Q Thanks.

23 A "It is the Department's interpretation of the
24 foregoing provision that while loss subject to the water
25 damage exclusion generally is not covered, loss resulting

1 from any damage caused by wind is clearly covered.
2 Period. Thus, the loss must be apportioned and any wind
3 damage claim paid regardless of whether tidal surge slash
4 water subsequently washed the structure away or caused
5 other damage. Period."

6 Q And to the extent that the anticoncurrent cause
7 clause says something different than that, it's invalid.
8 Would you agree with me?

9 MR. WEBB: Objection to --

10 A I --

11 MR. WEBB: -- the form of the question.

12 A I don't think it says anything different than
13 that.

14 BY MR. SCRUGGS:

15 Q Well, if someone were to read it that way,
16 would that be an improper application?

17 MR. WEBB: Objection to the form.

18 A In the department's interpretation, yes, sir.

19 BY MR. SCRUGGS:

20 Q Okay. You reference a bulletin down here. If
21 you could, read to me that line there and then the
22 bulletin for me.

23 A "I draw your attention to Bulletin No. 2005-6,
24 issued by Commissioner Dale on September 7, 2005, which
25 provides as follows with respect to slab claims resulting

1 from Hurricane Katrina: NOT PROOFREAD*****

2 "In some situations, there is either very
3 little or nothing left of the insured structure and it
4 will be a fact issue whether the loss was caused by wind
5 or water. Period. In these situations, the insurance
6 company must be able to clearly demonstrate the cause of
7 the loss. I expect and believe that where there is any
8 doubt, that doubt will be resolved in favor of finding
9 coverage on behalf of the insured. In instances where
10 the insurance company believes the damage was caused by
11 water, I expect the insurance company to be able to prove
12 to this office and to the insured that the damage was
13 caused by water and not by wind."

14 Q Okay. And I'm going to ask you some questions
15 about that bulletin in a minute, but it's actually the
16 line below that, if you could read that, that I do want
17 to ask you some questions about.

18 A The "this Bulletin" line sentence --

19 Q Yes, sir.

20 MR. STREETMAN: The next sentence, is that what
21 you're --

22 MR. SCRUGGS: Yes, sir.

23 MR. STREETMAN: -- starting with "this
24 Bulletin"?

25 MR. SCRUGGS: Yes, sir.

1 A****"This Bulletin clearly directs insurers to bear
2 the burden of proving the cause of the loss. If the
3 insurer believes the loss was caused solely by water,
4 then the insurer must be able to prove that the damage
5 was caused by water and not by wind."

6 Q So according to this Bulletin 2005-6 issued
7 September 7, 2006, and this letter of yours --

8 MR. STREETMAN: 2005.

9 BY MR. SCRUGGS:

10 Q I apologize.

11 MR. SCRUGGS: Thank you. And let me -- I'll
12 just start over so I can get the dates right.

13 BY MR. SCRUGGS:

14 Q So according to this bulletin that you
15 reference in your letter, 2005-6, and the letter that you
16 wrote on March 24, 2006, it's the insurers that bear the
17 burden of proving the cause of the loss from Hurricane
18 Katrina.

19 A Yes, sir.

20 Q Okay. Read -- and I'm going to have a couple
21 questions about this -- the last paragraph, first
22 sentence that starts with "I wish."

23 A "I wish to take this opportunity to remind you
24 that State Farm is required to comply with both of the
25 aforementioned Bulletins as it considers slab claims and

1 the wind vs. water issue resulting from Hurricane
2 Katrina. Period."

3 Q Okay. What steps did State Farm -- strike
4 that. What steps did the insurance department take to
5 insure that State Farm complied with the bulletins in
6 this letter that you -- that you sent?

7 A We required State Farm to respond in writing
8 specifically as to how they were handling these claims,
9 not the verbal representations that had previously been
10 committed to the department.

11 Q Anything other than that?

12 A Not at that juncture.

13 Q Well, what about after that juncture or aside
14 from that juncture?

15 A That's what led to the department of insurance
16 examination of State Farm, one of the issues.

17 Q The compliance with these bulletins and this
18 letter?

19 A And their representations to the department of
20 insurance in subsequent letters.

21 Q Okay. Why was this letter written,
22 Mr. Harrell? Why did you write this letter on March 24,
23 2006?

24 A The department on multiple occasions had been
25 given verbal representations by State Farm

1 representatives regarding how they were adjusting
2 claims --

3 Q Can you tell me who -- and I apologize. I
4 don't want to interrupt. Can you tell me who those State
5 Farm representatives were?

6 A I can tell you who I dealt with.

7 Q Sure.

8 A There would have been Webb Howell and Allen
9 McGlynn.

10 Q I started to say Alleen. Okay. Allen. Okay.

11 A In one meeting possibility of the gentleman
12 he's I want to say Joe Fincher. I think that's his name.

13 Q Okay.

14 A And their claim person. His memory slips my
15 mind at the time. I apologize. Handles the claims for
16 Mississippi.

17 Q Terry Blalock?

18 A Yes, sir.

19 Q These were the representatives that were giving
20 oral representations to you?

21 A Yes, sir, at --

22 Q Okay --

23 A -- different times.

24 Q -- and proceed with your answer. And I
25 apologize. You -- the question was why you wrote this

1 letter, and you were talking about State Farm**
2 representatives.

3 A The department prior to -- prior to this letter
4 had received complaints from insureds alleging that State
5 Farm was telling them that they don't owe any damage
6 in -- different versions of the stories, just
7 paraphrasing the -- the consensus of it is that different
8 policyholders all had a similar version that State Farm
9 adjusters or representatives were advising they don't owe
10 any damage for the wind because the house would've washed
11 away later anyway, as it relates to the water surge areas
12 in the lower three counties.

13 Throughout the process, the department would
14 communicate with State Farm representatives regarding
15 that issue. Usually it would be Webb Howell -- at least
16 for myself, Webb Howell or Allen McGlynn in most
17 situations. And they said, "No, that's not how we're
18 doing it. We're apportioning the wind and water damages.
19 We're paying the wind; we're not paying the water." That
20 would go on. Then you'd hear more complaints.

21 The department wanted to make sure exactly how
22 State Farm was doing -- doing their claims. That's what
23 resulted in the letter, to make them put in writing to us
24 how they were handling their wind versus water issues.

25 Q Did you communicate with Allen McGlynn or Webb

1 Howell before sending this letter that you were going to
2 send a letter?

3 A I'm sure I told Mr. McGlynn. It probably
4 wouldn't have been Webb. We had -- we'd have
5 conversations on issues frequently regarding State Farm
6 claims.

7 Q Right. And I guess my question is: Did you --
8 did you tell Mr. McGlynn or Mr. Howell or anybody, "Hey,
9 I'm going to send you a letter the next couple of days
10 regarding y'all's alleged interpretation of the
11 anticoncurrent cause clause, so don't be surprised when
12 you get it" or --

13 A I don't remember. I wouldn't have -- I
14 wouldn't have had a problem telling him the letter is
15 coming.

16 Q Did you -- do you remember you or someone else
17 in the department sending State Farm a draft letter with
18 this in it with -- strike that -- a draft letter, a draft
19 version of this letter, prior to the official letter
20 being sent?

21 A I don't remember.

22 Q Okay. You don't remember one way or the other?

23 A No, sir.

24 Q Okay. And I don't want to misstate your prior
25 testimony, but just so I'm clear for the record and I can

1 transition and move: The only steps the department took
2 at this time to insure that this letter and the bulletins
3 it referenced were complied with was requiring State Farm
4 to respond.

5 A We --

6 Q In writing.

7 A We -- they responded in writing and represented
8 to the department of insurance this is how they're
9 handling it. We had no reason at that time to doubt or
10 question their representations.

11 Q You didn't?

12 A No, sir.

13 Q Notwithstanding all the complaints you were
14 getting?

15 MR. WEBB: Objection to the form.

16 A At that juncture during the late spring and
17 early summer of 2006, the complaints as it related to
18 those issues were dropping off substantially.

19 BY MR. SCRUGGS:

20 Q Oh, they were?

21 A Yes, sir.

22 Q Is there anything I can look at that would
23 evidence the number and frequency and variance of
24 complaints coming into the Mississippi Department of
25 Insurance regarding this clause or anything related to

1 Katrina?***ROUGH DRAFT -- NOT PROOFREAD*****

2 A You can look at the consumer log of all the
3 calls coming in, the consumer services division, and also
4 base it on phone calls the rest of the department was
5 getting.

6 Q Would that log show what the calls were about
7 or just that a call was made?

8 A It would show what calls came in and what files
9 were opened.

10 Q Okay. Is that something that the department
11 would have in its possession somewhere, these logs of
12 calls and complaints coming in?

13 A Yes, sir.

14 Q Okay. Why did you write this letter to Allen
15 McGlynn?

16 A Because he's -- at that time Mr. McGlynn was
17 the attorney I was dealing with on behalf of State Farm.

18 Q Okay. He's an attorney?

19 A Yes, sir.

20 Q Okay. And again, I don't want to misstate your
21 testimony, but is it that you took State Farm's word for
22 it that they were complying with this letter and the
23 bulletins when they responded?

24 MR. WEBB: Objection to form.

25 A Yes, sir.

1 BY MR. SCRUGGS:H DRAFT -- NOT PROOFREAD*****

2 Q Okay.

3 MR. SCRUGGS: Excuse me. Give me one second to
4 get organized.

5 (OFF THE RECORD.)

6 MR. SCRUGGS: Exhibit 20?

7 THE COURT REPORTER: Yes.

8 MR. SCRUGGS: Well, we're going to have to have
9 more than this.

10 THE COURT REPORTER: Did you give me one?

11 MR. SCRUGGS: Did I give you one?

12 THE COURT REPORTER: I don't believe so.

13 MR. SCRUGGS: Well, you're the most important
14 person, so I tell you what, mark -- if you can mark this,
15 and we'll just let them look on. Thank you.

16 **CHECK WAS HEATHER ON RECORD FOR ALL THAT**

17 - - -

18 (Exhibit 20 marked)

19 BY MR. SCRUGGS:

20 Q Okay. Exhibit 20 --

21 THE VIDEOGRAPHER: Zach, put your mike on.

22 MR. SCRUGGS: I took it off. I was trying to
23 fool you. I was trying to test you, make sure you're
24 still -- I need to sit down anyway.

25 MR. WEBB: Excuse me, before you go into this,

1 I notice it doesn't have a Bates number on it. Is this
2 something that's already been produced or --

3 MR. SCRUGGS: No --

4 MR. WEBB: Okay.

5 MR. SCRUGGS: -- it hadn't been produced.

6 MR. WEBB: I just want to lodge an objection to
7 asking the witness questions about a document that hadn't
8 here before been produced but -- to give us an
9 opportunity to review it beforehand. Just note that
10 objection, please.

11 MR. SCRUGGS: Does that go both ways?

12 MR. WEBB: Pardon?

13 MR. SCRUGGS: Does that go both ways?

14 MR. WEBB: I'm not asking him about anything.

15 BY MR. SCRUGGS:

16 Q Exhibit 20 I've handed you is a September 16,
17 2005, letter from the Consumer Federation of America to
18 various insurance commissioners, including George Dale.
19 Have you seen this letter?

20 A I don't recall it.

21 Q Okay. Put that aside.

22 MR. STREETMAN: Can I have that and get a copy
23 made for us since we were -- I'm just going to hand it
24 out. You can keep going.

25 MR. SCRUGGS: Well, why don't you just make a

1 copy of this exhibit that's stamped here, as long as Lori
2 is okay with that.

3 That wasn't so bad, was it?

4 - - -

5 (Exhibit 21 marked)

6 BY MR. SCRUGGS:

7 Q Okay. Exhibit 21, this purports to be a
8 March 31, 2006, letter from State Farm, Mr. Burwell to
9 you. Do you recognize this letter?

10 A Yes, sir.

11 Q And was this in response to your letter of
12 March 24, 2006?

13 A Yes, sir.

14 Q Okay. If you would turn the page, the second
15 page, first --

16 **CHECK HEATHER HERE**

17 MR. SCRUGGS: Yeah, yeah, I'm going to.

18 BY MR. SCRUGGS:

19 Q -- first paragraph starts "in using." Can you
20 read that for me?

21 A Yes, sir. "In using this type of comprehensive
22 review of all information, we are administering claims in
23 accordance with the directives outlined -- outlined by
24 the Mississippi Department of Insurance in Bulletin
25 2005-6 and...2006-2. Period." Second sentence too?

1 Q****No, that's good. Thank you. Well, actually, I
2 skipped something. If you could go to the first page and
3 read where it says -- starts "when evidence."

4 A "When evidence shows that the hurricane winds,
5 parenthesis, or objects driven by those winds, end
6 parenthesis, and rains entering the insured premises
7 caused by the hurricane winds proximately caused damage
8 to the insured property, those losses will be covered
9 under the policy, and this will be the case even if flood
10 damage, which is not covered, subsequently occurred.
11 Period."

12 Q So in those two provisions you read, State Farm
13 seems to be saying that they're complying with the
14 department's -- with your letter and the two bulletins.
15 Is that correct?

16 A Yes, sir.

17 Q Okay. And you took their word that they were
18 doing that.

19 A Yes, sir.

20 Q Okay. Without any kind of follow up to make
21 sure that that was the case.

22 A Yes, sir.

23 Q Okay. Put that aside.

24 MR. SCRUGGS: 22, Exhibit 22 to your
25 deposition.

1 *****ROUGH DRAFT -- - - -ROOFREAD*****

2 (Exhibit 22 marked)

3 BY MR. SCRUGGS:

4 Q This is a March 28, 2006, article by Anita Lee
5 called Approved by accident? Are you familiar with this
6 article?

7 A I -- I don't remember it.

8 Q Okay. And this purports to be a Q and A with
9 Commissioner George Dale. Does that refresh your
10 recollection at all?

11 A No, sir.

12 Q Okay. I'm just going to ask one question about
13 it. If you could turn the page, down at the bottom of
14 page 2...

15 MR. WEBB: And while he's doing that, this is
16 not something y'all have produced too. Is that right,
17 Zach? Or do you know?

18 MR. SCRUGGS: I don't think it was produced to
19 McIntosh. It's a --

20 MR. WEBB: Okay.

21 MR. SCRUGGS: It's an article.

22 BY MR. SCRUGGS:

23 Q I just have one question about this. If you
24 could, read the bottom question and answer on page 2 that
25 starts with "when were concurrent-cause clauses." Can

1 you read that for me, Mr. Harrell?FREAD*****

2 A "When were -- when were concurrent-cause" --

3 Q This --

4 A -- "clauses" --

5 Q -- is the question. I'm sorry.

6 A Yeah.

7 Q Yeah.

8 A Did you say read the question or the answer?

9 Q Read both, please.

10 A I'm sorry. "When were concurrent-cause clauses
11 added to insurance policies, the clauses that say we will
12 not pay the claim if water was involved in causing the
13 damage?"

