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1 IN THE COURT OF COMMON PLEAS
2 OF CUYAHOGA COUNTY, OHIO
3 -----
4 JANIE COUSINS,
5 Plaintiff,
6 vs Case No. 460155
 Judge Mary Boyle
7 JOHN T. JACOBUS,
8 Defendant.
9 -----
10 DEPOSITION OF TERRI LEFEVER
11 THURSDAY, FEBRUARY 13, 2002
12 -----
13 Deposition of TERRI LEFEVER, a Witness
14 herein, called by counsel on behalf of the
15 Plaintiff for examination under the statute,
16 taken before me, Vivian L. Gordon, a Registered
17 Diplomate Reporter and Notary Public in and for
18 the State of Ohio, pursuant to agreement of
19 counsel, at the offices of Becker & Mishkind,
20 Skylight Office Tower, Suite 660, Cleveland,
21 Ohio, commencing at 2:00 o'clock p.m. on the day
22 and date above set forth.
23 -----
24
25

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1 APPEARANCES:
2 On behalf of the Plaintiff
3 Becker & Mishkind Co., LPA
4 HOWARD D. MISHKIND, ESQ.
5 Skylight Office Tower Suite 660
6 Cleveland, Ohio 44113
7 216-241-2600
8
9
10 On behalf of the Defendant
11 Rawlin, Gravens & Franey Co., LPA
12 MARTIN FRANEY, ESQ.
13 1240 Standard Building
14 Cleveland, Ohio 44113
15 216-579-1602
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1 TERRI LEFEVER, a witness herein, called for
2 examination, as provided by the Ohio Rules of
3 Civil Procedure, being by me first duly sworn,
4 as hereinafter certified, was deposed and said
5 as follows:
6 EXAMINATION OF TERRI LEFEVER
7 BY MR. MISHKIND:
8 Q. Would you state your name for the
9 record, please.
10 A. Terri Lefever.
11 Q. You are employed by Nationwide; is
12 that correct?
13 A. Yes, I am.
14 Q. How long have you been employed for
15 Nationwide?
16 A. Twenty-two years.
17 Q. You have had a little bit of
18 experience in evaluating claims?
19 A. A little bit.
20 Q. You know why you are here today,
21 don't you?
22 A. Yes, I do.
23 Q. Have you ever had your deposition
24 taken in a prejudgment interest hearing before?
25 A. Not a deposition, no.

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1 Q. You testified at prejudgment interest
2 hearings?
3 A. Yes.
4 Q. How many times have you had the
5 misfortune to testify at a prejudgment interest
6 hearing?
7 A. Three or four times.
8 Q. I reviewed the claims file last night
9 after receiving it late yesterday afternoon.
10 Obviously, going through it once -- perhaps as I
11 read it through again, I'll recognize things
12 better, and not having seen it before 24 hours
13 ago I can't confess to be totally conversant
14 with everything in there like you were -- but I
15 did notice that there were some other people
16 that were involved in the claims handling before
17 you got involved in the case; true?
18 A. That's correct.
19 Q. In fact, I think you were brought
20 into the case sometime around September, maybe
21 October of 2002?
22 A. It was September 24th.
23 Q. To be exact?
24 A. Yes.
25 Q. Before that, there was a James

<p>Page 5</p> <p>1 Lindenberger? 2 A. Jeff Lindenberger. 3 Q. He was on the claim before you? 4 A. Before me. 5 Q. And then before him, was that Gina 6 Scruggs or was there someone else? 7 A. Gina Scruggs. 8 Q. Was Gina involved in the case once 9 the lawsuit was filed? 10 A. For a short period, I think, and then 11 it was transferred to Jeff. 12 Q. Tell me why it was transferred from 13 Gina to Jeff and then I'm going to ask you why 14 it wound up in your hands. 15 A. I'm not sure why it was transferred 16 from Gina to Jeff. The reason it was 17 transferred to me is because starting September 18 1st of 2000, I began handling the nonstandard 19 litigation files. 20 Q. September 1st, 2000 or do you mean 21 2002? 22 A. 2002. 23 Q. Nonstandard -- I didn't catch the end 24 of the sentence. Nonstandard, what type of 25 cases?</p>	<p>Page 6</p> <p>1 A. Litigation files. 2 Q. Tell me what a nonstandard litigation 3 file is. 4 A. It's the Nationwide Assurance 5 Company. The higher risk policies. 6 Q. I'm still lost. Why was the file, 7 even though you started handling the nonstandard 8 litigation file, why was this file transferred 9 to you as of September 20 something? Was this a 10 nonstandard litigation file? 11 A. Yes, it was. 12 Q. Why? 13 A. The files have a number at the end 14 and it's a 41. 41 would indicate it's a 15 nonstandard file and it was that type of policy. 16 Q. What does a 41 mean? 17 A. That it's a nonstandard file. 18 Q. We are obviously not talking the same 19 language. When one refers to a nonstandard 20 file, what is the definition of a nonstandard 21 file? 22 A. It would be the higher risk policies. 23 Q. So Mr. Jacobus' policy was a higher 24 risk policy? 25 A. A nonstandard, yes.</p>
<p>Page 7</p> <p>1 Q. Was it a higher risk policy (a 2 nonstandard policy) from the time that it was 3 written, or did it become a nonstandard file as 4 a consequence of the nature of this collision? 5 A. No, it was when it was written. 6 Q. So he was a high risk insured from 7 the moment that he became an insured with 8 Nationwide? 9 A. I would say yes. 10 Q. So the circumstances around the 11 collision of December 6th, 2000 didn't cause it 12 to become nonstandard; he was at higher risk by 13 some coding definition when he became an insured 14 with Nationwide? 15 A. Correct. 16 Q. Do you know what it was about 17 Mr. Jacobus that caused him to be a high risk or 18 a nonstandard insured? 19 A. No, I don't know. 20 Q. So as of September 1st, you were 21 handling all nonstandard litigation files. As a 22 consequence, I presume some other files wound up 23 in your lap? 24 A. Correct. 25 Q. You and I have not, other than</p>	<p>Page 8</p> <p>1 perhaps meeting I think at a pretrial, you and I 2 have not had any conversations relative to this 3 case, have we? 4 A. To this case, no. 5 Q. I think we may have had another file, 6 but I think that case is gone. Anyway, you and 7 I with regard to this particular matter, other 8 than meeting you briefly at the pretrial, we 9 haven't had any conversation relative to this 10 case; true? 11 A. No. 12 Q. You never called me to offer any 13 money between the time that you got involved in 14 this case or to try to negotiate with me 15 directly once you got involved in this case in 16 September of 2000; true? 17 A. Not directly. 18 Q. Any communication that you had would 19 have been with your attorneys; correct? 20 A. Correct. 21 Q. Is Gina Scruggs still with 22 Nationwide? 23 A. Yes, she is. 24 Q. How about Jeff, is he still with 25 Nationwide?</p>

<p style="text-align: right;">Page 9</p> <p>1 A. Yes. 2 Q. What office is Jeff in? 3 A. I believe he is in the Akron office 4 on White Pond Drive. 5 Q. What office are you in, Terri? 6 A. The Canton office. 7 Q. Who is Martha Tanner? 8 A. She is the associate director for the 9 nonstandard group. 10 Q. Where does she office out of? 11 A. Dublin, Ohio. 12 Q. Is she also referred to as Marti? 13 A. Yes. 14 Q. Again, I'm trying to put the 15 nomenclature together and make sure I'm 16 referring to the right people. 17 What involvement did Martha Tanner 18 have as it relates to setting reserves or giving 19 settlement authority to you in connection with 20 this case? 21 A. Any time there is a file over my 22 authority and over my supervisor's authority, we 23 have to go to her for direction and for 24 authority. 25 Q. James McKelvey?</p>	<p style="text-align: right;">Page 10</p> <p>1 A. Is my immediate supervisor. 2 Q. To get additional authority, would 3 Mr. McKelvey have to go to Ms. Tanner? 4 A. Yes. 5 Q. There is a reference to Art. 6 A. Art. 7 Q. Who is Art? 8 A. Art Hopwood is our CRCL claims legal 9 counsel for nonstandard. 10 Q. Does he have any involvement in 11 setting reserves or providing settlement 12 authority? 13 A. No. 14 Q. Who does Martha get her authority 15 from in terms of providing settlement authority 16 or advising with regard to modifying reserves? 17 A. It would be the director, Manuel 18 Fuentes. 19 Q. And where is Manuel Fuentes located? 20 A. The Columbus office. 21 Q. Do you know whether Mr. Fuentes was 22 involved at all in any of the reserve 23 evaluations or the settlement authority in this 24 case? 25 A. Prior to trial?</p>
<p style="text-align: right;">Page 11</p> <p>1 Q. Prior to trial. 2 A. He was not. 3 Q. Since the verdict was returned, has 4 he been involved? 5 A. Yes. 6 Q. Is he the one that indicated that the 7 reserves should be increased to at least 8 \$200,000? 9 A. Yes. 10 Q. And why was the reserve increased 11 after the verdict to \$200,000? 12 A. To include the prejudgment interest. 13 Q. The compensatory award was \$118,000; 14 true? 15 A. Right. 16 Q. And the prejudgment interest 17 calculated to ten percent back to the date of 18 the collision, unless my calculations are wrong, 19 would come in somewhere less than \$200,000? 20 A. Correct. 21 Q. Why was the reserve set above what 22 the worse case scenario from a compensatory 23 level Nationwide would have? 24 A. Manuel looked at the file. He wanted 25 the \$200,000 but it was later decided to set the</p>	<p style="text-align: right;">Page 12</p> <p>1 reserve at \$124,000. 2 Q. Do you know why Manuel wanted 3 \$200,000? 4 A. No. 5 MR. MISHKIND: Marty, for purposes of 6 the hearing, are you going to have anyone else 7 other than Terri? 8 MR. FRANEY: I haven't thought about 9 it. 10 MR. MISHKIND: Because if you are, 11 obviously, in looking at the file, I have a 12 better appreciation for the various people that 13 were involved and I think you can understand I 14 didn't before. I knew of Gina Scruggs and 15 Terri, and I met this Jeff Lindenberger one 16 time, but I didn't realize he was involved as 17 long. So if there is an intent to have any of 18 these people testify -- 19 MR. FRANEY: I don't believe so. 20 MR. MISHKIND: If you change that -- 21 MR. FRANEY: I will let you know. 22 MR. MISHKIND: Thanks. 23 Q. Monica Cipriani, who is that? 24 A. She works out of, I believe it's the 25 Columbus office for the ICE transmittal</p>

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1 evaluation people.
2 Q. What's that?
3 A. It's a tool that we use for
4 evaluation purposes.
5 Q. Explain to me what this tool is.
6 A. We send the medicals to her through a
7 transmittal with all the information about the
8 accident. She puts all the medicals into her
9 system and it spits out a report that tells us
10 what is reasonable and customary for the area.
11 Q. And this is called an ICE?
12 A. ICE.
13 Q. That stands for what?
14 A. I believe independent claims
15 evaluation. I could be wrong on the "I" part.
16 Q. So this is some computer that is
17 taking data that you feed into it or people at
18 Nationwide feeds in and then it kicks back and
19 tells you what it considers to be reasonable?
20 A. Reasonable and customary.
21 Q. And is that reasonable and customary
22 for purposes of settlement or reasonable and
23 customary for purposes of verdict potential?
24 A. Probably both. It's for the area.
25 This particular county would be Cuyahoga County.

