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IN THE COURT OF COMMON PLEAS
OF CUYAHOGA COUNTY, OHIO

THOMAS BRUBAKER,
Plaintiff,

vs.

Case No.
382394

SHAFRAN, ZAPKA & LEUCHTAG,
L.P.A., et al.,
Defendants.

- - - - -

Deposition of GARY HIMMEL, called
by the Plaintiff for examination under
the statute, taken before me, Steven H.
Henschel, a Registered Professional
Reporter and Notary Public in and for
the State of Ohio, pursuant to notice
and stipulations of counsel, at the
offices of Ulmer & Berne, 900 Bond Court
Building, Cleveland, Ohio, on Wednesday,
September 15, 1999, at 12:45 o'clock
p.m.

- - - - -

ORIGINAL

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1 APPEARANCES:

2
3 On behalf of the Plaintiff:

4 Becker & Mishkind, by

5 DAVID A. KULWICKI, ESQ.

6 Suite 600 Skylight Office Tower

7 Cleveland, Ohio 44113

8 241-2600
9

10 On behalf of the Defendants:

11 Ulmer & Berne, by

12 RICHARD G. WITKOWSKI, ESQ.

13 900 Bond Court Building

14 Cleveland, Ohio 44114

15 621-8400
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1 (Thereupon, Himmel Deposition
2 Exhibits-1 thru 11 were marked for
3 purposes of identification.)

4 - - - - -

5 GARY HIMMEL, of lawful age,
6 called for examination, as provided by
7 the Ohio Rules of Civil Procedure, being
8 by me first duly sworn, as hereinafter
9 certified, deposed and said as follows:

10 EXAMINATION OF GARY HIMMEL

11 BY-MR.KULWICKI:

12 Q. Mr. Himmel, let's start with
13 your full name and current address,
14 business address?

15 A. Gary L. Himmel, 80 South
16 Summit Street, Akron, Ohio, 44308.

17 Q. And what's your date of
18 licensure?

19 A. November of 1990.

20 Q. Has your license ever been
21 revoked or suspended?

22 A. No.

23 Q. Have you ever been the
24 subject of any disciplinary procedure?

25 A. No, sir.

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1 Q. What is the nature of your
2 current practice?

3 A. It's general practice. I
4 have, I guess, an eclectic client base
5 that's developed over the years.

6 Q. Do you do a fair amount of
7 work involving injury whether medical
8 negligence, product liability or
9 personal injury type cases?

10 A. Yes, sir,

11 Q. What percentage of your
12 practice currently would you estimate
13 falls within the category of an injury
14 practice?

15 A. It's the bulk of my
16 practice.

17 Q. How long has injury type of
18 litigation been the bulk of your
19 practice?

20 A. I was trying to get a date,
21 since probably about 1994.

22 Q. And what happened in 94 that
23 you tended to specialize or be more
24 active in that area of practice?

25 A. I left Amer Cunningham

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1 Brennan and opened my own office.

2 Q. Currently -- well, since 1994
3 is it fair to say that most of your
4 clients are located in Summit County?

5 A. Yes.

6 Q. Do you have clients in other
7 counties?

8 A. Yes.

9 Q. And in the past 10 years
10 have you represented clients in Cuyahoga
11 County?

12 A. Yes.

13 Q. If you would briefly run
14 through your employment history.

15 A. 1978, approximately, I was
16 hired as an intern, City of Akron.
17 1980 became a prosecutor, assistant law
18 director for the City of Akron. In
19 1983 I left there and practiced at
20 Knowlton Sanderson and in 1990 I left
21 there and practiced at Amer Cunningham
22 Brennan and in 1994 I left Amer
23 Cunningham Brennan and opened up my own
24 office in Akron,

25 Q. Have you ever officed or

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1 held an office in Cleveland or in
2 Cuyahoga County?

3 A. What do you mean?

4 Q. Have you physically had your
5 office located in the City of Cleveland
6 or in Cuyahoga County?

7 A. Do you mean like my
8 practice, my files, my --

9 Q. Yes.

10 A. No,

11 Q. Prior to today's deposition
12 did you review any documents?

13 A. Yes.

14 Q. What documents did you
15 review?

16 A, I should clarify what I said
17 about the office in Cleveland. When I
18 was associated with Michael Shafran I
19 spent -- it was his office that I was
20 in working in the DES litigation, but my
21 office was in Akron.

22 Q. Thank you.

23 A. You're welcome.

24 Q. With regard to the documents
25 reviewed, what documents have you

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1 reviewed?

2 A, Well, I reviewed the exhibits
3 that you Just handed me and then I
4 reviewed my DES file to get documents
5 that my attorney requested and then I
6 had a chance to look at what you had
7 sent today.

8 Q. Besides those categories of
9 documents, any other documents that you
10 reviewed in preparation for today's
11 deposition?

12 A. No.

13 Q. Have you ever testified
14 before whether in court or by
15 deposition?

16 A. Yes.

17 Q. And when and under what
18 circumstance?

19 A. In 1980 I testified,
20 approximately 1980, in a muni court in a
21 case where I was a plaintiff in a wet
22 basement of my house and one time when
23 I was a prosecutor there was a civil
24 suit brought against some police
25 officers and an attorney in Canton asked

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1 me to testify as to what I had done as
2 a prosecutor and I did. We called me
3 as a witness and I testified.

4 Q. Besides those two incidents
5 or instances have you ever testified or
6 given testimony in any other case or
7 action?

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

9 Q. Have you ever acted as an
10 expert in a legal malpractice action?

11 A. No.

12 Q. Let me ask you about
13 insurance coverage in this case. Let me
14 hand you what's previously been marked
15 as Deposition Exhibit 7.

16 A. Okay.

17 Q. What is your understanding
18 today as to whether or not you're
19 covered for any of the acts complained
20 of by Mr. Brubaker if you're found
21 liable as asserted by Mr. Brubaker?

22 MR. WITKOWSKI:

23 Objection. To the extent it calls for
24 a legal conclusion as to --

25 A. I'm not sure. I know that

1 they're providing a defense for me.

2 Q. Have they indicated to you
3 that they are providing a defense under
4 reservation of rights?

5 A. I believe so, yes.

6 Q. Have you retained private
7 counsel' to represent you or advise you
8 relative to this insurance coverage?

9 A. No, sir.

10 Q. Have you corresponded with an
11 insurer relative to the coverage issue?

12 A. I don't think so, no.

13 Q. Has an insurer corresponded
14 with you relative to your coverage?

15 A. I believe so.

16 Q. And is your belief that
17 there was only one letter sent by them
18 to you or more?

19 A. I think one.

20 Q. And would you keep that
21 correspondence in a file?

22 A. Uh-huh, yes.

23 Q. What I've handed you as
24 Plaintiff's Exhibit 7, is that a
25 declaration page from your policy that

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1 we're speaking of today?