14 Q Okay.

15 A "We have looked at that. Somewhere over the
16 last 15 years, and I'm not sure that it's in all policy
17 language. I don't know."

18 Q Okay.

19 MR. STREETMAN: You want him to keep reading?

20 MR. SCRUGGS: Yes, sir.

21 A Oh, I'm sorry. I thought that was --

22 BY MR. SCRUGGS:

23 Q That's okay. Yeah, it skips. It skips.

24 A Okay. "Keep in mind, we have three people in
25 our rating division. Period. Companies have hundreds

1 of -- hundreds of type policies, property and casualty
2 policies, that come through that division. Let's hope
3 that there's nothing in these policies that in any way
4 hurts the consumer that we have approved unknowingly.
5 And I'm not saying we approved this unknowingly, but it
6 got in the policy.

7 "Now our job is to interpret what's in the
8 policy in a manner that benefits the consumer, and that's
9 what we're attempting to do."

10 Q All right. And read the last question and
11 answer -- I mean the next one.

12 A "So, you might not have realized how this was
13 going to be interpreted when it was approved?"

14 "Oh, I'm admitting that with just the volume of
15 the number of type policies -- and there are hundreds of
16 them in the course of a year that come through my rating
17 division -- there may be other things that are in
18 policies that would have gotten approved by my department
19 by accident.

20 "That's just the volume of business that they
21 do. Let's hope it's a minimal number of things that were
22 approved."

23 Q And the last. Sorry.

24 A "Are you saying this was an accident?"

25 "I'm not saying this is an accident. I'm just

1 saying probably, in retrospect, based on the effect it's
2 had on this storm, we probably wouldn't have approved it.
3 Period."

4 Q Do you agree with what Mr. Dale said there?

5 A If the department would've known that State
6 Farm -- let me back up here, retract that. The
7 department approved the concurrent causation language
8 with the interpretation that we had that it was that
9 we've discussed multiple times today. State Farm had
10 represented to the department of insurance that it was
11 interpreting it the same way. Hindsight, you know, 20/20
12 is 20/20, don't know what else we could've done to make
13 it, the department's interpretation, any clearer or State
14 Farm's application of it any clearer.

15 Q Well, Mr. Dale says here that based on what he
16 knows now, he wouldn't approve this clause. Is the
17 department undertaking any effort to void this clause or
18 have it modified in the future?

19 MR. WEBB: Objection to form.

20 MR. STREETMAN: Object and instruct him not to
21 answer as that may be a part of the examination.

22 MR. SCRUGGS: Well, I understand -- though I
23 don't agree -- with the objections into the market
24 conduct exam, but I'm not sure that's a valid objection
25 as to what the department plans on doing based on its

1 finding after the fact, so I'm going to ask the question.

2 BY MR. SCRUGGS:

3 Q Has the insurance -- excuse me, has the
4 insurance department undertaken any effort to modify or
5 invalidate this clause based on what you now know as
6 Mr. Dale talked about in Exhibit 22?

7 MR. STREETMAN: Same -- same objection.

8 MR. SCRUGGS: Are you instructing him not to
9 answer?

10 MR. STREETMAN: Yes, sir.

11 MR. SCRUGGS: Okay. Exhibit 23.

12 - - -

13 (Exhibit 23 marked)

14 BY MR. SCRUGGS:

15 Q Exhibit 23 is a judicial opinion by Judge
16 Senter in the case Buente versus Allstate Insurance
17 Company. Are you familiar with this opinion?

18 A I remember reading it when it came out.

19 Q Okay. And is it correct that your letter of
20 March 24, 2006, was sent after this opinion was issued by
21 Judge Senter?

22 A What was the date of the letter?

23 Q The date of the letter was the 24th.

24 A And the date of this document is dated the
25 24th?

1 Q****The opinion appears to have been issued on the
2 24th.

3 A And my letter is dated the 24th? I believe
4 it's the same date, aren't they?

5 Q Did you have knowledge of this opinion before
6 you wrote this letter?

7 A I don't -- I don't think so. I don't remember.

8 Q Turn to page 9 of that opinion for me. If you
9 could, read for me -- and maybe I'll just -- the
10 highlighted part here. I'll just give you my version of
11 Exhibit 23. This is an excerpt from Judge Senter's
12 opinion in Buente versus Allstate.

13 A "I find that Exclusion 23 under Coverages A and
14 B and Exclusion 15 under Coverage C create ambiguities in
15 the context of damages sustained by the insured during a
16 hurricane. Period. These provisions purport to exclude
17 coverage for wind and rain damage, both of which are
18 covered losses under this policy, where any excluded
19 cause of loss, e.g. water damage, is 'the predominant
20 cause of the loss.' I find that these two exclusions are
21 ambiguous in light of the other policy provisions
22 granting coverage for wind and rain damage..." -- keep
23 reading the sentence or stop there?

24 Q The -- to the end of the sentence.

25 A "...and in light of the -- of the inclusion of

1 a 'hurricane deductible' as part of the policy. Period."

2 Q Okay. Do you remember reading that when it
3 came out?

4 A I remember reading the opinion.

5 Q Do you agree with that judicial determination?

6 A I think that's consistent with the department's
7 interpretation that that shouldn't be how the policy is
8 interpreted.

9 Q But -- and I certainly don't want to be
10 argumentative with you, but the judge in that paragraph
11 you just read isn't saying how Allstate is interpreting
12 the policy. He's saying what he -- that he finds the
13 anticoncurrent cause clause in that particular policy
14 ambiguous. Is that a fair assessment?

15 A That's my understanding of what he's saying.

16 Q Okay. He's just saying it's ambiguous.

17 A Yes, sir.

18 Q Okay. Read the bottom part of page 9 there.
19 Starts with "but."

20 A "But it is my opinion, upon a thorough review
21 of the terms of the Allstate policy, that the damage
22 attributable to wind and rain will be covered, regardless
23 of whether a later inflow of water caused additional
24 damage that would be excluded from coverage. Period."

25 Q Is that consistent with how the department

1 interprets*the anticoncurrent cause clause?****

2 A Yes, sir.

3 Q Okay. Thank you.

4 MR. STREETMAN: You done with this?

5 MR. SCRUGGS: Yes, sir. Exhibit 24.

6 - - -

7 (Exhibit 24 marked)

8 BY MR. SCRUGGS:

9 Q Exhibit 24 to your deposition is a Memorandum
10 Opinion by Judge Senter in the case Tuepker versus State
11 Farm. Are you familiar with this opinion?

12 A I remember reading it when it came down.

13 Q Okay. Turn to page 7 for me, and I'll
14 represent to you this opinion -- well, doesn't say when
15 it came down. It was into May, but you'll just have to
16 accept my representation for purposes of this question.

17 If you could, turn to 7 for me and read the
18 highlighted part here and then there. You don't have to
19 read the middle clause.

20 A "I also find that the language in the State
21 Farm policy that introduces subsection 2 of SECTION I
22 dash LOSSES NOT COVERED is ambiguous. The provisions in
23 question purport to exclude from coverage -- coverage
24 losses that would otherwise be covered, such as wind
25 damage, when that covered loss happens to accompany water

1 damage (an excluded loss)." Skip the next section.

2 "I find that this language in the State Farm
3 policy creates ambiguities in the context of damages
4 sustained by the insured during a hurricane. These
5 provisions purport to exclude coverage for wind and rain
6 damage, both of which are covered losses under this
7 policy, where an excluded cause of loss...water damage,
8 also occurs. I find that these two exclusions are
9 ambiguous in light of the other policy provisions
10 granting coverage for wind and rain damage and in light
11 of the inclusion of a 'hurricane deductible' as part of
12 the policy. Period."

13 Q Thank you. So -- and again, is it fair to say
14 that Judge Senter was finding that State Farm
15 anticoncurrent cause clause that we've been talking about
16 a lot today ambiguous?

17 MR. WEBB: Objection to the form.

18 A Yes, sir.

19 BY MR. SCRUGGS:

20 Q Okay. And do you agree with his interpretation
21 of the anticoncurrent cause clause?

22 A Yes, sir.

23 Q And it's consistent with how the department
24 interprets the anticoncurrent cause clause.

25 A Yes, sir.

1 Q****Okay. And this might've been asked before, but
2 so I'm clear and for the record: Has State Farm --
3 strike that. Has the department of insurance done
4 anything to address this opinion with -- in approving or
5 modifying or changing the anticoncurrent cause form in
6 the State Farm policies?

7 MR. WEBB: Objection to form.

8 MR. STREETMAN: Zach, again, I object and
9 instruct him not to answer due to it being part of the
10 ongoing examination.

11 MR. WEBB: I'd also add an objection as counsel
12 knows a decision in this case is on appeal, and I believe
13 counsel is involved in that appeal. The issue is not
14 finally decided.

15 MR. SCRUGGS: Okay. Well, I won't say it.

16 BY MR. SCRUGGS:

17 Q The -- let me ask the question this way: Did
18 State Farm do anything from this date of this opinion,
19 which I'll represent to you was in May 2006, until
20 October 19, 2006, market conduct exam, to modify or
21 invalidate or void the policy provision that Judge Senter
22 just found ambiguous in this opinion?

23 MR. WEBB: Object to the form.

24 A I'm not sure what State Farm did.

25 BY MR. SCRUGGS:

1 Q****I'm sorry. That was my question, and I strike
2 the question. That's a fair answer. Did the department
3 of insurance do anything from the date of this opinion,
4 which I'll represent to you is late May 2006, to
5 October 19, 2006, to invalidate or void or modify this
6 anticoncurrent cause clause provision that Judge Senter
7 held ambiguous?

8 MR. WEBB: Objection to the form.

9 A Matter is -- our attorneys looked at it, and
10 the matter is on appeal.

11 BY MR. SCRUGGS:

12 Q Your attorneys --

13 A On appeal.

14 Q -- looked at it, and the matter is on appeal?
15 I'm not sure I follow you. I apologize.

16 A That ruling, it's my understanding from -- our
17 attorneys reviewed the document, our in-house attorneys
18 reviewed that ruling, and reviewed the language. The
19 matter is on appeal, so I don't think there's a final
20 ruling regarding that particular matter yet.

21 Q But you and the department agree with the
22 interpretation and the ruling that Judge Senter made on
23 that clause. Is that right?

24 A Yes, sir.

25 Q So as the department of insurance, the one that

1 approves*the forms, did you take any action from the time
2 this opinion was issued till this market conduct exam to
3 address this -- this ruling and modify or void the
4 provision?

5 MR. WEBB: Objection to the form.

6 A No, sir.

7 MR. SCRUGGS: Okay. Exhibit 25, the infamous
8 wind/water claim protocol. Sorry, Dan, I'm not getting
9 as good to throw those across as I used to.

10 - - -

11 (Exhibit 25 marked)

12 BY MR. SCRUGGS:

13 Q Mr. Harrell, I marked as Exhibit 25 to your
14 deposition a September 13, 2005, State Farm document that
15 is commonly referred to as a wind/water claim handling
16 protocol. Are you familiar with this document?

17 MR. WEBB: Before you answer that question,
18 Mr. Harrell, I don't know if we picked up on the record
19 the comment of counsel describing this as -- by use of a
20 pejorative word in the introduction statements. I'd
21 object to that as argumentative and move to strike. Go
22 ahead and answer the question.

23 MR. SCRUGGS: Didn't mean to offend you, Dan.

24 A What was the question again, gentleman?

25 BY MR. SCRUGGS:

1 Q****LetUme see if I can remember it.****

2 MR. STREETMAN: I think do you recognize that
3 document.

4 MR. SCRUGGS: Thanks, Jim.

5 A Yes, sir.

6 BY MR. SCRUGGS:

7 Q And this document being the wind/water claim
8 handling protocol.

9 A Yes, sir.

10 Q When did you first see this document?

11 A After the commencement of the department's
12 examination of State Farm.

13 Q The market conduct exam?

14 A Yes, sir.

15 Q Okay. I just have a couple questions about it,
16 if you can turn the page for me. If you could, read for
17 me this provision right here that's, I guess, highlighted
18 and underlined.

19 A "Damage to Property Caused by Flood Waters with
20 available Flood Policy. Where wind acts concurrently
21 with flooding to cause damage to the insured property,
22 coverage for the loss exist -- exists only under flood
23 coverage, comma, if available. Period."

24 Q Thank you. That's inconsistent with the
25 interpretation the department gives the anticoncurrent

1 cause clause. IsDthat correct?ROOFREAD*****

2 MR. WEBB: Objection to form.

3 MR. STREETMAN: That is subject to the
4 examination. Clearly he's testified that he didn't see
5 this until after that. Obviously this document, I think
6 as you characterized it, as the famous or infamous or
7 whatever. And, therefore, with regard to this document,
8 I'm going to instruct him not to answer.

9 MR. SCRUGGS: Well, I don't have a single
10 question about the market conduct exam. My question is
11 simply a document that was generated two years -- excuse
12 me, one year before the market conduct examination
13 started, whether the instruction in this document is
14 consistent with how, A, State Farm represented to the
15 department it was interpreting the provision and, two,
16 the department's own interpretation of the provision.

17 MR. WEBB: Objection to the form of the
18 question.

19 BY MR. SCRUGGS:

20 Q Can you answer any of those questions?

21 MR. STREETMAN: I think he can, if I can -- if
22 I can interject. I think if your question is, is the
23 language -- without comment from him other than that, but
24 it is language here on -- that he just read consistent
25 with the department's interpretation and that's the

1 end -- if that's the question, I think yes, you can
2 answer that --

3 MR. SCRUGGS: That's one part of the question.

4 MR. STREETMAN: Okay.

5 BY MR. SCRUGGS:

6 Q So let me -- I'm going to read it so we can
7 keep the record consistent. This provision -- you just
8 read it, I don't want to misstate it -- "Damage to
9 Property Caused by Flood Waters with available Flood
10 Policy. Where wind acts concurrently with flooding to
11 cause damage to the insured property, coverage for the
12 loss exists only under flood coverage, if available." Is
13 that instruction inconsistent with how the department
14 interprets the anticoncurrent cause clause?

15 MR. WEBB: Objection to the form.

16 MR. STREETMAN: You can answer that.

17 A That is not consistent with the department's
18 interpretations.

19 BY MR. SCRUGGS:

20 Q Okay. Next question. Is that provision I just
21 read and that you read previously inconsistent with what
22 State Farm representatives represented to you how they
23 were interpreting that clause prior to October 19, 2006?

24 MR. WEBB: Objection to the form.

25 MR. STREETMAN: You can answer that question.

1 A****ThatGis not consistent with what State Farm
2 representative represented to the Mississippi Department
3 of Insurance.

4 BY MR. SCRUGGS:

5 Q Thank you. And you would agree with me that
6 that would be an improper interpretation of the
7 anticoncurrent cause clause.

8 MR. WEBB: Objection to the form.

9 MR. STREETMAN: I -- I think that he's answered
10 that question, and I'm uncomfortable with it going beyond
11 that as it may touch upon findings in the examination. I
12 think he's testified that's not consistent with the
13 department's interpretation.