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1 A. They are supposed to be prepared on
2 every file unless it's a limits case, a death
3 case, or a broken bone.
4 Q. Is it just a one-time report or is it
5 prepared on a regular basis, updated or amended?
6 A. If you have got all of your medicals,
7 a one-time report. If you don't, then you have
8 to do supplementals.
9 Q. Would it be called a claims summary
10 report, just under a different date?
11 A. Correct.
12 Q. Do we have any other claims summary
13 reports under different dates than the one that
14 is printed on September 27th, 2001 in this case?
15 A. No.
16 Q. Do you know why there wasn't another
17 claims summary report prepared after September
18 of 2001?
19 A. No, I don't.
20 Q. In fact, after September 2001, you
21 know from having inherited this file late in the
22 game, but nonetheless inheriting it, that after
23 September 2001 there was considerable additional
24 medical treatment that the plaintiff had for her
25 tinnitus; true?

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1 Q. Is there an ICE report contained
2 within your file?
3 A. Yes.
4 Q. Can you show me? I may have seen it,
5 but I just wouldn't necessarily recognize what
6 the ICE report looks like.
7 (Pause.)
8 A. That report, and then this one would
9 be on there. Once we receive this report back,
10 the claims summary report, we do another report
11 that will kick out this one, the negotiation
12 report.
13 Q. I have seen these documents.
14 Obviously there is nothing on here that says
15 ICE, so you can see my confusion.
16 But what you have handed to me is two
17 documents, one that's a claims summary report
18 and it has a date of
19 July 9, 2001 on it?
20 A. That would be the last service date.
21 The date of report would be here.
22 Q. September 27th, 2001?
23 A. That's when that report was printed.
24 Q. And how frequently do the claims
25 summary reports get prepared?

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1 A. Correct.
2 Q. In fact, a substantial amount of her
3 treatment was in 2002; true?
4 A. Correct.
5 Q. These claims summary reports, are
6 these submitted to the Department of Insurance;
7 do you know?
8 A. Not to my knowledge.
9 Q. But the procedure at Nationwide is to
10 prepare claims summary reports more than once if
11 additional information becomes available?
12 A. Correct.
13 Q. And one should have been prepared in
14 this case after September of 2001; true?
15 A. Following procedure, correct.
16 Q. And the procedure that Nationwide
17 had, at least with regard to this case, was not
18 followed; true?
19 A. True.
20 Q. And do you have any explanation as
21 you sit here as sort of the last person in line
22 as to why that didn't take place in this case?
23 A. I didn't feel it was necessary.
24 Q. Well, the fact that you didn't feel
25 it was necessary, it was your ultimate call not

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1 to comply with policies and procedures at
2 Nationwide?
3 MR. FRANEY: Objection.
4 A. No. I normally comply or I do comply
5 with the procedures. I just felt in this case
6 it wasn't necessary.
7 Q. Even though the plaintiff's medical
8 treatment continued after September of 2001;
9 true?
10 A. True.
11 Q. Even though the nature and the extent
12 and the permanency of the plaintiff's injury
13 became clearer in 2002; true?
14 A. True.
15 Q. And you weren't on this file until
16 roughly a year after this claims summary report
17 had been prepared; true?
18 A. Correct.
19 Q. So the decision-making with regard to
20 supplemental claims summary reports would have
21 been at least initially within the jurisdiction
22 of Jeff Lindenberger.
23 He would have been the one that would
24 have been preparing a supplemental claim report
25 reevaluating the case after September of 2001;

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1 true?
2 A. Right.
3 Q. And he didn't do that?
4 A. No.
5 Q. And then when you got involved in the
6 case as of September 24th, 2002, your testimony
7 is you didn't feel that it was necessary to
8 prepare a supplemental report; true?
9 A. True.
10 Q. Why?
11 A. I looked at the report that had been
12 kicked out prior and I noticed that the
13 reduction was very minimal, so I felt it wasn't
14 necessary to send it back through a second time.
15 Q. And the reduction you are talking
16 about is the amount of medical bills --
17 A. That were provided and then the
18 amount that was allowed.
19 Q. And for the record, we are looking at
20 a billed amount of medical of \$5,400 and a
21 recommended amount, according to the computer,
22 of \$5,300, rounded off?
23 A. Correct.
24 Q. We know that when you got involved in
25 the case in September of 2002 that the medical

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1 expenses were in excess of \$5,400 at that time;
2 true?
3 A. Correct.
4 Q. At the time that this matter
5 proceeded to trial, the medical expenses, the
6 past medical expenses were somewhere in the
7 range of \$7,000 in past medical expenses; true?
8 A. Correct.
9 Q. With additional medical expenses at
10 that point, if you are using this claims summary
11 report for some particular reason, why didn't
12 you run another report with that additional
13 medical in it?
14 A. I just didn't feel it was necessary.
15 Q. Even though there was additional
16 information?
17 A. Correct.
18 Q. If you didn't feel it was necessary,
19 why do you feel the claims summary report at all
20 is necessary?
21 A. When this report initially came out,
22 I think it was geared toward the new hires, to
23 give them a sense of how cases should be
24 negotiated, what they should be looking for, and
25 I felt as an experienced adjuster with very

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1 little reduction the first time around that it
2 wouldn't be necessary to send it back through.
3 Q. Let me give that back to you.
4 The negotiation report --
5 MR. FRANEY: I don't want to
6 interrupt your depo, just so we try to keep --
7 this is my file. Just so I get my stuff back at
8 the end, I don't want you mixing it.
9 MR. MISHKIND: You will get it back.
10 Q. The negotiation report, which is the
11 other document that you handed to me and I
12 recognize having seen about 10:00 o'clock last
13 night, does this have a particular name to it or
14 is this part of the ICE document, as well?
15 A. That's also part of the ICE document.
16 It's after we receive the claims summary report
17 back, we have another report that we have to
18 fill in, the time of the accident, the impact,
19 the injuries, and this report is kicked out
20 after that is done.
21 Q. And this report was prepared in
22 January or printed out in January of 2002;
23 correct?
24 A. Correct.
25 Q. Again, this report has the medical as

5 (Pages 17 to 20)

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1 of the end of 2001 and nothing in 2002; true?
2 A. Correct.
3 Q. Do you agree with the disclaimer
4 that's contained in the ICE documents that the
5 ICE provides claims representatives with
6 statistically valid data and claims specific
7 information needed to help evaluate and settle
8 claims; however, there may be aspects of a
9 particular claim that can only properly be
10 addressed by applying professional judgment and
11 experience to the claims representative?
12 A. Correct.
13 Q. In fact, you don't settle your cases
14 by cookbook evaluation, do you?
15 A. No, I do not.
16 Q. You don't just look at this
17 particular case had this verdict, this
18 particular case had this verdict, and then
19 decide that's what is going to factor in in
20 terms of what should be offered for purposes of
21 settlement or what the potential jury verdict
22 is?
23 A. No, that's not how I evaluate my
24 cases.
25 Q. Tell me, since you have been doing

Page 22

1 this for 22 years -- you started when you were
2 about six years old -- tell me what factors you
3 take into account, aside from the fancy
4 computers, in terms of arriving at what you
5 consider to be a good faith offer on a case.
6 A. When I evaluate a case, I look at the
7 entire picture. I look at the accident itself,
8 how it happened, the injuries, the property
9 damage, what type of witness the parties are
10 going to make, the doctors' reports. The whole
11 picture. I look at everything.
12 Q. Do you take into account the strength
13 of the attorney representing the plaintiff?
14 A. Yes.
15 Q. Or the experience level of the
16 attorney representing the plaintiff?
17 A. Yes.
18 Q. I have seen files before where there
19 is an evaluation made concerning the attorney
20 and whether or not the attorney tries cases,
21 whether or not the attorney is likely to be
22 aggressive with regard to the case, whether or
23 not the plaintiff made the right decision or the
24 wrong decision on hiring a particular lawyer.
25 The competency of the plaintiff's

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1 attorney is a factor that you take into account
2 in terms of evaluating the case; true?
3 A. True.
4 Q. I don't see anything at all in the
5 file -- admittedly I went through it briefly --
6 but I don't see anything that comments at all on
7 me or my law firm in terms of the handling of
8 the case or any aspects plus, minus or
9 indifferent about Howard Mishkind as Janie
10 Cousins' attorney. Was there ever any factor
11 given to that in terms of evaluating this case?
12 A. Not from my end, I don't believe I
13 factored that in.
14 Q. Did you see anything by anyone, Gina
15 Scruggs, Jeff Lindenberger, or anyone that took
16 into account whether or not plaintiff was
17 represented by competent counsel?
18 A. No, I saw nothing.
19 Q. Did you see anything that suggested
20 that plaintiff's counsel was incompetent?
21 A. No.
22 Q. Did you see any suggestion that
23 plaintiff's counsel was anything other than
24 willing, if necessary, to try this case before a
25 jury of eight in an effort to get reasonable

