

IN THE COURT OF COMMON PLEAS
TUSCARAWAS COUNTY, OHIO
COMMON PLEAS COURT

NEDRA F. LOVELL, ET AL.,

Plaintiffs,

vs.

W. THOMAS KLASERNER, D.C.,
ET. AL.,

Defendants.

ROCKNE W. CLARKE

CLERK OF COURTS

CASE NO. 91CM010031

TELEPHONIC
DEPOSITION OF:
BRUCE BEAL

ORIGINAL

TELEPHONIC DEPOSITION OF BRUCE BEAL,
taken before Jody- L. Hibbs, Certified Shorthand
Reporter and Notary Public of the State of Iowa,
commencing at 3:00 p.m., March 10, 1993, at
1441 29th Street, West Des Moines, Iowa.

A P P E A R A N C E S

Plaintiffs by: MARK D. OKEY
Attorney at Law
337 Third Street, N.W.
Canton, OH 44702

- and -

ALLEN SCHULMAN, JR.
Attorney at Law
740 United Bank Plaza
220 Market Avenue, South
Canton, OH 44702

Defendants by: DAVID BERTSCH
Attorney at Law
50 South Main Street
P.O. Box 1500
Akron, OH 44309

Reported by: Jody L. Hibbs, CSR, RPR, CM

I N D E X

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(Present for the telephonic deposition was Mr. Bruce Beal and Attorney David Bertsch in person. Attorneys Mark Okey and Allen Schulman appearing telephonically.)

BRUCE BEAL,

called as a witness, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. OKEY:

Q. Hello, Mr. Beal.

A. Good afternoon.

Q. How are you doing', sir?

A. Fine. Thank you.

Q. I don't know if we've ever talked on the telephone before. I can't recall. But I just want to introduce myself. This is Mark Okey, and I'm here with Allen Schulman in Canton, Ohio', and we'll be taking your deposition today.

If at any time I ask you a question you do not understand, sir, please let me know and I'll be glad to repeat it or have the court reporter read it back to you. Is that agreeable?

1 A. That's fine.

2 Q. All right, sir. First of all, would
3 you just state your full name for the record,
4 please.

5 A. Bruce Alan Beal.

6 Q. And where do you reside, Mr. Beal?

7 A. My home address is 430 South School
8 Street, Waukee, Iowa.

9 Q. Sir, your deposition is being taken
10 today and you're at the, what, the office of
11 National Chiropractic Mutual Insurance Company?

12 A. That's correct.

13 Q. Could you give us the address just for
14 the record, sir, of National Chiropractic?

15 A. 1441 29th Street, West Des Moines, Iowa
16 50265-1309.

17 Q. All right, sir. And I know that
18 Mr. Bertsch is with you today and also the court
19 reporter. Is there anyone else present in the
20 room?

21 A. No, just the three of us are here.

22 Q. All right, sir. My first question is,
23 did you establish your claims file on February 9
24 of 1990?

25 A. We received first notice of the loss

1 from Dr. Klaserner on the 9th.

2 Q. Would that have been the day that you
3 actually established or opened your file?

4 MR. BERTSCH: Mark, do you have a
5 specific document that you're looking at?

6 MR. OKEY: No, Dave. I was just
7 curious. That's the date that I had marked down
8 as the date that the claims file was opened. I'm
9 just asking whether or not I can confirm that.

10 A. What is that date again?

11 Q. February 9 of 1990.

12 A. That is the date, again, that we
13 received the first notice of the loss.

14 Q. All right, sir. I apologize. I've got
15 kind of a bad cold today so if my voice trails
16 off on me -- and I'll try to speak up -- you just
17 let me know.

18 MR. BERTSCH: Are you picking us up
19 pretty good?

20 MR. OKEY: Wonderful.

21 Q. Mr. Beal, from your notes from February
22 9 of 1990, I determined that you had set an
23 initial reserve of \$30,000; is that correct?

24 A. Yes, it is.

25 Q. And, Mr. Beal, for my benefit, could

1 you give me the definition of what a reserve is.

2 A. It's an amount set aside that we would
3 feel would be the ultimate exposure on a loss.

4 Q. All right, sir. And was there any
5 particular reason why you selected or chose the
6 figure of \$30,000 on February 9 of 1990?

7 A. That reserve was not set by me.

8 Q. Can you tell me who set the reserve?

9 A. Robert Nelson, the claims manager.

10 Q. Okay. And is Mr. Nelson your direct
11 supervisor, sir?

12 A. He was at that time, yes.

13 Q. I gather that at some point in time he
14 has since changed jobs?

15 A. He is still here, and I believe his
16 title now is senior litigation consultant.

17 Q. All right. When did he change title,
18 sir?

19 A. January or February of 1993.

20 Q. All right, sir. So just a short while
21 ago?

22 A. That's correct.

23 Q. So throughout the course of this
24 particular claim and this litigation Mr. Nelson
25 was in fact your direct supervisor?

1 A. Yes.

2 Q. You also on February 9 of 1990 set an
3 initial retention value of \$100,000; is that
4 correct?

5 MR. BERTSCH: Mark, I think he
6 indicated that he personally did not do that.

7 MR. OKEY: Okay. I'm not talking about
8 the reserve, Dave.

9 MR. BERTSCH: Okay,

10 Q. I'm talking about something titled
11 "retention." They are two separate items,
12 correct, Mr. Beal?

13 A. On the form you're looking at, yes.

14 Q. All right. And maybe we can start: did
15 you set the retention value?

16 A. No.

17 Q. Was that Mr. Nelson?

18 A. No. That is set by contract with the
19 reinsurer, the reinsurance company.

20 Q. Is that the Employers Reinsurance
21 Corporation?

22 A. Yes, it is.

23 Q. And it's commonly referred to in your
24 notes as ERC?

25 A. Yes.

1 Q. All right. So that is something that
2 is set strictly by contract?

3 A. Yes, it is.

4 Q. And for my benefit, sir, could you give
5 me a definition of what retention means.

6 A. On this particular document the
7 retention is 100,000. That is on any losses from
8 January 1 of '85 to the present time. That would
9 mean that the first 100,000 paid indemnity is
10 National Chiropractic's responsibility.

11 Q. All right, sir. Now, I also noted that
12 from the notes taken on February 9 of 1990 you
13 indicated that this case or this claim was too
14 early to code, Specifically, what is this
15 reference to a code?

16 A. It would be a cause-of-loss code.

17 Q. All right. And was this case ever
18 coded?

19 A. I don't recall without looking through
20 the file.

21 Q. All right, sir. I was unable to find
22 anywhere in the claims file where it's been
23 assigned a particular code. Do you have any
24 recollection, personal recollection without
25 looking at the file whether or not it's been

1 assigned a definite code?

2 A. No, no personal knowledge.

3 Q. All right, sir. Would there be some
4 place that I could look in my copies of your
5 claims file to find that code?

6 A. Well, the form that you're looking at
7 is headed "New Claim File, Secretarial
8 Instructions." There would be a form -- the same
9 form or one very similar, which eventually may
10 have instructed the clerical staff to change the
11 code.

12 Q. Is there any particular significance to
13 the code assigned to a case?

14 A. No. It's strictly, I guess, for
15 in-house purposes so we can determine what kind
16 of losses that we get in.

17 Q. So an internal manner in which you
18 identify types of claims?

19 A. Yes.

20 Q. Can you tell me, other than Mr. Nelson,
21 whether or not there was any other claims
22 representative who had a supervisory capacity
23 over you during the course of this particular
24 claim?

25 A. No, there was not.

1 Q. On February 14 of 1991 I believe you
2 raised the reserve to a figure of \$200,000; is
3 that correct, sir?

4 A. 2-14 of '91?

5 Q. That's correct.

6 A. So we are one year from where we were
7 talking about, roughly?

8 Q. That's correct.

9 A. Yes, I have a memo to file addressed to
10 Bob. That would be Bob Nelson. I'm requesting
11 authority to increase the reserve for \$200,000.

12 Q. All right. Mr. Beal, was Mr. Nelson
13 the individual who had authority to raise the
14 reserve?

15 A. Yes. I sought that authority from him
16 and he granted it.

17 Q. That's not something that you can do
18 independent of his -- or seeking his
19 recommendation?

20 A. No.

21 Q. And then I gather that was in fact
22 approved by Mr. Nelson?

23 A. Yes, I recall it was.

24 Q. Okay. Can you tell me, sir, what your
25 specific authority, if I'm using that term

1 correctly, is on a particular claim?

2 MR. BERTSCH: You mean as far as how
3 high the reserve goes before he has to seek
4 approval from the supervisor, Mark'?

5 MR. OKEY: Sure, Dave.

6 A. \$10,000 .

7 Q. All right, sir. Do you happen to know
8 what Mr. Nelson's authority is?

9 MR. BERTSCH: Before he has to seek
10 approval?

11 MR. OKEY: Yeah. I just was curious
12 whether or not Mr. Beal knew what Mr. Nelson's
13 authority was before Mr. Nelson had to go and get
14 somebody to give him a recommendation.

15 A. Yes.

16 Q. What is that, sir?

17 A. Policy limits.

18 Q. Now, I'm going to take you up
19 through -- again, make another jump. I'm going
20 to take you into 1992, specifically the date
21 July 21 of '92. Again, you prepared a memo on
22 that date. Could you find that, sir.

23 A. July 21, 1992?

24 Q. That's correct.

25 A. Okay, I have it.

1 Q. All right, sir. And that particular
2 memo indicates that apparently you had had a
3 telephone conversation with, I believe,
4 Mr. Bertsch?

5 A. Is this a handwritten memo?

6 Q. Yes, sir

7 MR. BERTSCH: We're looking at the one
8 with Orville.

9 MR. OKEY: I may be mistaken. One
10 of the defense counsel, Mr. Bertsch or
11 Mr. Reed.

12 A. So we have the same document, are we
13 talking where it says "coverage"; then there's a
14 date 7-21-92?

15 Q. This would be a document prepared by
16 you, Mr. Beal.

17 A. In handwritten --

18 Q. Yes, sir.

19 MR. BERTSCH: The first line says,
20 "Plaintiff has filed motion for continuance"?

21 MR. OKEY: Let me just grab my copy
22 here real quickly. Yeah, I believe that's the
23 one.

24 MR. BERTSCK: Okay.

25 Q. You notice just above your initials,

1 Mr. Beal --

2 A. Just above my initials, yes.

3 Q. Okay. -- there's a notation. I
4 believe the triangle refers to the defense
5 counsel?

6 A. Correct.

7 Q. And it reads, "Defense counsel feels
8 settlement value is \$150,000"?

9 A. Yes.

10 Q. Did you receive that information from
11 Mr. Reed on that particular date?

12 A. That would have been from a phone
13 conversation on that date,

14 Q. Okay, From Mr. Reed?

15 A. Yes.

16 Q. And then I believe that subsequent to
17 that telephone conversation you then received
18 on -- at least it's dated July 28 of 1992, a
19 rather long memorandum from Mr. Bertsch; is that
20 correct?

21 MR. BERTSCH: Objection to the
22 derogatory use of the word of "rather long."

23 MR. OKEY: Fair enough, Dave.

24 A. It's a letter dated July 28 from Dave
25 Bertsch?

1 Q. That's correct, sir.

2 A. Ten pages long?

3 Q. Yes, sir.

4 A. I believe, yes, I've got that,

5 Q. All right. If I recall, if you go to

6 the last page of that particular letter,

7 Mr. Bertsch -- am I correct in stating he had

8 advised you that the case had a verdict range of

9 approximately 3 to \$400,000?

10 A. Yes.

11 Q. All right. And I believe he also

12 indicated to you in that letter that he felt that

13 the case had a settlement value right now,

14 referring to that time, of \$150,000; is that

15 correct, sir?

16 MR. BERTSCH: Objection, Mark. I think
17 it states value up to 150,000.

18 MR. OKEY: Up to, okay. Thank you.

19 MR. BERTSCH: The way that I'm reading
20 it, it's not that it has a 150; it's a settlement
21 value, quote, "up to 150,000."

22 MR. OKEY: All right, sir. That's
23 fine.

24 Q. Is that correct, with that
25 understanding, Mr. Beal?

1 A. Yes.

2 Q. All right. I'd like you then to go to
3 the date of 12-29 of '92.

4 MR. BERTSCH: Got you.

5 Q. Okay. And again I believe I'm
6 referring to a notation prepared by you,
7 Mr. Beal. Do you have that, sir?

8 A. Yes.

9 Q. All right. And on that particular date
10 I believe you noted that the defense counsel had
11 asked you for some authority; correct?

12 A. The document reads, "Wants some
13 authority."

14 Q. Right. And that's in your handwriting?

15 A. Yes.

16 Q. I'm assuming that the person wanting
17 authority would be either Mr. Bertsch or
18 Mr. Reed. Am I correct in that assumption?

19 MR. BERTSCH: Well, I'm going to
20 object, Mark, as to -- that's what he wrote down.
21 But if you're asking him what the conversation
22 was with the defense counsel that causes him to
23 write that note down, I'm not sure that's not his
24 shorthand to the conversation.

