

DISTRICT COURT, JEFFERSON COUNTY, COLORADO

In the Matter of:

Andrew Gholson, et al. v. State Farm Fire & Casualty, et al.

2008CV317

DEPOSITION OF:

**WILLIAM McLOUGHLIN**

DATE TAKEN:

**February 13, 2009**

PAGES:

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REPORTED BY:

**Tiffany D. Goulding, RPR**

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**1**

1 DISTRICT COURT, JEFFERSON COUNTY, COLORADO  
2 Case No. 2008CV317

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3 DEPOSITION OF: WILLIAM McLOUGHLIN - February 13, 2009

4 ANDREW GHOLSON, ELIZABETH GHOLSON, WILLIAM GHOLSON, a  
5 minor, by and through his parents, Andrew Gholson and  
6 Elizabeth Gholson, and ERIC GHOLSON, a minor, by and  
7 through his parents, Andrew Gholson and Elizabeth  
8 Gholson,  
9 Plaintiffs,  
10 v.  
11 STATE FARM FIRE AND CASUALTY, T.L.C. CONSTRUCTION,  
12 INC., d/b/a AMERICAN RESTORATION, INC., OF BAILEY;  
13 TERRY AUMILLER and JOHN DOES 1-9,  
14 Defendants.

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15 PURSUANT TO NOTICE, the deposition of  
16 WILLIAM McLOUGHLIN was taken on behalf of the  
17 Defendant State Farm Fire and Casualty at 1125 17th  
18 Street, Suite 2100, Denver, Colorado 80202, on  
19 February 13, 2009, at 9:34 a.m., before Tiffany D.  
20 Goulding, Registered Professional Reporter and Notary  
21 Public within Colorado.

22 A P P E A R A N C E S

23 For the Plaintiffs: SAMUEL G. LIVINGSTON, ESQ.  
24 Law Office of Samuel G.  
25 Livingston, P.C.  
1416 Larimer Street, Suite 300  
Denver, Colorado 80202

For the Defendant: JON F. SANDS, ESQ.  
KIMBERLE E. O'BRIEN, ESQ.  
Fisher, Sweetbaum, Levin  
& Sands, P.C.  
1125 17th Street, Suite 2100  
Denver, Colorado 80202

Also Present: Tim Thomsen

**3**

1 10 Fax to McLoughlin from Parker, 5/16/08 139  
2 Re: Gholson Air Sampling Results

3 12 Public Adjusters of Colorado, LLC Insurance 33  
4 Claim Adjusting Agreement

5 16 Letter from Carol Turner, M.D., 8/24/07 152

6 18 Letter to Public Adjusters of Colorado from 98  
7 ICA, Inc., 9/24/08, Re: Andrew and  
8 Elizabeth Gholson 34036 Grouse Lane,  
9 Evergreen

10 19 Fax to Egger from McCaffry, 7/11/07, Re: 138  
11 Andy and Beth Gholson

12 24 CoCat Fire Estimate, 3/12/07 50

13 26 E-mail to bmcloughlin@earthlink.com from 91  
14 Andy G, 7/26/07, Subject: Fw: Re: Revised  
15 Scope, with attached e-mails

16 27 E-mail to bmcloughlin@earthlink.com from 90  
17 Andy G, 7/26/07, Subject: Fw: Revisions,  
18 with attachment

19 30 DRI, Inc. Fire Estimate 160

20 31 E-mail to Blackburn, Meyer, Griggs, 121  
21 McLoughlin, 6/3/07, Subject: Needed Job  
22 Updates

23 32 DRI, Inc. Fire Estimate 86

24 33 Letter to Blackburn from McCaffry, 5/24/07 136  
25 Reference: Gholson Estimate Upgrades

35 Handwritten note to Tenney from Gholson, 76  
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41 Letter to McLoughlin from Davis, 6/5/07 106  
Re: Engineering Review of Gholson  
Residence, 34036 Grouse Lane, Evergreen

45 Sworn Statement in Proof of Loss Statement 156  
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3 February 13, 2009

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INITIAL

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8 48 DRI, Inc. Fire Estimate, 6/20/07 80

9 49 DRI, Inc. Fire Estimate 80

10 50 DRI, Inc. Fire Estimate 80

11 51 American Restoration, Inc. Drawing 126

12 52 Public Adjusters of Colorado, LLC Estimate 122  
13 12/19/07

14 54 Out-of-Pocket Structure Repairs Costs 156  
15 Incurred by Insureds, 3/24/08

16 55 Letter to Thomsen from Goldman, 1/16/08 107

17 56 Letter to McLaughlin from Goldman, 2/20/08 118

18 57 Letter to Sands from Goldman, 3/11/08 119

19 EXHIBIT DISPOSITION:

20 Original Exhibits: With transcript

21 DEPOSITION EXHIBITS: (Previously marked)

22 1 DRI Letter of Intent, 5/14/07 87

23 3 Letter to Thomsen from Foothills 145  
24 Environmental, Inc., 2/7/06, Re: Asbestos  
25 Sampling at 34036 Grouse Lane, Evergreen,  
Colorado

**4**

1 WHEREUPON, the following proceedings  
2 were taken pursuant to the Colorado Rules of Civil  
3 Procedure.

4 \* \* \* \* \*

5 MR. SANDS: Before we begin the  
6 deposition, we've had a discussion off the record that  
7 we'll summarize on the record. I'll try to summarize  
8 it, then let Mr. McLoughlin state his position.

9 Mr. McLoughlin asked this morning if he was going to  
10 be compensated over and above the statutory witness  
11 and mileage fee check that he received with the  
12 subpoena. And my response was that Mr. McLoughlin is  
13 being deposed today as a fact witness, and I believe  
14 that as a fact witness he has an obligation to appear  
15 and testify just like my other citizen who is called  
16 in a lawsuit as a fact witness.

17 There was some discussion.

18 Mr. Livingston indicated that he anticipates that  
19 Mr. McLoughlin will be disclosed as an expert pursuant  
20 to 26(a)(2). It's not clear at this juncture, and I'm  
21 not asking Mr. Livingston to make it clear, whether  
22 that would be a disclosure pursuant to Rule 26(a)(2),  
23 capital B I or II. I think I have the rule right. We  
24 don't have that disclosure at this juncture.

25 In all events, my position is that we

5

1 will not be compensating or agreeing to compensate  
 2 Mr. McLoughlin for his time today. We've served the  
 3 statutory witness and mileage fee. However,  
 4 Mr. McLoughlin wants to preserve his right to seek  
 5 relief from the Court or to make sure he doesn't waive  
 6 any right to seek compensation for his time today. So  
 7 I think that sums up our off-the-record discussion.  
 8 And, Mr. McLoughlin, you can go ahead and make  
 9 whatever statement you want to make about this issue.  
 10 THE DEPONENT: In regards to this matter  
 11 on compensation, I'm providing professional services.  
 12 I feel that I'm entitled to be paid for my  
 13 professional time. I have advised Attorney Sands that  
 14 my routine expert fee is \$150 an hour. I said I  
 15 wanted to be fair and reasonable about this. So I  
 16 have set a benchmark of \$100 an hour as fair  
 17 compensation for my time, which is being taken away  
 18 from my other business activities, professional  
 19 activities. I feel that it's no different than a  
 20 medical doctor or professional being compensated in  
 21 giving their testimony in deposition. And so I want  
 22 to preserve my right, and if need be, then we can  
 23 forward a letter to the judge to render an opinion. I  
 24 do not want to delay this matter. The Gholsons need  
 25 to get remedy and I think it's important to move this

6

1 matter forward.  
 2 MR. SANDS: Fair enough.  
 3 WILLIAM McLOUGHLIN,  
 4 having been first duly sworn to state the whole truth,  
 5 testified as follows:  
 6 EXAMINATION  
 7 BY MR. SANDS:  
 8 Q. So with that, let's go ahead and swear  
 9 the witness. Would you please state your full name,  
 10 sir.  
 11 A. William McLoughlin.  
 12 Q. Can you spell your last name.  
 13 MR. LIVINGSTON: Sorry. Our position is  
 14 that's how that should be handled.  
 15 MR. SANDS: Sure. I didn't know you were  
 16 going to make a statement.  
 17 MR. LIVINGSTON: I don't represent  
 18 Mr. McLoughlin. He was obviously employed by my  
 19 clients. My clients feel the discussion that we're  
 20 having today should have happened well before today,  
 21 should have happened when the estimate of  
 22 Mr. McLoughlin was provided, I believe it was in  
 23 January. We understand from the testimony in this  
 24 case that the insurance company has taken the position  
 25 that once the case goes into litigation they don't

7

1 have to sit down with the estimator. That's what  
 2 they've testified to. We disagree with that position.  
 3 However, we believe that to the extent that he's being  
 4 drug down here, I'm being drug down here to basically  
 5 adjust the claim, you can play it however you want in  
 6 terms of paying him or not; but certainly, we believe  
 7 we have a right to bring up your position at trial  
 8 that you basically forced the matter into litigation,  
 9 avoided basic communication with the adjuster and --  
 10 insurance adjuster, public adjuster, and then drug him  
 11 into this process and refused to pay for his time. We  
 12 think that would be relevant to the circumstances of  
 13 the case.  
 14 Move forward at your own risk. If you  
 15 don't want to pay him, I think it raises issues to be  
 16 addressed at trial. This is further evidence of the  
 17 type of economic depression that's gone on in this  
 18 case, similar to Mr. McLoughlin's initial  
 19 communication, where he simply called the adjuster and  
 20 the adjuster then shut off the housing repairs, even  
 21 though there was a schedule in place that housing  
 22 should go on.  
 23 MR. SANDS: Mr. Livingston, if you could  
 24 confine your remarks to the issue of whether  
 25 Mr. McLoughlin should be paid, I think it's highly

8

1 inappropriate for you to give a speech or an argument,  
 2 basically coach Mr. McLoughlin at this point.  
 3 MR. LIVINGSTON: I'm not coaching him at  
 4 all. I'm stating what my position is.  
 5 MR. SANDS: You're making a legal  
 6 argument.  
 7 MR. LIVINGSTON: What I'm saying --  
 8 MR. SANDS: You're making a closing  
 9 argument, and frankly, if the Gholsons have a position  
 10 on whether Mr. McLoughlin should be paid, then that's  
 11 the issue. I don't think it's appropriate for you to  
 12 make statements about your position in the case.  
 13 MR. LIVINGSTON: I think I should be able  
 14 to make a statement as to what my clients' position is  
 15 without being interrupted. And basically, our  
 16 position is it's between you two, but you need to know  
 17 that I believe the decision you're making today is  
 18 something that will now come up in the case. If you  
 19 want to play it this way, rest assured that I will  
 20 talk about the fact that you refuse to pay people to  
 21 come in and you make them go into litigation. There's  
 22 an enforcement of the contract provision, you've got  
 23 to go into litigation. Seems to me you're handling  
 24 this unwisely and making it difficult for public  
 25 adjusters. That is your choice, but I'm going to talk

**9**

1 about it.

2 MR. SANDS: Well, okay. I appreciate

3 your threats, Mr. Livingston, which are legion in this

4 case. And you make an effort at every opportunity to

5 suggest that you're going to bring everything up in

6 the case. Let me say this: I'm not going to dignify

7 that speech with the same sort of argumentative

8 statement. I will, however, simply say that

9 Mr. McLoughlin is not being brought in here to adjust

10 the claim. Mr. McLoughlin is being asked to testify

11 as a fact witness, and so I'm not sure what else to

12 say at this juncture in response to your argument; but

13 thank you for your position. Mr. McLoughlin, once

14 again, is not being brought here as part of the

15 process to adjust the claim. I am defending

16 litigation and I consider Mr. McLoughlin to be a

17 witness with admissible -- who knows about things that

18 I believe are admissible or will lead to the discovery

19 of admissible evidence in the litigation to properly

20 defend my client against the bad-faith claim. So with

21 that said, let's go ahead and go forward.

22 MR. SANDS: Mr. McLoughlin, yes, sir?

23 THE DEPONENT: Can I make one comment?

24 MR. SANDS: Well, does it have to do with

25 your position on whether you should be paid or not?

**10**

1 MR. LIVINGSTON: Jon, I don't think you

2 get to define the basis. Let him say what he needs to

3 say and we'll get this business over with.

4 MR. SANDS: Let me say this: I think

5 you're interfering with my Rule -- my right under

6 Rule 30 to take a deposition, Sam. That's my

7 position.

8 MR. LIVINGSTON: Who is? I'm trying

9 to --

10 MR. SANDS: Go ahead, Mr. McLoughlin.

11 Make a statement. You want to make -- you can make

12 whatever statement you want to make, Mr. McLoughlin.

13 MR. LIVINGSTON: I'm trying to maintain

14 basic order and you keep interrupting me. Just let

15 the guy make a statement about whatever he wants to

16 say about it.

17 MR. SANDS: The basic order of a

18 deposition is the attorney who's noticed the

19 deposition asks questions, the witness answers the

20 questions, and the attorney who is not taking the

21 deposition may make objections under the rules of

22 civil procedure. That's the basic order of a

23 deposition.

24 MR. LIVINGSTON: We haven't started the

25 deposition yet. We're trying to straighten out these

**11**

1 preliminary matters about his fee.

2 MR. SANDS: Mr. McLoughlin, what

3 statement did you want to make?

4 THE DEPONENT: I wanted to make a comment

5 relative to what you said. In this affair I received

6 a letter from Trina Marky, the section claims manager

7 for State Farm, suggesting that all efforts to settle

8 the claim be directed through you. Okay. And as far

9 as I know from my professional experience, your client

10 has a duty to continue to settle the claim, and that

11 duty does not cease with litigation. And so I want to

12 make that clear that, you know, things that may come

13 up may generate the need to make settlements. You may

14 define that or your client's representatives may

15 become aware of situations that they need to take care

16 of to avoid further breach of the contract. So I just

17 want to make that clear because of the point that

18 you've made.

19 MR. SANDS: Thank you. Let me be clear

20 about what Ms. Marky asked you to do. That was to

21 send your correspondence to me as a conduit so I could

22 forward it to them -- so I could get it and forward it

23 to them. I'm not adjusting the claim. Your

24 correspondence has all been -- that was directed to

25 State Farm care of me has been forwarded to them. All

**12**

1 right.

2 THE DEPONENT: Okay.

3 MR. SANDS: All right. With that having

4 been said, is there anything else you want to say

5 before we begin?

6 THE DEPONENT: No.

7 MR. SANDS: I don't want to restrict your

8 opportunity to say what you need to say.

9 MR. LIVINGSTON: I assume that discussion

10 is a discussion. It's not part of the deposition

11 where you're under oath, he's under oath. That's a

12 discussion and now we're going to commence with

13 testimony.

14 Q. (BY MR. SANDS) Mr. McLoughlin, would you

15 state your address, please.

16 A. 10583 Serengeti Drive. That's in

17 Littleton, Colorado 80124.

18 Q. And is that your place of business?

19 A. Yes, it is.

20 Q. What business do you operate at that

21 address?

22 A. Public Adjusters of Colorado, LLC.

23 Q. Does Public Adjusters of Colorado, LLC

24 have any employees other than yourself?

25 A. At this time I have one

**13**

1 Q. And what is his or her name?  
 2 A. Mark Canter.  
 3 Q. Is Mark Canter a licensed public  
 4 adjuster?  
 5 A. Not at this time.  
 6 Q. You are a licensed public adjuster?  
 7 A. Yes, I am.  
 8 Q. Licensed by the Colorado Division of  
 9 Insurance?  
 10 A. Correct.  
 11 Q. Did you at one time have a -- Public  
 12 Adjusters of Colorado at one time have an employee by  
 13 the name of Dan McCaffry?  
 14 A. Yes.  
 15 Q. And how long was Mr. McCaffry employed by  
 16 Public Adjusters of Colorado?  
 17 A. Period spanned from April of 2007 to, I  
 18 think, the first week of August 2007.  
 19 Q. 2008?  
 20 A. 2007.  
 21 Q. Okay. April to August of 2007?  
 22 A. Correct.  
 23 Q. I'm sorry. I misspoke. Do you know  
 24 where Mr. McCaffry is today?  
 25 A. No, I do not.

**14**

1 Q. Why did Mr. McCaffry leave Public  
 2 Adjusters of Colorado?  
 3 A. I was dissatisfied with his work.  
 4 Q. Did you terminate him from the company?  
 5 A. I did.  
 6 Q. Mr. McCaffry worked on the Gholson file;  
 7 isn't that right?  
 8 A. He did.  
 9 Q. Was he for a time anyway the public  
 10 adjuster employed by Public Adjusters of Colorado who  
 11 had responsibility for the Gholson matter?  
 12 A. He had some responsibility for the  
 13 Gholson matter, yes.  
 14 Q. Do you know whether Mr. McCaffry is still  
 15 in Colorado even?  
 16 A. I do not.  
 17 Q. Do you know, Mr. McLoughlin -- withdraw  
 18 that question.  
 19 How long have you been a public adjuster?  
 20 A. I've been doing public adjusting work  
 21 since, I'd say, the last quarter of 2001.  
 22 Q. And prior to that what was your  
 23 profession?  
 24 A. I was -- I'm an engineer.  
 25 Q. Do you have an engineering degree?

**15**

1 A. I do.  
 2 Q. From where?  
 3 A. Drexel University.  
 4 Q. And any particular discipline?  
 5 A. Chemical engineering.  
 6 Q. Have you ever been licensed in Colorado  
 7 as a professional engineer?  
 8 A. No, I have not.  
 9 Q. Have you ever sat for the PE license in  
 10 Colorado or tested for the PE license?  
 11 A. I have not.  
 12 Q. Are you licensed in any state as a  
 13 professional engineer?  
 14 A. No.  
 15 Q. Have you ever been?  
 16 A. No.  
 17 Q. Have you ever attempted to be licensed as  
 18 a professional engineer?  
 19 A. No.  
 20 Q. Before you became a public adjuster, were  
 21 you employed as an engineer in a professional  
 22 capacity?  
 23 A. I was.  
 24 Q. With what entity?  
 25 A. Several.

**16**

1 Q. In Colorado?  
 2 A. I worked for a large corporation, Sealed  
 3 Air Corporation.  
 4 Q. Sorry?  
 5 A. Sealed Air Corporation.  
 6 Q. Where was that located?  
 7 A. Headquarters is in Saddle Brook, New  
 8 Jersey.  
 9 Q. Is that where you worked?  
 10 A. I was based out of Danbury, Connecticut.  
 11 I had an international assignment with them that was  
 12 my last assignment. I was based in Netherlands.  
 13 Q. And how long did you work for Sealed Air  
 14 Corporation?  
 15 A. I worked from, I think, October of 1988  
 16 to May of 2000.  
 17 Q. And can you tell me the reason you left  
 18 that profession or that employer?  
 19 A. I retired.  
 20 Q. And did you take some time off then  
 21 between when you left Sealed Air Corporation and the  
 22 time you started your public adjusting work?  
 23 A. I have a substantial investment portfolio  
 24 and I kind of fell into public adjusting by accident.  
 25 Q. That was my next question. How in the

**17**

1 world did you get into public adjusting after being a  
 2 chemical engineer and apparently having a substantial  
 3 investment portfolio?  
 4 A. I also have a plastics certificate from  
 5 the University of Massachusetts. And in my capacity  
 6 with Sealed Air, I was about employee 514. When I  
 7 left, we had 18,000 employees. We had a lot of growth  
 8 through acquisition. The last assignment I had Sealed  
 9 Air had purchased the Cryovac division of W.R. Grace  
 10 for medical packaging and I was over in Europe to help  
 11 integrate a one-and-a-half-billion-dollar chunk of  
 12 that business. And Sealed Air stock was very  
 13 lucrative in the '90s. And I made good investments  
 14 and I decided to retire. And my ex-wife was a  
 15 director for JD Edwards, so we settled here. And I  
 16 was quite happy and content. And I got into public  
 17 adjusting because my house in 2001 got battered by  
 18 golf-ball to tennis-ball-sized hailstones, and my  
 19 insurance adjuster showed up at my door and told me I  
 20 needed flood insurance.  
 21 Q. What company?  
 22 A. It was Farmers.  
 23 Q. And so how did that -- you said that that  
 24 precipitated you getting into public adjusting?  
 25 A. Yes.

**18**

1 Q. That experience, can you explain that a  
 2 little more to me. I guess the question is, how or  
 3 why did that motivate you to get into public  
 4 adjusting?  
 5 A. Certainly, with my business activities we  
 6 were integrating and purchasing new businesses. I was  
 7 looking at them, moving equipment, reorganizing them  
 8 to our business model. We were developing all the  
 9 businesses, highly protected risks. We were having a  
 10 cross-pollination strategy to enhance the business,  
 11 and I was able to substantially reduce our property  
 12 premiums, our business interruption, our liability  
 13 issues. So, you know, insurance wasn't a mainstay of  
 14 my job. It was just a small increment. And when this  
 15 guy came to my door -- and my house had about \$55,000  
 16 worth of damage to the exterior -- I was able to  
 17 settle my claim under proof of loss. I knew what a  
 18 proof of loss was. I also knew what a public adjuster  
 19 was. I had the need to use them in my professional  
 20 capacity to handle loss situations in other countries.  
 21 So I didn't seek a public adjuster to solve my claim,  
 22 but my neighbors had great difficulty with their  
 23 claims and they had similar damages to their house.  
 24 And, you know, they asked me how I got my issue  
 25 resolved because they were all mired

**19**

1 They had catastrophe adjusters go through  
 2 the neighborhood. They had written \$10,000 roof  
 3 claims because they got paid \$600 for the first  
 4 \$10,000 of loss and then they got paid an additional  
 5 \$100 for the next \$10,000 of loss. And they basically  
 6 staked out these claims by writing \$10,000 and then  
 7 they moved on to a tornado event. And these people in  
 8 my neighborhood couldn't cover their roof with  
 9 \$10,000, and so I began to help my neighbors. I had  
 10 found what I thought were competent contractors, began  
 11 the repairs on my home. I gave my neighbors my list  
 12 of contractors and they went ahead to resolve their  
 13 claims; but they ultimately ran into the inspection  
 14 issues, which I didn't understand at the time, and so  
 15 I told them to get a public adjuster. And that's when  
 16 I tried to find a public adjuster in Colorado for  
 17 them, and there wasn't too many to choose from.  
 18 That's when I met Mr. Symalla.  
 19 Q. Mr. who?  
 20 A. Symalla, Ralph Symalla.  
 21 Q. I don't know who he is.  
 22 A. He owned Public Adjusters, Incorporated  
 23 of Colorado. He was a 70-something-year-old gentleman  
 24 who had been practicing public adjusting for over 30  
 25 years in Colorado, and he proceeded to finish helping

**20**

1 all those parties get their claims paid.  
 2 Q. Did you purchase a company from him, or  
 3 you said you met him? How is that relevant to your  
 4 entry into the profession?  
 5 A. Well, he asked me to look at something,  
 6 and I went down to look at it. It was a loss in  
 7 Pueblo and it was an aluminum house fire and the  
 8 insurance carrier, Safeco, was investigating under the  
 9 reservation of rights. And the family of 11 was  
 10 camping out in front of the home in the wintertime and  
 11 the patriarch of the family, who was 76 years old, had  
 12 a minor stroke. And it was really deplorable. And so  
 13 then I said, Well, I'll come to work with you, and I  
 14 successfully resolved that case. I then ran into a  
 15 case in Cedar Ridge that involved an elderly woman  
 16 that was not being well treated by your client, and I  
 17 successfully resolved that. And I engaged a case in  
 18 Buena Vista, an elderly woman who had Hartford AARP,  
 19 was hoping that she would die before they had to pay  
 20 her claim. Her house had been crushed by a 90-foot  
 21 pine tree.  
 22 Q. Let me ask you, this is all before you  
 23 became licensed that you were helping this other  
 24 gentleman?  
 25 A. No. At that time we talked to the

**21**

1 division of insurance and they said I could work under  
 2 his licensure.  
 3 **Q. I'm just trying to put it in sequence**  
 4 **here.**  
 5 A. No. You know, I made sure that I  
 6 conformed with the rules.  
 7 **Q. I wasn't questioning that. I wanted to**  
 8 **find out in sequence how this led up to your becoming**  
 9 **a public adjuster.**  
 10 A. I then got involved with many, many  
 11 people from the wildfire events and I helped  
 12 probably -- I took on some clients and I probably  
 13 helped 50 other parties. I got an extra fax line. I  
 14 got 5,000 cell phone minutes. I talked to them in  
 15 15-minute schedules.  
 16 **Q. What role were you playing in that**  
 17 **respect?**  
 18 A. In that respect I was helping these  
 19 people to -- you know, instructing them how to make  
 20 their inventories, how to file a proof of loss, how to  
 21 get their claims.  
 22 **Q. You were working with this gentleman that**  
 23 **you mentioned a moment ago who was in the business?**  
 24 A. Yes. Ralph Symalla, Public Adjusters,  
 25 Incorporated of Colorado.