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1 compensation for his client?
2 A. No.
3 Q. Do you know in this case why there
4 was no consideration in any of the documents as
5 to whether plaintiff's counsel's involvement --
6 plaintiff's counsel being myself -- was a plus
7 or minus to how this case might be presented to
8 a jury?
9 A. No.
10 Q. How the witnesses appeared, you knew
11 Mr. Jacobus, at least from your brief
12 interactions with him, and you had input from
13 your colleagues as to what type of witness he
14 would make.
15 Did you ever interview or get any
16 input on Shelly Lawrence, the only independent
17 witness to the collision, in terms of the
18 quality of her appearance in terms of how she
19 would be as a witness?
20 A. No, I did not.
21 Q. Does this report called negotiation
22 report, which I'm going to return to Mr. Franey
23 in a second before I do lose it, does it give
24 you some indication as of the end of January
25 2002 as to what usual and customary settlement

6 (Pages 21 to 24)

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1 for this kind of case should be?
2 A. On the back page it will give you a
3 range. And this tells you the percentage of how
4 many cases are settled for that, which is 6,100;
5 how many cases are settled for that at 60
6 percent, 90 percent and then where Gina had her
7 evaluation.
8 Q. So Gina's evaluation at the end of
9 January at or about the time that the lawsuit
10 was filed -- because I think it was filed
11 sometime around the 20th of January, and I may
12 be off by a few days -- but her evaluation was
13 \$35,000?
14 A. Correct.
15 Q. And at that time, her offer at or
16 around the time that the lawsuit was filed was
17 \$17,000; true?
18 A. Correct.
19 Q. And in fact, \$35,000 was never
20 offered until, perhaps, the day before we
21 started the trial in this case?
22 A. Correct.
23 Q. Even though throughout 2002 the
24 plaintiff's injury and her treatment and her
25 analysis with regard to the tinnitus became

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1 clearer and clearer in terms of its causal
2 relationship to the motor vehicle collision;
3 true?
4 A. True.
5 Q. Do you mind me calling you Terri?
6 A. No, not at all.
7 Q. Terri, the two forms, the claims
8 summary report and the negotiation report, are
9 these the only two such reports that were
10 generated in connection with this case?
11 A. Through ICE?
12 Q. Yes.
13 A. Yes.
14 Q. So everything else that we have in
15 terms of reserves or settlement authority is on
16 the adjustor's log?
17 A. Correct.
18 Q. You know that Mr. Burke's deposition
19 has been taken?
20 A. Yes.
21 Q. Have you seen Mr. Burke's deposition?
22 A. No.
23 Q. During the course of trial, other
24 than seeing you the morning of trial, were you
25 present at any other day during the course of

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1 trial?
2 A. No.
3 Q. Was anyone from Nationwide present
4 during the course of trial?
5 A. Not that I'm aware of.
6 Q. There are cases that you will monitor
7 that you will be present from the start to the
8 finish of trial; true?
9 A. True.
10 Q. Why weren't you present more than
11 just the morning of trial in this case?
12 A. I didn't feel it was necessary for me
13 to be there.
14 Q. Did you give up hope of trying to
15 settle this case after the morning of trial?
16 A. No.
17 Q. Was there any effort made after the
18 trial started by you or anyone from Nationwide
19 to increase the settlement authority or
20 settlement offer conveyed to the plaintiff?
21 A. No.
22 Q. Was there anything preventing you or
23 any representative on behalf of Nationwide from
24 making an effort to increase the settlement
25 offer to try to resolve this case?

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1 A. No.
2 Q. And do you have any idea if an effort
3 had been made to try to settle this case by
4 increasing the settlement offer after the trial
5 had commenced what the response of the plaintiff
6 would have been?
7 A. No, I do not.
8 Q. I promise you I'm not going to go
9 through each and every entry, otherwise we will
10 be here as long as I have been reading it last
11 night, but I do have some questions regarding
12 some of the entries.
13 If you can answer this question,
14 fine; if it's too general, tell me.
15 How would you say that you get along
16 with Mr. Burke in terms of your communication
17 with him as personal counsel for Mr. Jacobus?
18 MR. FRANEY: Objection. Go ahead.
19 A. I didn't have a whole lot of
20 interaction with him, but when I did meet him
21 and we talked on the phone, I thought it was
22 fine.
23 Q. In your opinion, did he have
24 unrealistic expectations that he conveyed to you
25 in terms of what should be done with regard to

7 (Pages 25 to 28)

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1 this case?
2 A. No.
3 Q. You may certainly feel free to use
4 your documents.
5 I want to run through some of the
6 entries. First I'm going to refer to the
7 adjustor's log. I'm not going to go through all
8 of them. There will be ones that I will, that
9 are either obvious to me or ones that I'll wait
10 until the hearing to talk to you about, but
11 starting with the adjustor's log, it appears as
12 of December 7, 2000, that --
13 MR. FRANEY: Let her get there.
14 MR. MISHKIND: In fairness to you,
15 what I have done, I have pulled out just certain
16 pages --
17 MR. FRANEY: Let's make sure we are
18 both on the same page, that's all -- I don't
19 mean page literally -- the entry that you want
20 to talk to her about so she has it in front of
21 you.
22 Q. I'm referring to December 7, 2000,
23 there is a statement liability decision. It's
24 at the bottom of one of those pages.
25 A. Okay.

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1 the collision?
2 MR. FRANEY: Objection.
3 A. No, I don't know.
4 Q. Still while Gina was handling the
5 case -- maybe what I can do is to help you a
6 little bit. What does case base mean?
7 A. It's a reserving. You have to
8 reserve after 90 days.
9 Q. It appears the first reserve set
10 would have been \$6,500?
11 A. Correct.
12 Q. And that would have been perhaps
13 before -- I want to believe that it was -- maybe
14 it was May of '01.
15 A. Yes.
16 Q. So May 7, 2001, there was a reserve
17 set of \$6,500?
18 A. Correct. I'm sorry, it's six months,
19 not 90 days.
20 Q. And there is a comment, not a minor
21 impact, clear liability; correct?
22 A. Correct.
23 Q. And then it talks about expect worse
24 case with no lost wages around \$6,500. Is this
25 Gina's comment or is this someone else inputting

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1 Q. It says insured at fault 100 percent
2 for left of center and DUI; true?
3 A. True.
4 Q. So that as of even before the lawsuit
5 was filed, Nationwide recognized that
6 Mr. Jacobus was liable for causing this
7 collision; correct?
8 A. Correct.
9 Q. And there was no indication at all in
10 the investigation that Janie Cousins caused or
11 contributed in any way to this collision; true?
12 A. True.
13 Q. Yet the answer that was filed in this
14 case denied negligence on the part of
15 Mr. Jacobus and alleged comparative negligence
16 on the part of the plaintiff?
17 MR. FRANEY: Objection.
18 Q. Do you realize that?
19 A. Yes, I do.
20 Q. Given the fact that liability was 100
21 percent and your investigation showed that the
22 plaintiff was not at fault, caused or
23 contributed, do you know why an answer was filed
24 denying negligence and asserting that the
25 plaintiff was comparatively negligent in causing

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1 information to Gina at this point?
2 A. That would have been Gina's comment.
3 When we do case base, we have to make a log
4 entry of why we are reserving it and what we
5 reserve it at.
6 Q. In looking at the file, and obviously
7 when you inherited the file, being a senior
8 claims handler or whatever your title is, you go
9 back and look and see what's gone on in the file
10 with your colleagues that have handled the case
11 up to that point; correct?
12 A. Correct.
13 Q. In an effort to see if anything has
14 been missed or perhaps additional information
15 was necessary; correct?
16 A. Correct.
17 Q. When you got involved in the case,
18 did it appear to you from looking at the file
19 that I, as plaintiff's attorney, failed to
20 cooperate in any way in terms of providing
21 information, both with regard to the collision,
22 as well as with regard to information about
23 Janie Cousins' psychiatric treatment that she
24 was receiving?
25 A. No.

<p>Page 33</p> <p>1 Q. So there is no question that I fully 2 cooperated both from a presuit standpoint and 3 during the course of litigation; true? 4 A. True. 5 Q. I didn't try to hide any of the bad 6 stuff, did I? 7 A. No. 8 Q. It appears that -- maybe you can tell 9 me when this occurred -- but with clear 10 liability and insured cited for DUI, the value 11 was increased to \$13,000. Do you know when that 12 was? 13 A. That would have been on 5-1. 14 MR. FRANEY: What year? 15 THE WITNESS: 2001. 16 A. And it was also due to the increase 17 in the medicals. 18 Q. The first settlement demand that was 19 made by the plaintiff in this case was \$175,000; 20 true? 21 A. Correct. 22 Q. And that was sometime in October of 23 2001. The lawsuit was filed January of 2002. 24 A. Without looking at the notes, I would 25 have to --</p>	<p>Page 34</p> <p>1 Q. I have a note here of October 29, 2 2001 that the demand was \$175,000 and the offer 3 was \$10,000. Does that sound about right in 4 terms of the offer demand? 5 A. Yes. 6 Q. And then at the time that the -- 7 actually before the lawsuit was filed, it 8 appears that the demand was reduced from 9 \$175,000 to \$125,000. Do you recall that? 10 A. Yes, I do. 11 Q. And that was a reduction in offer 12 without at that point any corresponding increase 13 in offer; true? 14 MR. FRANEY: Object. I lost you 15 there. 16 THE WITNESS: Me too. 17 MR. MISHKIND: If both of you lost me 18 then obviously it was poorly worded. 19 Q. The reduction to \$125,000 in the 20 demand, that was made by the plaintiff. 21 A. Correct. 22 Q. By me on behalf of the plaintiff. 23 And at that time, there wasn't an increase in 24 the settlement offer in response to the 25 \$125,000, was there?</p>
<p>Page 35</p> <p>1 MR. FRANEY: You mean after -- I'm 2 still lost. Are you saying after you reduced 3 your demand to \$125,000 there was no increase to 4 the offer? 5 MR. MISHKIND: Immediately in 6 response to the \$125,000. 7 MR. FRANEY: Do you understand that 8 question? 9 THE WITNESS: Yes. 10 A. Without looking through my logs, I 11 can't answer that. 12 Q. And if there was an increase in the 13 offer, I would like to know about that, because 14 my records show that after the lawsuit was filed 15 on behalf of the plaintiff in early January, I 16 reduced the settlement demand down to \$75,000 17 and at that time there was an offer of \$17,000 18 that had been conveyed. But I don't see that 19 Gina ever made any offer between the time that 20 she made the first \$10,000 and when she conveyed 21 the \$17,000 sometime in early January. 22 MR. MISHKIND: And Marty, if you know 23 of any offer between the \$175,000 and the 24 \$125,000, I have no problem -- you are as 25 familiar with this file as I am. Do you show</p>	<p>Page 36</p> <p>1 anything in response to my \$125,000? 2 MR. FRANEY: She prepared kind of her 3 summary of this herself. 4 MR. MISHKIND: Sure. 5 A. No, there was no offer. 6 Q. Now, this is a document that you 7 prepared after going through the logs? 8 A. Yes. 9 Q. When does it start? 10 A. The date of the accident. 11 Q. And in terms of you being most 12 familiar with this case, would this be of 13 assistance to you to refer to or to refresh your 14 memory about the events? 15 A. Yes. 16 Q. What I'm going to do is I'm going to 17 let you do that, but I'll mark this as an 18 exhibit which will be Exhibit 1 for purposes of 19 this deposition and then you can use it as you 20 feel necessary. 21 ----- 22 (Thereupon, LEFEVER Deposition 23 Exhibit 1 was marked for 24 purposes of identification.) 25 -----</p>