2 A, It appears to be.

3 Q. Let me hand you what we have
4 marked as Deposition Exhibit 8, can you
5 identify that document?

6 A. Yes. This is a letter that
7 I authored from my Akron office to the
8 Ohio Bar Liability Insurance Company.

9 Q. Was that letter sent?

10 A. Yes.

11 Q. And in that letter it
12 reflects that you had an understanding
13 that you were under a policy of
14 insurance that was kept by Michael
15 Shafran back in 1995, correct?

16 A. Yes, sir.

17 Q. Have you ever confirmed
18 whether or not there was, in fact,
19 coverage under that policy?

20 A. No, sir.

21 Q. What was your basis or the
22 basis for your belief that you were
23 insured under that policy as referenced
24 in Deposition Exhibit 8?

25 A. Michael told me, Michael

1 Shafran told me that I was covered under
2 his policy.

3 Q. Have you ever had any
4 correspondence with QBLIC or any
5 insurance agent relative to that
6 particular coverage?

7 A. No, not that I can recall.

8 Q. So other than your
9 conversation with Mr. Shafran you have
10 not confirmed whether or not there is,
11 in fact, or you were, in fact, insured
12 under Shafran's policy?

13 A. Yes, sir.

14 Q. Let's talk about Shafran.
15 When did you first meet Michael Shafran
16 and under what circumstances?

17 A. First ever met the fellow?

18 Q. Yeah.

19 A. I was probably in my late
20 teens, my sister was dating his brother.
21 And -- no, it would have been after
22 that, sometime after my sister married
23 his brother I met him, probably met him
24 at the wedding.

25 Q. And after you had begun law

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1 school did you ever clerk with Mr.
2 Shafran?

3 A. Yes,

4 Q. And do you remember what
5 years you would have clerked with him?

6 A. We met, I don't know if it
7 was either my last year of college at
8 Kent State or my first year of law
9 school, there was one summer when I did
10 some work for him in his Cleveland
11 office.

12 Q. Was it clerk type duties?

13 A. Yes.

14 Q. Filing, that sort of thing?

15 A. Yes.

16 Q. After that summer with Mr.
17 Shafran when was the next time that you
18 had any professional involvement with
19 him?

20 A. Like what do you mean?

21 Q. Well, let me take you up
22 until November 1994. Between the time
23 that you spent the summer with Mr.
24 Shafran and November of 1994 were you
25 associated with him in any fashion?

1 A. Up to what date?

2 Q. November of 94,

3 A. November of 94, no, sir.

4 Q. During that period of time I
5 assume you were not a partner with Mr.
6 Shafran in any law firm, correct?

7 A. Correct.

8 Q. Did you co-counsel any case
9 with him during that time period?

10 A. No.

11 Q. Had you entered into any
12 agreements with Mr. Shafran whereby you
13 referred a case to him or he referred a
14 case to you and you maintained what we
15 call a referral relationship?

16 A. No.

17 Q. Did you ever act as local
18 counsel to Mr. Shafran or did he act as
19 local counsel to you ever in that time
20 period?

21 A. I don't think so.

22 Q. In November 1994 it's my
23 understanding that you became associated
24 with Mr. Shafran in a law firm called
25 Shafran and Himmel, correct?

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1 A. Right.

2 Q. And it's further my
3 understanding that you did not enter
4 into any written agreement with Mr.
5 Shafran relative to that business
6 entity, correct?

7 A. Correct.

8 Q. Let me ask, prior to
9 November of 1994 did you have occasion
10 to discuss Michael Shafran with anyone
11 else in the business community?

12 A. I'm not sure what you --
13 business community?

14 Q. Yes, that's fair enough. If
15 you don't understand I'll clarify it.
16 Prior to entering into a relationship
17 with Mr. Shafran in November of 94 were
18 you aware of Mr. Shafran's reputation in
19 the general business or legal community?

20 A. Not really, no.

21 Q. During that time period,
22 again before November of 94, were you
23 aware that Mr. Shafran suffered from
24 Tourette's syndrome?

25 A. Yes,

1 Q. Were you aware that he had
2 substance abuse problems?

3 A. Before 94?

4 Q. Yes.

5 A. Could you define that?

6 Q. Did you hold the belief or
7 opinion or had you learned through
8 conversations with others that Mr.
9 Shafran was known to have or show signs
10 of having a substance abuse problem?

11 A. Before November of 94, I
12 don't recall.

13 Q. At the time of this
14 relationship in November of 94 was Mr.
15 Shafran already in a relationship with a
16 Mr. Pecchio in a firm called Shafran and
17 Pecchio?

18 A. I think so.

19 Q. Do you know if that
20 relationship had terminated before
21 Shafran and Himmel began?

22 A. I'm sorry --

23 Q. The question was prior to
24 commencement of Shafran and Himmel in
25 November of 94 do you know what the

1 status of Shafran and Pecchio was?

2 A. No.

3 Q. Let me hand you what I've
4 marked as Plaintiff's Exhibit 1 and 2
5 and let me represent to you that those
6 are responses to interrogatories that
7 were supplied to me by your counsel here
8 not verified and what I want to ask you
9 is whether or not you can verify them
10 orally right now, in other words, is the
11 information contained in those
12 interrogatories true and accurate to the
13 best of your knowledge?

14 A. One second. Are they the
15 same?

16 Q. No.

17 MR. WITKOWSKI: There
18 are slight differences.

19 A. You want me to take them one
20 at a time?

21 Q. Sure.

22 A. As to deposition Exhibit
23 Number 1, yes, I can verify those are
24 my answers. Can I see this for a
25 second, please?

1 Q. Sure,

2 A. Okay. As to Deposition
3 Exhibit Number 2, the only question I
4 have is on interrogatory number 13,
5 which is a question about professional
6 liability insurance and it says no
7 coverage exists and to the extent that I
8 had Mr. Witkowski, I would disagree,
9 that's the only thing. Otherwise, I
10 verify the answers.

11 Q. And with the exception of
12 interrogatory number 13 and request for
13 production of documents number 7
14 contained in Deposition Exhibit 2, with
15 the exception of that question, are the
16 answers contained in Exhibits 1 and 2
17 truthful and accurate?

18 A. I believe so.

19 Q. Let me hand you what we've
20 marked as Deposition Exhibit Number 3,
21 can you identify that two-page document?

22 A. Yes. This was the letter
23 that Michael sent to me asking me to
24 get involved in the DES litigation.

25 Q. Let me ask you the

1 circumstances behind that letter. By
2 the way, I think it's dated sometime in
3 September of 94, is that when you recall
4 receiving it?

5 A. Yes.

6 Q. How did it come to be that
7 you and Michael were talking about your
8 involvement in DES cases, did you
9 contact him or did he contact you
10 initially?

11 A. He called me and told me
12 about DES.

13 Q. Do you know why he contacted
14 you?

15 A. It was a big project and he
16 was excited about it.

17 Q. And he knew you through the
18 family relationship?

19 A. And as an attorney in Akron.

20 Q. Did you see each other over
21 the years from the date of your sister's
22 marriage to his brother to September of
23 94?