**22**

1 **Q. Then eventually you apparently -- I'm**  
 2 **going to go out on a limb here. You eventually**  
 3 **decided to get licensed and start your own company, or**  
 4 **did you take over his company?**  
 5 A. No, actually not. I actually decided  
 6 that I was going to get out of the business. I wound  
 7 down all the wildfire victims. It took me until 2004,  
 8 sometime in 2004 to wind those all out. I started  
 9 seeking engineering employment. Mr. Symalla in the  
 10 meantime had brought in some other parties into his  
 11 business. He was very, very ill in the year of 2004,  
 12 in the hospital maybe ten months of that year. He  
 13 passed away, I think, December 16 of 2004. And his  
 14 widow came to me. It was December 31, 2004, and she  
 15 did not have a license to handle the claims. The two  
 16 individuals that were working with him came and they  
 17 encouraged me to open a business. I met with JT  
 18 Thompson.  
 19 **Q. Who is JT Thompson?**  
 20 A. He's the head of the Colorado Division of  
 21 Insurance licensing. You know, the division of  
 22 insurance was at the point of taking enforcement  
 23 action against that business. They actually had filed  
 24 notice of formal hearing on the 20th of December,  
 25 about four days after he died. And I said look

**23**

1 Dick, the files, there was 25 poorly handled files,  
 2 most of them because of his being in the hospital. He  
 3 had actually -- the issue they were pursuing him on is  
 4 he had let his license lapse when he was in the  
 5 hospital. He had not paid his \$53 to renew his  
 6 grandfathered license. I brought to the attention  
 7 of -- the two parties that were working with him were  
 8 not licensed. And, you know, I said, I don't know  
 9 what to do, I don't want to take on these claim files,  
 10 I think there might be liability issues with them, you  
 11 know, I can turn them over to you. And the division  
 12 of insurance is pretty much not in a position to  
 13 handle them. So we worked out an agreement that I  
 14 would get the two parties licensed, that I could start  
 15 a business under the similar trade name, that I could  
 16 handle claims under a management agreement. It took  
 17 me about two years to do all of them without a legal  
 18 case. And if I had to do it again, I probably would  
 19 have passed.  
 20 **Q. Did you, let's say, in the 2007/2008 time**  
 21 **frame work full time as a public adjuster?**  
 22 A. Yeah. I mean, I also have my investment  
 23 stuff.  
 24 **Q. I'm not trying to get into your personal**  
 25 **financial affairs at all. What I want to know is, is**

**24**

1 **it a full-time job for you to be a public adjuster?**  
 2 A. Yeah, it is. I'm also a staunch consumer  
 3 advocate.  
 4 **Q. Okay. Meaning what?**  
 5 A. Well, in 2007 I went to the legislative  
 6 hearings to get House Bill 07-11-04 put into place.  
 7 Okay. I went to speak on behalf of that. And I don't  
 8 know if you're aware, but that's the bill that  
 9 entitles an insured to pick a contractor of choice at  
 10 a fair market price. And in that hearing there was  
 11 two camps. There was the preferred contractor camp  
 12 that felt that they had culled their relationships and  
 13 they were entitled to the fruits of their investment,  
 14 and then there was the alternate camp that's saying  
 15 that that was anti-competitive, it wasn't free market,  
 16 it was unfair to the consumer, and it was creating all  
 17 kinds of dysfunction in the marketplace.  
 18 And I kind of stepped in the middle of  
 19 the thing and said, I hear both sides and I appreciate  
 20 that insurance is the cornerstone of capital  
 21 formation, but I think that there are a lot of  
 22 problems with these preferred programs because the  
 23 consumer is getting shortchanged. And I said that the  
 24 problems that I have beyond that are even more  
 25 interesting that is one every property policy

25

27

1 contains a no-benefit bailee clause and these  
2 preferred service providers to operate are getting  
3 paid directly from the insurance carrier sidestepping  
4 the mortgage company's interests. Most properties are  
5 secured with a mortgage and those mortgages have deeds  
6 of trust, and by doing so the investor is not getting  
7 the opportunity to determine whether their property is  
8 properly restored, meeting code requirements,  
9 something that can be legally transferred at a future  
10 date. And I said that this may be a form of larceny.  
11 And with that, the vote was decisive and the bill went  
12 on and was passed.

13 The following year, last year, I got  
14 behind House Bill 08-14-07. Okay. And that is for  
15 unreasonable claims conduct. It's a bill that's  
16 modeled after Washington state. It was sponsored by  
17 the CTLA. I provided a lot of background information  
18 on what is probably unbelievable loss ratios that are  
19 being garnered by most of the major property insurance  
20 companies in the state of Colorado.

21 **Q. Explain what you mean by that, if you**  
22 **would, sir.**

23 A. Well, if you look at the Colorado 2006  
24 statistical industry report, which is resident at the  
25 division of insurance, it contains documentation about

1 very significant amount of the statewide policies that  
2 are paying loss ratios that are 20 percent. And how  
3 do you do that? I mean, you can talk about McKinsey.  
4 Are you familiar with McKinsey?

5 **Q. Go ahead.**

6 A. McKinsey is a think tank that first  
7 hooked up with Allstate when Sears was trying to sell  
8 Allstate, and they came in and they said you can  
9 screen your policyholders and try to selectively  
10 cherry-pick your policyholders, but after a certain  
11 point, that becomes impossible. Statistics come into  
12 play. You're going to have a loss frequency, whether  
13 you have a rich client, a poor client, an educated  
14 client, a particular ethnic client. You're going to  
15 have a certain loss frequency. So McKinsey devised a  
16 strategy to assist Allstate to reduce their claim  
17 exposures. And that model was then maneuvered to your  
18 client, to Travelers, to Hartford, and it's -- with  
19 the advent of modern computers, it's now gotten to the  
20 point where five years ago an 85 percent loss ratio  
21 would have been cause for celebration in any major  
22 carrier and now, you know, 60 percent isn't enough.  
23 40 percent isn't enough.

24 In fact, your client announced they were  
25 pulling out of the state of Florida a couple of weeks

26

28

1 what the loss ratios are for admitted property  
2 carriers in the state of Colorado. To give you an  
3 example, your client's loss ratio that year reported  
4 to the division of insurance was 60 percent nationally  
5 and 42 percent for their primary dwelling policy  
6 operations. State Farm has a lot of other policies,  
7 and so you have to do some statistical analysis. And  
8 you can go to the other lines of coverage and when you  
9 sum it all up, State Farm has close to 32 percent of  
10 the market share, probably about a mean 36 percent  
11 loss ratio. That is, for every dollar of premium  
12 that's collected, they're paying out 36 cents. And I  
13 would like to know where I can sign up for that  
14 investment.

15 And, you know, it's not -- there's really  
16 a couple different ways that such a loss ratio could  
17 be garnered. It could be that the insurance carriers  
18 are collecting excessive premiums. And, yes, the  
19 premiums in Colorado, I think, are a bit above the  
20 norm, but not significantly. So the other avenue to  
21 do that is to reduce claim exposure or minimize claim  
22 exposure. And I believe from my professional  
23 experience that is rampant within this industry. And  
24 your client has no unique status in that arena. There  
25 are major carriers with loss ratios that are -- with a

1 ago and they're going to surrender or abandon close to  
2 1 million policies over a two-year period. They  
3 wanted to institute a 40 percent premium increase and  
4 Florida is a very, very, very unique demographic.  
5 Florida is the largest insurer in that state right  
6 now, and the division of insurance has kind of a real  
7 unique role there. They don't call it the division of  
8 insurance. They call it -- I forget exactly what they  
9 call it. I have to look it up. Basically, State Farm  
10 wanted to get a 40 percent premium increase, and they  
11 were disenchanted reportedly because they wouldn't be  
12 allowed to make a 25 percent gross profit.

13 **Q. How did you hear about all of this, by**  
14 **the way?**

15 A. That's published. It's public  
16 information.

17 **Q. Where did you find it as public**  
18 **information?**

19 MR. LIVINGSTON: You're talking about the  
20 Florida thing?

21 MR. SANDS: What he was talking about.

22 A. Web sites, on there.

23 **Q. (BY MR. SANDS) I mean, I'm sorry. State**  
24 **of Florida government Web site?**

25 A. I don't know. It's on there. And I saw



**29**

1 some notes from NAPIA on it and I went to look at it.  
 2 **Q. Notes from where?**  
 3 A. NAPIA. That's the National Association  
 4 of Public Insurance Adjusters.  
 5 **Q. And I didn't mean to interrupt your flow,**  
 6 **but what I wanted to get is the source of your**  
 7 **information about what State Farm did or didn't do or**  
 8 **wanted to or didn't want to do in Florida that you**  
 9 **just testified to. Is that a government Web site or a**  
 10 **blog, or what's the source of your information?**  
 11 A. It was on different sites. If you'd like  
 12 me to supply you a list, I can do so.  
 13 **Q. Okay. You're not able to identify any of**  
 14 **them now?**  
 15 A. No. No, I'm not.  
 16 **Q. Okay. So all of that information came**  
 17 **from Web sites about the Florida situation that you**  
 18 **testified to, or was it other sources as well?**  
 19 A. I try to stay current in my profession  
 20 and understand what is going on. In the same token,  
 21 Allstate has two states fining them \$25,000 a day for  
 22 not turning over pertinent McKinsey documents.  
 23 **Q. What I was asking was the source of your**  
 24 **document.**  
 25 A. National Association of Public Insurance

**30**

1 Adjusters has Web sites. And there are certainly  
 2 blogs that I went to, press releases where I read  
 3 about it. And that's my understanding of it.  
 4 **Q. Is the National Association of Public**  
 5 **Insurance Adjusters Web site something that can be**  
 6 **accessed by anyone or do you have to belong to that**  
 7 **association to access that information or that site?**  
 8 A. I don't know. I belong, and I believe  
 9 it's -- I believe it's a subscription-based thing.  
 10 **Q. All right. And I'm sorry. I didn't mean**  
 11 **to interrupt you. Were you done describing your -- we**  
 12 **sort of got into your public consumer advocacy**  
 13 **activities, and I think that's what you were**  
 14 **describing.**  
 15 A. Right. So I was supplying -- that  
 16 information was being supplied to legislative senate  
 17 and house representative parties in support of that  
 18 bill. It had a significant impact on any legislation  
 19 put forward.  
 20 **Q. I'm sorry. Which legislation was that?**  
 21 A. That was House Bill 08-14-07,  
 22 unreasonable claims conduct --  
 23 **Q. But the Florida situation -- 1407 became**  
 24 **a statute effective August of 2008, I believe, and so**  
 25 **State Farm -- the Florida situation you were**

**31**

1 **describing happened after that?**  
 2 A. This is a recent current event here. You  
 3 can go look on it. It's in the news.  
 4 **Q. That part I understand. Maybe I**  
 5 **misunderstood your testimony, Mr. McLoughlin. I**  
 6 **thought you had said that the Florida situation was --**  
 7 A. Last two weeks I said.  
 8 **Q. Okay. I thought you said that came up**  
 9 **during the Colorado legislation --**  
 10 A. No.  
 11 **Q. Let me finish my question. Maybe I**  
 12 **misunderstood your testimony. I thought you had**  
 13 **indicated that the Florida situation was something**  
 14 **that was considered by the Colorado legislature in the**  
 15 **process of enacting activities leading up to the**  
 16 **enactment of House Bill 1407, which ultimately became**  
 17 **Section 10-3-115 and 116?**  
 18 A. Correct.  
 19 **Q. So my question is, did I misunderstand**  
 20 **you? I think I did.**  
 21 A. Yes, you did. Let me clarify for you.  
 22 **Q. Please.**  
 23 A. 2007 I went to the legislative hearings  
 24 to help support House Bill 07-11-04, which is  
 25 selection of your contractor of choice at a fair

**32**

1 market price.  
 2 **Q. Yes. I recall you saying that.**  
 3 A. In 2008 I helped support House Bill  
 4 08-14-07, okay, unreasonable claims conduct, which  
 5 went into -- you're correct -- August 8 signed by Bill  
 6 Ritter. And then I was just commenting that there's  
 7 current events in the last couple weeks, say, about  
 8 State Farm's publicly stated release that they're  
 9 going to pull out of the state of Florida because  
 10 they're dissatisfied with the premium increases that  
 11 the state of Florida will grant them. And how that  
 12 dovetailed with the other part is when we were talking  
 13 about House Bill 08-14-07, I said I brought up a lot  
 14 of loss ratio statistics which I enlightened a lot of  
 15 the legislative parties about the performance of  
 16 insurance companies in property cases here in  
 17 Colorado.  
 18 **Q. Is loss ratio something that's regulated**  
 19 **by the Colorado Division of Insurance, to your**  
 20 **knowledge?**  
 21 A. No. No, it's not regulated; but it  
 22 certainly is a litmus test for performance of  
 23 companies, their profitability, how they're treating  
 24 the consumer.  
 25 **Q. Okay. I'm going to move into the Gholson**

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1 claim, but I'd like to take a short break before we do  
 2 that and I want to grab something. Off the record.  
 3 (Recess taken 10:17 a.m. to 10:31 a.m.)  
 4 Q. (BY MR. SANDS) Now, Mr. McLoughlin, you  
 5 were involved and maybe still are involved in the  
 6 Gholson matter, correct?  
 7 A. Yes.  
 8 Q. And you entered into an agreement with  
 9 the Gholsons for your services; isn't that right?  
 10 A. That's correct.  
 11 Q. And I know we have it marked as an  
 12 exhibit, and as I recall that, let me show you  
 13 Exhibit 12 from Mr. Gholson's deposition. And is that  
 14 your insurance adjusting agreement for providing  
 15 services to the Gholsons?  
 16 A. Yes, it is.  
 17 Q. When I say "your," I understand you're a  
 18 representative of Public Adjusters of Colorado, LLC?  
 19 A. Correct. That's my business.  
 20 Q. Now, do you have any -- I think  
 21 Mr. Gholson testified that he was referred to you by  
 22 Justin Blackburn or another, a gentleman named Eli  
 23 perhaps from DRI. Not DRI. Yeah, I think it is DRI.  
 24 Do you have any understanding about whether that is  
 25 the case or not? I guess the question is, do you know

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1 how the Gholsons got to Public Adjusters of Colorado?  
 2 A. It's my understanding that Mr. Gholson  
 3 contacted me and I told him I would come up and meet  
 4 with him. And I do believe that someone from DRI  
 5 suggested that maybe he get a public adjuster  
 6 involved.  
 7 Q. Does Public Adjusters of Colorado have  
 8 any sort of business relationship with a company  
 9 called Disaster Restoration, Inc. or DRI?  
 10 A. No. There's no direct relationship.  
 11 Q. Is there any kind of -- well, withdraw  
 12 that question.  
 13 Do you from time to time refer your  
 14 clients to DRI?  
 15 A. No, no. In this particular case, this is  
 16 the first time I had ever been involved with DRI.  
 17 Q. The first time you had ever been involved  
 18 with DRI is the Gholson matter?  
 19 A. Uh-huh.  
 20 Q. Is that yes, for the record?  
 21 A. Yes.  
 22 Q. So you had never before worked with  
 23 anyone from DRI before the Gholson matter?  
 24 A. That's correct.  
 25 Q. Do you know how it is that DRI came to

35

1 refer the Gholsons then to you, if you had not worked  
 2 with them before?  
 3 A. It's my understanding they were very  
 4 impressed with my presentation for House Bill  
 5 07-11-04, and so they suggested to the Gholsons that  
 6 they might give me a call.  
 7 Q. And did you work at all with DRI then on  
 8 the Gholson matter in any capacity?  
 9 A. Yes.  
 10 Q. In what capacity did you work with DRI on  
 11 the Gholson matter?  
 12 A. They were to supply estimates of repair.  
 13 Q. And had they, being DRI, provided any  
 14 estimates to you or to -- withdraw that.  
 15 Had they provided estimates to the  
 16 Gholsons before they had any communication with you,  
 17 "they" being DRI?  
 18 A. Not that I'm aware of.  
 19 Q. Do you recall when you first had any  
 20 communication with DRI on the Gholson matter?  
 21 A. I believe they were present when I met  
 22 with Mr. Gholson at his property.  
 23 Q. The first time?  
 24 A. Yes.  
 25 Q. Let's talk about that. When did you

36

1 first go to the Gholson property? You can use your --  
 2 I think your agreement that I've shown you as  
 3 Exhibit 12 from Mr. Gholson's deposition as a frame of  
 4 reference for timing.  
 5 A. I think it was the day prior to this.  
 6 Q. So April?  
 7 A. 24.  
 8 Q. April 24?  
 9 A. Uh-huh.  
 10 Q. Prior to the execution of the agreement  
 11 marked as Exhibit 12 that you have in front of you,  
 12 did you have -- did you perform any services for the  
 13 Gholsons?  
 14 A. No.  
 15 Q. Just you were in the process of deciding  
 16 whether you were going to enter into an arrangement  
 17 with them; is that fair?  
 18 A. I always go up and meet with the insured  
 19 and discuss their situations. I have no shortage of  
 20 work and clients, potential clients in need, and so I  
 21 haven't solicited a case in years.  
 22 Q. My question was, before execution of  
 23 Exhibit 12, which is the public adjusting agreement,  
 24 you were in the process of deciding whether you would  
 25 handle the matter for the Gholsons; is that fair?

**37**

1 A. Yes, with a little clarification. I met  
 2 with Andy Gholson, took a look at his property  
 3 situation, discussed with him where -- you know, what  
 4 he thought the current status of his situation was.  
 5 At that time he was working with CoCat and DRI to  
 6 potentially have someone restore his property. He was  
 7 still at that point uncertain whether he needed -- he  
 8 felt he needed help, but he, you know, had met with  
 9 CoCat and they were supposed to send a revised  
 10 estimate. And I told him, Well, we can make an  
 11 arrangement, why don't you get your estimate from  
 12 CoCat, and if everything works out, so be it, if not  
 13 we certainly can step into this case.  
 14 **Q. Prior to the Gholson matter, had you ever**  
 15 **worked with anyone from CoCat?**  
 16 A. Yeah. I can't recall what it was because  
 17 I can remember having to deal with Trevor Martin, but  
 18 I can't recall the event. It was some time ago, a  
 19 long time ago.  
 20 **Q. Had you ever had an experience -- I know**  
 21 **you only identified the one; but prior to the Gholson**  
 22 **matter, did you have any experience with CoCat which**  
 23 **led you to believe that CoCat was not capable or**  
 24 **reputable?**  
 25 A. Yeah. I had encountered some issues that

**38**

1 raised some serious concerns.  
 2 **Q. Tell me what those were, please.**  
 3 A. Almost at this time there was a client  
 4 case in Greeley where they had come onto the property  
 5 and they had done the debris removal. I thought that  
 6 their billing was excessive. I had discovered that  
 7 the agent who had referred them said that the work was  
 8 authorized. I found out later that that same agency  
 9 also wrote CoCat's commercial liability policies.  
 10 They were filing liens on the property. I stepped in,  
 11 got that situation resolved equitably.  
 12 **Q. When did that happen? Give me a month**  
 13 **and a year, approximately.**  
 14 A. Well, the fire was on May 1 of 2007 and  
 15 they did the debris removal before the insured's  
 16 carrier had even inspected the site. And that was a  
 17 real problem. That was going on at this time.  
 18 **Q. The Gholson fire was in February of '07;**  
 19 **is that right?**  
 20 A. Yes.  
 21 **Q. And so you got involved in April of '07**  
 22 **then with the Gholsons, right, according to**  
 23 **Exhibit 12?**  
 24 A. Yeah. Like I said, I told Mr. Gholson,  
 25 You know, get your estimate from CoCat and see if he

**39**

1 makes the proper adjustments. And we talked a little  
 2 bit about some of the construction issues at his  
 3 house. His brother-in-law is a very solid contractor  
 4 and had walked his property with him and had pointed  
 5 out many of the issues that I pointed out in my first  
 6 visit to Mr. Gholson that I thought were of concern.  
 7 **Q. And were those issues that you pointed**  
 8 **out to Mr. Gholson related to fire damage or to**  
 9 **preexisting construction issues? Please tell me what**  
 10 **you were talking about there.**  
 11 A. Well, let's clarify this first. The fire  
 12 occurred and then the insured has to put their house  
 13 back to proper building codes. It's just that simple.  
 14 And in the case of the Gholsons, they had -- you know,  
 15 I walked up, I could see the slab had no footings on  
 16 it. Under the garage area the slab was cracked.  
 17 Mr. Gholson had relayed to me that Mr. Thomsen had in  
 18 one of the prior meetings taken a dime out of his  
 19 pocket and said that State Farm only pays for slabs  
 20 that are cracked wider than a dime, which is just  
 21 absurd. And the simple reality was that he could not  
 22 rebuild the garage or any portion of his home in that  
 23 area on the existing slabs that were there.  
 24 **Q. When you first saw the property, which**  
 25 **was, I think, April 24 of 2007, correct?**

**40**

1 A. Correct.  
 2 **Q. Did you reach a conclusion in your own**  
 3 **mind as to whether the slab that you just referred to**  
 4 **was directly damaged by the fire or not?**  
 5 A. Well, the slab was damaged by the fire.  
 6 **Q. And in what respect?**  
 7 A. Well, when you have a fire like that  
 8 cooking on top of the slab, it expands the  
 9 reinforcement bars inside the slab to a greater  
 10 degree. It has a higher coefficient of thermal  
 11 expansion than concrete, so after it cools down, the  
 12 reinforcement in there is no longer embedded into the  
 13 concrete and therefore it's no longer considered a  
 14 rigid structure by design. The other issue which was  
 15 clearly obvious is that the water had washed away  
 16 around all the corners. You could see that there was  
 17 no footing underneath it.  
 18 **Q. Let me ask you --**  
 19 MR. LIVINGSTON: Let him finish whatever  
 20 he's saying. He's going into something else.  
 21 A. There was no footing under it, and so to  
 22 erect a building on there, you have to have a stamped  
 23 engineer's design. And one of those design criteria  
 24 is to have a suitable load-bearing footing  
 25 arrangement. There's just no way around it

**41**

1 Q. (BY MR. SANDS) Now, the footing not  
 2 being there, that was something that existed prior to  
 3 the fire, of course, yes?  
 4 A. Yes.  
 5 Q. The fire suppression efforts washed away  
 6 the backfill around the footer, is what you're saying?  
 7 A. There was no footer.  
 8 Q. I'm sorry. Around the slab, correct?  
 9 A. Yes. You could see it.  
 10 Q. It exposed that the original construction  
 11 did not include a footing for the slab, correct?  
 12 A. That's correct.  
 13 Q. Was there visible cracking of the slab  
 14 that you attributed to the fire itself?  
 15 A. There was cracking evidence on the slab.  
 16 Q. My question is, though --  
 17 A. Yes. It was clear that it was related to  
 18 the fire.  
 19 Q. Explain that, please. Let me give you  
 20 some foundation here. I've been handling construction  
 21 litigation in Colorado for 29 years, and one thing  
 22 every engineer I've ever spoken to about concrete in  
 23 Colorado tells me is that the one thing we know about  
 24 concrete here is that it cracks. It just is a fact of  
 25 life in Colorado. So let me ask you, do you

**42**

1 understand that concrete cracks for a lot of reasons,  
 2 slabs crack?  
 3 A. Concrete gets harder every year for 100  
 4 years.  
 5 Q. Well, my question is, concrete can crack  
 6 for a lot of reasons, a slab, right?  
 7 A. Sure. Not having proper control joints.  
 8 Q. Concrete in Colorado cracks outside of  
 9 control joints even, right, or are you not aware of  
 10 that?  
 11 A. If concrete is put in properly and it's  
 12 designed properly, the control joints will do their  
 13 job.  
 14 Q. This house was built in 1978, is that  
 15 right, the Gholson residence?  
 16 A. I believe it was started a little sooner.  
 17 The person who built it pulled the permit, I think,  
 18 even earlier than that.  
 19 Q. Even earlier than '78?  
 20 A. Yes.  
 21 Q. Do you know whether the construction  
 22 standards in Colorado called for control joints in  
 23 slabs?  
 24 A. Well, my experience with Colorado is the  
 25 building department was like the Wild West of building

**43**

1 for a period of time.  
 2 Q. I don't know what that means.  
 3 A. You go out to someplace like Chaffee  
 4 County or whatever, there wasn't any construction  
 5 standards 25, 30 years ago.  
 6 Q. This was a slab-on-grade that we're  
 7 talking about, correct?  
 8 A. Yes, exactly.  
 9 Q. All right. So back to my question, on  
 10 what basis did you reach a conclusion when you first  
 11 saw the slab we're talking about -- this is the garage  
 12 area where the fire was, correct? That's the slab  
 13 you're talking about?  
 14 A. Yes.  
 15 Q. When you first saw that slab, you said  
 16 you reached the conclusion that there were signs of  
 17 physical damage caused by the fire itself, correct?  
 18 A. It was really moot.  
 19 Q. I'm sorry?  
 20 A. It was really moot because to put up the  
 21 garage, you would have to put in a slab with the  
 22 footing arrangement.  
 23 Q. But my question is -- I understand your  
 24 opinion is that it's moot. I understand that's your  
 25 opinion, but my question is, did you reach the

**44**

1 conclusion that there were signs of physical damage to  
 2 the slab as a result of the fire itself?  
 3 A. There was spalling on the surface of the  
 4 slab.  
 5 Q. Slabs spall for reasons other than fire,  
 6 correct?  
 7 A. Well, it's possible.  
 8 Q. Well, in fact, concrete spalling in  
 9 Colorado happens all the time for reasons other than  
 10 fire. Do you not know that, Mr. McLoughlin?  
 11 A. You know, I think you're misguided in  
 12 trying to direct this as to being that somehow that  
 13 slab didn't have to be replaced or was some kind of a  
 14 preexisting condition. The property had a fire. The  
 15 Gholsons have a replacement cost policy. And I'm sure  
 16 you're familiar with Dupris versus Allstate. They  
 17 have an indexing policy which guarantees that they're  
 18 going to restore the property, you know, like kind and  
 19 quality. And State Farm's policy has an A-1  
 20 designation, which is similar construction, identical  
 21 construction to meet the building code requirements so  
 22 that it can be returned to its original intended  
 23 purpose, which was the occupancy of the Gholsons. And  
 24 the simple fact is that the garage burned down and now  
 25 to put it back up, a properly stamped, professionally

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1 stamped engineer drawing meeting all the load detail  
2 requirements for submittal had to be put into place.  
3 And the theory the other day that was expressed by  
4 Mr. Thomsen that bringing an engineer in, you know,  
5 limits your options of grandfathering, well, that's  
6 just sidestepping laws and regulations. It's  
7 nonsense.