<p>Page 37</p> <p>1 Q. Terri, for the record, is Plaintiff's 2 Exhibit 1 for your deposition a time line or 3 chronology that you prepared after you reviewed 4 your claim log? 5 A. Yes. 6 Q. And when did you prepare that? 7 A. Last night. 8 Q. So you were working on it while I was 9 working on it? 10 A. Yes. 11 Q. Now, looking at that time, is my 12 statement correct that I reduced my settlement 13 demand on behalf of the plaintiff from \$175,000 14 to \$125,000 and at that time there was no 15 increase in the offer until the demand was 16 reduced down to \$75,000? 17 A. Correct. 18 MR. FRANEY: As long as we have the 19 understanding that that is what the log 20 represents. She wasn't involved in any 21 negotiations between you and Gina Scruggs. What 22 she is telling you is what the log reflects. 23 MR. MISHKIND: Right. 24 Q. And you would expect that the log 25 which contains entries that are made at or near</p>	<p>Page 38</p> <p>1 the times of the events that took place would 2 accurately reflect the negotiation process; 3 true? 4 A. True. 5 Q. In fact, the adjustors are schooled 6 and warned and told to make as contemporaneous 7 an entry as possible concerning what the 8 plaintiff's attorney says, what they offer, and 9 anything that is relevant to that encounter; 10 true? 11 A. True. 12 Q. So that there is no question based 13 upon the business records of Nationwide, 14 plaintiff, without any other offer being made at 15 that time by Nationwide, by Gina, reduced the 16 settlement demand from \$175,000 to \$125,000? 17 A. Correct. 18 Q. And then reduced the settlement 19 demand again to \$75,000 and then there was an 20 offer of \$17,000? 21 MR. FRANEY: Objection. I think you 22 made one misstatement there. The way I read the 23 log, the \$10,000 offer was in response to your 24 \$175,000 demand and then you countered with a 25 \$125,000 demand and then the log reflects that</p>
<p>Page 39</p> <p>1 it unilaterally appears that you reduced your 2 demand to \$75,000. 3 MR. MISHKIND: I think we are saying 4 the same thing. 5 MR. FRANEY: You seem to be saying 6 that the demand went from \$175,000, the way I 7 understood your question, to \$125,000 without 8 any response. 9 MR. MISHKIND: There was a \$10,000 10 offer. 11 MR. FRANEY: As long as we are on the 12 same page. 13 MR. MISHKIND: We are. 14 Q. There is a reference later on in one 15 of the documents to bidding against one's self. 16 Do you see that note that Jeff Lindenberger 17 made? 18 A. I did read that last night. 19 Q. I bid against myself on behalf of my 20 client when I reduced the demand from \$125,000 21 down to \$75,000, didn't I? 22 A. I suppose. 23 Q. And can we agree that when I reduced 24 the demand to \$75,000 in early January, that the 25 balance of that year, up until October of 2002,</p>	<p>Page 40</p> <p>1 there were no offers made in a further effort to 2 settle this case? 3 A. That's what the file reflects. 4 Q. Even though the plaintiff's injury 5 became clearer, her medical treatment continued 6 throughout that year, there was no additional 7 attempt in writing or verbally to increase the 8 offer of \$17,000 until we get to October of 9 2002; true? 10 A. True. 11 Q. In October of 2001, before the 12 lawsuit is filed, it looks like Gina is 13 indicating to Mr. McKelvey that she needs as 14 much as \$25,000, given the DUI issue and the 15 client's ongoing tinnitus and the party's 16 psychological problems -- that has to be a 17 typo -- but may be attributed to us, part of the 18 psychological problems may be attributed. 19 She was asking for authority of as 20 much as \$25,000 as of October 2001; correct? 21 A. That was presettlement authority. 22 Q. What does that mean? 23 A. There is the reserve or the authority 24 and then there is presettlement authority. It's 25 two separate things.</p>

<p>Page 41</p> <p>1 Q. Can you help me out? I'm a naive 2 guy. Explain to me what that means. 3 MR. FRANEY: Objection to naive. 4 MR. MISHKIND: Thank you. 5 A. The reserve is one part of the file 6 and then the presettlement authority, from what 7 I understand from presettlement authority, is 8 your settlement authority that you would have 9 on -- it's very confusing. The presettlement 10 authority is the authority that they give before 11 they give you the actual settlement authority. 12 Q. If you are given presettlement 13 authority, how does that differ from settlement 14 authority? 15 A. That's a good question. 16 Q. Sometimes I get lucky. 17 Are you able to tell me? 18 A. No, I can't tell you. 19 Q. If the presettlement authority was 20 \$25,000 as of October 2001 or November 2001, 21 does that mean that Gina, if this case could 22 settle for \$25,000, had the authority to convey 23 that offer to the plaintiff or plaintiff's 24 counsel? 25 A. I would have to say yes, because he</p>	<p>Page 42</p> <p>1 did raise the reserve down here. 2 Q. And the reserve was raised to 3 \$25,000? Meaning that from the standpoint of 4 funds that were put off to the side that would 5 be available to satisfy this claim, \$25,000 was 6 available? 7 A. Correct. 8 Q. And the reserve is a dynamic process, 9 is it not? 10 A. True. 11 Q. Based upon the ongoing nature of a 12 client's injury or the other factors that may 13 play out during the course of litigation, the 14 reserve is reviewed on some type of a basis; 15 true? 16 A. True. 17 Q. At Nationwide, how often is the 18 reserve expected to be reviewed, minimally? 19 A. It would depend on the information 20 that you would get for the claim. 21 Q. Is there a minimum frequency that a 22 reserve needs to be brushed off and looked at 23 during the course of litigation? 24 A. It's initially set at six months 25 after the claim is started and then it's</p>
<p>Page 43</p> <p>1 reviewed as you get your documentation and you 2 get your discovery in. 3 Q. Are there any guidelines that you 4 have in the Nationwide policy and procedure that 5 says as you get that information in, the reserve 6 shall be reviewed or reassessed within X number 7 of days or weeks of getting additional 8 information? 9 A. Not X number of days. You just 10 review it as the material comes in. 11 Q. Certainly the reserve existed to 12 settle this case at \$25,000 presuit? 13 A. Correct. 14 Q. And presuit, we know that the offer 15 that was made was \$10,000? 16 A. Correct. 17 Q. It wasn't until after the lawsuit had 18 been filed I had unilaterally reduced my 19 settlement demand to \$75,000 that the offer of 20 \$17,000 was conveyed; true? 21 A. True. 22 (Witness conferring with counsel.) 23 Q. There is a reference to advisory 24 comments, med coordinator. Who is the med 25 coordinator?</p>	<p>Page 44</p> <p>1 A. That would have been Harry Burg. 2 Q. Is Harry a physician? 3 A. No. He is a nurse, an RN. 4 Q. And if I read this correctly, in 5 November, Harry Burg indicated that the tinnitus 6 is related to the motor vehicle collision; true? 7 A. True. 8 Q. And this is before the lawsuit was 9 filed? 10 A. True. 11 Q. And Harry indicated -- and this was 12 conveyed apparently to Gina -- that one can 13 experience tinnitus because of an injury to the 14 neck where there is muscle spasms that affect 15 the inner ear; true? 16 A. That's what his entry says, yes. 17 Q. And in fact, you realized when you 18 got involved in the case that the argument that 19 because the plaintiff didn't strike her head on 20 any object, that the medical literature clearly 21 indicated that one can have a hyperextension or 22 hyperflexion injury causing muscle spasms and 23 experience tinnitus without actually a blow to 24 the head; true? 25 A. True.</p>

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1 Q. Now, Ms. Scrubs, in January, right
2 around the time that the lawsuit was being
3 filed, notes that I lowered my demand to
4 \$75,000. She increased her offer to \$17,000.
5 And I indicated to her that I was willing to
6 negotiate and I suggested mediation; correct?
7 A. Correct.
8 Q. To your knowledge, after this
9 conversation in January, prior to trial, did
10 Nationwide ever respond and say, Mr. Mishkind,
11 that's a great idea, let's mediate the case;
12 let's try to meet and try to get this resolved
13 before we go through litigation on this matter?
14 A. Not to my knowledge.
15 Q. Do you know why no one followed
16 through with the concept of mediating to try to
17 resolve this case without the cost of
18 litigation?
19 A. No, I do not.
20 Q. That would have been a reasonable
21 thing to do, wouldn't it?
22 A. Yes.
23 Q. And in fact, I told Gina that my
24 client makes an excellent witness.
25 Now, she didn't know whether I was

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1 puffing or whether I was being serious. And
2 when you are talking to a plaintiff's lawyer you
3 don't always know whether or not they are being
4 serious with you.
5 From the standpoint that you could
6 observe, other than concerns relative to her
7 divorce, did Janie Cousins, in your opinion,
8 from your limited viewing of her, make a nice
9 appearance?
10 MR. FRANEY: Objection.
11 A. I thought she did, yes.
12 Q. And in fact, her family made a nice
13 appearance, didn't they?
14 A. I really didn't get to see her
15 family.
16 Q. Chronologically, either looking at
17 this or looking at your note, in January of
18 2002, right around the time that the lawsuit was
19 filed, the reserve was adjusted to \$40,000;
20 true?
21 A. True.
22 Q. Yet the offer was still \$17,000;
23 correct?
24 A. Correct.
25 Q. And it remained that way -- and I