24 A. Yes.

25 Q. And when did you see each

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1 other, under what circumstances?

2 A. Under those same types of
3 circumstances, you know, family
4 get-togethers.

5 Q. Other than that letter there
6 was there any written document or
7 correspondence confirming the nature of
8 your relationship with Shafran relative
9 to these DES cases?

10 A. Other than what you showed
11 me here today as exhibits, no, I don't
12 think so.

13 Q. And, likewise, we discussed
14 that there was no written partnership
15 agreement, can we also agree that there
16 was no written limited partnership
17 agreement?

18 A. Yes,

19 Q. And it's my understanding
20 from your responses to written discovery
21 that your association with Mr. Shafran
22 ended in early May of 1995, correct?

23 A. It was earlier than that.

24 Q. Let me hand you what I've
25 marked as Plaintiff's Exhibit 6, and can

you identify that two-page document?

2 A. Yeah, yes, This is,
3 Deposition Exhibit 6 is an agreement
4 that was entered into between Michael
5 and I memorializing our separation.

6 Q. And let me underline a
7 portion of the ,first line of paragraph
8 four, I've underlined some language that
9 talks about a public announcement of the
10 dissolution. Are you aware of any
11 public announcement being made relative
12 to that dissolution?

13 A. In regards to DES the
14 announcements were to everybody involved
15 and I think that's what public was,
16 that's what our involvement was and
17 that's what the announcement was.

'18 Q. How was that announcement
19 made?

20 A. Well, there were letters sent
21 to clients, there was a tremendous
22 number of them. The ones that I took,
23 and there was just a couple that I
24 took, I announced to them and Michael
25 was going to announce to the remaining

1 women that he would be the counsel.

2 Q. Do you have any confirmation
3 whether or not Shafran announced to the
4 clients that he retained control of that
5 the dissolution was occurring?

6 A. No, sir.

7 Q. Was there a general
8 announcement made via publication in the
9 Legal News, publication in any
10 newspaper?

11 A. Not by me.

12 Q. Are you aware of any
13 announcement in any sort of legal notice
14 being published by Mr. Shafran?

15 A. No.

16 Q. Other than letters being sent
17 to individual DES clients by yourself
18 are you personally aware of any other
19 manner in which the dissolution of
20 Shafran and Himmel was publicly
21 announced?

22 A. No.

23 Q. During the course of --

24 MR. WITKOWSKI: The
25 courts were made aware of substitutions

1 of counsel.

2 A. That's correct.

3 MR. WITKOWSKI:

4 Everything was officially separated out.

5 MR. KULWICKI: Fair enough.

6 A. That's correct. I became --
7 thank you -- I became counsel for my
8 number of clients and he remained on as
9 counsel for the remaining women.

10 Q. During the course of the
11 operation of Shafran and Himmel did you
12 physically perform work on the premises
13 of Shafran's offices in Cleveland?

14 A, Yes.

15 Q. And how often would you go
16 up there on average during that five or
17 six month period?

18 A. Half the time.

19 Q. Did you physically have an
20 office located on premises?

21 A, Yes.

22 Q. Was your name ever published
23 in the building directory or on the
24 signage at the entrance to the doorway?

25 A. I think there was a sign

1 like one of those that slips, almost
2 like that one across the hall, that
3 slips in the door on the wall and that
4 was it.

5 Q. Do you recall after the
6 dissolution of Shafran and Himmel, do
7 you recall going back to Shafran's
8 offices and seeing whether or not that
9 sign had been removed?

10 A. I believe so.

11 Q. How many or on what occasion
12 would you have, after the dissolution of
13 Shafran and Himmel, what occasion would
14 you have to come to Cleveland to go to
15 his offices?

16 A. Picking up, there was a lot
17 of materials involved in DES and to pick
18 up some materials.

19 Q. Would you have been there
20 during May of 95?

21 A. I'm not sure.

22 Q. In May of 95 do you know if
23 Mr. Shafran had entered into any
24 partnership with anyone else?

25 A. No.

1 Q. He didn't or no, you don't
2 know?

3 A. I don't know,

4 Q. Let me hand you what I've
5 marked as Deposition Exhibits 4 and 5
6 and let me represent to you that those
7 are portions of the Ameritech yellow
8 pages for 1995 and 1996. If you would
9 look alphabetically down to where it
10 says Shafran and Himmel, I want to ask
11 you, were you aware in 1995 or 1996
12 that Shafran and Himmel was published in
13 the directory in that manner?

14 A. No.

15 Q. Did you ever have occasion
16 to look in the phone book, to look up
17 Shafran's number or to check and see
18 whether or not you were listed in any
19 fashion with reference to him?

20 A. No.

21 Q. During the course of the
22 relationship of Shafran and Himmel did
23 you ever have occasion to discuss other
24 cases with Mr. Shafran, strategy,
25 technique, thoughts about any other

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1 cases?

2 A. No.

3 MR. WITKOWSKI: By other
4 cases you mean other than DES?

5 Q. Other than DES. Thank you,
6 yes.

7 A. Do you mean my cases, his
8 cases?

9 Q. Yes.

10 A. Nothing that I can remember,
11 no.

12 Q. Do you deny ever having
13 conversations with him about things like
14 pleading practice or legal issues or
15 procedural issues that arose from time
16 to time with the nature of both of your
17 practices during that time period?

18 MR. WITKOWSKI: You mean
19 other than DES? Let's do it that way,
20 nonDES and DES.

21 MR. KULWICKI: Yes.

22 A. Do I deny it? He's
23 extremely hard to communicate with on
24 issues in general,

25 Q. So you may have communicated

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1 with him about litigation topics or
2 legal topics other than the DES
3 litigation, but you don't specifically
4 recall anything today sitting here,
5 correct?

6 A. No. He's not somebody that
7 I would have gone to like for advice.

8 Q. Would it be fair to say that
9 the nature of his practice has always
10 been an injury related practice, whether
11 involving product liability, class
12 action lawsuits, personal injury or
13 medical negligence?

14 A. I don't know about his whole
15 practice, I know he did a lot of that.

16 Q. You were aware that prior to
17 1995 that he held himself out as having
18 certain expertise in the injury field,
19 correct?

20 A. I don't know how he held
21 himself out. I know that's what his
22 practice involved.

23 Q. Thank you. During the
24 course of the relationship of Shafran
25 and Himmel were there any other

1 attorneys that worked within the office?

2 A. Yes.

3 Q. And can you identify some of
4 those or those individuals that were
5 there between November of 94 and May of
6 95?

7 A. He had some attorneys that
8 paid him for space and then I think he
9 had attorneys that were employees of
10 his. And the employees I think were --
11 at what time period?

