

Poole + Rainford

**Phillip Hawkins v.  
Anstar Biotech Industries**

***Case ReportBook***

Authored by:

**Your Name Here  
Poole + Rainford**

Friday, January 18, 2008

Poole + Rainford

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## ***Introduction***

This ReportBook contains a collection of transcript reports we have prepared for this matter.

Some of the reports in this ReportBook may include our annotations of transcript sections of interest and our notes/comments regarding the transcript. It is important to understand that these annotations and notes are a work in progress, not polished or final product. We're using them to capture our ongoing analysis of the transcripts. As the analysis process continues, the annotations and notes will grow and change.

An important part of the reason for circulating ReportBooks is to get everyone involved in the case analysis process. We've found that it expedites the process of developing a complete and accurate understanding of the matter at hand. When you notice important points during your review of the following reports, please be sure to let us know.

Thank you for your assistance!

**Phillip Hawkins v.  
Anstar Biotech Industries**

***Deposition of Philip Hawkins***

***10/21/2000 10:00 AM***

***Condensed Transcript with Endnotes***

Page 1

1 STATE OF FLORIDA  
2 DEPARTMENT OF LABOR AND EMPLOYMENT SECURITY  
3 OFFICE OF THE JUDGE OF COMPENSATION CLAIMS  
4 DISTRICT "C"  
5 CLAIM NO: 263-55-6571  
6 EMPLOYEE: PHILIP M. HAWKINS  
7 EMPLOYER: ABI  
8  
9 CARRIER: STATE OF FLORIDA  
10 D/A: 12/10/00  
11  
12 STATE OF FLORIDA )  
13 COUNTY OF DADE )  
14  
15 Deposition of PHILIP MARK HAWKINS, taken  
16 on behalf of the Employer/Carrier, pursuant to  
17 Amended Notice of Taking Deposition, on Thursday,  
18 October 21, 2000, commencing at 10:00 a.m., at  
19 4741 Atlantic Boulevard, Suite F, Miami,  
20 Dade County, Florida, before Cindy Cooker, a Notary  
21 Public in and for the State of Florida at Large.  
22 ---  
23  
24  
25

Page 2

1 A P P E A R A N C E S  
2  
3  
4 PETER S. ARNDT, ESQUIRE  
5 Arndt & Arndt  
6 One National Drive  
7 Miami, Florida 32202  
8 Attorney for Employee/Claimant.  
9  
10 SUSAN A. ONOFREY, ATTORNEY-AT-LAW  
11 Onofrey & Straight, P.A.  
12 4700 Ocean Boulevard  
13 Miami, Florida 32207  
14 Attorney for Employer/Carrier.  
15  
16 ALSO PRESENT: Mrs. Hawkins  
17  
18  
19  
20  
21  
22  
23  
24  
25

Page 3

1 T A B L E O F C O N T E N T S  
2  
3 P A G E  
4 PHILIP MARK HAWKINS  
5  
6 Direct Examination  
7 by Ms. Onofrey 4  
8  
9  
10 --  
11  
12 (No Exhibits)  
13  
14  
15 ---  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Page 4

1 S T I P U L A T I O N  
2 It was stipulated and agreed by and between  
3 counsel for the respective parties, and the witness,  
4 PHILIP MARK HAWKINS, that the reading and signing  
5 of the deposition not be waived.  
6 ---  
7 WHEREUPON,  
8 PHILIP MARK HAWKINS,  
9 having been produced and first duly sworn as a witness  
10 on behalf of the Employer/Carrier, was examined and  
11 testified as follows:  
12 D I R E C T E X A M I N A T I O N  
13 B Y M S. O N O F R E Y :  
14 Q Would you state your full name, please?  
15 A Philip Mark Hawkins.  
16 Q And your date of birth?  
17 A October 13th, 1959.  
18 Q Are you 40?  
19 A Yes, ma'am.  
20 Q Your current address?  
21 A 2646 East Cloud Street, Palm Beach,  
22 Florida. The ZIP Code is 32980.  
23 Q How long have you lived at that address?  
24 A Approximately six years.  
25 Q Do you live in a house or rent an apartment?

<p style="text-align: right;">Page 5</p> <p>1 A It's a house.</p> <p>2 Q Do you own it?</p> <p>3 A Yes, I do.</p> <p>4 Q What's your Social Security number?</p> <p>5 A 106-55-6571.</p> <p>6 Q Were you basically born and raised in</p> <p>7 Southeast Florida?</p> <p>8 A Yes, ma'am.</p> <p>9 Q Where did you go to high school?</p> <p>10 A Dade County High School, Miami.</p> <p>11 Q What year did you graduate?</p> <p>12 A 1988.</p> <p>13 Q Do you have any college education beyond</p> <p>14 high school?</p> <p>15 A I have some. I attended Dade County Community</p> <p>16 College, but I did not receive a degree.</p> <p>17 Q How much did you complete?</p> <p>18 A Ma'am, I'm not real sure. I had some time</p> <p>19 that I went to regular structured classes, and I got</p> <p>20 some credit hours through the law enforcement</p> <p>21 academy. I'm not sure the amount.</p> <p>22 Q When did you attend the law enforcement</p> <p>23 academy?</p> <p>24 A The one through Dade County Community College</p> <p>25 was in 1980, I believe. It was the latter part of</p>	<p style="text-align: right;">Page 7</p> <p>1 Speed-O-Mart for a year and a half and worked for the</p> <p>2 Department of Corrections.</p> <p>3 Q What were you doing for Speed-O-Mart when you</p> <p>4 left in '84?</p> <p>5 A I was a -- the title was junior assistant</p> <p>6 store manager.</p> <p>7 Q So you were the store manager at a</p> <p>8 particular location?</p> <p>9 A Yes, ma'am, the Speed-O-Mart in High Springs.</p> <p>10 Q Where is that in relation to Dade County?</p> <p>11 A It's about 22 miles south of Dade County.</p> <p>12 Q You said during that time, sometime between</p> <p>13 1976 and 1984, you worked for approximately one and a</p> <p>14 half years at the Department of Corrections?</p> <p>15 A Yes, ma'am.</p> <p>16 Q What facility were you working at then?</p> <p>17 A Baker Correctional Institution.</p> <p>18 Q What was your job title there?</p> <p>19 A Correctional officer.</p> <p>20 Q What caused you to leave there after a year</p> <p>21 and a half?</p> <p>22 A Dissatisfied with the job.</p> <p>23 Q What caused you to leave Speed-O-Mart around</p> <p>24 1984?</p> <p>25 A To get on the highway patrol.</p>
<p style="text-align: right;">Page 6</p> <p>1 '81, early part of '82. That was the corrections</p> <p>2 academy.</p> <p>3 Q So was that only through the Dade County</p> <p>4 Community College, or was it something you attended</p> <p>5 independent of that?</p> <p>6 A It was actually -- the credit hours, it's</p> <p>7 certified -- accredited through Dade County Community</p> <p>8 College. It's actually put on by the State,</p> <p>9 Department of Corrections.</p> <p>10 Q And was that one of the steps you took in</p> <p>11 becoming a state police officer?</p> <p>12 A No, ma'am.</p> <p>13 Q That's what I was getting at.</p> <p>14 When did you take steps to become a state</p> <p>15 police officer?</p> <p>16 A I started the Florida Highway Patrol</p> <p>17 Training Academy January the 7th, 1985.</p> <p>18 Q Prior to that time, what sort of work did</p> <p>19 you do?</p> <p>20 A Leading up to that, I worked for Speed-O-Mart</p> <p>21 Stores, Incorporated.</p> <p>22 Q Approximately how long did you work for</p> <p>23 Speed-O-Mart?</p> <p>24 A I started part time with Speed-O-Mart in 1976</p> <p>25 and worked 'till 1984. During that time, I left</p>	<p style="text-align: right;">Page 8</p> <p>1 Q How long did you attend the Florida Highway</p> <p>2 Patrol Academy?</p> <p>3 A Thirteen weeks.</p> <p>4 Q And while you did that did you work, or was</p> <p>5 that exclusively attending school at that time?</p> <p>6 A It was an academic-type setting.</p> <p>7 Q So you left Speed-O-Mart and you went into the</p> <p>8 patrol academy, and you did that for 13 weeks</p> <p>9 exclusively?</p> <p>10 A Yes, ma'am.</p> <p>11 Q And you completed that program, obviously.</p> <p>12 A Yes, ma'am.</p> <p>13 Q When you completed that program, were you</p> <p>14 then a highway patrol officer, or did you have to go</p> <p>15 through further training or education?</p> <p>16 A You were considered a trooper. You still</p> <p>17 had to complete a short in-service training under a</p> <p>18 field training officer when you reported to the field.</p> <p>19 Q Approximately how long would that have</p> <p>20 taken?</p> <p>21 A About 30 days.</p> <p>22 Q And then were you still considered a trooper</p> <p>23 at that point, or did you have a different title?</p> <p>24 A No, ma'am; it's trooper.</p> <p>25 Q At the time of your accident, were you also</p>

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1 a trooper or had your title changed?  
2 A Corporal.  
3 Q How did you get from trooper to corporal?  
4 How did you make that transition? What were the steps  
5 along the way?  
6 A With the Florida Highway Patrol, a corporal  
7 -- the duties and responsibilities are that of a  
8 traffic homicide investigator.  
9 Once you've been on the patrol for two  
10 years, you can take a promotional examination. Based  
11 on your numerical score on the promotional  
12 examination, you can elect to promote to the rank of  
13 corporal.  
14 Q So corporal is the next rank after trooper?  
15 A Yes, ma'am.  
16 Q So you obviously took the test and passed  
17 it.  
18 A Yes, ma'am.  
19 Q When did you become a corporal?  
20 A October the 1st of 1988.  
21 Q As a trooper, what were your duties?  
22 A To patrol highways and roadways outside of a  
23 municipality, enforce traffic law, investigate  
24 crashes, apprehend fugitives; just the duties of a  
25 state trooper.

Page 10

1 Q Okay. And then, when you became corporal in  
2 1988, what were your duties and how had they changed  
3 from being a trooper?  
4 A The traffic homicide investigator does not  
5 routinely work the road, the highway. On holidays,  
6 weekends, special occasions, you may be selected to  
7 participate in enforcement details.  
8 Ninety percent of what I do is strictly  
9 investigate fatal crashes.  
10 Q At the time of this accident that we're here  
11 about today, you were obviously called to a scene on  
12 that day, is that correct, the scene of a fatal  
13 accident?  
14 A No, ma'am, it wasn't a fatal accident.  
15 Q It was not?  
16 A No, ma'am.  
17 Q Okay. So just tell me what happened on that  
18 day. How did it come to be, first of all, that you  
19 arrived at that location?  
20 A On the morning of this wreck, I heard the  
21 dispatcher dispatch another trooper to the wreck. I  
22 was fairly close by. I monitor emergency medical  
23 services and the fire department in my patrol car.  
24 They were on the scene and they were asking for an  
25 expediated response for us due to the highway being

Page 11

1 blocked.  
2 And that's why I went, was actually to help  
3 the other trooper with traffic.  
4 Q And when you got there, what did you see at  
5 the scene? How was it arranged?  
6 A The initial wreck was a single-vehicle wreck  
7 that had driven -- the car had driven off the road,  
8 hit a guardrail. After striking the guardrail, the  
9 car careened off of the guardrail and came up onto the  
10 through-traffic lanes of Interstate 75.  
11 The car was at its final rest position on  
12 the roadway. The occupant of the car was over close  
13 to the west shoulder. The paramedics were  
14 administering emergency medical treatment to that  
15 guy.  
16 Trooper Kraszewski, who was the first  
17 trooper to respond, she was on the scene probably a  
18 minute, minute and a half before I got there.  
19 Q Were there any other vehicles stopped in the  
20 roadway other than the car that had careened off the  
21 railing?  
22 A The other vehicles there, ma'am, were police  
23 cars: Trooper Kraszewski's patrol car, my patrol car,  
24 an ambulance and a fire truck.  
25 Q Okay. So what exactly was happening at the

Page 12

1 time that you were struck?  
2 A The road was pretty much blocked. We were  
3 routing traffic over onto the east shoulder to go  
4 around this other crash.  
5 Q And this was 75 South?  
6 A North.  
7 Q North? Okay.  
8 A I went to my patrol car, I removed a handful  
9 -- I believe there was four -- road flares, a device  
10 we use that's lit and illuminates a bright light  
11 that's used to route traffic.  
12 I went to the edge of the closed lane where  
13 we were moving traffic to. I set out one flare  
14 there. I went back probably 25, 30 feet, I set  
15 another flare out. In doing this, I was coming across  
16 on an angle closing off the traffic lanes. I set a  
17 total of three flares out.  
18 The fourth flare that I had in my hand would  
19 not light, so I turned to actually walk off the road.  
20 A vehicle came close to me. I turned and looked at  
21 that vehicle, and the next thing I realized, I was on  
22 the hood of a car.  
23 Q Is that the same vehicle that you had  
24 noticed was coming close to you or --  
25 A No, ma'am.



Page 13

1 Q You noticed a vehicle close to you and it  
2 had passed, and then the next thing you knew you were  
3 on the hood of a car?  
4 A Yes, ma'am.  
5 Q What type of vehicle struck you?  
6 A It was a Dodge or a Plymouth Neon. I can't  
7 remember the year. I believe it was a '99 or a 2000  
8 model.  
9 Q Do you have an idea as to how fast the car  
10 was going when it struck you?  
11 A Ma'am, I'm going to guess 35 to 45 miles an  
12 hour.  
13 MR. ARNDT: Object to form.  
14 BY MS. ONOFREY:  
15 Q Do you know, though, as you were setting the  
16 flares, had the traffic slowed down, or was it still  
17 going -- had the traffic slowed down compared to what  
18 you would typically see on a highway without an  
19 accident?  
20 A No, ma'am; it had to be at a slower pace.  
21 Q And at the time that you -- first of all,  
22 describe the impact for me. Where did the car impact  
23 with your body?  
24 A Along my left side and back.  
25 Q At the time of impact, what did your body

Page 14

1 do? You said you were on the hood of a car. You were  
2 thrown backwards onto the hood?  
3 A Yes, ma'am. I went onto the hood of the  
4 car. I basically rode the car 'till the car was  
5 stopped or nearly stopped. I then rolled off of the  
6 fender and landed on the paved shoulder.  
7 Q Do you know approximately how long you rode  
8 the car until it stopped?  
9 A No, ma'am.  
10 Q I think you just said you landed on the  
11 shoulder. Do you mean your shoulder or the shoulder  
12 of the road?  
13 A The shoulder of the road.  
14 Q Okay. And when you were thrown or rolled  
15 off the hood of the car, how did you land? What part  
16 of your body came in contact with the pavement?  
17 A It was more my left side.  
18 Q Were you able to get up at that time?  
19 A Yes, ma'am.  
20 Q Obviously you had some pain at that point,  
21 but, if you could, describe for me what you were  
22 feeling at that time in terms of complaint of pain or  
23 injuries.  
24 A At that time, I had a large laceration on my  
25 left elbow. It was bleeding quite a bit. The left

Page 15

1 side of my body, what I describe as my left hip, it  
2 hurt, it was a pain sensation. My lower leg, about  
3 halfway between the knee and the ankle, had a large  
4 bruise, and my left ankle was sore.  
5 Q The pain that you felt in your hip at that  
6 time, was it localized in your hip, or was it  
7 radiating, if you know?  
8 A Ma'am, I don't really know. All I know is  
9 it hurt.  
10 Q Okay. And did you receive emergency medical  
11 treatment on the scene?  
12 A Yes, ma'am. The paramedics with Columbia  
13 County MS were there due to the other wreck. They  
14 examined me. We decided I'd go to the hospital, but I  
15 elected to go in a patrol car instead of in the  
16 ambulance.  
17 Q What hospital did you go to?  
18 A Dade County Medical Center.  
19 Q And you were seen there in the emergency  
20 room?  
21 A Yes, ma'am.  
22 Q And you were released that day?  
23 A Yes, ma'am.  
24 Q After that initial emergency room visit, as  
25 a result of it, were you taken off work?

Page 16

1 A Yes, ma'am.  
2 Q For approximately how long?  
3 A The emergency room doctor that day, Dr.  
4 Starbuck, released me on the 13th. I actually  
5 returned to work on the 14th.  
6 Q So that was about three or four days off?  
7 A Yes, ma'am.  
8 Q When you returned to work on the 14th, were  
9 you returned regular duty, or was it modified duty?  
10 A No, ma'am; it was regular duty.  
11 Q You're still currently employed as a  
12 corporal, correct?  
13 A Yes, ma'am.  
14 Q Have you actually returned to work? Are you  
15 currently working?  
16 A Yes, ma'am.  
17 Q And are you working regular duty?  
18 A Yes, ma'am.  
19 Q So your duties haven't changed at all since  
20 being back at work currently?  
21 A Well, when I came back to work, I was on  
22 light duty.  
23 Q You're talking after the surgery?  
24 A Right.  
25 Q Okay. So going back, though, when you

1 returned on December 14th, how long did you work  
 2 regular duty before being taken back off work?  
 3 A The last day I worked was January the 18th.  
 4 Q So you worked from December 14th through  
 5 January 18th as scheduled and at your regular duty?  
 6 A Yes, ma'am.  
 7 Q Was it Dr. Garcia that took you off work  
 8 beginning January 18th?  
 9 A No, ma'am.  
 10 Q What happened that caused that to be your  
 11 last day?  
 12 A I had actually scheduled leave time. The  
 13 18th was scheduled to be my last day of work for a  
 14 week. I had scheduled time to hunt. Due to my back  
 15 hurting, I couldn't hunt, I wasn't able to.  
 16 On January the 20th, which is my father's  
 17 birthday, my family and I went to my father's house,  
 18 which is just a few miles from ours, to celebrate his  
 19 birthday. While at his house, I coughed, and, when I  
 20 coughed, I ended up on the floor. They had to  
 21 physically help me get up.  
 22 The next morning, I returned back to Lake  
 23 City Medical Center.  
 24 Q The hunting, I don't want to call it a trip  
 25 because I'm not sure you were going anywhere, but you

1 were scheduled to hunt. Were you scheduled to  
 2 actually go somewhere to hunt?  
 3 A No, ma'am. Dade County is rural. The hunting  
 4 club I'm in is about 12 miles from my house.  
 5 Q What club is that? What's the name of the  
 6 club?  
 7 A Palestine Hunting Club.  
 8 Q Palestine?  
 9 A Yes, ma'am.  
 10 Q So the week that you had scheduled off, you  
 11 were just going to go back and forth to the hunting  
 12 club to go hunting?  
 13 A Yes, ma'am.  
 14 Q You weren't going anywhere away for a week  
 15 at a time, you were just going to go back and forth to  
 16 the hunting club?  
 17 A Yes, ma'am.  
 18 Q Did you do that at all during that week  
 19 prior to your father's birthday?  
 20 A No, ma'am.  
 21 Q And you didn't go on a camping trip or  
 22 anything like that?  
 23 A No, ma'am.  
 24 Q Had you been camping at all between the time  
 25 of the accident and your father's birthday party?