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1 won't repeat myself again -- all the way till
2 October?
3 A. True.
4 Q. Now, there is some reference to an
5 arbitration award involving tinnitus that was
6 rendered in an arbitration in Lorain County for
7 \$50,000. Were you familiar with that case at
8 all?
9 A. No.
10 Q. There is also reference in the jury
11 verdicts to the Steven Frank case, which I'm
12 actually disappointed because it has my
13 associate's name in there and it should have had
14 my name in as well. It was a total of \$5.3
15 million, tinnitus being one of the injuries. Do
16 you remember seeing that case referenced?
17 A. Briefly.
18 Q. Did you look outside of Cuyahoga
19 County or Ohio to look at other tinnitus cases
20 to get an idea of what jury verdicts were
21 returning in nonOhio tinnitus cases?
22 A. No.
23 Q. June 3rd, Jeff Lindenberg makes
24 mention of an agreement on mediation. Perhaps
25 this will be useful. I will not disturb reserve

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1 at this time.
2 So at least internally, the people at
3 Nationwide were kicking around the proposal that
4 I had made back in January to mediate the case;
5 correct?
6 A. From reviewing the logs, yes.
7 Q. And to your knowledge, from reviewing
8 the log or talking with Jeff, did anyone ever
9 pick up the phone or write a letter or knock at
10 my door and say, hey, Mishkind, let's mediate
11 the case; the idea that you had back in January
12 was a great one, to get this case resolved?
13 A. Not that I'm aware of.
14 Q. Do you know any reason why someone
15 couldn't have done that in an effort to
16 negotiate this case in good faith?
17 A. No.
18 Q. Now, Mr. Lindenberg isn't a
19 physician, is he?
20 A. No.
21 Q. He doesn't have any medical training,
22 does he?
23 A. Not that I'm aware of.
24 Q. Do you know where he obtains the
25 qualification to make the statement, I question

12 (Pages 45 to 48)

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1 the mechanics of injury, although it's not
2 impossible.
3 And again referring to where a
4 patient has not struck their head on anything,
5 do you know where he got that you have to strike
6 your head to have sustained an injury involving
7 tinnitus?
8 A. No, I don't.
9 Q. What is your reaction to his
10 statement in July of '02 that he will negotiate
11 when the demand is more reasonable?
12 A. I don't know.
13 Q. You would agree that the \$75,000
14 demand was reasonable; true?
15 MR. FRANEY: Objection.
16 A. Yes.
17 Q. Do you know what Mr. Lindenberg
18 meant when he said on July 1st, 2002, we need to
19 continue efforts to get the attorney to a figure
20 we can work with without bidding against
21 ourselves. Jeff will continue his efforts to
22 resolve. This is as of July. Do you know what
23 he meant by -- or maybe it's not Jeff.
24 A. It's his supervisor, Charity Ginella.
25 Q. Charity is the first name?

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1 Q. Was I, based upon your review of this
2 case, making a demand that was unfathomable or
3 unrealistic?
4 MR. FRANEY: Objection.
5 A. No.
6 Q. Now, he also makes a comment about
7 the court where I'm not optimistic a
8 constructive approach will be taken by the court
9 in the future. I will approach this privately,
10 for the most part, but it was clear that any
11 statement I had on the substance was irrelevant.
12 Good faith only equals increasing the offer.
13 There is a potential punitive aspect here, but I
14 could not value what could have been or what
15 might have been.
16 Is that again part of Jeff's creative
17 writing?
18 A. Yes.
19 Q. Would you ever make any kind of
20 comment in that regard in your assessment of the
21 case?
22 A. I myself, no.
23 Q. Does that promote getting a case
24 resolved?
25 A. As far as?

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1 A. Yes. That was her review.
2 Q. So Charity is saying to Jeff, we
3 can't bid against ourselves and Jeff will
4 continue his efforts to try to get the
5 plaintiff's attorney to a figure we can work
6 with; correct?
7 A. That's what she said in the log, yes.
8 Q. But yet Mr. Lindenberg on July 1st
9 says, and correct me if I am wrong, after the
10 pretrial, no real substantive negotiations took
11 place. Plaintiff's counsel has taken the
12 approach that by lowering a demand from
13 unfathomable to simply unrealistic means, I have
14 to respond. I will respond, but the purpose of
15 today in their mind was apparently to see if I
16 would modify the floor. We are looking at some
17 movement, but I'm not going to do it without a
18 purpose.
19 What was your reaction when you saw
20 that?
21 MR. FRANEY: Objection.
22 A. Jeff is a creative writer.
23 Q. Would you ever put anything like that
24 in a report?
25 A. Not myself, no.

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1 Q. Making a comment that I'm not going
2 to lower demand. We are looking at some
3 movement, but I'm not going to do it without a
4 purpose. I will approach this privately, but
5 for the most part it was clear that any
6 statement I had on the substance was irrelevant.
7 Good faith only equals increasing the offer.
8 Does that thought process on the part
9 of the person responsible for a file demonstrate
10 an honest and good faith attempt to get a case
11 resolved, in your opinion?
12 MR. FRANEY: Objection.
13 A. No.
14 Q. When you got involved, Terri, you
15 realized that Mr. Jacobus was never sent the
16 suit acknowledgment letter with punitive damage
17 language in it?
18 A. Correct.
19 Q. And he should have been sent that at
20 some time earlier than when you had it sent to
21 him; correct?
22 A. Correct.
23 Q. When should it have been sent to him?
24 What's the normal time --
25 A. When suit was filed.

13 (Pages 49 to 52)

<p>Page 53</p> <p>1 Q. So the complaint in January, he 2 should have been given the letter that was 3 ultimately sent to him in October? 4 A. Correct. 5 Q. That letter in October, which is 6 somewhere in here, says that you have the right 7 to retain an attorney because punitive damages 8 are not covered under your contract. 9 A. Correct. 10 Q. But it does indicate that we, 11 Nationwide will continue to provide you with a 12 defense in this matter, whether you retain an 13 attorney or not; correct? 14 A. Correct. 15 Q. So you agreed to defend him but not 16 necessarily to indemnify him for punitive 17 damages; correct? 18 A. Correct. 19 Q. Up to the point that Mr. Burke got 20 involved in the case, were there any experts 21 ever retained or consulted to testify on 22 Mr. Jacobus' behalf relative to the issue of his 23 intoxication to try to minimize his exposure to 24 punitive damages? 25 A. No.</p>	<p>Page 54</p> <p>1 Q. Do you know why there wasn't any 2 decision made by Nationwide to provide him with 3 that kind of defense, even though you would 4 indemnify him for any punitive damages, why you 5 didn't take the initiative to defend him on that 6 issue? 7 MR. FRANEY: Objection. 8 A. I don't know. 9 Q. Certainly he was entitled to be 10 defended on a reasonable basis on all claims, 11 even though, if a jury found on punitive 12 damages, he would be responsible for the payment 13 of punitive damages; true? 14 A. True. 15 Q. Just one more interesting comment and 16 then we may be done with the log. 17 There is a note, and I don't know 18 whether I have the top page, but it says -- and 19 this may be from Jeff's pretrial -- the judge 20 advised the plaintiff's attorney yesterday that 21 this will be a fun case to try due to punitive 22 issues, so we will not get any help from her. 23 She advised me yesterday that she cannot believe 24 that Nationwide would let our insured hang when 25 the demand is within the limits. This will be a</p>
<p>Page 55</p> <p>1 business call. 2 Was that again Jeff's -- 3 A. No, that's my call. 4 Q. So that would have been the pretrial 5 that you and I met in person for the first time? 6 A. October 22nd. 7 Q. Got it. I wasn't privy to these 8 conversations. This is probably when you were 9 in talking with the judge. 10 But your statement is that the judge 11 said that she couldn't believe that Nationwide 12 would let their insured hang when the demand was 13 within limits. 14 A. That was her statement, yes. 15 Q. When you said this was a business 16 call, what did that mean? 17 A. Whether to proceed to trial or 18 attempt to settle it. 19 Q. Now, there was some reference at that 20 pretrial to increasing the settlement offer from 21 \$17,000 to \$25,000. When I walked away from 22 that pretrial, I had no direct communication 23 from you or from Marty of a \$25,000 settlement 24 offer. It may have been conveyed to the judge 25 that that's what your authority was, but do you</p>	<p>Page 56</p> <p>1 remember specifically conveying to me in my 2 presence that you were increasing the offer from 3 \$17,000 to \$25,000? 4 A. I believe so. 5 Q. You do? 6 A. Uh-huh. 7 Q. Were we in chambers or were we in the 8 hallway? 9 A. I think we were back in that one jury 10 room when she took us back to the jury room. 11 Q. So this \$25,000 was the first time 12 since the suit was filed that the offer had been 13 increased and it now went up \$8,000; correct? 14 A. Correct. 15 Q. You knew as of this point in time, 16 the end of October, that you were past due on 17 producing an ENT to refute the ENT's report. It 18 was due October 1. You guys were scurrying to 19 get an extension until the end of October to 20 produce an ENT to try to refute the causal 21 relationship between the tinnitus and the 22 collision; true? 23 MR. FRANEY: Objection. Go ahead. 24 A. We wanted to get another opinion of 25 the plaintiff's injuries, so we were --</p>

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1 Q. There was a deadline of October 1 for
2 the production of the report, and we had a
3 discussion with the judge. We were actually in
4 the jury room, and the judge, I think, granted
5 you another day or two past what had been
6 requested -- I think it may have fallen on a
7 weekend or holiday -- to provide the report from
8 your expert; true?
9 A. Correct.
10 Q. When you got Silberman's report --
11 and just to sort of jump ahead, you see the
12 analysis by Mr. Franey and Mr. Rawlin, and even
13 I think your own analysis that Dr. Silberman
14 really didn't help your case much, did he?
15 A. No.
16 Q. No one ever requested an opportunity
17 to have Janie Cousins examined, did they?
18 A. No.
19 Q. And certainly that's something that
20 you guys at Nationwide do from time to time, the
21 so-called independent medical exams, where a
22 client's history is taken and they are examined.
23 You do that on a regular basis; correct?
24 A. Yes.
25 Q. But a decision in this case wasn't

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1 made to do that with regard to Janie Cousins to
2 assess her injury; correct?
3 A. Correct.
4 Q. And would you agree that you usually
5 get a better assessment of the objectivity of
6 the injury where the doctor examines the patient
7 in addition to just simply reading records?
8 A. Not always.
9 Q. Did you know that you would get as
10 good an analysis by just having the doctor
11 review the records as opposed to examining the
12 plaintiff in this case?
13 MR. FRANEY: Can you repeat that?
14 Q. In this case, as the adjustor making
15 the calls as to whether to have an independent
16 medical examination done, did you feel that you
17 could get as good a read on the nature of her
18 injury, permanency, causal relationship, degree
19 of disability, by simply having the doctor
20 review records as compared to having the doctor
21 take a history, do an exam, and review the
22 records?
23 A. Since the claim of tinnitus was made,
24 I felt -- well, after reading the log, I felt
25 that the review was just as good as an

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1 independent medical exam.
2 Q. And in order for that to be valid,
3 the doctor had to have all of the relevant
4 medical records to be able to make his opinion
5 on records alone; correct?
6 A. Correct.
7 Q. So then I would imagine you were
8 surprised to learn at his discovery deposition
9 at the time of trial that Dr. Silberman didn't
10 even know that the plaintiff had been examined
11 twice, the day of the collision and then three
12 days later at the emergency room, with regard to
13 her symptoms of tinnitus; correct?
14 A. Correct.
15 Q. The doctor should have been provided
16 with all of the medical records in order to
17 provide the best objective opinion that he could
18 provide without actually examining the patient;
19 correct?
20 A. Correct.
21 Q. And he didn't have all that
22 information, did he?
23 MR. FRANEY: Objection. I think you
24 are assuming facts. I know what he has
25 testified to.