25 MR. OKEY: I understand that he's just

1 taking notes at that time. I'm just asking
2 whether or not -- the other person was that was
3 requesting authority.

4 MR. BERTSCH: I'm going to object,
5 Mark, because -- the basis of my objection is
6 that what he wrote down is his summary of the
7 discussion, but he's not testified that those are
8 the exact words that we used when we called him.

9 MR. OKEY: I understand that. I'm not
10 saying that he wrote down every word of the
11 conversation, Dave.

12 MR. BERTSCH: I recognize you are not
13 saying he wrote down every word. That's obvious
14 because that only refers to three words there.
15 All I'm saying is that your question assumes that
16 Orville or I specifically asked for authority.

17 Q. Well, did Mr. Bertsch ask for that
18 authority on that date, sir?

19 A. I don't recall.

20 Q. Do you know if Mr. Reed asked for
21 authority on that date, sir?

22 A. I don't recall.

23 Q. Okay. Now, I believe on -- well, let
24 me ask you this, Mr. Beal. Is that the first
25 notation in your notes on this claim that refers

1 to any request for authority to settle this case?

2 A. I don't see that it says "requests
3 authority."

4 Q. Okay, What exactly does' it say?

5 A. It says "wants some authority."

6 Q. Okay, Do you consider that -- you do
7 not consider that a request for authority?

8 A. The best I can recall is, it's probably
9 just a note to myself that we discussed the pros
10 and cons of the case, the plus and minuses, if
11 you will. And it was felt that if we were going
12 to offer some money up on this thing, that maybe
13 this would be the time to do it.

14 Q. All right, sir. And the person that
15 you would have talked to, who would that have
16 been?

17 A. I have no idea. As you can see, most
18 of my little handwritten memos I usually have a
19 name. This one doesn't say. It just says,
20 "defense counsel." Whether I talked with Orville
21 or Dave, I have no idea.

22 Q. Okay. Most likely it would have been
23 one of those two gentlemen; correct?

24 A. I believe so.

25 Q. All right, sir. Basically my question

1 was, at any time prior to December 29, 1992, had
2 any defense counsel on this case asked you for or
3 told you they wanted authority?

4 A. I don't believe so, no.

5 Q. All right, sir. On January 11 of 1993,
6 I believe --

7 MR. BERTSCH: Mark, bear with us.

8 Q. How about finding a document for that
9 date?

10 MR. BERTSCH: Right.

11 A. 1-11 of '93, and what's the heading on
12 that?

13 Q. That would be, I believe, a memorandum
14 to the file. .

15 A. Handwritten again?

16 Q. Yes, sir.

17 A. Okay. I've got it, I believe I've got
18 it.

19 Q. Is that in your handwriting, sir?

20 A. Yes, it is.

21 Q. I don't believe -- my copy is rather
22 fuzzy, but did you initial that document?

23 A. It doesn't look like I did. No, I
24 don't see my initials on it.

25 Q. My first question regarding that

1 document is, the subject that you identified in
2 that document was an "authority request," am I
3 correct?

4 A. Yes, I am seeking authority.

5 Q. Okay. So you're the one asking for
6 authority?

7 A. Correct.

8 Q. And who are you asking authority from?

9 A. The memo is addressed to Bob Nelson,

10 Q. All right. And then would Mr. Nelson
11 then respond back to you?

12 A. Yes.

13 Q. And is his response the printed -- the
14 last line printed on the bottom of the page?

15 MR. BERTSCH: Handwritten.

16 Q. Handwritten, I'm sorry.

17 A. Mr. Nelson's response was, "Granted
18 \$50,000."

19 Q. All right. And my copy again, sir,
20 is rather fuzzy because it's a faxed copy, but
21 is that Mr. Nelson's initials following
22 50,000?

23 A. Yes.

24 Q. And does the date read 1-12-93?

25 A. Yes.

1 Q. Thank you, sir. Can you tell me,
2 **Mr.** Beal, what action or activity on this claim
3 prompted you to request authority from Mr. Nelson
4 on January 11 of 1993?

5 MR. BERTSCH: One second, Mark.

6 MR. OKEY: I'm on that same document,
7 Dave. I'm not really moving off of that yet, the
8 11-93 document.

9 MR. BERTSCH: I'm handing him another
10 document to see --

11 MR. OKEY: Okay. Fine.

12 MR. BERTSCH: -- because --

13 MR. OKEY: If he's referring, to
14 refresh his recollection, to another document,
15 maybe, Dave, since I'm not there, you could
16 identify it for me.

17 MR. BERTSCH: I can't tell you that he
18 is referring to it to refresh his recollection.
19 I handed him the January 5 -- our status report
20 of **January 5**, but he has not looked at **it** yet.
21 **For** whatever it's worth, that's why I said "hold
22 on" in case he needed to refresh his
23 recollection, but he **has** not **read it** yet.

24 A. To answer your question, I have no idea
25 at this time what prompted my actions on the

1 11th.

2 Q. Okay. You don't have a specific
3 recollection of defense counsel asking you for
4 authority on January 11, 1993?

5 MR. BERTSCH: On January 11, Mark?

6 MR. OKEY: Yes, sir.

7 A. No, I don't.

8 Q. All right. Thank you. I believe in
9 your note titled "memorandum to file" that you
10 sent to Mr. Nelson, you then -- under the subject
11 "authority- request," you then went through and
12 summarized the status of this particular claim
13 and also the claims evaluation. Am I correct in
14 that, sir?

15 A. In very brief form.

16 Q. Yes. And I believe you indicated to
17 Mr. Nelson towards the bottom of the page that in
18 fact there was a 50/50 chance of a defense
19 verdict?

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

21 Q. My question in that regard, Mr. Beal,
22 is, was that your personal opinion or evaluation
23 regarding this case or claim or did this
24 information come from some other source?

25 MR. BERTSCH: I'm going to object,

1 Mark, because I think your question is in the
2 disjunctive, that it's an either/or in terms of
3 that. It's either his opinion or someone else's
4 opinion as opposed to might be both opinions.

5 MR. OKEY: I can accept that, Dave. I
6 guess I'm not trying to be technical with the man
7 or trying to get him -- to pin him down,

8 MR. BERTSCH: With that understanding,
9 go ahead and answer.

10 Q. If he can just answer it in any fashion
11 that he can, I would appreciate it.

12 A. Could you repeat the question again,
13 please?

14 Q. Sure,' Mr. Beal. The quotation or the
15 notation "50/50 chance of defense verdict," I
16 guess I'm just asking you, sir -- let me ask it
17 this way first. Was that your opinion of this
18 particular claim?

19 No.

20 Whose opinion were you noting there?

21 A. The evaluations that I had received
22 from defense counsel.

23 Q. All right. And based upon those
24 evaluations, you were sending that information
25 then on to Mr. Nelson?

1 A. Yes.

2 Q. I believe also, just below that, you
3 indicate that there's a settlement range and then
4 you give the figures 125 to \$150,000; is that
5 correct?

6 A. Yes.

7 Q. Did you have a personal opinion on the
8 chance of a defense verdict on January- 11, 1993?

9 A. Did I have a personal opinion?

10 Q. Yes, sir, as the claims adjustor on
11 this case.

12 A. It would solely be based on what type
13 of evaluation I was getting from defense counsel.

14 Q. All right. I gather you did not have
15 an independent opinion then of a chance of a
16 defense verdict in this case on that particular
17 date?

18 A. No, I did not.

19 Q. Did you have an independent opinion
20 regarding the settlement range of this case? And
21 again, I'm referring to **January** 11 of 1993.

22 A. I wrote down 125,000, \$150,000. And it
23 would appear that I derived that from defense
24 counsel's evaluation.

25 Q. All right, sir. Let me ask you this.

1 Did the reinsurance carrier, did they ever
2 express an opinion to you at or about the time of
3 January 11, 1993, regarding their evaluation of
4 this claim?

5 A. No, they did not.

6 Q. I'll get into this a little bit later,
7 but, Mr. Beal, who was the representative for the
8 ERC?

9 MR. BERTSCH: Mark, what do you mean by
10 the representative that --

11 MR. OKEY: That Mr. Beal dealt with or
12 communicated with at the reinsurance carrier.

13 MR. BERTSCH: On this file, you mean?

14 MR. OKEY: Yes, sir.

15 MR. BERTSCH: Okay. If anyone, I don't
16 know. Go ahead, Bruce.

17 A. Off the top of my head, I don't know
18 the person's name. I know that there's been two
19 of them over the life of this file.

20 Q. Do you know either of their names?

21 A. The most current one has been Don
22 Heinrich.

23 Q. Would you spell that last name for me?

24 A. No, I don't know how.

25 Q. Okay. Do you know the other person's,

1 either the first or last name?

2 A. Early on in the file there should be an
3 acknowledgment from ERC that they received a copy
4 of our file.

5 Q. That's correct. I was unable to make
6 out the last name, and I was hoping that you
7 could help me with it.

8 A. Tom Crossett.

9 Q. Pardon?

10 A. Tom Crossett, C-r-o-s-s-e-t-t.

11 Q. All right. Thank you. Now, on the
12 date that you had written this memorandum to
13 Mr. Nelson, I gather you did not have any
14 authority at that time; is that correct?

15 A. I would have only had my 10,000
16 authority.

17 Q. All right. Now, when Mr. Nelson got
18 back to you, I believe he, what, returned this
19 memorandum to you on the 12th of January, 1993?

20 A. That's the date that he signed it. I
21 can only assume I got it that date, which is
22 probably correct since we're only about 50 feet
23 apart.

24 Q. I guess I was just -- for my own
25 curiosity, this memorandum would have to

1 physically be placed on his desk and then he
2 would respond to it by writing on it and then
3 returning it back to you; is that correct?

4 A. It may have gone through the hands of a
5 clerical or a secretarial individual.

6 Q. I understand that. I'm not saying that
7 you actually hand-delivered it, but that's how it
8 would be transferred between the two of you?

9 A. Yes.

10 Q. All right. Now, when Mr. Nelson
11 granted the \$50,000 authority, was that the first
12 authority to settle this particular claim that
13 had ever been granted on this case?

14 A. I don't recall without going back
15 through the entire file.

16 Q. Well, I'll tell you what, Have you had
17 an opportunity to review this file prior to your
18 deposition today?

19 A. Yes, I've breezed through it.

20 Q. Okay. Do you recall seeing any other
21 notation or documentation indicating that some
22 authority had been granted on this case prior to
23 January 12, 1993?

24 A. No, I did not notice it.

25 Q. All right, sir. Mr. Beal, you're aware

1 of what date this trial commenced, are you not?

2 A. I believe it was the 13th of January.

3 MR. BERTSCH: Mark, I'm showing his
4 memo, the 13th. It indicates "picked jury on the
5 12th."

6 Q. Right. The trial actually commenced on
7 the 12th of January, correct? I don't know if
8 that's a big issue for dispute here, I'm just
9 telling you the fact that it did start on the
10 12th.

11 A. My notes sag the jury was picked on the
12 12th and opening statements were on the 13th.

13 Q. Can you tell me, Mr. Beal, how yo'u
14 conveyed Mr. Nelson's grant of authority to
15 defense counsel?

16 A. By phone.

17 Q. And can you tell me, sir, when you
18 telephoned them and who did you talk to?

19 A. Referring to my handwritten note of
20 1-13-93, I talked with Dave Bertsch. And at the
21 bottom of that is "advised okay to offer 50,000
22 and see where plaintiff lands. Everyone's still
23 on fairly even ground."

24 Q. Okay, And are you referring to a
25 memorandum to the file prepared by you and dated

1 1-13-93?

2 A. Yes.

3 Q. All right, sir. So do you know when
4 that \$50,000 authority was actually offered to
5 the plaintiff?

6 MR. BERTSCH: Mark, maybe you can tell
7 us that.

8 Q. I'm trying to remember.

9 A. No, I don't know.

10 Q. All right, sir.

11 MR. BERTSCH: Things were kind of a
12 blur that week.

13 MR. OKEY: I can appreciate that.

14 MR. BERTSCH: And I don't run it
15 through my mind too often since.

16 MR. OKEY: All right.

17 Q. Can you tell me, Mr. Beal, when you
18 were first advised as to plaintiffs' reaction to
19 that offer having been made?

20 A. If I may look through the file.

21 Q. Sure. Take your time.

22 MR. BERTSCH: Mark, I'm showing him
23 another memo dated January 13, one of his
24 handwritten pages at the bottom here.

25 MR. OKEY: All right.

Q. Are you with me, Bruce?

A. Yes. That is the 13th of January, '93.
It starts out on that page, "Defense D.C., Kelli Pearson."

Q. Right. I'm on the same page with you.

A. All right. And I guess essentially the third paragraph,

Q. Yes, sir.

A. I was advised that the offer had been made to the plaintiff.

Q. I'm sorry. I didn't mean to cut you off. Are you finished, sir?

A. Yes.

Q. All right. When you were advised, who advised you?

A. Possibly Orville Reed.

Q. All right. Now, did you have a conversation or an opportunity to talk with Mr. Reed on the 14th, the following day?

A. It would appear that I did.

Q. All right. And again, you prepared a memorandum to file and it was dated for January 14, 1993?

A. And how does it start out?

Q. I believe my copies indicate a

1 document -- let me count them here.