8 **Q. Mr. McLoughlin, I appreciate your saying  
9 that I'm misguided. I appreciate that's your opinion.  
10 I appreciate your position on behalf of the Gholsons.  
11 Okay. I know you have one and I know that you're  
12 going to express it. I would appreciate it, however,  
13 if you would not make assumptions about the reasons  
14 I'm asking you questions. You may think they're  
15 stupid. You may think I'm stupid. You may think I'm  
16 misguided. Whatever you think is what you think. I  
17 would still like an answer to my question. And  
18 whether you think the question is misguided or stupid  
19 or not, please answer it, sir. The question was, did  
20 you reach a conclusion when you first got there as to  
21 whether this slab had been directly damaged by the  
22 fire or not? You said you saw spalling and then I  
23 asked you how you reached the conclusion that the  
24 spalling was caused directly by the fire, and that's  
25 when you told me I'm misguided and gave us the**

1 **fire or not. Did you reach a conclusion?**  
2 A. It is my opinion that the spalling that  
3 was caused there was caused by the fire.

4 **Q. On what basis did you reach that  
5 conclusion that day?**

6 A. The spalling was on all different areas  
7 of the slab and in some cases it was in corners where  
8 if you had a motor vehicle parked with salt on the  
9 vehicle, that might cause spalling. It was over in  
10 the corner where you couldn't possibly park that  
11 vehicle.

12 **Q. Well, from my own experience in  
13 construction cases and garage situations where the  
14 slabs are rarely perfectly level, at least that's what  
15 I've been told by engineers, you do get spalling in  
16 corners, for example, because when you park your car  
17 in the garage and the salt and the water drip off --  
18 the snow drip off the car, it migrates into other  
19 areas, not just exactly under where the car is parked.  
20 So what I'm wondering here is, did you do anything  
21 like test whether the slab was level and where water  
22 might migrate?**

23 A. Once again, I previously stated the whole  
24 thing was moot. The foundation footing had to go in,  
25 regardless of the condition of the slab.

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1 narrative you just gave us. I would like an answer to  
2 my question, which is on what basis did you reach the  
3 conclusion that the spalling that you saw was directly  
4 caused by the fire?

5 MR. LIVINGSTON: Okay. Now, wait a  
6 minute. You just gave the witness what I consider a  
7 tongue lashing and you referenced this, you know, you  
8 call me misguided, et cetera.

9 MR. SANDS: He did.

10 MR. LIVINGSTON: You made a comment to  
11 him, I think, immediately before he said that didn't  
12 you know, Mr. -- haven't you figured out,  
13 Mr. McLoughlin, or something to that effect that  
14 spalling happens for a number of reasons in Colorado.  
15 I think the tone of that statement you made was kind  
16 of insulting, frankly.

17 **Q. (BY MR. SANDS) Well, if you were  
18 insulted, Mr. McLoughlin, it was not my intent to  
19 insult you.**

20 A. No offense taken, Mr. Sands. No offense  
21 was directed at you.

22 **Q. Thank you. I really wasn't offended. I  
23 just want to know whether you reached a conclusion  
24 that the spalling that you testified to a little bit  
25 ago here in this deposition was directly caused by the**

1 **Q. I understand that. I'm just trying to  
2 understand what analysis you went through. And I have  
3 my reasons for asking. Once again, you may not agree  
4 with my reasoning, but I have my reasons.**

5 A. Sure.

6 **Q. So I just want to know, is there any  
7 other reason other than what you've already said that  
8 you reached the conclusion that the spalling that you  
9 saw in the garage slab was directly caused by the  
10 fire, other than what you've already said?**

11 A. I believe it to be caused by the fire.

12 **Q. I'm asking are there any other reasons.  
13 I know you believe that. I'm trying to get all the  
14 reasons you believe that.**

15 MR. LIVINGSTON: I'll object as far as  
16 the opinion that you elicited, you didn't get it  
17 within the proper legal standard.

18 A. There was also other issues. When the  
19 fire occurred, there was all kinds of materials in the  
20 Gholson garage that were burned by the fire. And  
21 those materials -- those containers leaked and  
22 released those materials. And you could certainly see  
23 that they had saturated the surface. And you could  
24 see that in some places there was no saturation of  
25 those materials and in the middle of the pool area

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1 So that would tell me that it was very current  
 2 spalling.  
 3 **Q. (BY MR. SANDS) And I think we have some**  
 4 **photographs. Did you take pictures of the slab**  
 5 **yourself?**  
 6 A. There were pictures that were taken,  
 7 yeah. I don't know whether Dan McCaffry took them.  
 8 **Q. Okay. And after you -- at some point**  
 9 **around the time you signed your contract with the**  
 10 **Gholsons, you said you indicated to them go ahead and**  
 11 **get your estimate from CoCat, right?**  
 12 A. I suggested that they do it. I wanted  
 13 him to be satisfied that, you know, CoCat wasn't going  
 14 to provide him a competent estimate. As I said, his  
 15 brother-in-law is a contractor. His brother-in-law  
 16 had walked the site, said there's all these particular  
 17 issues that you're going to have to address as a  
 18 result of this fire. So he was -- Mr. Gholson, you  
 19 know, almost like had the answers to the examination  
 20 before I got there. So I was really kind of passing  
 21 the test.  
 22 **Q. And you think he got those answers, to**  
 23 **the best of your understanding, from his**  
 24 **brother-in-law, the contractor?**  
 25 MR. LIVINGSTON: Object to form.

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1 **Q. (BY MR. SANDS) Did you know where he got**  
 2 **all of the answers you said he got?**  
 3 A. He said he got -- his brother-in-law had  
 4 confirmed all that.  
 5 **Q. Now, was one of the functions you were**  
 6 **going to perform for the Gholsons assistance in review**  
 7 **of the estimates that were provided by CoCat or any**  
 8 **other contractor?**  
 9 A. Yeah. I mean, that's my business's  
 10 function. We looked at the CoCat estimate that was  
 11 generated May 14, 2007, and the estimate is grossly  
 12 inadequate.  
 13 **Q. I'm going to show you a couple of**  
 14 **exhibits, sir. First one is Exhibit 24. This is a**  
 15 **CoCat estimate. You can see it's provided with**  
 16 **respect to the Gholson residence there?**  
 17 MR. LIVINGSTON: What's the date on this  
 18 one?  
 19 MR. SANDS: I'm going to get there.  
 20 **Q. (BY MR. SANDS) This one the date is**  
 21 **March 22, 2007?**  
 22 A. Correct. I looked at that one as well.  
 23 **Q. You looked at this one?**  
 24 A. Yes.  
 25 **Q. This is the first one I know of**

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1 A. Yes, that is the first one.  
 2 **Q. Did you discuss this estimate with the**  
 3 **Gholsons?**  
 4 A. I did.  
 5 **Q. Did you find this CoCat estimate -- that**  
 6 **is, Exhibit 24, the March 22, '07, estimate -- to be**  
 7 **grossly inadequate, as you said before?**  
 8 A. Yes.  
 9 **Q. In what respects?**  
 10 A. It doesn't address the requirements to  
 11 restore that house.  
 12 **Q. You're talking about the code issue, for**  
 13 **example, the slab and what other issues? That's a**  
 14 **dumb question. Let me reask it.**  
 15 **In what respects did you find this**  
 16 **Exhibit 24, the March 22, '07, CoCat estimate, to be**  
 17 **inadequate?**  
 18 MR. LIVINGSTON: Can we have the document  
 19 presented to the witness so he can review it.  
 20 MR. SANDS: It is presented to the  
 21 witness.  
 22 MR. LIVINGSTON: Give it to him then.  
 23 MR. SANDS: Okay. I thought I had.  
 24 A. For instance, the garage that he had was  
 25 a 9-foot-high garage and he's got an 8-foot-high

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1 garage. The estimate --  
 2 MR. LIVINGSTON: Can we clarify on the  
 3 record. The estimate you said has 8-foot and the  
 4 house has 9-foot?  
 5 THE DEPONENT: Yes.  
 6 MR. LIVINGSTON: Keep going with your  
 7 answer.  
 8 A. So that means that everything on or  
 9 around or about that garage is all 1 foot short all  
 10 the way around. You know that as a construction  
 11 defect attorney. I'm sure you understand that. And  
 12 then you have an inadequate amount of roof decking and  
 13 roof materials for the other areas going into the mud  
 14 room. You're missing -- his entire garage was  
 15 sheetrocked. It had a 220-volt service in it, a  
 16 separate self-feed panel with 220 volts for his --  
 17 Mr. Gholson likes to do woodworking and that's a hobby  
 18 of his. That stuff is not there. There's -- we can  
 19 go on and on.  
 20 MR. LIVINGSTON: You want to go on and  
 21 on, let's get it on the record.  
 22 A. It was missing an interior -- it was  
 23 missing a door and the entry door to the garage on the  
 24 exterior of the single-entry door. It's missing  
 25 exterior light fixtures. It's missing proper -- there

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1 was decking inside his garage, the rafters. Please  
 2 understand, I haven't been through this in quite some  
 3 time.  
 4 **Q. (BY MR. SANDS) That's okay. And we can**  
 5 **go about this another way to save time. Suffice to**  
 6 **say for the moment that there were a number of issues**  
 7 **you had with the March 22, 2007, CoCat estimate? I**  
 8 **know you haven't identified all of them. There were a**  
 9 **number of them; is that fair?**

10 MR. LIVINGSTON: So for the record, we're  
 11 withdrawing the request to identify all issues at this  
 12 time.

13 **Q. (BY MR. SANDS) Can you answer my**  
 14 **question, Mr. McLoughlin? There were a number of**  
 15 **issues you had with the CoCat estimate?**

16 A. That is correct.

17 **Q. Now --**

18 A. I have one big issue, though.

19 **Q. Go ahead.**

20 A. I am really concerned about how Mr. Story  
 21 got an 02/15/07 assignment date on it when he didn't  
 22 show up to the property until about the time that he  
 23 says it was entered and completed, which is he showed  
 24 up somewhere about 3/10, March 10. And I just really  
 25 don't understand how his assigned date on this project

1 Gholson --  
 2 MR. LIVINGSTON: Did you say I answered?  
 3 MR. SANDS: Had served.  
 4 MR. LIVINGSTON: Okay. I'm sorry. I  
 5 thought you said I had responded to a subpoena.  
 6 MR. SANDS: No, I didn't say that. Sorry  
 7 if I didn't speak clearly.  
 8 MR. LIVINGSTON: Go ahead.

9 A. There's a number of concerns. One, he  
 10 has Gholson, dash, STR and when they came during the  
 11 STD, they also supplied the string Gholson, dash, STR,  
 12 which means they still have the ESX file, which is the  
 13 cold file for Xactimate, which can be exchanged via  
 14 XactNet. And that file will show who initially  
 15 initiated this, who authored it, who made changes on  
 16 it. It will show a progression sequence in the audit  
 17 file that it's contained in, which, you know, I could  
 18 extract most of that information, but it really  
 19 records every key stroke that's made in that file.  
 20 The fact is, I don't understand how Trampus Story has  
 21 got an assignment date, you know, shortly after the  
 22 fire when he didn't show up until the tenth. It kind  
 23 of baffles me. The other thing that I wish to know is  
 24 that he has a pricing code string, which is a bit  
 25 problematic, too.

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1 was before he even came up on the property.  
 2 **Q. Your understanding is that the first time**  
 3 **Mr. Story was at the property was March 10 of 2007?**

4 A. Yes. He came just about the time they  
 5 were -- abatement was just about to start. The  
 6 abatement was actually done in April, but it was  
 7 delayed for the ten-day waiting period. And he showed  
 8 up just prior to when they were originally going to  
 9 commence that. My recollection with Mr. Gholson was  
 10 that Mr. Story just pulled up at the site with a six  
 11 pack of beer in the front seat, an open container in  
 12 the car, and said, You know, howdy, partner, can I  
 13 help you out here, what's going on.

14 **Q. Your understanding was, again, that was**  
 15 **March 10, approximately?**

16 A. About that time, yes.

17 **Q. 2007? What concerns does it raise for**  
 18 **you that the date on the front of that Exhibit 24, the**  
 19 **March 22, '07, estimate has a February 15, 2007,**  
 20 **assignment date?**

21 A. Well, I know from stuff that was supplied  
 22 by CoCat's -- was it SDT?

23 **Q. The subpoena duces tecum that**  
 24 **Mr. Livingston had served?**

25 A. Right. I understand they have the string

1 **Q. (BY MR. SANDS) Explain that, if you**  
 2 **would, please.**

3 A. He has a price string called CODE24B6DRO.  
 4 And what that tells me is that this is Colorado, CO.  
 5 DE is the Denver price code. Four means it's  
 6 Xactimate. 24B means it's a building repair estimate  
 7 and six means 2006. D means the third quarter price  
 8 list that came out October 1 of 2006. So that's way  
 9 before the fire and a period where you had very, very  
 10 substantial price increases going on on building  
 11 materials and labor trades and everything else, and  
 12 this would grossly undervalue the scope of work. I  
 13 can't understand why a contractor would come to the  
 14 Gholsons and make this estimate if they were trying to  
 15 make a legitimate fair market profit. I mean, it kind  
 16 of baffles the imagination. Then it has a tail code  
 17 on it, RO, which means that they have taken the  
 18 standard price code, they've made some kind of  
 19 customization or they've saved it as a customized  
 20 price file. And that is troubling to me.

21 **Q. Why is that troubling to you, sir?**

22 A. Well, you know, as a consumer advocate  
 23 for House Bill 07-11-04, selecting a contractor at  
 24 fair market price, I just don't understand how this  
 25 gentleman could arrive at this. And I mean, he

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1 clearly has State Farm Insurance, Tim Thomsen, so he  
2 knows who the claim is being handled with. He's  
3 showing a date assigned almost a month before he came  
4 to the site. And the other thing, he's got date  
5 entered and date completed to -- you know, the best  
6 estimator in a restoration company is a Ms. Donelle  
7 Likkel of ICA. She performs them on a function called  
8 Sketch. And she can whip any other restoration  
9 project manager in town printing out one of these  
10 estimates; but even with her expertise, it would still  
11 take her probably three days to master this work  
12 product. And here this guy enters it on one date and  
13 completes it the next date. So I have to believe if  
14 we get the ESX file, we will find he received an  
15 estimate from somebody else.

16 **Q. So your assumption is that Mr. Story had**  
17 **received an estimate from someone before he actually**  
18 **completed his own estimate; is that what you're**  
19 **saying?**

20 A. I believe when his ESX file is produced,  
21 it will show that he received an ESX file from  
22 somebody else and then began to put his own imprint on  
23 it. That's, you know, an assumption, but I think I  
24 have a pretty solid basis to suspect that this might  
25 be the case.

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1 **Q. And just to -- are you suggesting or is**  
2 **your suspicion that Mr. Story at CoCat had received an**  
3 **estimate from somebody at State Farm before he ever**  
4 **got there? Is that what you're surmising?**

5 MR. LIVINGSTON: Object to form. I think  
6 he said ESX file.

7 A. I just said he got an ESX file. I don't  
8 know from who. Certainly, the ESX file will tell that  
9 story. And the other last point I want to make on  
10 this, this has the price code with something called  
11 factored -- base service charges factored out. And,  
12 you know, the Gholson property is what from a project  
13 standpoint I would call a 'tweener location. I mean,  
14 it's sitting up on top of a mountain. You've got a  
15 lot of driving to get to it. A lot of the building  
16 materials are not resident right there in town, and so  
17 you've got to go some distance to get materials and  
18 construction activities. The contractors have to  
19 drive a considerable distance to perform the work.

20 There is a price code which is used in  
21 Colorado called a resort price code, okay, and the  
22 resort price code would be a different string. It  
23 would be CO, I think it's RE or RO in the string as  
24 opposed to CO DE. And, you know, you would use that  
25 price code for mountain properties. Okay. And I

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1 think technically Mr. Gholson is at 8,000 feet, and so  
2 in some respects the resort price would probably be  
3 the proper code to use on his reconstruction effort.  
4 That's substantially higher than any such code. If  
5 you took the standard price code for Colorado, Denver,  
6 you know, Xactimate 24 building and you used the right  
7 quarter of pricing and you used factored in base  
8 service charges and factored out, that's about a  
9 6 percent differential. The resort would probably be  
10 from the lowest level about a 15 percent differential.  
11 And that probably is the proper code to apply to this  
12 project.

13 **Q. My understanding is that Evergreen is**  
14 **included in the Denver metro area price code for**  
15 **Xactimate. Am I wrong in my understanding?**

16 A. It is not.

17 **Q. It's not included in the Denver metro**  
18 **price?**

19 A. No.

20 **Q. I'm sorry. Xactimate price code? Which**  
21 **price code -- Xactimate price code is the Evergreen**  
22 **area included in?**

23 A. Well, that's what I said. It's a  
24 'tweener. It's between the resort and whatever.

25 **Q. So you -- go ahead.**

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1 A. It's between the resort and the Denver.  
2 And, you know, it's really a contractor's choice. And  
3 in this process I didn't influence anybody to pick the  
4 price codes that they wanted to work on; but my  
5 professional opinion would be to properly and  
6 adequately handle that job, there would have been two  
7 ways to do it. You could either -- assuming that you  
8 have price X, being the lowest price, being base  
9 service charges factored out, base service charges  
10 factored in would have increased approximately 6 to  
11 7 percent and resort would have taken it up  
12 approximately to 15 percent. I think the right  
13 selection is kind of a hybrid between the two, but I  
14 really feel that anybody who would be using base  
15 service charges factored out on the Gholson project is  
16 shortchanging the situation and dynamics of the job.

17 (Deposition Exhibit 47 was marked.)

18 **Q. I'm going to show you what has been**  
19 **marked today as Exhibit 47. And Exhibit 47 is a**  
20 **Disaster Restoration, Inc. estimate for the Gholson**  
21 **residence; isn't that right?**

22 A. That is correct.

23 **Q. And if you flip ahead, you'll see that**  
24 **the date on this one is June 9 --**

25 A. Correct.



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1 Q. -- 2007?  
 2 Have you seen this estimate before?  
 3 A. I have.  
 4 Q. Flip, if you would, ahead to -- let's go  
 5 to page 10 of the estimate. It says page 10 at the  
 6 bottom. You see there's some handwriting there.  
 7 You're not there yet. Sorry.  
 8 A. Okay.  
 9 Q. Do you see that handwriting at the  
 10 bottom?  
 11 A. Yes.  
 12 Q. Do you know whose that is?  
 13 A. That is not my handwriting.  
 14 Q. Do you know whose it is?  
 15 A. I believe it's probably Dan McCaffry's.  
 16 Q. Now, can you tell from looking at this  
 17 DRI estimate that's dated June 9, 2007, what price  
 18 list was being used?  
 19 A. They use their own generated price list.  
 20 Q. And how do you know that?  
 21 A. Because I made inquiries about it.  
 22 Q. My review of the records indicates -- and  
 23 I could be mistaken, but I'd like to see if you know.  
 24 This appears to be the first DRI estimate for the  
 25 Gholson residence, this June 9, '07, estimate. Do you

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1 have a recollection as to whether this Exhibit 47 is  
 2 the first DRI estimate?  
 3 A. This is. This is an institute work  
 4 product. At the particular time that this was being  
 5 developed, you had Jeff Davis.  
 6 Q. Go ahead.  
 7 A. Jeff Davis was hired and retained to  
 8 evaluate the requirements for reconstructing the  
 9 property. And he was in the process of preparing his  
 10 report and Mr. Davis -- at this point Disaster  
 11 Restoration was, you know, beginning to make the  
 12 obvious scope issues that they felt were there. And  
 13 Mr. McCaffry, who has 24 years of field adjusting  
 14 experience, very, very knowledgeable on IntegraClaim,  
 15 was going through and making -- his job was to make  
 16 notes and help get the estimate that was accurate.  
 17 Q. So was it Mr. McCaffry who was at least  
 18 at that time in June of '07 more directly involved  
 19 than you in working with the Gholsons on the  
 20 estimates, at least at that time?  
 21 MR. LIVINGSTON: Object to form.  
 22 A. He was new and I was vigilantly  
 23 overlooking what he was doing.  
 24 Q. (BY MR. SANDS) Were you finished with  
 25 your answer?