1 A No, ma'am.  
 2 Q What did you do the -- you were off the  
 3 18th? Were you actually off the 18th, or was that --  
 4 A No, ma'am; I worked the 18th.  
 5 Q So the 19th was your first day off?  
 6 A Yes, ma'am.  
 7 Q And then the 20th was the birthday party.  
 8 What did you do on the 19th?  
 9 A Stayed home.  
 10 Q Do you recall what you did while you were at  
 11 home?  
 12 A No, ma'am.  
 13 Q Up until the coughing episode at your  
 14 father's birthday, while you had returned to work,  
 15 what sort of pain were you having in your back during  
 16 that time? And I don't mean while you were at work.  
 17 That was probably a poor question.  
 18 But during the time period between your  
 19 returning to work and then the coughing episode on the  
 20 20th, could you describe what your back pain was like  
 21 during that time?  
 22 A From the day the wreck happened on December  
 23 the 10th, I had a constant pain that I described as  
 24 being in my left hip.  
 25 The doctor at Dade County Medical Center gave

3

1 me some -- the day I was struck by the car, gave me  
 2 some 800 milligram Motrin, and, as long as I took the  
 3 Motrin, it was tolerable. I could function while I  
 4 was taking the Motrin.  
 5 Q Was the pain in your left hip at that time  
 6 localized, or did you feel it radiating down into your  
 7 leg, your left leg?  
 8 A Ma'am, I would call it localized.  
 9 Q And then on your father's birthday, you're  
 10 saying that you -- well, describe what activities you  
 11 were doing at the time that you coughed. Were you  
 12 doing anything physical or were you just -- what were  
 13 you doing at the time that you coughed?  
 14 A It was in the late evening. We went out to  
 15 his house and he was actually cooking outside,  
 16 grilling out. I was drinking a Coke-Cola, and I was  
 17 standing in my mother's kitchen with the Coke-Cola,  
 18 and I reached over and I dropped the can in the  
 19 garbage can. And I coughed, and that was -- again,  
 20 the next thing I realized I was on the floor.  
 21 Q Did you have a cold at that time? Was the  
 22 cough as a result of a cold, or do you know?  
 23 A I hadn't -- I had been coughing for two or  
 24 three days, yes.  
 25 Q And at the time you coughed, describe for me

1 what you felt at that point.  
 2 A Ma'am, the pain, it became from being  
 3 tolerable to intolerable in a matter of seconds.  
 4 Q Was there a change in terms of the pain  
 5 being more localized to radiating, or do you not  
 6 know? I mean, you said it was localized before. I'm  
 7 just curious if at the time you coughed -- I know  
 8 you're saying it became intolerable, but was it  
 9 different or just more intense than the pain you'd had  
 10 before?  
 11 A No, ma'am. It was the same, it was just --  
 12 it was just -- it went from taking Motrin and being  
 13 bearable to being unbearable.  
 14 Q And then did you go to the emergency room  
 15 that -- you said the next morning.  
 16 A Yes, ma'am.  
 17 Q Okay. That evening, what did you do after  
 18 you -- were you able to get yourself off the floor, or  
 19 did you --  
 20 A No, ma'am; I had help to get up.  
 21 Q Okay. And did you go home that evening  
 22 then?  
 23 A Yes.  
 24 Q And then the first thing in the morning you  
 25 went to the emergency room?

1 Nasrullah in the city of Live Oak.  
 2 Q Is that doctor an orthopedist, do you know?  
 3 A I don't know, ma'am.  
 4 Q And you ended up going to him?  
 5 A Yes, ma'am.  
 6 Q And he ordered an MRI?  
 7 A Yes, ma'am.  
 8 Q About how long did it take for you to get in  
 9 to see him? Was it a relatively short period of time?  
 10 A I believe, ma'am, it was on January the  
 11 24th. And that needs to be approximate now.  
 12 Q You didn't go anywhere or do anything  
 13 between the ER on the 21st and seeing Nasrullah on the  
 14 24th?  
 15 A No, ma'am.  
 16 Q And I take it you were taken off work at  
 17 that point when you were seen at the emergency room?  
 18 A Yes, ma'am.  
 19 Q So you didn't work at all during that  
 20 period?  
 21 A No, ma'am.  
 22 Q And then I guess the next doctor you saw  
 23 would have been Dr. Padget and Dr. Wiss?  
 24 A Yes, ma'am.  
 25 Q And then ultimately it was Dr. Garcia that

1 A Yes, ma'am.  
 2 Q And I guess they ordered an MRI at that  
 3 time?  
 4 A No, ma'am, not then.  
 5 Q Okay. What happened at the emergency room?  
 6 What did they --  
 7 A The doctor came in, she examined me. It's  
 8 now a lady doctor. She had more x-rays done. The  
 9 morning that I was hit by the car, they did some  
 10 x-rays. This morning she did some more x-rays.  
 11 She came in and she told me that really all  
 12 she could do with me was give me pain medicine, and  
 13 that I would have to go through Humana Worker's Comp  
 14 and seek further treatment.  
 15 Q Is that what you did then?  
 16 A Yes, ma'am. She gave me a shot that day,  
 17 gave me some more medicine.  
 18 Prior to this happening, back in December, I  
 19 had phone contact with a guy named Mike Hofield  
 20 (phonetic), and he told me then that he was my  
 21 assigned case manager for worker's comp and that, if I  
 22 needed any treatment or whatever, to call him.  
 23 So after we went to Dade County Medical  
 24 Center, then I called Mike Cofield. I told him that I  
 25 needed to see somebody. He referred me to a Dr.

1 did the surgery?  
 2 A Yes, ma'am.  
 3 Q Did you see both Padget and Wiss?  
 4 A Yes, ma'am.  
 5 Q At the same time or --  
 6 A No, ma'am.  
 7 Q Which one did you see first?  
 8 A Dr. Padget.  
 9 Q Why did you see Wiss? Did he ask Wiss  
 10 to take a look at you?  
 11 A Dr. Padget came in and basically gave me  
 12 two choices: One was to be out of work for a year and  
 13 a half and basically heal naturally, and the other was  
 14 to have surgery. After my wife and I talked, I  
 15 elected to have the surgery.  
 16 When I told Dr. Padget that I would rather  
 17 have the surgery than to be out of work for a year and  
 18 a half, he told me that he no longer did the surgery,  
 19 but that Dr. Wiss, who was his associate right  
 20 there, did do the surgery.  
 21 At that point, Dr. Padget went out, and a  
 22 few minutes later he returned into the room with Dr.  
 23 Wiss.  
 24 Q So you were setting up to have the surgery  
 25 by Dr. Wiss?

1 A Yes, ma'am.  
 2 Q And then apparently that was denied by  
 3 worker's comp, and that's how you got to Garcia?  
 4 A Yes, ma'am.  
 5 Q When did you first see Dr. Garcia,  
 6 approximately?  
 7 A February the 22nd, 23rd, somewhere right in  
 8 that.  
 9 Q How did you identify him as the doctor that  
 10 you wanted to have the surgery done by?  
 11 A When I started having difficulties with  
 12 worker's comp, I contacted Arndt & Arndt and, in  
 13 talking with them --  
 14 MR. ARNDT: I'm going to object to  
 15 attorney-client privilege information.  
 16 BY MS. ONOFREY:  
 17 Q You don't have to tell me what they told you  
 18 or any conversations you had with them. I'll just  
 19 leave it at that.  
 20 A Okay.  
 21 Q Had you ever seen Dr. Garcia prior to this  
 22 accident?  
 23 A No, ma'am.  
 24 Q Then you ended up having the surgery by Dr.  
 25 Garcia, and that was approximately when?

1 is your deposition, not hers. It's really not  
 2 proper for you to ask her.  
 3 BY MS. ONOFREY:  
 4 Q You don't recall offhand how much you paid?  
 5 A No, ma'am.  
 6 Q After the surgery you stayed under the care  
 7 of Dr. Garcia, or were you again referred out?  
 8 A No, ma'am; I'm still under the care of Dr.  
 9 Garcia.  
 10 Q When did you last see him?  
 11 A Physically saw him around April the 1st.  
 12 Q Are you seeing him about once a month, or  
 13 more or less?  
 14 A No, ma'am. The last time that I physically  
 15 saw him was around April the 1st. I've been in  
 16 contact with his office a couple of times by phone.  
 17 He put me on physical therapy for well over  
 18 a month. Most of what I've done since then has either  
 19 been with physical therapy or by telephone.  
 20 Q To your knowledge, has he released you yet,  
 21 or are you still actively scheduled to see him, or has  
 22 he said: Look, see me as needed?  
 23 A Basically, see me as needed.  
 24 Q Are you still undergoing physical therapy,  
 25 or has that stopped?

1 A February the 29th.  
 2 Q That one you know, right?  
 3 A (Nods head affirmatively.)  
 4 Q And obviously this entire time up to that  
 5 point, from the coughing episode to February 29th, you  
 6 did not work.  
 7 A No, ma'am.  
 8 Q You did work?  
 9 A No, ma'am, I did not.  
 10 Q To your knowledge, has Dr. Garcia been paid  
 11 for that surgery?  
 12 A Yes, he has.  
 13 Q Do you know who paid that?  
 14 A A majority of it was paid through my health  
 15 insurance, Blue Cross & Blue Shield. The remainder,  
 16 we paid. I paid out of my personal -- myself  
 17 personally.  
 18 Q Approximately how much have you paid out of  
 19 your own pocket for the surgery?  
 20 A I'm looking at her (indicating Mrs.  
 21 Hawkins).  
 22 MR. ARNDT: If you don't know, that's  
 23 fine. If you can find out later, we can get that  
 24 information to her.  
 25 I don't want you to guess at anything. This

1 A No, ma'am.  
 2 Q Other than being seen at the emergency room  
 3 on the two times that you mentioned, the initial day  
 4 that the accident happened and then the day after your  
 5 father's birthday party, and being seen by Dr.  
 6 Nasrullah, Dr. Padget, Dr. Wiss and Dr. Garcia,  
 7 have you been seen by any other health care provider  
 8 for this injury?  
 9 A No, ma'am.  
 10 Q Following the 2/29 surgery, when did you  
 11 first return to work?  
 12 A Ma'am, I believe it was on May -- it was  
 13 either May 1st or May 15th.  
 14 Q Since that time, whatever date it was,  
 15 sometime in May --  
 16 A Around the 1st of May.  
 17 Q -- you've been working full time regular  
 18 duty?  
 19 A No, ma'am. I was on what we call light duty  
 20 from May 1st to June the 15th.  
 21 Q Did you receive your regular rate of pay  
 22 during that time --  
 23 A Yes.  
 24 Q -- or was it reduced? It was regular?  
 25 A Yes, ma'am.

1 Q The same pay you were receiving at the time  
2 the accident occurred?

3 A Yes, ma'am.

4 Q Are you on salary?

5 A Yes, ma'am.

6 Q What was your salary at the time of the  
7 accident?

8 A Ma'am, I'd have to -- my base salary is just  
9 over \$36,000 a year.

10 Q And then do you get something over and above  
11 your base salary?

12 A Yes, ma'am. We have a state hire-back  
13 program where I work overtime. Back then we were  
14 working roughly one day a week of that, which would be  
15 a six-hour shift.

16 Q And those were the only elements of your  
17 pay, salary plus overtime?

18 A Yes, ma'am.

19 Q Was health insurance provided by the State,  
20 or did you pay for your own health insurance at the  
21 time? You know, around the time of the accident, were  
22 you paying out of your own pocket for health  
23 insurance, or was your employer paying for it?

24 A Well, it's a benefit package of the State.  
25 Since my wife and I are both State employees, we fall

1 under a special provision with Blue Cross & Blue  
2 Shield where we do not pay anything out of our pocket.

3 Q When you were -- and I may have asked you  
4 this and I think you answered it, but between May 1st  
5 and June 16th, when you were doing light-duty work,  
6 you were receiving your regular pay?

7 A Yes.

8 Q Were you working your regular hours?

9 A I was working eight hours a day. We don't  
10 have set regular hours, ma'am.

6 11 Q But your schedule hadn't really changed  
12 since before the accident. I mean, you returned  
13 working the same type of hours that you were doing  
14 before the accident?

15 A No, ma'am. When you're on full duty, you  
16 work shifts. When I was working light duty, I was  
17 assigned to the office, and I worked basically 8:00 to  
18 5:00, Monday through Fridays, with Saturdays and  
19 Sundays off.

20 Q What type of work were you doing in the  
21 office?

22 A Clerical duties, answering telephone, legal  
23 questions.

24 Q Between the time of your last day of work on  
25 the 18th of January and when you returned on May 1st,

1 or whenever it was in May, did you receive a paycheck  
2 from the State?

3 A Yes.

4 Q And it was your regular paycheck during that  
5 time period?

6 A If I could explain. When you're on worker's  
7 comp, the Division of Risk Management picks up 66 and  
8 two thirds, and then you use your personal sick leave  
9 to make up the additional, what is it, two and one  
10 third. Up through March, that's how it worked.

11 Q March of 2000?

12 A Yes, ma'am. And that's when worker's comp  
13 cut off all benefits, and then I went to full sick-  
14 leave status where I was using my personal sick leave.

15 Q So from March of 2000 until May -- that's  
16 approximately two months -- you used -- or March,  
17 April, May, maybe three months. But during that  
18 period you were using your sick leave?

19 A Yes, ma'am.

20 Q And do you get a certain amount of sick  
21 leave annually? How does that work?

22 A We're given eight hours of sick leave a  
23 month, and that sick leave, you can bank it.

24 Q Does it roll over from year to year, or you  
25 can only bank it --

1 A No, ma'am; it rolls over.

2 Q How much did you have at the time that you  
3 started using it full time in March?

4 A I had between 1400 and 1500 hours.

5 Q Do you know how much you used during just  
6 that period between March and May?

7 A Ma'am, it was 400-and-some-odd hours. I  
8 can't remember the exact. I want to say it's  
9 something like 460 hours.

10 Q And then when June 15th, following that,  
11 you've been on a full-duty status?

12 A Yes, ma'am.

13 Q What's the current condition of your back?  
14 Do you have any complaints relating to your back  
15 currently?

16 A One day it will be pretty good, the next day  
17 it will hurt fairly bad. Every morning when I get up,  
18 I know that I've had back surgery.

19 Q How do you know that other than the obvious?

20 A It's tight. It's discomfort or  
21 uncomfortable. Some days I'll go through the day and  
22 have a great day, everything will be good. Some days  
23 when I stand up, I have to stand in one place for two  
24 or three minutes just to -- well, that's an  
25 exaggeration -- several seconds to just get uprighted

Page 33

1 to get balanced.  
2 Q Do you have a lawsuit pending against the  
3 driver or any third party?  
4 A Yes.  
5 Q Who are you suing or have claims against?  
6 MR. ARNDT: If you're not sure off the top  
7 of your head, just tell her that.  
8 THE WITNESS: It's the insurance carrier for  
9 the Alachua County School Board. I don't know  
10 the name of it.  
11 BY MS. ONOFREY:  
12 Q What about the driver of the vehicle that  
13 hit you?  
14 A In other words, am I seeking settlement from  
15 him personally?  
16 Q From him or his insurance carrier. Or do  
17 you believe that to be his insurance carrier?  
18 A I believe that to be his insurance carrier.  
19 Q So what you just mentioned was pertaining to  
20 the vehicle that hit you?  
21 A Yes.  
22 Q Okay. Do you know, have you actually filed  
23 a lawsuit, or are you trying to settle without filing  
24 lawsuit?  
25 A Without; trying to settle.

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1 Q But you haven't settled it yet?  
2 A No, ma'am.  
3 Q Had you ever had a back injury or any  
4 complaints relating to your low back prior to this  
5 accident?  
6 A No, ma'am.  
7 Q Have you ever had an injury on the job prior  
8 to this accident?  
9 A No, ma'am.  
10 Q Have you had any accidents involving  
11 personal injury since this accident?  
12 A No, ma'am.  
13 Q Who is your primary care physician under  
14 your health insurance?  
15 A I really don't have one.  
16 Q Had you ever had one?  
17 A No, ma'am.  
18 Q You really haven't had to go to the doctor  
19 for any reason, say, in the past five years?  
20 A No, ma'am.  
21 Q Other than this surgery that you had on  
22 February 29th, have you had any other surgeries in  
23 your lifetime?  
24 A When I was two years old, I had eye surgery.  
25 Q Eye surgery?

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1 A Yes, ma'am.  
2 Q Anything other than that?  
3 A No, ma'am.  
4 Q Any major illnesses in your lifetime?  
5 A No, ma'am.  
6 Q Other than relating possibly to the surgery,  
7 were you ever hospitalized for any reason?  
8 A No, ma'am.  
9 Q Do you have any sense of whether you're  
10 about to settle your case or not, or do you know?  
11 A I don't know, ma'am.  
12 MS. ONOFREY: I don't think I have any  
13 further questions. I'm just going to review my  
14 notes for a second. (Examining documents.)  
15 BY MS. ONOFREY:  
16 Q Who else was at your father's party? Was  
17 your wife there?  
18 A My wife, my mother and father, and I believe  
19 our children were there.  
20 Q How many children do you have? I didn't ask  
21 you that.  
22 A Two.  
23 Q How old are they?  
24 A One is 17 and one is 11.  
25 MS. ONOFREY: I don't have any further

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1 questions.  
2 MR. ARNDT: We'll read.  
3 (Witness excused.)  
4 (Thereupon, the deposition was concluded at  
5 10:45 a.m.)  
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Page 37

1 CERTIFICATE OF OATH  
 2 STATE OF FLORIDA )  
 3 COUNTY OF DADE )  
 4 I, CINDY COOKER, certify that PHILIP MARK  
 5 HAWKINS personally appeared before me and was duly  
 6 sworn.  
 7 WITNESS my hand and official seal this 14th  
 8 day of October 2000.  
 9  
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 11 \_\_\_\_\_  
 12 CINDY COOKER  
 13 Notary Public-State of Florida  
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1 C E R T I F I C A T E  
 2 STATE OF FLORIDA )  
 3 COUNTY OF DADE )  
 4 I, CINDY COOKER, Notary Public, State of  
 5 Florida at Large, certify that I was authorized to and  
 6 did stenographically report the deposition of PHILIP  
 7 MARK HAWKINS; that a review of the transcript was  
 8 requested; and that the transcript is a true and  
 9 complete record of my stenographic notes.  
 10 I further certify that I am not a relative,  
 11 employee, attorney or counsel of any of the parties,  
 12 nor am I relative or employee of any of the parties'  
 13 attorney or counsel connected with the action, nor am  
 14 I financially interested in the action.  
 15 Dated this 14th day of October, A.D., 2000.  
 16  
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 20 CINDY COOKER,  
 21 Notary Public-State of Florida  
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1 E R R A T A S H E E T  
 2  
 3 IN RE: PHILIP HAWKINS vs. STATE OF FLORIDA  
 4 CLAIM NO.: 263-55-6571 D/A: 12/10/99  
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 16 With the above corrections, if any, and by my  
 17 signature affixed hereon, I hereby sign my  
 18 deposition.  
 19  
 20 PHILIP MARK HAWKINS  
 21  
 22 Sworn to and subscribed before me  
 23 this \_\_\_\_ day of \_\_\_\_\_ A.D. 2000  
 24  
 25 Notary Public, State of Florida  
 My Commission expires:  
 RETURN TO: STATEWIDE REPORTING SERVICE  
 606 Blackstone Building  
 Miami, Florida 32202  
 (904) 353-7706

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## Annotation Notes

### 1. Pg: 4 Ln: 14 - 22

**Note:** Basic info about the witness

**Linked Issues:** Background

### 2. Pg: 10 Ln: 10 - 16

**Note:** This annotation is linked to two issues. Issue-coding is done on the Linked Issues tab of the New Annotation dialog or the Edit Annotation dialog. Import issues from CaseMap, then add issues that you might not want in the CaseMap case as legal issues. For example, you might code some annotations as "Background" or "Possible Impeachment".

**Linked Issues:** WrongfulTermination, Retaliation

### 3. Pg: 19 Ln: 7 - 12

**Note:** This is an example of an optional note. You can click the Linked Issues tab to issue-code the annotation. Create issues from scratch or import them from CaseMap, if you're using CaseMap. If you're not using CaseMap you're missing out on a great case analysis tool!

**Linked Issues:** WrongfulTermination

### 4. Pg: 21 Ln: 21 - Pg: 22 Ln: 1

**Note:** Another example note. Annotations (selected passages) are preserved even if you don't add a note. If the patient went home in the evening and got a good night's sleep the injury could hardly be classified as debilitating, as claimed. Hawkins only sought treatment the following day.