14 MR. SCRUGGS: So you're going to instruct him
15 not to answer that one?

16 MR. STREETMAN: I am.

17 MR. SCRUGGS: Okay.

18 MR. STREETMAN: I mean, I think he's answered
19 it.

20 BY MR. SCRUGGS:

21 Q Okay. One more question on this. Up above
22 where it says "Damage Caused by Excluded Water," if you
23 could read for me that title and then that provision.

24 A "Damage Caused by Excluded Water. When the
25 investigation indicates that the damage was caused by

1 excluded water and the claim investigation does not
2 reveal independent windstorm damage to separate portions
3 of the property, there is no coverage available under the
4 homeowners policy pursuant to the following language in
5 Section 1 Losses Not Insured."

6 Q Okay. You would agree with me, Mr. Harrell,
7 that in the case of a slab, for instance, there's often
8 not any independent windstorm damage available.

9 MR. WEBB: Objection to the form.

10 A It'd be a case-by-case scenario. Each case
11 would stand on its own facts.

12 BY MR. SCRUGGS:

13 Q Okay. Well, I appreciate that, but the
14 question is: In a slab case there's often not any
15 independent windstorm damage to separate portions of the
16 property that can be determined, would there not?

17 A Again, I'd have to look -- it'd be a
18 case-by-case adjustment of each claim.

19 Q You'd agree with me that in a claim
20 investigation process it'd be important to determine
21 whether wind caused any damage to a structure before the
22 water got there, would it not?

23 MR. WEBB: Objection to form.

24 A Yes, sir.

25 BY MR. SCRUGGS:

1 Q****Okay. And if wind did cause damage to a
2 structure before water got there, it'd be covered
3 regardless of what water did later.

4 MR. WEBB: Objection to form.

5 A The damage caused by the preceding wind.

6 BY MR. SCRUGGS:

7 Q Uh-huh.

8 A Yes, sir.

9 Q Okay. I think I'm finished with that one.

10 A Are you almost at a stopping point?

11 Q Let me -- I have one more -- when I say line of
12 questions, just a couple questions, and then we'll be at
13 a stopping point. Is that okay with you?

14 A That's fine.

15 Q You can -- I'm not going to tell you you can't
16 take a break.

17 MR. STREETMAN: Stopping point as in you're
18 going to be done with your questions or a stopping point
19 to --

20 MR. SCRUGGS: Stopping point to bathroom,
21 coffee break kind of stuff.

22 MR. STREETMAN: Okay.

23 MR. SCRUGGS: Sound good?

24 MR. STREETMAN: Yeah. How long do you expect
25 to go --

1 you read for any bottom paragraph at the bottom of page
2 8, starts with "this result."

3 A "This result, and State Farm's position, is
4 supported by the State Farm homeowners policy issued to
5 Plaintiffs. See homeowners policy attached as
6 Exhibit "1", Section I-Losses Not Insured, par. 2." The
7 whole paragraph or just that one --

8 Q Yes, sir.

9 A "The portion of the policy contained in Section
10 I-Losses Not Insured Paragraph 2, is commonly referred to
11 as the 'anti-concurrent causation' language. It is clear
12 that the policy contemplates a situation where there may
13 be two or more losses to property. Pursuant to the terms
14 and conditions of the policy, irrespective of the timing
15 of the losses, or the number of said losses, if but one
16 of those causes of loss is excluded pursuant to Paragraph
17 2, then the entire loss is excluded. Here, the reality
18 of Plaintiffs' allegations mean that even if Plaintiffs
19 were successful in proving that a specific portion of
20 their property was damaged by wind to a particular degree
21 prior to the arrival of...water, because water was in the
22 chain of causation of the destruction of the property,
23 including that portion damaged by wind, then the loss is
24 not covered."

25 Q Okay. Two questions about what you just read.

1 Is what you just read inconsistent with how the insurance
2 department interprets the anticoncurrent cause clause?

3 MR. WEBB: Before you answer that question, I
4 want to object on two grounds. No. 1 is you've given him
5 incomplete information related to the context of what the
6 claim is made here because the plaintiffs in this case
7 were claiming only a total loss and not a partial loss,
8 and they were using the partial loss in an attempt to
9 justify payment for the total loss but not for the
10 partial loss. Entirely different context than which
11 we're talking about here today. It's not fair to ask the
12 witness that question.

13 Additionally, to the extent that you're making
14 a representation that this is a position taken on behalf
15 of State Farm, it's inconsistent with a position stated
16 in the correspondence of March 31st. I think you full
17 well know that that's not the case. But I'll just let it
18 go at that.

19 MR. STREETMAN: Let me just make a comment for
20 the record, because we're in new waters for me and him.
21 The way I understand your question is not him to comment
22 on the pleading or the validity of the pleading or the
23 legal conclusions but just whether or not what he just
24 read is consistent with what we've been talking about all
25 afternoon with the department of insurance. Is -- is

1 that correct?UGH DRAFT -- NOT PROOFREAD*****

2 MR. SCRUGGS: That's correct.

3 MR. STREETMAN: Okay.

4 BY MR. SCRUGGS:

5 Q So the question --

6 MR. WEBB: And my objection is that he can't
7 answer that question properly without understanding the
8 full nature of the claims made by those claimants in that
9 case.

10 MR. SCRUGGS: And I understand, and your
11 objection is noted and --

12 MR. STREETMAN: And I'm going to allow him to
13 answer it under that limited parameters that we just
14 talked about.

15 MR. SCRUGGS: And what we'll do is, I'm going
16 to ask the question again to keep the record consistent,
17 and you just state that you objected based on the grounds
18 you just objected to.

19 MR. WEBB: Yeah, that's fine.

20 MR. SCRUGGS: Sound good?

21 MR. WEBB: So the record will show it.

22 MR. SCRUGGS: Yeah, the record will definitely
23 show your objection.

24 BY MR. SCRUGGS:

25 Q Question: The provision you just read in

1 Exhibit 26, which is a motion filed by State Farm, is
2 that provision consistent with the department of
3 insurance interpretation of the anticoncurrent cause
4 clause?

5 A Let me answer it with what I -- what I think
6 the document says, because I'm not sure -- the way I read
7 this -- this paragraph is that you're saying if you had
8 wind and water, then you can exclude the whole loss, if
9 they came together. If that's what that is saying, then
10 that's -- conflicts with the department's interpretation
11 of anticoncurrent causation.

12 Q Okay. Well, and I don't want to be
13 argumentative, and I'm really going to -- I'm going to
14 move on after this one question. But you answered the
15 question if that's what that means. You just read the
16 provision.

17 A Yeah.

18 Q Is the provision you just read, what you read,
19 consistent with how the department of insurance construes
20 the anticoncurrent cause clause that it references?

21 MR. WEBB: Note my objections.

22 MR. STREETMAN: And rather than provision, can
23 we say paragraph because provision --

24 MR. SCRUGGS: I'm sorry, the paragraph in the
25 motion.

1 A****Now I got totally confused. The --**

2 BY MR. SCRUGGS:

3 Q You can read it again if necessary.

4 A My understanding of the question is, is that
5 consistent with the department's interpretation of the
6 anticoncurrent causation. Was that the basis of your
7 question?

8 Q (Nods head affirmatively.)

9 A My question is: It is not.

10 Q Okay. Second question: Is what you just read
11 in this State Farm motion consistent with the
12 representations that State Farm made to you and the
13 department prior to October 19, 2006?

14 MR. WEBB: Same objections.

15 A No.

16 BY MR. SCRUGGS:

17 Q Okay. Thank you. You can put that away.
18 Okay.

19 MR. WEBB: Did you mark this as an exhibit?

20 MR. SCRUGGS: I did. Somebody did.

21 THE COURT REPORTER: Twenty-six.

22 MR. STREETMAN: I bet she did.

23 MR. SCRUGGS: Okay. Exhibit 27.

24 - - -

25 (Exhibit 27 marked)

1 BY MR. SCRUGGS:H DRAFT -- NOT PROOFREAD*****

2 Q Exhibit 27 to your deposition purports to be a
3 Mississippi Insurance Department Bulletin No. 2005-6
4 filed September 7, 2005. Are you familiar with this
5 document?

6 A Yes, sir.

7 Q Okay. Who drafted this document?

8 A It was a combination effort involving myself
9 and others at the department.

10 Q What others?

11 A Probably Mark Haire would have assisted in the
12 drafting of this document and other lawyers within the
13 legal division.

14 Q Okay. Why was this bulletin written?

15 A One second. Let me read it real quick to
16 refresh my memory. I apologize.

17 Q Sure. Go ahead.

18 A There were -- early on in the days **CHECK
19 HEATHER** -- and early on in the days following the storm
20 everybody was aware of the feeling, housing issues and
21 all those wonderful -- those tragedies that everybody
22 down there was being subjected to. You know, in the days
23 following the storm, you know, there may have been a
24 reason why somebody couldn't have their claim adjusted a
25 day, two days, three days after the storm. But by

1 September that process should've been substantially
2 addressed. You still had lots of, you know,
3 inconveniences, and we understood that, from everybody,
4 from the insurer's perspective, somebody trying to
5 inspect the property, someone trying to still do recovery
6 issues, whatever the case may be. But we were also
7 receiving complaints from consumers regarding water
8 damage, regarding the wind versus water and the -- being
9 able to inspect the premises. That's what resulted in
10 this, to make sure -- they issued it to make sure the
11 companies realized that in our department's position that
12 they needed to fully inspect the property before a
13 coverage decision is made. You can't just blanketly say,
14 "You're in a water surge area; therefore, we're not
15 paying any claims in that area."

16 Q Okay. So this provision was drafted to make
17 sure insurance companies weren't doing that kind of
18 adjustment that you described?

19 MR. WEBB: Objection to form.

20 A Yes, sir.

21 MR. STREETMAN: You can answer.

22 A Yes, sir.

23 BY MR. SCRUGGS:

24 Q Okay. And I promise the reading will -- is
25 about to stop, but if you could, read to me that

1 paragraph that starts with "in some situations."

2 A "In some situations, there is either very
3 little or nothing left of the insured structure and it
4 will be a fact issue whether the loss was caused by wind
5 or water. In these situations, the insurance company
6 must be able to clearly demonstrate the cause of the
7 loss. I expect and believe that where there is any
8 doubt, that doubt will be resolved in favor of finding
9 coverage on behalf of the insured. In instances where
10 the insurance company believes the damage was caused by
11 water, I expect the insurance company to be able to prove
12 to this office and the insured that the damage was caused
13 by water and not by wind."

14 Q Okay. So under this bulletin, if an insurance
15 company cannot clearly demonstrate the cause of the loss
16 was water, then the department's directing the company to
17 pay that claim. Is that fair to say?

18 MR. WEBB: Objection to the form of the
19 question.

20 A Yes, sir.

21 BY MR. SCRUGGS:

22 Q Okay. And similarly, according to this
23 bulletin, the department's saying that if the insurance
24 company has any doubt as to what caused a loss in
25 Katrina, the department's directing the company to pay

1 that claim. Is that right?OT PROOFREAD*****

2 MR. WEBB: Same objection.

3 A If they can't prove that it was a -- excuse
4 me -- excluded peril, then they need to pay it.

5 BY MR. SCRUGGS:

6 Q Right. And if -- and furthermore, is it fair
7 to say that this document is saying that if the insurance
8 company has any doubt as to what caused the loss, it
9 should pay the claim?

10 A If they can't prove it, then they need to pay
11 it.

12 Q No -- right. And I'm -- you testified to that.
13 My question is somewhat different, and I'm just reading
14 from this provision. This provision says, "I expect and
15 believe that where there is any doubt, that doubt will be
16 resolved in favor of finding coverage on behalf of the
17 insured." So my question is: Is it bulletin directing
18 the insurance companies that if they have any doubt as to
19 the cause of a loss, they should pay the claim?

20 A Yes, sir.

21 Q And pursuant to this bulletin that you drafted
22 with Mark Haire and others, would you agree with me that
23 under this directive, if an insurance company had an
24 engineering report that said a policyholder's loss was
25 caused by wind, then it should pay that loss, should it

1 not? *****ROUGH DRAFT -- NOT PROOFREAD*****

2 MR. WEBB: Objection to the form of the
3 question.

4 A Yes, sir.

5 BY MR. SCRUGGS:

6 Q Okay. And that would be true even if it got
7 another report that said damage was caused by water.

8 MR. WEBB: Same objection.

9 A You'd have to look at each -- each report and
10 find out why they're different.

11 BY MR. SCRUGGS:

12 Q Okay. But generally, you'd agree with me that
13 if an engineering -- if an insurance company had a
14 engineering report that said the damage was caused by
15 wind, it should pay that claim.

16 A That's --

17 MR. WEBB: Same objection.

18 A That's part of the adjusting process. You look
19 at the adjusters, look at the engineer. All those are
20 factored in the company's decision to substantiate their
21 case as to why it was wind or why it was water.

22 BY MR. SCRUGGS:

23 Q Right. And I don't know if that's exactly the
24 answer to my question, but that's okay. We'll get there.

25 You would agree with me that if a company had a

1 engineering report that said the damage was caused by
2 wind, then there's at least some doubt as to what caused
3 the loss, and that claim should be paid.

4 MR. WEBB: Objection to form.

5 A Was there anything else -- I mean, you'd have
6 to look at the entire file. If there's nothing else to
7 rebut that. If they have another engineer, another
8 adjuster that had a conflicting opinion, if that was what
9 was in the file, then they need to -- my thought process
10 is they need to pay the claim.

11 BY MR. SCRUGGS:

12 Q Okay. Even if there is a conflicting report?

13 MR. WEBB: Objection to form.

14 A If you have conflicting expert opinions, you
15 need to address -- address those or find out why, get
16 them resolved.

17 BY MR. SCRUGGS:

18 Q I understand. But if there were conflicting
19 engineering reports on the cause of a loss, shouldn't the
20 insurance company pay that loss?

21 MR. WEBB: Objection to form.

22 BY MR. SCRUGGS:

23 Q From the insurance company. The insurance
24 company has in its possession and pursuant to its
25 direction two engineering reports, and they conflict on

1 the cause of the loss. One says it's excluded, the other
2 says it's covered. That claim should be paid, should it
3 not?

4 MR. WEBB: Objection to form.

5 A I think they need to get the conflicting
6 opinions addressed and resolved.

7 BY MR. SCRUGGS:

8 Q Okay. Well, the fact that they're conflicting
9 opinions would indicate to you that there was some doubt
10 as to the cause of loss, would it not?

11 MR. WEBB: Objection to form.

12 A Yes, sir.

13 BY MR. SCRUGGS:

14 Q Okay. What kind of punishment would a company
15 receive if it violated the directive that you authored
16 with other people in Bulletin No. 2005-6?