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1 MR. MISHKIND: His sworn testimony --
2 MR. FRANEY: I know what he testified
3 to.
4 MR. MISHKIND: His sworn testimony in
5 the evidence of this case was that he only had
6 the one emergency room record.
7 MR. FRANEY: We can agree to that.
8 MR. MISHKIND: Let me finish.
9 Q. He had one emergency room record and
10 didn't have both emergency room records;
11 correct?
12 A. If that's what he testified to.
13 Q. And certainly that's what the jury
14 heard; correct?
15 A. I'm assuming so.
16 Q. In other words, for someone who is
17 basing their opinion on records, without a
18 history, without an examination, it's important
19 from your defense standpoint that the doctor
20 have all of the information to be able to
21 provide effective testimony; correct?
22 MR. FRANEY: Objection. Go ahead and
23 answer.
24 A. Correct.
25 Q. And he didn't, did he?

<p style="text-align: right;">Page 61</p> <p>1 A. I'm not real sure. 2 Q. 15 point summary, what's that? 3 A. It's a summary that we put together 4 that has all the pertinent information from the 5 claim. It's actually 15 different entries. 6 Q. Thus the name 15 point summary? 7 A. Correct. 8 Q. Where is the 15 point summary? 9 MR. FRANEY: It's in the supplemental 10 packet. 11 MR. MISHKIND: Can you show that to 12 me? It may be obvious once you point it out to 13 me. 14 Q. Just for the record, and then we can 15 take a break -- I'm not going to be terribly 16 much longer after the break -- but the October 17 31, 2002 document that you generated, which is 18 the 15 point summary, references conclusions and 19 recommendations concerning this case; correct? 20 A. Correct. 21 Q. This again is before Dr. Fine and 22 Dr. Knapp were videotaped? 23 A. Correct. 24 Q. This was before Dr. Silberman's 25 discovery deposition was taken and his video was</p>	<p style="text-align: right;">Page 62</p> <p>1 taken? 2 A. I'm assuming so. 3 Q. And you have noted in here that 4 defense attorney, although he does not feel the 5 case is worth \$75,000, was recommending that 6 Nationwide be prepared to pay this amount and 7 that was the recommendation as early as, roughly 8 a month and a half before the case went to 9 trial; correct? 10 A. Correct. 11 (Recess had.) 12 Q. On October 24, 2002, defense 13 attorney -- and that would be Mr. Franey -- 14 indicated to you that he did not feel that he 15 would be able to hold the verdict to less than 16 \$75,000 and with reluctance he was recommending 17 that Nationwide be prepared to pay the \$75,000; 18 true? 19 A. Correct. 20 Q. Between October of 2002 and the day 21 before trial, \$75,000 was not offered; correct? 22 A. Correct. 23 Q. And from the communications that you 24 were made aware of, even at the time that I 25 redeposited Mr. Jacobus, did I make it known to</p>
<p style="text-align: right;">Page 63</p> <p>1 both personal counsel and to Mr. Franey that the 2 \$75,000 still remained on the table, but that as 3 we got closer to trial and the expenses of 4 getting the doctors lined up and everything else 5 inherent with trial, that the ability and the 6 willingness of the plaintiff to continue to 7 resolve this case at \$75,000 was dwindling? 8 A. Yes. 9 Q. Would you agree that with the 10 permanency of the plaintiff's injury -- strike 11 that. 12 Would you agree that all of the 13 doctors who testified by video and Dr. Silberman 14 acknowledged that the tinnitus was to a 15 reasonable degree of medical probability caused 16 by the auto collision? 17 A. Correct. 18 Q. And that there was no cure for 19 tinnitus? 20 A. Correct. 21 Q. And that the condition of tinnitus, 22 since there was no cure, is a permanent 23 condition? 24 A. Correct. 25 Q. And all of that information in terms</p>	<p style="text-align: right;">Page 64</p> <p>1 of the permanency, as well as the evaluation at 2 The Cleveland Clinic by the tinnitus management 3 clinic, with Dr. Newman, all of that information 4 became known from the July through October time 5 period with regard to this case before trial; 6 correct? 7 A. Correct. 8 Q. In light of that additional 9 information, would you agree that the \$75,000 10 which had been conveyed prior to all of that 11 information was a good faith effort on the part 12 of the plaintiff to resolve this case? 13 A. Yes. 14 Q. In fact, your report indicates that 15 the doctors at The Cleveland Clinic will testify 16 that her problem is permanent as a result of the 17 accident? 18 A. True. 19 Q. You indicate in your report that she 20 will make a nice appearance for herself. She 21 looked like a school teacher. 22 A. Correct. 23 Q. She is a small frame, she was going 24 through divorce at the time of the accident and 25 was on antidepressant meds. You indicate she</p>

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1 will generate sympathy from the jury; true?
2 A. Yes.
3 Q. Continuing, November, defense
4 counsel -- I presume that's Mr. Franey -- seems
5 in posture to want to pay the settlement demand,
6 and it says, which clearly includes punitive
7 amount. Discussed with Art. Correct?
8 A. That was Martha Tanner.
9 Q. And then Arthur Hopwood, I think
10 that's a name we didn't discuss.
11 MR. FRANEY: Yes, we have. Claims
12 legal counsel.
13 Q. That \$75,000 demand that existed
14 where it says clearly includes punitive amount,
15 I made it very clear in my communications, did I
16 not, that the \$75,000 would make -- that there
17 would be no continued prosecution of the
18 punitive damage claim if \$75,000 was paid?
19 A. Correct.
20 Q. So this statement is incorrect;
21 correct?
22 MR. FRANEY: I'm going to object to
23 that. I think you are reading it the wrong
24 way.
25 THE WITNESS: I agree.

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1 A. I really can't testify what she meant
2 by that when she wrote that.
3 Q. I'll leave it at that.
4 It says he is discussing with OGC.
5 What is OGC?
6 MR. FRANEY: She. Martha Tanner is a
7 woman.
8 A. Office of general counsel.
9 Q. Is that down in Columbus?
10 A. Yes.
11 Q. The big boys.
12 Let me ask you this. Why didn't you
13 offer or authorize Mr. Franey to offer the
14 \$75,000 prior to final trial prep to resolve
15 this case and put it behind us?
16 A. My supervisor and the associate
17 director and Mr. Hopwood, it was her final say
18 on what we offered.
19 Q. So the final say came out of
20 Columbus?
21 A. Out of -- well, it would have been
22 Martha Tanner.
23 Q. Yet you were the most familiar with
24 this file; correct?
25 A. Correct.

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1 Q. You had inherited it from Jeff who
2 had inherited from Gina?
3 A. Correct.
4 Q. As the claims person handling the
5 file, did you have authority to override what
6 you were being told?
7 MR. FRANEY: Objection. You have to
8 be kidding.
9 MR. MISHKIND: No, I'm not.
10 A. No.
11 Q. I suspected that was going to be the
12 answer, but I wasn't kidding when I asked it.
13 Based upon your assessment of the
14 case, the input from Mr. Franey -- and I take it
15 you value Mr. Franey's input --
16 A. Yes.
17 Q. -- even though you had to defer to
18 what you were being told by the powers to be,
19 did you feel that \$75,000 should have been
20 authorized to resolve this case before we got
21 into the final trial prep to put the case behind
22 us?
23 A. Yes.
24 Q. Did you do anything to make your
25 position known with Martha -- it was Martha;

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1 right?
2 A. Right.
3 Q. -- that, hey, I disagree with it; I
4 think a business decision in this case is let's
5 pay the \$75,000 and be done with it? Did you
6 make that known? Not necessarily in those
7 words.
8 A. I gave her my opinion of the case,
9 yes.
10 Q. And it was to authorize Mr. Franey to
11 either call me up or come visit me and say, the
12 case is done, we will pay the \$75,000, let's
13 avoid the final trial prep and going to trial?
14 A. My actual words were, give me the
15 \$75,000 and let me see what I can do.
16 Q. And with those actual words, you
17 recognized that if she gave you that authority
18 to work with the \$75,000, if \$75,000 had to be
19 paid and we still weren't at the point where we
20 had fallen off the abyss and got to the point
21 where all the expenses had been incurred and the
22 plaintiff no longer was willing to accept
23 \$75,000, you would do what you could even if it
24 meant, as hard as it might have been, to pay
25 that \$75,000 to settle the case; true?