2 MR. BERTSCH: Does it start off "Trial
3 will finish up on Saturday"?

4 MR. OKEY: Nope. My document dated
5 1-14, '93, is a two-page document.

6 MR. BERTSCH: All right,

7 MR. OREY: Both pages being titled
8 "memorandum to file." I'm not sure I have the
9 first or the second page that I'm referring to,
10 but the subject on mine says, "Orville Reed,
11 defense counsel."

12 MR. BERTSCH: Right.

13 THE WITNESS: Right.

14 MR. BERTSCH: That's the first page.

15 Q. Okay. Then the second page
16 concluded -- and below the last sentence there is
17 your signature or your initials, correct,
18 Mr. Beal?

19 A. Yes, it is.

20 Q. And if I can refer you to the second
21 page of that memorandum. Are you there, sir?

22 A. Yes.

23
24 you at that particular time and on that date?

25 A. Well, it appears that the trial was

1 going well, a good neck-and-neck race by
2 plaintiff and defendants. It wasn't anywhere
3 strongly in anybody's favor.

4 Q. Well, I'm referring to the second page
5 there, okay, specifically --

6 A. "Trial will finish up on Saturday?"

7 Q. Yes, sir. Then I believe, like the
8 second line down from that, you indicated "I
9 advised Mr. Reed to continue trial."

10 MR. BERTSCH: Mark --

11 Q. Do you see where that's at?

12 MR. BERTSCH: I mean, he's on the same
13 page with you. If you look at the line in
14 between, "Defense thinks they're running even
15 with plaintiff," that's why --

16 MR. OKEY: I understand that. I think
17 I commented about that and I understand that.

18 MR. BERTSCH: Okay. He's on the same
19 page with you.

20 Q. It goes on and it says -- to be honest
21 with you, Mr. Beal, my copy again is pretty darn
22 hard to read. Can you read to me from your
23 original record the rest of the paragraph or --
24 that starts with "I advised."

25 A. "I advised Mr. Reed to continue trial

1 and let me know how defense's case goes on
2 Friday. Orville thinks if we want to settle, we
3 should, but up to \$250,000. I advised we'll wait
4 for results on Friday."

5 Q. And was your response to Mr. Reed
6 telling you about the -- any desire to settle was
7 .just --

8 A. To wait until the next day of trial.
9 Whose desire to settle?

10 Q. Well, I'm trying to interpret what was
11 written there. "Orville thinks if we want to
12 settle," I assume that the "we" refers to the
13 defense, both you and the insurance carrier and
14 the defense counsel. Am I wrong in that
15 assumption?

16 A. I guess the way that I read this, that
17 if we have a desire to settle, perhaps we should
18 put up some money, but only up to 250,000.

19 Q. All right, sir.

20 A. And based on that time, plaintiffs were
21 still at 800,000 and unwavering and it was my
22 decision to wait one more day.

23 Q. All right. Did you take any action to
24 go back to Mr. Nelson to secure any additional
25 authority from him on that particular date after

1 your conversation with Mr. Reed?

2 A. Not that I recall.

3 Q. All right. I'm going to shift a few
4 gears here and take you back in time again, And
5 for your benefit, sir, so that you know what I'm
6 referring to, I'd like you to look for a memo
7 from Attorney Don Powell that is dated February
8 15, of 1991. Maybe you can help me find that,
9 Dave.

10 MR. BERTSCH: Yeah. Okay.

11 A. All right.

12 Q. Now, sir, that memo was prepared by a
13 Mr. Powell the day following his interview of
14 your insured, Dr. Klaserner; is that correct?

15 MR. BERTSCH: Well, Mark, it appears to
16 be -- Bruce would not have any personal
17 knowledge, you know, other than what the document
18 itself shows,

19 MR. OKEY: The document is dated
20 February 15, '91, am I correct?

21 MR. BERTSCH: And it refers to a
22 February 14 meeting with Dr. Klaserner. The only
23 person that could vouch for that is Don Powell.
24 But, I mean, we are both reading off the same
25 document, correct,

1 MR. OKEY: And I'm just pinning down
2 the dates on these, if I can.

3 MR. BERTSCH: I'll stipulate.

4 MR. OKEY: That's all I'm asking.

5 MR. BERTSCH: I'll stipulate that the
6 document dates that you've just stated are what
7 the documents reflect, but I don't think Mr. Beal
8 can vouch for whether or not, you know, those
9 took place. All he's doing is doing the same
10 thing you are, which is reading this document
11 that, you know --

12 Q. Okay. And, Mr. Beal, this memorandum
13 was prepared by Mr. Powell and forwarded to you
14 to inform you or to advise you of how his
15 interview of Dr. Klaserner had gone on the 14th,
16 am I correct?

17 A. Yes.

18 Q. And Mr. Powell indicated to you at that
19 time that it had not gone completely favorable.
20 Is that a fair characterization of that
21 interview?

22 MR. BERTSCH: Where are you at, Mark?

23 MR. OKEY: Well, I'm asking in a
24 general sense, Dave, that -- whether or not he,
25 referring to Mr. Beal, received information from

1 Mr. Powell in a memorandum that was not
2 particularly favorable to Dr. Klaserner.

3 MR. BERTSCH: Well, if you don't want
4 to tell us specifically where, then I'd like him
5 to read the entire memo then before he comments
6 on the characterization of it because I don't
7 think --

8 MR. OKEY: I understand. I just
9 assumed that he had read it, Dave. If he hasn't,
10 please go ahead and read it.

11 MR. BERTSCH: Why don't you take a
12 minute to read the document.

13 MR. OKEY: Sure. I think it's several
14 pages, like two or three.

15 MR. BERTSCH: It's more like five.
16 That's why I'd rather he read the document
17 before, you know, he answers any questions to
18 characterizing what it says because --

19 MR. OKEY: Fair enough. And just let
20 us know when you're ready,

21 MR. BERTSCH: I will tell you now that
22 I met with Mr. Beal earlier today and went
23 through the file in a general sense, but we did
24 not sit down and read each document like this.

25 MR. OKEY: Okay.

1 MR. BERTSCH: Are you done?

2 THE WITNESS: Yeah.

3 MR. BERTSCH: Do *you* want to put the
4 question to him again, Mark.

5 Q. Sure, Dave. Mr. Beal, my question is
6 this: you've now read the memorandum by
7 Mr. Powell dated February 15 of 1991. Contained
8 therein, isn't it correct that Mr. Powell points
9 out at least three problem areas regarding Dr.
10 Klaserner?

11 A. I think your question is very vague.

12 Q. All right.

13 A. But I'll attempt to answer it. That
14 memorandum is based on Don Powell's initial
15 discussion and impressions of the case. And it's
16 very early on in the case. I guess it's not as
17 favorable as one would want early on in a case,
18 but it's nothing that couldn't be overcome with
19 experts. That's written without any expert
20 opinion also. You know, Don hasn't explored --
21 we haven't gotten into discovery.

22 Q. I understand that this is early on in
23 the case, but this claim had actually occurred
24 back on December 1 of 1989. This is being
25 written well over a year later, am I correct?

1 MR. BERTSCH: Well, I'll stipulate to
2 that, Mark.

3 MR. OKEY: All right. I'm just
4 saying --

5 MR. BERTSCH: Let me ask you, though,
6 you said three problems, that he identifies three
7 problems. And I read this -- maybe what
8 you're -- you know, because I don't see, you
9 know, the first problem, second problem, third
10 problem. So if you've got --

11 Q. Let me ask it this way. Mr. Beal, in
12 that memorandum, does Mr. Powell identify that
13 there is a significant question as to whether
14 Dr. Klaserner should have manipulated
15 Mrs. Lovell? First of all, does he mention that?

16 MR. BERTSCH: Well, Mark, maybe to move
17 it along, can you show us where because I think
18 he can answer yes or no.

19 MR. OKEY: I'll be sure to get it.

20 MR. BERTSCH: I mean, it's a five-page
21 document. I want to try to move this along.
22 Whatever it says, it says.

23 MR. OKEY: Okay. Fine, Dave.

24 MR. BERTSCH: I'll see if I can spot it
25 here.

1 MR. OKEY: Hold on one second, please.

2 Page 4, first paragraph.

3 MR. BERTSCH: Yeah.

4 MR. OKEY: Midway through, starts with
5 the sentence "When I pointed out."

6 MR. BERTSCH: -- "that there would be a
7 significant question concerning whether or not he
8 should have performed the manipulation and when I
9 further pointed out that his thoughts about
10 pre-stroke symptoms were not helpful with respect
11 to this question, he essentially stated," et
12 cetera. Okay.

13 MR. OKEY: Right. And I'm asking
14 Mr. Beal to confirm that Mr. Powell reported that
15 to him.

16 MR. BERTSCH: I'll stipulate to it,
17 Mark.

18 MR. OKEY: Thanks. Pine.

19 MR. BERTSCH: The'docurnent says what it
20 says. And to the extent that the document says
21 that it was a significant question --

22 MR. OKEY: All right, Dave, Thank you.

23 MR. BERTSCH: Okay.

24 Q. Mr. Beaf, the problem area that
25 Mr. Powell refers to in that memorandum of

1 February 15 of '91 --

2 MR. BERTSCH: I'm going to object to
3 the term "problem area." There's a difference
4 between problem area and significant question.
5 But with that objection, go ahead, Mark.

6 MR. OKEY: Okay. Thanks, Dave. And,
7 Jody, I'll try not to step over Dave's talk and
8 likewise. So if you need to stop and ask us to
9 slow down, we'll be glad to do so.

10 MR. BERTSCH: No. 2.

11 Q. Sure. No. 2. Mr. Beal, did Mr. Powell
12 indicate to you in that memorandum that
13 Dr. Klaserner was not up-to-date on chiropractic
14 developments?

15 MR. BERTSCH: Where are we at, Mark?

16 MR. OKEY: Okay.

17 MR. BERTSCH: I think I saw it, but I
18 don't see it as I'm --

19 MR. OKEY: Page 5, second paragraph,
20 second sentence.

21 MR. BERTSCH: "His lack of current
22 education will obviously cause a problem if this
23 matter is skillfully presented to a jury"?

24 MR. OKEY: No. I've got page 5, second
25 paragraph, second sentence. It says, "It did

1 appear to me." Do you see that?

2 MR. BERTSCH: I'm with you. Okay.

3 I'll stipulate to that, that it says that "It did
4 appear to me that he probably did not keep up
5 with the developments of his profession." I'll
6 stipulate that on -- that's contained in the memo
7 that Don sent to Bruce.

8 MR. OKEY: All right. And now I gather
9 you're stipulating that Mr. Beal acknowledges
10 that comment by Mr. Powell?

11 MR. BERTSCH: Sure.

12 Q. Okay. Then the final, the third area,
13 is that -- and I'm using the term "problem area,"
14 and you correct me if you have a better term but,
15 Mr. Beal, did Mr. Powell tell you on February 15,
16 1991, that Dr. Klaserner quitting the practice of
17 chiropractic and becoming a street preacher was
18 also a problem in this case?

19 MR. BERTSCH: Where is the "quitting
20 the practice" part of it?

21 MR. OKEY: Well --

22 MR. BERTSCH: I'm reading it where it
23 says --

24 MR. OKEY: There are several references
25 to it, however the third paragraph on page 5

1 indicates it's also a -- caused a problem.

2 MR. BERTSCH: Mark, the only reason
3 that I ask you is that I read that third
4 paragraph. It says, quote, "In addition, his
5 street preaching may also cause a problem," --

6 MR. OKEY: Correct.

7 MR. BERTSCH: -- closed quote. I'll
8 stipulate.

9 MR. OKEY: Those are the references
10 that I'm referring to.

11 MR. BERTSCH: I think what that is
12 saying, though, the concern about street
13 preaching is much like the one juror said in voir
14 dire. I don't see any reference to that
15 paragraph to the quitting of practice unless
16 you're equating that with preaching. But I know
17 there's -- somewhere else in here he says
18 quitting the practice, but I don't know whether
19 Don identifies that as an issue in the case,
20 though.

21 MR. OKEY: Well, let me -- isn't it
22 also contained in that memorandum that he -- I'm
23 referring to Dr. Klaserner -- told Mr. Powell
24 that he quit the practice of chiropractic for two
25 reasons: One, he had callings of God and, two,

1 he quit because of the Lovell incident? Isn't
2 that true?

3 MR. BERTSCH: Okay. You're referring
4 to page 1, quote, "As a result of his calling
5 from the Lord and as a result of this incident,
6 he and his wife reached an agreement that he
7 should enter the ministry"?

8 MR. OKEY: That's correct.

9 MR. BERTSCH: We'll stipulate that
10 that's stated in Don Powell's memo to Mr. Beal
11 and Mr. Beal received that memo.