17 MR. WEBB: Objection to form.

18 BY MR. SCRUGGS:

19 Q What are the consequences of not following this
20 bulletin?

21 MR. WEBB: Same objection.

22 A There -- if the company is not following the
23 bulletin's regulations or statutes -- I mean, this is a
24 bulletin issued. The bulletins may not carry the weight
25 of law, just like attorney general opinions may not carry

1 the weight of law. The department relies on this
2 document to insure that they're being paid pursuant to
3 this bulletin. If they're not, then that's something the
4 department -- excuse me -- would address, whether it's in
5 finding out why they were not and, if they're not, taking
6 whatever disciplinary action the commissioner deems best,
7 whether that's penalties, whether that's making them
8 reopen claims, whether that's fines, what that's
9 suspension of licensing -- licenses. It is a myriad of
10 options and penalties that could be there.

11 BY MR. SCRUGGS:

12 Q Okay. Well, what steps has the department of
13 insurance taken to insure that this bulletin is complied
14 with?

15 A Back in 2006 we addressed earlier the letter
16 dated March -- I don't have it in front of me -- March
17 something to Allen McGlynn to insure they were complying
18 with it, and they responded back a few days later
19 insuring us they were complying with this bulletin. And
20 the department became concerned in -- later in 2006
21 regarding whether they were or were not, and that's one
22 of the reasons the department of insurance called the
23 examination.

24 Q The market conduct examination?

25 A Yes, sir.

1 Q****Okay. Has the insurance department filed any
2 kind of amicus brief in the appeal of Tuepker versus
3 State Farm, the opinion you just read that held that the
4 anticoncurrent cause clause is ambiguous?

5 A No, sir.

6 Q Has it sought to intervene in any way or be
7 heard on its interpretation -- it being the department of
8 insurance interpretation -- of the anticoncurrent cause
9 clause before the Fifth Circuit?

10 A No, sir.

11 Q And why is that?

12 A The department normally doesn't file amicus
13 briefs in those matters. We haven't -- we haven't done
14 so. We normally don't do so.

15 Q Okay. Well, the department of insurance
16 construes and interprets the attorney -- excuse me, the
17 anticoncurrent cause clause in a manner that you've
18 testified to at length today. Is that correct?

19 A Yes, sir.

20 Q All right. And you do understand that the
21 interpretation of the anticoncurrent cause clause is up
22 on appeal to the Fifth Circuit in at least one case and
23 perhaps several others.

24 A Yes, sir.

25 Q And neither you or anyone in the department

1 felt it necessary to voice to the court, "Hey, this is
2 how the insurance department interprets this provision
3 that is in litigation and up on appeal"?

4 MR. WEBB: Objection to the form.

5 A No, sir.

6 BY MR. SCRUGGS:

7 Q Okay. Has there been talk about trying to be
8 heard before the Fifth Circuit on how this clause should
9 be properly interpreted?

10 A There were discussions with the lawyers with
11 the department regarding what the department can and --
12 could and could not do regarding that issue.

13 Q And what was the determination?

14 A To not take any action at that time.

15 Q Okay. And I don't want to misstate your prior
16 testimony, but would you agree with me that one of the
17 jobs of the department of insurance is to protect the
18 rights of the policyholders in the insurance contract
19 process?

20 A Yes, sir.

21 Q And to insure that the policy provisions and
22 forms that you approve are interpreted fairly and
23 properly from the point of view of the policyholder.

24 A Yes, sir.

25 Q All right. And with those understandings, the

1 department of insurance hasn't tried to file anything
2 with the Fifth Circuit to let the Fifth Circuit know how
3 this clause that's at issue should be interpreted.

4 MR. STREETMAN: He's testified they haven't
5 filed anything.

6 MR. SCRUGGS: Okay. Just making sure I'm clear
7 for the record.

8 MR. STREETMAN: It can't be any clearer than
9 they haven't filed anything.

10 BY MR. SCRUGGS:

11 Q Okay. Do you not think from you being the
12 deputy commissioner of the department that it's important
13 for the department to be heard on this issue?

14 A The department has made it very clear our
15 position regarding that interpretation. We've issued
16 bulletins, we've issued -- you may go back and you may
17 even find press releases. There's -- there's articles in
18 the paper regarding the department's position on this
19 issue. I think everybody is very clear on the
20 department's position on this issue.

21 Q And I understand and -- but you're a lawyer.
22 Right?

23 A Yes, sir.

24 Q And the only way things get to the attention of
25 a court or a court of appeal is through pleadings. Is

1 that fair to say?DRAFT -- NOT PROOFREAD*****

2 A Yes, sir.

3 Q All right. But -- and just clear for the
4 record -- I don't want to keep on asking this -- the
5 department of insurance hasn't filed anything stating its
6 interpretation in court filings with the Fifth Circuit or
7 the Southern District or any other court.

8 A We would not have filed anything in the
9 Fifth --

10 MR. STREETMAN: Did -- have you or haven't
11 you --

12 A No.

13 MR. STREETMAN: -- filed anything?

14 A No, we have not filed anything.

15 BY MR. SCRUGGS:

16 Q Thank you.

17 MR. STREETMAN: Are you through with this one?

18 MR. SCRUGGS: Yeah, yeah. Thanks. Try to
19 short circuit some of this.

20 (OFF THE RECORD.)

21 BY MR. SCRUGGS:

22 Q You're correct --

23 MR. SCRUGGS: I'm sorry, back on the record.

24 BY MR. SCRUGGS:

25 Q I apologize for that, Mr. Harrell.

1 *****You're aware that sometime earlier this year
2 State Farm announced that it was going to stop writing
3 new homeowner's business on the -- in the state of
4 Mississippi?

5 A Yes, sir.

6 Q Okay. And what was the reasons they gave for
7 that decision?

8 A The legal environment in the state of
9 Mississippi.

10 Q Can you be more specific?

11 A Court cases, specifically the attorney general.

12 Q Well, let's talk about court cases for a
13 minute. What court cases?

14 A They didn't specify. I assume the ones coming
15 out of south Mississippi.

16 Q Okay. The Broussard decision?

17 A (Indicating).

18 Q You don't know? Did they reference the
19 opinions in Tuepker or Broussard as a reason for -- for
20 pulling out?

21 A Don't recall referencing any -- any one case.

22 MR. SCRUGGS: Okay. Exhibit 27? Just a quick
23 question, and we can move along. We got one more. You
24 get a highlighted portion, Dan.

25 MR. WEBB: All right.

1 *****ROUGH DRAFT -- - - -ROOFREAD*****

2 (Exhibit 28 marked)

3 BY MR. SCRUGGS:

4 Q This is an article titled Proposed rate hike on
5 hold written by Natalie Chandler on May 13, 2007. Are
6 you familiar with this article?

7 A Yes, sir.

8 Q Okay. If you can, turn to the second page of
9 it and read to me the highlighted part right there.

10 A Okay.

11 MR. STREETMAN: Why don't you read by Zach's --

12 MR. SCRUGGS: Yeah, that might be easier.

13 A "To begin writing again in Mississippi, State
14 Farm needs legal clarification on its policies, Supple
15 said. The company and other insurers say their policies
16 cover wind damage but not water, and that the policies
17 exclude damage that could have been caused by a
18 combination of both. Period."

19 Q And the next one. I'm sorry.

20 A The next highlighted section?

21 Q No, the next --

22 A That one?

23 Q This right here. I apologize. I didn't
24 highlight it.

25 A "The company is appealing a case in which a

1 federal judge ruled State Farm must prove which element
2 caused a home's destruction. Period."

3 Q Okay. This paragraph right here that you just
4 read, that's consistent with the insurance bulletin you
5 issued 2005-6, is it not?

6 MR. WEBB: Objection to form.

7 A Yes, sir.

8 BY MR. SCRUGGS:

9 Q All right. Read to me the highlighted
10 paragraph after that provision.

11 A "'That's an example of something we need to
12 clear up to move forward,' Supple said. 'If we don't get
13 that, then it will be a consideration of -- then it will
14 be a consideration of how certain that makes doing
15 business in the state.'"

16 Q Okay. So -- and again, from reading this
17 article and the provisions you just read, State Farm is
18 appealing a provision that requires it to prove which
19 element caused the loss. Is that fair?

20 MR. WEBB: Objection to --

21 A Yes --

22 MR. WEBB: -- the form of the question.

23 A Yes, sir.

24 BY MR. SCRUGGS:

25 Q Okay. But that ruling is consistent with the

1 insurance department's bulletin that you co-authored
2 2005-6, is it not?

3 MR. WEBB: Objection to form.

4 A Yes, sir.

5 BY MR. SCRUGGS:

6 Q Okay. So is it fair to say that State Farm is
7 saying that it's not going to write new homeowners
8 coverage until that interpretation is overturned?

9 MR. WEBB: Objection to the form --

10 MR. STREETMAN: I don't think he can testify as
11 to what State Farm is saying. Again, it's -- you know,
12 this is a newspaper article. It says what it says. He's
13 testified that this other part is consistent with the
14 department of insurance's -- I just don't think -- and
15 now I'm going to instruct him not to answer what State
16 Farm's position is or isn't. I'm sure there's State Farm
17 officials that you're going to ask that of.

18 MR. SCRUGGS: I'm sure -- I'm sure there are
19 and I will.

20 BY MR. SCRUGGS:

21 Q But you just read a direct quote from a State
22 Farm official that purports to say that they're not going
23 to write new business until that interpretation is
24 voided. And my question is: Is that how you read it?

25 MR. STREETMAN: You can --

1 *****MR. WEBB: Objection to form.*****

2 MR. STREETMAN: -- answer that. Is that how
3 you read it?

4 A Is that how I read the quote?

5 BY MR. SCRUGGS:

6 Q Yeah.

7 A Yes, sir.

8 Q Okay. So you'd agree with me that it's not
9 fair to just blame lawsuits or the courts for not writing
10 new policies on the coast, wouldn't --

11 MR. STREETMAN: I'm not going to have him
12 testify to what's fair or isn't fair and instruct him not
13 to answer.

14 BY MR. SCRUGGS:

15 Q Okay. Would that, in your opinion, as deputy
16 commissioner of insurance be a proper reason to stop
17 writing insurance on the coast or the state of
18 Mississippi?

19 MR. WEBB: Objection to the form.

20 A If what would be a proper reason?

21 BY MR. SCRUGGS:

22 Q Not writing new coverage until the
23 interpretation that the court and the department of
24 insurance has promulgated is overturned.

25 MR. WEBB: Objection to the form.

1 A****I don't think they have to have -- there's no
2 statute mandating they have to write anywhere in the
3 state of Mississippi.

4 BY MR. SCRUGGS:

5 Q No, I understand.

6 A They don't have to have a reason.

7 Q I understand. But as the deputy commissioner
8 of insurance, you can certainly make a determination on
9 what a proper or improper reason for a company that
10 you're regulating to not write new coverage, could you
11 not?

12 MR. WEBB: Objection to form.

13 A I'm not aware of any statute that spells out
14 the reasons they have to write it, so --

15 BY MR. SCRUGGS:

16 Q Okay. So they can just do what they want?

17 MR. WEBB: Objection to form.

18 BY MR. SCRUGGS:

19 Q Mr. Harrell?

20 MR. STREETMAN: I'm instructing him not to
21 answer that.

22 BY MR. SCRUGGS:

23 Q As deputy commissioner of insurance you can't
24 answer that question?

25 MR. WEBB: Objection to form.

1 *****MR. STREETMAN: On -- on my advice he can't.

2 BY MR. SCRUGGS:

3 Q Okay. Has State Farm or any insurance company
4 or anyone affiliated with an insurance company ever
5 communicated to you or the commissioner, directly or
6 indirectly, that it would stop writing in this state
7 unless the department's claim handling directives were
8 revoked or relaxed?

9 A No.

10 MR. SCRUGGS: Okay. Y'all will be pleased to
11 know that I think I'm finished with the ACC questions,
12 and I just have one or two more lines of inquiry. So I
13 think we'll be through by 5:00.

14 BY MR. SCRUGGS:

15 Q Okay. Shifting gears. The mediation program.

16 A Yes, sir.

17 Q Okay. The first mediation program that I
18 believe was instituted by the department in late 2005.
19 Is that correct?

20 A Sometime in the latter part of 2005.

21 Q Okay. Did the department have any
22 communications or dialogue with the insurance industry
23 before it set up that mediation program?

24 A We told them it was coming.

25 Q Did you ask for a dialogue or input?

1 A****Not to my knowledge.PROOFREAD*****

2 Q Okay. Dealing with that -- did that first
3 mediation program that was instituted in late December of
4 2005, is that still ongoing?

5 A Yes, sir.

6 Q Okay. And I understand and -- at least I think
7 I understand, correct me if I'm wrong, there's a separate
8 mediation structure that the department agreed to with
9 the State Farm in March of this year or was that the
10 same --

11 A No, sir, there's no separate mediation program.

12 Q It's the same.

13 A Yes, sir.

14 Q Okay. So the mediation -- so for purposes of
15 the question, so I'm clear: There's one insurance
16 department mediation program, and it was what was
17 constituted in December 2005.

18 A No, sir. There's two mediation programs.

19 Q Oh, okay.

20 A You have the one that's being conducted on the
21 non- -- what we call the non-litigation claims conducted
22 in Hattiesburg where Southern Miss is donating us office
23 space. That was implemented sometime in the latter part
24 of 2005.

25 Q Okay.

1 A****Sometime after that -- I want to say sometime
2 in 2006. I don't have the dates in front of me -- Judge
3 Senter contacted the department and asked us would we
4 come visit with him to set up a mediation program for his
5 lawsuits because he had seen and heard lots of great
6 things about the mediation program. So we went down
7 there and met with Judge Senter and talked to him about
8 the mediation program in Hattiesburg, how it works and
9 explained it to him. At a juncture he asked us would we
10 set one up for him and the lawsuits filed in his court,
11 and we did so.

12 Q When did -- Judge Senter initiated that -- that
13 meeting with you and the department?

14 A Yes, sir.

15 Q When was that meeting initiated?

16 A I don't know off the top of my head.

17 Q Well, help me out. You testified 2006. Was it
18 summer of 2006?

19 A I don't know off the top of my head without
20 looking at the records when we implemented the -- or
21 called it the litigation mediation program. If you have
22 the dates of when that was implemented, then it was
23 sometime prior to that, probably 30, 45 days before that
24 is when the process started.

25 Q Do you have any way of getting to me when you

1 had that initial meeting with Judge Senter about
2 implementing the insurance department's mediation program
3 to litigated claims in his court?

4 A I can check my records, and I can check with
5 Judge Senter and ask him when did we first meet. He may
6 have a better record than I do, but I'll be glad to
7 check.

8 Q And I don't want you to guess or speculate, but
9 I want -- I'm trying to get some area in here of
10 approximation. Would it have been the summer of 2006?

11 A I don't know when -- I don't know when we
12 started the -- I don't remember off the top of my head
13 when we started the litigation mediation program. If you
14 have the dates of when that regulation went into effect,
15 then it would stand to reason that 35 to 40 -- 30 or 45
16 days before that is when we started the communications
17 with Judge Senter and his law clerks regarding his
18 request to implement a mediation program for him.