17 (Pages 65 to 68)

<p>Page 69</p> <p>1 A. True.</p> <p>2 Q. And you wouldn't have recommended to</p> <p>3 your superiors to offer \$75,000 if you didn't</p> <p>4 feel that that would be a good faith attempt on</p> <p>5 the part of Nationwide to resolve this case;</p> <p>6 true?</p> <p>7 A. True.</p> <p>8 Q. But they, being the people above you,</p> <p>9 took issue with your business decision and</p> <p>10 didn't give you that authority, did they?</p> <p>11 A. No.</p> <p>12 Q. Is there anything that you see in the</p> <p>13 course of this case that represents a failure to</p> <p>14 negotiate in good faith by the plaintiff in any</p> <p>15 respect?</p> <p>16 A. No.</p> <p>17 Q. 12-2-02, recent evaluation injuries</p> <p>18 in file with 15 point summary.</p> <p>19 Was there another 15 point summary</p> <p>20 after the October one?</p> <p>21 A. No. It was my supervisor that was</p> <p>22 reviewing everything.</p> <p>23 Q. Sometimes the entries sort of</p> <p>24 duplicate.</p> <p>25 A. Right.</p>	<p>Page 70</p> <p>1 Q. Yet just days before trial, where it</p> <p>2 was evident that Janie Cousins was continuing</p> <p>3 with ongoing treatment for the tinnitus, is in</p> <p>4 the process of having hearing aids fitted to</p> <p>5 create white noise to reduce the effects of</p> <p>6 ringing, the decision was the reserve is</p> <p>7 accurate and that is a reserve of \$40,000;</p> <p>8 correct?</p> <p>9 A. At that time, yes.</p> <p>10 Q. Obviously there was no effort to</p> <p>11 authorize you to pay \$75,000 and there was no</p> <p>12 effort on the part of the powers to be to</p> <p>13 increase the reserve sufficient enough to give</p> <p>14 you that authority to offer \$75,000?</p> <p>15 A. It was their opinion that they were</p> <p>16 right where they wanted to be with settlement.</p> <p>17 Q. And I take it you were frustrated</p> <p>18 with that, weren't you?</p> <p>19 A. Somewhat.</p> <p>20 Q. It looks like your last note before</p> <p>21 the battle started was a resolution strategy on</p> <p>22 December 5?</p> <p>23 A. Most of the log entries are</p> <p>24 resolution strategies.</p> <p>25 Q. That's the first one I have seen</p>
<p>Page 71</p> <p>1 necessarily referred to that.</p> <p>2 A. Oh, really?</p> <p>3 Q. I may be wrong. You sort of</p> <p>4 summarized what had gone on with the doctors'</p> <p>5 testimony that had been taken?</p> <p>6 A. Correct.</p> <p>7 Q. And in this case, unlike cases that</p> <p>8 play out before a jury where you might not fully</p> <p>9 appreciate the extent of the injury until the</p> <p>10 doctors come into the courtroom and testify, you</p> <p>11 had the benefit -- whether I wanted to do it</p> <p>12 this way or not; I had to videotape the docs --</p> <p>13 you had the benefit of knowing what Dr. Fine and</p> <p>14 Dr. Knapp and Dr. Silberman were going to</p> <p>15 testify to; correct?</p> <p>16 A. Correct.</p> <p>17 Q. Did you know anything about Dr.</p> <p>18 Newman in terms of his reputation in the area of</p> <p>19 tinnitus management?</p> <p>20 A. Not of his reputation, no.</p> <p>21 Q. You obviously heard from Mr. Franey</p> <p>22 that Dr. Newman was well received by the jury;</p> <p>23 correct?</p> <p>24 A. Correct.</p> <p>25 Q. And I had built him up as a</p>	<p>Page 72</p> <p>1 nationally recognized expert in the area of</p> <p>2 tinnitus, had I not?</p> <p>3 A. Correct.</p> <p>4 Q. And did you overestimate his</p> <p>5 background and his experience in the area of</p> <p>6 tinnitus from what you can understand?</p> <p>7 A. No.</p> <p>8 Q. Yet Nationwide at this point, in</p> <p>9 order to offer anything more than what was now</p> <p>10 being authorized of \$40,000, anything more</p> <p>11 before trial started had to come from</p> <p>12 Mr. Jacobus; correct?</p> <p>13 A. Correct.</p> <p>14 Q. And it looks like Mr. Rawlin, who</p> <p>15 covered the discovery deposition for Mr. Franey</p> <p>16 who was battling in Akron, indicates to you that</p> <p>17 Dr. Silberman was not exceptionally strong and</p> <p>18 that is probably an understatement?</p> <p>19 A. Correct.</p> <p>20 Q. And I presume that concerned you as</p> <p>21 to what value he would have in terms of keeping</p> <p>22 the verdict down; correct?</p> <p>23 A. Correct.</p> <p>24 Q. Yet even with that information before</p> <p>25 we started trial, there was no effort made to</p>

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1 offer the \$75,000 to the plaintiff; true?
2 A. Correct.
3 Q. You have told me your feelings about
4 the case, yet on December 10th, you have a
5 note -- I think this is yours -- I will save
6 back my authority until I feel for sure that
7 this case will settle within the \$50,000
8 authority that I have been given. Did I read
9 that correctly?
10 A. Yes.
11 Q. You have told me now that you felt
12 that my efforts to settle the case were a good
13 faith effort. You were frustrated that you
14 couldn't get the authority to offer the \$75,000.
15 Apparently you were given authority to offer
16 \$50,000; correct?
17 A. For a day of trial, yes.
18 Q. Yet you made the comment that you
19 were going to save back some of your authority
20 until you were sure that it would settle for
21 \$50,000; correct?
22 A. I was instructed to save back.
23 Q. That wasn't your decision?
24 A. No.
25 Q. And I take it from what I have

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1 gathered from you, Terri, that if you had
2 control and discretion as the adjustor
3 responsible for this case, if \$50,000 was the
4 authority that they were going to give you at
5 that point, you wanted to put it on the table
6 and say, Mishkind, will your client accept
7 \$50,000?
8 A. Probably.
9 Q. But you never were given that
10 opportunity to do that, were you?
11 A. No.
12 MR. FRANEY: Wait. Hold on.
13 Objection. The \$50,000 was extended.
14 MR. MISHKIND: \$50,000 was extended
15 when? When we got to the courtroom?
16 MR. FRANEY: I think this entry is
17 the 10th. This is the day of trial. That's
18 what she testified to. I think you are getting
19 the dates confused.
20 MR. MISHKIND: You didn't offer
21 \$50,000. Part of that offer included, I think,
22 \$5,000 or \$10,000 from Mr. Jacobus. Your offer
23 was \$40,000, plus \$10,000 from Mr. Jacobus.
24 MR. FRANEY: My offer to you
25 following the deposition of John Cousins was

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1 \$40,000.
2 MR. MISHKIND: Correct.
3 MR. FRANEY: My offer to you before
4 trial began was \$50,000 from Nationwide and
5 \$15,000 from Jacobus. \$65,000.
6 MR. MISHKIND: I don't remember you
7 ever going up to \$50,000. But let's assume that
8 you are correct.
9 Q. The \$50,000 plus \$15,000 from Jacobus
10 still wasn't the \$75,000 which you recognized to
11 be a good faith effort to settle the case;
12 correct?
13 MR. FRANEY: We will agree that
14 \$65,000 --
15 MR. MISHKIND: I want her answering.
16 Q. You would agree that the \$65,000
17 offer still didn't meet the \$75,000 demand which
18 you felt was a good faith effort to resolve the
19 case; true?
20 A. True.
21 Q. And you also recognized that the
22 likelihood of getting this case settled at
23 \$75,000 had diminished, if not evaporated,
24 because of added costs that had been incurred to
25 get the case ready for trial with the videos of

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1 the doctors and all the time spent; true?
2 A. True.
3 Q. Just a couple questions and we will
4 be done.
5 There is a note in the claim file,
6 correspondence, until verdict, in handwriting.
7 Is this your handwriting?
8 A. Yes.
9 Q. Would you read into the record what
10 you wrote there.
11 A. Take it at school to make attorney go
12 to Athens for depo.
13 Q. To make plaintiff's attorney go to
14 Athens for depo. Why did you make that comment
15 in terms of making plaintiff's attorney go to
16 Athens for depo?
17 A. I was told that there was going to be
18 a deposition and it was going to be at school.
19 I'm assuming Janie's son.
20 Q. Right above it we had dates for depo,
21 19th, 20th, Cleveland. And is there any reason
22 why when dates were offered -- actually, this
23 was to Mr. Christie in terms of dates, or it may
24 have been to Mr. Franey, that he would be
25 available for deposition in Cleveland. Is there

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1 any reason why you made the note, rather than
2 doing the depo in Cleveland, to make plaintiff's
3 attorney go to Athens for the deposition rather
4 than doing it in Cleveland?
5 A. It was just notes that I jotted down.
6 Q. Because the way I read this, it
7 almost suggests that you wanted to make me have
8 to travel down to Athens.
9 A. No.
10 Q. Mr. Franey wrote you on October 23rd,
11 2002, a statement about the likelihood of a
12 verdict in this case. And again, I think you
13 told me before that you respect Mr. Franey as a
14 qualified insurance defense attorney; true?
15 A. True.
16 Q. And in his letter, did he indicate
17 that based upon nearly 18 years of doing
18 insurance defense work, I do not believe that I
19 can hold the verdict in all likelihood to less
20 than \$75,000 demand?
21 A. I remember that, yes.
22 Q. And obviously, you then as the
23 adjustor responsible for the file would be
24 conveying that information to the people that
25 are controlling the money as to what your

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1 defense attorney is saying; correct?
2 A. Correct.
3 Q. Yet even with your input and your
4 feeling about the case and the input from
5 Mr. Franey, the business decision was not to
6 authorize a settlement pretrial, before the
7 trial started of \$75,000?
8 A. It was a difference of opinion in the
9 injury evaluation.
10 Q. Between yourself, Mr. Franey, and the
11 people that controlled the money?
12 A. And yourself.
13 Q. Well, you already told me that you
14 felt that \$75,000 should have been offered to
15 settle the case; correct?
16 A. Correct.
17 Q. And Mr. Franey told you also that he
18 felt that the likelihood of a jury returning a
19 verdict in excess of \$75,000 based upon his 18
20 years of experience was likely; correct?
21 A. Correct.
22 Q. So if anything, my demand of \$75,000,
23 your assessment and likelihood of the case
24 resolving for anything less than \$75,000, and
25 Mr. Franey's comment that it was likely that the

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1 verdict would be greater than \$75,000, all three
2 of us were aiming toward trying to get this case
3 resolved at \$75,000; right?
4 A. Correct.
5 Q. Yet your superiors at Nationwide that
6 controlled the checkbook said no.
7 A. Correct.
8 Q. And Mr. Franey brought to your
9 attention -- I presume you brought to the
10 people's attention at Nationwide that litigation
11 costs are going to increase dramatically in this
12 matter as we proceed closer to trial; that
13 apparently Mr. Franey was urging Nationwide to
14 provide additional settlement authority to get
15 the case settled; correct?
16 A. Correct.
17 Q. Yet they didn't give the necessary
18 settlement authority to get it resolved at
19 \$75,000, did they?
20 A. No.
21 Q. This may have been inadvertently
22 placed in the file.
23 A. Yes. That's on another file I have.
24 Q. I probably should just give it back
25 to you. It's a fax cover sheet.