12 Q. November of 94 through May
13 of 95.

14 A. Were Victor Mezacapa.

15 MR. WITKOWSKI:
16 Employees now?

17 A. Employees, right. I believe
18 Victor, I'm not sure about Victor's
19 relationship, what it was. Mary Jane
20 Becker, I believe, was an employee.
21 Scott Miller. There was a fellow who
22 was there for a short period of time, a
23 young man whose name eludes me.

24 There was the following
25 lawyers that rented space, you know,

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1 paid Michael for just space, Rex Post,
2 there's a couple, I can't recall their
3 names, a man and a woman, I think they
4 kind of shared their practice. Sheldon,
5 I can't remember Sheldon's last name.
6 And there was a nurse attorney, Kathy
7 Bales. And Pecchio was there for a
8 while, but I don't remember how long and
9 I don't know what they were doing
10 vis-a-vis their business relationship.
11 Those are all the ones I can remember.
12 The space was at 113 St. Clair and
13 those were the lawyers that I recall
14 being in there.

15 Q. Were you aware of Shafran
16 relocating his office anywhere following
17 May of 95?

18 A. Secondhand.

19 Q. And what did you hear
20 secondhand?

21 A. That he was in the Standard
22 Building.

23 Q. And do you know or did you
24 gain some information as to when that
25 move took place?

1 A. I'm not sure if it was 97 or
2 98.

3 Q. Were you familiar with an
4 individual by the name of Marc Bern?

5 A. Yes.

6 Q. Who was Marc Bern?

7 A. He was a lawyer, he is a
8 lawyer in New York that I contacted to
9 help us out on the DES project.

10 Q. New York, New York?

11 A. Yes.

12 Q. And how about Jeffrey
13 Sussman?

14 A. Now, do I know Jeffrey
15 Sussman?

16 Q. Yes.

17 A. No.

18 Q. Do you recognize the name?

19 A. I had heard Michael talking
20 about him as somebody that he was going
21 to try to contact to get involved in
22 DES.

23 Q. Let me have you look at
24 Deposition Exhibit 6, I'm going to
25 circle the name of Jeffrey Sussman in

1 there, if you would just read that
2 paragraph and does that refresh your
3 recollection at all about the identity
4 or involvement of Jeffrey Sussman with
5 Michael Shafran?

6 A. No, Just he was somebody
7 they were trying to bring in.

8 Q. Was there a Shafran and
9 Kimmel letterhead?

10 A. Yes.

11 Q. Do you have any Shafran and
12 Himmel letterhead anywhere?

13 A. Anything that I can find
14 that was responsive to your request I
15 gave to my counsel.

16 Q. Were you aware -- well, let
17 me ask you[after Shafran and Himmel
18 started in November of 94 and up until
19 May of 95 did either you or he or the
20 firm obtain any additional DES clients?

21 A. Yes.

22 Q. And how did you obtain them?

23 A. Michael had gotten a
24 tremendous amount of newspaper coverage
25 and that just prompted women to call us

1 and women that were clients prompted
2 friends of theirs because the DES women
3 have extensive support groups and they
4 talk to each other so they would call
5 us.

6 Q. Do you remember seeing
7 newspaper articles about Shafran's
8 involvement with DES litigation?

9 A. You mean like opening the
10 paper and seeing it?

11 Q. Yeah. Or else having him
12 show you a cut out article?

13 A. Yes,

14 Q. Do you remember what
15 newspapers they were in?

16 A. The Plain Dealer is -- all I
17 recall is the Plain Dealer.

18 Q. Besides other clients and
19 newspaper coverage are there any other
20 ways in which DES clients became aware
21 of Shafran/Himmel or Shafran and Himmel
22 and contacted you for representation, to
23 your knowledge?

24 A. Not that I can think of.

25 Q. Why don't you, as best you

1 can, give me a brief overview of the
2 course and history of the DES
3 litigation, I just want to get sort of
4 a broad understanding of its
5 commencement and conclusion.

6 A. It started with Michael's
7 letter to me and then I came to
8 Cleveland and became very interested in
9 it, interviewed a number of the DES
10 victims, did some research on-line,
11 looked for lawyers that were involved
12 because I knew there had been a lot of
13 litigation around the country, and found
14 Marc Bern, talked to him about it, and
15 Just continued to get into it myself.

16 And I came to Cleveland,
17 met with Michael and decided that I
18 wanted to get into it, I thought it was
19 worthy, so I did, and Michael had gotten
20 the coverage, the clients were coming in
21 and the project was massive and
22 continues to be massive today.

23 It's ongoing. It's been
24 in federal and state court. There's a
25 lot of litigation on file here in

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1 Cleveland in both state and federal
2 court. There's litigation ongoing in
3 Summit County in state court. We've
4 been through the Court of Appeals.
5 We've been in the Federal Court of
6 Appeals. We've been in the Ohio Supreme
7 Court and right now we just argued a
8 few weeks ago in the 9th District Court
9 of Appeals and I'll say that the cases
10 are probably, circa 600, are fragmented
11 into different claims that were brought
12 at different times, all being driven by
13 this market share issue.

14 So the project was
15 overwhelming and that's really -- and it
16 continues to be an overwhelming project,
17 but it's one that I believe in and I'm
18 going to continue to fight for, We're
19 heading back to Columbus probably and we
20 hope to carry on the battle in the
21 courts for these women.

22 Q. You are currently involved as
23 a solo practitioner along with
24 co-counsel, correct?

25 A. Yes.

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1 Q. And your co-counsel consists
2 of your former firm Amer Cunningham as
3 well as other firms, correct?

4 A. No other firms at this time.

5 Q. During the course of the
6 operation of Shafran and Himmel did you
7 contribute expenses to the DES project
8 or contribute to the payment of
9 expenses, I should say?

10 MR. WITKOWSKI: During
11 his association with Shafran?

12 Q. Yes.

13 A. If it was, it was minimal,
14 like a few hundred dollars. Like if I
15 flew to New York to talk to Mark,
16 actually flew to New York to talk to
17 another attorney, I just paid for it.
18 To try to learn about DES I did that.
19 I flew to New York to meet with an
20 attorney who still does have extensive
21 experience with DES and it's successful
22 in New York because they accept the
23 claims, but not in Ohio. So I met with
24 him, I paid for that trip.

25 Q. During the course of the

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1 operation of Shafran and Himmel did you
2 ever review or audit any IOLTA account
3 that was used by Mr. Shafran for client
4 matters or client funds?

5 A. No, sir.

6 Q. Did you ever receive expense
7 retainers from DES clients to help fund
8 their own litigation?

9 A. No, sir.

10 Q. Do you know if Shafran ever
11 received expense retainers from any
12 clients to fund the litigation?

13 A. I don't think so.

14 Q. How were expenses in that
15 case financed and funded?

16 A. Well, what we had at the
17 beginning from, you know, this period
18 that I was with Michael was just
19 lawsuits being run out of his office.
20 So copying costs, research, anything
21 being done for these initial batch of
22 cases we had was Michael's costs, he
23 handled it.

24 Q. So be financed the QES
25 litigation through his own nonDES

1 litigation, correct?