19 Q Okay. The regulation, there was a regulation
20 issued by the insurance department that put that in
21 effect?

22 A That's my understanding, yes, sir.

23 Q Okay. Kind of like a bulletin that we were
24 going through before?

25 A Yes, sir.

1 Q****Okay. Do you know when that -- you don't know
2 when that bulletin was issued?

3 A No, sir.

4 Q Okay. But that's something I could find by
5 going to the insurance department's Web site?

6 A Yes, sir.

7 Q Okay. And that bulletin would've been issued
8 after your meeting with Judge Senter of his insistence.

9 A Yes, sir.

10 Q Okay. Who called you -- how did -- tell me --

11 MR. WEBB: Excuse me. I'm sorry. Did you say
12 at his assistance?

13 MR. SCRUGGS: Insistence.

14 MR. WEBB: Insistence. Okay.

15 MR. SCRUGGS: I don't know if you got that, but
16 that's what I meant to say. Maybe both, I don't know.

17 BY MR. SCRUGGS:

18 Q The -- how was the initial conversation
19 instituted? Who called you or who called who?

20 A Initially, I got a phone call from a state
21 representative who's a lawyer. And I apologize. My
22 memory -- should be on the westerly side of the state.

23 Q Be on the what?

24 A The westerly side of the state. She's a state
25 representative that's also a lawyer.

1 Q****Upshaw?DRAFT -- NOT PROOFREAD*****

2 A Yes, sir, Jessica Upshaw something. She has a
3 hyphenated name. I apologize for her last name. She
4 called and said, "Lee, call Judge Senter. Here's his
5 cell number." Well, I don't make a preference --
6 practice of calling federal judges. I never met Judge
7 Senter prior to that time. I said, "Will you give me
8 some more numbers?" "Here's his two law clerks; call
9 them, then." I said okay, I feel more comfortable
10 calling the law clerks versus a federal judge.

11 Q Who were the law clerks?

12 A Ronnie Cochran and Jerry -- Jerry Reed.

13 Q Okay. Did you know any of those gentlemen
14 prior to that call?

15 A Never heard -- never had met them, never heard
16 of them.

17 Q Okay. Proceed.

18 A We -- I contacted them, and we spoke over the
19 telephone. I don't recall exactly who all was in the
20 initial telephone -- telephonic discussions. And the
21 gist of it is when could we come see the judge. You
22 know, when a judge asks you to come see him, you tend to
23 go see him when he wants you to see him. So we quickly
24 rearranged our calendar.

25 The commissioner and I and maybe one of our

1 attorneys, I can't recall for sure, went down and visited
2 with Judge Senter in his chambers and his law clerks and
3 explained the program, how it worked, what it involved,
4 and went through the -- you know, the whole program. And
5 then we subsequently had subsequent follow-up meetings
6 with him and some of our lawyers in telephonic
7 conversations and ultimately brought in the American
8 Arbitration Association who was running the program for
9 us in Hattiesburg to also run this program for Judge
10 Senter.

11 Q Okay. How many different meetings did you have
12 with Judge Senter and his law clerks on this subject?

13 A I couldn't tell you. I don't recall. There
14 weren't twenty, but they were greater than -- there was,
15 you know, three, four, five, six, you know, multiple
16 telephone conversations.

17 Q Tell me about what was generally discussed in
18 these meetings.

19 A The judge wanted to learn how the program
20 worked, and he wanted to find ways to get these lawsuits
21 resolved. That was the -- you know, that's shortened,
22 but that was the gist of all the conversations is to how
23 he could do that.

24 Q Well, how did you tell him -- what did you tell
25 him about how the mediation program worked?

1 A****I explained -- I don't know if you tell Judge
2 Senter anything, but I explained to him how the mediation
3 worked in Hattiesburg, and we walked through it, you
4 know.

5 Q Well, walk through it with me.

6 A Okay. The -- if the -- in this case in the
7 Hattiesburg program, you know, if the insured wants it,
8 he or she can request it. They can come with or without
9 counsel. They can come in --

10 Q Let me -- let me stop you right there. Was
11 there an initial regulation that the insured could not
12 have counsel with them?

13 A I don't recall any such regulation.

14 Q That was never the case?

15 A I don't remember it.

16 Q Proceed.

17 A Then go in and they can present their evidence,
18 they can present just like any other mediation, the
19 insurance company questioner will present their evidence
20 and then go back and forth just like any other mediation
21 to try to get the claim resolved.

22 In a federal courtroom litigation mediation it
23 was going to have to work a little bit different in that
24 it was our take that Judge Senter was going to have to
25 motivate the lawsuits to go into mediation. His clerks

1 said, "You mean order?" Well, that's your word, but I
2 think you can motivate them to go. And ultimately he --
3 my recollection is he initially took a start of some
4 random sampling and ordered -- I forget the first wave,
5 but ordered X amount of lawsuits to go into mediation.

6 Q So it was the clerks' and the judge's idea to
7 order litigated claims into mediation.

8 A Yes, sir.

9 Q Okay. Was there any discussion about -- in all
10 these discussions you were having with the department --
11 strike that. With all these discussions you were having
12 with the court and his law clerks about the mediation
13 program, did particular lawsuits brought by @@Prince's or
14 Scruggs Katrina Group or other law firms come up?

15 A The judge was in the first couple of meetings,
16 and he was at the end. But in between all the
17 discussions were done with his law clerks. So he
18 wasn't -- he wasn't involved in any every single
19 discussion. I mean, he's not going to have @@ there. I
20 don't recall specifically any one particular plaintiff or
21 defendant being discussed.

22 Q You don't recall any discussions about any of
23 the cases the Scruggs Katrina Group had?

24 A I don't recall any of the specific -- any one
25 case that you guys had versus any other plaintiff

1 attorney.**ROUGH DRAFT -- NOT PROOFREAD*****

2 Q Well, aside from any particular one case, about
3 the law firm in general, that the law firm had cases.

4 A I mean, we knew -- everybody knew who the
5 lawyers were.

6 Q But no specific discussion on this firm's got
7 this many cases or we're going to send this many cases
8 from that firm into mediation, anything like that?

9 A No, sir.

10 Q Okay.

11 A Judge Senter picked who he -- who he sent in.

12 Q Okay. And the best of your recollection, this
13 was occurring throughout the process -- this process was
14 occurring, these discussions, about a mediation program
15 that eventually was set up in 2006?

16 A Whatever the date is. You can look -- I don't
17 know off the top of my head.

18 Q That's fair. That's fair. Do you or the
19 commissioner have continuing conversations with the court
20 or the court's law clerks about the mediation program?

21 A We have -- have meetings, status reports. I go
22 down there and check with the law clerks to see how it's
23 going, what can be done to improve it. Triple A has, you
24 know, telephonic discussions and/or meetings with the law
25 clerks as well. We recently met in the last -- sometime

1 in the last few months to -- the judge asked us to commit
2 a non-binding arbitration program.

3 Q What is non-binding arbitration?

4 A It is -- just like a normal arbitration process
5 that you would be familiar with, but in this context the
6 arbitrator would issue a -- a ruling that's not binding.
7 You would say company X, you pay initially -- whatever
8 you pay. Plaintiff you wanted Y. I think it is this. I
9 think this is what this case is worth, and this is my
10 opinion. This is my order, whatever he or she couches it
11 as. And they would give that to both parties. Both
12 parties can accept it; both parties can reject it. But
13 it gives both parties an opportunity to have a mutual
14 third party to evaluate the set of facts presented to
15 both sides and give an opinion of what they think the
16 case is worth.

17 Q Well, what's the difference between that and
18 mediation, non-binding mediation?

19 A The mediation, the mediator in most situations
20 doesn't issue any kind of written document. And in most
21 situations, he does not say -- or she say -- I think your
22 case, Mr. Scruggs, is worth, you know, \$10 million or
23 \$10. In non-binding arbitration, the arbitrator would
24 issue an opinion.

25 Q Is this non-binding arbitration program been

1 instituted yet?H DRAFT -- NOT PROOFREAD*****

2 A Yes, sir.

3 Q And tell me about that. You had started -- is
4 this something that is being done at the insistence of
5 Judge Senter?

6 A The initial idea came from Judge Senter. The
7 mediation program, according to him, it was working
8 great, and he wanted to try other ideas and other ways to
9 move some of this litigation out of his courtroom, get it
10 resolved and get -- you know, get the two parties to
11 agree on something. And that was a process that was out
12 there. The department of insurance cannot -- we have a
13 statute that allows us to do non-binding type resolution
14 disputes. We could not do binding, and the court's
15 opinion is that they could not do binding arbitration.

16 Q Okay. Let me ask you about this non-binding
17 arbitration -- excuse me, non-binding -- yeah, it'd be
18 non-binding arbitration. If the mediator or the arbiter
19 issues an opinion on what he thinks this case is worth
20 and one of the parties doesn't like it, then that's the
21 end of it, is it not?

22 A End of the arbitration, yes, sir.

23 Q All right. I mean, does that -- does that
24 arbiter's non-binding opinion go to the court?

25 A I'm not sure if Judge Senter sees his orders or

1 not. *****ROUGH DRAFT -- NOT PROOFREAD*****

2 Q Okay. So, in effect, this non-binding arbiter
3 issues an opinion of what he thinks it's worth, and
4 unless both parties agree to it, then there's nothing to
5 it.

6 A Correct.

7 Q Okay. And it's your testimony this process has
8 been instituted by the court?

9 A Yes, sir, that's my understanding.

10 Q Okay. How many cases have been sent to this
11 non-binding arbitration?

12 A I'd have to refer you to Judge Senter.

13 Q Okay. When was this non-binding arbitration
14 program instituted?

15 A Again, I can get you specific dates. It should
16 be out on our Web page, but it was sometime -- I want to
17 say sometime earlier this year, in 2007.

18 Q Is this for both litigated and non-litigated
19 claims?

20 A Yes, sir.

21 Q Okay. Sometime in -- and, I'm sorry, tell me
22 the date?

23 A Sometime earlier 2007 is the best of my
24 recollection.

25 Q Would it have been before March 1, 2007?

1 A****I don't know.-- NOT PROOFREAD*****

2 Q But the mediation program for non- -- strike
3 that. The mediation program for litigated claims was
4 instituted sometime in 2006.

5 A Yes, sir.

6 Q Okay. Why was the AAA, the Triple A, chosen to
7 run the insurance department's mediation program that was
8 subsequently adopted in some way, shape, or form by the
9 court?

10 A The department -- when the department decided
11 to implement a mediation program, the department did not
12 and does not have sufficient staff and resources to run
13 the mediation program. The department interviewed
14 several different entities, one out of Florida --

15 Q What was the name of that entity?

16 A I don't recall off the top of my head. They
17 did -- they did some of the mediation programs for the
18 Florida Department of Insurance in previous hurricanes.
19 We also interviewed some folks out of south Louisiana. I
20 think it was JAM or JAR or something. I forget their
21 acronym, that were affiliated with some lawyers here in
22 Mississippi as well. And we also interviewed Triple A.
23 And then maybe -- there may be one other applicant who we
24 spoke to regarding their -- what they could bring to the
25 table for this. And an ultimate decision was made to go

1 with the Triple A.RAFT -- NOT PROOFREAD*****

2 Q Okay. Did the -- you're a lawyer barred in the
3 state of Mississippi. Right?

4 A Yes, sir.

5 Q Okay. Did you or anyone in the department of
6 insurance in conducting this -- these interviews talk to
7 the Mississippi Bar about the mediation program or the
8 mediators that it had available to it?

9 A I personally didn't, but lawyers at the
10 department did.

11 Q Okay. And what was the sum and substance of
12 that interview or inquiry?

13 A I wasn't in there, but they contacted the bar
14 regarding how somebody gets on the state bar
15 association's list of mediators.

16 Q And what? And what came of it?

17 A I wasn't -- I wasn't in the phone call. They
18 contacted the state bar association, somebody did in the
19 legal department, talking about the mediation.

20 Q But the decision was made to use Triple A.

21 A Yes, sir.

22 Q And who made that decision?

23 A It was a consensus and recommendation upon all
24 parties at the department involved.

25 Q In the department?

1 A****Yes, sir.AFT -- NOT PROOFREAD*****

2 Q Okay. Did anyone look into the Triple A's
3 affiliation or connection with the insurance industry
4 before that selection?

5 A No, sir.

6 Q Are the Triple A arbiters that are used in the
7 insurance department's mediation all from Mississippi?

8 A Best of my knowledge, they're all licensed
9 lawyers here in Mississippi.

10 Q If someone were to participate in an insurance
11 department's mediation program for either litigated or
12 non-litigated claims, do the parties have a choice on who
13 that mediator would be?

14 A The regulation spells it out. Like I said, I
15 haven't looked at it in a while, but the best of my
16 recollection -- and I'd defer -- defer to the regulation
17 itself. But the Triple A -- when they send it out,
18 there's a process and -- out there as to how they come up
19 with the actual mediator. And I'd have to go back and
20 look at the actual regulation, make sure that that's --
21 my testimony would be accurate.

22 Q Okay. Well, and I certainly want that. But do
23 the parties have any choice on who their mediator is
24 under this insurance department mediation?

25 A Yes, sir. If they have a objection or a

1 conflict, then the regulation tells them to state it to
2 Triple A.

3 Q Well, what if -- what if the objection or
4 comment is, "We want to choose our own mediator, we don't
5 want somebody the AAA is sending down," what do they do
6 then?

7 A I don't believe, best of my knowledge, we've
8 ever had a issue. We go with the list of mediators that
9 are on the list, and that's who we go with. If somebody
10 wants to use their own mediator, there's no prohibition.
11 They can go out and do their own private mediation.

12 Q I understand. You can always elect a private
13 mediator. But often -- and you're a lawyer. Often
14 lawyers on opposing sides like to choose a mediator that
15 they both know.

16 A Uh-huh.

17 Q So my question is: Do lawyers in non- --
18 excuse me, in litigated claims -- or the parties, I
19 should say, have a choice on who the AAA sends down or is
20 it just take this person or go to private mediation?

21 A If they have a recommendation, if they have an
22 objection, then they can voice it. The department --

23 Q What would happen if they objected?

24 A Triple A would evaluate it. The department is
25 not involved in picking and choosing and assigning

1 mediators to each case.-- NOT PROOFREAD*****

2 Q No, I understand. And I didn't -- I wasn't
3 trying to insinuate they did. But I guess my question is
4 of Triple A, if Triple A said this is the mediator for
5 your case -- I assume that's the a process -- and one of
6 the parties says, "I don't want to use that mediator,"
7 what -- what can that party do?

8 A That mediator would be replaced with another
9 mediator.

10 Q It would?

11 A Yes, sir.

12 Q Okay. So if one party objects to the mediator
13 involved for any reason, just says, "I don't want to use
14 him or her," then another one is put in its place?

15 A Triple A evaluates the objection and makes a
16 decision.

17 Q Well, what if Triple A doesn't think that
18 that's a valid objection or think that -- doesn't find
19 the lawyer's reason for wanting a different mediator
20 credible? Then they still have to use them?