12 Q. All right. Thank you, Dave. Let me
13 then take you to the same month, February of '91,
14 and I believe in that month, Mr. Beal, am I
15 correct, that you requested a report from a
16 chiropractic expert named Dr. Ferezy? And I'm
17 not sure I'm pronouncing that right and maybe you
18 can give me the correct pronunciation.

19 A. Dr. Ferezy, yes.

20 Q. Ferezy. Thank you. Who is Dr. Ferezy,
21 Mr. Beal?

22 A. He's a chiropractor who does a -- he
23 practices in St. Paul. He is a diplomate in
24 chiropractic neurology.

25 Q. Is he an insured of National

1 Chiropractic?

2 A. I believe he may be. I don't know for
3 sure. But we insure 65 percent of all practicing
4 chiropractors in the country, so it's possible
5 that he is.

6 Q. All right, sir. How did you come to
7 select Dr. Ferezp?

8 A. We use him occasionally to review
9 files.

10 Q. All right. How many files has he
11 actually reviewed for you personally as a claims
12 adjustor, approximately?

13 A. As of February 26, 1991, this was the
14 first one.

15 Q. All right. Did you, sir, then get his
16 name from some particular source within your
17 company?

18 A. Probably.

19 Q. Do you have any specific recollection
20 of who told you to contact this particular
21 doctor?

22 MR. BERTSCH: Well, Mark, there's a
23 difference between saying that he got his name
24 from someone as opposed to being instructed to
25 contact him.

1 MR. OKEY: Again, I don't want to --

2 MR. BERTSCH: I might be --

3 MR. OKEY: -- get into semantics. I'm
4 just trying to ask him if he can identify for me
5 how he was given this doctor's name and --

6 MR. BERTSCH: Fine.

7 MR. OKEY: -- how he learned to contact
8 this doctor on this particular claim.

9 MR. BERTSCH: No problem.

10 A. From where or who, no, I cannot state.

11 Q. All right. Well, there's also a
12 notation -- and I'll have to find it for you --
13 but there's something in a note regarding an
14 Evans letter. Do you know who Evans is?

15 A. He's a doctor that reviews cases for
16 us. And a letter was drafted, just a form letter
17 type of thing,

18 Q. Yes.

19 A. And nobody ever assigned a number to
20 it, to the form letter or a name to the form
21 letter. And I just called it an Evans letter
22 because, I guess, he's the first guy I used it
23 on.

24 Q. All right. And so that was just kind
25 of your own personal form that you used to -- or

1 told your secretary, "Hey, give me an Evans type
2 letter to this particular doctor"?

3 A. To accompany the file up to
4 Dr. Ferezy, yes.

5 Q. Got you. Yes. By the way, Mr. Beal,
6 how long have you been employed by National
7 Chiropractic?

8 A. Three years and one month.

9 Q. What was your beginning date?

10 A. February 5, 1990.

11 Q. Okay. Prior to working at National
12 Chiropractic where had you worked before that,
13 sir?

14 A. From January 1985 until January of '90
15 I was employed with Economy Fire and Casualty
16 Company in Freeport, Illinois, as a claims
17 examiner.

18 Q. And did you leave that particular job
19 for a better paying job there at National
20 Chiropractic?

21 A. Equivalent pay.

22 Q. Was there any particular reasons why
23 you left the prior job, sir?

24 A. I'm originally from this area and it
25 was my desire to get back closer to home.

1 Q. Okay. Had you ever, prior to February
2 5 of 1990 adjusted any claims involving
3 chiropractic malpractice?

4 A. Prior to my being employed here?

5 Q. Yes, sir.

6 A. No.

7 Q. Did you go through any specialized
8 training when you came over from your prior
9 employment to the National Chiropractic?

10 A. Only on-the-job training.

11 Q. All right. And what -- who was
12 training you at that time when you first came on
13 board with National Chiropractic?

14 A. Bob Nelson, the claims manager.

15 Q. All right. Have you had any formal
16 training or education in the chiropractic field
17 of medicine?

18 A. Am I trained as a chiropractor?

19 Q. No, sir. Do you have any kind of
20 formal training regarding the practice of
21 chiropractic medicine?

22 MR. BERTSCH: Mark, are you asking him
23 if he has ever taken any chiropractic courses or
24 seminars?

25 MR. OKEY: Any kind of training back in

1 February of 1990.

2 MR. BERTSCH: Since or back then?

3 MR. OKEY: Let's take it from back
4 then, first of all, and then I can maybe work
5 forward with it.

6 A. I don't recall.

7 Q. Have you since your employment at
8 National Chiropractic had any training in
9 chiropractic medicine?

10 A. I have attended seminars, yes.

11 Q. And what kind of instruction did you
12 receive at these seminars?

13 A. Just various chiropractic techniques
14 and problems in chiropractic.

15 Q. Have you ever participated in or worked
16 in any kind of chiropractic internship program?

17 A. No, I have not.

18 Q. Have you ever had any medical training
19 in your background at all?

20 A. I've had quite a number of biology,
21 physiology, anatomy courses in high school and
22 college. I have attended seminars since 1979
23 when I got into the claims adjusting field
24 through the present time.

25 Q. Are you a college graduate, sir?

1 A. Yes, I am.

2 Q. Where did you graduate from and when?

3 A. University of Iowa in 1978.

4 Q. And what was your major?.

5 A. I graduated with a bachelor of business
6 administration majoring in insurance.

7 Q. All right. Now, if I can take you
8 back, then, in regard to the doctor's review.
9 I'm sorry. How do you pronounce his name again?

10 MR. BERTSCH: Ferezy.

11 MR. OKEY: Ferezy?

12 MR. BERTSCH: That's good enough.

13 Q. Dr. Ferezy issued a report dated April
14 9, 1991; correct?

15 A. Yes.

16 Q. Have you reviewed that report?

17 MR. BERTSCH: You mean just recently or
18 at any time, Mark?

19 MR. OKEY: Well, I'm really referring
20 to just recently.

21 MR. BERTSCH: Why don't you take a
22 minute and take a look at it.

23 MR. OKEY: Go ahead, Dave. And just
24 let me know when he's ready.

25 MR. BERTSCH: Okay.

1 MR. OKEY: Thank you.

2 MR. BERTSCH: Okay.

3 Q. Mr. Beal, you've had a chance to review
4 the doctor's report?

5 Yes.

6 Isn't it true, Mr. Beal, that report
7 was not as favorable as you had hoped for?

8 A. Dr. Ferezy raises some issues in
9 particular that Ms. Lovell was exhibiting some
10 symptoms that were rather ominous in nature.

11 Q. All right. But that really didn't
12 answer my question. Did you consider that --
13 isn't it a fact that you considered that report
14 as not being as favorable as you had hoped for?

15 MR. BERTSCH: We'll stipulate that's
16 the letter that he sent to Mr. Powell,

17 MR. OKEY: All right.

18 MR. BERTSCH: That's contained in there
19 that --

20 MR. OKEY: All right. Thank you.

21 Q. Other than the one comment that you
22 just made about that report, was there anything
23 else in that report that you considered not to be
24 favorable to you as the insurer?

25 A. No.

1 Q. Did you ever have an opportunity to
2 discuss the Lovell case with the doctor
3 personally?

4 A. Which doctor?

5 Q. This particular doctor that we're
6 referring to, Dr. Ferezy.

7 A. Yes, I did.

8 Q. Can you tell me the date that you spoke
9 to him?

10 A. No, I cannot.

11 Q. Is there a memo regarding your
12 telephone conversation with him?

13 A. Yes.

14 Q. And it is undated; correct?

15 A. Yes, it is.

16 Q. And I don't believe it contains your
17 signature either, does it?

18 A. No, it doesn't but that is my writing.

19 Q. That is your handwriting?

20 A. Yes.

21 Q. And what information did doctor -- did
22 this doctor convey to *you* during your telephone
23 conversation with him?

24 A. Again, he raised the issue that with
25 her symptoms that a stroke was imminent.

1 Q. Did he offer any additional information
2 other than that?

3 A. Well, I guess he stated -- or I
4 interpreted it as Dr. Klaserner had a good
5 diagnosis and he adjusted her anyway.

6 Q. Doesn't he also say or didn't he also
7 tell you that "we finished it off"?

8 MR. BERTSCH: Well - - .

9 A. That would be my terminology; not his.

10 Q. But that's what you wrote down?

11 MR. BERTSCH: Well, the whole phrase,
12 Mark, is, quote, "artery probably going to go and
13 we finished it off," closed quote.

14 Q. And is that a correct statement of what
15 you wrote down in that note regarding your
16 telephone conversation with this doctor?

17 MR. BERTSCH: I'll stipulate that the
18 note that I just read to you, I accurately read
19 to you.

20 MR. OKEY: All right.

21 Q. But are you saying, Mr. Beal, that
22 those are your words; not the physician's?

23 A. I would say it probably is my
24 terminology and not Dr. Ferezy.

25 Q. So that is your interpretation of what

1 he told you on that particular -- or during that
2 conversation?

3 A. Yes. And I would refer back to the
4 second page of his report, bottom paragraph, in
5 the middle of there, and I quote, "In fact, there
6 may be an exacerbating or coincidental
7 relationship only."

8 Q. All right. Mr. Beal, if you review the
9 report that was sent to you by the doctor, does
10 it contain anywhere in that report the words "we
11 finished it off" or "he manipulated anyway"?

12 MR. BERTSCH: Mark, maybe you can help
13 us. Does it --

14 MR. OKEY: No.

15 MR. BERTSCH: Okay. I mean, rather
16 than reading the whole three-page report again, I
17 don't recall seeing -- what was -- the first
18 question was "finished it off." What was the
19 other part of it?

20 MR. OKEY: Well -- and the other words
21 were "he manipulated anyway."

22 MR. BERTSCH: If it's not there, it's
23 not there. I assume your -- I don't see it as I
24 browse through this report. So if you're saying
25 it's not in the written report, we'll accept it.

1 Q. All right. My question, Mr. Beal, is,
2 did you in your telephone conversation with the
3 doctor indicate to him that he should have
4 omitted those comments from his report?

5 A. I very much doubt that I did. I don't
6 tell the doctor what to write.

7 Q. All right. Do you recall writing me a
8 letter dated December 14 of 1990?

9 A. December 4th of '90?

10 Q. No, sir, December 14 of 1990.

11 MR. BERTSCH: We got it.

12 A. Yes, I have it,

13 Q. And in that particular letter didn't
14 you indicate to me, sir, that your basis or your
15 position on liability would be based upon the
16 opinions of your doctor and that would be
17 Dr. Ferezy?

18 A. "Our position as to liability will be
19 based on this report."

20 Q. And what report are you referring to in
21 that letter?

22 A. I sent the file then to Dr. Ferezy,

23 Q. All right, sir. Thank you. Now, on
24 May 3 of 1991 I believe that you wrote Attorney
25 Powell to advise him of Dr. Ferezy's opinions, am

1 I correct in that?

2 A. Yes.

3 Q. And we've already referred to this
4 particular document and this particular letter,
5 wherein, is it not true, that you actually used
6 the words that that report from the doctor was
7 not as favorable as you had hoped for?

8 MR. BERTSCH: We'll stipulate, Mark.
9 The document says what it says.

10 A. "It doesn't appear to be quite as
11 favorable as I had hoped."

12 Q. Then you also commented but you were
13 not willing at that time to, quote, "throw in the
14 towel yet"?

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

16 Q. Now, on May 15 of 1992 you prepared a
17 document titled a "claims checklist;" correct?

18 A. Partially, yes.

19 Q. All right. When you say partially,
20 that you only prepared a part of it?

21 A. That's the date that part of the form
22 was completed.

23 Q. So this form was actually completed on,
24 what, several different dates?

25 A. Yes.

1 Q. Let me ask you some specific questions
2 about this form and then you tell me in your
3 answers specifically when or on what dates the
4 information was documented, okay?

5 A. All right.

6 Q. First of all, there's a section
7 referring to the expert witness. Do you see
8 that, sir?

9 MR. BERTSCH: Are you saying .
10 "chiropractic review," Mark?

11 MR. OKEY: Yeah, I believe that's what
12 it says, but it refers to the doctor.

13 MR. BERTSCH: Right.

14 A. Dr. Ferezy.

15 Q. Ferezy, yes, sir.

16 MR. BERTSCH: The form doesn't say
17 expert, but we're on the same --

18 MR. OKEY: I'm in that section.

19 MR. BERTSCH: We're with you.

20 Q. And I believe it indicates that there
21 was no deviation from standard of care and you
22 checked "no"?

23 A. Correct.

24 Q. Now, there's another section there,
25 says -- 'titled "Miscellaneous" section. Do you

1 see that?

2 A. Yes, at the bottom of the page.

3 Q. And that starts off with a question,
4 doesn't it?

5 A. Yes.

6 Q. And that question: "Is insured free
7 from liability?" And did you answer that, sir?

8 A. Yes.

9 Q. And in fact you checked or marked "no,"
10 am I correct?

11 A. Yes.

12 Q. Can you tell me the date that you
13 recorded that response?

14 A. Not a date definite. I would guess
15 that was done on or about the 15th of May.
16 That's the date that I started this form. It's
17 dated 5-15-92 at the top.