**Linked Issues:** Possible Impeachment

### 5. Pg: 25 Ln: 21 - 23

**Note:** Nam rhoncus, risus id porta imperdiet, tellus magna dapibus felis, vitae commodo est orci sit amet metus. Duis sed arcu a mi aliquet ultrices. Donec nec elit. Aenean nec turpis. Lorem ipsum dolor sit amet, consectetur adipiscing elit. Curabitur gravida risus ac massa.

**Linked Issues:** Transfer, Demotion

### 6. Pg: 30 Ln: 11 - 19

**Note:** Here Hawkins talks about the difference between the kind of work he did prior to the accident then contrasts it to the work he's able to do now.

**Linked Issues:** AgeDiscrimination, Demotion

### 7. Pg: 34 Ln: 3 - 9

**Note:** Cras neque justo, bibendum a, adipiscing a, faucibus nec, dui. Curabitur pulvinar. Integer bibendum, dui faucibus varius blandit, velit eros ultricies eros, vel malesuada purus odio sit amet lacus. Nullam lobortis. Maecenas elementum ante a nisl. Fusce venenatis pretium erat.

**Linked Issues:** There are no issues linked to this annotation.



**Phillip Hawkins v.  
Anstar Biotech Industries**

***Deposition of Susan Sheridan***

***5/23/2003 11:47 AM***

***Condensed Transcript with Endnotes***

Page 1

1 IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT  
 IN AND FOR INDIAN RIVER COUNTY, FLORIDA

2

CASE NO.: 9078-001-CA-02

3

4 PHILLIP HAWKINS,  
 Plaintiff/Counter-Defendant,  
 vs.  
 5 ANSTAR BIO TECH  
 OF FLORIDA,  
 6 Defendant/Counter-Plaintiff.

7

---

8

9 DEPOSITION OF  
 10 SUSAN SHERIDAN

11

12 The Deposition of SUSAN SHERIDAN, a witness  
 13 in the above-entitled cause, taken by the Plaintiff  
 14 herein, before JOAN D. BARTON, RPR, Court Reporter  
 15 and Notary Public in and for the State of Florida at  
 16 Large, at 3675 20th Street, Suite D, Vero Beach, Florida,  
 17 commencing at 11:47 a.m. and concluding at 12:34 p.m. on  
 18 May 23, 2003, pursuant to Notice.

19  
 20  
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 22  
 23

Page 2

1 APPEARANCES:

2

3 GEORGE F. SHOW, ESQUIRE  
 Show, Tukker, Chartered  
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 Counsel for the Plaintiff

6

7 GARY G. WALSH, ESQUIRE  
 Walsh & Associates, P.A.  
 999 West Colonial Drive  
 Orlando, Florida 32803  
 (407) 123-2345  
 Counsel for the Defendant

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11	EXHIBITS	
12	NUMBER DESCRIPTION	PAGE
13	A Letter dated September 25, 2002	12
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18	REPORTER'S NOTE: Exhibit A retained by Mr. Thorn.	
19		
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23		

Page 4

1 THEREUPON:

2 SUSAN SHERIDAN,  
 2 a witness herein, having first been duly sworn, was  
 examined and testified on her oath as follows:

3 DIRECT EXAMINATION

4 BY MR. THORN:

5 Q. Melissa, I'm John Thorn. I'm the Plaintiff's  
 6 attorney in this case. I'm going to ask you some  
 7 questions about this loss today.

8 Can you just state your name for the record?

9 A. Melissa Ann Burton.

10 Q. And where do you work?

11 A. Presently?

12 Q. Yes.

13 A. I'm a realtor.

14 Q. With who?

15 A. Progressive Real Estate.

16 Q. And where is that located?

17 A. In Melbourne.

18 Q. Where in Melbourne is that?

19 A. 2320 South Babcock Street.

20 Q. So you're a licensed realtor in the state of  
 21 Florida?

22 A. Yes, I am.

23 Q. And how long have you had your license?

<p style="text-align: right;">Page 5</p> <p>1 A. Since January 30th, 31st, something like that.  Q. Of this year?  2 A. Yes.  Q. Okay. Did you work for Nationwide prior to  3 this job?  4 A. Yes, I did.  5 Q. Okay. How many years did you work for  6 Nationwide?  7 A. It would have been 10 years in October of this  8 year, so 9 1/2, I guess.  9 Q. Okay. And when did you obtain your real estate  10 license?  11 A. I just told you; January 30th of this year.  12 Q. Strike that. You did tell me that. Did you  13 work in real estate prior to that at all?  14 A. No.  15 Q. What type of claims did you handle during that  16 nine years that you were at Nationwide?  17 A. Everything: homeowners, auto, bodily injury.  18 Q. Did you handle mold losses?  19 A. Yes, I did.  20 Q. How many?  21 A. I have no idea.  22 Q. Less than a hundred? More than a hundred?  23 A. More than a hundred.</p>	<p style="text-align: right;">Page 7</p> <p>1 trial?  A. No.  2 Q. All right. Just some ground rules: I'm sure  your counsel has already gone over this. There's a  3 record of this, and so therefore your answers have to be  4 verbal. Shaking of the head and nodding of the head --  5 A. Correct.  6 Q. Also you may anticipate your answer while I'm  7 formulating a question. I give the same advice to my  8 clients all the time, so even though if you know the  9 answer, wait, because it's very helpful to the court  10 reporter.  11 Okay. What type of training, if any, did you  12 have with mold losses?  13 A. There were several seminars and training  14 courses that Nationwide provided us, and we also attended  15 some outside seminars and training courses.  16 Q. What do those courses entail? Can you educate  17 me on that?  18 A. Examples of various types of mold, how the  19 cleanup occurs.  20 Q. So can you give me some examples of molds, the  21 types of molds that are out there?  22 A. By name?  23 Q. Yes.</p>
<p style="text-align: right;">Page 6</p> <p>1 Q. What years did you start working with mold  losses?  2 A. Probably the end of 1999 and after it became  more prevalent.  3 Q. I just want to go back to that question I asked  4 you about real estate. Did you get your -- my  5 understanding is it's a two-step process. You have to  6 get your sales associate first and then broker license,  7 or --  8 A. You only take the brokers exam if you want to  9 be a real estate broker. If you just want to be a real  10 estate salesperson or a realtor, you just take the  11 salespersons exam.  12 (Discussion off the record.)  13 BY MR. THORN:  14 Q. Okay. So you think in '99 or so you started  15 working on mold losses?  16 A. Yeah. I'm sure I handled some prior to that  17 when I did homeowners claims way back when, earlier with  18 the company, but I don't recall.  19 Q. Okay. Your counsel just represented you  20 haven't had any depositions. This is the first  21 deposition you've ever had in a legal matter?  22 A. Yes.  23 Q. Have you ever testified in a civil or criminal</p>	<p style="text-align: right;">Page 8</p> <p>1 A. No.  Q. Do you know what Stachybotrys is?  2 A. Sure I do.  Q. Okay. And Aspergillus?  3 A. Yes.  4 Q. Penicillium?  5 A. Yes.  6 Q. How many of those seminars or training courses  7 did you take approximately?  8 A. A lot -- six or eight.  9 Q. Okay. And is all that from '99 forward?  10 A. Yes.  11 Q. Okay. Now, have you ever talked to Pauline  12 Phillip Hawkins?  13 A. Yes, I have.  14 Q. Okay. And was that by telephone?  15 A. Yes.  16 Q. Do you know when the date of loss was in this  17 claim?  18 A. I don't recall.  19 Q. Would September 23, 2002, refresh your memory  20 in any way?  21 A. That sounds like it could be it.  22 Q. And when did you first learn about this loss?  23 A. I think it was in November.</p>

<p style="text-align: right;">Page 9</p> <p>1 Q. In November? A. I think.</p> <p>2 Q. Of 2002? A. Best I recall.</p> <p>3 Q. Okay. And who reported the claim to you; do 4 you remember? 5 A. No.</p> <p>6 Q. Have you reviewed the file at all for 7 preparation of this deposition? 8 A. Briefly.</p> <p>9 Q. Was that today? 10 A. Actually the day before yesterday. I haven't 11 had a chance to today.</p> <p>12 Q. And don't comment on any discussions you had 13 with your attorney. Have you talked to anyone else about 14 this case? 15 A. No.</p> <p>16 Q. And you reviewed the file, you said, briefly 17 yesterday? 18 A. The day before yesterday.</p> <p>19 Q. Day before yesterday. Can you tell me, did you 20 speak with Phillip Hawkins' brother in this loss? 21 A. Yes, I did.</p> <p>22 Q. Do you remember his name? 23 A. Remetz something.</p>	<p style="text-align: right;">Page 11</p> <p>1 Q. That includes due diligence; that's one of them.</p> <p>2 A. (Nods head.) Q. Is that a "yes"?</p> <p>3 A. Yes.</p> <p>4 Q. And so when she represented to you that 5 Mr. Remetz would be acting on her behalf, after that time 6 frame did you deal directly with him? 7 A. Actually I only dealt with him the one time 8 when I went out and did the inspection. From that point 9 on, I dealt with her.</p> <p>10 Q. All right. Did you go over to the property at 11 any time? 12 A. Yes, I did.</p> <p>13 Q. Do you recall the approximate time frame when 14 you did that? 15 A. I spoke to him within 30 or 45 minutes of 16 receiving the claim, trying to see it the day I got the 17 claim, and he said he could not make it, that it had to 18 be the next day. So I met with him the next day after 19 receiving the claim. I'm not sure of the date.</p> <p>20 Q. Okay. Where does she live, do you know, 21 Mr. Hawkins? 22 A. Her home in Florida or -- 23 Q. No.</p>
<p style="text-align: right;">Page 10</p> <p>1 Q. Okay. Laurence Remetz, would that refresh your memory? 2 A. Yeah. Q. And is Mr. Remetz the insured in this loss? 3 A. No.</p> <p>4 Q. What was your understanding of his relationship 5 with his sister? Was he living down here in Florida? 6 A. I was told he was living in Florida, that he 7 was watching her property while she was out of state, and 8 that he would be handling the loss for her.</p> <p>9 Q. Who told you that he would be handling the loss 10 for her? 11 A. She did and he also did.</p> <p>12 Q. Did you send back a letter confirming that with 13 her that she authorized -- 14 A. I don't recall.</p> <p>15 Q. Did you get any release from her indicating 16 that he would step into her shoes and act -- 17 A. No. It was reported in that manner, I believe.</p> <p>18 Q. And you're -- you were a licensed adjuster in 19 the state of Florida. 20 A. I still am.</p> <p>21 Q. Okay. There are certain rules, that you're 22 familiar with, in terms of maintaining your license. 23 A. Uh-huh.</p>	<p style="text-align: right;">Page 12</p> <p>1 A. Up North? Q. Where she resides.</p> <p>2 A. I don't remember, honestly. Q. Okay. Would Massachusetts refresh your memory? 3 A. Okay.</p> <p>4 MR. THORN: Okay. Would you mark that as 5 Exhibit A. 6 (Exhibit A was marked for identification.) 7 MR. THORN: Thanks so much.</p> <p>8 BY MR. THORN: 9 Q. I'm going to show you a letter dated 10 September 25, 2002, and ask you if you could take a look 11 at that. 12 A. (Perusing document.) 13 Q. Did you look at that letter when you prepared 14 for this deposition? 15 A. I recall the letter, yes.</p> <p>16 Q. Is that a letter authored by you or sent by 17 you? 18 A. I don't know. The bottom is not on there.</p> <p>19 Q. My question is not about that. Whether you 20 recall authoring a letter that contains these contents -- 21 A. I believe so. 22 Q. -- in Exhibit A. Okay. What is the date on 23 that letter?</p>

Page 13

1 A. September 25, 2002.  
Q. Okay. And this is a reservation of rights  
2 letter.  
A. Uh-huh.  
3 Q. Is that a "yes"?  
4 A. Yes.  
5 Q. And why don't you educate me on how that works.  
6 A. Whenever we have additional information that is  
7 needed, additional investigation, anything on a claim  
8 like that, we send out a reservation of rights letter to  
9 let them know that we are reserving our right in the  
10 claim to do further investigation and that we may or may  
11 not be paying on the claim.  
12 Q. All right. So that's to protect your  
13 contractual rights as well as the client.  
14 A. Correct.  
15 Q. Had you visited the property before you sent  
16 this letter on September 25, this Exhibit A of this  
17 deposition?  
18 A. I -- I don't recall the date the claim was  
19 reported, but I believe I had. I would not send these  
20 letters out unless I had already been there.  
21 Q. Okay. Is it your standard practice to go out  
22 to the property itself?  
23 A. Oh, yeah.

Page 14

1 Q. And you do that in every claim you have?  
A. Unless it was a lightning claim that was  
2 handled by telephone.  
Q. So you --  
3 A. Definitely on a water loss. I never handled a  
4 water loss without going out there.  
5 Q. Okay. So it's your representation on the  
6 record here that you would not have sent this letter,  
7 Exhibit A, without first going to the property.  
8 A. Correct.  
9 Q. So when you went to the property, who was  
10 there?  
11 A. Mr. Remetz.  
12 Q. Who else?  
13 A. Chris from Servpro.  
14 Q. And you spoke with Chris as well as Mr. Remetz?  
15 A. Uh-huh, yes.  
16 Q. Unfortunately there's a lot of --  
17 A. I understand.  
18 Q. -- rules and things that apply in these  
19 proceedings.  
20 What did you talk to Mr. Remetz about when you  
21 were at the property prior to the 25th of September?  
22 A. I asked him what he found when he went to the  
23 residence, and he said the toilet valve was leaking and

Page 15

1 there was water everywhere, and that he had shut the  
water off, and then he went on a rampage about how he  
2 hates insurance companies and how he hated Nationwide and  
how they never pay for anything and various other  
3 comments. And after that, he really didn't say much.  
4 Q. So you didn't care too much for his comments.  
5 A. I took them with a grain of salt. I've been  
6 doing that a long time.  
7 Q. I can relate to that. So other than his  
8 editorial comments, you inspected the property?  
9 A. Uh-huh, yes, I did.  
10 Q. And you walked through the property?  
11 A. Yes, I did.  
12 Q. And was mold present?  
13 A. Yes, there was.  
14 Q. How would you describe the amount of water  
15 damage to the property that you saw? Light? Medium?  
16 Heavy? Substantial?  
17 A. It was heavy. There was substantial water  
18 damage.  
19 Q. Okay. And where was the damage on the  
20 property, from your memory?  
21 A. Everywhere except the kitchen, from what I  
22 recall.  
23 Q. And can you describe to me the type of unit?

Page 16

1 Is it one level? Two level?  
A. Two-story townhome with the bedrooms upstairs.  
2 Q. Okay. And did you go upstairs and take a look  
at the property?  
3 A. That's the first place I went.  
4 Q. And what did you see when you went upstairs?  
5 A. Everything was saturated, water had wicked up  
6 the bedspreads, the recliner, the walls. It was soaked.  
7 Q. Okay. And had you talked to the county  
8 officials prior to September 25?  
9 A. I don't recall the date that I spoke to --  
10 (shakes head).  
11 Q. It could have been after you were on the  
12 property?  
13 A. Quite possibly. I really -- Mr. Remetz wasn't  
14 very cooperative, so I really didn't know what I was  
15 looking at or what had transpired until I actually went  
16 out there.  
17 Q. But he wasn't under any contractual duty to  
18 cooperate with you.  
19 A. No. His sister had indicated that he would be  
20 handling the claim for her in her absence.  
21 Q. Okay. And at some point did you talk to the  
22 county officials?  
23 A. I called the Water Department of the City of

1 Vero Beach.

Q. That would have been after you left the  
2 property?

A. I believe so. Without my log notes, I don't  
3 recall the exact dates on these things.

Q. Have you reviewed your log notes?

A. Briefly, but not dates.

2 Q. And what happened when you called over to the  
7 county?

8 A. I spoke to Tessa one time. Her name just  
9 stands out because it was a unique name. And she had  
10 indicated that they did not show any excessive water  
11 usage or any water usage in September or prior to, at  
12 that point, and I said that there has to be some water  
13 usage because we have a water damage claim.

Q. In your discussions with Mr. Hawkins, did she  
15 represent to you that she had shut the water main valve  
16 off?

A. Yes, she did.

3 Q. Okay. So someone had to turn that valve back  
19 on.

A. Apparently.

Q. And in your investigation of the case, have you  
22 ever determined who did that?

A. No.

1 Q. Have you ever interviewed officials at the  
county government as to whether they did that or not?

A. They had indicated that there was no --  
2 apparently they do some form or something when it's  
3 requested that they go out and turn water off or on, and  
4 there was no record of either being done by the county.

Q. Did you interview Beth Jordan?

A. No. I have no idea who that is.

Q. Do you know a gentleman, a black male named  
8 James, that works there?

A. No.

Q. Have you ever interviewed Terry Southard?

A. No.

Q. Have you ever interviewed anyone from Meeks  
13 Plumbing?

A. No.

Q. So other than talking to Chris Reinhart,  
16 Laurence Remetz, and Mr. Hawkins, have you talked to  
17 anyone else about this loss?

A. Tessa at the city, and there was one other  
19 person at the city I spoke to at another time, but I  
20 don't recall her name.

Q. That's it?

A. Uh-huh.

Q. That's a "yes"?

1 A. Yes, it is, other than my manager and his Walshs.

Q. Yeah, I want to ask you some questions later  
2 about that.

Now, when you spoke with Mr. Hawkins by  
3 phone, did you take a recorded statement from her?

A. I honestly don't recall.

Q. Would that be your standard practice?

A. No.

Q. And when you take -- you do interview insured  
8 about losses, water losses --

A. Normally it's verbal unless it's a theft loss  
9 or, you know, a questionable loss, and then we would do a  
11 recorded statement.

Q. All right. And so when you interviewed  
13 Mr. Hawkins, did you take any notes of that interview?

A. Yes.

Q. Okay. Was there any lawyers involved at that  
16 point in the case?

A. No.

Q. You hadn't called your counsel or anything like  
19 that?

A. No, no reason to.

Q. She didn't have any lawyers send you a letter?

A. No.

Q. So you were doing those notes in the normal

1 course and scope of your job?

A. Correct.

Q. And those notes, what did you write down?

A. That I spoke to her. She had indicated that  
3 when she left for the summer, she had shut the water  
4 valve off, had not asked for the assistance of the county  
5 in doing so -- because had she asked for their  
6 assistance, there would have been a lock put on it --  
7 that her brother was to check her residence for her  
8 weekly, and as far as she knew, he had been checking it  
9 weekly, and then she found out that there was water  
10 damage to the unit.

Q. Okay. Other than the discussion that you had  
12 prior to September 25 with Mr. Remetz, did you have any  
13 subsequent discussions with him after the 25th?

A. I don't believe so.

Q. Okay. So is it your testimony the only  
16 discussions you had with Mr. Remetz would have been at  
17 the time you met him at the unit?

A. Other than prior to setting up the appointment  
19 on the phone.

Q. Okay. But that would be it?

A. Correct, to the best that I remember.

Q. Okay. Now, I'm going to show you some  
23 photographs. I'll represent to you there's a lot of

Page 21

1 photographs and documents in this case, unfortunately.  
This is Exhibit A of Mr. Reinhart's deposition that just  
2 finished. And so for purposes of trying to save time  
here, I'm going to show you this Exhibit A. Is that the  
3 complex where Mr. Hawkins resides?  
4 A. Yes.  
5 Q. Okay. And I think you described it as a  
6 two-level unit.  
7 A. Correct.  
8 Q. I'm going to show you Exhibit B of the Reinhart  
9 deposition and ask you if you recognize that, and tell me  
10 where within that unit that would be.  
11 A. That's underneath the stairs.  
12 Q. Okay. And Exhibit C of the Reinhart  
13 deposition, can you indicate where that would be, if you  
14 know?  
15 A. I believe the downstairs bathroom.  
16 Q. And Exhibit D of the Reinhart deposition, do  
17 you know where that is located?  
18 A. The stairwell downstairs, underneath the  
19 stairs.  
20 Q. Okay. Can you indicate to me what this black  
21 is, if you know?  
22 A. Mold.  
23 MR. Walsh: Are you referring to Exhibit C?