21 A I'm not aware that ever happened.

22 Q Well, what if it did happen?

23 A We'd have to address it and look at it.

24 MR. WEBB: Objection to form.

25 BY MR. SCRUGGS:

1 Q****Okay. I don't want to misstate your prior
2 testimony, but is it your testimony that you have
3 periodic updates with either Judge Senter or his clerks
4 on the status of insurance department's mediation
5 program, both for non-litigated claims and the claims
6 that are before Judge Senter?

7 A Judge Senter wouldn't be -- his law clerks
8 wouldn't be involved in the ones that aren't in his
9 courtroom. But we get status reports from Triple A, and
10 then at times we meet with Judge Senter's law clerks to
11 see how is it going, what can we do to -- new ways, new
12 ideas can we come up with and implement to try to get
13 these claims resolved.

14 Q Well, let me ask my question this way: What
15 role does department of insurance -- strike that. What
16 role does the department of insurance have in the
17 court-ordered mediations of litigated claims before Judge
18 Senter?

19 A We're not assigning the cases. We're not
20 picking the cases. We're not picking the mediators s.
21 We're using our regulation to run the program pursuant
22 to, you know, the regulations that we adopted.

23 Q So the mediation program for litigated claims
24 before Judge Senter is being run pursuant to the
25 department of insurance guidelines.

1 A****Yes, sir.AFT -- NOT PROOFREAD*****

2 Q Are these status reports that you're updating
3 the court on, are they a matter of public record?

4 A Most time it's just a face-to-face meeting with
5 them, whenever I'm on the coast, sit down with the law
6 clerks.

7 Q Okay. Which law clerk do you mainly meet with?

8 A Whichever one is there. Either Mr. Reed or
9 Mr. Cochran.

10 Q Okay. What -- is there any way -- is there any
11 record for me to look at to determine how many claims
12 have settled in the department of insurance mediation
13 program, both the litigated and non-litigated, compared
14 to the number of claims that were submitted to mediation?
15 Do you follow my question?

16 A Yes, sir. That's usually put out on our Webb
17 site as we get new numbers on a weekly or every other
18 week, every third week basis. Whenever we get numbers.

19 Q Do you include in your numbers the litigated
20 claims that are ordered to mediation pursuant to Judge
21 Senter?

22 A We break them out. Separate categories.

23 Q But that would be a category. Judge Senter's
24 order of mediations would be on your Web site?

25 A Yes, sir.

1 Q****Okay. So I could go look on that Web site.

2 A It's my understanding it's out there. If it's
3 not, let Mr. Streetman know, and we'll be glad to get you
4 that --

5 Q No, I just want to be able to go look.

6 A Yeah. My understanding is -- I haven't been
7 out there lately.

8 Q To the Web site?

9 A I'm not looking at that issue.

10 Q Okay. And does it have both the number of
11 claims that have settled in mediation and the number of
12 claims that have not?

13 A Yes, sir.

14 Q So I could look at the total number of people
15 that participated in the mediation program and the total
16 number of people that have settled in that mediation
17 program.

18 A That's my understanding. To make it easy,
19 tells you how many signed up --

20 Q Yeah.

21 A -- how many have been resolved, how many are
22 not resolved, and the resolution percentage.

23 Q Both for the department's mediation program and
24 Judge Senter's.

25 A Yes, sir.

1 Q****Does the Web site list the amount of dispute
2 between the settled claims and the non-settled claims?

3 A No, sir.

4 Q Is there any way for me to get that
5 information?

6 A We don't have that information. We don't track
7 it.

8 Q So if I was an attorney trying to determine
9 whether this is something I wanted to do or recommend my
10 clients to do, I wouldn't have any way of finding out the
11 amount of dispute that was involved in the claims that
12 settled in these mediations and those that did not.

13 A That's correct.

14 Q Okay. And similarly, is there any listing of
15 the policy limits of the claims that settle in these
16 mediations as opposed to the policy limits of the claims
17 that did not settle in mediation?

18 A No, sir.

19 Q Okay. I'd have no way of getting that
20 information.

21 A No, sir.

22 Q And the department doesn't have that
23 information.

24 A Department does not have it.

25 Q Okay. And similarly, is there any kind of way

1 I can learn from this Web site or otherwise the estimated
2 damages of the settled claims in these mediations as
3 opposed to the claims that didn't settle?

4 A No, sir.

5 Q Department doesn't have that information.

6 A No, sir.

7 Q Okay. And is there any information about the
8 policy limits or the estimated damages of the non-settled
9 claims in these mediations?

10 A No, sir.

11 Q Okay. Don't you think that would be good
12 information to have for someone to judge whether this
13 mediation program was really working or not?

14 A See, I think you can look at the results and
15 see that -- that it's working.

16 Q No, I understand, and I'll look at -- I will
17 look at the results. But it'd be important -- don't you
18 think it'd be important for someone to know how much was
19 in dispute and how much these claims were settling for
20 relative to how much was in dispute?

21 A It's a case-by-case response. I don't think
22 you can make a blanket approach saying -- saying that.
23 It's a case-by-case analysis. You got to look at each
24 of -- each of your cases.

25 Q I know, and I don't -- I appreciate that. But

1 I guess my question a little more fundamental. Don't you
2 think it would be helpful to people that are looking at
3 this program to determine what these claims are really
4 settling for compared to how much is at issue?

5 A We're not tracking that information. We don't
6 have it, so --

7 Q I understand you don't have it, but don't you
8 that would be useful information to have?

9 A Don't know.

10 Q You don't know?

11 A It's not something that -- it's not something
12 we have, not something we're tracking regarding how much
13 the claim did or didn't settle for, how much the insured
14 asked for, how much the company was willing to pay.

15 Q Well, you would agree with me that if the
16 average amount of money that these claims were settling
17 for, the successful claims, was like 5-, \$10,000 and the
18 amount of dispute on the non-settled claims was 50-,
19 \$60,000, that'd be something important for people to
20 know, wouldn't it, to track the success of this program?

21 A If they don't --

22 MR. WEBB: Objection to form.

23 A -- want to settle -- I don't -- I'm not
24 officially answering you because we don't have the data.
25 I'm not sure what the consumer would or would not find

1 helpful in that matter when they go to mediation.

2 Q Okay.

3 MR. STREETMAN: I'm sorry, but I'm going to
4 have to take another break. I got to arrange --

5 MR. SCRUGGS: Yeah, that's probably --

6 MR. STREETMAN: -- I got -- I got to arrange
7 for people to be here.

8 MR. SCRUGGS: Yeah. And I apologize. Time did
9 run. I got a couple answers that I wasn't expecting to
10 led to questions I really wasn't -- I apologize, I wasn't
11 anticipating, but I do have a couple more on this, and
12 then I think we can wrap up pretty quick. But we might
13 go a little past 5:00.

14 MR. STREETMAN: Okay. A little past 5:00 being
15 a little past 5:00 lawyer time or a little past 5:00
16 regular folk time?

17 MR. SCRUGGS: Let's say 5:15. And I will do
18 everything in my power to make sure that happens.

19 (OFF THE RECORD.)

20 MR. SCRUGGS: Back on the record.

21 BY MR. SCRUGGS:

22 Q We were talking about the mediation program,
23 Mr. Harrell. The line of questioning I think we were
24 finishing was what information was and was not available
25 about the mediation program?

1 A****Yes, sir.AFT -- NOT PROOFREAD*****

2 Q And did Judge Senter or the law clerks in the
3 discussions you had with him in preparation for setting
4 up the court's mediation program that I believe was going
5 to be supervised by the department of insurance and the
6 AAA, did they ask any of the questions I asked about the
7 average amount of claims that were settled -- strike
8 that. I can ask that a lot better than I did.

9 In y'all -- in you and Commissioner Dale's
10 conversations with the court and his two law clerks
11 regarding the establishment of a mediation program or the
12 use of the insurance department's mediation program, did
13 they ask you any questions or seek any information about
14 the amount of dispute of the settled claims versus the
15 non-settled claims?

16 A I don't remember any discussions, no.

17 Q They didn't ask any I information about what
18 the amount of dispute or the policy limits or estimated
19 damage were for settled claims versus non-settled?

20 A No, sir.

21 Q Okay. What protections are in place,
22 Mr. Harrell, under either the insurance department's
23 mediation program or the one adopted by the court to
24 insure that the mediation is done in good faith?

25 A The intent is that it's done in good faith. As

1 to what authority does the commissioner or*the court have
2 to make a ruling that somebody was not negotiated in good
3 faith, I don't -- I don't see where either party really
4 has that jurisdiction.

5 Q Right. So, I mean, for instance, if the
6 insurance company came into a mediation either for the
7 non-litigated claims or the litigated claims, said,
8 "We're just offering \$1 and that's it," is there anything
9 that can be done?

10 A Not from -- I'm not aware of anything.

11 Q Okay. You would agree with me that if an
12 insurance company came in the mediation and took a
13 hardline position like that, hypothetically, that we're
14 going to offer \$1 or we're got going to offer anything,
15 that there's nothing that the medication -- excuse me,
16 there's nothing that the mediator or the department of
17 insurance or the AAA or the court could do to punish or
18 otherwise oversee that process.

19 MR. WEBB: Objection to the form.

20 A I'm not sure what -- what authority the court
21 could and couldn't have. If the court is monitoring it
22 independently, I think of us watch and see what cases are
23 resolved, tracking other dismissal orders. If the
24 department was to see, whether it's -- you know, you hear
25 the same argument from the insured's perspective. If the

1 insured wanted \$3 million on a \$100,000 policy and
2 wouldn't budge off 3 million, there's also nothing the
3 department could do in that category either.

4 Q Why -- why did you bring that up example?

5 A That's just a number.

6 Q Have you -- have you had any reports that
7 insureds have been unreasonable like that in mediations,
8 either litigated or non-litigated?

9 A Well, no, just using that as an example. I
10 mean, whether --

11 Q No, I under- --

12 A -- 10 million or \$1 or \$50. It's just an
13 example. I just chose --

14 Q No, I understand.

15 A -- out of the sky.

16 Q I understand. My question was more
17 fundamental. Let me ask it this way: Has the department
18 gotten reports, either on the litigated claims or the
19 non-litigated claims, that insurance companies were being
20 unreasonable or lowballing in the mediations?

21 A We've heard about both sides in both the
22 litigation and the non-litigation groups.

23 Q Well, who do you hear that from?

24 A Whether it's insureds, whether it's insurance
25 companies, we're hearing it from -- from all sides.

1 Q****So you get -- you being the department of
2 insurance -- get status updates on the progress of the
3 litigated claims that are in mediation pursuant to Judge
4 Senter's orders?

5 A Not a status report. It's couched as some
6 written document. We get a document showing how many
7 have been requested, how many have been resolved, how
8 many didn't resolve, and what's the resolution rate for
9 both programs. There's not a written documentation
10 coming in, you know, from some insured or some insurance
11 company -- I'm misstating. That -- that's -- we've heard
12 complaints from both sides, whether you're the insurance
13 company or whether you're the insurance -- whether you're
14 the insured, complaining about different issues at
15 different times.

16 Q Okay. What about the mediators, do you get
17 reports from the mediators about how particular
18 mediations are going, both in the litigated and
19 non-litigated claims?

20 A No, sir.

21 Q Okay. You would agree with me that there's no
22 downside for an insurance company or if you want to use
23 the example of an insured -- well, strike that. Let me
24 answer -- ask it in two parts just to be fair. You would
25 agree with me that there's no downside in these

1 mediations, both the litigated and the non-litigated
2 claims, for an insurance company to come in with a
3 lowball offer. There's no downside, there's -- to them
4 doing that, is there?

5 MR. WEBB: Objection to the form of the
6 question.

7 A I'm not sure what you're calling downside.
8 It's probably not going to get resolved, and they're
9 going to have to pay the -- pay the defense attorney and
10 all -- and the mediator. I mean, the benefit of the
11 mediation program, whether it's in this program or any
12 other mediation program, is to try to get the dispute
13 resolved.

14 Q But there's no -- when I say no downside,
15 there's no consequence from the AAA or the court or the
16 insurance department if an insurance company took that
17 position, is there?

18 A We haven't seen it. If we were to start seeing
19 that with companies or a company would come in and start
20 "No, I'm giving you zero, zero, zero, zero," that's
21 something the department would have to investigate to see
22 what action we could take.

23 Q Are you familiar with the McIntosh mediation --
24 strike that. Wrong Mc. Have you -- are you familiar
25 with the McFarland mediation that was conducted pursuant

1 to the insurance department's mediation program?

2 A No, sir.

3 Q You've never seen anything on the news about
4 it?

5 A I'm aware there's a commercial, but that's the
6 extent of my knowledge of it.

7 Q Have you looked into what's been said on these
8 commercials?

9 A I don't pay any attention.

10 Q You don't -- you didn't try to determine
11 whether what those people were saying about their
12 experience in mediation was true or not true?

13 A No, sir.

14 Q Okay. But your testimony is that you don't
15 know of any examples of insurance companies going into
16 mediations and offering zero.

17 A I'm not saying it didn't happen. I'm saying
18 off the top of my head I'm not aware of any instances
19 that happened. It probably did, but I'm not aware of
20 any.

21 Q And what could the department, the AAA, or the
22 court do if that situation did occur?

23 A I can't address what power Judge Senter has.
24 He has a whole different avenue of resources available to
25 him as a federal judge. If the department got into the

1 process and saw companies not, you know, what is -- you
2 know, negotiating in good faith, what is that? That's a
3 @@ -- but if we're seeing companies coming in and just
4 zeroing everybody out, that would be something the
5 department would not to look at and sit down and try to
6 figure out ways to address it because the intent is to
7 get the claims resolved so Mississippi can continue our
8 recovery and rebuilding effort.

9 Q Would you agree with me that it would be more
10 effective to mediate claims in bulk as opposed to on a
11 case-by-case basis?

12 A What do you mean, in bulk?

13 Q I mean insurance company mediate all the cases,
14 not just one by one on the -- strike that. Let me ask it
15 a better way because actually that question is a little
16 confusing. On the litigated claims, would you agree with
17 me that it's better for the insurance companies to
18 mediate all the claims a particular law firm might have
19 as opposed to just mediating on a case-by-case basis?

20 A You mean do one giant mediation for every case
21 that John Doe plaintiff attorney has at one time? Is
22 that your question?

23 Q Yeah.

24 A I'm not sure how you would do that, because
25 each case has to stand on its -- on its own set of facts.

1 Q****What makes you say that?FREAD*****

2 A Each set of facts are different from location
3 to location, residence --

4 Q How many hurricanes did we have?

5 A Best of my knowledge, one.

6 Q And what was involved in that hurricane?

7 A You had different wind in different places,
8 different water surges in different places, different
9 building structures, different elevations.

10 Q What's your basis of saying there was different
11 wind and water elevations at different places?

12 A That's my opinion of being down there and
13 reading what I've read in all the different news media
14 accounts.

15 Q Any particular ones that come to mind?

16 A No, sir.

17 Q Did you attend the -- are you all right?

18 A Yes. Back is just getting sore.

19 Q Did -- I'll try to fix that. Did you attend
20 the -- Judge Senter's status hearing on the Woullard and
21 Guice class action settlement proposals in end of
22 February 2007?