18 - Q. Okay.

19 A. And I would have had Dr. Ferezy's
20 opinion 13 months prior to that. And I probably
21 on or about the 15th completed the miscellaneous
22 section.

23 Q. All right. Then there's -- that
24 question is followed by a statement or a request
25 that says, "Indicate insured's degree of

1 negligence," am I correct?

2 A. Yes.

3 Q. All right. And then it gives you four
4 potential answers; correct?

5 A. Yes.

6 Q. And am I correct in stating that you
7 circled the word "significant"?

8 A. I did so, yes.

9 Q. Then there's a line from "significant"
10 to a word which is written in, and I believe in
11 your hand, "causation"?

12 A. Yes.

13 Q. Can you tell me why that was recorded
14 on that document?

15 A, All right. I will go back up to the
16 chiropractic review section. Dr. Ferezy, in his
17 report, states that there was not a deviation
18 from the standard of care. This form was not
19 developed by claims personnel in this company and
20 it really wasn't for our use.

21 So when I checked "no" down at
22 "miscellaneous" under the question or by the
23 question "Is the insured free from liability,"
24 I'm equating liability with exposure. Even though
25 the doctor is not -- did not breach the standard

1 of care, I feel that there is an exposure in this
2 case, and his exposure would be or could be
3 significant.

4 Q. Well, what do you equate with the term
5 negligence?

6 A. Breach of standard of care.

7 Q. And isn't that -- and to that
8 particular statement or request, you circled the
9 word "significant"?

10 A. Well, again, the exposure in this case
11 is significant, but I feel based on Dr. Ferezy's
12 report and others that the defense counsel
13 provided, that there is not a breach of the
14 standard of care.

15 Q. Well, Mr. Beal, I realize what you're
16 saying to me about exposure, but specifically on
17 this form the question or the request is
18 "Indicate insured's degree of negligence." It
19 does not say exposure, does it, sir?

20 A. Again, this was -- form was not for my
21 purpose.

22 Q. Where did you get this form?

23 A. It was developed by our accounting
24 department.

25 Q. And this form is part of the claims

1 file?

2 A. Yes, it is.

3 Q. And it's kept in the ordinary course of
4 business in the handling of this claim; correct?

5 A. Yes, it is.

6 Q. And it's titled at the very top
7 "National Chiropractic Mutual Insurance Company
8 Claim File Checklist"?

9 A. Yes, it is.

10 Q. All right. Now, at some point in time
11 additional information was written on this
12 particular document; correct?

13 MR. BERTSCH: Are you referring to the
14 pretrial, Mark?

15 MR. OKEY: Yeah.

16 MR. BERTSCH: Up above here.

17 THE WITNESS: Okay.

18 MR. BERTSCH: July 6 of '92?

19 Q. Right. Obviously, *you* knew information
20 regarding something that had happened on July 6
21 could not be recorded back on May 15 of '92;
22 correct?

23 A. That's right.

24 Q. So at some point in time this document
25 had some additional information written on it?

1 A. Yes.

2 Q. Just what additional information was
3 recorded on that document in July of 1992?

4 A. There's a blank and it says.
5 "plaintiff's demand." It's written in "\$5
6 million down to \$1 million at pretrial."

7 8. Do you have a specific recollection
8 that is the only information recorded on that
9 document at a later date?

10 A. Yes.

11 Q. Now, on July 28, '92, you received a --
12 sorry, Dave, but a long memorandum, rather, from
13 Mr. Bertsch, and I believe we've already referred
14 to it one time.

15 A. What was the date again?

16 Q. July 28 of '92.

17 A. Okay.

18 Q. All right, sir. And could you turn to
19 the last page of that document.

20 A. The postscript or otherwise?

21 Q. I'm sorry. I couldn't hear you, sir.

22 A. Page 10 is a postscript,

23 Q. Page 10?

24 A. Are you referring to that?

25 Q. I'm referring to -- no. I'm sorry.

1 I'm referring to page 9.

2 A. All right.

3 MR. OKEY: If I can go just off the
4 record for just a minute. Let me make sure that
5 I'm on the right spot here. Just a second.

6

7 (An off-the-record discussion was
8 held.)

9

10 Q. Mr. Beal, I was referring to the
11 correct page. That was page 9 of the report,
12 letter from Mr. Bertsch dated July 28, 1992.

13 MR. BERTSCH: He's got it.

14 A. Okay.

15 Q. And you have that in front of you, sir?

16 A. Yes, I do.

17 Q. You see the top paragraph on page 9,
18 and specifically I'd like to refer you to the
19 second sentence in that paragraph. It starts
20 off, "Stated differently." Do you see that, sir?

21 MR. BERTSCH: Line 5.

22 A. Yes.

23 Q. All right. At that time Mr. Bertsch
24 reported to you this comment, "Stated
25 differently, even though defendant presently

1 appears to have the better of the argument on the
2 issue of negligence, we may have to affirmatively
3 demonstrate beyond any doubt that Dr. Klaserner's
4 actions were reasonable in order to overcome the
5 jurors' inclination to find liability if
6 causation is established." You did have that
7 reported to you, right?

8 MR. BERTSCH: Stipulate to it.

9 Q. All right. My question to you,
10 Mr. Beal, do you agree with that evaluation or
11 did you agree with it on that date?

12 MR. BERTSCH: Well, I'm going to
13 object, Mark, because you've taken one sentence
14 out of context and characterized that as the
15 evaluation rather than the entire evaluation.

16 MR. OREY: I'm not characterizing it as
17 the entire evaluation. I did not say that,

18 MR. BERTSCH: Well, the very next
19 sentence qualifies that sentence.

20 MR. OKEY: Well, I understand, but I'm
21 asking him about this particular sentence.

22 MR. BERTSCH: Go ahead.

23 A. What's the question again?

24 Q. Whether or not you agreed with that
25 statement by Mr. Bertsch contained in his

1 July 28, 1992, letter to you?

2 A. Do I agree with that statement?

3 Q. You do?

4 A. Is that the question, do I agree with
5 it?

6 Q. That's correct.

7 A. Yes. I've been in the business long
8 enough that the classic textbook case is that you
9 need to prove -- you as the plaintiff needs to
10 prove negligence before you can get into
11 causation, yes.

12 Q. That's not what that's referring to,
13 though, sir. Mr. Beal, that's referring to you,
14 the insurer, and the insured having to
15 affirmatively prove beyond a doubt that
16 Dr. Klaserner, your insured, acted reasonably.
17 Do you understand the meaning of that sentence,
18 sir?

19 MR. BERTSCH: Well, I object to the
20 question as to whether or not he understands the
21 meaning of the sentence. And I'll also object --
22 I stated as a conditional with "we may have to."
23 And if you're asking him what his understanding
24 of the sentence is versus yours and you're
25 saying, does he understand the meaning of it, he

1 can give you what he reads it to mean and you can
2 disagree with him. Go ahead.

3 Q. Well, do you understand, Mr. Beal, that
4 is a reference to what you, the insurer
5 representing the insured, has to prove at trial;
6 not what the plaintiff has to prove?

7 MR. BERTSCH: Mark, I'm going to
8 object. And the reason that I'm going to object
9 is that you know as well as I do that's
10 plaintiff's burden of proof at trial. What I'm
11 stating here is a practical matter. We may end
12 up having to disprove it,

13 MR. OKEY: Well, I'm just asking him
14 to -- whether or not he agrees with your
15 evaluation, Dave, as stated in that particular
16 paragraph in that particular part of that report
17 to him. That's all I'm asking.

18 MR. BERTSCH: I think he answered that
19 he agreed with my evaluation. Am I mistaken in
20 that?

21 MR. OKEY: I didn't hear that.

22 MR. BERTSCH: Okay. I may be mistaken.

23 MR. OKEY: He said yes, it's classic
24 textbook that the plaintiff has to prove and
25 that's what I asked.

1 MR. BERTSCH: Well, my understanding is
2 that he did say that he agreed with the
3 evaluation, but go ahead, Mr. Beal.

4 A. Yes, I agree with that,

5 Q. Thank you. Mr. Beal, isn't it true
6 that this was never -- this claim was never
7 considered to be a no-liability case, was it?

8 MR. BERTSCH: Objection.

9 A. It's a case of no liability but the
10 exposure was great.

11 Q. Can you tell me where in your file,
12 anywhere in your file, you recorded this is a
13 case of no liability?

14 A. Excuse me. Then no negligence.

15 Q. No, I didn't ask you that, sir. I
16 asked you about liability. My specific question
17 was that this was never -- this claim was never
18 considered to be a no-liability case or claim.

19 MR. BERTSCH: Objection. He answered
20 you. He regards it as being a no-liability case
21 but there was exposure.

22 MR. OKEY: And I followed up and I
23 asked him, where can I find in his records or in
24 his claims files where anybody said this or
25 anybody documented that this is a no-liability

1 case.

2 The insured did not breach the standard
3 of care.

4 Q. I did not ask that, sir. I asked where
5 is it recorded in this file anywhere a statement
6 that says this is a no-liability case or claim?

7 MR. BERTSCH: As far as those specific
8 words, Mark, do you want?

9 MR. OKEY: That's what I'm asking,
10 Dave. I'm not trying to be argumentative. I'm
11 just asking him, do those words exist in his
12 file.

13 MR. BERTSCH: I mean, if they do, they
14 are there. If they don't, then they aren't. I
15 don't want him to look through the whole file. I
16 assume that you already have.

17 MR. OKEY: I think this is a critical
18 point. And if he needs to look at every document
19 in that file, go right ahead. I've looked at
20 them and I'd like to know if those words are
21 contained anywhere in his file.

22 MR. BERTSCH: Do you know whether those
23 exact words are contained in your file?

24 Those exact words, no, they are not in
25 the file. I'm sure they're not.

1 Q. All right, sir. And isn't it true that
2 this claim or this case was never considered to
3 be a case or a claim of comparative negligence?
4 Isn't that true?

5 A. That's correct.

6 Q. All right. Now, I believe that a point
7 in time occurred when you authorized Mr. Reed to
8 obtain an independent medical exam; correct?

9 A. I believe I did, yes.

10 Q. And I believe Mr. Reed selected
11 Dr. Harvey Friedman from Akron, Ohio, to perform
12 that exam; is that correct?

13 A. I believe so.

14 Q. And the IME was performed on March 3,
15 1992?

16 MR. BERTSCH: If that's what the file
17 says, Mark, we'll stipulate on or about March
18 1992.

19 MR. OKEY: Thank you, Dave.

20 MR. BERTSCH: You just want him to go
21 through the whole file to locate that date?

22 MR. OKEY: I'd appreciate that.

23 Q. Now, Mr. Beal, Mr. Reed wrote you a
24 letter about this IME examination. His letter is
25 dated 3-6, 1992. Do you have that letter in

1 front of you?

2 A. The letter of Dr. Friedman?

3 Q. No. It's not Dr. Friedman's letter,
4 but the letter from Mr. Reed to you about
5 Dr. Friedman's exam, and that letter is dated
6 3-6-92. I just don't want you to look through
7 the whole file.

8 MR. BERTSCH: What's the date, Mark?

9 MR. OKEY: March 6, 1992, letter from
10 Orville to Mr. Beal.

11 THE WITNESS: Did you find it?

12 MR. BERTSCH: No. Do you have that,
13 Mr. Beal?

14 THE WITNESS: Yes, I do.

15 Q. Okay. Would you take this opportunity
16 to maybe just read through it quickly.

17 MR. BERTSCH: Okay.

18 Q. Okay. Isn't it true, Mr. Beal, that in
19 that letter Mr. Reed advised you that he talked
20 with Dr. Friedman after Dr. Friedman examined my
21 client, Mrs. Lovell?

22 A. Yes.

23 Q. And Mr. Reed then went on and advised
24 you that Dr. Friedman had determined that
25 Mrs. Lovell had suffered serious sequellae from

1 this incident and this stroke?

2 A. That's what the letter says, yes.

3 Q. And also that she was essentially
4 unemployable? Is that contained there?

5 A. Yes, it is.

6 Q. And does it also indicate that
7 Dr. Friedman thought she had little use of her
8 left arm?

9 A. That's his impression, yes.

10 Q. And it was also Dr. Friedman's
11 impression that she had had a significantly
12 impaired left leg; is that correct?

13 A. He states that the left leg has been
14 significantly impaired, yes.

15 Q. Right. And that information then was
16 reported directly to you by Mr. Reed?

17 A. Yes, it was.

18 Q. All right. Now, doesn't that letter
19 also indicate that Mr. Reed told Dr. Friedman not
20 to write a report at that time?

21 A. That's what the second paragraph says.

22 Q. Okay. Now, after this or subsequent to
23 this, Dr. Friedman did in fact issue a report and
24 that report is dated July 14 of 1992; is that
25 correct? Maybe you want to get a copy of that

1 report out.

2 A. Okay.

3

4

5

6

7

8 held.)