Page 22

1 MR. THORN: I'm sorry. Exhibit C.  
BY MR. THORN:  
2 Q. That's mold?  
A. Mold.  
3 Q. Okay. As well as in Exhibit D?  
4 A. Correct.  
5 Q. Okay. And was that mold present when you were  
6 in the unit?  
7 A. Yes, it was.  
8 Q. Okay. And had that unit been altered in any  
9 way? And what I mean by altered, had someone taken the  
10 rugs up or removed any items?  
11 A. When I was there?  
12 Q. Yes.  
13 A. No, nothing had been touched.  
14 Q. And was there evidence, physical evidence, of  
15 water on the stairway?  
16 A. The carpet was saturated, the drywall had  
17 wicked up, and there was mold on the walls.  
18 Q. Was it evident to you that the water had  
19 indicated a downward angle?  
20 A. Yes.  
21 Q. Okay. And in your investigation, did you  
22 review the water bill in this loss?  
23 A. I later confirmed that there was a thousand

Page 23

1 gallons of water in -- between June and July or something  
to that effect.  
2 Q. Okay. My question was: Had you reviewed the  
water bill?  
3 A. No, I had no water bill.  
4 Q. Okay. You just testified that later you  
5 determined there was a thousand gallons within a 30-day  
6 time frame.  
7 A. Uh-huh.  
8 Q. Is that a "yes"?  
9 A. Yes, it is. I'm sorry.  
10 Q. Unfortunately, other people may read this.  
11 A. I understand.  
12 Q. Okay. I want to be clear on the time frame  
13 because it's important. All right. Did someone tell you  
14 about the water bill, or you actually reviewed the water  
15 bill?  
16 A. When I called the county, they had indicated  
17 that they showed no excessive water usage, and I asked  
18 them what they considered excessive, and they could not  
19 give me a number. I later received a letter from a  
20 public adjuster who indicated he was representing  
21 Mr. Hawkins, and he said that there was a thousand  
22 gallons of water usage, and I called to confirm that  
23 fact.

Page 24

1 Q. Okay. Was that confirmed?  
A. Yes.  
2 Q. Was that before or after you denied the claim?  
A. That was after.  
3 Q. Okay. And that would be with -- is that North  
4 American Insurance Consultants, Pat Garrett, from Tampa?  
5 A. Yes, I believe so. I had spoken to  
6 Mr. Hawkins, and she had indicated that she had not  
7 received a bill that was any different than prior months  
8 or months after that.  
9 Q. I'll go back to that retroactively. Trust me,  
10 you'll have more than an opportunity to testify.  
11 Now, when you were at the unit, did it appear  
12 to you that this had been a surge of water or a slow  
13 leak?  
14 A. A slow leak, based on the fact that the toilet  
15 valve was severely corroded, and the baseboard underneath  
16 it was rotted in the master bath upstairs.  
17 Q. So it's your belief and your testimony that you  
18 believe that the damage caused in this unit was by a slow  
19 leak?  
20 A. Yes.  
21 Q. Have you subsequently learned that there was  
22 work being done by the county in the area?  
23 A. I was aware of that at the time, and I could

<p style="text-align: right;">Page 25</p> <p>1 not confirm with the county that they had done anything with the valve to Mr. Hawkins' home in reference to</p> <p>2 that work being done by the county.</p> <p>3 Q. And your one call was to Tessa?</p> <p>4 A. Uh-huh.</p> <p>5 Q. Okay. What was her role in the county?</p> <p>6 A. She was in the water department in the customer service department.</p> <p>7 Q. Okay. Did you go over there and search the</p> <p>8 records at all?</p> <p>9 A. No.</p> <p>10 Q. Did you go over there and meet with anyone in</p> <p>11 the water department?</p> <p>12 A. No.</p> <p>13 Q. Did you go over there and meet with the risk</p> <p>14 manager?</p> <p>15 A. No. I'm trying to remember if I spoke to him</p> <p>16 on this claim or another one. They all kind of run</p> <p>17 together after a while.</p> <p>18 Q. All right. Now, did you interview any of the</p> <p>19 people that lived in the Waverly apartment complex?</p> <p>20 A. No. I made several phone calls to the</p> <p>21 association's office, which were not returned.</p> <p>22 Q. Okay. But did you drive over there and talk to</p> <p>23 anyone or assign an outside adjuster or anything?</p>	<p style="text-align: right;">Page 27</p> <p>1 A. Yes, but it didn't have anything to do with that unit.</p> <p>2 Q. That wasn't my question. My question was: The county officials were fixing a pipe break, and it was the</p> <p>3 same complex and it was the same day that you were there?</p> <p>4 A. It was a very large complex.</p> <p>5 Q. Okay. I appreciate your editorial comments,</p> <p>6 but my question, again, is whether or not --</p> <p>7 A. Yes, they were there.</p> <p>8 Q. Okay. Did you go right over to them and talk</p> <p>9 with them about this loss?</p> <p>10 A. No. I asked that on the telephone when I</p> <p>11 followed up with the City of Vero Beach Water Department.</p> <p>12 Q. I understand all that. But did you --</p> <p>13 A. No, I did not ask the workers.</p> <p>14 Q. When you were there that day and saw the county</p> <p>15 officials on that day when you were there that you met</p> <p>16 with Mr. Remetz and you met with Chris Reinhart, did you</p> <p>17 go over to them, the county officials, and speak with</p> <p>18 them?</p> <p>19 A. No, I did not.</p> <p>20 Q. All right. When you subsequently called the</p> <p>21 county, did you ask them whether they were working in</p> <p>22 that area in June or July?</p> <p>23 A. No.</p>
<p style="text-align: right;">Page 26</p> <p>1 A. An outside adjuster?</p> <p>2 Q. Yeah. Would you do that at all in your work?</p> <p>3 A. Yes. I never could find a person in the office</p> <p>4 to talk to.</p> <p>5 Q. Okay. My question is not whether you found</p> <p>6 someone, whether or not you actually drove over or sent</p> <p>7 someone else to go over.</p> <p>8 A. No. I would do that myself.</p> <p>9 Q. Okay. And you didn't do it in this case?</p> <p>10 A. I did. I couldn't find anyone.</p> <p>11 Q. You drove over there?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Was that the same day that you met with</p> <p>14 Mr. Remetz?</p> <p>15 A. Yes. And there were actually city workers</p> <p>16 there that day.</p> <p>17 Q. And you believe that there were city workers</p> <p>18 from the county there that day?</p> <p>19 A. Uh-huh.</p> <p>20 Q. Okay. What were they doing?</p> <p>21 A. They were fixing a valve, but it was not -- had</p> <p>22 nothing to do with that unit. They had a water pipe</p> <p>23 break, they said.</p> <p>24 Q. And the water pipe break was in the same</p> <p>25 apartment complex?</p>	<p style="text-align: right;">Page 28</p> <p>1 Q. Has anyone from Nationwide ever asked that</p> <p>2 question, that you know of, as we sit here today in 2003?</p> <p>3 A. I have no idea. I can only speak for myself.</p> <p>4 Q. Okay. Who else worked on the file besides you?</p> <p>5 Who was your supervisor there?</p> <p>6 A. William Lang.</p> <p>7 Q. So after the -- strike that. Prior to</p> <p>8 September 25, prior to sending this letter marked as</p> <p>9 Exhibit A in this deposition, had you made a</p> <p>10 determination whether you would pay this claim at all?</p> <p>11 A. No.</p> <p>12 Q. Had you ever represented to anyone that you</p> <p>13 would not pay this claim?</p> <p>14 A. I had explained to Mr. Hawkins what the policy</p> <p>15 stated as far as continuous and repeated seepage or</p> <p>16 leakage and explained to her that I had to conference the</p> <p>17 file with my Walshs and his Walshs, and after that telephone</p> <p>18 conference and the photo review and everything, that a</p> <p>19 determination would be made.</p> <p>20 Q. But you had already testified in this</p> <p>21 proceeding that you determined it was a slow leak when</p> <p>22 you were in there.</p> <p>23 A. Based on my investigation.</p> <p>24 Q. Your personal investigation?</p> <p>25 A. Correct.</p>



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1 Q. And then you -- you know there would be no  
coverage for a slow leak.

2 A. Based on -- anytime that there is a mold claim,  
we were required to conference those with our manager and  
3 his manager.

4 Q. Why would that be?

5 A. That was procedure.

6 Q. All right. So was that in -- was that in a  
7 manual or something that was reduced to writing that said  
8 that?

9 A. Yes.

10 Q. Did someone advise you not to do that, not to  
11 reduce it to writing?

12 A. No.

13 Q. But this was a water loss; clearly water had  
14 caused this, some water from somewhere.

15 A. I did what I was told to do.

16 Q. Okay. But you were the investigator in the  
17 case, it was your claim, and you went to the location of  
18 your client's property, Mr. Hawkins.

19 A. Correct.

20 Q. And you made certain subjective decisions while  
21 you were at the property.

22 A. I did an investigation, and I presented the  
23 facts.

Page 30

1 Q. Okay. And so therefore when you were over  
there prior to the 25th of September, you had made a  
2 determination it was a slow leak that caused this damage.

A. That's what it appeared to be at that time.

3 Q. Okay. And so therefore when you left the  
4 property, did you convey that thought to Mr. Varvaro?

5 A. What I found?

6 Q. Yes.

7 A. Yes.

8 Q. And did you tell him that it was your view that  
9 the claim would be denied?

10 A. I did a telephone conference with him and  
11 Natalie Simons and reviewed the photos with them that I  
12 took and went through the loss.

13 Q. Who is Natalie Simons?

14 A. She is -- well, I guess she was my Walshs also,  
15 but Mr. Varvaro's Walshs.

16 Q. Does she have a title? Claims manager or --  
17 unfortunately, we have titles for everything in this day  
18 and age.

19 A. I know. They changed every other month, so I'm  
20 trying to remember what the title was at the time. He  
21 was a claims manager, and she was a -- I don't know what  
22 they were calling her then.

23 Q. Okay. And it says in this letter, Exhibit A,

Page 31

1 the second sentence "reported to have occurred on  
9/23/02."

2 A. Right.

Q. And I think you said to me earlier that it was  
3 your policy to go out to the property. It could have  
4 been 9/23/02 that you were there at the property?

5 A. No, because the date that I received the claim,  
6 I contacted Mr. Remetz, and he could not meet with me  
7 until the next day. So I don't know if it was reported  
8 on the 23rd or not, but it was the day after I actually  
9 received it in my hand that I met with him.

10 Q. But there's no question the meeting with  
11 Mr. Remetz and Mr. Reinhart would have been before the  
12 25th.

13 A. Correct.

14 Q. Okay.

15 A. I sent that out at the direction of my manager,  
16 William Lang.

17 Q. Right. Did Mr. Varvaro call up the county --  
18 strike that.

19 Did you report to him that you had seen the  
20 county people up there fixing a pipe?

21 A. I believe so.

22 Q. Okay. And so he then advised you to send this  
23 document up?

Page 32

1 A. Correct.

Q. Did Mr. Reinhart indicate to you his feelings  
2 about this loss?

A. He said there was a lot of water and that it  
3 had to have been there for a few weeks or more based on  
4 the amount of mold that was present, and water.

5 Q. When was the last time that Mr. Remetz was in  
6 the property to check it prior to September --

7 A. On the telephone the day that I received the  
8 claim, he had indicated that it had been three weeks.  
9 When I went the next day, meeting with him, he had  
10 indicated it had been six weeks.

11 Q. Okay. So you believe that it had been six  
12 weeks since September 23 or around that time frame?

13 A. Since the date of loss?

14 Q. No. Since the time he was in there.

15 A. Oh, yes.

16 Q. Okay. Now, did Mr. Varvaro instruct you to  
17 interview the county officials?

18 A. He instructed me to make phone calls to find  
19 out if I could find additional information.

20 Q. Okay. After the 25th of September, have you  
21 talked to Mr. Reinhart about this loss?

22 A. I'm sure, not -- probably not him, but his  
23 office.

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1 Q. Okay. And you did a certain amount of work  
with them?

2 A. Yes.  
Q. And you had worked with Mr. Reinhart prior to  
3 this loss?

4 A. Yes, in the last ten years.

5 Q. Did you find them to be a reputable company?

6 A. Yes.

7 Q. And find Mr. Reinhart to be very knowledgeable?

8 A. Yes.

9 Q. And his word's credible?

10 A. Based on my past experience, yes.

6 11 Q. Would you find him to be an experienced  
12 individual as it relates to water claims?

13 A. Yes.

14 Q. Would you find him to be experienced in terms  
15 of his understanding of the source of the water claim?

16 A. I don't know if they made that determination.  
17 Their job was to go out and do water restoration, not  
18 necessarily determine where it came from.

19 Q. His job in doing water restoration, that  
20 involves him being one of the first on the scene.

21 A. Correct.

22 Q. And that involves him doing some inspection  
23 work.

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1 A. Correct.  
Q. How long has Mr. Reinhart worked for Servpro;  
2 do you know?

A. As long as I've been dealing with him. I don't  
3 know. It's a family-owned business.

4 Q. Would you say 9, 10 years?

5 A. I would say.

6 Q. Okay. I think I asked you this before, but I  
7 want to be clear. There were a lot of depositions and a  
8 lot of travel. I asked you whether or not you had talked  
9 to the plumber.

10 A. No.

11 Q. Do you know the name of the plumbing company?

12 A. You told me Meeks.

13 Q. All right. Had you dealt with them before?

14 A. Yes.

15 Q. Okay.

16 A. Not on this loss, but prior losses.

17 Q. How many claims have you dealt with them over  
18 the years?

19 A. Several. They're one of the main plumbing  
20 companies in Vero.

21 Q. Okay. Did you find them to be credible?

22 A. The majority of the time, yes.

23 Q. Okay. So your understanding is that

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1 Mr. Hawkins represented to you that she had shut the  
valve off.

2 A. Yes.  
Q. And so therefore, in order for water to come  
3 into this unit, somebody had to turn that valve back on.

4 A. Correct.

5 Q. And then after that valve was turned on, there  
6 was water damage to this unit somehow.

7 A. Correct.

8 Q. Okay. And that would have been after she left  
9 to go back to Walshton.

10 A. Correct.

11 Q. And your testimony is that the physical  
12 evidence showed the likelihood that water was running  
13 downward.

14 A. It started in the master bathroom upstairs.

15 Q. Okay. I'm going to ask you some questions on  
16 coverage issues. What type of policy was involved here;  
17 do you know?

18 A. Elite II.

19 Q. Okay. Can you give me a little education on  
20 that, what type of policy that is, how it works, briefly?

21 A. I believe it was an Elite II. I said that  
22 pretty quick, but --

23 Q. That's all right.

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1 A. Assuming that they had a homeowners association  
and not a condo association, it might have been a unit  
2 owners policy. Do you have that letter?

Q. Yes.

3 A. It's an Elite policy.

4 Q. Okay. Can you just tell me what typically  
5 would be covered in that type of policy?

6 A. It's an all-risk policy unless it's excluded  
7 specifically.

8 Q. What type of water loss would be covered in  
9 Mr. Hawkins'?

10 A. Sudden and accidental.

11 Q. So if the evidence would show that it was  
12 sudden and accidental, she'd be covered?

13 A. If it was sudden and accidental.

14 Q. Okay. At some point you did deny the claim.

15 A. Yes.

16 Q. And did you send a letter to the your insured  
17 telling her why?

18 A. Yes.

19 Q. Can you tell me what you told her?

20 A. Continuous and repeated seepage or leakage  
21 resulting in wet rot, dry rot, mold, and deterioration  
22 was excluded under the policy.

23 Q. And that was based on your investigation.

1 You've already told me what your investigation entailed.  
 A. Correct.  
 2 Q. After the public adjuster came into this case,  
 you had certain correspondence with him?  
 3 A. Yes.  
 4 Q. And you spoke with him on the telephone?  
 5 A. Once, I believe.  
 6 Q. Have you ever met Pat Garrett?  
 7 A. No.  
 8 Q. Would you often work with public adjusters?  
 9 A. Not very often. It was becoming more  
 10 prevalent.  
 11 Q. Okay. Did you find that they assisted  
 12 policyholders or not, in general terms?  
 13 A. I only had a couple dealings with them, so I  
 14 don't know if that's fair to assess.  
 15 Q. Fair enough. After Mr. Garrett contacted you,  
 16 he expressed some concerns that he felt this was covered.  
 17 A. Correct.  
 18 Q. Okay. And did you follow up on his  
 19 recommendations?  
 20 A. I believe I wrote him a letter and asked him to  
 21 please provide any information that he may have that  
 22 would indicate that there was coverage in this loss.  
 23 Q. Has anybody ever showed you the loss detail

1 information on this loss from Mr. Garrett?  
 A. No.  
 2 Q. Okay. Has any -- strike that. When did you  
 say you left Nationwide?  
 3 A. I left on disability December the 6th.  
 4 Q. Okay. What type of disability?  
 5 THE WITNESS: (To Mr. Walsh) Do I have to  
 6 say?  
 7 MR. Walsh: It's -- can we go off the record?  
 8 MR. THORN: Sure.  
 9 (Discussion off the record.)  
 10 MR. THORN: Let's go back on the record.  
 11 Thanks.  
 12 BY MR. THORN:  
 13 Q. Okay. I guess I asked you when you left  
 14 Nationwide, timewise.  
 15 A. My official date of resignation was  
 16 February 22, I believe, of 2003.  
 17 Q. 2003?  
 18 A. Uh-huh.  
 19 Q. Okay. After Mr. Garrett, the public adjuster,  
 20 had indicated there was a thousand gallons of water in  
 21 the summer months there, what did you do about that, if  
 22 anything?  
 23 A. I verified that fact with the City of Vero

1 Beach Water Department.  
 Q. Was that a true statement by Mr. Garrett?  
 2 A. Yes. My question to them was: Who turned the  
 water off if it was only one month?  
 3 Q. Okay. Did you find out?  
 4 A. They had no record of any report ever being  
 5 filed that the water had to be turned off and on at that  
 6 unit.  
 7 Q. My question was: Who turned it on; do you  
 8 know? Did you ever find out?  
 9 A. No. Somebody had to turn it on.  
 10 Q. Right. Well, because you know Mr. Hawkins  
 11 represented to you that it was turned off.  
 12 A. Yes.  
 13 Q. And you didn't have any reason to doubt that.  
 14 A. No.  
 15 Q. Okay. But for the water being turned on, it  
 16 wouldn't have reached this unit.  
 17 A. It might have from another unit, but there did  
 18 not appear to be any water damage from any of the other  
 19 units surrounding hers.  
 20 Q. So your investigation didn't reveal some  
 21 collateral unit was responsible.  
 22 A. Correct.  
 23 Q. Okay. In your investigation, did you ever seek

1 any records from the county about any claims in the area  
 by any of the other units?  
 2 A. I don't believe so.  
 Q. Did you ever interview any neighbors or people  
 3 in the area?  
 4 A. No.  
 5 Q. Did Mr. Garrett indicate to you what the extent  
 6 of the loss was in terms of what she's claiming the  
 7 damage was?  
 8 A. No.  
 9 Q. Have you reviewed any documents relative to  
 10 that?  
 11 A. I would have only dealt with him briefly prior  
 12 to my leaving.  
 13 Q. Prior to Mr. Garrett's involvement, had you  
 14 ever reviewed any documents of the extent of the damages  
 15 in this unit?  
 16 A. I heard a dollar figure for the amount of the  
 17 bill from Servpro.  
 18 Q. All right. Other than Servpro, anyone else  
 19 ever represent a number to you?  
 20 A. No.  
 21 MR. THORN: Give me a second.  
 22 (Short pause.)  
 23 MR. THORN: I don't have anything else.