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1 Mr. Franey in his letter of November
2 11th -- I think this was Mr. Franey -- indicates
3 at the time that Mr. Jacobus' deposition was
4 retaken that nothing occurred at the time of the
5 deposition to lead me to conclude that the value
6 of the case is decreasing.
7 He even indicated that should this
8 matter go to trial, the jury will quickly figure
9 out that there is insurance and that is why he
10 has two attorneys. They will never figure out,
11 but will speculate as to limits. Given his
12 assets, they will probably assume the limits are
13 substantial; correct?
14 A. Correct.
15 Q. And did you concur with Mr. Franey's
16 assessment of what was likely ahead?
17 A. Yes.
18 Q. And that certainly would translate
19 into a likelihood that the verdict would be at
20 or greater than what the settlement demand was
21 in this case; true?
22 A. True.
23 Q. Yet the folks making the decisions
24 weren't listening to you and they weren't
25 listening to Mr. Franey; correct?

20 (Pages 77 to 80)

<p>Page 81</p> <p>1 A. Well, they listened to us. They let 2 us have our opinion, but -- 3 Q. That's the extent of it. They 4 listened to you, let you have your opinion, and 5 then they made a decision lower than what you 6 recommended? 7 A. Correct. 8 Q. And the last item before trial 9 started was Officer Borque. 10 A. Correct. 11 Q. And Officer Borque, according to 12 Mr. Franey when he wrote to you indicates that 13 he makes a very good witness in his own behalf; 14 correct? 15 A. Correct. 16 Q. Can we agree that if anything, over 17 the course of the month where the depositions 18 were taken of Dr. Fine, Dr. Knapp, 19 Dr. Silberman, Officer Borque, that plaintiff's 20 case got stronger as we got closer to the 21 courtroom? 22 A. I would agree. 23 Q. Terri, the letter that was sent to 24 Mr. Jacobus notifying him of his right to retain 25 personal counsel was dated October 3, 2002, just</p>	<p>Page 82</p> <p>1 two months before the trial; correct? 2 A. Correct. 3 Q. Were you ever able to determine who 4 dropped the ball in terms of sending this letter 5 that should have been sent back in January of 6 2002? 7 MR. FRANEY: Objection to the form of 8 the question, but go ahead. 9 Q. Did you ever determine who it was 10 that should have sent this letter back in 11 October, back in January of 2002? 12 A. Yes. 13 Q. Who was it? 14 A. Gina Scruggs. 15 Q. Did you ever get an explanation from 16 Gina as to why she didn't send the letter? 17 A. No. 18 Q. That certainly is not in compliance 19 with the normal procedure at Nationwide, is it? 20 A. No. 21 Q. Yet, in this letter of October 3, you 22 state to Mr. Jacobus, do you not, that 23 Nationwide will provide a defense for you, 24 however, for the entire lawsuit; true? 25 A. True.</p>
<p>Page 83</p> <p>1 Q. Even though if he was hit for 2 punitive damages, he would be responsible for 3 it, but you agree to provide him with a defense 4 for all claims for the entire lawsuit; correct? 5 A. Correct. 6 Q. What's Tuttle? 7 A. It's in Columbus. 8 Q. Is it a city in Columbus? 9 A. No. Actually I think it's one of our 10 service centers. It's in Tuttle. 11 Q. I saw a couple references that Art 12 will be in Tuttle. And I thought it was some 13 code. Maybe an island. It's one of the 14 offices? 15 A. It's down toward Dublin. 16 Q. After the verdict came in, I offered 17 in correspondence I think dated December 19th, 18 to accept the verdict on the compensatory and 19 the punitive damages and to waive prejudgment 20 interest and attorney fees. You were made aware 21 of that? 22 A. Correct. 23 Q. And I gave a deadline of January 3 or 24 January 4 to respond; correct? 25 A. Correct.</p>	<p>Page 84</p> <p>1 Q. No offer was made in any manner prior 2 to January 3 to respond to that offer, to that 3 demand of mine; correct? 4 MR. FRANEY: I'm going to object to 5 this whole line because it's beyond the scope of 6 what we are here about on prejudgment interest. 7 MR. MISHKIND: I recognize your 8 objection. 9 A. Correct. 10 Q. So the most authority that you had 11 that you were told you could pay before we got 12 down at the courthouse on December 11th was 13 what? 14 A. \$40,000. 15 Q. And the most authority that you had 16 the morning of trial still remained \$40,000? 17 A. \$50,000. 18 Q. How did you go about getting it from 19 \$40,000 to \$50,000 between the day before trial 20 and the day of trial? 21 A. My supervisor came over to my office 22 and advised me that I had \$10,000 more. 23 Q. And your supervisor is Jim? 24 A. Jim McKelvey. 25 Q. Do you know how it is that Jim got</p>

<p>Page 85</p> <p>1 that extra \$10,000?</p> <p>2 A. Martha Tanner gave it to him.</p> <p>3 Q. Do you know what factors came into</p> <p>4 play between the day before trial and the day of</p> <p>5 trial that caused them to move from \$40,000 to</p> <p>6 \$50,000?</p> <p>7 A. No.</p> <p>8 Q. Generally there was no additional</p> <p>9 evidence that you had in terms of evaluating the</p> <p>10 potential verdict in this case?</p> <p>11 A. No.</p> <p>12 Q. The verdict of \$118,000 that came</p> <p>13 back on the compensatory level, what was your</p> <p>14 reaction to that?</p> <p>15 A. I wasn't surprised.</p> <p>16 Q. Were you actually pleased that it</p> <p>17 wasn't higher than \$118,000?</p> <p>18 MR. FRANEY: Objection.</p> <p>19 A. My personal opinion, yeah.</p> <p>20 Q. I will share with you that Mr. Burke</p> <p>21 when his deposition was taken indicated that he</p> <p>22 thought the verdict was going to be</p> <p>23 compensatory-wise somewhere around \$200,000,</p> <p>24 irrespective of the punitive claim.</p> <p>25 Did you have in your mind a range as</p>	<p>Page 86</p> <p>1 to where you thought, based upon how the</p> <p>2 evidence went in, on a compensatory level what</p> <p>3 the verdict likely would be?</p> <p>4 A. No.</p> <p>5 Q. But certainly you recognized, as did</p> <p>6 Mr. Franey, that the likelihood was that the</p> <p>7 verdict will be in excess of the demand of</p> <p>8 \$75,000; true?</p> <p>9 A. Yes.</p> <p>10 Q. Is there anything before I complete</p> <p>11 my questioning that you believe to be relevant</p> <p>12 and important to you as an adjuster in terms of</p> <p>13 the decision-making process and why offers were</p> <p>14 made and why the settlement demand was not met</p> <p>15 prior to the day of trial that you believe to be</p> <p>16 relevant in defense of Nationwide such that a</p> <p>17 court could conclude that Nationwide</p> <p>18 demonstrated good faith in its negotiations of</p> <p>19 this claim?</p> <p>20 MR. FRANEY: Objection. Because that</p> <p>21 question is so open ended and really it goes</p> <p>22 beyond the scope of her testimony, so --</p> <p>23 MR. MISHKIND: It's not beyond the</p> <p>24 scope of her testimony. She is the adjuster</p> <p>25 that is ultimately responsible for it. We have</p>
<p>Page 87</p> <p>1 spent probably an hour and half, hour and 45</p> <p>2 minutes talking about a lot of different</p> <p>3 aspects.</p> <p>4 Q. I just want to understand whether</p> <p>5 there is anything that you, as you sit here</p> <p>6 right now, can tell me that you believe to be</p> <p>7 important in your mind that you can tell me</p> <p>8 about that suggests that Nationwide negotiated</p> <p>9 in good faith in connection with the Cousins</p> <p>10 versus Jacobus matter?</p> <p>11 MR. FRANEY: I'm going to put an</p> <p>12 objection to it. It's really the same question</p> <p>13 over again.</p> <p>14 MR. MISHKIND: That's fine. Your</p> <p>15 objection is noted. Go ahead, Terri.</p> <p>16 A. The only thing I could probably add</p> <p>17 would be that it was just a difference of</p> <p>18 opinion in value.</p> <p>19 Q. A difference of opinion, not between</p> <p>20 you and me and between Mr. Franey, but between</p> <p>21 the superiors at Nationwide; true?</p> <p>22 A. True.</p> <p>23 Q. All right. Anything else?</p> <p>24 A. No.</p> <p>25 MR. MISHKIND: I thank you for taking</p>	<p>Page 88</p> <p>1 the time to come and talk to me.</p> <p>2 MR. FRANEY: You can indicate waiver</p> <p>3 of signature.</p> <p>4 -----</p> <p>5 (Deposition concluded at 4:04 p.m.)</p> <p>6 (Signature waived.)</p> <p>7 -----</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

CERTIFICATE

1
2
3 State of Ohio,
4 SS:
5 County of Cuyahoga.
6
7

8 I, Vivian L. Gordon, a Notary Public within
9 and for the State of Ohio, duly commissioned and
10 qualified, do hereby certify that the within
11 named TERRY LEFEVER was by me first duly sworn
12 to testify to the truth, the whole truth and
13 nothing but the truth in the cause aforesaid;
14 that the testimony as above set forth was by me
15 reduced to stenotypy, afterwards transcribed,
16 and that the foregoing is a true and correct
17 transcription of the testimony.

18 I do further certify that this deposition
19 was taken at the time and place specified and
20 was completed without adjournment; that I am not
21 a relative or attorney for either party or
22 otherwise interested in the event of this
23 action. I am not, nor is the court reporting
24 firm with which I am affiliated, under a
25 contract as defined in Civil Rule 28 (D).

IN WITNESS WHEREOF, I have hereunto set my
hand and affixed my seal of office at Cleveland,
Ohio, on this 17th day of February, 2003.

Vivian L. Gordon

Vivian L. Gordon, Notary Public
Within and for the State of Ohio
My commission expires June 8, 2004.

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