9

10 Q. Mr. Beal, I'm referring to page 2 of
11 Dr. Friedman's report. Would you turn to that
12 page, sir,

13 A. All right.

14 Q. And I'm specifically referring to the
15 fourth paragraph --

16 A. All right.

17 Q. -- and the last sentence.

18 MR. BERTSCH: Where are we at, Mark?

19 Q. Where it reads -- and this is
20 Dr. Friedman's report again, It says, "Secondly,
21 she did have the chiropractic manipulation which
22 I believe probably accelerated the stroke, but
23 probably did not cause its specific onset";
24 correct? That information was reported to you,
25 sir; correct?

1 A. Yes.

2 Q. Now, I believe your attorneys,
3 specifically Mr. Reed, deposed Dr. Jay Berke who
4 was the plaintiff's treating neurologist; isn't
5 that correct?

6 A. I suppose he did.

7 Q. Well, in fact that deposition -- a copy
8 of that was sent to you, wasn't it, sir?

9 A. The deposition transcript? No.

10 Q. Dr. Berke's deposition transcript was
11 never sent to you?

12 MR. BERTSCH: He had -- Do you have a
13 letter, Mark?

14 MR. OKEY: No. I'm asking the
15 question. I don't have a specific letter on
16 that,

17 A. I may have received a deposition
18 summary, but an actual deposition transcript, I
19 doubt if it was sent.

20 Q. Well, do you have a specific
21 recollection, sir, of Mr. Reed or Mr. Bertsch
22 telling you that they took the deposition of
23 Dr. Berke -- that's Jay Berke -- the neurologist,
24 and that he testified that the manipulation
25 caused Mrs. Lovell's stroke?

1 MR. BERTSCH: Mark, I can probably move
2 it along faster. I have in front of Mr. Beal the
3 June 29 letter from Orville to him reporting the
4 deposition that Orville took of Jay Berke, so
5 whatever --

6 MR. OKEY: I'm specifically -- I was
7 asking Mr. Beal whether or not he had received
8 information to the effect that Dr. Berke
9 testified on deposition that the manipulation by
10 Dr. Klaserner caused Mrs, Lovell's stroke.

11 MR. BERTSCH: For the record, Mark, I
12 can quote to you right from the letter and
13 stipulate that Mr. Beal received it. It says,
14 quote, "Dr. Berke is of the opinion that
15 Dr. Klaserner's cervical manipulation caused the
16 stenosis which led to the stroke which
17 Mrs. Lovell suffered." And that's on the front
18 page of Mr. Reed's report to Mr. Beal dated June
19 29, 1992.

20 MR. OKEY: Thank you, Dave.

21 Q. And my question, Mr. Beal, then, that
22 information was directed to you, sir?

23 MR. BERTSCH: We'll stipulate to it,
24 Mark.

25 MR. OKEY: Okay.

1 Q. Isn't it also true, Mr. Beal, that the
2 original doctor that you retained on this case to
3 review it, Dr. Ferezy, in his report he also
4 indicates that in fact there may be an
5 exacerbating or coincidental relationship only in
6 regards to the manipulation and the stroke?

7 MR. BERTSCH: Hold on a second.

8 A. Second page, last paragraph, yes, it
9 says that.

10 Q. And Mr. Bertsch's letter to you dated
11 July 28, 1992, is the same one that we referred
12 to on a number of occasions. Would you get that
13 out for me, sir.

14 MR. BERTSCH: How much longer, Mark?

15 MR. OKEY: Not too much longer, Dave.

16 MR. BERTSCH: Pardon me?

17 MR. OKEY: Not too much --

18 MR. BERTSCH: Another half hour, you
19 think?

20 MR. OKEY: Oh, yeah, that will be doing
21 it.

22 MR. BERTSCH: Go ahead.

23 MR. OKEY: Okay, Just one second,
24 please. I'm going to go off the record for just
25 a second. Thank you.

1

1 (An off-the-record discussion was
2 held.)

3 Q. Mr. Beal, I'd ask you to direct your
4 attention to page 8 of Mr. Bertsch's letter dated
5 July 28, 1992, and specifically the fifth
6 paragraph.

7 MR. BERTSCE: Okay.

8 MR. OKEY: And, Dave, the last sentence
9 of that paragraph.

10 MR. BERTSCH: "This is borne out"?

11 MR. OKEY: "This does not eliminate."

12 MR. BERTSCH: No. You said -- oh,
13 you're up one paragraph. I thought you said the
14 fifth. I see what you're doing,

15 MR. OKEY: I'm using that top couple of
16 lines there, okay?

17 MR. BERTSCH: Okay. Quote, "This does
18 not eliminate the claim that the adjustment
19 aggravated these symptoms and precipitated the
20 stroke, but plaintiffs' case has far less appeal
21 if in fact she had a preexisting thrombosis in
22 her neck, i.e., a bomb in her neck waiting to go
23 off with the only question being not "if" but
24 "when."

25 MR. OKEY: That's correct.

1 Q. And was that information given to you
2 directly from Mr. Bertsch?

3 MR. BERTSCH: Mark, I will stipulate
4 that any of the reports that we furnished to you
5 from Mr. Beal's claims file having to do with
6 reports that we sent to Mr. Beal, that whatever
7 is in those letters, was communicated to Mr. Beal
8 so that you don't have to ask that each time.

9 He received each of these reports. It's
10 addressed to him and that's evidenced by the fact
11 that when you asked for a copy of his claims
12 file, anything that we produced to you came out
13 of Mr. Beal's file. So if it was produced to you
14 as part of his claims file, that means the report
15 was given to him and it was communicated to him,
16 so I'll stipulate on any letter of myself and
17 Mr. Reed to Mr. Beal that you have in your
18 possession that we furnished it out of his claims
19 file, that that came from the claims file and the
20 information contained therein was communicated to
21 Mr. Beal.

22 MR. OKEY: Could we also, Dave, have a
23 stipulation that he understands -- that all of
24 the information was in fact reviewed and read by
25 Mr. Beal?

1 MR. BERTSCH: Well, let me
2 double-check. Did you read each one of our
3 letters when we sent it, even my long ones?

4 THE WITNESS: Yes.

5 MR. BERTSCH: Okay.

6 Q. Okay. Thank you. I'd like to take you
7 back then to a memo dated 2-15-91 by Mr. Powell.
8 Would you go back to that document then again,
9 sir?

10 MR. BERTSCH: Is that the one with
11 doctor -- the discussion with Dr. Klaserner?

12 MR. OKEY: That's right.

13 MR. BERTSCH: Got it. Go ahead.

14 MR. OKEY: Okay. I believe it's on the
15 second page.

16 MR. BERTSCH: Okay.

17 MR. OKEY: Second paragraph, Mr. Beal.

18 MR. BERTSCH: Okay,

19 MR. OKEY: Again, Dave, I don't know if
20 we want to go through all of the stipulations --

21 MR. BERTSCH: I stipulate, you know --

22 MR. OKEY: My question really, Dave, I
23 wanted to verify with Mr. Beal that he received
24 information regarding the types of verdicts in
25 the Tuscarawas County area as reported by

1 Mr. Powell.

2 MR. BERTSCH: Mark, we'll stipulate to
3 this. In other words, this came out of Bruce's
4 claims file. It's Don's memo that was sent to
5 Mr. Beal, and Mr. Beal indicated that he had read
6 it, so we stipulate that whatever is contained in
7 that letter was read by Mr. Beal and that will
8 hold true --

9 MR. OKEY: Would you also stipulate
10 then, Dave, and Mr. Beal, that in a memo of
11 Attorney Bertsch dated July 28, 1992, that
12 Mr. Beal was advised by you, Dave, that "while it
13 is conceivable that a verdict could be returned
14 in excess of \$500,000 were this case venued in
15 Akron or Cleveland, Tuscarawas County is fairly
16 conservative in personal injury awards," period?

17 It goes on to say, "In our opinion the
18 verdict range in Tuscarawas County would likely
19 be in the area of 300,000 to \$400,000."

20 May we have a stipulation that that was
21 received by Mr. Beal and read by him?

22 MR. BERTSCH: We've already stipulated
23 that anything in the July 28 letter -- I'm just
24 assuming -- I couldn't get to that page, but it
25 sounds like you read it right off the page. But

1 the document speaks for itself, and Mr. Beal has
2 already testified that he's received and reviewed
3 each of these communications that we've covered
4 here today from Mr. Powell, Mr. Reed, and myself
5 to him, so --

6 MR. OKEY: Okay, Dave. Thank you.

7 MR. BERTSCH: I understand what you're
8 doing. You're going through each one and
9 locating certain things and asking him if he read
10 it. He's stipulating that he has read each one
11 of them.

12 Q. All right. Mr. Beal, based upon this
13 information that you had reviewed and received
14 from the various sources, is it true, sir, that
15 you knew, based upon these evaluations, that a
16 large verdict was possible in this case?

17 MR. BERTSCH: Mark, what do you mean by
18 large?

19 MR. OKEY: Well, me personally, I
20 consider verdicts in the 3 to 4, \$500,000 range
21 or excess of that rather large.

22 MR. BERTSCH: Okay. I do too,
23 especially in this case.

24 A. What was the question again?

25 Q. My question is, sir, that you were well

1 aware based upon these various evaluations that
2 you had received from both the attorneys and
3 other sources that a large verdict from 300,000
4 to \$500,000 was possible in a case like this?

5 A. I was aware that there was the
6 potential for that, yes.

7 Q. All right, sir. In fact, that's borne
8 out by your comment on your January 11, 1993,
9 note where you indicated that the liability
10 situation was 50/50; correct?

11 A. The potential for a large verdict? Not
12 based on a 50/50 chance of defending it, no.

13 Q. Okay. Let's put it this way. There
14 was an equal chance here for a plaintiff's
15 verdict as well as a defense verdict?

16 A. That's what the 50/50 would mean, yes.

17 Q. All right.

18 A. But that doesn't have any weight to
19 what -- how high or low that exposure could be.

20 Q. Is there any question in this case or
21 was there ever any question in this case that the
22 injuries sustained by Nedra Lovell were permanent
23 in nature?

24 A. Yes.

25 Q. There was? Where is that information

1 found, sir, in your claims file?

2 A. Well, perhaps not permanent in nature
3 but not as serious as Ms. Lovell would have us
4 believe.

5 Q. Are you aware, sir, that Dr. Friedman,
6 your examining neurologist indicated and
7 testified that her conditions were permanent?

8 A. I'm aware of that.

9 Q. You are certainly aware, aren't you,
10 sir, that the treating physicians for Mrs. Lovell
11 testified that her conditions were permanent?

12 A. I'm aware of that.

13 Q. These were also, sir, injuries or
14 conditions, medical conditions that were very
15 objective in nature for the most part, weren't
16 they?

17 MR. BERTSCH: Mark, which injuries are
18 you referring to as being objective?

19 MR. OKEY: These conditions directly
20 resulted **from** the stroke.

21 A. I would disagree with them being
22 objective.

23 Q. What were the objective injuries and
24 what were the subjective injuries then according
25 to you?

1 A. Dr. Friedman viewed videotapes,
2 surveillance tapes of your client following the
3 IME, and he was quite taken aback. It was his
4 opinion that he was duped, that 'it' was a
5 different woman that he was seeing on the
6 videotape from what he had seen in his office.

7 Q. Did you ever use the videotapes, the
8 surveillance in court?

9 MR. BERTSCH: Come on, Mark. You know
10 we didn't. You were there in court.

11 Q. Why didn't you, Mr. Beal?

12 A. It was a strategic decision left to
13 defense counsel.

14 Q. Did you tell them to use them?

15 A. No, I did not.

16 Q. Do you know anybody at National
17 Chiropractic who did tell them to use them?

18 A. No. To use them in court or to use
19 surveillance?

20 Q. To use them in court, the videotapes.

21 A. No, that was their decision only.

22 Q. And "their decision" was, what, the
23 defense counsel? That's what you are referring
24 to?

25 A. It was defense counsel's decision

1 whether or not to use the surveillance tapes.

2 Q. Isn't it also a fact that Mr. Reed
3 advised you, Mr. Beal, that in his discussions
4 with Dr. Friedman that Dr. Friedman's opinion was
5 that she was essentially unemployable and that
6 was consistent with what Dr. Jay Berke, her
7 treating neurologist, was going to testify and
8 had testified to on deposition? Isn't that true?

9 MR. BERTSCH: Well, I'm going to
10 object, Mark, because you're not putting a time
11 on it. What Mr. Beal has told you is that the
12 statement that Dr. Friedman made to Mr. Reed at
13 one point was not the same statement and opinion
14 that Dr. Friedman held later after viewing the
15 videotapes.

16 And secondly, Dr. Berke, as you well
17 know, testified at trial that this woman was not
18 completely and totally unable from any type of
19 employment.

20 MR. OKEY: Well, I was just saying,
21 Dave -- I asked you about essentially
22 unemployable, which you know Dr. Friedman
23 testified himself at trial, went over information
24 reported to you, and that the two doctors, your
25 examining neurologist and our treating

1 neurologist were essentially consistent in that
2 opinion.