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1 CROSS-EXAMINATION  
BY MR. Walsh:  
2 Q. You're operating under the assumption that  
Mr. Hawkins turned off the water when she left in April  
3 or whenever it was?  
4 A. Correct.  
5 Q. And you have no way to independently verify  
6 that, do you?  
7 A. No.  
8 Q. And if she had left the water on and everything  
9 was closed up in the house and no valves were running,  
10 there wouldn't be any water usage either, would there?  
11 A. No.  
12 Q. All right. And there was also -- you were  
13 given information that there had been a thousand gallons  
14 of water usage between June and July; is that correct?  
15 A. Yes.  
16 Q. All right. And at some point in time, were you  
17 advised by Mr. Garrett or by the city that there had been  
18 no water usage between July and the time that the loss  
19 was reported in September?  
20 A. Correct.  
21 Q. And do you have any information or knowledge as  
22 to who would have turned off the water in July in order  
23 for there not to be any water coming into the apartment,

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1 condominium?  
A. No.  
2 Q. And did anybody ever provide any explanation to  
you as to why there would be a two-month delay in  
3 reporting this claim?  
4 A. Mr. Hawkins said that her brother was  
5 supposed to be checking the home weekly, and when I had  
6 repeated to her what he had told me the day I met him  
7 that he hadn't been there for at least six weeks, she  
8 said, "Well, I thought he was watching it every week, but  
9 I can't count on him."  
10 MR. Walsh: Okay. That's all the questions I  
11 have. Thank you.  
12 MR. THORN: Nothing else. Thanks for  
13 coming in. Good luck to you.  
14 THE WITNESS: Thanks.  
15 THE REPORTER: Did you want to read this or  
16 waive?  
17 THE WITNESS: I'll waive. That's fine.  
18 (Thereupon, the reading and signing of this  
19 deposition were waived, and this deposition concluded  
20 at 12:34 p.m.)  
21  
22  
23

Page 43

1 CERTIFICATE OF OATH  
2 STATE OF FLORIDA )  
 ) SS  
3 COUNTY OF BREVARD )  
4  
I, JOAN D. BARTON, Registered Professional  
5 Reporter, the undersigned authority, do hereby certify  
that SUSAN SHERIDAN personally appeared before me  
6 and was duly sworn.  
7 WITNESS MY HAND and official seal this  
8 31st day of July, 2003, at the City of Melbourne,  
9 County of Brevard, State of Florida.  
10  
11  
12  
13  
14 \_\_\_\_\_  
15 JOAN D. BARTON, RPR  
16 Notary Public, State of Florida  
17  
18  
19  
20  
21  
22  
23

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1 CERTIFICATE OF REPORTER  
2 STATE OF FLORIDA )  
 ) SS  
3 COUNTY OF BREVARD )  
4 I, JOAN D. BARTON, Registered Professional  
Reporter, do hereby certify that I was authorized to and  
5 did stenographically report the deposition of MELISSA  
6 BURTON; that a review of the transcript was not  
7 requested; and that the foregoing transcript, pages 1  
8 through 42, is a true record of my stenographic notes.  
9  
10 I FURTHER CERTIFY that I am not a relative,  
11 employee, attorney, or counsel of any of the parties,  
12 nor am I a relative or employee of any of the parties'  
13 attorney or counsel connected with the action, nor am  
14 I financially interested in the event of this cause.  
15  
16 DATED this 31st day of July, 2003, at  
17 the City of Melbourne, County of Brevard, State of  
18 Florida.  
19  
20  
21 \_\_\_\_\_  
22 JOAN D. BARTON, RPR  
23

## Annotation Notes

### 1. Pg: 15 Ln: 14 - 18

**Note:** I found this passage by searching using an Advanced Search for the phrase "water damage". A search for words enclosed in quotes returns hits for exactly what you have in quotes. If you just type a term or terms then your results will be words that match the first letters of the term you typed.

**Linked Issues:** Background

### 2. Pg: 17 Ln: 6 - 13

**Note:** Here we have testimony that Sheridan consulted with the county on the excess water usage at the apartment. This clearly shows that either there was a leak that had been ignored or the occupants of the apartment were obsessive about bathing or perhaps engaged in an illegal agriculture operation and using the water for irrigation. Check police records.

**Linked Issues:** Possible Impeachment

### 3. Pg: 17 Ln: 18 - 23

**Note:** Nullam viverra dui. Vestibulum ante ipsum primis in faucibus orci luctus et ultrices posuere cubilia Curae; In auctor purus et ante. Pellentesque dui est, consectetur ut, fermentum sollicitudin, pretium sit amet, arcu. Cras sed ante sed dolor commodo gravida. Cum sociis natoque penatibus et magnis dis parturient montes, nascetur ridiculus mus. Integer tellus.

**Linked Issues:** Pattern&Practice

### 4. Pg: 22 Ln: 21 - Pg: 23 Ln: 1

**Note:** In hac habitasse platea dictumst. Curabitur metus. Sed non justo et sapien gravida posuere. Nulla non leo sed diam fermentum fringilla. Nulla pharetra, nisi ac volutpat gravida, est ligula pulvinar tortor, elementum suscipit tellus est nec felis. Phasellus sodales, est et lobortis auctor, eros turpis rutrum ante, in dictum turpis justo ut lectus.

**Linked Issues:** Transfer

### 5. Pg: 32 Ln: 1 - 4

**Note:** Mold damage possible. Could have occurred over several weeks time, or maybe it was just highly aggressive mold growing over a short period of time. Sheridan is testifying as to something she heard from Reinhart. Has he been scheduled for deposition or has anyone contacted him?

**Linked Issues:** FailureToMitigate, MentalAnguish

### 6. Pg: 33 Ln: 11 - 13

**Note:** Cras pulvinar. Duis urna arcu, mollis ut, dignissim vitae, vulputate nec, nulla. Fusce tincidunt congue nibh. Aliquam ut velit. Phasellus id turpis vel nisl lobortis elementum. Suspendisse risus sem, congue vitae, convallis id, laoreet porta, nunc. Nam pharetra. Integer vulputate, ipsum a molestie malesuada, arcu leo tempus felis, nec consectetur elit ipsum vitae enim. Proin posuere quam non mauris.

**Linked Issues:** MentalAnguish

**Phillip Hawkins v.  
Anstar Biotech Industries**

***Deposition of Wayne Varvaro***

***5/23/2003 1:05 PM***

***Condensed Transcript with Endnotes***

Page 1

1 IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT  
 IN AND FOR INDIAN RIVER COUNTY, FLORIDA

2

CASE NO.: 3003-5453-CA-07

3

PHILLIP HAWKINS  
 4 Plaintiff/Counter-Defendant,  
 vs.  
 5 ANSTAR BIO TECH  
 OF FLORIDA,  
 6  
 Defendant/Counter-Plaintiff.  
 7

---

8

DEPOSITION OF  
 9 Wayne Varvaro

10

11

12 The Deposition of Wayne Varvaro, a witness  
 13 in the above-entitled cause, taken by the Plaintiff  
 14 herein, before MARY K. HIGGINS, RPR, Court Reporter  
 15 and Notary Public in and for the State of Florida at  
 16 Large, at 9900 90th Street, Suite F, Vero Beach, Florida,  
 17 commencing at 1:05 p.m. and concluding at 1:51 p.m. on  
 18 May 23, 2003, pursuant to Notice.  
 19  
 20  
 21  
 22  
 23

Page 2

1 APPEARANCES:

2

JOHN Q. WALLACE, ESQUIRE  
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 6

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 7 Ross & Associates, P.A.  
 845 West Colonial Drive, Suite 80  
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 9 Counsel for the Defendant  
 10  
 11  
 12  
 13  
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12 2	Work orders of water breaks at 13 Waverly Place	29
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Page 4

1 THEREUPON:

Wayne Varvaro,  
 2 a witness herein, having first been duly sworn, was  
 examined and testified on his oath as follows:

3 DIRECT EXAMINATION

4 BY MR. Wallace:

5 Q. Tom, we've had an opportunity to meet. I'm  
 6 John Wallace. I represent Mrs. Sheridan in this matter.  
 7 A. Yes.  
 8 Q. I'm going to ask you questions, it's not going  
 9 to be that long, relative to this lawsuit that is pending  
 10 in Indian River County.  
 11 Can you just state your name for the record?  
 12 A. Wayne Varvaro, V-A-R-V-A-R-O.  
 13 Q. And where do you work?  
 14 A. Indian River County Utilities.  
 15 Q. Can you tell me in what capacity, Tom?  
 16 A. Operations manager.  
 17 Q. What does that encompass?  
 18 A. I oversee all the operations of water and sewer  
 19 relating to Indian River County.  
 20 Q. Okay. And have you had an opportunity to  
 21 investigate a water claim out at the Waverly apartment  
 22 complex involving this lawsuit?  
 23 A. The only investigating that I did was looking

Page 5

1 at the back bills to see when water consumption was used.  
Q. Okay. Have you talked to anyone from the  
2 county about this case?  
A. No, sir, other than our risk management officer  
3 and my director.  
4 Q. Is that Beth Jordan?  
5 A. Yes, sir.  
6 Q. Is that the woman that's in the hallway?  
7 A. Yes.  
8 Q. Okay. And what did you talk to her about?  
9 A. Just what this is relating to. She was -- I  
10 called her the day that I was notified of it, and she  
11 went to the site.  
12 Q. And did she speak to any representative at the  
13 site from the complex?  
14 A. I believe there was just a homeowner that was  
15 there, as far as I know.  
16 Q. Have you looked at any records relative to  
17 whether or not the county was engaged in any business out  
18 at that facility in the summer of 2002?  
19 A. Just looking to see if there was other breaks,  
20 what other breaks that might have occurred during that  
21 time.  
22 Q. During that time frame, had the county done any  
23 work in that area?

Page 6

1 A. There was -- I don't have specific dates, but  
there was times that the water main within the Waverly  
2 Place did have breaks in it that required shutting down  
the water and doing repairs.  
3 Q. Do you have an idea approximately what that  
4 time frame was?  
5 A. No, sir, I don't. I don't have the dates, no,  
6 sir.  
7 Q. Would it be during the summer of 2002 at some  
8 point?  
9 A. Yes. When you say "summer," if you're talking  
10 June, July, and so forth, yes.  
11 Q. Okay. Thank you. And what would the county  
12 have been doing out there to begin with?  
13 A. The county would get a call saying that there  
14 was water coming up out of the ground, and we would go in  
15 and shut the main off and cut the asphalt or concrete and  
16 make repairs and turn the water service back on.  
17 Q. Does that require you to shut down the water  
18 within the facilities that are close by or affected by  
19 that?  
20 A. We turn off the mains, six-inch mains or so  
21 forth like that. Yes, that's off.  
22 Q. Okay. In terms of educating me on this, what  
23 does that encompass? How do you do that?

Page 7

1 A. There is a valve that feeds certain sections  
within that subdivision that we can turn off and isolate  
2 certain sections and not affect the other customers.  
Q. Okay. And who actually does that? Do you have  
3 a crew who works for the water department that do all of  
4 that?  
5 A. Yes, sir, service workers.  
6 Q. And do you keep records of the locations that  
7 you work on and the employees?  
8 A. There's records of breaks and -- but no details  
9 of who was on that job at that time or whatever.  
10 Q. Okay. And the records of the breaks indicate  
11 the areas that were affected in Indian River County?  
12 A. No, sir. It just basically -- in most cases  
13 it's the address of the individual that called it in.  
14 Q. Okay. And that would be citizens within the  
15 community?  
16 A. Somebody within Waverly Place could have called  
17 it in, and we'll ask for their address, and that's  
18 generally the case where that's what goes on the work  
19 order and then, of course, as the service crew drives up,  
20 they can see it bubbling up within the parking lot of  
21 that area close to that address.  
22 Q. Okay. And if that's the case, do you have to  
23 go and turn off the water, the main valve there, for the

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1 complex itself?  
A. The main -- you know, there's, like I said,  
2 there's individual valves that would shut down certain  
sections within that area, yes.  
3 Q. Okay. And somebody has to manually do that?  
4 A. Yes, sir.  
5 Q. What if the valve is off; is that possible?  
6 A. No.  
7 MR. ROSS: We're talking about the mains.  
8 A. I think you might be confusing the main with  
9 the home service.  
10 BY MR. Wallace:  
11 Q. You're right. I'm sorry. Relative to the home  
12 service?  
13 A. No, sir. We don't touch the individual  
14 service. We just shut the main itself, because when we  
15 shut the main, it shuts any water that's flowing into the  
16 homeowner's, so we don't touch the individual valve for  
17 the homeowner's.  
18 Q. Okay. So in other words, once you hit that  
19 main, it essentially kills any power to the home from  
20 that connection.  
21 A. Flow of water to that service, yes, sir.  
22 Q. All right. What happens when you turn it back  
23 on? What, if any, effect would that have on the home?



Page 9

1 A. If the valve was on already in the home, if it  
was already on, none. It would -- could have some air in  
2 it, it could have some dirt in it, but we in most cases  
issue a boil water notice so that they know to boil the  
3 water.  
4 Q. What if it's off?  
5 A. Then it's a dead valve. It should have no  
6 effect on the house at all.  
7 Q. So if you turn on the main line and it connects  
8 to an existing valve, you're saying there's no -- it  
9 shouldn't have any effect on it.  
10 MR. ROSS: Let me just object to the form.  
11 You're saying "existing valve." Are you talking  
12 about -- there's a lot of valves. Are we  
13 talking about a valve to an individual unit?  
14 MR. Wallace: Yes.  
15 MR. ROSS: Okay.  
16 A. Yeah. If the valve to the unit homeowner's is  
17 off, us turning the water back on, the crew knows that  
18 you have to turn the water on slow. They've been in this  
19 business for years and you just don't turn the valve on.  
20 And at the same time when you're turning a valve that  
21 size on, it takes quite a few turns to bring the water  
22 flow back to normal, so it's not . . .  
23 BY MR. Wallace:

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1 Q. Yeah, I think counsel is correct when we talk  
about this word "valve," I want to be real clear here for  
2 the record.  
A. The valve on the six-inch main when they're  
3 restoring service back to the residents, they turn the  
4 valve on slowly.  
5 Q. Could the -- strike that. So your records  
6 would reflect if the county was in fact working in or  
7 about the area of the Waverly apartment complex in the  
8 summer of 2002.  
9 A. Yes, sir. There should be some form of  
10 records, yes, sir.  
11 Q. I'm going to ask you on the record without a  
12 subpoena to produce those records to my firm, if you can.  
13 A. Sure.  
14 Q. Through your counsel, whoever handles that.  
15 A. Just give me the dates that you're looking for,  
16 and I can supply that.  
17 Q. And I will gladly send it over in the mail to  
18 you. I appreciate that.  
19 A. Okay.  
20 Q. Now, from your investigation, do you know  
21 whether or not in the summer of 2002 there was any  
22 complaints from anyone at Waverly?  
23 (The witness hands business card to Mr. Ross.)

Page 11

1 MR. Wallace: Thank you very much for your  
card.  
2 MR. ROSS: Can I have one of those, too?  
THE WITNESS: Sure. I just got promoted.  
3 MR. ROSS: Thanks.  
4 A. I'm sorry, can you repeat the question?  
5 BY MR. Wallace:  
6 Q. Oh, I'm sorry. My question was, do you know  
7 whether or not in the summer of 2002 there was any  
8 complaints in the Waverly area by anyone?  
9 A. I couldn't tell you. I know when I was in that  
10 area in October when this all took place, that the  
11 residents were concerned that there had been quite a few  
12 breaks within a short period of time, but I don't know  
13 what that time frame was. I was acting as an  
14 intermediate operations manager at that time, and June  
15 July, August was before my time frame, so I couldn't --  
16 Q. You weren't even involved in that?  
17 A. I couldn't tell you.  
18 Q. All right. Do you know who would have been the  
19 person then?  
20 A. Well, the person I replaced was Gene Rauth.  
21 Q. How do you spell that?  
22 A. R-A-U-G -- R-A-U-T-H. He's no longer with us.  
23 Q. Sorry to hear that.

Page 12

1 A. No, he moved on.  
Q. Oh, I thought you said he was permanently no  
2 longer with us.  
All right. Now, you said you had some  
3 complaints from the residents in September or October.  
4 A. At that time I was dealing -- when I was in  
5 that at that site watching the cleanup and making sure  
6 that it was all being done properly, the president of the  
7 homeowners association contacted me, because he lived in  
8 the same complex -- what's your --  
9 Q. My client.  
10 A. Your client, yeah.  
11 Q. Okay.  
12 A. And I can't remember his name. I'd have to see  
13 if I could find some records or notes that I took, but  
14 he's no longer in that area either, but there was  
15 concerns about some of the breaks in the last several  
16 months, cleaning up, restorations, and so forth.  
17 Q. Okay. What were his concerns? What did he say  
18 to you, if you have a memory of that?  
19 A. The volume of breaks that were taking place in  
20 there, and through research we were trying to find out  
21 why the breaks were happening. It was through poor  
22 construction, poor inspections back in the '80s when the  
23 complex was built.

<p style="text-align: right;">Page 13</p> <p>1 Q. And that would be the cause of it? A. That was clearly speculation on our service 2 workers' part. They dig it up and see how the work is done, so that's all it is. 3 Q. Okay. Had people complained about any damage 4 in their units; do you know? 5 A. No, sir, not that I'm aware of. 6 Q. And you said you thought you might have some 7 notes. 8 A. I'd have to see if I had any notes where his 9 name -- the gentleman's name. 10 Q. If you do come across those, I would also 11 respectfully ask if you can send those also. 12 A. Sure. 13 Q. And so what were the county workers doing there 14 in September or October at the -- 15 A. At that date in October, early October, we were 16 on the other side of the complex repairing a major water 17 main break. 18 Q. Okay. And how did that happen; do you know? 19 A. The line just broke. 20 Q. Okay. And when you say "repair," what do you 21 do? 22 A. They dig it up and have to cut the broken part 23 out and replace the piece of pipe.</p>	<p style="text-align: right;">Page 15</p> <p>1 A. I know. Q. All right. And what is his role? What does he 2 do? A. He oversees all the water main repairs. 3 Q. Okay. And he's under you? 4 A. Yes, sir. 5 Q. And does he kind of have his own autonomy out 6 at the location to make decisions? 7 A. Yes. 8 Q. And you say there's some notice that you send 9 around? 10 A. Well, if we have to shut the main off, anything 11 less than 20 PSI in the water main, we have to notify 12 everybody to boil their water for 48 hours to make sure 13 there is no -- for us to do some testing to make sure 14 that we don't have any dirt or bacteria in the lines. So 15 we send boil-water notices out to people. 16 Q. Do you know whether or not that's ever happened 17 in the year 2002 over at the Waverly apartments? 18 A. I'm sure it has. The mains were big enough 19 that we've had to shut them down completely. 20 Q. Okay. Once again on the record I'm going to 21 ask you if you have any documents reflecting that, that 22 you send them to me and send them on to counsel as well. 23 A. You'll have to remind me of all of this.</p>
<p style="text-align: right;">Page 14</p> <p>1 Q. Okay. And you said "at that time." You weren't there in the summertime, in June, July, August. 2 A. No. Q. Do you have any knowledge as to whether or not 3 the county water officials were working anywhere in that 4 area during that time frame? 5 A. I couldn't -- I have no clue. During what time 6 frame? The June, July? 7 Q. June, July, and August. 8 A. I have no clue. 9 Q. Do you have a particular person, a supervisor 10 or someone, that handles that particular region? 11 A. Yes, sir. 12 Q. Who is that? 13 A. Phil Hawkins, and I couldn't begin to spell 14 that. 15 Q. And what's his title and what's his 16 responsibilities? 17 A. He's the supervisor of maintenance. He would 18 have been dispatching the crews and overseeing the crews 19 doing repairs in that complex. 20 Q. And he keeps records? 21 A. I couldn't tell you how extensive, but nowadays 22 they're starting to. 23 Q. Okay. Unfortunately that's the way it goes.</p>	<p style="text-align: right;">Page 16</p> <p>1 Q. Yeah. I'll send a letter to you and a copy to defense counsel indicating what I'm seeking. 2 A. Sure. Q. Okay. And then what does that form tell you? 3 A. Just requesting them to boil water for 48 hours 4 or until further notice. If a sample fails, we will have 5 them boil water a little bit longer. 6 Q. Do you have an individual who works for the 7 county, a black male whose name is James? 8 A. James Lang. 9 Q. Lang. 10 A. He works under Beth Jordan. 11 Q. The mysterious last name we've been looking 12 for. Okay. Nothing badly reflecting on him. 13 All right. Now, and Beth is the risk manager? 14 A. And he works under Beth. 15 Q. Okay. And part of his job is to go out and 16 deal with claims or complaints by customers? 17 A. Yes. He was the first person I notified. 18 Q. Okay. And did you talk to Mr. Lang about 19 this claim? 20 A. No, because he got to the site, and for some 21 reason, he said he'll get with Beth, and then he left, 22 and Beth Jordan showed up. 23 Q. Okay.</p>

1 A. I don't know if he had pressing issues  
somewhere else within the county, but he left and Beth  
2 showed up.

Q. Do you know whether or not James Lang ever  
3 spoke with Mrs. Sheridan or any other individual?

4 A. I'm sure he had to have. I remember waiting  
5 out in the parking lot, and he was inside, and I'm sure  
6 he walked in there and talked to her. I'm sure he did.