2 A. I don't know.

3 Q. But that was your
4 understanding?

5 A. I don't know where his money
6 came from.

7 Q. Did you ever see or receive
8 checks, from whatever source, that were
9 made payable to Shafran and Himmel?

10 A. No, sir.

11 Q. Were you aware of any
12 account that was designated as a Shafran
13 and Himmel account?

14 A. No, sir,

15 Q. Let me hand you what I've
16 marked as Deposition Exhibit 9, that was
17 previously identified in the deposition
18 of Mr. Brubaker, did you ever see that
19 check prior to the instant litigation
20 being filed?

21 A. No.

22 Q. Were you aware that Mr.
23 Shafran was negotiating checks that were
24 made out and made payable to Shafran and
25 Himmel?

1 A. No, sir.

2 Q. Why did you break up Shafran
3 and Himmel or why was Shafran and Himmel
4 dissolved?

5 A. Because Michael said it just
6 wasn't getting it, we just, it just
7 wasn't working, our relationship.

8 Q. What did he mean by that?

9 A. Just didn't work. We didn't
10 communicate. I was working as hard as
11 I could on this overwhelming amount of
12 paperwork, it was overwhelming. The
13 defense firms were just burying us in
14 paper and requests to produce and time
15 lines, it was a lot. It was more than
16 he could handle and more than I could
17 handle. And he suggested, he said, you
18 know, we're done. And I was relieved,
19 I said okay. Let's split.

20 Q. Just so I understand, the
21 dissolution was initiated by Shafran,
22 correct?

23 A. Yes,

24 Q. And agreed to by you without
25 any dispute?

4 A. Yes,

2 Q. And at the dissolution it's
3 my understanding that you took a few of
4 the DES clients with you but the vast
5 majority remained with Shafran?

6 A. Yes.

7 Q. And is it true now that some
8 or a41 of those clients that were left
9 with Shafran in 1995 have now been
10 reunited with you?

11 A. Yes.

12 Q. How did that happen?

13 A. Okay. One of the ways I
14 thought we could eliminate one of the
15 overwhelming parts of the case was the
16 filing aspect of it and the pleadings
17 and paperwork being generated, so I have
18 a considerable interest in computers and
19 suggested that the project be
20 computerized.

21 And I think I approached
22 the defense on this at one of our many
23 meetings at court and they agreed to
24 look into it and it was done. It was
25 adopted by the Federal Court, judge --

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1 she's now retired,

2 Q. Aldrich?

3 A. Aldrich, thank you, yes, and
4 she redid it to be handled by Lexis
5 Nexis and it was designated a CLAD
6 system, computer litigation automated
7 docket. So we did that and it was sill
8 overwhelming, but it's a system whereby
9 you can download from any computer to
18 the courts and any counsel could that
11 had the password.

12 So that system was
13 initiated and when we left -- pardon me,
14 when we split up our relationship I was
15 managing those couple of cases out of my
16 office in Summit County. And --

17 Q. Let me interrupt you for one
18 moment. I'm going to hand you what we've
19 marked as Deposition Exhibit 10, which
28 is a two-page document. Does that
21 reflect the few cases that you took with
22 you at the time of the dissolution of
23 Shafran and Himmel?

24 A. Yes,

25 MR. KULWICKI: You know

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1 what, let's go off the record for a
2 second.

3 (Discussion off record.)

4 Q. We broke while we were
5 talking about the dissolution and the
6 disbursement of DES cases and you had
7 just explained to me about the CLAD
8 system.

9 A. Right.

10 Q. I want to shift gears real
11 quick and go back to an earlier area of
12 inquiry we talked about which was the
13 financing of the DES cases. Bid you ever
14 enter into an agreement with -- well,
15 strike that. Did you and Shafran ever
16 seek a loan from any banking institution
17 or any other financing source for money
18 to finance this litigation?

19 A. No.

20 Q. Did you ever inquire into
21 how Shafran was financing the DES
22 litigation'?

23 A. No.

24 Q. Let's go back to the
25 disbursement of the DES funds -- or the

1 DES cases.

2 MR. WITKOWSKI: There
3 were no funds.

4 Q. Cases.

5 MR. WITKOWSKI:
6 Unfortunately.

7 Q. And you were talking about
8 the status of the cases and how
9 Shafran's cases that were left with him
10 at the time of the dissolution had come
11 to become your cases again. Did you
12 get all of his cases or did they go to
13 different places?

14 A. No, I got all of them.

15 Q. And, again, you computerized
16 the litigation in some fashion?

17 A. Yes.

18 Q. You were going to explain to
19 me how all those cases came to be
20 placed back on your docket.

21 A. Right. These couple cases
22 listed on Exhibit 10 kept me involved in
23 the courts in Cleveland and the courts
24 were telling me that my filings were
25 appropriate but everything from

1 Michael's office was botched up and then
2 Michael's office would call me and say
3 what do I do and I would try and
4 explain it, but computer technology
5 isn't the easiest thing to explain,
6 particularly over the phone.

7 And he just faltered with
8 it and I said that you're going to lose
9 everything and he wanted then, like in
10 95, he wanted me to buy the cases and I
11 said no, but I'll take them all over
12 and then you can have like a percentage
13 of the new people I bring in, because I
14 couldn't handle it alone. So I
15 approached the other attorneys, Marc
16 Bern stayed with it but didn't finance
17 anything. I approached Amer Cunningham
18 and they got involved and then we agreed
19 to let Michael retain a couple, some
20 percentage at the end of the cases that
21 he had sent to me. So then I just got
22 all the files.

23 Q. Has Marc Bern throughout the
24 course of your involvement with the DES
25 cases, has he remained a solo

1 practitioner?

2 A. I don't know.

3 Q. With regard to the time
4 between which you dissolved Shafran and
5 Himmel and the time at which Shafran
6 encountered these problems and came back
7 to you for assistance with the
8 computerization and dealing with the
9 court's requirements for these cases,
10 what length of period of time was that?

11 A. I'm not sure.

12 Q. Do you have any
13 correspondence that would confirm this
14 situation where you became involved with
15 Shafran's docket?

16 MR. WITKOWSKI: You got
17 all the case files.

18 A. Yeah, I'm not sure. I'd
19 have to check.

20 Q. What I'm asking more
21 specifically about is a correspondence
22 confirming the new agreement or the new
23 arrangement?

24 A. I can check.

25 Q. And at the time -- go ahead.

1 When did this new arrangement commence,
2 to the best of your knowledge?

3 A. I'm not sure.

4 Q. Was it in 95, I mean was it
5 shortly after the dissolution of Shafran
6 and Himmel?

7 A. There's been so much ongoing
8 with the litigation, I'm not sure. I
9 think near the end of 95, somewhere in
10 that area.

11 Q. And when you entered into
12 this new arrangement with Mr. Shafran
13 was it different from the arrangement
14 that you had between November of 94 and
15 1995, the Shafran and Himmel
16 arrangement?