23 A Yes, sir.

24 Q Who did you attend that with?

25 A Myself, Christina Kelsey, and Jimmy Blissett.

1 Q****The last person?NOT PROOFREAD*****

2 A Jimmy Blissett.

3 Q Does Jimmy Blissett work for the department?

4 A Jimmy Blissett is the gentleman running the
5 State Farm examination.

6 Q Why would Jimmy Blissett have been with you at
7 that mediation -- excuse me, at that settlement
8 conference?

9 A We wanted to go listen and see what was said at
10 the hearing.

11 Q Okay. Did the insurance -- but I'm --
12 particularly Mr. Blissett, what would be his reason for
13 going along on something like that?

14 MR. STREETMAN: I'm going to object because
15 that has to do directly with the examination process.

16 BY MR. SCRUGGS:

17 Q Well, is Mr. Blissett a lawyer?

18 A No, sir.

19 MR. SCRUGGS: Okay. So you're instructing him
20 not to answer?

21 MR. STREETMAN: Yeah.

22 BY MR. SCRUGGS:

23 Q Y'all three went down there together?

24 A Yes, sir.

25 Q Okay. And you stayed for both hearings?

1 A****Yes, sir.AFT -- NOT PROOFREAD*****

2 Q Okay. And what was your reason for going down?

3 A Wanted to see what took place in the hearings.

4 Q Anything more specific than that?

5 A No, sir.

6 Q Okay. Did you meet with anybody there in
7 particular or the court or any of its clerks during that
8 hearing?

9 A Yes, sir.

10 Q Okay. Tell me about that.

11 A Met with Judge Senter's law clerks after the
12 hearing.

13 Q Before the hearing, during it, or after?

14 A After.

15 Q Okay. And what did y'all discuss?

16 A The mediation program.

17 Q Did y'all discuss anything about the goings on
18 and the arguments at the hearing that you just attended?

19 A I don't recall any.

20 Q You don't recall?

21 A I don't recall any discussions.

22 Q None at all?

23 A I'm sure it came up. Any specifics as to what
24 was and wasn't said I just don't remember.

25 Q Okay. Did you leave that hearing with any of

1 Judge Senter's law clerks?NOT PROOFREAD*****

2 A I don't remember leaving with them. We may
3 have. We had -- I had my own car. I would've left in my
4 own car.

5 Q Well, would -- would you have -- after the
6 hearing would Ronnie Cochran, for instance, been in the
7 same car with you?

8 A No, sir.

9 Q So your testimony is that when you left the
10 federal courthouse that day, Ronnie Cochran wasn't in the
11 car with you?

12 A I don't remember him being in the car.

13 Q At any point that day were you and Ronnie
14 Cochran in the same vehicle?

15 A I don't -- I don't remember it.

16 Q How long did y'all meet after the hearing with
17 Ronnie Cochran and Terry Reed?

18 A Hour or so. I don't -- don't know.

19 Q What did you discuss regarding the mediation
20 program?

21 A In general how's it -- how's it going. Triple
22 A was with us, Debbie Middlemore.

23 Q What's her name?

24 A Excuse me, Debbie Middlemore.

25 Q Is she the one that's running this mediation

1 program for the AAA?FT -- NOT PROOFREAD*****

2 A Yes, sir.

3 Q Anybody else besides her?

4 A Don't recall.

5 THE WITNESS: Can we take a -- I need a quick
6 recess.

7 MR. SCRUGGS: Sure. Off the record.

8 (OFF THE RECORD.)

9 MR. STREETMAN: Could you ask him the question
10 regarding Mr. Cochran again?

11 MR. SCRUGGS: Sure.

12 BY MR. SCRUGGS:

13 Q The question --

14 MR. STREETMAN: If he saw Mr. Cochran on that
15 date --

16 THE VIDEOGRAPHER: Are we --

17 MR. STREETMAN: Yeah, I'm sorry.

18 (Short pause.)

19 BY MR. SCRUGGS:

20 Q I was -- I think -- I'm not quite sure, but I
21 was asking you about meeting with Ronnie Cochran and
22 Jerry Reed on the day of the Guice and Woullard hearing.
23 And I was asking about that meeting, and I think you
24 testified y'all met after the hearing?

25 A Yes, sir.

1 Q****And I think you wanted to clarify your answer.

2 A Yes, sir. We met briefly, and then after that
3 went and met Ronnie and Jerry down the street at some
4 place, I don't remember the name of it, and had a Coke.

5 Q After the hearing?

6 A Yes, sir.

7 Q Okay. Any particular reason why y'all went off
8 campus?

9 A No, sir. They were -- they were leaving, and
10 they said can you join us. I said I'll go by a few
11 minutes, and I got to leave.

12 Q Okay. And what did y'all discuss at that
13 meeting over a Coke?

14 A Did not discuss anything involving the case. I
15 don't remember.

16 Q Anything about the mediation program?

17 A Not at that meeting.

18 Q Okay. Let me ask a really fundamental
19 question. Why would you and the AAA person, Debbie
20 @Mellar, be meeting with Judge Senter's law clerks about
21 the mediation program on the day of the Woullard and
22 Guice hearing?

23 A We were there to observe the hearing, and then
24 we met with them afterwards to discuss the mediation
25 program.

1 Q****Which mediation program?FREAD*****

2 A The federal mediation program.

3 Q The federal -- the one in -- the court-ordered
4 mediation program?

5 A Yes, sir.

6 Q Why would -- what involvement -- I guess I'm
7 trying to get a clear idea. What involvement would the
8 department have in that?

9 A We're overseeing the program for the judge.

10 Q Oh, you are?

11 A Yes, sir.

12 Q Okay. And you still are as of today?

13 A Yes, sir.

14 Q Okay. March 2007 at some point State Farm and
15 the insurance commissioner reached some kind of agreement
16 regarding outstanding claims that State Farm has. Is
17 this ringing a bell?

18 A Yes, sir.

19 Q Okay. How did this agreement come about?

20 MR. STREETMAN: I need to...

21 (Conference outside the hearing of the court
22 reporter.)

23 MR. STREETMAN: I'm going to instruct the
24 witness not to answer as this is part of the examination
25 process.

1 *****MR. SCRUGGS: A settlement agreement between
2 the insurance commission for the state of Mississippi and
3 State Farm where they agreed to reopen claims is my
4 question, and you're instructing him not to answer?

5 MR. STREETMAN: That's right.

6 MR. SCRUGGS: And that's part of the market
7 conduct --

8 MR. STREETMAN: If it's -- if it was after --
9 are you talking about March of this year?

10 MR. SCRUGGS: I don't know what it -- how it
11 relates to market conduct exam. I just know that there
12 was --

13 MR. STREETMAN: I wasn't asking if you knew how
14 it was related. I asked you if it was March of this
15 year.

16 MR. SCRUGGS: I think that's when it came out.

17 MR. STREETMAN: Okay. It's -- it is related to
18 the market conduct examination, and I'm instructing the
19 witness not to answer.

20 MR. SCRUGGS: All right.

21 BY MR. SCRUGGS:

22 Q Am I correct, Mr. Harrell, that this agreement
23 between State Farm and the Mississippi Department of
24 Insurance was announced to the public? Was it not?

25 A Yes, sir.

1 Q****Okay. And at least some of the terms of it
2 were announced to the public via some kind of press
3 release or something like that. Am I correct in that?

4 A Yes, sir.

5 MR. WEBB: Objection to the form.

6 MR. STREETMAN: And anything that's a part of
7 public press release of the agreement, obviously you can
8 ask him. Anything that has to do with the manner in
9 which they came about it or is related to the
10 examination, I would have an objection. So we'll just
11 take it question by question.

12 MR. SCRUGGS: Okay. Well, I don't know. I
13 don't have any information right now that it has anything
14 to do with anything other than your objection.

15 BY MR. SCRUGGS:

16 Q So did -- you know, how long did -- let me just
17 ask it on a case-by-case, question-by-question basis.
18 How long did the Mississippi Department of Insurance and
19 State Farm negotiate this settlement slash reopen cases
20 agreement?

21 A That process started sometime in January of
22 '07.

23 Q Okay. So in January of '07 the Mississippi
24 Department of Insurance and State Farm were negotiating a
25 deal where State Farm would reopen thousands of slab

1 claims.****ROUGH DRAFT -- NOT PROOFREAD*****

2 MR. WEBB: Objection to the form of the
3 question.

4 A The --

5 BY MR. SCRUGGS:

6 Q Thousands of claims in general, slab or not.

7 MR. WEBB: Objection to the form.

8 A In January of 2007 the department was already
9 conducting its examination into the operation of State
10 Farm as relates to their Katrina claims. Without
11 jeopardizing the investigation at this juncture, there
12 were issues and concerns that were raised, and the
13 department was in the -- was working on those issues to
14 find the best way to get them resolved. One of those was
15 to reopen slab claims.

16 BY MR. SCRUGGS:

17 Q So during the market conduct examination of
18 State Farm, State Farm agreed with the insurance
19 department to reopen slab claims.

20 MR. WEBB: Objection to the form of the
21 question.

22 MR. SCRUGGS: Just trying to make sure I
23 understand what he just testified to, because I'm not
24 clear.

25 MR. STREETMAN: Is your question during the --

1 as a result of the examination or during the time period,
2 if that makes any sense?

3 MR. SCRUGGS: Well, I think his testimony was
4 that it was as a result. I'm just trying to make sure
5 that that's -- that I understood him accurately.

6 MR. STREETMAN: Okay. Well, then --

7 MR. SCRUGGS: That's all.

8 MR. STREETMAN: -- if it's as a result, then
9 I'm instructing him not to answer.

10 MR. SCRUGGS: He might already have. I just
11 have to read the transcript.

12 BY MR. SCRUGGS:

13 Q The negotiations that led to State Farm's
14 agreement to reopen certain slab claims started in
15 January of 2007?

16 MR. WEBB: Objection to form.

17 A Somewhere in that ballpark, yes, sir.

18 BY MR. SCRUGGS:

19 Q And was there any -- was there any
20 determination to include non-slab claims in that
21 reopening process?

22 A It's stemming from the market conduct issues,
23 so I have to be careful what I can say pursuant to
24 statutes. But there were -- the issues that we were
25 seeing were all within the water surge area, and they

1 were all concerning slab claims.OOFREAD*****

2 Q Who initiated these negotiations?

3 MR. STREETMAN: I'm going to object and
4 instruct him not to answer. That's a part of the
5 examination.

6 BY MR. SCRUGGS:

7 Q I saw in the public record slash press release,
8 media reports, whatever, that in announcing this
9 settlement or this deal in March 2007 the insurance
10 commissioner noted that after the Woullard settlement
11 broke down, that he reached an agreement with State Farm.
12 Is that an accurate characterization of the timing of all
13 this?

14 MR. WEBB: Objection to the form.

15 A The agree- -- the department was proceeding
16 with the process of having State Farm reopen the slab
17 claims. That was a process that was ongoing before that,
18 and that was a process that was ongoing before General
19 Hood and Mike Moore reached their settlement with State
20 Farm and your law firm. That information was shared with
21 General Moore and General Hood prior to the settlement
22 hearing with Judge Senter.

23 Q And I appreciate that. The -- I'm asking about
24 the part of the announcement that seemed to indicate that
25 when the Woullard settlement broke down, that the

1 insurance commissioner stepped in to do a deal with State
2 Farm. I don't have a specific -- granted I don't have a
3 specific press statement in front of me, but would that
4 be a fair characterization of how this settlement between
5 State Farm and the department of insurance was reached?

6 MR. WEBB: Objection to form.

7 A The department was going to proceed, and they
8 had already advised the attorney general and Mike Moore,
9 whatever role he was playing, the department was going to
10 do that. The department had already advised State Farm
11 they were going to do that. When the settlement -- when
12 Judge Senter would not approve the settlement, the
13 department proceeded with what the department was going
14 to do beforehand and included in that the other non-slab
15 claims.

16 Q Okay. Did you or the commissioner have any
17 discussions with Judge Senter or his law clerks about
18 either the court's failure to approve the Woullard
19 settlement or State Farm's settlement with the insurance
20 commissioner in March 2007?

21 A Restate that. I'm sorry.

22 Q Sure. And that's fair. Did either you or the
23 commissioner have any conversations with either the court
24 or his two law clerks about the -- either the settlement
25 negotiations or the settlement between State Farm and the

1 department of insurance in March 2007?D*****

2 A I advised the law clerks of what the department
3 was in the process of doing.

4 Q Okay. And what was their response?

5 A They didn't have a response. I just told them
6 what we were fixing to do.

7 Q When did you tell them that?

8 A Probably the day of the hearing.

9 Q Okay. So you told them the day of the Woullard
10 hearing?

11 A Yes, sir.

12 Q So you told the court and the clerks the day of
13 the Woullard hearing that State Farm and the insurance
14 department had been entering their own settlement?

15 A No, I said the department of insurance was
16 going to make State Farm reopen slab claims.

17 Q Okay. But that was couched as some kind of
18 settlement or agreement, was it not?

19 A No, sir. At that juncture State Farm had not
20 agreed to anything. This is what the department was
21 going to tell them to do.

22 Q Did State Farm ever agree to that?

23 A Yes, sir.

24 Q When?

25 A Sometime after that and prior to the

1 announcement. UGH DRAFT -- NOT PROOFREAD*****

2 Q Okay. But just so I'm clear: You advised the
3 court and the clerks that the department was going to
4 require State Farm to reopen all its slab claims.

5 A It would've been the clerks. I don't think
6 Judge Senter was in that meeting.

7 Q So you advised Judge Senter's law clerks that
8 the department was going to require State Farm to reopen
9 slab claims.

10 A Yes, sir.

11 Q Did you advise the law clerks on any minimum
12 amount that would have to be paid once they reopened
13 these slab claims, that being State Farm?

14 A Not at that juncture, no, sir.

15 Q Okay. Well, what would just ordering State --
16 and this is a fundamental question, Lee. What would just
17 requiring State Farm to reopen the slab claims, what --
18 was there any -- just reopen them or was there you got to
19 reopen them and pay a certain amount of money? You see
20 what I'm saying?

21 A Yes, sir. The department -- @see, the
22 department had issues arising out of the examination
23 regarding how State Farm adjudicated slab claims.

24 Q I appreciate that, and that wasn't my question,
25 though. My question is: Was there -- other than the

1 requirement you, State Farm, reopen your slab claims, was
2 there any requirement you're going to reopen them and pay
3 this amount or pay that amount, or you're just going to
4 reopen them and once you reopen them you can do whatever
5 you want to do?

6 MR. WEBB: Objection to form.

7 MR. STREETMAN: That was a -- it --

8 BY MR. SCRUGGS:

9 Q I can break it down, but, I mean, do you
10 understand the question?

11 A I think so. In the initial discussions with
12 State Farm, the department -- there was -- our concern
13 was regarding how the claim was initially adjudicated,
14 and what we were going to do is have them come in with a
15 new team of individuals and readjust the claim. If that
16 process revealed that the insured was over policy limits,
17 then that's what he was owed. If it revealed they were
18 owed \$25,000, then that's what they revealed, and that's
19 what the process was going to be. But there was no --
20 initially there was not a -- in just the slab issues our
21 concern was involving how they adjusted them, and that's
22 why we wanted them readjusted.