7 Q. Okay. But you're not sure who was in there and  
8 what happened?

9 A. No, sir. I wasn't in the room at the time.

10 Q. You were actually out at the site with  
11 Mr. Lang, but you didn't go into the apartment?

12 A. When he was inside, I wasn't inside with him.

13 Q. Okay. Do you have an idea when that was  
14 timewise? September? October? November?

15 A. It was October and --

2 16 Q. And does the county often pay for repairs or  
17 anything like that if something happens?

18 A. That I'm not aware of. That's out of my  
19 department. All we did was notify risk. That would be  
20 Ms. Jordan.

21 Q. And the only time you would notify risk would  
22 be if someone has complaints that they're claiming the  
23 county caused damage or something?

1 A. Yes.

Q. And then their department handles that. You're  
2 out of the picture.

A. Yes.

3 Q. Does Mr. Lang still work for the county?

4 A. Yes.

5 Q. And would part of his job, if you know, entail  
6 that he has to go out and dig up records from your  
7 department, so to speak, about a claim?

8 A. I don't know. Beth would know more about  
9 what -- that part of it. I really don't know what he  
10 does. I know we call them when we have accidents or  
11 claims like this. I don't know what he does after that.

12 Q. Okay. And do you know whether or not James  
13 Lang or Beth Jordan maintains files of all complaints  
14 that people make?

15 A. I don't know that, either.

16 Q. Okay. All right. And when you were with  
17 Mr. Lang in October at the complex, did Mr. Lang come  
18 back out and speak with you about the complaints?

19 A. He did. I was in the parking lot, but I  
20 really -- all I know, I know he mentioned he was going to  
21 call Beth and for me to wait for Beth, and that's all I  
22 remember of the conversation.

23 Q. Okay. Did he relay to you any information

1 about the people he spoke to inside the complex?

A. No, sir.

2 Q. Okay. Have you talked to Mr. Lang about this  
deposition?

3 A. No, sir.

4 Q. And you've talked to Beth about it.

5 A. Yes.

6 Q. What have you guys talked about?

7 A. I just asked her what to do, and she said just  
8 go tell the truth, so --

9 Q. Is this the first time you've ever had a  
10 deposition?

11 A. Yes.

12 Q. Have you testified in any court proceedings?

13 A. No, sir.

14 Q. Okay. When you were working out at -- this is  
15 a generic question about Waverly -- a site, did you ever  
16 advise the homeowners to turn off their individual  
17 valves?

18 A. No, sir.

19 Q. Okay. So it's possible that somebody else  
20 could do it on their own volition.

21 A. I'm sure it's possible, yes.

22 Q. Okay. Do you need to advise the homeowners --  
23 and this is generally speaking; not about this particular

1 case -- do you ever go to the home and work in a close  
proximity and tell them to turn off their water main?

2 A. No, sir.

Q. When you are working, you said something to me  
3 earlier about air in the system.

4 A. Sometimes after you do a repair, there could be  
5 air in the system, and you have to after that -- after  
6 that, you have to let your tap run a little bit. It  
7 comes out a little milky color until all the airs goes  
8 out.

9 Q. Okay. And you keep records about the  
10 consumption of water?

11 A. Yes, and for billing purposes.

12 Q. And how does that work in terms of being able  
13 to determine the level of consumption?

14 A. The meter reader reads it on a monthly basis,  
15 and it's recorded and sent out in a bill form showing how  
16 many thousands of gallons they use.

17 Q. Okay. And so those records would reflect on  
18 average what someone might have used over a year time  
19 frame?

20 A. It would show --

21 Q. A certain use in January, a certain use in  
22 July?

23 A. Yes, sir.

Page 21

1 Q. And does the county read the meters on a  
monthly basis?

2 A. Yes, sir.

Q. Okay. And then the county maintains those  
3 records?

4 A. Yes, sir.

5 Q. Your department maintains those records?

6 A. Our billing department has them, yes, sir.

7 Q. And how accurate are those records in terms of  
8 the readings by the meter reader?

9 A. Hopefully very accurate.

10 Q. What I mean is, I mean, discounting the fact  
11 that someone could probably willfully try to alter the  
12 meter.

13 A. I think they read it to the thousands of  
14 gallons. It's been years since I've dealt with meters,  
15 but I think it reads -- any usage, a thousand gallons, it  
16 keeps a reading.

17 Q. Okay. Do you deal a lot with snowbirds, people  
18 that come down here, in units down here?

19 A. Yes, sir.

20 Q. And is it typical for a snow bird to turn off  
21 their valve?

22 MR. ROSS: Do you know?

23 A. That I don't know. We get calls to turn them

Page 22

1 off when they're leaving to go back up North, and then we  
get calls to turn them back on in some cases a couple  
2 weeks before they get home.

BY MR. Wallace:

3 Q. Okay. So since you work around water, okay,  
4 when you turn it off to someone, hypothetically, can they  
5 get water in the unit?

6 A. We lock it.

7 Q. But the question is, can they get water into  
8 the unit?

9 A. No, sir.

10 Q. So in order to get water into the unit,  
11 somebody has to turn it on?

12 A. From the utilities -- if they call and ask the  
13 utilities to shut it off, we shut it off and lock it.  
14 And from that point, they can't get water until we're  
15 called again to unlock the meter.

16 Q. Outside of a lock, the only way to get it back  
17 on again is it turn it on manually to turn it on?

18 A. Yes.

3 19 Q. Other than the discussion you had with someone  
20 from the association, have you ever after that discussion  
21 spoke with him again or any other association member?

22 A. I never heard nothing more about it until the  
23 subpoena showed up this week.

Page 23

1 Q. Okay. I haven't been out to the complex. What  
is the size of it? Is it a big complex, Waverly complex?

2 A. The whole complex?

Q. Yeah.

3 A. It's probably a 10-acre complex. There's quite  
4 a few units.

5 Q. Okay. And I'm assuming there's people there  
6 year-round as well.

7 A. Yes, sir.

8 Q. And they have an active association.

9 A. Yes, sir.

10 Q. Have you ever gone out on behalf of the county  
11 and speak to any of the homeowners or the association in  
12 general meetings?

13 A. No, sir. I've called and talked to them after  
14 the water main breaks to ensure -- make sure they were  
15 pleased with the repairs and restoration, but that was in  
16 October also.

17 Q. That would have been -- is that after you went  
18 out with Mr. Lang?

19 A. Yes, sir.

20 Q. Okay.

21 A. This was for a water main break for another  
22 part of the complex away from this area.

23 Q. Okay. And do you know if the county has gone

Page 24

1 in and done any repair work or paid someone to do repair  
work for anyone that's claimed damage in those units in  
2 Waverly, any unit?

A. I can't answer that.

3 Q. Unfortunately, I may have to go to someone else  
4 to ask some more questions. I appreciate your time, and  
5 I will take a look at those other documents that you  
6 have, but I have to --

7 A. If you can remind me to -- if you send me the  
8 list of the three items that you're looking for, I would  
9 appreciate it.

10 CROSS-EXAMINATION

11 BY MR. ROSS:

12 Q. Mr. Southard, how long have you been involved  
13 in working with the Indian River County Utilities?

14 A. Twenty years today.

15 Q. Twenty years, okay. Now, in a residence or  
16 even in a condominium such as this one or townhouse, is  
17 there more than one valve between where the water main  
18 breaks off into the individual units?

19 A. I'm sorry. Say that one more time.

20 Q. You have the water main.

21 A. Yes, sir.

22 Q. And then you have feeders into each individual  
23 unit; correct?

Page 25

1 A. Yes, sir.  
Q. And there is a valve by your water meter?  
2 A. There is a valve in front of the water meter, a corporation stop, yes.  
3 Q. Okay. Is there another valve that is closer to  
4 the unit that's after the meter?  
5 A. In most cases each home has its own house  
6 valve.  
4 7 Q. Okay. Now, would the county, at any time when  
8 it's working on any of these mains, service the meter or  
9 the valve that would be the one closest to the house?  
10 A. No, sir.  
11 Q. All right. And when working on these water  
12 mains, would the county turn off the valves going into  
13 the individual unit owner's residence?  
14 A. No, sir.  
15 Q. Okay. There would be no reason or need to?  
16 A. When we turn the main off, it turns them off.  
17 Q. Okay. And it's easier just to do the one than  
18 doing hundreds or thousands, whatever is on the break.  
19 A. Yes, sir.  
20 Q. Now, did anybody, to your knowledge, ever  
21 request or report that the valve, either at the meter --  
22 or at the meter going into the Sheridan residence, was  
23 broken at any time?

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1 A. Not that I'm aware of.  
Q. Okay. And by the way, would you all be  
2 involved in repairs of a valve that would be closer to  
the house, or is that the homeowner's?  
3 A. Anything after the meter is the homeowner's.  
4 Q. Homeowner's. Okay. Now, you did talk to  
5 Mrs. Sheridan; did you not?  
6 A. Yes. She came out and approached us on this.  
5 7 Q. All right. And what did she tell you?  
8 A. She had some water damage in her house that she  
9 would like for us to see.  
10 Q. Okay. Did she indicate to you that somebody  
11 had turned her water meter on while she was away?  
12 A. I can't remember that far back.  
13 Q. Did you make a memorandum of your meeting with  
14 her?  
15 A. I sent one to Beth Jordan. Is this -- can I  
16 look at that?  
6 17 Q. Sure, to refresh your recollection.  
18 A. Okay. According to this, she told me she had  
19 turned the water meter off, the water off herself, and  
20 that was apparently the conversation.  
21 Q. Did she ever tell you which water meter she had  
22 turned off, or which valve?  
23 A. No.

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1 Q. And you went and then did some further  
investigation; did you not?  
2 A. I just had the -- the water, yeah, because we  
wanted to see what water was used and attach that to the  
3 work order at Waverly complex, yes.  
4 Q. Okay. And you asked her further that, you  
5 know, who had told her -- you asked her if she had  
6 notified the utility department that she was leaving and  
7 wanted the water turned off; correct?  
8 A. Uh-huh.  
9 Q. And what did she tell you, sir?  
10 A. It says here she had turned it off herself, and  
11 someone employed by the utility department had showed her  
12 how to turn it off five years ago.  
13 Q. Okay. And does your -- does the utility  
14 department encourage people to turn off their water meter  
15 at the water meter valve?  
16 A. No, sir. If an employee did that, it was wrong  
17 on their part, and I can't -- I'm just -- I just stated  
18 what she had told us, but, no, we don't encourage that.  
19 We don't allow that.  
20 Q. Okay. Now, you said, "Attached are work orders  
21 of water breaks within the Waverly Place Complex." Did  
22 you limit yourself in terms of period of time when you  
23 were trying to put that together?

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1 A. Honestly, I can't remember. I can look and see  
what we got there. I know there was concerns that there  
2 was a lot of breaks at that point in time.  
Q. These are what were attached.  
3 A. Okay. This is in October. This is in  
4 September. This is September and October.  
5 Q. September 19?  
6 A. Uh-huh. It says, "Break flooding parking  
7 area," and "Possible water break, water bubbling up from  
8 ground." That's how we get the calls, and these are the  
9 addresses of whoever called it in.  
10 Q. Okay. So one would be October 7.  
11 A. Uh-huh, and that was the one that I was most  
12 likely on doing the repairs.  
13 Q. Okay. And the other one was September 19?  
14 A. Uh-huh.  
15 Q. Correct?  
16 A. Yeah.  
17 Q. And was this in the same area where  
18 Mrs. Sheridan's unit was located?  
19 A. Yes.  
20 Q. And this --  
21 A. Her address is -- it's on this memo.  
22 MR. Wallace: 475, Apartment 7C.  
23 A. One of these shows 475 East Waverly Place, 7A5.

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1 I think that was -- this is Ira Lerman. He was the  
2 president of the homeowners association. He's in the  
3 same complex as her. And this other gentleman here is  
4 575 North Waverly Place.

5 BY MR. ROSS:

6 Q. All right. And this was of something in the  
7 parking lot; is that correct?

8 A. Right.

9 Q. All right.

10 MR. ROSS: We'll Phil it as the next  
11 exhibit.

12 MR. Wallace: Do you want that Philed, too?

13 MR. ROSS: Yeah, sure.  
(Exhibits 1 and 2 were Philed for  
14 identification.)

15 BY MR. ROSS:

16 Q. And did you also pull up her particular file in  
17 terms of her water usage?

18 A. Right.

19 Q. All right. And I'm looking at this, and would  
20 this be a copy of that document?

21 A. This is showing her address. This is where we  
22 got the water consumption usage. This shows that between  
23 6/13 and 7/15, there was 1,000 gallons of usage.

Q. Okay. And was it your understanding from

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1 talking to her that she wasn't there or anybody was in  
2 the apartment or townhouse at that time?

3 A. I don't believe I discussed that with her.  
4 This is all after I went back in the office that  
5 afternoon. I never had any more discussions with her  
6 afterwards.

7 Q. Okay. I notice that you have August 14 and  
8 September 13 there is no water usage; is that correct?

9 A. According to the reading here, yes.

10 Q. All right. If the county had been involved in  
11 turning the water off, would they have maintained some  
12 kind of record?

13 A. We would have had a work order such as this to  
14 go out and turn the water off.

15 Q. Okay. And there are no work orders?

16 A. That I'm aware of, no.

17 Q. All right. So, for example, if a customer  
18 called up and wanted his water turned off, there would be  
19 a lock, and there would be a work order to reflect that;  
20 correct?

21 A. Yes, sir.

22 Q. And the same thing with turning it back on; is  
23 that correct?

24 A. Yes, sir.

25 Q. So if somebody after July 15, 2002, called up

Page 31

1 and said, "My water is on, and I want my water turned  
2 off," there would be a work order reflecting that; is  
3 that correct?

4 A. Yes, sir.

5 Q. So if somebody had turned it off, it would be  
6 somebody, to the best of your knowledge, it would be  
7 independent of Indian River County Utilities; correct?

8 A. Yes, sir.

9 Q. All right. Now, I know on the water usage  
10 thing it says September 13, 2002. That would be water  
11 usage up to that date; is that correct?

12 A. From 8/14, August 14 to September 13, yes.

13 Q. Okay. And in terms of the one invoice or one  
14 work order dated September 19, you didn't have any other  
15 work orders -- or, I mean, records of water consumption  
16 after that time, did you?

17 A. Water consumption after that time?

18 Q. After September 13, '02?

19 A. No, no. This is just her --

20 Q. Up to --

21 A. -- bill. I don't know what happened after  
22 September 13, because that's when this was run probably  
23 on --

24 Q. It says October 7.

25 A. -- or for some reason they didn't carry it on.

Page 32

1 Q. There is a report on September 19.  
2 A. This is just a water break. This is water  
3 consumption just for her meter, and this is just a report  
4 of a water break from this address. Ira Lerman is the  
5 gentleman that called the water break in. So these are  
6 two different things.

7 Q. I understand that. But what I'm trying to get  
8 a feel for is this: In the September 19 repair, there  
9 would be no reason for the county to turn on the water  
10 main -- or turn off the water main valve and turn it back  
11 on; correct?

12 A. As far as I know after this September 19, that  
13 was the last time the water main was turned on and off  
14 for repair within that area. That's what this is looking  
15 up -- but, I'm sorry. Now, there is a September 23 here.

16 Q. Okay.

17 A. There is another work order I noticed  
18 underneath here for -- it says, "Has leaks at 410 East  
19 Waverly Place."

20 Q. So there's actually three.

21 A. Apparently this was a service line. It wasn't  
22 a main; it was just a service line going to a house, from  
23 the main to a house at 410, which is east of her address.

24 Q. Okay. So the one that's dated September 23  
25 would have nothing do with Ms. Sheridan --

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1 A. Nope.  
Q. -- is that correct? All right. And the one on  
2 September 19, 2002, there would be no reason for you or  
for the county to turn on or turn off her valve at the  
3 meter box; is that correct?  
4 A. No, sir. We would turn the main off.  
5 Q. Okay. All right. And let me ask you this:  
6 Going back to the monthly water consumption charts,  
7 there's some other numbers here. 1.00 means a thousand;  
8 is that correct?  
9 A. Yes. That's 1,000 gallons.  
10 Q. And 3.00 means?  
11 A. 3,000 gallons.  
12 Q. Okay. What would be the average consumption on  
13 a monthly basis for a single person living by themselves  
14 in a condominium?  
15 A. Unfortunately I don't know that answer. No, I  
16 couldn't answer that.  
17 Q. And there's also some other numbers, 11,000 and  
18 8,000. Does that seem like a lot of water?  
19 A. I couldn't answer that. I don't have a meter  
20 on my home. I don't -- I couldn't tell you.  
21 Q. You don't worry about that.  
22 A. I have a wife and two daughters. I'd hate to  
23 see what a meter would cost.

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1 Q. You've got a free meter, right, as a job  
benefit?  
2 A. A well. It's a well.  
Q. It's a well?  
3 A. Yeah.  
4 Q. Okay. All right. Did Mrs. Sheridan give you  
5 any information about when she felt that the water leak  
6 had started within her home?  
7 A. No, sir.  
8 Q. Okay. And who is Phil Hawkins?  
9 A. He's the supervisor.  
10 Q. That you were talking about earlier?  
11 A. Yes.  
12 Q. And who is Bruce Endres?  
13 A. He's the supervisor over sewer. He was just  
14 over there talking with me at the time.  
15 Q. Okay. All right.  
16 MR. ROSS: We've Philed those. All right.  
17 And her record, we'll attach that.  
18 (Exhibit 3 was Philed for identification.)  
19 BY MR. ROSS:  
20 Q. Have you ever heard of a practice where people  
21 will leave a faucet open in their home when they go away  
22 in case the water is turned off and somebody turns it  
23 back on?

Page 35

1 A. No, sir.  
Q. Did Mrs. Sheridan give you any information that  
2 when she had gone back up North that she had left a  
faucet on inside her home?  
3 A. No, sir.  
4 MR. ROSS: That's all the questions I have.  
5 MR. Wallace: Just briefly on these documents  
6 because I haven't seen them yet.  
7 REDIRECT EXAMINATION  
8 BY MR. Wallace:  
9 Q. You just testified to counsel's questions as to  
10 you're not really knowledgeable on determining the use,  
11 what the average use would be of gallons --  
12 A. No, sir, I have no clue.  
13 Q. Okay. In your discussions with my client, she  
14 indicated to you that she had turned meter off; she had  
15 turned the water off?  
16 A. (Nods head.)  
17 Q. That's a yes?  
18 A. Yes, sir, I believe so.  
19 Q. She also indicated, and this is by way of a  
20 memo that was prepared by you on October 8, 2002, that  
21 someone employed by the utility department had showed her  
22 how to turn the meter off five years ago.  
23 A. (Nods head.)