17 A. Yes.

18 Q. How was it different?

19 MR. WITKOWSKI: Just so
20 I understand the question that you're
21 asking, is it relating to this
22 agreement, did it change this agreement
23 or did it relate back to the
24 relationship that existed prior to this
25 termination? We've got three phases.

1 We've got his initial involvement with
2 Himmel until it looks like March or
3 April of 95, then we've got the period
4 where he was handling just the Summit
5 County cases and then we've got this
6 period where he got back involved in all
7 of them.

8 Q. That's fair enough. I'm
9 talking about the third phase or the
10 phase what I'm calling the new
a1 arrangement.

12 MR. WITKOWSKI: And
13 comparing it to one or two?

14 Q. Comparing it to the Shafran
15 and Himmel relationship.

16 MR. WITKOWSKI: The
17 number one?

18 Q. Yeah,

19 A. Yeah, there was a new
20 agreement because the fellows, the new
21 lawyers becoming involved signed on to
22 it, a new agreement as to the DES
23 cases.

24 Q. And the new lawyers being
25 Amer Cunningham?

1 A. Yes.

2 Q. And at the time that this
3 new agreement or new arrangement
4 commenced and the agreement with Amer
5 Cunningham and yourself and Shafran was
6 executed were there additional filings
7 in the DES cases to reflect the change
8 in relationship? In other words, was
9 there a substitution of counsel or
10 notice of appearance or any other type
11 of legal notice in that litigation?

12 A. I'm not sure,

13 Q. Was there correspondence to
14 the DES clients that remained with
15 Shafran prior to the new arrangement
16 being commenced?

17 A. I think so.

18 Q. During the course of your
19 relationship with Shafran, the first
20 relationship when Shafran and Himmel was
21 in existence, were you working around or
22 working in a context where you could
23 observe Mr. Shafran from time to time?

24 A. Yes.

25 Q. And based on those

1 observations did you see any
2 manifestation of his Tourette's
3 syndrome?

4 A. Yes.

5 Q. Did you find that his work
6 habits were erratic during that time
7 period in the sense that he didn't
8 maintain normal business hours?

9 A. I'm not sure what normal
10 business hours are. I worked very hard
11 when I was up there and that's been my
12 habit for the last, really, 15 years of
13 law practice. So I tend to keep my
14 head down focused on the clients I
15 represent and I find that lawyers have
16 different hours. I mean, I sometimes
17 work at home so I really don't know if
18 I would say his hours are erratic. He
19 put time in, he put a of time in, I saw
20 him there a lot,

21 Q. Did you find that during
22 that time period, during the
23 relationship of Shafran and Himmel, that
24 he was difficult to communicate with?

25 A. Yes.

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1 Q. In what ways?

2 A. Just busy and hurrying and
3 kind of harried and always doing a
4 number of things and just running
5 around.

6 Q. Did you find his behavior
7 during that time period to be unusual by
8 your own definition?

9 A. We had his ways and I had my
10 mine, I mean,

11 Q. Was his way like any other
12 person that you knew?

13 A. I don't mean to be
14 difficult, I don't think anybody's ways
15 are, you know, the same as anybody
16 else's.

17 Q. You wouldn't characterize him
18 as unusual or odd during your
19 relationship in the way in which he
20 behaved?

21 MR. WITKOWSKI:
22 Objection.

23 A. It's hard to answer. I
24 guess I find everybody to be a little
25 bit odd. If you give me like a

1 specific thing maybe I could --

2 Q. Let's be honest, he's a
3 weird individual, isn't he, wouldn't you
4 agree with that statement?

5 MR. WITKOWSKI:

6 Objection.

7 A. He's complex, like all of
8 us.

9 Q. Did you suspect during the
10 course of your relationship with Mr.
11 Shafran when Shafran and Himmel was in
12 existence that he was engaged in
13 substance abuse?

14 A. No. I knew that he was
15 medicated for Tourette's and what he was
16 on and why he was on was strictly his
17 personal business. I know that he was
18 trying to, you know, deal with his
19 disease and it's a tough one.

20 Q. Did you observe him failing
21 to meet his obligations as a lawyer and
22 let me start with an example, by failing
23 to return client phone calls, did you
24 observe that occurring during that time
25 period?

1 A. I had -- no, no.

2 Q. Did you ever have any DES
3 clients complain to you during that time
4 period that he was failing to return
5 their phone calls?

6 A. Never,

7 Q. Did you witness --

8 A. And I say that because
9 that's the part of the practice I knew
'10 and I was involved in and I was -- him
11 and I were all over those cases.

42 Q. Did you observe messages,
13 phone messages piling up from either DES
14 or nonDES clients either at the
15 reception area or in Mr. Shafran's work
16 area?

17 A. We kept his -- he had a
18 habit of keeping his messages.

19 Q. Did you ever discuss with
20 any of his secretaries or paralegals or
21 staff any complaints that they had
22 during that time period about him
23 failing to return messages?

24 A, No.

25 Q. Have you since learned about

1 Shafran's substance abuse problems?

2 A, No.

3 Q. Have you learned anything
4 about his commingling of funds in his
5 trust accounts and/or misuse or abuse of
6 his trust accounts?

7 A. No, sir.

8 Q. Have you been interviewed by
9 the FBI other any other governmental
10 agency regarding Mr. Shafran?

11 A. No, sir.

12 Q. Have you ever filed a bar
13 complaint or complaint with any
14 grievance committee against Mr. Shafran?

15 A. No, sir.

16 Q. Has any grievance committee
17 or bar association contacted you
18 regarding Mr. Shafran?

19 A. No.

20 Q. Has any prosecutor ever
21 contacted you, whether federal or state,
22 regarding Mr. Shafran?

23 A. 'No.

24 Q. Are you aware of any
25 sanctions being filed against Mr.

1 Shafran in the course of any litigation,
2 DES or nonDES, at any time?

3 A. When the DES litigation was
4 going on we tried for class
5 certification and the defendant filed a
6 motion to sanction us, motion to
7 sanction, I'm saying us, Himmel and
8 Shafran and Shafran, and that was
9 litigated and Shafran alone was
10 sanctioned.

11 Q. And when. did that take
12 place?

13 A. I don't remember. I don't
14 remember.

15 Q. I'm going to hand you what
16 we have marked as Deposition Exhibit
17 Number 10. In the first paragraph
18 there's some reference to Rule 11
19 action, is that the same sanctions issue
20 that you're referencing?

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

22 Q. Was there another Rule 11 or
23 sanctions issue that arose with Mr.
24 Shafran?

25 A. Yes.

1 Q. And what was that?

2 A. I don't recall the specifics
3 of it, but some defendant complained
4 about something that him or I had done
5 and to the best of my recollection it
6 was dismissed.

7 Q. Now, my understanding is
8 there were two cases pending in the
9 Northern District of Ohio, the Kurczi
10 case and the Ambrose case, is that
11 correct?