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1 A. Yeah.  
 2 MR. LIVINGSTON: Jon, when you get to a  
 3 point to take a break, maybe we can do that. I don't  
 4 know what time it is.  
 5 MR. SANDS: 11:15.  
 6 MR. LIVINGSTON: Whatever.  
 7 Q. (BY MR. SANDS) Could you flip to  
 8 Exhibit 30 in the book you have in front of you,  
 9 please, Mr. McLoughlin. My colleague, Ms. O'Brien,  
 10 has corrected me. This is a DRI estimate, Exhibit 30,  
 11 that was identified by Mr. Gholson, and it actually  
 12 has an earlier date. It's May 29, '07.  
 13 A. Correct.  
 14 Q. This may be the first one.  
 15 A. I can look to my files and see. I  
 16 produced everything I had.  
 17 Q. Okay. Well, is it your understanding  
 18 then that DRI -- let's assume this one, Exhibit 30,  
 19 is the first DRI estimate -- that DRI was using its  
 20 own price code?  
 21 A. Yes. I mean, I also looked. If you go  
 22 to Xactimate, they allow you to put in stuff like your  
 23 workers' comp rates and other things and develop your  
 24 own pricing. In fact, they encourage contractors to  
 25 develop their, you know, representative pricing

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1 models. You know, I run the standard price codes  
 2 against DRI's stuff. And when I've done that, they  
 3 vary, you know, a fraction of a percent differential.  
 4 Q. Now, I'm sorry. Were you done?  
 5 A. Yes.  
 6 Q. Was your office comparing estimates from  
 7 DRI with estimates from CoCat?  
 8 A. We were not, simply because Mr. Story had  
 9 the opportunity to make sensible corrections to his  
 10 estimate, and what he demonstrated in his May 14  
 11 estimate was that he had no intention of doing the  
 12 right things at the Gholson property. He also made  
 13 very substantial representations to Mr. Gholson, or as  
 14 reported to me by Mr. Gholson, that you don't need a  
 15 building permit, you don't need to do this, you know,  
 16 you don't need to follow the codes, and that's simply  
 17 wrong.  
 18 Q. You said earlier that it's your  
 19 understanding Mr. Story appeared at the home for the  
 20 first time on March 10 of 2007 or about that date. Do  
 21 you remember that?  
 22 A. Correct.  
 23 Q. Are you aware -- I don't remember whether  
 24 you were present in Mr. Story's deposition or not?  
 25 A. I've read it though

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1 **Q. You know that Mr. Story said then at**  
2 **page 80 of his transcript that he was there within a**  
3 **day or two of the fire?**

4 MR. LIVINGSTON: Wait a minute,  
5 Mr. Sands. You know, you're representing what the  
6 testimony has been in this case and you know that he  
7 said exactly what Mr. McLoughlin said earlier. If  
8 you're going to start representing stuff about what's  
9 going on, you need to show him everything, not I think  
10 the guy misspoke there. Don't change the facts. Show  
11 him -- the guy repeatedly said what he's saying.  
12 You're trying to change the evidence by using what I  
13 think is an inaccurate portion of what this guy's  
14 deposition says. And you know that, Jon.

15 MR. SANDS: Actually, I don't. Maybe  
16 I've forgotten. I do not recall Mr. story saying  
17 anything inconsistent -- can I finish, please. I  
18 don't recall him saying anything inconsistent with  
19 what he said at page -- in this transcript page 80.

20 MR. LIVINGSTON: You done?

21 MR. SANDS: You asked him beginning at  
22 page 79, line 25, The fire was February 2. It was  
23 within several weeks of the fire you first met  
24 Mr. Gholson. Answer: I believe it was within two  
25 days of the fire. I initially made contact with

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1 I met him, I had the restoration estimates, and the  
2 process was going to start on Monday. I'm not trying  
3 to be critical. I just want to keep this thing  
4 accurate in terms of what we're dealing with.

5 **Q. (BY MR. SANDS) Go ahead, Mr. McLoughlin.**

6 A. I'm happy that I read his -- I picked  
7 that date up and I felt that that was inaccurate given  
8 the other testimony that he made. He represented when  
9 he came that the site was cleared. And what happened  
10 with the garage, getting that cleared, yeah, I think  
11 he actually made reference to a corner -- one of the  
12 corners was broken of the garage slab by a skid steer  
13 or something. It's my understanding in my  
14 investigation in the Gholson time line issues that the  
15 American Restoration did not quickly remove the garage  
16 debris. They did that sometime after they carted out  
17 the personal property on the 9th of February. They  
18 were hampered by snow, so it took them a while. They  
19 couldn't get the dumpsters out. So Mr. Story's  
20 recollection that, you know, about the time he was  
21 checking the abatement bids that the slab was cleared,  
22 that the corner was broken pretty accurately pinpoints  
23 his time to about the 10th of March.

24 **Q. Who did the board-up -- emergency**  
25 **board-up after the fire?**

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1 Mr. Gholson. Then you asked him, And when you showed  
2 up, did you have a six pack of beer? And he said, I  
3 haven't had a beer to drink in over four years, so the  
4 answer would be no.

5 MR. LIVINGSTON: Mr. Sands, what I'm  
6 referring to is recall the numerous times in his  
7 testimony that he said when I first was there and he  
8 showed me the numbers from the remediation, bounced it  
9 around, I told him I thought they looked reasonable  
10 and the remediation was going to start that coming  
11 Monday. And there was extensive references to that.  
12 And that's also what Mr. Gholson said. I think, Jon,  
13 that I'm just trying to be fair here. Realistically,  
14 that is what happened. I mean, the guy said the first  
15 meeting I went over the restoration estimates and told  
16 him, yeah, those numbers look right. You know and I  
17 know that wasn't the day after the fire. There's just  
18 no evidence in this case to support that, you know,  
19 anybody is really dealing with this the day after the  
20 fire, other than the initial board-up people, the  
21 State Farm people, et cetera. So I don't want to  
22 really see it go in a direction of trying to mislead  
23 somebody based on some earlier confusion. Remember  
24 Mr. Trampus also said, I'm no good with dates, but he  
25 did remember events. And the event was the first day

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1 A. It was Disaster Restoration who was  
2 called by the -- I believe they were called by the  
3 fire department -- I believe the fire department  
4 instructed Andy to call for the board-up service.

5 **Q. So did you have -- you then had**  
6 **discussions with someone from Disaster Restoration**  
7 **about the pricing that they were going to be using in**  
8 **doing their estimates; is that accurate?**

9 A. I have. I have two cases with them. And  
10 certainly Mr. Egger in the other cases made that a big  
11 bone of contention. You know, I examined their  
12 estimate for fitness. I don't control contract or  
13 pricing like some other parties might.

14 **Q. What are the parties you're referring to?**

15 MR. LIVINGSTON: He wasn't finished with  
16 his answer, I don't think. Complete your answer.

17 A. Yeah. You know, I've seen cost  
18 manipulation in the restoration industry, insurance  
19 industry as a whole. And I'm not pointing fingers at  
20 people here. I'm just trying to analyze the facts of  
21 the situation.

22 **Q. (BY MR. SANDS) My question that I have**  
23 **now is, you said you're not pointing fingers at**  
24 **people. I want to make sure we get a clear answer to**  
25 **this. Are you suggesting in this case that you**

17 (Pages 65 to 68)

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1 **believe that State Farm manipulated any contract or**  
 2 **pricing with respect to the Gholson residence?**  
 3 MR. LIVINGSTON: Objection, vague as to  
 4 "manipulation."  
 5 **Q. (BY MR. SANDS) It's his term. However**  
 6 **you were using the term "manipulation."**  
 7 A. I think from the evidence that I see, I  
 8 have good reason to believe that State Farm was  
 9 involved in controlling pricing for contractors.  
 10 **Q. For which -- go ahead. For which**  
 11 **contractors?**  
 12 A. CoCat, I have to believe that there's  
 13 some influence in a later issue with Jim Black.  
 14 **Q. And what's the basis for your position or**  
 15 **belief that State Farm had manipulated CoCat's**  
 16 **pricing?**  
 17 A. Well, I can't understand why CoCat would  
 18 supply a fax to Mr. Thomsen dated 7/12 with their  
 19 estimate, when they have no contractual relationship  
 20 with the Gholsons, period. I mean, it's just absurd.  
 21 And then to make a time line in support, I mean, I  
 22 would like to know why they would even venture into  
 23 such a thing. And the fact that the estimates are  
 24 using October 1, 2006, modified pricing is just  
 25 amazing

**70**

1 **Q. Did you review the State Farm estimate**  
 2 **for the Gholson residence?**  
 3 A. I have, yes.  
 4 **Q. And what pricing did State Farm use in**  
 5 **its estimate, if you recall?**  
 6 A. They have a proprietary price code. I  
 7 have no access to it. So I can't analyze that  
 8 database without getting the price list.  
 9 **Q. Is there any other basis for your**  
 10 **supposition that State Farm manipulated CoCat's**  
 11 **pricing, other than CoCat sent a fax and provided a**  
 12 **construction time line to State Farm in July of 2007?**  
 13 **Any other reason?**  
 14 MR. LIVINGSTON: Object to the form of  
 15 the question.  
 16 A. The discrepancies in the two estimates  
 17 are uncannily similar.  
 18 **Q. (BY MR. SANDS) Which two estimates are**  
 19 **you referring to?**  
 20 A. Between State Farm, Tim Thomsen's  
 21 estimate, and CoCat's estimate.  
 22 **Q. Okay. What discrepancies are you**  
 23 **referring to?**  
 24 A. Where you have 8-foot ceilings in the  
 25 garage and other anomalies throughout the estimate

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1 If you'd like me to spend a day, I can give you a very  
 2 detailed list of them.  
 3 **Q. I don't need you to do that.**  
 4 MR. LIVINGSTON: Can we take a break,  
 5 Jon? I made an inquiry about that 15 minutes ago.  
 6 MR. SANDS: Yeah. If you need a break,  
 7 we can take a break. Sure.  
 8 (Recess taken, 11:28 a.m. to 11:40 a.m.)  
 9 **Q. (BY MR. SANDS) Mr. McLoughlin, just to**  
 10 **get these things -- go ahead. Is there something else**  
 11 **you wanted to say?**  
 12 A. Yeah. I didn't finish the last spot.  
 13 **Q. Go ahead. Finish your answer.**  
 14 A. It was about why, you know, I saw  
 15 manipulation.  
 16 **Q. Yes. I was asking you about that.**  
 17 A. And then in the estimate that was  
 18 transferred 7/12 to Tim Thomsen, the plumbing and  
 19 electrical was added into there. And he testified in  
 20 his deposition that he was not qualified. He was a --  
 21 his employment history was he was a carpenter for DRI.  
 22 He had about a seven-month stint at ICA and then he  
 23 was discharged because his brother caused a fire on  
 24 one of their client's sites. And then he went to work  
 25 for CoCat. And some of the things that he said in his

**72**

1 deposition testimony, you know -- I don't know -- he  
 2 really has some misguided notions about policy  
 3 coverage and how it applies in a replacement cost  
 4 policy situation. We were also talking about -- I  
 5 can't understand -- and, once again, I'm going to  
 6 reiterate -- why CoCat would volunteer an estimate, a  
 7 project time table for a project that they have no  
 8 interest in filling in these blanks. I'm amazed at  
 9 the similarity in the deficiencies and how they  
 10 aligned between State Farm's estimate. I assume Tim  
 11 Thomsen is the author on that. I assume that's true.  
 12 And then we go further in time to the  
 13 situation with Jim Black, and that's a really  
 14 interesting scenario. Mr. Gholson went out and, you  
 15 know, wanted to get a -- and tried to get an  
 16 independent estimate and, you know, I've now  
 17 discovered that he was -- I guess he was speaking with  
 18 a Greg Tenney, who was working at that time for Jim  
 19 Black Construction, and Mr. Tenney came up and went  
 20 through the site and was advised of all the  
 21 engineering issues that were stamped by Jeff Davis, a  
 22 Colorado licensed PE, and Mr. Tenney contacted -- it's  
 23 my understanding contacted Mr. Thomsen. And  
 24 Mr. Gholson, unbeknownst to me, requested an ESX file,  
 25 which he had no knowledge what an ESX file was

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1 **Q. I'm sorry. Mr. Gholson requested an ESX**  
 2 **file?**  
 3 A. Right. He submitted a document to State  
 4 Farm requesting the release of an ESX file. The whole  
 5 thing gets even more bizarre, is it wasn't State  
 6 Farm's ESX file that was transferred. It was CoCat's  
 7 ESX file that was transferred over to Jim Black.  
 8 **Q. How do you know that?**  
 9 MR. LIVINGSTON: Whoa. Let him continue  
 10 his answer. You can ask him how does he know that  
 11 later.  
 12 **Q. (BY MR. SANDS) I'm sorry. I didn't mean**  
 13 **to interrupt you.**  
 14 A. So the whole process of Mr. Gholson  
 15 trying to get some perceived independent third-party  
 16 estimate was contaminated. Mr. Gholson reported to me  
 17 after he received the estimate from Jim Black that  
 18 Mr. Black told him that he wasn't going to work with  
 19 the public adjuster and to fire the public adjuster.  
 20 I found it kind of interesting that State Farm would  
 21 communicate with the client -- refused to communicate  
 22 with a client that's represented by a public adjuster  
 23 in some cases, but in this case, you know, consented  
 24 to this process and how it was that State Farm's ESX  
 25 file didn't get transferred and CoCat's is kind of

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1 mysterious. But then you look at Jim Black's  
 2 Xactimate estimate. It's a clone of CoCat's, an  
 3 amazing clone of CoCat's to the T.  
 4 And what's really interesting about it is  
 5 some little manipulative things were done to kind of  
 6 cloak it. You'd have to understand how these  
 7 estimates are put together. They're done by you  
 8 create the drawing and the rooms come out in the order  
 9 that they were drawn, and so the general -- the first  
 10 two sections, which were done by putting microdots on  
 11 the drawing, were removed and reinserted in a  
 12 different place. So at first blush, it appears to be  
 13 different; but then every room lines up. Not only  
 14 does every room line up, but every task lines up. And  
 15 then it has also a nonstandard price code on it. It  
 16 says Colorado, DE4B. I think it's -- it would be 7B  
 17 and then it has a read after it. Okay. And why would  
 18 a contractor that's now going to do something in  
 19 potentially the fourth quarter of 2007 put in a second  
 20 quarter pricing model that also with the read is a  
 21 nonstandard code and why would it line up item per  
 22 item per item, room by room by room exactly as CoCat's  
 23 did. And to me something doesn't smell right. The  
 24 ESX files will tell the story.  
 25 And I just find it deplorable that you

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1 know, in my consumer efforts under House Bill 07-11-04  
 2 to get a contractor of choice at fair market price,  
 3 you know, you've got a third version of basically  
 4 State Farm's estimate to repair the home. This  
 5 estimate from Jim Black does not include any of the  
 6 engineering requirements to get a properly COed  
 7 property after the construction is complete. And, you  
 8 know, to me this smacks of some kind of collusive  
 9 behavior.  
 10 **Q. Who first contacted Jim Black**  
 11 **Construction to provide an estimate at the Gholson**  
 12 **property?**  
 13 A. It's my understanding that Andy was  
 14 telling his story to an Evergreen firefighter and he  
 15 said, I know a guy who's in the restoration business,  
 16 Greg Tenney, who's a fireman up in Bailey, and so  
 17 Mr. Gholson contacted Mr. Tenney and then  
 18 Mr. Tenney -- Mr. Gholson gave Mr. Tenney a copy of  
 19 DRI's estimate that the prices were blacked out and  
 20 Mr. Tenney contacted -- there's more to this. I have  
 21 since contacted Mr. Tenney, who no longer works for  
 22 Jim Black. He then went from there to work for  
 23 American Restoration for a short period. He then went  
 24 to work for Gillian, which is a contractor that does a  
 25 lot of work down on the Air Force Academy down at the

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1 military. He's now no longer working with them. In  
 2 my discussions with Mr. Tenney, he said that Mr. Black  
 3 instructed him to not ignore the DRI thing, to take  
 4 the ESX from CoCat, modify it slightly, and give it to  
 5 Mr. Gholson. And Mr. Black -- Andy actually met with  
 6 Mr. Jim Black and Mr. Jim Black, you know, told him  
 7 that --  
 8 **Q. Go ahead.**  
 9 A. Mr. Jim Black told him, Fire the public  
 10 adjuster. I find that whole scenario troubling.  
 11 **Q. Okay. Let me hand you what's been marked**  
 12 **earlier in an earlier deposition as Exhibit 35. Have**  
 13 **you ever seen Exhibit 35 before?**  
 14 A. I have.  
 15 **Q. And Exhibit 35 is the fax from**  
 16 **Mr. Gholson to Mr. Tenney --**  
 17 A. Yes.  
 18 **Q. -- that you referred to a moment ago?**  
 19 A. Right.  
 20 **Q. And attached to the first page of**  
 21 **Exhibit 35 is an estimate with the pricing and other**  
 22 **strike-throughs, correct?**  
 23 A. Correct.  
 24 **Q. Now, this is the one you testified to a**  
 25 **moment ago about?**

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1 MR. LIVINGSTON: Object to form.  
 2 **Q. (BY MR. SANDS) You testified that**  
 3 **Mr. Gholson --**  
 4 A. Yes. This is the DRI estimate.  
 5 MR. LIVINGSTON: I was going to say wait  
 6 until he finishes the question.  
 7 **Q. (BY MR. SANDS) This is the document you**  
 8 **testified to a moment ago, when you suggested that**  
 9 **Mr. Gholson had sent a fax to Mr. Tenney with an**  
 10 **estimate with the -- by the way, Mr. Tenney was with**  
 11 **Jim Black Construction at the time?**  
 12 A. Yes, he was.  
 13 **Q. And did you discuss with Mr. Gholson --**  
 14 **by the way, just to put it in time frame, this is the**  
 15 **July 26, 2007, DRI estimate, correct?**  
 16 A. Yes.  
 17 **Q. And did you discuss with Mr. Gholson that**  
 18 **he should go ahead and send this DRI estimate with the**  
 19 **strike-throughs to Mr. Tenney or was that something**  
 20 **Mr. Gholson did on his own?**  
 21 A. Mr. Gholson did that on his own. He  
 22 wanted to move his house forward. He wanted to get  
 23 another independent opinion. And, you know, his  
 24 discussion with me is that I wanted them to get the  
 25 State Farm estimate, the DRI estimate, and I wanted

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1 somebody to go through, do an independent, honest  
 2 assessment, tell me, you know, this is right, this is  
 3 what you need, this is what you don't need, this is  
 4 compliant with code. But Mr. Gholson has been  
 5 insistent that with his discussions with Jefferson  
 6 County building officials, that he had to meet the  
 7 established code requirements.  
 8 **Q. Now, I understood that that was one of**  
 9 **the functions you were performing for the Gholsons,**  
 10 **was to review estimates and give your thoughts**  
 11 **regarding estimates?**  
 12 A. Correct.  
 13 **Q. And so Mr. Gholson was at the same time**  
 14 **independently seeking that same kind of advice from**  
 15 **another contractor, Jim Black Construction, correct?**  
 16 A. Well, he at that point decided to do that  
 17 on his own.  
 18 **Q. Now, Mr. McCaffry left your firm, was it**  
 19 **in July of '07?**  
 20 A. It was actually, I think, the first  
 21 couple days of August.  
 22 **Q. August of '07?**  
 23 A. Yes.  
 24 **Q. And you said a couple of things. If I**  
 25 **understand correctly one of the things you said is**

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1 that you were dissatisfied with Mr. McCaffry's  
 2 performance and you terminated him, correct?  
 3 A. Yes.  
 4 **Q. On the other hand, you said he had**  
 5 **20-some years' experience and was very good at what he**  
 6 **did; is that right?**  
 7 A. Well, let me clarify that. He had 24  
 8 years. He worked the last 14 years, I believe, as an  
 9 independent adjuster and then prior to that ten-year  
 10 period as a company adjuster. He had a very  
 11 impressive resume as far as experience. He was  
 12 intimately versed in the parallel building estimator  
 13 program called IntegraClaim. He had no Xactimate  
 14 experience. One of the problems that I ran into was  
 15 that Mr. McCaffry was not at all versed in Excel  
 16 spreadsheet material and he concealed that from me.  
 17 And I discovered it in I want to say the end of June  
 18 and I gave him, you know, a complete Excel training  
 19 package and told him that he needed to, you know, get  
 20 his proficiency up and spend as much time as needed  
 21 and he did not. He did not take that initiative on,  
 22 and so he could not do all of the contents work that  
 23 we do. And, you know, the ALE presentations are  
 24 scheduled in Excel. And I just said, you know, great,  
 25 we're doing fine over here, but we have to handle the

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1 entire claim.  
 2 **Q. Do you think Mr. McCaffry was competent**  
 3 **to compare construction estimates?**  
 4 A. His construction expertise was good.  
 5 (Deposition Exhibit 48 was marked.)  
 6 **Q. Let me hand you now what's been marked as**  
 7 **Exhibit 48. Do you recognize Exhibit 48?**  
 8 A. Yes.  
 9 **Q. What is Exhibit 48?**  
 10 A. It's one of the step progressions in  
 11 DRI's estimates.  
 12 **Q. If you look --**  
 13 A. Dated 6/20.  
 14 **Q. That's what I was getting to.**  
 15 A. '07.  
 16 (Deposition Exhibit 49 was marked.)  
 17 **Q. Thank you. Just to move this along, let**  
 18 **me hand you what's been marked as Exhibit 49, just to**  
 19 **get that identified. Can you tell me what that is,**  
 20 **please. What is Exhibit 49?**  
 21 A. That's an estimate dated -- from DRI  
 22 dated 7/10.  
 23 (Deposition Exhibit 50 was marked.)  
 24 **Q. And finally, can you identify Exhibit 50,**  
 25 **please**

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1 MR. LIVINGSTON: Jon, what is the source  
 2 of some of these ones? This one here is Gholson --  
 3 excuse me. Exhibit 49 is Gholson 1344 that came from,  
 4 I assume, Glen Goldman. And then these other ones, I  
 5 know that there was a subpoena issued and they were  
 6 supplied with a Bates stamp format that would have  
 7 had, I guess, the direct -- either it came from the  
 8 PAC file or came from DRI. Do you know where these  
 9 came from?  
 10 A. This didn't come from my files.  
 11 **Q. (BY MR. SANDS) Let me get the witness to**  
 12 **identify the document. Can you identify Exhibit 50,**  
 13 **please.**  
 14 A. This is -- well, I can tell you that it  
 15 says DRI Restoration, Inc. and it says it's printed  
 16 out 8/28/2008, and this certainly didn't come from my  
 17 file.  
 18 **Q. You see the control number at the bottom?**  
 19 **It says, "PAC 4211"?**  
 20 MR. LIVINGSTON: Which exhibit?  
 21 MR. SANDS: Exhibit 50.  
 22 MR. LIVINGSTON: Okay. 50 now?  
 23 MR. SANDS: I'm sorry.  
 24 **Q. (BY MR. SANDS) Exhibit 50, if you look**  
 25 **at the bottom, there's some control numbers,**

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1 **Mr. McLoughlin?**  
 2 A. Yes.  
 3 **Q. Can you see the control numbers begin on**  
 4 **Exhibit 50 at PAC 4211 and go through page PAC 4249?**  
 5 A. Correct.  
 6 MR. LIVINGSTON: I'm not concerned about  
 7 Exhibit 50. I'm concerned about Exhibit 47 and 48.  
 8 Where did these come from?  
 9 MR. SANDS: We'll come back.  
 10 MR. LIVINGSTON: Wait a minute. Hold on.  
 11 MR. SANDS: If you keep interfering with  
 12 my deposition, Mr. Livingston, I'm going to call the  
 13 Court. So if you have an issue with the source of  
 14 documents, I'll talk to you about that; but I want to  
 15 get through Mr. McLoughlin's deposition.  
 16 MR. LIVINGSTON: Jon, you need to calm  
 17 down. You're getting too upset.  
 18 MR. SANDS: I'm not upset.  
 19 MR. LIVINGSTON: Jon, you need to listen  
 20 to what I'm saying. Quit cutting me off.  
 21 MR. SANDS: Actually, I don't.  
 22 MR. LIVINGSTON: Jon, I have a right to  
 23 know the source of documents that are being used in  
 24 this case so that I can understand if they were  
 25 properly disclosed to me. I would hope that we could