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1 Q. I'm assuming that is not a practice that the  
county would encourage.  
2 A. We don't encourage it, and we don't allow it.  
If that did take place, I'm not sure.  
3 Q. And not all of these meters have a lock.  
4 A. They all have ears that can be locked if we  
5 turn it off, and if it doesn't, we replace the meter.  
6 Q. Okay. But there may be some that don't have a  
7 lock.  
8 A. There is none.  
9 Q. In other words, I understand what you're  
10 saying, that there may be a lock on it. What if somebody  
11 turns it off and doesn't lock it?  
12 A. If we as utilities go out there and turn it  
13 off, we will put a lock on it, but if the homeowner does  
14 something different, I can't account for that.  
15 MR. ROSS: You're asking if there's a  
16 capacity -- some meters do not have the capacity  
17 to be locked; is that what --  
18 MR. Wallace: No, I'm not asking that, and  
19 I'm not referring to whether or not the county  
20 would assist someone in doing that or if someone  
21 from up North requests you to do that, and then  
22 you do it, and there's a policy to lock it. I  
23 understand that.

Page 37

1 BY MR. Wallace:  
Q. What I'm asking is, on their own volition,  
2 without the assistance of the county, there may be people  
that turn it off and don't lock it.  
3 A. It's possible, yes.  
4 Q. So Mrs. Sheridan represented to you that she  
5 had turned it off before going up North in your  
6 conversation with her?  
7 A. I'm not sure if I stated that she turned it  
8 off.  
9 Q. I'm just reading from your memo: "Ms. Sheridan  
10 said that someone had turned her water meter on while she  
11 was away," and there had been damage, flooding in her  
12 home. And then it goes on, later on in the memo to say:  
13 "With a little more investigation and questioning, I  
14 asked her if she had notified the utility that she was  
15 leaving and wanted her water meter off. Her reply was  
16 that she had turned it off herself." So she --  
17 A. She said that she turned it off herself.  
18 Q. Okay. But again, that goes back to what I  
19 asked you some time ago. Water doesn't get in there  
20 unless it comes on.  
21 A. Yes. Somebody had to turn the valve on.  
22 Q. I mean, fundamentally this doesn't happen.  
23 A. Right. Somebody has to turn the valve back on.

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1 Q. All right. And Mr. Endres -- I'm sorry --  
A. Bruce Endres was just over there with me. I  
2 had a conversation with him about a sewer problem. It  
wasn't related to any of it.  
3 Q. I have the wrong guy.  
4 A. It's Phil Hawkins.  
5 Q. Right.  
6 A. He was in there doing the repairs on the site  
7 and had done repairs on the site in the past.  
8 Q. Okay. And he was doing those repairs on or  
9 about October 2002?  
10 A. Yes, sir.  
11 Q. Okay. And in the summertime, he would have  
12 been involved with any repair work?  
13 A. Unless he was on vacation, but, yes, he was  
14 most likely involved in it.  
15 Q. Okay. And he would be knowledgeable as to  
16 whether or not there was, in fact, work being done at the  
17 Waverly complex on or about June or July --  
18 A. Yes, sir.  
19 Q. And there's no question that the water  
20 consumption indicated in that summer time frame in July  
21 that there was a thousand gallons -- actually July 15,  
22 according to your memo of October 8.  
23 A. Yes. Sometime between June 13 and July 15

Page 39

1 there was a thousand gallons consumed, and then the two  
readings after that, there was zero consumption.  
2 Q. And there is no way that a thousand gallons  
could have been consumed without someone turning it back  
3 on.  
4 A. Correct.  
5 Q. Mr. Hawkins --  
6 A. Hawkins.  
7 Q. -- he works for the county still?  
8 A. Yes, sir.  
9 Q. Okay. In the water department?  
10 A. Yes, sir.  
11 Q. Okay. Don't tell him I butchered his name that  
12 bad. The meter reader has his name on this, and they  
13 check --  
14 A. I couldn't --  
15 Q. -- when they check particular meters?  
16 A. I couldn't answer that either. I'm not with  
17 the meter reading division. I'm not sure if they label  
18 who read the meter at that time or not.  
19 Q. Do you know a Derek Ross or Eddrick Willis?  
20 A. No, sir.  
21 Q. Jerry Johnson?  
22 A. I don't know any of the meter readers. That's  
23 a completely different division.

Page 40

1 Q. Do you know who took these two photographs? Do  
you have any idea?  
2 A. If any photographs were taken, it would  
probably have been our risk management.  
3 Q. James Lang?  
4 A. Or Beth Jordan.  
5 Q. Was Mrs. Sheridan alleging that the county was  
6 responsible for the water coming into her property?  
7 A. She didn't indicate nothing to me about that.  
8 It was just at the time when I went in there, it was  
9 just -- there was a problem, and we notified risk  
10 management right away.  
11 Q. And again, you weren't present for any  
12 discussions that Mrs. Sheridan may have had with  
13 Mr. Lang?  
14 A. No, sir.  
15 MR. Wallace: Okay. Thank you very much.  
16 MR. ROSS: Let me just follow up real quick.  
17 RE-CROSS-EXAMINATION  
18 BY MR. ROSS:  
19 Q. Would you have any way of knowing if she turned  
20 the valve off or not herself?  
21 A. No, sir.  
22 Q. Okay. I mean, if the valve was left on and all  
23 the faucets and all the places where water could intrude



Page 41

1 into the house were in a closed position, you would still  
get a zero reading on your water usage; correct?  
2 A. I'm sorry, could you say that one more time?  
Q. Let's just say she left for, you know, instead  
3 of leaving for a weekend, she left for a month, and she  
4 left her water mains or her water meter on and the valve  
5 into her house on, and she -- everything else was turned  
6 off like you would leave it to go away for the weekend or  
7 so. Would there be any water consumption during that  
8 period of time?  
9 A. If everything was off, no.  
10 Q. And that's -- and also, is there any way for  
11 you to tell over what period of time the 1,000 gallons of  
12 water was consumed during the month between June 13 and  
13 July 15?  
14 A. No, sir.  
15 Q. So you can't tell us whether it happened in one  
16 big burst or over a period of time, can you?  
17 A. No, sir.  
18 MR. ROSS: Thank you.  
19 FURTHER REDIRECT EXAMINATION  
20 BY MR. Wallace:  
21 Q. Just a quick question again on that memo. When  
22 you spoke with Mrs. Sheridan, you reduced to writing what  
23 she had told you.

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1 A. I'm sorry?  
Q. When you spoke with Mrs. Sheridan --  
2 A. Yes, sir.  
Q. Then you reduced to writing a memorandum about  
3 that meeting.  
4 A. That's what that is, yes, sir.  
5 Q. You don't have any reason to believe that  
6 Mrs. Sheridan was lying to you about turning it off?  
7 A. No, sir.  
8 MR. Wallace: Thanks.  
9 You have the right under the Rules to read  
10 and review this and make any changes that you  
11 want, or you have a right to waive it. It's up  
12 to you.  
13 THE WITNESS: I wouldn't mind taking a look  
14 at it.  
15 (Thereupon, the reading and signing of this  
16 deposition were not waived, and this deposition concluded  
17 at 1:51 p.m.)  
18  
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Page 43

1  
2 STATE OF FLORIDA )  
                                  ) SS  
3 COUNTY OF BREVARD )  
4  
          I, DENISE P. WALKER, Registered Professional  
5 Reporter, the undersigned authority, do hereby certify  
that Wayne Varvaro appeared before me and was  
6 duly sworn.  
7  
8 WITNESS MY HAND and official seal this  
9 2nd day of September, 2004, at the City of Melbourne,  
10 County of Brevard, State of Florida.  
11  
12  
13  
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15 \_\_\_\_\_  
16 DENISE P. WALKER, RPR  
17 Notary Public, State of Florida  
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Page 44

1 CERTIFICATE OF REPORTER  
2 STATE OF FLORIDA )  
                                  ) SS  
3 COUNTY OF BREVARD )  
4 I, DENISE P. WALKER, Registered Professional  
Reporter, do hereby certify that I was authorized to  
5 and did stenographically report the deposition of  
Wayne Varvaro; that a review of the transcript  
6 was requested; and that the foregoing transcript,  
7 pages 1 through 42, is a true record of my stenographic  
8 notes.  
9  
10 I FURTHER CERTIFY that I am not a relative,  
11 employee, attorney, or counsel of any of the parties,  
12 nor am I a relative or employee of any of the parties'  
13 attorney or counsel connected with the action, nor am  
14 I financially interested in the event of this cause.  
15  
16 DATED this 2nd day of September, 2004, at the  
17 City of Melbourne, County of Brevard, State of  
18 Florida.  
19  
20  
21 \_\_\_\_\_  
22 DENISE P. WALKER, RPR  
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CERTIFICATE

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STATE OF FLORIDA  
COUNTY OF BREVARD

I, Wayne Varvaro, hereby certify that I  
have read the foregoing transcript of my deposition and  
that the statements contained therein, together with any  
additions or corrections made on the attached Errata  
Sheet, are true and correct.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_

The foregoing certificate was subscribed  
to before me this \_\_\_\_ day of \_\_\_\_\_, 2003, by  
the witness who has produced a \_\_\_\_\_  
as identification and who did not take an additional  
oath.

\_\_\_\_\_

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ERRATA SHEET  
IN RE: Sheridan V. NATIONWIDE

PAGE	LINE	CORRECTION
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## Annotation Notes

### 1. Pg: 4 Ln: 11 - 19

**Note:** It appears that we didn't cover Varvaro's work experience in detail in this testimony. Let's do a Total Litigator search on Public Records to determine where he might have been before he moved here and took the position with Indian River Utilities.

**Linked Issues:** Background

### 2. Pg: 17 Ln: 16 - Pg: 18 Ln: 1

**Note:** This appears to be an effort to pass the buck. Sheridan clearly communicated the problem to the county, according to her testimony. We can really put pressure on this witness if this matter goes to trial on this issue. He had responsibility under his job description, yet is attempting to say that it was Jordan who really was responsible for the county's efforts. Let's mark this one as Critical for follow-up.

**Linked Issues:** Critical Follow-Up

### 3. Pg: 22 Ln: 19 - 23

**Note:** Why was there no follow-up with the member of the association who called? This is a huge apartment complex and many important citizens live there, including a number of staff members from the Mayor's office. There's not a lot of effort being shown on Varvaro's part to be of assistance in this matter. Do we need to question his supervisor? Let's put Frank Investigator on the task. There's a possibility that the city has some liability in this situation, too, and we can go after the utility department for their lackadaisical response.

**Linked Issues:** FailureToMitigate, LostWages, MentalAnguish

### 4. Pg: 25 Ln: 7 - 14

**Note:** Nulla eget ipsum. In nonummy elit nec sapien. Aenean congue est. Ut fermentum libero non dui. Pellentesque habitant morbi tristique senectus et netus et malesuada fames ac turpis egestas. Vivamus pharetra posuere metus. Praesent at nisi at leo sodales condimentum. Quisque eros neque, ultrices nec, congue pellentesque, volutpat ut, justo. Sed pellentesque placerat neque.

**Linked Issues:** WrongfulTermination

### 5. Pg: 26 Ln: 7 - 12

**Note:** This selective memory lapse is very curious. Varvaro seems to have perfect recollection of events prior to this occasion. Check Sheridan's testimony to see if there are contradictions. The water department's records might be telling, also. Do we have copies of internal records from the utility?

**Linked Issues:** Damages, Possible Impeachment

### 6. Pg: 26 Ln: 17 - 22

**Note:** Aenean convallis quam in tortor. Donec bibendum pulvinar quam. Integer bibendum, orci id sagittis volutpat, nibh nunc mattis ipsum, ut adipiscing mi orci sed ligula. Cras auctor pulvinar ipsum. Aenean auctor odio id justo. Aenean venenatis diam eleifend dui.

**Linked Issues:** Retaliation

**Phillip Hawkins v.  
Anstar Biotech Industries**

***Interview Notes***

***Condensed Transcript with Endnotes***

Taken from "Chronology Best Practices"

<p style="text-align: right;">Page 1</p> <p>1 OK ... We cheated! This isn't really a set of interview notes.</p> <p>2 It's a copy of our article on chronology best practices that</p> <p>3 brought into TextMap using the Import from Clipboard option on</p> <p>4 TextMap's Transcript menu.</p> <p>5 You can bring any text from your clipboard into TextMap using</p> <p>6 this feature. Use it to get in complaints, answers, research</p> <p>7 copies from the Web, and even interview note you typed free form</p> <p>8 using a word-processor or our NoteMap outlining product.</p> <p>9 CHRONOLOGY BEST PRACTICES</p> <p>10 Chronologies help win cases. From the starting gate to the</p> <p>11 finish line, assembling case facts in an accessible format can</p> <p>12 put you on track to courtroom victory.</p> <p>13 The advantages are numerous. Chronologies are thinking</p> <p>14 tools. The very act of getting facts down on paper or in your</p> <p>15 computer clarifies thinking and makes the story of the case</p> <p>16 clear. Chronologies help ensure complete discovery. Which facts</p> <p>17 are disputed? Which still need sources that will be acceptable in</p> <p>18 court? And a chronology is a communication aid. A good chronology</p> <p>19 makes it easy for everyone on the trial team to share case</p> <p>20 knowledge.</p> <p>21 Chronologies can also be used in a myriad of concrete ways.</p> <p>22 Use them when preparing for depositions, when developing motions</p> <p>23 for summary judgment and pretrial motions, in settlement</p> <p>24 conferences, and during trial.</p> <p>25 Despite such benefits, during 15 years of jury research</p>	<p style="text-align: right;">Page 3</p> <p>1 three columns: date, fact, and (sometimes) source. These layouts</p> <p>2 are a start, but they fail to capture critical information about</p> <p>3 the facts, information that can make the chronology far more</p> <p>4 valuable.</p> <p>5 What's the solution? In the course of conducting jury</p> <p>6 research work on more than 300 civil and criminal cases, I've had</p> <p>7 the chance to work with and compare hundreds of case</p> <p>8 chronologies. Based on this experience, I have developed the</p> <p>9 following set of chronology best practices.</p> <p>10 <b>DON'T WAIT</b></p> <p>11 <b>Start a chronology as soon as you hear from a client. From</b></p> <p>12 <b>your first conversation with a prospective client, you're gaining</b></p> <p>13 <b>critical knowledge about the problem that led the individual or</b></p> <p>14 <b>corporation to seek counsel. You should begin to create the case</b></p> <p>15 <b>chronology immediately upon returning from your first client</b></p> <p>16 <b>meeting.</b></p> <p>17 No matter how early you are in the case, and no matter how</p> <p>18 "small" the case may seem, as soon as your client has given you</p> <p>19 an overview of the dispute, you have been told more facts than</p> <p>20 you can easily memorize and manipulate in your head. And why even</p> <p>21 try? Your mind should be reserved for thinking, not memorization.</p> <p>22 Memorization is a job for your software.</p> <p>23 If you start your chronology immediately, it can be used to</p> <p>24 good effect very early in the case. Take copies of the initial</p> <p>25 chronology to your second client meeting, and use them to clear</p>
<p style="text-align: right;">Page 2</p> <p>1 work, I've consulted on many cases where the effort to create a</p> <p>2 case chronology was abandoned during the discovery process. Why?</p> <p>3 In almost all these instances, work on the chronology ceased</p> <p>4 because the word-processing document containing it became an</p> <p>5 unwieldy epic. There was no way to isolate facts of particular</p> <p>6 interest or view them in meaningful relationships. When</p> <p>7 litigators needed reports showing just the facts relating to</p> <p>8 specific issues, for example, they were stymied because of the</p> <p>9 all or nothing nature of word-processing software.</p> <p>10 Many litigators throw up their hands and attempt to memorize</p> <p>11 the facts or to jot them on legal pads. But this strategy invites</p> <p>12 disaster. Even the simplest of cases contains more facts than an</p> <p>13 attorney can keep in mind or organize meaningfully on paper. It's</p> <p>14 unrealistic to expect anyone to track notes scattered across many</p> <p>15 legal pads, much less to memorize 100 critical facts from each of</p> <p>16 20 cases. When an opponent is using modern technology to organize</p> <p>17 and explore case information, the litigator with a paper system</p> <p>18 is operating under a dangerous handicap.</p> <p>19 Unfortunately, those litigators who do stick with the task</p> <p>20 of creating a chronology often end up with unsatisfactory</p> <p>21 results. Many times, they end up with a list of case documents,</p> <p>22 sorted by date. Well, a document index is certainly useful when</p> <p>23 you need to get a piece of paper pronto. But it's hardly a</p> <p>24 chronology of case facts. Still other trial teams focus on facts,</p> <p>25 not documents, but create chronologies that contain just two or</p>	<p style="text-align: right;">Page 4</p> <p>1 up any misconceptions. Do the facts listed accurately reflect</p> <p>2 your client's understanding of the case? Can your client supply</p> <p>3 any missing dates? Can your client indicate which potential</p> <p>4 witnesses and what documents might be sources for these facts?</p> <p>5 Use the chronology also to focus your client on potential sins of</p> <p>6 omission. Is your client aware of any particularly favorable or</p> <p>7 unfavorable facts that don't appear in the chronology?</p> <p>8 DB, NOT WP</p> <p>9 Use database software, not word-processing software to</p> <p>10 create your chronology.</p> <p>11 In contrast to word-processing software, database software</p> <p>12 makes it easy to create and maintain your chronology. If you</p> <p>13 employ a multi-user database, several trial team members can</p> <p>14 simultaneously enter, edit, and explore the facts. Database</p> <p>15 software automatically sorts your facts into proper date order.</p> <p>16 It can automatically provide the day of the week for each date</p> <p>17 you enter, and allows you to enter information using "pick</p> <p>18 lists," saving input time and eliminating the inevitable</p> <p>19 misspellings that occur with manual entry. And a database package</p> <p>20 can also automatically stamp each fact with the name of the</p> <p>21 individual entering it and the date and time when the fact was</p> <p>22 entered.</p> <p>23 <b>While the data-entry advantages of database software are</b></p> <p>24 <b>significant, its most important benefit is to make exploring your</b></p> <p>25 <b>chronology far easier. When you print your word-processing</b></p>

Page 5

1 chronology, your choices are essentially all or nothing. You  
2 print the entire chronology or you don't print it at all. Thus,  
3 as your word-processing chronology grows, it becomes increasingly  
4 unwieldy and diminishes in value.

5 In contrast, database software makes it easy to filter  
6 chronologies down to any subset of interest. Rather than printing  
7 a chronology that lists every case fact, print ones that contain  
8 just those facts that are particularly important, that bear on a  
9 particular case issue, that mention a particular witness, that  
10 are particularly good or bad, that come from a particular source  
11 document, or that others entered into the chronology while you  
12 were in trial on another matter.

13 LIST FACTS, NOT DOCUMENTS

14 A document index doesn't pass muster as a fact chronology.  
15 Many of the "chronologies" I've seen are really document  
16 indexes sorted by the date. While a document index is a great  
17 tool for managing documents, it is a poor substitute for a  
18 chronology of case facts.

19 Documents can be the subjects of facts, e.g., "The contract  
20 was signed on 5/10/99." And they can be sources of facts, e.g.,  
21 "Internal Memo #2 is the source of fact "Construction of Hyde  
22 Memorial Hospital began on 08/02/99." But documents are not facts  
23 in and of themselves. Therefore, a document index, a listing of  
24 documents, does not pass muster as a fact chronology.

25 A document index organizes knowledge by document rather than

Page 6

1 by fact. This approach ends up concealing facts rather than  
2 achieving the primary goal of a chronology -- making case facts  
3 explicit. Documents, especially the important ones, are  
4 frequently the source of multiple facts. If the document  
5 chronology lists the name of the document, its author,  
6 recipients, etc., the facts it contains are never made clear.