12 A. Yes.

13 Q. Were there any other cases
14 pending in the federal courts, DES
15 cases?

16 A. No, not that I can -- no.

17 Q. Do you know which case the
18 sanctions were made against Mr. Shafran,
19 was it in Kurczi or Ambrose or both?

20 A. I believe it was only in
21 Kurczi, federal court.

22 Q. And besides the sanctions in
23 that case were there any sanctions
24 rendered in any of the state court
25 litigation, DES, whether you, Shafran,

1 or Shafran and Himmel?

2 A. No, sir,

3 Q. In Deposition Exhibit 1 in
4 your response to interrogatory number 3
5 D, you were asked the reason why any
6 relationship between the answering
7 defendant, meaning you, and Michael
8 Shafran was terminated and your response
9 was we were incompatible. What did you
10 mean by not being compatible or being
11 incompatible, what did that mean?

12 A. We just weren't compatible,
13 He had his way of doing things and I
14 had my way and I have found that to be
15 my experience with other lawyers, it's
16 difficult to co-counsel a plaintiff's
17 matter. It's one lawyer wants to do it
18 one way and another lawyer wants to do
19 it another and it's too much, it just
20 didn't work.

21 Q. Now, at the time of the
22 dissolution of your agreement or your
23 relationship with Shafran you took about
24 six or seven cases with you and how
25 many cases did he retain?

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1 A. I don't know.

2 Q. Several hundred?

3 A. More than a hundred.

4 Q. And the terms of your
5 agreement, the agreement between Shafran
6 and Himmel during the relationship of
7 Shafran and Himmel, you worked on all of
8 the cases, not just these six or seven,
9 correct?

10 A. Yes, sir.

11 Q. And during the course of
12 that relationship you had agreed to
13 share in the fees relative to all of
14 those cases, not just these six or
15 seven, true?

16 A. Yeah, yes.

17 Q. And referring to Deposition
18 Exhibit 6, the agreement that was
19 entered into at or about the time of
20 the dissolution of Shafran and Himmel,
21 did that permit you to participate at
22 all in any of the fees that were
23 collected by Mr. Shafran relative to the
24 cases that he retained?

25 A. I don't remember. I don't

1 remember. Whatever this agreement says.
2 I'm not sure.

3 Q. And at the commencement of
4 the new arrangement that we talked
5 about, we talked about three phases,
6 we're talking about the third phase now,
7 was there an agreement that you would
8 then participate in the fees associated
9 with those cases that Shafran retained
10 at the dissolution of Shafran and
11 Himmel?

12 A. So you're asking when I took
13 over all the cases?

14 Q. Yes.

15 A. Was I to get a fee from
16 those cases?

17 Q. Yes.

18 A. Yes,

19 Q. In phase two now, after the
20 dissolution of Shafran and Himmel and
21 before this new arrangement took effect
22 where Amer Cunningham got involved, is
23 it fair to say that you continued to
24 have contact with Shafran regarding DES
25 litigation during that time period?

1 A, Nominal.

2 Q. And what was the nature of
3 that contact?

4 A. Calling me up and asking me
5 what to do, how do I file, how do I
6 download. Computer stuff.

7 Q. During the course of this
8 relationship of Shafran and Himmel did
9 you hold yourself out as a partner to
10 Mr. Shafran?

11 A. To, I don't understand, to
12 Mr. Shafran?

13 Q. Yes,

14 A. What did I say to Shafran or
15 -- I mean --

16 Q. Well, no. Did you hold
17 yourself out as a partner in the law
18 firm of Shafran and Himmel?

19 A. Not to Michael, what him and
20 I did, but to others?

21 Q. Right.

22 A. The only thing that changed
23 between October, November when I started
24 with him was that letterhead. I didn't
25 hold him out as a partner to my clients

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1 and that's all I had was my couple of
2 clients plus the DES project. So we
3 didn't have like, you know, a public
4 announcement, you get announcements all
5 the time about lawyers joining and
6 moving, firms changing and relationships
7 changing, we didn't do that.

8 Q. How about in the DES
9 litigation, did you hold yourself out as
10 his partner or as a partner to the law
11 firm of Shafran and Himmel during the
12 DES litigation?

13 MR. WITKOWSKI: You mean
14 during the period November to April or
15 May?

16 Q. Well, ever, ever.

17 A. I think the DES women
18 understood that we were working together
19 for them.

20 Q. How would you characterize
21 Shafran and Himmel, what type of
22 business relationship or business entity
23 was it, was it a partnership, a
24 corporation, a limited partnership or
25 what would you characterize it as?

1 A. None of the above. We were
2 together on that letterhead in an effort
3 to, we thought that this DES project
4 would take us into some relationship and
5 it never did.

6 Q. Did you have an understanding
7 in 1994 under the disciplinary rules
8 that there was a -- that two attorneys
9 could ethically form a joint partnership
10 or a limited partnership?

11 A. Did I understand that?

12 Q. Yes.

13 MR. WITKOWSKI: At that
14 time?

15 Q. Yes.

16 A. Did I understand, I don't
17 know that I specifically knew that.

18 Q. During the course of Shafran
19 and Himmel's operation did you ever
20 write to your clients, the clients, the
21 nonDES clients on Shafran and Himmel
22 letterhead?

23 A. Yes.

24 Q. I want to get into some
25 general stuff here. Would you agree

1 that an attorney representing an injury
2 victim in a product liability action has
3 an obligation to keep the client
4 informed about the progress of his case?

5 A , Yes ,

6 Q . Would you agree that an
7 attorney representing an injury victim
8 in a product liability case has an
9 obligation to keep the client informed
10 about pretrial dates where the party's
11 attendance is required by local rule or
12 by court order?

13 A . Yes .

14 Q . Would you agree that in
15 those cases that the attorney has an
16 obligation to keep the client advised of
17 trial dates?

18 A . Yes .

a9 Q . Would you agree that the
26 attorney has an obligation to obtain the
21 party's acknowledge or -- strike that.
22 That the attorney has an obligation to
23 obtain the client's informed consent
24 prior to any dismissal, voluntary or
25 otherwise, of the action?

1 MR. WITKOWSKI: Or
2 otherwise?

3 MR. KULWICKI: Yes.

4 MR. WITKOWSKI:
5 Nonvoluntary?

6 NR. KULWICKI: Well, you're
7 right. Let me rephrase the question.
8 Your objection is well taken.

9 Q. Would you agree that an
10 attorney representing an injury victim
11 in a product liability action must
12 obtain the client's knowledge and
13 consent -- or knowing consent prior to
14 voluntarily dismissing the claim?

15 A. I'm not sure.

16 Q. Would you agree that an
17 attorney representing an injury victim
18 in a product liability case should not
19 dismiss voluntarily two times, more than
20 one time, basically, without the
21 client's informed consent?

22 A. Should not dismiss -- I
23 don't know. I mean, I guess you should
24 talk to your client about his case or
25 her case.