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1 all agree on that.  
 2 MR. SANDS: If you'll recall --  
 3 MR. LIVINGSTON: If I haven't received  
 4 this document before and it's, in fact, being  
 5 disclosed for the first time, that would be a serious  
 6 issue that I need -- you can clarify it by just  
 7 telling me, where did 47 and 48 come from? Because I  
 8 don't see a DRI stamp showing it was subpoenaed  
 9 directly from DRI. I don't see a PAC stamp indicating  
 10 that it was subpoenaed from Mr. McLoughlin. And I  
 11 don't see a State Farm stamp indicating it came from  
 12 them. I don't see a stamp saying it came from me.  
 13 Just tell me if there's something that's been copied  
 14 and it cut it off, but don't get so upset.  
 15 MR. SANDS: These came from your office,  
 16 Mr. Livingston. These came from your office. These  
 17 are documents that we received in the binder of  
 18 estimates that you supplied to the appraisers. That's  
 19 where these came from. They came from your office.  
 20 MR. LIVINGSTON: Wait a minute.  
 21 THE DEPONENT: I have my duplicate  
 22 binder. I want to check it.  
 23 MR. SANDS: Go ahead.  
 24 MR. LIVINGSTON: This is the package of  
 25 information that we sent to the appraisers, some of

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1 which came from Mr. McLoughlin's file before it was  
 2 Bates stamped?  
 3 MR. SANDS: I'm just telling you. You  
 4 asked me what the source is of Exhibits 47 and 48  
 5 were. We had not seen these until we -- they had not  
 6 been disclosed by your side of the case until I was  
 7 given a binder by you of documents that you sent to  
 8 the appraisers.  
 9 MR. LIVINGSTON: I think I explained to  
 10 you when I talked to you in my office that a lot of  
 11 this was obtained from Mr. McLoughlin's file and sent.  
 12 That apparently explains what's going on here. I'm  
 13 trying to clarify this. I don't think I deserve to  
 14 get yelled at.  
 15 MR. SANDS: I haven't yelled at anybody.  
 16 MR. LIVINGSTON: Jon, you've got to calm  
 17 down, man.  
 18 A. This is the binder of estimates that I  
 19 supplied. I saw this estimate here.  
 20 **Q. (BY MR. SANDS) Which exhibit number?**  
 21 A. 50.  
 22 **Q. Exhibit 50 that has the PAC stamp on it?**  
 23 A. Yeah.  
 24 **Q. You're saying that did not come from your**  
 25 **file?**

**85**

1 A. I don't believe so.  
 2 MR. LIVINGSTON: Wait.  
 3 A. I understand what it says. Let me check  
 4 the chronology file.  
 5 **Q. (BY MR. SANDS) Could you check,**  
 6 **Mr. McLoughlin, because --**  
 7 A. I am. I'm trying to.  
 8 **Q. -- for the source of Exhibit 50, my**  
 9 **understanding is that it came from your file.**  
 10 MR. LIVINGSTON: He didn't Bates stamp  
 11 them. You guys did and sent them to me.  
 12 MR. SANDS: That's correct.  
 13 (Recess taken 12:01 p.m. to 12:07 p.m.)  
 14 **Q. (BY MR. SANDS) Mr. McLoughlin, can you**  
 15 **identify Exhibit 50, please.**  
 16 A. Yes.  
 17 **Q. What is Exhibit 50?**  
 18 A. Exhibit 50 is an estimate from DRI. It's  
 19 dated 8/28/2008.  
 20 MR. LIVINGSTON: Counsel, let me make  
 21 that clear what just happened in that exchange, that I  
 22 have a right to try and clarify where something is  
 23 coming from and it needs to be dealt with in a  
 24 gentlemanly fashion. And, you know, he did raise the  
 25 concern. He said I have never seen this. I said

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1 let's try and straighten that out. I'm glad we  
 2 straightened that out and we understand what happened.  
 3 It's wrong to say I'm accusing you of fraud. You  
 4 shouldn't be saying that to me. Just because I said I  
 5 want to make sure we understand we have the right  
 6 documents, that doesn't mean I'm accusing you of  
 7 fraud. That means I want to see that we have the  
 8 right documents, Jon.  
 9 A. All right.  
 10 **Q. (BY MR. SANDS) Okay. Mr. McLoughlin,**  
 11 **Exhibit 50 is a copy of a document that's contained in**  
 12 **your file, correct?**  
 13 A. Yes.  
 14 **Q. Again, you said it's an estimate from DRI**  
 15 **that's dated August 28, 2008, correct?**  
 16 A. Correct.  
 17 **Q. Now, we have a number of DRI estimates,**  
 18 **sir, that have been marked in this case. Today we've**  
 19 **marked Exhibits 47, 48, 49, and 50 and during**  
 20 **Mr. Gholson's deposition we marked Exhibit 32, which**  
 21 **is yet another DRI estimate, and that one is dated**  
 22 **July 8 of 2007. Then I think we also looked at, I**  
 23 **think, maybe Exhibit 30 in the book you have in front**  
 24 **of you, which is the earlier DRI estimate from May of**  
 25 **2007.**

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1 A. Right.  
 2 **Q. So I know there are a lot of sort of**  
 3 **paper chase here --**  
 4 A. And I think I can --  
 5 **Q. -- a lot of DRI estimates. I'm going to**  
 6 **ask a general question about the DRI estimates. Were**  
 7 **these estimates being obtained from DRI at your**  
 8 **request?**  
 9 A. Yes, and/or Dan McCaffry's.  
 10 **Q. Public Adjusters of Colorado or Dan**  
 11 **McCaffry's?**  
 12 A. Public Adjusters of Colorado had -- by  
 13 about somewhere the end of May, a letter of intent was  
 14 given by DRI to Mr. Gholson and Mr. Gholson signed a  
 15 letter of intent with them.  
 16 **Q. We have that marked as an exhibit. I'll**  
 17 **show it to you to put it in exact time reference.**  
 18 **Look at Exhibit 1 in the binder you have in front of**  
 19 **you there, sir.**  
 20 A. Sure.  
 21 **Q. That's dated May 14 of 2007, correct?**  
 22 A. Correct.  
 23 **Q. Exhibit 1 is the letter of intent between**  
 24 **Mr. -- it's only signed by Andrew Gholson, but we'll**  
 25 **say between the Gholsons and DRI, correct?**

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1 A. I think in my file is the copy of the  
 2 mailing envelope.  
 3 **Q. Fair enough. So by May 14 of 2007, there**  
 4 **was an understanding that DRI would be retained to**  
 5 **actually do the work at the Gholson property?**  
 6 MR. LIVINGSTON: Object to form,  
 7 mischaracterizes the document.  
 8 A. As previously stated, I entered into a  
 9 contract with Mr. Gholson. He was still unclear and I  
 10 said, Go get the CoCat estimate from Mr. Story.  
 11 Mr. Gholson's documents reflect that effort. And  
 12 Mr. Story wanted him to sign his contract, and I said  
 13 I would wait out -- you know, we would wait a  
 14 reasonable period to see whether Mr. Story was going  
 15 to be insincere, knowing that more work needed to be  
 16 done on there. Mr. Story clearly knew some of Andy's  
 17 concerns about, you know, engineering issues required  
 18 to restore the house. And Mr. Story finally produced  
 19 his estimate on the 14th, and at that point Andy knew  
 20 that Trampus Story was not squaring with him.  
 21 **Q. (BY MR. SANDS) By that date you mean by**  
 22 **May 14, 2007?**  
 23 A. Yes, May 14, 2007.  
 24 **Q. Go ahead. You said "that date." I**  
 25 **wanted to make sure**

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1 A. So then he said, Okay, I'll move forward  
2 on this project with DRI, you know, Bill, go ahead,  
3 get going, and we went to look for an engineer. We  
4 finally retained Jeff Davis, who issued his report.  
5 In the meantime, Andy somewhere close to the end of  
6 May -- I don't know whether it was the 26th or 29th or  
7 whatever -- he signed and mailed this letter of intent  
8 to DRI. They had begun work on their estimate  
9 products ahead of the engineering, and then they were  
10 working through progression. And we sat down. Dan  
11 McCaffry sent some letters advising them about  
12 changes, both pro and con, that needed to be made to  
13 make his estimate fair and accurate. You know, one of  
14 the things that you should understand is that in these  
15 affairs with the proof of loss, you know, my firm only  
16 gets one logical bite at the proper amount of  
17 insurance coverage, and we have to make sure that our  
18 stuff is accurate. Otherwise, we get accused of --  
19 wrongly accused of inflating estimates or attempts to  
20 defraud insurance carriers, things that have obviously  
21 come to light which are in the discovery matters in  
22 this case, and so we have to make sure -- you know, I  
23 have a very high ethical bar and we have to make sure  
24 our I's are dotted and our T's are crossed.  
25 **Q. What was it specifically about the date**

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1 **of May 14, 2007, that led you and the Gholsons to,**  
2 **say, rule out working with CoCat?**  
3 A. Mr. Story's estimate came in.  
4 **Q. Did Mr. Story or CoCat -- did Mr. Story**  
5 **do estimates that were dated after that date, to your**  
6 **knowledge?**  
7 A. Yes, he sure did. I see an estimate from  
8 CoCat, and Mr. Story has testified that he didn't  
9 complete that estimate. He doesn't know who, but  
10 somebody filled in the plumbing and electrical and  
11 faxed it -- it has a fax stamp -- to State Farm on  
12 July 12. Yes, July 12. It's dated July 12. So that  
13 estimate was produced and forwarded to State Farm  
14 without the Gholson's permission, without -- it defies  
15 logic, because CoCat had no contractual relationship.  
16 Somebody there -- Mr. Story testified that he was not  
17 qualified to complete electrical and plumbing, that  
18 somebody filled it in and forwarded it to State Farm.  
19 I don't know that it went directly to Mr. Thomsen.  
20 **Q. Could you look at Exhibit 27, please.**  
21 **That first page of Exhibit 27 bears control No. PAC**  
22 **234 and it's an e-mail, and then there's an**  
23 **estimate -- CoCat estimate attached to that. Is this**  
24 **the estimate that you just testified to that led you**  
25 **and the Gholsons to believe -- or to the conclusion**

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1 **that the Gholsons would not work with CoCat?**  
2 A. Yes.  
3 **Q. Now, what is it about this estimate that**  
4 **is -- well, just to put this in perspective, could you**  
5 **look at Exhibit 26.**  
6 A. Sure.  
7 **Q. This also came from your file. I'm not**  
8 **saying it doesn't exist in other places, but you see**  
9 **it bears PAC 233 at the bottom?**  
10 A. Yes.  
11 **Q. This is also a string of e-mails. And I**  
12 **want to direct your attention specifically to the one**  
13 **that's dated May 8 from Mr. Gholson to Mr. Story. And**  
14 **Mr. Gholson wrote on that date, "Hi, Trampus, thanks**  
15 **for meeting me yesterday. I'm looking forward to**  
16 **seeing your revised estimate and getting started."**  
17 **You see that?**  
18 A. Yes.  
19 **Q. And in the earlier estimates -- there**  
20 **were earlier estimates from CoCat, right?**  
21 A. The 3/22.  
22 **Q. And was it when you saw the May 14**  
23 **estimate from Mr. Trampus Story on behalf of CoCat**  
24 **that you advised the Gholsons, or did you advise the**  
25 **Gholsons not to work further with CoCat?**

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1 A. Mr. Gholson had been talking with DRI,  
2 had been talking with at some point American  
3 Restoration. He had been talking at some point with  
4 CoCat. And, you know, he's really a very honest,  
5 simple person and he wanted to see if Trampus Story  
6 was going to repair his house properly. And now after  
7 there had been discussions about other details that  
8 his brother-in-law had raised -- Andy's brother-in-law  
9 had raised and Trampus, you know, was trying to get  
10 him to sign the contract, I said, Well, why don't you  
11 get that estimate and satisfy yourself that Mr. Story  
12 is either going to do the right thing or he's just  
13 going to continue to further this lie and  
14 inappropriate repair estimate that's not going to be  
15 able to restore your house for a certificate of  
16 occupancy. And on the 14th -- so Mr. Gholson went  
17 about that. I was not -- you know, Mr. Gholson had  
18 signed my contract, but at this time I wasn't really  
19 engaged in it. Okay. He needed to satisfy this  
20 particular issue.  
21 **Q. At what time, May 14 of 2007?**  
22 A. When we signed the contract and then  
23 moving forward, you know, I told him, You know, we'll  
24 sit tight, if it works out fine, great, then we'll rip  
25 it up and you're satisfied



1 Q. We're going way off on different areas  
2 here. My question was, did you advise Mr. Gholson not  
3 to work with CoCat as of May 14, 2007?

4 A. Mr. Gholson saw the estimate and knew  
5 that it was grossly incomplete. I didn't have to tell  
6 him. He said -- I told him, I don't think you're  
7 going to get a fair estimate from them.

8 Q. Now, did you believe he would get a fair  
9 estimate from DRI?

10 A. I said to him that -- you know, I told  
11 him, I said, I've never done a project with them and,  
12 you know, we'll have to work through this and see if  
13 they're going to supply us a correct estimate. And I  
14 said that they certainly can do the job, and we set  
15 about that path.

16 Q. Now, you can look in the binder there. I  
17 think it's Exhibit 30. The first DRI estimate, once  
18 again, is dated -- you can tell me, what is the date?

19 A. It's dated 5/29.

20 Q. May 29, 2007, correct?

21 A. Yes.

22 Q. So did you work with the Gholsons in the  
23 determination to go ahead and sign a letter of intent  
24 before seeing an estimate from DRI?

25 MR. LIVINGSTON: Object to form, vague

1 2007?

2 A. Because at the time that I met  
3 Mr. Gholson on the 24th of April, he told me that he  
4 had been talking with DRI. He had this idea that he  
5 needed to get three estimates. He had, you know --  
6 that this is a necessary requirement for him to repair  
7 his house.

8 Q. Now, DRI had done some work there, of  
9 course, because DRI handled the board-up right after  
10 the fire, correct?

11 A. Right.

12 Q. But your understanding, at least as of  
13 today, is that there is an estimate -- or that they  
14 had actually done an estimate of the repair for the  
15 fire damage before May 14, a written estimate?

16 A. I believe so.

17 Q. Have you asked Mr. Gholson whether he  
18 still has it?

19 MR. LIVINGSTON: Wait a minute. Object  
20 to the form, assumes facts not in evidence.

21 Q. (BY MR. SANDS) Well, you said you  
22 believe there's a written estimate from DRI?

23 A. I believe --

24 MR. LIVINGSTON: Let him ask the  
25 question. Whatever the question is, let him ask it.

1 and ambiguous.

2 MR. SANDS: I'm sorry?

3 MR. LIVINGSTON: Object to form, vague  
4 and ambiguous.

5 MR. SANDS: I'll rephrase.

6 Q. (BY MR. SANDS) We established earlier  
7 Exhibit 1 is a letter of intent between the Gholsons  
8 and DRI, correct?

9 A. Correct.

10 Q. And as of May 14, 2007, which is the date  
11 of that letter of intent, DRI had not produced any  
12 estimates; is that also correct?

13 A. I believe, but I've never seen where they  
14 had done some estimating on the loss.

15 Q. Prior to May 14 of 2007?

16 A. I believe so.

17 Q. You say you've never seen those  
18 estimates?

19 A. No, I haven't.

20 Q. Neither have we. I'm wondering if it  
21 exists somewhere that you know of?

22 A. No. I don't have it.

23 Q. What's the basis of your testimony that  
24 you believe that DRI had done some estimating prior to  
25 the execution of the letter of intent dated May 14

1 then you can answer.

2 Q. (BY MR. SANDS) As I understand your  
3 testimony, Mr. McLoughlin, it is that you believe at  
4 least that there's a written estimate from DRI that  
5 predates May 14, 2007; is that accurate? It's  
6 accurate that you believe it --

7 A. Yes.

8 Q. -- existed at some point?

9 A. I'm not sure they ever gave it to --

10 MR. LIVINGSTON: Object to form, calls  
11 for speculation.

12 MR. SANDS: I'm asking him what the basis  
13 is.

14 Q. (BY MR. SANDS) What is your belief about  
15 any written estimate from DRI that predates May 14,  
16 2007?

17 A. What is my belief?

18 Q. Yes. Did one exist or not?

19 MR. LIVINGSTON: Object to form, calls  
20 for speculation.

21 MR. SANDS: I'm asking for his belief.  
22 He said he believed there was something. I'm trying  
23 to find out what that is.

24 MR. LIVINGSTON: Whatever it is.

25 A. I believe that they may have been doing

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1 some work on it. I never saw it. I don't think it  
 2 was ever produced. You know, the owner, Michael,  
 3 Bridges, insisted that to move forward with the  
 4 project there needed to be some kind of good faith  
 5 established between him and Andy Gholson because there  
 6 had been so many contractors involved. And so how far  
 7 had they field measured it, had they made a template,  
 8 I have no idea; but when they signed the letter of  
 9 intent and we got the first estimated work product, it  
 10 was very, very clear that an engineer needed to be  
 11 brought to the site to determine the full scope of  
 12 repair issues and that these other estimates reflect a  
 13 progression of getting it right.

14 **Q. (BY MR. SANDS) You're talking about the**  
 15 **DRI estimates, the progression of DRI estimates?**  
 16 A. Yes. Attempting to do it right.

17 **Q. Who was assisting the Gholsons in**  
 18 **reaching the conclusion that the DRI estimates were**  
 19 **getting it right? Was that your office?**  
 20 A. Yes. And I participated in that. Dan  
 21 McCaffry was working on it with DRI.

22 **Q. Now, ultimately the Gholsons retained a**  
 23 **different company, ICA, to do the work at their home,**  
 24 **correct?**  
 25 A. That's correct.

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1 **Q. Did you assist the Gholsons in bringing**  
 2 **ICA into the picture?**  
 3 A. Yes, I did.

4 **Q. Had you worked with ICA before?**  
 5 A. Yes.

6 **Q. And tell me the reason that you decided**  
 7 **to bring ICA into the picture, notwithstanding the**  
 8 **progression of estimates from DRI and working toward**  
 9 **getting it right with DRI.**  
 10 MR. LIVINGSTON: Object to form, vague.

11 **Q. (BY MR. SANDS) Well, I'll rephrase. Let**  
 12 **me lay some foundation. Mr. McLoughlin, there was a**  
 13 **progression of DRI estimates that you said the**  
 14 **progression was to get it right?**  
 15 A. Yes.

16 **Q. And the last DRI estimate is the one,**  
 17 **Exhibit 50, that we had some discussion about a while**  
 18 **ago and that's, I think, in August of 2008, correct?**  
 19 A. Correct.

20 **Q. Now, if you will look in the binders in**  
 21 **front of you, you will see that the contract with**  
 22 **ICA -- and let me find that -- is in there. Would you**  
 23 **look at Exhibit 18, please. Do you recognize**  
 24 **Exhibit 18?**  
 25 A. I do.

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1 **Q. What is it, sir?**  
 2 A. That's an AIA contract with ICA between  
 3 Mr. Gholson.

4 **Q. And what's the date of that contract?**  
 5 A. It says, "ICA has provided an estimate  
 6 dated September 22 to repair the fire damage on your  
 7 property."

8 **Q. Do you know, was there a similar**  
 9 **progression of estimates from ICA? By "similar," I**  
 10 **mean similar to the DRI progression of estimates.**  
 11 A. Yeah, there was. Let me clarify the  
 12 thing so that you understand. State Farm did not  
 13 respond appropriately to the proof-of-loss  
 14 documentation. And in talking with Mr. Gholson and  
 15 Mr. Goldman, there was a decision made to, you know,  
 16 consolidate all funds and proceed with as much  
 17 building as could be done with whatever funds that  
 18 were had and that Mr. Goldman would go and correct  
 19 some of the legends or some of the payee issues on the  
 20 checks and that they would retain a contractor. So  
 21 DRI was first brought back into the picture. There  
 22 was some friction in moving that forward. They  
 23 started to supply an estimate. This was before you  
 24 filed your action to take it to appraisal, or State  
 25 Farm filed the action to take it to appraisal. And at

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1 some point we heard that DRI was going to be indicted,  
 2 and so there was some pause.

3 And what I did is that I said, You're not  
 4 going to make your two-year anniversary date. We did  
 5 a very intensive effort with ICA. They came out and  
 6 measured the whole place. I went over, sat in their  
 7 shop, looked at stuff. They continued to make  
 8 corrections. The ICA work product that came out in  
 9 the end is the most accurate estimate that's been  
 10 supplied in the whole affair, and they entered into a  
 11 quality AIA contract with them to proceed with the  
 12 reconstruction of the house.

13 **Q. Can you tell from the ICA estimate that**  
 14 **is attached as part of Exhibit 18 -- and I think it**  
 15 **begins -- the first page in this exhibit anyway where**  
 16 **the actual estimate numbers appear, I think, is**  
 17 **page 2047. It's Gholson 2047 in the lower right-hand**  
 18 **corner. Can you tell from this whether ICA used an**  
 19 **Xactimate pricing system?**  
 20 A. Yeah. This is an Xactimate estimate.

21 **Q. And do you know what price list was used**  
 22 **by ICA? Because I don't see it here, but maybe I'm**  
 23 **missing it.**  
 24 A. If you go to 2045.  
 25 **Q. 2045?**

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1 A. Yes.

2 **Q. Okay. I'm there.**

3 A. And you see price list.

4 **Q. Of course.**

5 A. Colorado, Denver, so that's CO, DE, 5 for

6 Xactimate, 25B for building, eight for 2008, C for

7 third quarter.

8 **Q. Now, does this estimate, can you tell,**

9 **utilize that price list throughout or are the numbers**

10 **revised?**

11 MR. LIVINGSTON: Object to form.

12 A. No, they do not make an amended price

13 list.

14 **Q. (BY MR. SANDS) So you said earlier in**

15 **this deposition that the estimates for work at the**

16 **Gholson home should be really something between the**

17 **Denver price list and the resort price list. Do you**

18 **remember that testimony?**

19 A. Yes, and they chose to craft it under

20 this. Okay.

21 **Q. Under the Denver price list?**

22 A. Under the Denver factored out. And there

23 was some discussion about that. They wanted the work.

24 We didn't want to raise a red herring with State Farm

25 down the road, and so we opted -- the discussion was

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1 to go down the same path.

2 **Q. To use the Denver price list?**

3 A. Use the Denver price list with I believe

4 it's the base service charges factored out.

5 **Q. Factored out?**

6 A. I believe so.

7 **Q. If you can look at page --**

8 A. Yeah. You can look at the code right

9 here in front, restoration service factored out.

10 **Q. Factored out. Just for the record,**

11 **explain once again what does factored out mean, as**

12 **briefly as you can.**

13 A. Okay. Factored out means that you take

14 all the tasks that are on the job and whenever a

15 certain task has a leftover time increment that isn't

16 a full day, they then assign a base service charge to

17 compensate for an incomplete day. And factored in

18 gives more time allotment for travel contiguously

19 through the estimate, through the whole task map. It

20 gives more of a time increment for travel for the

21 contractor and to collect materials to travel to the

22 job site. And the net/net, if you take estimates and

23 you price one factored in, factored out, it varies on

24 the items in the estimate; but it usually ranges

25 between 6 and 7 percent between factored in and

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1 factored out.

2 MR. SANDS: All right. It's 12:30. Why

3 don't we take as brief a lunch break as works for

4 everyone, 45 minutes, and do our best to get back in

5 45.

6 MR. LIVINGSTON: I'd like an hour lunch.

7 MR. SANDS: Hour lunch is fine, so 1:30.

8 (Recess taken, 12:34 p.m. to 1:41 p.m.)