3 MR. BERTSCH: Mark, I'll stipulate
4 that's what Mr. Reed reported to him in the one
5 report back in -- earlier in the year, which
6 you've already made reference to. And I don't
7 have the specific language right out of the
8 report. I'll stipulate that Mr. Reed wrote words
9 to that effect that Dr. Friedman had told
10 Mr. Reed that she was essentially unemployable.

11 What Mr. Beal is telling you, that he
12 has had subsequent discussions with Mr. Reed
13 where Dr. Friedman had changed his opinion after
14 viewing the videotape and felt that she was not
15 the same woman that had been in his office and
16 was no longer adhering to the opinion that he had
17 previously told Mr. Reed.

18 Q. Mr. Beal, when did Dr. Friedman view
19 the videotape of Mrs. Lovell?

20 A. I don't know.

21 Q. Was it before or after trial?

22 A. Before trial.

23 Q. Where in your claims file or any
24 reports from Mr. Bertsch or Mr. Reed does it
25 indicate that Dr. Friedman changed his opinions

1 regarding Mrs. Lovell's permanency after viewing
2 this videotape?

3 MR. BERTSCH: Objection, Mark.

4 Dr. Friedman didn't change his opinions regarding
5 permanency. Dr. Friedman testified at trial that
6 this woman had a permanent condition. What
7 Dr. Friedman changed his opinion on was the
8 degree of severity of that condition. I mean, he
9 testified at trial that she had a permanent
10 condition, permanent residual deficits as a
11 result of this stroke.

12 The videotape that was shown to
13 Dr. Friedman did not change his opinion that this
14 woman no longer had any permanency, but simply as
15 to the degree of disability that this woman was
16 suffering.

17 Q. My question to you originally about
18 this subject was: there was really no question
19 that there were permanent conditions?

20 MR. BERTSCH: Correct. And there is no
21 question.

22 MR. OKEY: He didn't answer that. He
23 answered it, no, he didn't think so based upon
24 the fact that Dr. Friedman thought that he was
25 duped.

1 MR. BERTSCH: No, Mark. What you asked
2 him is, is there any -- you know, there's no
3 question this woman had in part a permanent
4 residual condition. But what Mr. Beal --

5 Q. Mr. Beal, are you telling me or are you
6 testifying that Mrs. Lovell did not have a
7 permanent condition?

8 A. I suppose her condition was or is
9 permanent, just the degree of severity is at
10 question.

11 Q. All right, And then my follow-up
12 question to that is, where can I find in your
13 claims file any documentation regarding
14 Dr. Friedman saying he was duped after he viewed
15 the videotape and therefore was changing his
16 opinions regarding the severity of her permanent
17 injury? Where can I find that in your file?

18 A. I would say it is not in my file, but I
19 do have recollection of a discussion I had with
20 Mr. Reed regarding that.

21 Q. And can you tell me where that
22 discussion was had, when and where?

23 A. I would say approximately late July of
24 '92.

25 Q. Six months before this trial began?

1 A. Possibly.

2 Q. And you didn't note that?

3 MR. BERTSCH: Okay, Mark. The question
4 has been asked and answered.

5 Q. All right. Mr. Beal, as a matter of
6 practice in the performance of your profession,
7 isn't that the type of information that you would
8 note in your claims file?

9 A. Not necessarily,

10 Q. All right. Let me ask you this,
11 Mr. Beal. Isn't it true that on December 5 of
12 1990 I wrote you a letter inquiring about whether
13 or not your insurance carrier was interested in
14 settling this case?

15 A. December 5 of when?

16 Q. 1990.

17 A. Your letter dated December 5, 1990,
18 "Dear Mr. Beal, enclosed please find the
19 following." Yes.

20 Q. It is true that I inquired about
21 settlement at that time; correct, sir?

22 A. Yes.

23 Q. All right. And I also mentioned in my
24 letter to you of January 28, 1991, when I sent
25 you information regarding the filing of this

1 lawsuit that I also mentioned again that I hoped
2 that the case would be resolved either by
3 litigation or through settlement; isn't that
4 true?

5 A. What date?

6 Q. That would be January 28, 1991.

7 A. January 28, 1991?

8 Q. Yes, sir.

9 A. I can't find anything on that date.

10 Q. I'm representing to you that I wrote
11 you a letter dated January 28, 1991, wherein in
12 the second paragraph -- and by the way, I got
13 this from your claims file.

14 MR. BERTSCH: Mark, there's a lot of
15 paper here.

16 MR. OKEY: I understand. And I'm
17 just. -- I'm just going to represent to you -- and
18 if I misquote it or misread it, you tell me.

19 MR. BERTSCH: Maybe I can find it in
20 this one. January 28, 1991? Why don't you go
21 ahead and read it. We're having trouble finding
22 it.

23 Q. That's fine, Dave. In that letter I
24 indicated to you, Mr. Beal, "I felt that this
25 action was necessary and trust it will lead to a

1 resolution of this case by settlement or trial."

2 Do you recall receiving that particular letter,
3 sir?

4 A. I don't particularly recall that
5 specific letter, no. We can't locate it.

6 Q. I don't want you shuffling around going
7 through the file, but I'll represent to you that
8 I got a copy of that letter in with the papers
9 that I received regarding your claims file.

10 A. Okay. That's fine.

11 Q. By the way, Mr. Beal, have we received
12 the entire claims file?

13 A. Yes.

14 MR. BERTSCH: With the qualification,
15 Mark, as I indicated to Allen before -- two
16 qualifications. One being anything after the
17 verdict and two being medical records,
18 depositions, pleadings and Dr. Berke's report,
19 whatever I put in the letter to Allen.

20 MR. OKEY: Thank you, Dave.

21 Q. Now, Mr. Beal, you were aware that
22 early on in this claim the plaintiffs' demand or
23 the original plaintiffs' demand was \$5 million,
24 am I correct?

25 A. That's right.

1 Q. And then you were also aware, sir, that
2 when the first pretrial was held on November 25
3 of 1991, plaintiffs' reduced their demand to
4 \$1 million; correct?

5 A. As I recall today, it was like one and
6 three quarters, 1.75 million or something like
7 that.

8 Q. Well, I think what you're referring to
9 there, sir, is the revised demand in the lawsuit.
10 I'm referring to the stated settlement demand of
11 the plaintiff at the time of the first pretrial,
12 which was November 25, 1991.

13 MR. BERTSCH: Do you have a document,
14 Mark?

15 MR. OKEY: I believe it was reported to
16 Mr. Beal by Mr. Reed, and I don't have that
17 document right in front of me, but I believe it's
18 in Mr. Beal's own handwriting after a telephone
19 call with Mr. Reed.

20 MR. BERTSCH: My only confusion on
21 that, Mark, I saw one like that and it was the
22 notation on the one document that says that --
23 said that the demand dropped from \$5 million to
24 \$1 million, but it was at the July pretrial.

25 MR. OKEY: Well, I think the situation

1 is this. The original demand was \$5 million.
That demand was reduced to 1 million on the date
3 of the first pretrial.

4 MR. BERTSCH: The only thing that we
5 have covered up -- that's why I asked if you had
6 another document. But the only thing that we've
7 covered up to this point on that is the claim
8 file checklist where it has a date of July 6,
9 1992, "\$5 million down to \$1 million at
10 pretrial."

11 Q. And at least we can agree to this, that
12 as of the second pretrial, July 6, 1992, the
13 plaintiffs' demand had been reduced to \$1
14 million; correct?

15 A. I agree with that, yes.

16 Q. And in fact you prepared a memo dated
17 July 21, 1992, and at that time you recorded that
18 the case had a settlement value of \$150,000;
19 correct?

20 MR. BERTSCH: Objection. Mark, I think
21 it says, quote, "The defense" -- and I assume
22 that means defense counsel -- "feels settlement
23 value is 150,000."

24 MR. OKEY: All right.

25 MR. BERTSCH: But with that

1 qualification, we have the document here and
2 we're looking at that, yes,

3 Q. Right. Okay. And that's what you
4 recorded; right, Mr. Beal?

5 A. Yes.

6 Q. And again, I assume that you got that
7 information directly from the defense counsel?

8 A. **From** Mr. Reed.

9 Q. Okay. And would you have received that
10 in a telephone call on that same date that you
11 created this note?

12 A. Yes.

13 Q. At that time, sir, did you grant any
14 authority to settle this case?

15 A. No, I did not.

16 Q. Did you ever personally grant your
17 \$10,000 authority to the defense counsel as **far**
18 as settlement in this case?

19 A. I don't believe I did.

20 Q. Now, then there again we go ahead to
21 the July 28, 1992, memorandum, letter from
22 **Mr. Bertsch.** And again, that memorandum
23 contained a statement advising you of the
24 settlement value of \$150,000; is that correct?

25 MR. BERTSCH: Well, I think it says

1 up -- July. Oh, wait a minute. July 28, Mark?

2 MR. OKEY: That's your long letter,
3 Dave. It would be on the last page.

4 MR. BERTSCH: Right. You just want to
5 grab it?

6 MR. OKEY: Go ahead.

7 MR. BERTSCH: "Settlement value up to
8 \$150,000."

9 Q. Okay. And that information was
10 reported to you, Mr. Beal?

11 A. Yes, it was.

12 MR. BERTSCH: We'll stipulate.

13 Q. Did you authorize or seek any authority
14 to settle the case in response to that?

15 A. No, I did not.

16 Q. Then on October 13, 1992, defense
17 counsel, I believe, called you and told you that
18 "plaintiffs' counsel likes to settle." Do you
19 recall receiving that information?

20 MR. BERTSCH: Stipulate.

21 Q. All right, Knowing that, Mr. Beal, and
22 assuming that you read that, you were aware of it
23 back in October of 1992. Did you grant any
24 authority to settle this case at that time?

25 A. Based on my handwriting stating

1 plaintiffs' counsel likes to settle cases?

2 Q. That's right.

3 A. I did not grant authority then. That
4 note would at that time indicate that plaintiffs'
5 counsel didn't like to try cases.

6 Q. Okay. Then on December 10, 1992, you
7 advised in another memorandum that plaintiff's
8 were requesting an offer; isn't that correct?

9 A. Yes.

10 Q. All right. And I note -- did you take
11 any actions to authorize some authority on this
12 case to settle it?

13 A. No.

14 Q. And on December 29 of 1992, defense
15 counsel specifically asked you for some authority
16 on this case; correct?

17 A. We've discussed this document and I
18 don't believe that they were requesting' dollars.
19 I believe that we just touched **upon it** and **it** was
20 suggested that if we're going to throw some money
21 at this case, you know, do **it** now as opposed to
22 waiting until trial.

23 Q. In fact, they told you "now is the
24 time," didn't they?

25 A. I don't recall whether that was --

1 those were the exact words or not.

2 Q. That's what you wrote down?

3 A. On the 29th of December?

4 Q. Well, I'll tell you what. Let's go
5 back to December 10. Let's look at that.

6 A. Okay. "Feels now is the time," yes.

7 Q. That was reported to you on December
8 10; right?

9 A. Yes.

10 Q. Did you take any action to get any
11 authority granted to settle this case after that?

12 A. Based on plaintiffs' unwavering demand
13 of \$1 million, no.

14 Q. So you took no action; correct?

15 A. Pardon me?

16 Q. You took no action then to get any
17 authority at that time?

18 A. To get authority, no.

19 Q. All right. Now, you took no action
20 after your telephone call with defense counsel on
21 the 29th of December, 1992; correct?

22 A. As far as seeking authority to settle
23 the case, no. Or attempt settlement of the case,
24 no.

25 Q. All right. And on -- I'm sorry.

1 January 11, 1993, that was in fact the time that
2 defense counsel requested authority, am I
3 correct?

4 MR. BERTSCH: Mark, you've gone through
5 all of this. I mean --

6 MR. OKEY: Well, I'm just --

7 MR. BERTSCH: I'm only looking at the
8 time and I am just curious -- this is stuff that
9 you have already gone over once and --

10 MR. OKEY: I'm not going to be much
11 longer, but I want to ask these questions.

12 MR. BERTSCH: Go ahead. Go ahead.

13 Q. And is that true, Mr. Beal, that the
14 defense counsel requested authority on January
15 11, 1993?

16 A. I don't know whether they did or not.
17 I have a note addressed to memorandum to file,
18 addressed to Bob Nelson seeking authority.

19 Q. Well, then you were the one that sought
20 the authority and then you received the authority
21 the next day, the 12th?

22 A. Yes.

23 Q. Now, did you anticipate that a \$50,000
24 offer would settle this case?

25 A. No. As my note on January 13 states,

1 "Advised" -- he was talking with Dave Bertsch,
2 1-13-93. Last couple of lines, "Advised okay to
3 offer 50,000 and see where plaintiff lands."

4 . Q. All right, sir. There was no
5 expectation \$50,000 would settle this case on
6 that based upon that offer; right?

7 MR. BERTSCH: Objection, Mark. He just
8 answered you.

9 Q. Is that true, there was no expectation
10 of settlement with that offer?

11 MR. BERTSCH: No expectation --

12 A. No reasonable expectation.

13 MR. BERTSCH: -- of settlement at
14 50,000, Mark?

15 MR. OKEY: Yeah, that's right.

16 MR. BERTSCH: Okay.

17 Q. Did you ever at any time or did anybody
18 from your company ever grant any authority in
19 excess of \$50,000 on this case?