23 MR. STREETMAN: He doesn't understand your
24 question, obviously. I think I do --

25 MR. SCRUGGS: No, I think he actually -- he did

1 answer it somewhat.AFT -- NOT PROOFREAD*****

2 MR. STREETMAN: It was my understanding you
3 were asking did you say, okay, if you're going to reopen
4 these, you got to pay them X number of dollars.

5 MR. SCRUGGS: Yeah. Okay. And that's --
6 that's true --

7 A The answer is no.

8 MR. SCRUGGS: Okay. Thank you, Jim. And --

9 MR. STREETMAN: I didn't mean to conduct your
10 examination --

11 MR. SCRUGGS: No, you're trying to be helpful,
12 and I appreciate that and making sure everybody is on the
13 same page.

14 BY MR. SCRUGGS:

15 Q The -- so when you advised at the time in late
16 February -- I'll just represent to you when the Woullard
17 hearing was -- that you advised the court's clerks that
18 the department was going to require State Farm to reopen
19 and readjust slab claims, there was no monetary component
20 it to. It was just you readjust them with new adjusters,
21 and whatever you determine is owed, you pay it.

22 MR. WEBB: Objection to form.

23 BY MR. SCRUGGS:

24 Q Is that fair?

25 A Yes, sir.

1 Q****Okay. When was it decided -- and you
2 communicated that to the clerks.

3 A Yes, sir.

4 Q Okay. When was it decided that there'd also be
5 a monetary component to it, you'll reopen and readjust
6 these slab claims and pay X amount?

7 A Sometime after that. I don't know the exact
8 date.

9 Q How did that come to be part of the deal or --
10 MR. WEBB: Objection to the form.

11 MR. STREETMAN: And I object and instruct him
12 not to answer as I believe that's part of the examination
13 process.

14 MR. SCRUGGS: Well, in all fairness, Jim, he
15 kind of opened the door by testifying that he -- that as
16 a result of the market conduct exam they saw there was a
17 problem with slabs, so that's why they required them to
18 reopen. So this is -- I'm just following what he's
19 already opened the door to.

20 MR. STREETMAN: I understand he may have. I'm
21 still going to instruct him at this point not to answer.

22 MR. SCRUGGS: Okay.

23 MR. STREETMAN: I'm trying to give you some
24 leeway with regard to that, to this stuff. And it gets
25 into some gray areas and things that I'm not sure about,

1 and so -- I'm, again, trying to let him go as*far as
2 possible but --

3 BY MR. SCRUGGS:

4 Q Who supervises the mediators in this mediation
5 program, both the -- the actual mediators. Mediation
6 programs @@ more specific being mediators, who supervises
7 the mediators in both the non-litigated mediation claims
8 and the litigated mediation claims?

9 A Triple A oversees the mediators.

10 Q Well, who determines whether these guys are
11 doing their job or actually being effective mediators or
12 not?

13 A Triple A will evaluate and make recommendations
14 to the department. And if it's a federal mediation
15 issue, then they would also make recommendations to the
16 court.

17 MR. SCRUGGS: Okay. I do have one more area to
18 get into which may be quick, may be not. There's a
19 couple things we can do. Obviously there's going to be a
20 lot of matters that we're going to be taking before Judge
21 Walker, and hopefully we're coming back at least for a
22 couple matters, maybe more. At least hopefully maybe.
23 If y'all are right, none. But the only area I have left
24 to go into is the rate approval process that I left
25 aside. We talked about the approval process of a policy

1 form, and that bled into the attorney -- I mean the ACC
2 clause. But I also have some questions for this witness
3 about the approval of rates in general and what goes into
4 that. And I don't anticipate it being real long, but at
5 the same time, I don't want to break my word, and I don't
6 want to keep everybody here longer than necessary,
7 especially if we might come back. So, Jim, what --
8 what's your thoughts?

9 MR. STREETMAN: I -- you know, we're at -- you
10 know, there's a reason that we have the rule. We're at
11 about -- I think about seven hours of actual deposition
12 start -- if we say we started at 9:30 --

13 MR. SCRUGGS: How many -- how -- what are we on
14 time? You usually keep it on the video, don't you?

15 THE VIDEOGRAPHER: Yeah, it's about -- it's
16 about six hours.

17 MR. SCRUGGS: Six hours.

18 MR. STREETMAN: It -- it would be my
19 preference -- I believe the deponent is getting tired,
20 and we would -- if -- and what we would be willing to
21 stipulate to, if, in fact, the judge said to us we win on
22 everything that we've argued about so far, we would still
23 make this opponent available to you to ask what
24 additional questions that you have regarding rate. And
25 then -- and by that time, you know, we'll be able to

1 clear up a lot of these issues.ROOFREAD*****

2 MR. SCRUGGS: Okay. And that's -- y'all've all
3 been real patient. I appreciate particularly your
4 patience. I think -- I certainly -- you know, I think
5 it'd be another 20, 30 minutes. But if you're -- with
6 your representation that he'll be made available for that
7 extra hour, which won't take that, to go through the rate
8 approval process and some questions related to that, then
9 I think we can probably recess this deposition. And with
10 the caveat from my point of view that there are areas
11 that I asked that I wasn't allowed to go into that I'm
12 going to be moving to the court to get into.

13 MR. STREETMAN: And what we want -- and -- and
14 I don't know if you're just going to go ahead and do it
15 by motion or by letter to me, to us, if we're going to
16 reconvene anyway, so I don't know. We can talk about it,
17 but let's keep that -- keep that communication open
18 and --

19 MR. SCRUGGS: Yeah, right.

20 MR. STREETMAN: -- we'll see if we can work out
21 what issues we have.

22 MR. SCRUGGS: And I would work with you and all
23 the parties' counsel here to --

24 MR. STREETMAN: Right.

25 MR. SCRUGGS: -- get an appropriate time,

1 whether we're talking about a lot of issues or just the
2 rate approval process issue and...

3 MR. WEBB: On the hour, if that is an exact
4 time, my question about that is, are we talking about an
5 hour total, even if we come back, even if the court says
6 come back?

7 MR. SCRUGGS: Well, we would move like you
8 moved in Rigsby to, you know, get whatever you asked for.
9 We're going to move for additional time to ask the
10 questions I didn't get the answer to. What you moved in
11 Rigsby.

12 MR. WEBB: I made a motion in Rigsby?

13 MR. SCRUGGS: Yeah.

14 MR. WEBB: Renfro versus Rigsby?

15 MR. SCRUGGS: In the -- in the McIntosh case.

16 MR. WEBB: Oh, McIntosh.

17 MR. SCRUGGS: The Rigsby matter. The Rigsby
18 matter. I think you had all this stuff that you couldn't
19 go into and asked for additional time. I'm sure we'll
20 have something like that --

21 MR. STREETMAN: I'm not going to come in with a
22 stopwatch and --

23 MR. SCRUGGS: I understand --

24 MR. STREETMAN: -- you got --

25 MR. SCRUGGS: -- and I --

1 *****MR. STREETMAN: -- fifty-nine minutes and --

2 MR. SCRUGGS: -- believe me, I don't want to
3 waste --

4 MR. STREETMAN: -- you know, so --

5 MR. SCRUGGS: -- my time any more than I want
6 to waste --

7 MR. STREETMAN: But also --

8 MR. SCRUGGS: -- y'all's time.

9 MR. STREETMAN: -- in -- between now and when
10 we reconvene it's my understanding we will probably have
11 these other issues resolved so we can all get them --

12 MR. SCRUGGS: We'll make a motion at some
13 point --

14 MR. WEBB: Sure.

15 MR. SCRUGGS: -- sooner rather than later to
16 compel answers to certain questions. And as Judge Walker
17 indicated on the phone, he's going to look at all that,
18 matters or, you know, discussions he's had with Dale and
19 others and then the market conduct exam stuff.

20 MR. WEBB: Before we go today, I want to ask a
21 couple of questions to clarify a couple of things just so
22 we'll be clear about that too.

23 MR. STREETMAN: Are we talking about real
24 people couple of questions or --

25 MR. WEBB: Yes.

1 *****MR. STREETMAN: -- lawyer's couple of
2 questions?

3 MR. WEBB: No, no, I'm not going to -- ten
4 minutes maybe.

5 MR. SCRUGGS: Well, with the understanding and
6 stipulation that I got an hour, whether I use it or not,
7 on the rate stuff and other issues out there --

8 MR. STREETMAN: Okay.

9 MR. WEBB: That's fine.

10 MR. SCRUGGS: Subject to all those stipulations
11 and agreements, I tender to you.

12 MR. WEBB: And subject to all my reservations
13 and objections, I accept.

14 MR. SCRUGGS: I don't remember all those.

15 EXAMINATION

16 BY MR. WEBB:

17 Q Mr. Harrell, I know that you know me. My name
18 is Dan Webb. I'm a lawyer from up in Tupelo. I
19 represent State Farm in this case. And just so I'm clear
20 before I ask you a couple of questions here to clarify
21 some things, I think, in my mind and for the record, have
22 you and I had any conversations at all about anything
23 related to your testimony here today before today?

24 A No, sir.

25 Q Okay. Going all the way back to about 9:30

1 this morning you were asked some questions about
2 Mr. Streetman's involvement in representing you, and I
3 recall -- and I may be absolutely recalling this fuzzily,
4 and I just need your help on it. I recall that you
5 mentioned something about State Farm was paying for
6 Mr. Streetman's involvement? Do you remember mentioning
7 something like that?

8 A Yes, sir.

9 Q Just so I'm clear: What's -- what is the basis
10 or how does it come about that State Farm is being
11 charged or assessed fees related to Mr. Streetman's
12 involvement?

13 MR. SCRUGGS: Object to the form, asked and
14 answered.

15 A Pursuant to the examination statutes, the
16 commissioner of insurance is allowed to retain multiple
17 expert type things. And in this case, it's Mr. Streetman
18 to represent us in this matter.

19 BY MR. WEBB:

20 Q So the way I understand it -- and I didn't want
21 the record to be unclear about this -- it's not a
22 situation where State Farm has been voluntarily engaged
23 in going out and seeking counsel for you or the
24 commission, is it?

25 MR. SCRUGGS: Object to the form.

1 A****Not -- no, sir, it was ordered by*the -- an
2 order.

3 BY MR. WEBB:

4 Q All right, sir. And there were several
5 questions asked during the course of your deposition
6 earlier today about various interpretations that the
7 department has taken relative to policy provisions. And
8 just to be clear about that: As I understand it, at no
9 point in time either in the past up through during and
10 including today has the department ever taken a position
11 that merely because there is some wind damage that a
12 company should also have to pay for a total loss
13 including the water damage?

14 MR. SCRUGGS: Object to the form.

15 A In your scenario, they'd have -- they'd have to
16 pay the wind damage. If it's 10 percent, 10 percent.

17 BY MR. WEBB:

18 Q But they -- but the department's position has
19 never been that they would also have to pay for the water
20 damage, too.

21 MR. SCRUGGS: Object to the form.

22 BY MR. WEBB:

23 Q Right?

24 A That's correct.

25 Q Okay. And I don't know how quick you could get

1 your hands on it, but Exhibit 21, if y'all have it there,
2 Mr. Burwell's letter -- and this will be very quick. I
3 just want to go to one -- it's on the second page of
4 Exhibit 21, and it is the second full paragraph, the
5 sentence -- Mr. Scruggs read some excerpts from various
6 documents, and I'm talking about the sentence that begins
7 "but when the investigation indicates." Do you see that?

8 A What paragraph are you in?

9 Q It's the second full paragraph -- excuse me,
10 third full paragraph on that page.

11 A Okay. I see it.

12 Q "But when the investigation indicates that the
13 damage was caused by excluded water and the investigation
14 does not indicate independent windstorm damage to
15 separate portions of the property, there is no coverage
16 available under the homeowner's policy." See that?

17 A Yes, sir.

18 Q Okay. And this was a letter that you received
19 sometime after March 31, 2006. Correct?

20 A Yes, sir.

21 Q Okay. As a follow up to the questions about
22 that letter and the questions that Mr. Scruggs asked you
23 about out of that one pleading in that Palmer case where
24 you read a portion of the brief, it would be consistent
25 with that for State Farm to have taken the position that

1 in your judgment that if independent windstorm damage
2 would have occurred in the absence of excluded water,
3 that it was covered even if the property had some water
4 damage before or after the windstorm occurred. That's
5 the way you understood it. Correct?

6 MR. SCRUGGS: Object to the form of the
7 question. It misstates his prior testimony, and it's
8 been asked and answered. If you understand what he just
9 asked you --

10 BY MR. WEBB:

11 Q If you do.

12 A I'm going to have to ask you to --

13 Q Okay. I'll try.

14 A Repeat that. That's a --

15 Q And I'm --

16 A -- pretty long-winded --

17 Q -- I'm trying to rush through just a few
18 questions.

19 As I understand it, the position that if
20 there's independent windstorm damage -- and I'm using the
21 reference of Mr. Burwell's letter here and also the
22 Palmer pleading as a reference. But as I understand it,
23 that if State Farm's position is that if there's
24 independent windstorm damage that would have occurred in
25 the absence of excluded water, that that being covered,

1 even if the property also later sustained water damage,
2 is the way you understood that the policy was being
3 applied. Is that correct?

4 MR. SCRUGGS: Object to the form, and it's
5 leading. If you understand, you can answer.

6 MR. STREETMAN: You can answer if you
7 understand it.

8 BY MR. WEBB:

9 Q If you do.

10 A It's my understanding that the water -- I mean
11 the wind portion would be covered and the water would
12 not.

13 Q Right. Okay. As I recall from seeing some
14 things -- and I believe -- and like Mr. Scruggs said
15 earlier, I don't have a particular press release or a
16 bulletin in front of me. But as I recall, the department
17 has announced that there are likely to be or will be
18 market conduct examinations focusing on multiple insurers
19 with relation to Hurricane Katrina. Is that true?

20 A Yes, sir.

21 MR. WEBB: Okay. Indulge me just a moment.
22 That's all I have at this point reserving questions
23 for --

24 MR. SCRUGGS: One single follow-up question to
25 what he just asked.

1 *****ROUGH DFURTHER EXAMINATIONAD*****

2 BY MR. SCRUGGS:

3 Q What other companies are going to get the
4 pleasure of a market conduct examination?

5 MR. STREETMAN: At this time, that would be
6 part of the market conduct examination, not been
7 determined, and I'm going to have to instruct him not to
8 answer. We can take that up with the judge.

9 BY MR. SCRUGGS:

10 Q You're not going to answer?

11 A Upon advice of counsel.

12 MR. SCRUGGS: Okay. Let's recess.

13 (Deposition recessed at 5:39 p.m.)

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