9 **Q. (BY MR. SANDS) Mr. McLoughlin, I had**

10 **asked you earlier about the -- I think it's Exhibit 1,**

11 **the May 14, 2007, letter of intent?**

12 A. Yes.

13 **Q. I want to show you what was marked**

14 **yesterday as Exhibit C during the deposition of**

15 **Mr. Egger, which has control Nos. PAC 350 through and**

16 **including PAC 353. You've seen this before, correct?**

17 **Take your time. The PAC numbers indicate that was**

18 **something that was produced by your firm pursuant to**

19 **our subpoena?**

20 A. Yeah.

21 **Q. It's from -- first of all, what's the**

22 **date of that letter?**

23 A. August 15.

24 **Q. 2007, correct?**

25 A. Correct.

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1 **Q. And it's from -- who signed it on behalf**

2 **of Public Adjusters?**

3 A. I did.

4 **Q. Now, attached to the letter that was**

5 **apparently faxed to State Farm is the letter of**

6 **intent, right?**

7 A. Yes.

8 **Q. Do you recall whether your firm provided**

9 **any of the estimates that were being prepared by DRI**

10 **to State Farm as they were being prepared?**

11 A. No.

12 **Q. Is it your practice -- do you not recall**

13 **or you know that you didn't do it?**

14 A. I know I didn't do it.

15 **Q. And is it your firm's practice to not**

16 **send estimates to insurance companies as they're being**

17 **generated?**

18 A. As I said earlier, we send things in

19 under the proof of loss, so it's important to get an

20 accurate number. During this period Jeff Davis had

21 given his preliminary engineering report and they were

22 doing architectural work on the home. And I think the

23 architecture process started in August because Andy

24 received some funds after he got unencumbered. And

25 Jeff Davis was having some really difficult structural

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1 problems with putting the house back together.  
 2 **Q. Putting it in a time perspective --**  
 3 MR. LIVINGSTON: Were you finished?  
 4 A. Well --  
 5 **Q. (BY MR. SANDS) Go ahead.**  
 6 A. He had made this preliminary engineering  
 7 report. Now, they sat down to do the blueprints.  
 8 **Q. By "he" you mean Mr. Davis?**  
 9 MR. LIVINGSTON: Whoa, whoa, whoa.  
 10 **Q. (BY MR. SANDS) By "he" do you mean**  
 11 **Mr. Davis?**  
 12 A. Mr. Davis and the architect. I can't  
 13 remember what her name is. Maybe if I dug through my  
 14 file I could figure it out, but her name is -- I think  
 15 I produced plans that had her name on them. They  
 16 started to put in the architecture of the house and  
 17 get into the nitty gritty of the engineering details  
 18 and they ran into load problems on the roof. And they  
 19 had to put in three columns in the back and some  
 20 bridge beams. And they also had to attend to a  
 21 framing situation that was between the lower level and  
 22 the upper level of the ceiling/floor assembly which  
 23 was very oddly constructed. It had the structural  
 24 members running one way through half the house and  
 25 then they had them running the opposite direction, and

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1 they were connected right in the middle of the room.  
 2 And it was a very large deflection in there that they  
 3 had to address.  
 4 There was uncertainty at that point. And  
 5 we were waiting to get that loop closed by having him  
 6 complete -- the engineering guy to get DRI to get  
 7 their number and make sure it's correct in line.  
 8 Certainly, as I stated before, you know, there's  
 9 been -- State Farm and State Farm representatives have  
 10 been very, very critical of the work. And as you can  
 11 see from the deposition and discovery information,  
 12 there's been allegations of fraud and whatever. I  
 13 don't subscribe to that at all.  
 14 **Q. This Jeff Davis Engineering report that**  
 15 **I've got here in this exhibit book that's marked**  
 16 **Exhibit 41, is this the engineering report you were**  
 17 **referring to?**  
 18 A. Yes.  
 19 **Q. It bears control Nos. SF 762 to 764. My**  
 20 **question for you, sir, is, is this June 5, 2007, Jeff**  
 21 **Davis Engineering report a preliminary report or was**  
 22 **it something else?**  
 23 A. Well, it was his first report and it was  
 24 his best understanding of the issues that needed to be  
 25 addressed

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1 **Q. Did you forward this report from**  
 2 **Mr. Davis to State Farm when you received it?**  
 3 A. Yeah, I sure did.  
 4 **Q. Do you remember when you forwarded it?**  
 5 A. Yes, it was December.  
 6 **Q. December of?**  
 7 A. Of 2007.  
 8 (Deposition Exhibit 55 was marked.)  
 9 **Q. Our records actually show -- well, all**  
 10 **right. Withdraw that. Let me just mark this.**  
 11 **Exhibit 55 is a letter from Mr. Goldman**  
 12 **to Tim Thomsen at State Farm. It's dated January 16,**  
 13 **2008. And in this letter -- first of all, have you**  
 14 **ever seen this before?**  
 15 A. No, I have not.  
 16 MR. LIVINGSTON: Jon, I'm sorry. I've  
 17 got 50 here. Is there a bunch we're missing?  
 18 MR. SANDS: Yeah. I've got a bunch  
 19 marked that haven't been introduced yet. We just  
 20 premarked.  
 21 MR. LIVINGSTON: Okay.  
 22 **Q. (BY MR. SANDS) Exhibit 55, you see that**  
 23 **as of January 16 Mr. Goldman had communicated with**  
 24 **Mr. Thomsen, indicating that the engineering report**  
 25 **had not previously been received and he indicates**

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1 here -- "he," being Mr. Goldman, indicates that he had  
 2 forwarded the report to Mr. Thomsen. My question  
 3 is --  
 4 MR. LIVINGSTON: Doesn't say anything  
 5 about not being previously received. You're  
 6 misstating the document.  
 7 **Q. (BY MR. SANDS) Let's read it.**  
 8 **Mr. McLoughlin, do you see that Mr. Goldman wrote to**  
 9 **Mr. Thomsen, quote, You recently indicated to me that**  
 10 **you do not have a copy of the engineering report**  
 11 **prepared by Jeff Davis Engineering, LLC. I have**  
 12 **enclosed the June 5, 2007 engineering report for your**  
 13 **review? I've read that accurately?**  
 14 A. That's what it says.  
 15 **Q. And do you have something in your file**  
 16 **that indicates that the Jeff Davis report had been**  
 17 **sent in December of 2007?**  
 18 A. I believe so. I can look, if you like.  
 19 **Q. Is it something you could find quickly in**  
 20 **your file or would it take --**  
 21 A. I hope so.  
 22 **Q. Why don't you take a quick look and see**  
 23 **if you can find it.**  
 24 MR. LIVINGSTON: Jon, to save time,  
 25 wasn't that attached to the December 26 letter that we

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1 talked about yesterday?  
 2 MR. SANDS: December 26?  
 3 MR. LIVINGSTON: Yeah. Remember, that  
 4 had the whole chronology of all the engineering and  
 5 all of the permit issues and I understood they had  
 6 talked about it after the request was sent in was  
 7 provided.  
 8 MR. SANDS: December 26 letter from?  
 9 MR. LIVINGSTON: Mr. Sands. Excuse me.  
 10 From Mr. McLoughlin to State Farm. I believe it's in  
 11 there, but I could be wrong, if that will save time.  
 12 MR. SANDS: No. I appreciate it. I do  
 13 want to save time.  
 14 THE DEPONENT: Yeah. I believe that's  
 15 when it came up.  
 16 MR. SANDS: I'm trying to find that. I  
 17 don't find a December 26 letter from yesterday, but  
 18 I'm not saying it wasn't --  
 19 MR. LIVINGSTON: Do you recall -- I don't  
 20 know if we introduced it with all the attachments. I  
 21 think we did. Remember, it had a chronology?  
 22 MR. SANDS: Here it is.  
 23 THE DEPONENT: That's the one I believe  
 24 I'm looking for.  
 25 MR. SANDS: Okay

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1 **Q. (BY MR. SANDS) Let's try this.**  
 2 **Mr. McLoughlin, Mr. Livingston has indicated that the**  
 3 **engineering report might have been attached to a**  
 4 **December 26 communication to State Farm?**  
 5 A. Yes.  
 6 **Q. Yesterday we marked Exhibit G, or**  
 7 **Mr. Livingston marked Exhibit G, which bears control**  
 8 **Nos. PAC 1896 through 1912, correct?**  
 9 A. Yes, that's correct.  
 10 **Q. Is this the correspondence with which you**  
 11 **believe the Jeff Davis report was sent?**  
 12 A. Yes.  
 13 **Q. Okay. Let's go ahead and see if we can**  
 14 **find that. It's not there, is it, at least attached**  
 15 **to this Exhibit G from the deposition of Mr. Egger?**  
 16 A. No.  
 17 **Q. And this is the way it was marked by**  
 18 **Mr. Livingston, so I don't know if there may have**  
 19 **been -- do you want to take a look at your letter of**  
 20 **December 21, 2007, which accompanies the fax cover**  
 21 **sheet dated December 26, and see if it mentions the**  
 22 **Jeff Davis Engineering report, or as an alternative,**  
 23 **if you want to look in your file and see if maybe this**  
 24 **Exhibit G doesn't have everything that was attached to**  
 25 **it you can do that too.**

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1 A. Well, I recall a very clear and specific  
 2 communication with Mr. Thomsen, which is not recorded  
 3 in his log file, that took place on October 2 and it  
 4 was at the State Farm office in the Meridian complex.  
 5 We were at a meeting following a meeting of  
 6 September 27, 2007, for Colonial Manor with the  
 7 Sheridan Building Department. And we were meeting  
 8 there with Mr. Thomsen, Mr. Egger, Mr. Dan Meyer, who  
 9 was now in good faith working on a scope agreement,  
 10 and also I think there was an Andy Baker from Blue Sky  
 11 Construction there as well. We were supposed to have  
 12 an hour or so meeting following that, but time ran  
 13 short. I did have a very, very clear communication  
 14 with Mr. Thomsen, where I conveyed to him all the  
 15 issues that are subject to that report, the septic  
 16 system, the roof, the slab, and so on.  
 17 And, in fact, I think if you look at  
 18 State Farm's log, I think somewhere about October 8  
 19 maybe there's an entry from Mr. Whitworth stating why  
 20 are we just finding out about this now. That also  
 21 strikes me as kind of bizarre because I also had  
 22 communications with Tim Thomsen in July and August  
 23 relating to the same thing, and I told him that we  
 24 were working on the architectural plans, I told him we  
 25 were working out all the issues, and that we would

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1 diligently try to get the estimate together when we  
 2 got things nailed down.  
 3 Mr. Gholson had had a plan review meeting  
 4 with the Jefferson County Building Department on the  
 5 morning of October 2. This is where he met with  
 6 planning and zoning, building department officials.  
 7 And what they did is they accepted his defensible  
 8 space. He had the appropriate setback documentation.  
 9 He had the appropriate site survey. He had a fire --  
 10 he had had the fire department agreement on the grade  
 11 of his driveway. He brought the stamped, rolled plans  
 12 in from Jeff Davis and they would not grant a full  
 13 building permit. They would only grant slab-only  
 14 permits. And furthermore, they also stated that he  
 15 would have to have a complete septic design package,  
 16 which requires a hydrology study and a septic design  
 17 and variance. We already knew there was no place to  
 18 locate it on the property without seeking a variance  
 19 and that they were insisting upon that. That was  
 20 completely contradictory to Tim Thomsen's testimony  
 21 that this stuff just gets grandfathered in.  
 22 And Mr. Gholson started diligently. He  
 23 had the foundation work being torn out the next day or  
 24 two, a few days. He had the same crew going over  
 25 helping to dig the hydrology holes so the hydrologist

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1 could finish his study required for the design. He  
2 completed the product somewhere about October 29.  
3 Mr. Davis in two days turned around the whole design.  
4 Mr. Gholson, when he was back from -- he's a pilot, so  
5 when he came back in he immediately filed on  
6 November 2, 2007, for a full-blown hearing. He posted  
7 his property. He notified all his neighbors. He did  
8 all the things. The hearing was scheduled for the  
9 18th and the completed approval was delivered on, I  
10 think, the 3rd of January.

11 So Mr. Gholson could not do anything  
12 other than put the slabs in and the foundation in,  
13 which he did, and completed. And he was still at that  
14 time of the idea that if -- he was concerned that if  
15 he didn't get this in and he started getting lots of  
16 snow up there, he would never be able to rebuild his  
17 house and that his family would be displaced. And so  
18 he completed one task methodically after the next.

19 And that was not recorded in State Farm's  
20 log. I'm really surprised, but, you know what's even  
21 more amazing, Mr. Sands? What I found more amazing is  
22 that Mr. Goldman received from DMA Housing a  
23 transcript of communications Mr. Thomsen had when he  
24 contacted DMA, and the most alarming thing I saw in  
25 there -- it's right there. After our discussion

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1 Mr. Thomsen -- I said, You've got to get back -- Tim,  
2 you've got to get back to me on this, we've got to get  
3 going on this. He said, I'll get back to you, we'll  
4 work this out. And the very next day he called up DMA  
5 and put in -- the log note from DMA Housing says, you  
6 know, that's it for ALE, they're out, they're not  
7 going to like it. That's my recollection. I can read  
8 it exactly for you. I can pull it from my file. So  
9 he had no intention of moving forward in any kind of  
10 cooperative manner on the claim. He went in and  
11 started full throttle to get the Gholsons out of ALE  
12 on December 31, and I just find that inexcusable.

13 MR. SANDS: Could you read the question  
14 back, please.

15 (The last question was read back as  
16 follows: "And this is the way it was marked by Mr.  
17 Livingston, so I don't know if there may have been --  
18 do you want to take a look at your letter of December  
19 21, 2007, which accompanies the fax cover sheet dated  
20 December 26, and see if it mentions the Jeff Davis  
21 Engineering report, or as an alternative, if you want  
22 to look in your file and see if maybe this Exhibit G  
23 doesn't have everything that was attached to it, you  
24 can do that, too.")

25 MR. LIVINGSTON: So you're asking him to

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1 look through his file?

2 Q. (BY MR. SANDS) I just want to know on  
3 what basis -- do you have any documentation to show  
4 that the Jeff Davis Engineering report was sent  
5 directly to State Farm prior to the date Mr. Goldman  
6 sent it to Mr. Thomsen on January 16, 2008? Do you  
7 have any documents?

8 A. I was under the impression that it was in  
9 this document, but I may be mistaken about that.

10 Q. You're referring to Exhibit G?

11 A. Yeah.

12 Q. So as you sit here today, it's possible  
13 the first time the Jeff Davis Engineering report was  
14 sent to State Farm was with this January 16 --

15 A. It's possible.

16 Q. Let me finish my question. -- this  
17 January 16, 2008, letter marked as Exhibit 55?

18 A. That's correct.

19 Q. So a moment ago I think you indicated you  
20 were waiting until you had basically a final  
21 estimate -- I'm paraphrasing here -- before any  
22 estimate was sent by you to State Farm; is that fair?

23 A. That's correct.

24 Q. Now, there are a lot of estimates here  
25 that we've seen from DRI, CoCat, and I think there

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1 were the Jim Black estimates?

2 A. Yes.

3 Q. Is it more -- is it your practice to  
4 typically wait until you've got a final estimate to  
5 send to the insurance company or do you work in the  
6 process of developing these estimates with insurance  
7 companies as you're getting to the final numbers?

8 MR. LIVINGSTON: Object to the form of  
9 the -- Jon, did you mean the insurance company or  
10 contractor?

11 MR. SANDS: I meant the insurance  
12 company.

13 MR. LIVINGSTON: Object to form, assumes  
14 facts not in evidence.

15 MR. SANDS: I didn't assume any facts. I  
16 asked him what his practice was.

17 MR. LIVINGSTON: Assumes facts not in  
18 evidence, object to form, the way that question is  
19 worded.

20 A. It depends on who we're working with.

21 Q. (BY MR. SANDS) So in this case, at least  
22 it appears to me that none of the estimates leading up  
23 to the one that was submitted, I think, by you with  
24 the claim presentation was submitted to State Farm?

25 A. I'm sorry?

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1 **Q. None of the estimates that preceded your**  
 2 **I think it was March 2008 claim presentation was sent**  
 3 **to State Farm. Do you agree with that?**  
 4 MR. LIVINGSTON: Object to form,  
 5 misstates the evidence.  
 6 **Q. (BY MR. SANDS) When was your claim**  
 7 **presentation sent to State Farm?**  
 8 MR. LIVINGSTON: Object form, assumes  
 9 facts not in evidence. Withdraw that. Go ahead and  
 10 answer that as stated.  
 11 A. Okay. I know for a fact that all the  
 12 documentation in the completed claim presentation,  
 13 which was sent March 7, contained everything. I do  
 14 know that at one point Mr. Goldman asked me to give  
 15 him the estimate, which in this case, I couldn't get a  
 16 completed estimate from DRI to my satisfaction. So  
 17 then we had the whole Jim Black situation where, you  
 18 know, that was just, you know, a reprint of the CoCat  
 19 estimate and lacked the basic fundamentals in order to  
 20 properly restore the house and get a CO. So then I  
 21 couldn't find -- I couldn't find, you know, a  
 22 contractor that could give us a legitimate independent  
 23 estimate. So I actually went out and purchased  
 24 Xactimate and we wrote our estimate. You know, we  
 25 made the corrections. Mr. Gholson and I worked on it

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1 November -- end of November, December. And that  
 2 estimate that was with our package that's titled  
 3 Public Adjusters of Colorado is dated December 30. At  
 4 some point shortly thereafter, I forwarded it to  
 5 Attorney Goldman and Attorney Goldman was -- it was my  
 6 understanding he forwarded it to State Farm.  
 7 (Deposition Exhibit 56 was marked.)  
 8 **Q. (BY MR. SANDS) Exhibit 56 is a letter**  
 9 **from Mr. Goldman to you. Do you remember receiving**  
 10 **this letter dated February 20, 2008?**  
 11 A. Yes.  
 12 **Q. Do you remember having any communications**  
 13 **with Mr. Goldman after you received this letter of**  
 14 **February 20, 2008?**  
 15 A. Yeah. This was a very troubling time.  
 16 My wife was pregnant and she was having difficulty  
 17 with the pregnancy. And it was a lot of medical  
 18 visits over a four-week period and she ultimately  
 19 miscarried.  
 20 **Q. I'm sorry to hear that.**  
 21 A. You know, so during that period, I was  
 22 trying to give Mr. Goldman things that would -- you  
 23 know, we had done all the detailed stuff to arrive at  
 24 all the figures and proof of losses and everything  
 25 else, but I hadn't done all the narratives that were

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1 needed to complete the claim presentation. So I was  
 2 forwarding him whatever documentation he asked for to  
 3 supply to State Farm. Then that's just the way it  
 4 was.  
 5 (Deposition Exhibit 57 was marked.)  
 6 **Q. Mr. McLoughlin, Exhibit 57 is a letter**  
 7 **dated March 11, 2008, to me from Mr. Goldman. I know**  
 8 **it wasn't copied to you, so let me ask you, have you**  
 9 **ever seen it before?**  
 10 A. No.  
 11 **Q. This is a letter that Mr. Goldman, on the**  
 12 **face of it at least, indicates that he is sending to**  
 13 **me so that I can provide to State Farm a large binder**  
 14 **of documentation supporting the Gholson's claim and**  
 15 **proof of loss. Then he indicates that he has numbered**  
 16 **the documents. And so putting the two letters that**  
 17 **we've just looked at together, Exhibit 55, which is**  
 18 **dated February 20, 2008, and Exhibit 56 -- I'm sorry.**  
 19 **Exhibit 56, which is dated February 20, 2008, which is**  
 20 **the letter to you from Mr. Goldman, and the letter**  
 21 **dated March 11, 2008, which is the letter from**  
 22 **Mr. Goldman to me, is it between those two dates that**  
 23 **you provided supporting documentation to Mr. Goldman**  
 24 **for delivery to State Farm?**  
 25 A. I know I sent him segments of it. I had

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1 forwarded the estimate of repair to him for him and  
 2 Andy to review, I assume as soon as it was completed.  
 3 So that happened -- that was December 30. And I had  
 4 sent them the contents for their final review prior to  
 5 the end of December. I had sent -- I had worked out  
 6 the ALE numbers. I spent a lot of time at the end of  
 7 December working with Gholson getting all the ALE  
 8 figures. So Mr. Goldman was apprised of the  
 9 situation.  
 10 **Q. But my question is -- I'll change it, I**  
 11 **suppose, then in light of your answer to the last**  
 12 **one -- did you send some documentation to Mr. Goldman**  
 13 **between the dates of February 20, 2008, and March 11,**  
 14 **2008, for transmission to State Farm? For reference,**  
 15 **in Exhibit 57 Mr. Goldman indicates that a large**  
 16 **binder containing documents numbered Gholson 74 --**  
 17 A. This is the complete and final claim  
 18 presentation.  
 19 **Q. Okay. So sometime on or before March 11,**  
 20 **you delivered the complete and final claim**  
 21 **presentation to Mr. Goldman, correct?**  
 22 A. Correct.  
 23 **Q. Then he sent it to me to be sent to State**  
 24 **Farm, as far as you know, correct?**  
 25 A. Correct. And a copy was also mailed to

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1 Ed Russ, Jr., chairman of the board and CEO for State  
 2 Farm.  
 3 **Q. I want to show you Exhibit 31. This**  
 4 **is -- have you seen this before, sir? Take your time,**  
 5 **if you need to. It's an e-mail. It appears to me to**  
 6 **be an e-mail dated June 3, 2007.**  
 7 A. Yes.  
 8 **Q. And it's from Mr. McCaffry to Justin**  
 9 **Blackburn at DRI, correct?**  
 10 A. Yes.  
 11 **Q. Were there -- let me ask you this: Do**  
 12 **you know what precipitated Mr. McCaffry's e-mail to**  
 13 **Mr. Blackburn, in as concise an answer as you can**  
 14 **possibly give me?**  
 15 A. Mr. Blackburn was -- he didn't want to  
 16 make some of the plus/minus changes that were  
 17 requested, and so we ended up having a meeting  
 18 following this to get things moving.  
 19 **Q. Do you remember -- go ahead. I'm sorry.**  
 20 **I thought you were done.**  
 21 A. As I said, this was the first project  
 22 that I had ever worked on with DRI and there was some  
 23 anxiety within the company about them between their  
 24 project manager stuff working with a public adjuster.  
 25 And so there was some hurdles that had to be crossed

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1 that, hey, you know, we insist that we have quality  
 2 work done accurately with the right prices.  
 3 **Q. Ultimately did DRI make the changes that**  
 4 **your company requested that they make to their**  
 5 **estimates?**  
 6 A. They had, and the final estimates that  
 7 were completed by them, I think, are somewhere maybe  
 8 July 26. There was still some noted duplication  
 9 issues on various line items and Jeff Davis was still  
 10 trying to figure out how to get the house to conform  
 11 to the requirements that would be required to get the  
 12 certificate of occupancy.  
 13 (Deposition Exhibit 52 was marked.)  
 14 **Q. Let me hand you what's been marked as**  
 15 **Exhibit 52. Do you recognize Exhibit 52, sir?**  
 16 A. I do.  
 17 **Q. What is it?**  
 18 A. It's an Xactimate estimate.  
 19 **Q. Who prepared this estimate?**  
 20 A. I did.  
 21 **Q. You see the price list there on the front**  
 22 **page of Exhibit 52?**  
 23 A. Yes.  
 24 **Q. Now, I'm looking at the price list you**  
 25 **have there. Let's go through the acronym. CO stands**

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1 **for Colorado, correct?**  
 2 A. Correct.  
 3 **Q. DE stands for Denver, correct?**  
 4 A. Correct.  
 5 **Q. Five, I forgot?**  
 6 A. Five is for Xactimate 2005.  
 7 **Q. Okay. B?**  
 8 A. For building.  
 9 **Q. Seven?**  
 10 A. Seven is for 2007 and D is for fourth  
 11 quarter.  
 12 **Q. And then the ICA price list which was**  
 13 **used, I'll just show you my copy, it's Exhibit 18.**  
 14 A. I have it right here.  
 15 **Q. The difference in the price list is that**  
 16 **you used -- as of December of '07, you used the fourth**  
 17 **quarter 2007 price list and ICA used the third quarter**  
 18 **2008 price list; is that right?**  
 19 A. That is correct.  
 20 MR. LIVINGSTON: Excuse me. Did you say  
 21 2008 price list?  
 22 MR. SANDS: Third quarter 2008 price  
 23 list.  
 24 A. Yeah.  
 25 **Q. (BY MR. SANDS) Am I right about that?**

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1 A. Yes. That's the third quarter. C is the  
 2 third quarter.  
 3 **Q. And maybe you can't answer this. I don't**  
 4 **want to spend the time to go over the numbers now.**  
 5 **Can you tell me how much difference the pricing would**  
 6 **be between the fourth quarter of 2007 when you did**  
 7 **your estimate and the third quarter of 2008 when ICA**  
 8 **did its estimate?**  
 9 MR. LIVINGSTON: Can I have that read  
 10 back, please.  
 11 (The last question was read back as  
 12 follows: "And maybe you can't answer this. I don't  
 13 want to spend the time to go over the numbers now.  
 14 Can you tell me how much difference the pricing would  
 15 be between the fourth quarter of 2007 when you did  
 16 your estimate and the third quarter of 2008 when ICA  
 17 did its estimate?")  
 18 MR. LIVINGSTON: I'm going to object to  
 19 that. Either he gets to take the time to look through  
 20 it or you've got to move on. You can't say just to  
 21 guess. The question is phrased just guess.  
 22 **Q. (BY MR. SANDS) If you can't tell me**  
 23 **without guessing --**  
 24 A. I can say some highlight things. For  
 25 instance, as I stated the ICA estimate in my



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1 opinion, was the most accurate. When I compared it to  
2 this one, we did find a couple of small mistakes,  
3 nothing that was intentional.