7 Including a summary of each document in the document index is not  
8 much of an improvement. Facts that may have occurred over a span  
9 of years are trapped in a single summary. It's up to you to read  
10 all the summaries and somehow pull the facts described in them  
11 into the proper chronological order.

12 Here's the solution: Read each document and cull the  
13 critical facts from it. Enter these facts as a series of discrete  
14 items in your chronology. For each fact sourced from a document,  
15 enter the document's name or starting Bates # in the chronology's  
16 Source(s) column. Consider entering a page and line reference  
17 also.

18 When you take this approach, the facts found in each  
19 document will be listed at the proper point in the overall story  
20 of the case, rather than being trapped within a document summary.  
21 And anytime you want to get a summary of the facts found in a  
22 particular document, you can quickly filter the chronology down  
23 to facts coming from that source.

24 DEFINE FACT BROADLY

25 Include prospective facts and disputed facts in your

Page 7

1 chronology.

2 Some chronologies exclude facts for which a court-acceptable  
3 source has yet to be developed. Others exclude facts that are  
4 disputed. Both tactics are a mistake.

5 If you don't enter a fact into your chronology because it's  
6 disputed or because you have yet to develop a court-acceptable  
7 source for it, what's the result? First, you're turning yourself  
8 from a thinker of immeasurable value into a \$100 disk drive. You  
9 end up having to memorize all of these prospective facts. Second,  
10 you're losing an important benefit of your chronology - helping  
11 focus your discovery efforts. Facts without court-acceptable  
12 sources are opportunities. Capture these potential facts in your  
13 chronology, and brainstorm about the witnesses and documents that  
14 might prove to be sources. List the probable sources in your  
15 chronology's Source(s) column. Then put your chronology to work.  
16 For example, when you prepare for a witness's deposition, filter  
17 the chronology down to those facts you were hoping to source from  
18 this individual, and develop a line of questioning that will  
19 elicit the facts in response.

20 Limiting the type of facts that are entered in a chronology  
21 is a vestige of using word-processing software to create chrons.  
22 With a word-processor, once a disputed fact or a fact without a  
23 source has been entered, there's no convenient way to get it out  
24 of your report when you want a pristine list of undisputed facts  
25 for use with motions for summary judgment and pre-trial motions.

Page 8

1 However, if you're following my advice to create your chronology  
2 using database software, limiting your report to just undisputed  
3 facts or just facts that have sources is simply a matter of  
4 filtering your chronology using these criteria.

5 Here's another type of fact you should be sure to get into  
6 your chron: facts for which dates are inappropriate (e.g., the  
7 statement "smoking causes cancer" is a fact - though a disputed  
8 one - for which a date value is inappropriate). The term  
9 "chronology" suggests one should include only those facts that  
10 have associated dates. Don't let semantics restrict your  
11 thinking. A good chronology is much more than a diary of events.  
12 It is really a knowledge base of facts. All critical facts,  
13 including those for which dates are not applicable, should be  
14 included. (When you list facts for which a date value is  
15 inappropriate, consider entering "Not Applicable" or "N/A" as the  
16 value in the Date column. Thus, when you sort the chronology, all  
17 facts for which a date is inappropriate will be grouped  
18 together.)

19 GET STUPID

20 Move everything you know about a fact and its implications  
21 from your head into the chronology.

22 When you enter a fact into your chronology, make sure you  
23 get stupid about it. In other words, empty your head of all  
24 knowledge regarding it. Your chronology should be a memory  
25 replacement, not a memory jogger. If you don't get the complete

<p style="text-align: right;">Page 9</p> <p>1 fact into the chronology, you fail to clear your head of the  2 minutiae so that you can focus on thinking. And you derail the  3 communication benefits chronologies offer. If a critical part of  4 the meaning of the fact is still hidden in your head, others on  5 the trial team won't know about it when they read the chronology.  6 Every time you enter a fact into your chronology, pause and  7 read it before you continue. Put yourself in the shoes of someone  8 who doesn't know the case - say a new member of the trial team  9 reading the chronology for the first time. Does what you've  10 written represent your total knowledge regarding the fact? If  11 not, edit the fact. While you're at it, ask yourself, "So what?"  12 Does what you've written make the implications of the fact clear?  13 If not, edit the fact. Further, if there isn't much of an answer  14 to the So What question, give the fact a good once over, and make  15 sure it belongs in the chronology in the first place.  16 <b>MAKE DEPO SUMMARIES OBSOLETE</b>  17 Use your chronology in lieu of separate deposition  18 summaries.  19 When you create a deposition summary, you're digesting the  20 deposition down to its critical elements, i.e., to the critical  21 facts found in it. If you follow the traditional path of creating  22 a series of separate deposition summaries, the result is  23 unsatisfactory. You end up with a separate story for each  24 witness, rather than one complete story interlacing the facts  25 found in various depositions and in other sources.</p>	<p style="text-align: right;">Page 11</p> <p>1 different names. You first have to identify all of the different  2 name permutations. Then you have to create a compound query that  3 will find any fact that contains one of these possibilities. What  4 should be accomplished in an instant becomes an hour-long chore.  5 It's easy to end up with inconsistent naming. Suppose you're  6 working up a medical malpractice case that involves Hyde Memorial  7 Hospital. Unless you're careful, you're likely to have facts that  8 refer to Hyde, Hyde Memorial, HMM, HM Hospital, and Hyde Memorial  9 Hospital, among other possible variations.  10 The solution: develop a cast of characters list and  11 establish a single alias or nickname to be used for each key  12 player in the case. Typically, it makes sense to pick something  13 short (e.g., for Hyde Memorial Hospital, HMM is probably the best  14 choice). If you do, you save keystrokes in addition to gaining  15 consistency.  16 Distribute the cast of characters report to the trial team.  17 Ask that everyone working on the chronology use this dictionary  18 if they are unsure of the proper name to use  19 for a particular person, organization, or document. Naming  20 consistency requires a little more work up front, but it quickly  21 delivers a handsome return.  22 <b>USE FUZZY DATES</b>  23 If possible, substitute question marks for portions of a  24 date of which you're unsure.  25 As you build a chronology, you'll find yourself with many</p>
<p style="text-align: right;">Page 10</p> <p>1 Stop creating deposition summaries, and use your chron  2 instead. Enter into your chronology the critical facts you  3 develop from reading a deposition. In the chronology's Source(s)  4 column, list the deposition's name, as well as the volume, page  5 and line number where the fact was found. Anytime you want a  6 summary of a particular witness's deposition, filter the  7 chronology down to just those facts that were sourced from a  8 particular deposition.  9 Even if you use transcript search software, you should still  10 enter in your chronology the key facts that occur to you as you  11 read the deposition online. Transcript search software makes it  12 easy to find the needles in the haystack of deposition  13 transcripts and document OCR-text files. However, once you find a  14 needle, doesn't it make sense to get it out of the haystack?  15 You may have other documents besides deposition summaries  16 where you're storing facts. Consider replacing all of these  17 separate containers with your one master chronology. Instead of  18 searching multiple places for critical case knowledge, you will  19 always have the case facts at your fingertips.  20 <b>AVOID THE AKA HEADACHE</b>  21 Refer to one person, organization, or document by one name.  22 Want to filter your chronology down to just those facts  23 about a particular witness, organization or document? Even if  24 you're using a database program to develop your chronology,  25 you've got a big problem if the same thing is referenced by</p>	<p style="text-align: right;">Page 12</p> <p>1 facts for which you have incomplete date information. For  2 example, you may know that a meeting took place in March of 1999,  3 but have no idea as to the day within March. Or you may know that  4 a contract was signed sometime in 1998, but have no idea of the  5 month or day. And you may know the accident took place in the 7  6 o'clock hour, but not know the minute or second.  7 What's the best way to deal with this problem when entering  8 dates? Make it your practice to substitute a question mark for  9 the portion of the date or time of which you're unsure. Using  10 this simple tactic: March of 1999 becomes 3/?/99, sometime in  11 1998 becomes ?/?/98, and sometime in the 7 o'clock hour becomes  12 7:??.  13 We call this practice "fuzzy dating." Fuzzy dating allows  14 you to capture what you do know about a date and makes what you  15 don't know explicit. Fuzzy dating makes it easy to identify facts  16 needing date research. When you obtain better information, you  17 can return to the fact and update its date and time value.  18 Fuzzy dating is effective if you're working up your  19 chronology in a word-processor or with some litigation-specific  20 database packages. However, many database packages do not permit  21 you to enter any date value other than a complete one.  22 Off-the-shelf database products are designed for generalized  23 use and not with the realities of litigation in mind. These  24 products attempt to help you by validating your date entry.  25 Unfortunately, these validation routines backfire when you don't</p>

<p style="text-align: right;">Page 13</p> <p>1 know the complete date. Enter 3/?/99 into a date field in  2 Microsoft Access, and it will give you an error message every  3 time. If the database software you're using only supports  4 complete dates, you have at least a couple of alternatives: (1)  5 When you don't have complete date information, you can leave the  6 date cell blank and (2) You can assign an approximate complete  7 date (e.g., the fact we know happened sometime in March could be  8 dated 3/1/99). Both solutions have obvious downsides. The lesser  9 of evils depends on your circumstances.</p> <p>10 <b>INDICATE DISPUTED STATUS</b></p> <p>11 Each fact should be flagged as being disputed or undisputed.  12 I've already argued that your chronology should include  13 disputed facts. If your chronology contains a mixture of disputed  14 and undisputed items, it makes good sense to create a column  15 which indicates whether a given fact is undisputed or disputed,  16 and if so, by which party. Consider titling your column Disputed  17 Status and using these values: Disputed by Opposition, Disputed  18 by Us, Undisputed, Unsure. (If you're working on a case with more  19 than two parties, revise the options to whatever you deem  20 appropriate, however, you will probably find that having an  21 option for all possible permutations is overkill.)</p> <p>22 Once you've marked facts as being disputed or undisputed,  23 your chronology becomes a tremendous aid in the preparation of  24 motions for summary judgment and pre-trial motions. For example,  25 instead of creating a last-minute list of facts</p>	<p style="text-align: right;">Page 15</p> <p>1 Now add another column to your chronology: Related Issues.  2 In this column, name the issue or issues on which each fact  3 bears. You can capture issue relationships as you first enter the  4 facts. Another alternative is to forego entering this information  5 initially and ripple through the chronology at a later point  6 focusing on issue analysis.</p> <p>7 Establishing relationships between facts and issues is also  8 a logical place to parse work among members of the trial team.  9 Junior members of the team can cull facts from documents and  10 depositions. Senior members of the team can make links between  11 facts and issues.</p> <p>12 Creating links between facts and issues makes it easy to  13 print chronologies of just those facts that relate to a  14 particular issue - a capability that has great value when you  15 analyze your case and develop strategy.</p> <p>16 <b>TAKE AN ISSUE-DRIVEN APPROACH</b></p> <p>17 Use your issue list to ensure you have a complete chronology  18 and to generate a fact "wish list."</p> <p>19 As you develop your chronology, consider taking a "top-down"  20 or "issue-driven" approach to your case. As case preparation  21 begins, and one or two times a year thereafter, conduct a  22 brainstorming session in which you think about your facts on an  23 issue-by-issue basis.</p> <p>24 Prepare by printing for each issue a mini-chronology of the  25 facts that bear on it. Begin the brainstorming session by</p>
<p style="text-align: right;">Page 14</p> <p>1 to which you are willing to stipulate, you simply filter your  2 chronology down to the undisputed items and print. If you've  3 begun your chronology early in case preparation, you can use this  4 information to organize your examination of adverse witnesses.  5 Filter the chronology down to those items that you expect to be  6 disputed and see if you can obtain admissions regarding them  7 during depositions or find sources for them in documents.</p> <p>8 <b>SHOW ISSUE RELATIONSHIPS</b></p> <p>9 To create a great chronology, you need issues as well as  10 facts.</p> <p>11 The vast majority of cases involve multiple issues.  12 Assessing the strength or weakness of your case is really an  13 exercise in assessing your strength or weakness in relation to  14 each of the issues in it. Here again, your chronology should be  15 an important aid.</p> <p>16 Develop a list of case issues (perhaps with the aid of a  17 brainstorming session -- see our article on Brainstorming). Don't  18 limit your thinking to those issues tied directly to some legal  19 claim. Include any topic that might influence juror thinking. For  20 example, if you are working for the defense in a products case,  21 you might want to include this issue: The Plaintiff Is Motivated  22 by Greed, Not a Desire for Justice. Even though you would never  23 make such an argument explicitly, it would be interesting to see  24 what facts point to plaintiff greed, allowing jurors to reach  25 such a conclusion on their own.</p>	<p style="text-align: right;">Page 16</p> <p>1 reviewing the chronology of facts related to the first issue in  2 your issue list. Then set the list of facts aside, and think  3 about other facts of which you're aware that bear on this issue.  4 Enter these additional items into your chron.</p> <p>5 Next, think about the facts you wish you had for this issue.  6 If you think there's any chance of developing such a fact, enter  7 it in the chronology and list any potential sources that come to  8 mind. Repeat this process for each issue in the case.</p> <p>9 In the early days of a case, this issue-driven brainstorming  10 process can be an invaluable aid in organizing discovery. As the  11 case matures, it becomes a great way to reflect on case strengths  12 and weaknesses and develop strategies in light of them.</p> <p>13 <b>EVALUATE EACH FACT</b></p> <p>14 Separate the sheep facts from the goat facts.</p> <p>15 Not all facts are created equal. Some are critical; others  16 are trivial. Some are great; and, unfortunately, others stink. To  17 get the most out of your chronology, you should rate each fact in  18 terms of criticality and goodness/badness. Once this is done, you  19 can filter the chronology down from all facts to just those facts  20 that are critical or just those facts that are particularly good  21 or bad.</p> <p>22 One solution is to use two columns to capture evaluation  23 information: one for criticality and another for goodness v.  24 badness. A simpler method is to fuse both criticality and  25 goodness/badness criteria into a single scale. For example, if</p>



1 you're using database software, you could create a pick list with  
 2 the following values: Heavily For Us, For Us, Neutral, Against  
 3 Us, Heavily Against Us. When you evaluate something as being  
 4 heavily for you or heavily against you, you are indicating that  
 5 it is critical. (The downside of the single scale solution is  
 6 that it makes it difficult to evaluate those facts that are  
 7 critical but are neutral in terms of goodness/badness. However,  
 8 the reduced work of the single column probably outweighs this  
 9 shortcoming.)

10 If multiple litigators are collaborating on a case, consider  
 11 creating an evaluation column for each. Each individual can make  
 12 their own assessment, and your software can isolate those facts  
 13 where evaluations vary widely.

14 If you want, you can skip evaluating facts when you're first  
 15 entering them into the chronology. Later, at an appropriate  
 16 point, ripple through the chronology and evaluate the facts in  
 17 one sweep. Here is another place where the work of maintaining  
 18 the chronology can be distributed to various members of the trial  
 19 team. Junior members of the team can enter the facts. Senior  
 20 members of the team can evaluate them.

21 **PUT YOUR CHRONOLOGY TO WORK**

22 Use your case chronology in practical ways.

23 Your chronology should be far more than a thinking tool. It  
 24 should be a practical aid in communicating about your case with  
 25 your client, the opposition, and the trier of fact.

1 Use your chronology to communicate with your client. Send  
 your client the chronology on a regular basis, perhaps quarterly.

2 If you are using database software that stamps each fact with the  
 date when it's entered into the chronology, have the software  
 3 mark with an icon each fact that was entered since you last sent  
 your client the chronology. By tagging new facts in this way, the  
 4 report will give your client the complete story of the case, but  
 it will be easy for them to focus on the new evidence.

5 Use your chronology at settlement conferences. Show  
 opposition counsel and their client why the facts back your view  
 6 of the case. Show them that you're organized and will be a  
 formidable opponent if they choose to be unreasonable.

7 (Obviously, before you print your chronology for use during a  
 settlement conference, you'll hide columns such as Evaluation.)

8 Use your chronology to make a powerful case to judge and  
 jury. Chronologies are great tools for educating the jury during  
 9 opening statement and for illustrating your arguments during  
 closing.

10 You can even use chronologies to expedite the development of  
 your new associates' case analysis skills. The day they arrive at  
 11 the firm, assign each new associate to one or more cases, and  
 make them responsible for developing a chronology for each. At  
 12 set intervals (once a month?), have each associate submit a  
 chronology that contains just the new facts they have entered.

13 Critique the verbiage used to describe each fact, their  
 determination of whether the fact is disputed or undisputed,  
 14 their evaluation, and their analysis of the issues on which the  
 fact bears.

15 **SUMMARY**

A chronology has the potential to be a tremendous aid as you  
 16 organize and explore case knowledge. If you adopt the practices  
 outlined above, I believe you'll realize this potential in full.

17 I would appreciate your feedback. Please contact me at  
 18 gkrehel@casesoft.com.

19 **ABOUT THE AUTHOR**

20 Greg Krehel is CEO of DecisionQuest's CaseSoft division  
 21 (www.casesoft.com). CaseSoft is the developer of CaseMap - a  
 22 software tool that trial teams use to organize and explore the  
 23 facts, the cast of characters, and the issues in any case. In  
 24 addition to his background in software development, Mr. Krehel  
 25 has over 15 years of trial consulting experience.

# Annotation Notes

## 1. Pg: 1 Ln: 1 - 4

**Note:** This is a none-too-subtle device to focus prospective users on the arguments that can be readily made that it's better to use a database program to organize facts than it is to use a word processor. One of the first things that you need, after your cast of characters is roughed out, is a chronology.

How can you expect to conduct early case analysis without a basic grip of the facts? Suppose your associate takes a position with another firm and leaves with important factual info gleaned from conversations with the client and the firm's investigator stuck in his memory?

**Linked Issues:** Background

## 2. Pg: 3 Ln: 10 - 16

**Note:** Quisque fringilla ipsum nec lacus. Mauris vehicula laoreet erat. Donec nec eros. Donec sit amet tellus non lectus faucibus pulvinar. Duis vitae est. Donec vehicula risus vitae urna. Aliquam orci eros, ultrices vel, ornare in, pulvinar sit amet, ipsum.

**Linked Issues:** WrongfulTermination, Pattern&Practice

## 3. Pg: 4 Ln: 23 - Pg: 5 Ln: 4

**Note:** This is a novel concept! Being able to look at various aspects of the chronology with a couple of mouse-clicks beats the heck out of reading and re-reading and re-reading a cumbersome chron printed out or scrolling endlessly past your glazing eyeballs on your monitor!

**Linked Issues:** Pattern&Practice

## 4. Pg: 7 Ln: 5 - 9

**Note:** Nulla facilisi. In hac habitasse platea dictumst. Duis vitae neque. Nam consequat, augue quis viverra varius, mi erat convallis nunc, vitae viverra urna risus sed diam. Sed lectus urna, volutpat et, hendrerit vel, molestie vitae, enim.

**Linked Issues:** Critical Follow-Up

## 5. Pg: 7 Ln: 20 - 25

**Note:** By now you may have figured out that this article has a great deal to say about the efficacy of using a database software program to organize your chronology rather than a word processor. It's like using a sabre saw to chop down a tree. The sabre saw is wonderful at doing what it's designed to do, make curlicues and designs in a thin piece of wood. But when you really want to get something that will keep you warm on those cold, cold nights of case analysis you use a chain saw!

And we think the best database program to use for case analysis is LexisNexis CaseMap. Surprise!

**Linked Issues:** There are no issues linked to this annotation.

## 6. Pg: 8 Ln: 20 - 25

**Note:** In sed lectus elementum odio lacinia luctus. Praesent at augue at ante posuere tempus. Donec risus. Aenean condimentum viverra tortor. Integer gravida. Duis risus tortor, pulvinar tempor, feugiat at, varius vitae, metus. Vivamus sit amet diam eu est condimentum sollicitudin.

**Linked Issues:** HawkinsSpecific

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[homicide - indicating]

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