20 A. No.

21 Q. Now, you were informed on January 13,
22 1993, that the plaintiffs had unilaterally
23 dropped or reduced their demand to \$800,000;
24 isn't that correct?

25 A. Yes.

1 Q. Were you also told on that date by
2 defense counsel that plaintiffs indicated that
3 all the plaintiff ever wanted was \$500,000 on
4 this case?

5 A. I believe that was in some type of
6 discussion that plaintiffs' counsel and Mr. Reed
7 had.

8 Q. All right. And did you take any action
9 to get any additional authority to attempt to
10 settle it at that time?

11 A. Plaintiff never made a demand of
12 \$500,000. Their demand was still 800,000.

13 Q. I didn't ask you that. I asked you if
14 you ever took any additional steps to secure any
15 authority in response to those statements?

16 A. No.

17 Q. All right, And did you take any steps
18 to secure any additional authority after Mr. Reed
19 told you that perhaps if we're going to settle,
20 we should settle but up to \$250,000 on January
21 14, 1993?

22 MR. BERTSCH: Mark, objection. He's
23 already told you after the original 50,000 he
24 never sought any additional authority, so you're
25 going through all of these steps --

1 MR. OKEY: After what Mr. Reed told him
2 on the phone.

3 MR. BERTSCH: You know the answer. You
4 asked him an hour and a half ago and you know the
5 answer already. He told you he never took any
6 additional steps.

7 MR. OKEY: Please. I understand what
8 you're saying, but I would like Mr. Beal to
9 simply respond whether or not he took any steps
10 after Mr. Reed advised him on the 14th of 1993.

11 A. On the 14th?

12 Q. Again, Mr. Beal, that's when Mr. Reed
13 told you if you want to settle, we should up to
14 250,000. My question very simply is, did you
15 take any other steps there, obtain any additional
16 authority after you had that discussion with
17 Mr. Reed?

18 A. Well, we'll stipulate that Mr. Reed
19 wasn't asking or demanding that we settle, yes.
20 He states if we want to settle, we could maybe
21 offer up to 250,000. And no, I did not take any
22 further action.

23 Q. Thank you, sir. Well, in essence,
24 Mr. Beal, really this boils down to a situation
25 where you, in your evaluation, simply felt that 'a

1 jury in Tuscarawas County, Ohio, would not come
2 back with a large verdict in this case;
3 isn't that true?

4 MR. BERTSCH: What do you mean by
5 large?

6 MR. OKEY: The same thing that you had
7 been quoting in your own records, Mr. Beal, the 3
8 to 400,000. I think you saw the 500,000 on your
9 one note.

10 MR. BERTSCH: Well, I'm going to
11 object. It's my report to him when I said
12 300,000 to 400,000 verdict range in Tuscarawas
13 County.

14 Q. He quotes 500 and then 300 to 400 in
15 his own note to Mr. Nelson dated January 11,
16 1993. My question is that, in essence, you
17 didn't think a jury in Tuscarawas County, Ohio,
18 would return a verdict in that range; isn't that
19 true?

20 A. The likelihood was not great.

21 Q. All right. Essentially you decided to
22 take the chance, correct, with the jury?

23 A. As did the plaintiff.

24 Q. All right. But I'm just asking you,
25 you decided to take the chance?

1 A. Whether they'd come back with a large
2 verdict?

3 Q. You took the chance --

4 A. On the whole outcome.

5 Q. -- with the jury's verdict as opposed
6 to attempting any additional settlement?

7 A. Rephrase the question.

8 Q. Well, I'm just asking you, sir, whether
9 or not it was your decision to try the case, take
10 the chance with the jury, rather than pursue any
11 additional action towards settlement.

12 A. Based on defense counsel's evaluation
13 of the case and the high demand by the
14 plaintiffs, yes, that is what I decided.

15 Q. All right. Let me ask you about the
16 ERC very quickly here. What exposure does ERC
17 have in this case?

18 MR. BERTSCH: You mean on the judgment,
19 Mark?

20 MR. OKEY: Well, I guess that's what it
21 would be about.

22 MR. BERTSCH: I mean, whether their
23 policy kicks in in excess and to what limit?

24 Go ahead, Bruce,

25 A. The National Chiropractic's retention

1 is the first \$100,000.

2 Q. \$100,000 is the limit of your personal
3 responsibility -- and I'm talking about National
4 Chiropractic -- on this judgment?

5 A. That's correct. That is by contract.

6 Q. And so any sum over \$100,000 is the
7 responsibility of ERC?

8 A. Yes.

9 Q. All right. Did you keep ERC updated
10 throughout the course of this pending litigation?

11 A. Only in that I sent them copies of
12 evaluations and such that I received from defense
13 counsel. You've probably noted a lot of the
14 documents are stamped on there "copy to ERC."

15 Q. That's correct.

16 A. That's the extent of our communications
17 with that company.

18 Q. Did you have any additional letters to
19 ERC?

20 A. None.

21 Q. None. Well, what is ERC's rule in the
22 handling or adjusting of this claim?

23 A. This claim and all others that we have
24 in-office, they have a very hands-off approach.
25 We handle these chiropractic cases and let them

1 know when we need some money, which is very
2 seldom.

3 Q. Does ERC control National
4 Chiropractic's authority to settle?

5 A. No.

6 Q. Was ERC ever consulted about the
7 granting of any authority in this case?

8 A. I've already explained the only
9 communication I had with them was they were
10 provided copies of evaluations that I received
11 from the defense counsel along with other
12 materials that I felt pertinent.

13 Q. I assume your answer is no, they were
14 not consulted then regarding authority?

15 A. No, they were not.

16 Q. Okay. The last update that you sent to
17 ERC was an overnight mailing on January 11, 1993;
18 correct?

19 A. Possibly. Without going through the
20 file, I don't know.

21 Q. And that, of course, wouldn't be
22 received by them until at least the 12th of
23 January, 1993; correct?

24 MR. BERTSCH: Well, it's overnight on
25 the 11th, Mark. We'll stipulate that it got in

1 on the 12th at the earliest.

2 A. Is there some form or document?

3 Q. It's one of your forms, Mr. Beal.

4 MR. BERTSCH: If it's there, Mark,
5 okay?

6 MR. OKEY: Okay.

7 Q. My question is, really that's the date
8 that trial commenced, isn't it, Mr. Beal?

9 MR. BERTSCH: We have already
10 established that.

11 MR. OKEY: We can establish that?

12 MR. BERTSCH: Yeah.

13 MR. OKEY: Okay.

14 Q. Can you tell me how much money you
15 spent, Mr. Beal, or authorized to spend on the
16 surveillance of my client?

17 MR. BERTSCH: What's the relevancy,
18 Mark?

19 MR. OKEY: I just want to know what he
20 spent on it.

21 A. I saw this morning going through the
22 file my original note in early '92. I believe it
23 was \$3,000 in my discussions with Orville Reed.
24 And it seems like maybe there was a later date --
25 and I don't know whether I authorized any more or

1 not or just gave him as much as he wanted. I
2 don't recall.

3 Q. Is there any notation in your claims
4 file. that indicates why defense counsel opted not
5 to use the videotapes of the plaintiff at trial?

6 A. Written notes, no.

7 Q. And I understand these videotapes are
8 in the possession of Mr. Reed?

9 A. I believe so.

10 Q. All right. Does ERC, do they establish
11 their own claims file?

12 A. I have no idea. I just send them parts
13 of my claim file. What they do with them, I have
14 no idea.

15 MR. OKEY: Okay. Just one minute,
16 please.

17 Q. Mr. Beal, can you tell me the name of
18 the individual who you or anybody else at
19 National Chiropractic has contacted at ERC since
20 January 16, 1993?

21 MR. BERTSCH: What's the relevancy,
22 Mark?

23 MR. OKEY: Just want to know the
24 individual who would have the ERC claim.

25 A. I have not talked with anybody from

1 ERC.

2 Q. I'm sorry.

3 A. I have not talked to or communicated in
4 any way with anyone from ERC.

5 Q. Since when, sir?

6 A. Since after the trial,

7 Q. Are they aware of the verdict?

8 A. They may be. I don't know.

9 Q. At least they are not aware of it
10 through you; correct?

11 A. Pardon me?

12 Q. They are not aware of it at least
13 through you?

14 A. I would have to go back through my
15 post-trial material to see whether I've updated
16 them or not.

17 Q. All right, sir. Sir, were you ever
18 given any advice from counsel or did you receive
19 any memos or information to the effect that
20 related to prejudgment interest being imposed in
21 Ohio?

22 MR. BERTSCH: Well, I'm going to
23 object, Mark. We're getting into post-trial
24 matters.

25 MR. OKEY: I don't mean -- I want to

1 refer to pretrial, prior to trial only.

2 A. I think there **was** your letter of
3 January 5 **or** some such thing. Maybe in December.

4 MR. BERTSCH: It was January.

5 MR. OREY: Okay.

6 MR. BERTSCH: **He's** referring to Allen's
7 letter to us. We faxed a copy on to them where
8 Allen's just saying about he intends to go after
9 Dr. Klaserner.

10 Q. All right. And did you take any
11 actions in response to that, Mr. Beal, to find
12 out anything more about prejudgment interest?

13 A. No.

14 MR. BERTSCH: Mark, you've said as of
15 about a half hour ago you weren't going to be
16 much longer.

17 MR. OKEY: Believe **it** or not, I'm done.

18 MR. BERTSCH: Because I've got two or
19 three questions and I've got to rush out of here
20 to catch a flight, so I hope they don't require
21 any **follow-up** questions from you. Hint. Hint.

22 CROSS-EXAMINATION

23 BY MR. BERTSCH:

24 Q. Mr. Beal, at any time during the trial
25 of this action was **it** ever reported to you that

1 plaintiffs had never dropped their settlement
2 demand below \$800,000?

3 A. No.

4 Q. You have indicated -- well, let me ask
5 you. Throughout the preparation and the trial of
6 this case, did you have a belief as to whether or
7 not Dr. Klaserner was negligent, your own
8 personal belief?

9 A. I believe --

10 MR. OKEY: Objection. Go ahead and
11 answer.

12 A. I believe that he was not negligent.

13 Q. Pet you have also seen in there a
14 reference to a jury having a verdict --
15 possibility of a verdict holding Dr. Klaserner
16 liable that possibly could be as high as 50/50.
17 How is it that you accommodate or reconcile your
18 own personal belief as to your insured's
19 innocence with this evaluation of a 50/50 shot
20 with a jury?

21 MR. OKEY: I'm going to object as far
22 as the extent of his own personal authority is
23 only \$10,000.

24 MR. BERTSCH: I didn't ask for personal
25 authority. I asked for his --

1 MR. OKEY: I made an objection, Dave,

2 MR. BERTSCH: I just want to clarify
3 the question. I asked how did he come to
4 reconcile his own personal belief and evaluation
5 that Dr. Klaserner was not negligent with those
6 portions of his file wherein it indicates that
7 the chance of a jury verdict -- adverse jury
8 verdict being 50/50. Go ahead, sir,

9 A. I guess I differentiate between breach
10 of the standard of care and causation versus an
11 ultimate exposure.

12 Q. If you would, when you say exposure as
13 opposed to -- your own personal belief in whether
14 or not your insured is negligent versus exposure,
15 are those two one in the same in all instances?

16 A. They are not.

17 Q. And why is that not -- why is that,
18 they are not one in the same?

19 A. The breach of the standard of **care**
20 could not be there. The causation could not be
21 there. But yet the doctor could ultimately be
22 found liable by a jury and, therefore, there is
23 an exposure, There's exposure in every case.

24 MR. BERTSCH: **Nothing** else.

25

REDIRECT EXAMINATION

BY MR. OKEY:

Q. Well, Mr. Beal, my only follow-up question would be that based upon Mr. Bertsch's questioning, he's asked you for essentially what was your subjective opinion regarding exposure; correct?

A. That's true.

MR. OKEY: Okay. Thank you. That's all I have.

MR. BERTSCH: Okay, Thank you, Mark. We are not going to waive.

MR. OKEY: Okay. That's fine.

MR. BERTSCH: And you have her address. She has got your address off the letter for purposes of the bill to you, and I've got -- I'm out of here because I've got to catch a flight here in about a half hour and it's a 20-minute drive to the airport.

MR. OKEY: Thanks, Jody.

(Deposition concluded at 5:20 p.m.)

C E R T I F I C A T E

I, JODY L. HIBBS, a Certified Shorthand Reporter and Notary Public in and for the State of Iowa, do hereby certify that prior to the commencement of the telephonic deposition BRUCE BEAL was duly sworn by me to testify the truth;

That the foregoing is a true and accurate computer-aided transcription of the testimony as taken stenographically by and before me at the time and place indicated on the title page;

That I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am not financially interested in the action.

Dated this 12th day of March, 1993.

Jody L. Hibbs
JODY L. HIBBS, CSR, RPR, CM

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