4 **Q. When you say "this one," you're referring**  
5 **to the estimate prepared by --**

6 A. When the comparison was done on the ICA  
7 estimate, I used this 12/30/2007 product and I found a  
8 couple small mistakes, both pro and con. And the ICA  
9 estimate does not have the completed concrete items  
10 and stuff and building permits and architectural fees  
11 that Mr. Gholson -- stuff that Mr. Gholson had already  
12 completed and paid for. I think if my memory serves  
13 me correct, it's about 297,000.

14 **Q. Yeah. If you look at page --**

15 A. 297.

16 **Q. Yes.**

17 A. This one, if I remember correctly, is  
18 320.

19 **Q. Well, if you look at page Gholson 348,**  
20 **which is almost at the end, it's \$320,098.45.**

21 A. Right. That differential, what that was  
22 was the concrete for the buildings, slab, engineering  
23 charges for Jeff Davis and other, the architectural  
24 fees. The well system was in the out structure claim  
25 presentation, as well as the septic, so this doesn't

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1 have the septic, this doesn't have septic, this  
2 doesn't have well, this doesn't have well, but this  
3 has the concrete work. And the concrete work was  
4 listed in here in this estimate from exact bills that  
5 Andy had incurred.

6 **Q. And you're referring -- when you say "in**  
7 **here," you're referring to the Public Adjusters**  
8 **estimate marked as -- let's get an exhibit number**  
9 **here -- 52?**

10 A. Right. The concrete in here was based  
11 on, you know, exact costs that was paid by  
12 Mr. Gholson.

13 (Deposition Exhibit 51 was marked.)

14 **Q. Let me show you what's been marked as**  
15 **Exhibit 51. Do you know what Exhibit 51 is?**

16 A. I do.

17 **Q. What is Exhibit 51?**

18 A. This is a document that I gave to Tom  
19 Bain from the Colorado Department of Public Health and  
20 Environment showing the areas of the house that were  
21 damaged after the loss.

22 **Q. In some of the depositions, obviously**  
23 **Mr. Bain's name has been mentioned. Did you contact**  
24 **Mr. Bain about the Gholson claim?**

25 A. I did

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1 **Q. And how many times did you talk to**  
2 **Mr. Bain?**

3 A. August of 2007 I called him and I talked  
4 actually about two claims with State Farm. That would  
5 be this claim and Colonial Manor. I felt that what  
6 had transpired in both of them were a real problem.

7 **Q. I asked you how many times you had**  
8 **contacted Mr. Bain. That's all I've asked so far.**

9 MR. LIVINGSTON: Relative to this case,  
10 Jon, in particular or all the other ones?

11 MR. SANDS: That's a good correction.

12 **Q. (BY MR. SANDS) Let's say with respect to**  
13 **the Gholson claim, how many times have you talked to**  
14 **Mr. Bain?**

15 A. I don't know. Many, many times.

16 **Q. Many times?**

17 A. Yes.

18 **Q. Is it your understanding that -- I think**  
19 **Mr. Livingston in one of his questions, if I remember**  
20 **correctly, suggested that there was an investigation**  
21 **going on. Do you know of some investigation going on**  
22 **that's being conducted by the Colorado Department of**  
23 **Health?**

24 A. There is one going on.

25 **Q. What do you know about that**

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1 investigation? Go ahead. I'm going to pull that. Go  
2 ahead, Mr. McLoughlin. What do you know about that?  
3 And let me say this: I don't want a -- if you can't  
4 answer it without a lengthy narrative, let me know  
5 that and I'll ask more specific questions because this  
6 could go on all afternoon and I want to avoid that.  
7 So let me ask you this. Let me ask a more specific  
8 question.

9 A. I can tell you that in August I contacted  
10 Mr. Bain and I said, I have property X and property Y  
11 and here's what I believe the situation is, property X  
12 being Gholsons and property Y being Colonial Manor.  
13 And I had discussed with him at Colonial Manor that I  
14 had been accused of in a letter from Mr. Thomsen  
15 potentially causing a major asbestos spill after the  
16 fire loss. I was outraged. I had sent some  
17 correspondence of this, Exhibit C from yesterday's  
18 deposition of Tom Egger. And I felt that sending  
19 these letters, and also in Colonial Manor the full  
20 claim presentation, that State Farm would take a look  
21 at this and say, Oh, jeez, we've got a problem and  
22 they would step up. So that's why I kept it on an  
23 X-and-Y basis.

24 **Q. As Mr. Livingston indicated, I'm really**  
25 **asking you about the Gholson situation.**

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1 A. I just think it's important so that you  
2 know that there's two things going on and right now  
3 I'm trying to get my arms around it. Then on  
4 September 6 in the Colonial Manor project -- and this  
5 is very important because there was discussions of the  
6 Gholsons on this -- State Farm had been notified that  
7 the abatement contractor was going to begin work, that  
8 they had responded to the proof of loss, and that the  
9 thing was under containment, the costs were mounting  
10 and this was going proceed with abatement. And there  
11 was a bunch of -- I don't know how else to describe  
12 it, but panic calls from Mr. Thomsen insisting that  
13 they be allowed to go into the property. And I was  
14 greeted out there by a very large entourage of State  
15 Farm people and contractors and everyone, and there  
16 was quite some sidewalk discussions out in front of  
17 the property.

18 **Q. Was Mr. Bain there?**

19 A. Mr. Bain was not there.

20 **Q. I'm only asking you about your  
21 communications with Mr. Bain.**

22 A. I'm going to get to that. What  
23 transpired in those conversations was so troubling  
24 that the next day I went to Mr. Bain with photographic  
25 documentation from the Gholson property and with a

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1 narrative that I had written for the Colonial Manor  
2 claim presentation and I filed two formal complaints.  
3 I spent an hour and a half talking to him. Mr. Bain  
4 has not disclosed the details of their investigation,  
5 but I do understand that he had interviewed  
6 Mr. Gonzalez at least twice. We then followed  
7 Mr. Bain's instructions in dealing with the Gholson  
8 rental property for furnishings to the T.

9 **Q. Now, yesterday Mr. Livingston marked a  
10 transcript of a telephone message that you had -- or  
11 telephone -- I think it was a message you had on your  
12 machine from Mr. Egger; is that right?**

13 A. Yes.

14 **Q. Do you have any other recordings of any  
15 communications with anybody from State Farm?**

16 A. I don't know. That one kind of, you  
17 know --

18 **Q. My question is, do you know whether you  
19 have any or not. That's all I want to know.**

20 MR. LIVINGSTON: I think he's trying to  
21 answer, Jon. I understand you want brevity. He's not  
22 rambling or anything.

23 MR. SANDS: I respectfully disagree. I  
24 appreciate what Mr. McLoughlin is trying to do.

25 **Q. (BY MR. SANDS) I want to know if you can**

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1 **tell me at the moment, do you know whether you have  
2 other recordings or not?**

3 A. Tim Thomsen's testimony concerning about  
4 the cutoff of the ALE prompted my memory and I went  
5 searching through my phone messages and I found that  
6 one. And I apologize. I would have disclosed it,  
7 although I've gone back and looked at the STD  
8 requirement to.

9 **Q. I'm not sure frankly my subpoena was  
10 broad enough.**

11 MR. LIVINGSTON: No, it did not ask for  
12 tapes.

13 **Q. (BY MR. SANDS) Fine. Let's move on. I  
14 wasn't going to suggest that you hadn't complied. I  
15 wasn't going to go there. I want to know, do you have  
16 any others?**

17 A. In the Gholson matter?

18 **Q. Yes, in the Gholson matter.**

19 A. No.

20 **Q. When is the last time you spoke with  
21 Mr. Bain from the Colorado Department of Health about  
22 the Gholson matter?**

23 A. October 2008.

24 **Q. October 2008?**

25 A. Yes. He no longer works with the CDPHE.

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1 **Q. Do you know who on behalf of the State of  
2 Colorado, if anyone, is involved in the ongoing  
3 investigation you indicated?**

4 A. Yes. There is a very active  
5 investigation going on.

6 **Q. Listen to my question.**

7 A. Excuse me. I apologize.

8 **Q. Do you know who is involved on behalf of  
9 the State of Colorado in the active investigation  
10 involving the Gholson matter?**

11 MR. LIVINGSTON: I'm going to object to  
12 form.

13 A. No. I don't know who's in charge of  
14 their enforcement actions.

15 **Q. (BY MR. SANDS) How do you know there is  
16 an active action going on as of today's date --**

17 A. Well --

18 **Q. -- involving the Gholson matter?**

19 A. I know that I spoke with Mr. Fine -- I  
20 don't know -- maybe a week and a half ago.

21 **Q. What's his name?**

22 A. Mr. Steve Fine.

23 **Q. Steve Fine?**

24 A. He's in charge of the asbestos unit.

25 **Q. Is that Fine?**

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1 A. Yes.

2 Q. Did you contact him?

3 A. He called me.

4 Q. I hesitate to ask, but in as brief a

5 manner, most concise manner as you can possibly tell

6 me -- withdraw that.

7 How long did your conversation last with

8 Mr. Fine?

9 A. It wasn't very long.

10 Q. Did he call you with specific requests?

11 A. Yes.

12 Q. What was his specific request of you?

13 A. I think I need to leave that to them.

14 Q. You're not going to answer?

15 MR. LIVINGSTON: Wait a minute. What's

16 the problem here? He asked you a question. I think

17 he deserves an answer. I'm not your attorney.

18 A. I'm not an attorney, but this involves a

19 governmental investigation and I really don't know

20 whether I'm in a standing on solid ground by sitting

21 here disclosing what they've asked me.

22 MR. LIVINGSTON: Let me step in for a

23 minute. Did this guy you talked to tell you you can't

24 talk to anybody about it?

25 MR. SANDS: He's asking you.

1 affairs.

2 Q. Are you going -- do you intend to provide

3 the names of contractors involved in estimating?

4 A. I intend to involve --

5 MR. LIVINGSTON: Object to form, vague.

6 What estimating are you talking about? Asbestos

7 remediation? Are you talking about these millions of

8 contracts or proposals?

9 Q. (BY MR. SANDS) When you say "involved,"

10 involved in what process? Are you going to -- that's

11 a good -- I think Mr. Livingston's question is fair.

12 Are you going to provide him with the names of people

13 or entities involved in what process?

14 A. Involved in? I'm sorry. I don't

15 understand the question.

16 Q. You're going to provide Mr. Fine names

17 and addresses of everyone -- you said everyone

18 involved. I'm asking you, involved in what process?

19 A. Well, that was -- what happened with the

20 initial evaluation, lack of containment, improper

21 removal of the personal property, the return of

22 contaminated goods, I'm providing him with a list.

23 I'm not going to tell him who he should direct

24 enforcement actions against. He has to make that

25 decision himself.

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1 MR. LIVINGSTON: I'm asking you,

2 Mr. McLoughlin, this guy you talked to, did he tell

3 you not to discuss it? Because if that's the case, I

4 can see what you're talking about; but if it's not, I

5 think we need to move forward here.

6 A. He asked me for a complete list of names

7 and addresses of all the parties involved.

8 Q. (BY MR. SANDS) In the Gholson claim?

9 A. Yes.

10 Q. And did you give him the names Tim

11 Thomsen?

12 A. I haven't given him any names yet. I'm

13 going to do that this weekend.

14 Q. He asked you to provide to him in

15 writing?

16 A. Yes. He wanted current addresses, names,

17 phone numbers, that sort of thing.

18 Q. Have you begun compiling that list at

19 this juncture?

20 A. I haven't. I've had a pretty intense

21 week.

22 Q. Pretty busy week for all of us. I

23 understand.

24 A. I finished with a client last night at

25 midnight so I'm taking care of my day-to-day business

1 MR. SANDS: Want to take like five

2 minutes? Let's take a five-minute break.

3 (Recess taken, 2:28 p.m. to 2:37 p.m.)

4 Q. (BY MR. SANDS) Now, sir, do you

5 remember -- we have an exhibit, and I'm not sure --

6 well, let me find it. I should have done it during

7 the break. Before I do that, let me show you this

8 letter of May 24, 2007, that we marked earlier as

9 Exhibit 33. That's a letter written by your firm, or

10 by Public Adjusters of Colorado, to Mr. Blackburn and

11 DRI, correct?

12 A. Correct.

13 Q. Again, the date of that is May 24?

14 A. Is that May 24, 2007? I can't remember.

15 Yes.

16 Q. Do you recall seeing that letter before

17 today?

18 A. I think I've seen it, yes.

19 Q. And that has to do with your firm's

20 discussions with Mr. Blackburn about DRI's -- is it

21 the first estimate DRI had done?

22 A. The first estimate DRI had done?

23 Q. Yes, sir. Let me show you Exhibit 30

24 again, which is in this book. You see this DRI

25 estimate is dated --

137	139
<p>1 A. 29th.</p> <p>2 <b>Q. -- May 29?</b></p> <p>3 <b>What's the date of that letter, May 24?</b></p> <p>4 A. Right.</p> <p>5 <b>Q. So it's dated before this estimate?</b></p> <p>6 A. Correct.</p> <p>7 <b>Q. Okay. Is that letter, Exhibit 33,</b></p> <p>8 <b>addressing a specific DRI estimate or is it just</b></p> <p>9 <b>addressing issues you were discussing with DRI?</b></p> <p>10 A. I didn't write this letter. At this</p> <p>11 time, you know, I was trying to let Mr. McCaffry</p> <p>12 handle stuff.</p> <p>13 <b>Q. Fair enough.</b></p> <p>14 A. They had an American Restoration</p> <p>15 estimate. They had the CoCat estimates. You know, we</p> <p>16 knew that an engineer had to come out. I'm an</p> <p>17 engineer. I said, You know, this is going to have to</p> <p>18 happen, this is going to have to happen, but get the</p> <p>19 process started, get it going.</p> <p>20 <b>Q. Fair enough. As of May 24 Mr. McCaffry</b></p> <p>21 <b>was more involved than you were, fair?</b></p> <p>22 A. Yes.</p> <p>23 MR. LIVINGSTON: Object to form, vague.</p> <p>24 <b>Q. (BY MR. SANDS) Okay. Can I have the</b></p> <p>25 <b>exhibit book.</b></p>	<p>1 this matter.</p> <p>2 <b>Q. At some point -- withdraw that.</b></p> <p>3 <b>Do you recall that your firm became</b></p> <p>4 <b>involved in requesting some -- let me have that</b></p> <p>5 <b>exhibit book, if I may, sir -- requesting some air</b></p> <p>6 <b>sampling and testing at the Gholson's rental residence</b></p> <p>7 <b>in Evergreen?</b></p> <p>8 A. My firm?</p> <p>9 <b>Q. Well, let me ask the question another</b></p> <p>10 <b>way. Did your firm become involved in asking -- or</b></p> <p>11 <b>ordering some testing at the Gholson rental residence</b></p> <p>12 <b>on Isenberg Lane?</b></p> <p>13 A. And what date was that?</p> <p>14 <b>Q. Well, let me show you Exhibit 10, which</b></p> <p>15 <b>is a fax to you. It's dated May of 2008 from</b></p> <p>16 <b>Certified --</b></p> <p>17 A. Insulators, yeah. I didn't order this.</p> <p>18 I did send you correspondence concerning the cleaning</p> <p>19 and discarding of items over at the rental property.</p> <p>20 <b>Q. Who ordered that testing that's referred</b></p> <p>21 <b>to in Exhibit 10?</b></p> <p>22 A. That was -- Andy Gholson, you know, had</p> <p>23 the items -- the contaminated items at the house</p> <p>24 disposed of, and out of the list of 15 that you</p> <p>25 supplied the day before the work was supposed to</p>
138	140
<p>1 A. Sure.</p> <p>2 <b>Q. I need to find an exhibit and we'll move</b></p> <p>3 <b>on. Can I have that book?</b></p> <p>4 A. Sure. Absolutely.</p> <p>5 <b>Q. It's actually in here. I'm going to show</b></p> <p>6 <b>you Exhibit 19. Now, this is a letter -- a fax,</b></p> <p>7 <b>actually, to State Farm from Mr. McCaffry of Public</b></p> <p>8 <b>Adjusters. Do you recall seeing that before?</b></p> <p>9 A. Yes.</p> <p>10 <b>Q. Now, very simple question, to the best of</b></p> <p>11 <b>your knowledge, is that the first date upon which your</b></p> <p>12 <b>firm notified State Farm that it was working with the</b></p> <p>13 <b>Gholsons?</b></p> <p>14 A. I believe so.</p> <p>15 <b>Q. Now, Mr. McLoughlin --</b></p> <p>16 A. Excuse me.</p> <p>17 <b>Q. Go ahead.</b></p> <p>18 A. I assume he had a conversation with</p> <p>19 Mr. Egger. And if my recollection serves me, it was</p> <p>20 maybe about a week before this, because he didn't know</p> <p>21 who Tom was and, you know, we told him that we had a</p> <p>22 contract. I think what prompted an immediate response</p> <p>23 was this July 2 DMA letter that the Gholsons received.</p> <p>24 That really -- we were trying to get our arms around</p> <p>25 all the issues, and at this point we needed to address</p>	<p>1 start --</p> <p>2 <b>Q. Who supplied?</b></p> <p>3 A. Your office supplied to Glen Goldman --</p> <p>4 <b>Q. Whose office?</b></p> <p>5 A. Your office supplied Glen Goldman a list</p> <p>6 of 15 items that they wanted to clean, and out of</p> <p>7 those there was an attempt to clean ten of them</p> <p>8 because they made sense to try. You know, someone</p> <p>9 could argue that they might be cost effective. And</p> <p>10 that was -- the actual abatement or disposal of the</p> <p>11 contaminated contents at the Gholson house was</p> <p>12 supposed to start the next day. So Certified</p> <p>13 Insulators then had to make a new proposal for the</p> <p>14 cleaning. And I forwarded to you an entry marked</p> <p>15 correspondence relating to those matters. And then</p> <p>16 when they completed the work, they had to do a</p> <p>17 clearance testing on the property and clearance</p> <p>18 testing on the ten items that were attempted to be</p> <p>19 cleaned. And that was arranged by -- actually, I</p> <p>20 think that was arranged by Mr. Parker of Certified</p> <p>21 Insulators. I've never done any work with -- I know</p> <p>22 the name. He hired D &amp; D. And I did do a check on</p> <p>23 their credentials, make sure they were licensed and</p> <p>24 everything. And other than that, I just asked him to</p> <p>25 forward me the results</p>

**141**

1 **Q. Do you have any certification in asbestos**  
 2 **handling?**  
 3 A. As far as what?  
 4 **Q. Are you certified pursuant to Regulation**  
 5 **8 yourself?**  
 6 A. Yes.  
 7 **Q. When did you receive that certification?**  
 8 A. Well, depends on what you're asking as  
 9 far as certification. I've been invited to become an  
 10 air monitoring specialist by Paula Ross, Jack Dixon,  
 11 Tom Bain, and I've declined because I said that I do  
 12 not want to be in a position where I am, you know, so  
 13 to speak, testing and administering the results and  
 14 passing judgment, because I felt the insurance  
 15 carriers would cry foul.  
 16 **Q. Let me ask you this: Do you know whether**  
 17 **the state actually issues any sort of license or**  
 18 **certification to persons, firms, or entities for**  
 19 **asbestos handling?**  
 20 A. Yes, they do.  
 21 **Q. What sort of licenses or certifications**  
 22 **are you aware of that are issued by the state?**  
 23 A. They have asbestos worker. There's a  
 24 16-hour certification. There's a supervisor, a  
 25 40-hour certification. There's air monitoring

**142**

1 specialist, which requires a couple different training  
 2 levels. There's a project designer. There's a  
 3 project planner, which you see more typically in  
 4 schools and stuff, and then there's the general  
 5 abatement contractor certifications.  
 6 **Q. Now, we've heard some questioning during**  
 7 **the course of various depositions in this case**  
 8 **regarding what was done at the Gholson residence by**  
 9 **American Restoration with respect to moving personal**  
 10 **property out of the house. You're generally aware of**  
 11 **that, correct?**  
 12 A. Yes.  
 13 **Q. What is your understanding of the kind of**  
 14 **licensing or certification, if any, that American**  
 15 **Restoration, in your opinion, would have needed to**  
 16 **move personal property out of the Gholson residence?**  
 17 **I mean the residence where the fire occurred.**  
 18 MR. LIVINGSTON: Object to form. And  
 19 we're certainly calling for opinions. This is no  
 20 longer fact.  
 21 **Q. (BY MR. SANDS) Let me ask you, do you**  
 22 **know what sort of license or certification would be**  
 23 **required of any person or firm that moved personal**  
 24 **property out of the Gholson residence after the fire?**  
 25 MR. LIVINGSTON: Same objection

**143**

1 A. Any contractor -- and I'll speak in  
 2 generality. As far as the asbestos report from Andre  
 3 Gonzalez, that property was a major spill. And there  
 4 were some misguided deposition statements made  
 5 throughout this process. There are no areas within  
 6 the house that are -- it's a contiguous space. The  
 7 whole entire interior of that property was  
 8 contaminated.  
 9 **Q. (BY MR. SANDS) In fact, I recall in a**  
 10 **report or a document that you had authored that you --**  
 11 A. I hadn't finished.  
 12 **Q. I'm sorry. I thought you were done.**  
 13 A. And so anyways, that house should have  
 14 been put under -- by Colorado Regulation 8 should have  
 15 been put under negative air containment by a licensed  
 16 GAC, general abatement contractor. The people that  
 17 would have been working under there, they would have  
 18 had to pull a permit with the CDPHE. They would have  
 19 had to post the property. They would have had to seal  
 20 the property, the openings, penetrations, whatever, so  
 21 that they could draw 2 inches of negative water column  
 22 while they were working in there. They would have had  
 23 to have a decon unit where employees could go in and  
 24 out with proper PPE, personal protective equipment.  
 25 That would be asbestos suits, respirators. Those

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1 personnel that would go in would have to be fit.  
 2 They'd have to be medically examined, fit tested. The  
 3 workers would have to have a minimum of 16 hours of  
 4 training. The supervisor that would have been on site  
 5 required would have had to have had 40 hours of  
 6 training. They would have had to set up OSHA  
 7 monitoring, PEL monitoring devices. A contractor can  
 8 do that himself and drop off the samples. They would  
 9 have had to have -- you know, if they were going to  
 10 take stuff out, they would have had to have an  
 11 approved load-out such that they could maintain  
 12 negative 2 inches of water column.  
 13 Anything that would have come out of  
 14 there would have had to go through a multiple  
 15 wrapping, manifesting procedure. Then it would have  
 16 had to have been transported under a RCRA hazardous  
 17 waste manifest and then the receiving authority would  
 18 have had to have all the certified setup to take that  
 19 wrapped, contaminated material into their possession  
 20 and clean it. And as far as I know, none of those  
 21 issues happened.  
 22 **Q. Are you done?**  
 23 MR. LIVINGSTON: Aren't you glad you  
 24 asked.  
 25 **Q. (BY MR. SANDS) Are you done?**