1 Q. Would you agree that an
2 attorney representing an injury victim
3 in a product liability case has an
4 obligation to obtain his client's
5 informed consent prior to settling that
6 claim?

7 A. Yes.

8 Q. Would you agree that the
9 attorney has an obligation -- strike
10 that. Have you been involved in any
11 product liability actions or intentional
12 tort cases involving defective
13 machinery?

14 A. When?

15 Q. Ever.

16 A. Products liability, will you
17 repeat that?

18 Q. Have you ever been personally
19 involved in any product liability action
20 or intentional tort case involving
21 defective machinery or allegedly
22 defective machinery?

23 A. I can recall one time, last
24 year.

25 Q. Did you handle the case to

1 conclusion?

2 A. Yes.

3 Q. Did you resolve the case
4 like through settlement or through
5 judgment?

6 A. Last, yes.

7 Q. Which, settlement or
8 judgment?

9 A. Settlement.

10 Q. What was the nature of the
11 injury in that case?

12 A. Just a fellow hurt his hand
13 at work.

14 Q. And what was the caption of
15 the case?

16 A. Backus, Audey Backus versus
17 maybe River Valley Paper Products.

18 Q. And was that filed in Summit
19 County?

20 A. Yes, sir.

21 Q. Did you have an expert
22 witness in that case?

23 A. No.

24 Q. Do you have experience in
25 evaluating injury claims and valuating

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1 them, in other words, coming to
2 settlement values or judgment values
3 relative to injury claims?

4 A. Yes, I have to -- that
5 previous answer involved my work as a
6 plaintiff's attorney.

7 Q. Right. I understand.

8 A. I just thought of another
9 case as a defense attorney.

10 Q. And what was that case?

11 A. I was just helping a client,
12 Barberton Steel and Iron, and a fellow
13 was hurt on the Job and his insurance
14 counsel took, the company's insurance
15 counsel took over, defended the case, so
16 I was just working with my client.

17 Q. Back to the next question
18 which is you have experience in valuing
19 injury claims, correct?

20 A. Yes.

21 Q. And would you agree that in
22 valuing an injury claim that the
23 severity, including nature and extent
24 of the injury, is a significant fact in
25 valuation of injury?

4 A. Yes,

2 Q. Would you agree that an
3 injury involving multiple facial
4 fractures requiring open repair with
5 surgical repair using plates and loss of
6 vision and fracture of a hand requiring
7 surgical repair is a serious injury?

8 MR. WITKOWSKI:
9 Objection.

10 A. You know, it depends how you
11 define serious. It's one aspect of the
12 case, it is what it is.

13 Q. Is that a significant injury,
14 you would agree with that, wouldn't you?

15 MR. WITKOWSKI:
16 Objection.

17 A. I mean, I think it is what
18 it is. It's just -- I don't know, I
19 need to study the records and see what
20 kind of residual things are going on.

2% Q. Would you agree that an
22 attorney representing a client in an
23 injury claim has an obligation to
24 identify all parties and all potential
25 defendants in the litigation?

1 MR. WITMOWSKI:

2 Objection,

3 A, What?

4 Q. The question is whether or
5 not an attorney representing a client in
6 an injury case has an obligation to
7 identify all potential defendants or
8 parties to the litigation?

9 A. I don't understand what you
10 mean by identify, you mean, the attorney
11 has an obligation to --

12 Q. Locate all potential
13 defendants?

14 A. I think so.

15 Q. Did you maintain a calendar
16 during 1994 and 1995?

17 A. I had a calendar.

18 Q. Yes, I thought so.

19 A. I had a calendar.

20 Q. I was going to be amazed if
21 you didn't.

22 A. Now I'm thinking of my
23 calendar, yes.

24 Q. Was it maintained on a
25 Daytimer, a bound Daytimer or just tell

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1 me how did you maintain your calendar,
2 how was it recorded?

3 A. 1994, 1995, it was, I
4 believe, all electronic.

5 Q. Would you have kept either a
6 hard copy of your calendar in those
7 years or would you have a computer
8 database reflecting your calendar
9 during that time period?

10 A. I would have to check.

11 Q. Sitting here today what's
12 your best recollection?

13 A. If I have anything I don't
14 -- I don't have a hard copy. It's
15 either on backup or -- it's either on a
16 backup disc, I'd have to ask my office
17 and see.

18 Q. Do you acknowledge that I
19 personally contacted you prior to the
20 filing of this lawsuit and discussed
21 some of the facts that we've talked
22 about here today and the nature of your
23 relationship with Michael Shafran?

24 A. Yeah, that I had been
25 retained by your client and money had

1 been stolen from your client,

2 MR. KULWICKI: That's all
3 the questions that I have right now. I
4 have in the past deposition rendered an
5 objection to further inquiry into Mr.
6 Brubaker on certain topics. If by court
7 order that is found to be null and void
8 and further inquiry is made with
9 reference to Mr. Brubaker, I reserve the
10 right to conduct further inquiry with
11 you, but other than that I'm finished.

12 MR. WITKOWSKI: Well,
13 I'd just like to put on the record if I
14 can't talk to his client he's not
15 talking to mine and I resent the idea
16 that you make an objection on the record
17 for me to continue and then seek to do
18 the same thing, but that's my attitude.
19 And we'll take a look at the transcript
20 if and when it's prepared.

1 CEFARATTI GROUP FILE NO. 3000

2 CASE CAPTION: THOMAS BRUBAKER VS.

3 SHAFRAN, ZAPKA & LEUCHTAG

4 DEPONENT: GARY HIMMEL

5 DEPOSITION DATE: SEPTEMBER 15, 1999

6

7

(Sign Here)

8

The State of Ohio,)

9

County of Cuyahoga) SS:

10

Before me, a Notary Public in and

11

for said County and State, personally

12

appeared GARY HIMMEL, who acknowledged

13

that he/she did read his/her transcript

14

in the above-captioned matter, listed

15

any necessary corrections on the

16

accompanying errata sheet, and did sign

17

the foregoing sworn statement and that

18

the same is his/her free act and deed.

19

IN TESTIMONY WHEREOF, I have

20

hereunto affixed my name and official

21

seal at _____, this _____ day

22

of _____, A.D. 1999.

23

24

25

Notary Public Commission Expires

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ERRATA SHEET

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CERTIFICATE

State of Ohio)

SS.:

County of Cuyahoga.)

I, Steven H. Henschel, a Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within named witness, was duly sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony then given by the witness was by me reduced to stenotypy in the presence of said witness; afterwards transcribed, and that the foregoing is a true and correct transcription of the testimony so given by the witness.

I do further certify that this deposition was taken at the time and place in the foregoing caption specified.

I do further certify that I am not a relative, counsel or attorney for either party, or otherwise interested in the event of this action.

IN WITNESS WHEREOF, I have he-reunto set my hand this 30th day of September, 1999.

Steven H. Henschel
Steven H. Henschel, Notary Public
within and for the State of Ohio

My commission expires March 18, 2003.

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