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1 A. Yes.  
 2 MR. SANDS: Yeah, I'm glad I asked. I'm  
 3 here to get Mr. McLoughlin's testimony.  
 4 Q. (BY MR. SANDS) I think I'm  
 5 mispronouncing your name. Is it McLoughlin?  
 6 A. It is McLoughlin.  
 7 Q. McLoughlin?  
 8 A. A lough in Ireland is a body of water.  
 9 And, you know, I've got an interesting story. My  
 10 wife's maiden name is Loughran. So when we got  
 11 married, there was a big Irish clan fest. So she got  
 12 to get the higher order put in front of her name. And  
 13 she got rid of the ran. Now she's a lin.  
 14 Q. Okay.  
 15 MR. LIVINGSTON: Is there a regulation on  
 16 that you can cite for us?  
 17 MR. SANDS: Call Mr. Bain and ask him if  
 18 he's okay with that name change.  
 19 Q. (BY MR. SANDS) All right.  
 20 Mr. McLoughlin, Exhibit 3, do you recognize that?  
 21 A. I do.  
 22 Q. And just to cut this with -- again,  
 23 respecting your opportunity to fully answer my  
 24 question, I want to cut right to it here. This is  
 25 Mr. Gonzalez's report that was issued after he was

1 chance to go into why. I wanted to know the  
 2 specifics.  
 3 Q. (BY MR. SANDS) Let me ask you this: Do  
 4 you have any reason to disagree with the sample  
 5 description table that's at the bottom --  
 6 A. I'll tell you why.  
 7 Q. -- of the first page?  
 8 A. By the regulation, he didn't take a  
 9 sufficient amount of samples. And he also did -- he  
 10 only did bulk samples. He did no microvac or air  
 11 samples that would lead me to be able to define and --  
 12 what's there in the visual evidence is more than  
 13 enough to call the thing a major spill. I think that  
 14 his report should have called it a major spill; but on  
 15 the other hand, he clearly says that all removal,  
 16 cleanup, decontamination must be removed by workers  
 17 certified to handle asbestos-containing material, the  
 18 work must be performed in accordance with Colorado  
 19 Regulation 8 and all applicable OSHA regulations.  
 20 Well, Colorado Regulation 8, that clearly calls for it  
 21 to be put under containment, calls for PPE, decon.  
 22 OSHA is kind of interesting because any building  
 23 that's prior to 1980, if it's going to go through  
 24 demolition has to be tested. In a case where you've  
 25 had an incident where it's been damaged, it would

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1 called to the Gholson home on February 5; is that  
 2 correct?  
 3 A. Yes.  
 4 Q. And you have been critical of this  
 5 report; isn't that right? In a document that you  
 6 wrote you indicated that --  
 7 A. Yeah, I have been critical. I sure have.  
 8 Q. You see there under conclusions and  
 9 recommendations Mr. Gonzalez wrote that "the office  
 10 content on the main floor and the content in the  
 11 master bedroom were not impacted by the fire and can  
 12 safely be removed without concern for asbestos  
 13 contamination." Have I read that correctly?  
 14 A. That's what it says.  
 15 Q. You disagree with that sentence?  
 16 A. I sure do.  
 17 Q. Then is there -- without telling me why  
 18 at this point, can you tell me is there any other  
 19 portion of the report marked as Exhibit 3 from  
 20 Mr. Gonzalez that you disagree with? Let me make it a  
 21 more --  
 22 MR. LIVINGSTON: You can't get more wordy  
 23 than what do you disagree with, don't tell him why,  
 24 just tell him that.  
 25 MR. SANDS: I was going to give him a

1 require testing. And OSHA is any level of asbestos.  
 2 Throw the 1 percent out. Any finding of asbestos the  
 3 workers have to be protected. And so when you have a  
 4 situation like State Farm, who's an employer, they are  
 5 responsible to give their employees worker  
 6 right-to-know training, have the training. They  
 7 should be walking into these loss sites treating them  
 8 as a presumed asbestos spill because if there's more  
 9 than 32 square feet of potentially damaged material,  
 10 doesn't matter what age the building is, it's a  
 11 presumed asbestos hazard until it's proven otherwise.  
 12 So the tester should be testing them to the extent  
 13 they need to prove that they're not a major spill  
 14 hazard.  
 15 Q. Now, you're aware that Diamond Hills  
 16 performed abatement of the residence at the Gholson --  
 17 the Gholson residence? I'm sorry. Certified --  
 18 A. They did not.  
 19 Q. I got it backwards. Certified Insulators  
 20 performed abatement at the Gholson residence; is that  
 21 correct?  
 22 A. That is correct.  
 23 Q. Mr. Gholson testified that he has no  
 24 reason to believe that the abatement work was handled  
 25 improperly. You weren't here -- I don't think you

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1 were here for his deposition?

2 A. No, I wasn't.

3 **Q. Do you have any reason to disagree with**  
4 **his testimony, which was that he has no reason to**  
5 **believe that the abatement work was done improperly?**

6 A. I don't believe so. I wasn't there when  
7 it was done, but what I do know is that the items that  
8 contained asbestos were removed and there is a  
9 clearance report from a certified professional.

10 **Q. And then Certified -- was it Certified**  
11 **that, again, was called to the rental -- withdraw that**  
12 **question.**

13 **Have you heard that there was a time when**  
14 **Mr. Gholson was at his -- present at his residence**  
15 **where the fire took place with a Mr. Gies, G-i-e-s,**  
16 **after the fire?**

17 A. I think I heard that in Tom Egger's  
18 testimony or maybe Tim Thomsen's. I'm not sure.

19 **Q. Was that the first time you had ever**  
20 **heard that?**

21 A. No. Andy had told me they were there.

22 **Q. And did he tell you that he walked in**  
23 **areas of the residence with Mr. Gies, who -- do you**  
24 **know what Mr. Gies's qualifications are?**

25 A. Yeah. He's like vice-president of

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1 Certified Insulators. He's had a stroke.

2 **Q. When did he have a stroke?**

3 A. I don't know. Maybe six months ago.

4 **Q. So it was after the Gholson fire?**

5 A. Six months ago, yeah.

6 **Q. So did Mr. Gholson tell you that he**  
7 **walked through the residence with Mr. Gies without any**  
8 **PPE, or personal protective equipment?**

9 A. I understand that, but you see, it's kind  
10 of interesting you bring that up.

11 **Q. All I asked you is did he make you aware**  
12 **of that. That's all I asked you.**

13 A. I want to add something, too.

14 **Q. I want to know, did he make you aware of**  
15 **that?**

16 A. Yes.

17 **Q. Do you know what Mr. Gies's -- does**  
18 **Mr. Gies have any certifications that you're aware of?**

19 A. I'm sure he does. Their firm is licensed  
20 in maintaining. I'm sure he has.

21 **Q. Do you believe that Mr. Gies was in error**  
22 **for allowing Mr. Gholson to walk the residence with**  
23 **him when they did after the fire without advising him**  
24 **to wear personal protective equipment?**

25 MR. LIVINGSTON: Object to the form

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1 It's the improper legal standard for an opinion, and  
2 back here you are with opinions that you weren't going  
3 into.

4 **Q. (BY MR. SANDS) Have you told Mr. Gholson**  
5 **that Mr. Gies should have told him to wear personal**  
6 **protective equipment when they walked the residence**  
7 **together?**

8 A. Well --

9 **Q. Have you told Mr. Gholson that or not?**

10 A. I'm going to give some more information  
11 here. So first of all, State Farm mailed the Gonzalez  
12 report Mr. Gholson request on the 12th, but it wasn't  
13 actually mailed until the 14th. So they hadn't  
14 received the report prior to this walk-through on the  
15 16th. And at this time personal property had been  
16 removed without proper controls. Mr. Gholson's  
17 experience with everybody and their brother was, you  
18 know, here's Tim and Tom and Terry Aumiller doing a  
19 two-hour dog-and-pony walk through the house and then  
20 having Mrs. Gholson and Mr. Gholson say, I guess we  
21 ought to test for asbestos. It's my understanding  
22 that Tim turned to Mr. Terry Aumiller and said, Do you  
23 think we ought to test this? Mr. Aumiller should be  
24 aware of these situations because he does construction  
25 work. Tim should be aware of this.

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1 **Q. Shouldn't Mr. Gies, since that's his**  
2 **profession? In fact, didn't you say earlier in this**  
3 **deposition that just visually it should have been**  
4 **apparent that it was a major spill? Is that what your**  
5 **testimony was?**

6 MR. LIVINGSTON: Object to form.

7 **Q. (BY MR. SANDS) Did I misstate your**  
8 **testimony?**

9 MR. LIVINGSTON: Misstates the evidence.

10 **Q. (BY MR. SANDS) Did I misstate your**  
11 **testimony?**

12 A. I'm sorry. What?

13 **Q. Did I misunderstand you? I thought you**  
14 **had said earlier in this deposition that --**

15 A. I told Mr. Gholson that Mr. Gies should  
16 have told him that he needed a PPE. The problem with  
17 that also is that Mr. Gholson would have had to go get  
18 a respiratory exam and fit test. I think Mr. Gies was  
19 walking across from his house and probably should have  
20 used better judgment on that.

21 **Q. Mr. Gholson testified that you told him**  
22 **to have -- to get Exhibit 16, which is a note from**  
23 **Carol A. Turner, MD. Did you tell Mr. Gholson to**  
24 **obtain that document?**

25 A. I did, because Mr. Gholson and Beth

38 (Pages 149 to 152)

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1 Gholson brought to my attention that their son -- I  
2 think it's Eric. It says William Gholson. Will. I'm  
3 sorry. Will Gholson, he goes by Will, has a  
4 respiratory condition. And I wanted that for the file  
5 so that I could present so that Mr. Thomsen could  
6 understand sensibly that this house needs to be  
7 restored to a good environmental condition.

8 MR. SANDS: Let's take a short break.

9 (Recess taken, 3:03 p.m. 3:15 p.m.)

10 **Q. (BY MR. SANDS) Mr. McLoughlin,**  
11 **Mr. Gholson testified the other day in this case**  
12 **earlier this week that you had advised Mr. and**  
13 **Mrs. Gholson to bag some personal property in their**  
14 **rental residence on Isenberg and place it in the**  
15 **basement. Do you remember advising them to do that?**

16 A. Yes. That was the instructions per Tom  
17 Bain.

18 **Q. And the Gholsons also said that you did**  
19 **not tell them to wear any kind of protective**  
20 **equipment. Is that an accurate -- Mr. Gholson said**  
21 **you did not advise the Gholsons to wear protective**  
22 **clothing or gear in the course of bagging and placing**  
23 **that personal property in the basement. Is that also**  
24 **accurate?**

25 A. No, that's not accurate.

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1 **Q. Did you tell them to wear protective**  
2 **equipment?**

3 A. What I told them is that this may be  
4 potentially asbestos contaminated.

5 **Q. Did you tell --**

6 MR. LIVINGSTON: Whoa, whoa. Let him  
7 answer. He wasn't finished.

8 MR. SANDS: He wasn't answering.

9 MR. LIVINGSTON: He was answering.

10 A. I told them that this may be potentially  
11 contaminated and Tom Bain wants this property  
12 isolated. And I told them that owners don't have to  
13 wear respiratory gear to do that, an owner of the  
14 property. I said -- they had some masks that they had  
15 from previously at one point, it's my understanding  
16 from discussions with the Gholsons, that Tim -- the  
17 Gholsons had inquired of Tim Thomsen about  
18 inventorying property that was left in the children's  
19 room upstairs in their house. And they inquired how  
20 they were going to do that and Tim had told them to --  
21 that it was their own problem. So they went out and  
22 got Tyvek suits and respirators and proceeded to do  
23 the inventory of that property. And no one told them  
24 that they could go from a memory recollection and  
25 avoid that or get a certified professional to do that.

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1 So my understanding is they were going to use that  
2 same gear to do that when they put this property in  
3 partitions -- partitioned areas in their house.

4 **Q. (BY MR. SANDS) Mr. Gholson's testimony**  
5 **was that they did not wear any protective clothing**  
6 **while moving -- bagging and moving the personal**  
7 **property at the Isenberg rental property. So was that**  
8 **contrary to your understanding of what they would be**  
9 **doing?**

10 MR. LIVINGSTON: Object to the form. Are  
11 you talking about a respirator?

12 MR. SANDS: Anything. His testimony was  
13 they didn't wear any kind of protective clothing or  
14 gear at all when they were bagging and moving the  
15 personal property.

16 A. Andy also said, Well, jeez, Bill, we've  
17 already been surrounded by this contaminated stuff for  
18 how long now, you know, this is just -- how much more  
19 harm can it do at this point.

20 **Q. (BY MR. SANDS) How did you respond?**

21 A. Well, I said, You need to take care, and  
22 that's how we left the discussion, that they had their  
23 other respiratory gear.

24 **Q. You said an owner has the right or option**  
25 **to do that, that is, to handle the personal property**

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1 **without protective clothing or gear; is that correct?**

2 A. There is a loophole in the regulation --  
3 asbestos regulations. They don't fall under the  
4 auspices of OSHA because they're not workers. And  
5 under Colorado Regulation 8, they can't dictate what  
6 an owner does with their property. So an owner can go  
7 and expose themselves as much as they like and the  
8 state can't take any enforcement action on them.

9 (Deposition Exhibit 54 was marked.)

10 **Q. I just want you to identify Exhibit 54, I**  
11 **believe it is. Do you know what this is?**

12 A. Yes.

13 **Q. What is Exhibit 54?**

14 A. That's a list of expenses that they had  
15 incurred to date in the work and items that they had  
16 done. None of these issues had been included in  
17 Mr. Thomsen's estimate, so I made this for Attorney  
18 Goldman and suggested that he file this and demand  
19 immediate reimbursement on these things --

20 **Q. And then --**

21 A. -- which I believe has never happened.

22 **Q. I want to show you a part of Exhibit 45.**

23 **And I don't mean to --**

24 A. I'm sorry. One last point.

25 **Q. Yes?**



**157**

1 A. This was forwarded -- I mean, this is  
 2 dated 3/24, so we're approaching ten months now,  
 3 almost 11 months, and this still hasn't been paid.  
 4 Q. Mr. McLoughlin, sir, Exhibit 45, the  
 5 first two pages of which is comprised of a letter  
 6 dated January 30, 2008, to Mr. Thomsen from the  
 7 Gholson's former attorney, Glen Goldman, but I want to  
 8 focus your attention on the third page of Exhibit 45,  
 9 which bears control No. SF 725. This is a sworn  
 10 statement in proof of loss, correct?  
 11 A. Correct.  
 12 Q. Is your handwriting on this page?  
 13 A. It is.  
 14 Q. Other than the signatures --  
 15 A. Correct.  
 16 Q. -- it's your handwriting?  
 17 A. Yes.  
 18 Q. Then page SF 727 is a sworn statement in  
 19 proof of loss?  
 20 A. Correct.  
 21 Q. Sworn statement in proof of loss, and  
 22 there's some typed-in numbers there. Did you type  
 23 those in?  
 24 A. Yes.  
 25 Q. So the line 8 or category 8, amount

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1 claimed under policy, those blanks were filled in by  
 2 your office or by you, correct?  
 3 A. Yes. And those pages also have  
 4 accompanying documentation to support those.  
 5 Q. But they weren't sent with this letter of  
 6 January 30, 2008, were they, or do you know?  
 7 A. I'm sorry. With what?  
 8 Q. The supporting documents that you just  
 9 testified to were not sent with this letter of  
 10 January 30, 2008, were they?  
 11 A. I'm not sure.  
 12 Q. Okay. Do you know whether the Gholsons  
 13 financed or borrowed any money from any entity or bank  
 14 or mortgage company to do any construction at their  
 15 Grouse Lane residence?  
 16 A. When?  
 17 Q. Well, at any time between the date of the  
 18 fire and today's date.  
 19 A. Not that I'm aware of. I have no idea.  
 20 Q. That's all I have. Thank you, sir.  
 21 EXAMINATION  
 22 BY MR. LIVINGSTON:  
 23 Q. Mr. McLoughlin, there was discussion  
 24 earlier surrounding Mr. Gholson walked through the  
 25 property with Mr. Gies. Do you remember that

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1 testimony?  
 2 A. Yes.  
 3 Q. Now, at the time that occurred, did  
 4 Mr. Gholson have a copy of the report?  
 5 A. No.  
 6 Q. At the time that occurred, had there been  
 7 plastic laid down that might lead one to believe that  
 8 the site had, in fact, been secured, that is, prior to  
 9 Mr. Gholson walking through that day?  
 10 A. Yes.  
 11 Q. So Mr. Gholson enters this scene, he  
 12 doesn't have the report, he sees plastic laid down  
 13 such that a layperson like Mr. Gholson might well  
 14 believe that this had been an adequate abatement  
 15 procedure, particularly since his insurance company,  
 16 in its infinite wisdom, had gone through procedures  
 17 with the abatement contractor to remove items and  
 18 supposedly comply with regulations. A layperson  
 19 looking at this might think the site had been secured?  
 20 MR. SANDS: Objection to the form of the  
 21 question.  
 22 A. Let me draw a little bit what my  
 23 understanding is of this. The Gholsons first met with  
 24 Tim Thomsen, Tom Egger, Terry Aumiller, Beth, Andy  
 25 Gholson. And it's my understanding that on February 5

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1 they walked through the house and then the so-called  
 2 request to have the property asbestos tested was a  
 3 statement made by Mr. Thomsen to Mr. Aumiller.  
 4 Q. (BY MR. LIVINGSTON) Maybe we could --  
 5 the question is, relative to that day when there was  
 6 plastic on the floor and these people don't have the  
 7 report, given your earlier testimony about that, would  
 8 it surprise you at all if a layperson would walk  
 9 through that, having known that the insurance company  
 10 had remediated things supposedly in a safe way, they  
 11 might look at this plastic and believe this thing is  
 12 made safe because they've got plastic around it, I  
 13 have every right to believe it's fine to walk through  
 14 because my insurance company secured it and so forth?  
 15 Would that be something --  
 16 A. Yeah, that happens.  
 17 MR. SANDS: Objection to the form, but  
 18 you can still answer.  
 19 A. Yeah, it happens a lot.  
 20 MR. SANDS: I think you've answered.  
 21 Q. (BY MR. LIVINGSTON) Did you ever have an  
 22 occasion wherein a State Farm manager named Carol  
 23 Riggs threatened you with the filing of a defamation  
 24 suit simply because you accurately reported  
 25 information surrounding State Farm's activities to

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1 another person who had had similar problems? Did you  
2 ever have a threat of a defamation suit made by simply  
3 reporting the truth by State Farm?

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

6 A. Yes.

7 Q. (BY MR. LIVINGSTON) And when State  
8 Farm's representative, Ms. Riggs, threatened you, did  
9 you challenge her to provide one single iota of  
10 evidence to show that what you had said was  
11 inaccurate, that you say this is all true, show me  
12 what I'm saying wrong? Did you say that?

13 A. Yes, I sure did.

14 Q. Was she ever -- did she say, This is  
15 what's wrong with what you're saying or demonstrate  
16 any factual basis that what you were saying was untrue  
17 or false? Did she ever identify anything to suggest  
18 you were making a false statement?

19 A. No, she did not.

20 Q. In spite of the fact that she could not  
21 identify the existence of a false statement being  
22 made, did she continue to threaten a liable suit?

23 A. That was the end of our conversation.  
24 She said that State Farm was considering a defamation  
25 suit against me for the information. I said, Well,

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1 Carol, I don't know that I made any errors in what was  
2 represented, if you can find something, I'd be happy  
3 to correct them, if not, then I stand by what I  
4 prepared.

5 Q. Thank you. Have you ever been physically  
6 assaulted by a State Farm employee?

7 A. Yes, I have been.

8 Q. Why don't you tell Mr. Sands about that.

9 A. When I first got into public adjusting, I  
10 can't recall the exact date; but I had a neighbor who  
11 had a water loss event at their house on a Saturday.  
12 A child had overflowed the second-floor toilet. Water  
13 cascaded down. My neighbor is a stock broker. He  
14 called me up and asked me if I'd come over. While I  
15 was there, a State Farm adjuster rang the doorbell,  
16 came in, and I introduced myself and I handed her my  
17 public adjuster's business card. And she struck me  
18 with her camera. She had it on a lanyard and hit me  
19 on the head. I had to get two stitches.

20 Q. This is your neighbor the homeowner who  
21 witnessed this?

22 A. Yes, he sure did.

23 Q. What was his name?

24 A. Joe Kazamata.

25 Q. Did State Farm managers later acknowledge

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1 that this had happened and address or approach you?

2 A. Yes. In fact, team leader Ed Lucero came  
3 over and he asked questions concerning the event, and  
4 he asked me if I wanted to press charges. I told him  
5 I did not and suggested that -- I don't recall the  
6 adjuster's name. It was a female, just moved here  
7 from California. She claimed that public adjusters  
8 are really bad people in California, and I just asked  
9 Mr. Lucero to send her to charm school.

10 Q. Did Mr. Lucero acknowledge that it was  
11 apparent from that conversation that the adjuster had  
12 acknowledged that she had hit you with the camera and  
13 Mr. Lucero was acknowledging that and saying, What do  
14 you want to do?

15 A. Yes.

16 Q. So there's really no question that you,  
17 the insured, the State Farm manager, and the  
18 individual that committed the assault all acknowledged  
19 that they had assaulted you simply for being a public  
20 adjuster, based on the assumption that public  
21 adjusters aren't nice people, at least in California;  
22 is that a fair statement?

23 MR. SANDS: Objection to the form.

24 A. Yes, that's true.

25 Q. (BY MR. LIVINGSTON) With regard to that

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1 incident that you mentioned earlier surrounding the  
2 fire where you suggested that State Farm had suggested  
3 that you created -- or I guess had disturbed a fire  
4 scene after the loss and thereafter created an  
5 asbestos spill, do you recall that testimony?

6 A. Yes.

7 Q. And was that in Sheridan, did you say?

8 A. Yes. It also suggested it was either  
9 Public Adjusters or DRI.

10 Q. And did you arrive and you met State Farm  
11 people? I think you said there was an entourage?

12 A. Yes. That occurred on September 6. That  
13 entourage included Mr. Rick Whitworth, Tom Egger, Tim  
14 Thomsen, Andre Gonzalez, included people from Diamond  
15 Hills. There was -- at one point the Sheridan  
16 Building Department, Ted Blanchard was there, another  
17 employee. There was an official from CDPHE, Jeff  
18 Adams. And there was also some unidentified people  
19 who were identified as being from State Farm's SIU.

20 Q. SIU is the fraud investigation unit of  
21 the insurance company?

22 A. That's what I understand.

23 Q. Did the insurance company later tell you,  
24 even in writing, that they were pursuing you for fraud  
25 and suggesting that you had disturbed a fire scene to

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1 create damage which would bring about additional work  
2 for contractors?

3 A. No. That was conveyed in a letter from  
4 Mr. Thomsen suggesting that.

5 Q. Okay. And did you eventually establish  
6 through photographs that this entourage and all the  
7 allegations made by the entourage was a complete  
8 farce?

9 MR. SANDS: Objection to the form.

10 A. I addressed the issue by producing the  
11 Sheridan fire investigation photos that were taken  
12 immediately after the fire was extinguished on  
13 September 24. Nobody had been into the property  
14 except for the fire investigator. I think his name  
15 was Mr. Pat Conroy from Sheridan. And this disk that  
16 he supplied me showed the exact same asbestos  
17 debris -- major spill asbestos debris in the same  
18 locations as pictures that I secured on May 16. That  
19 was three-plus weeks after the loss.

20 Q. (BY MR. LIVINGSTON) So in other words,  
21 this asbestos debris that they were accusing you of  
22 actually spreading yourself or somehow bringing about  
23 yourself was actually identified clearly in  
24 photographs taken immediately after the fire by the  
25 fire department well before you even were at the

1 you a letter after they had written letters accusing  
2 you of fraud, confronting you with this massive group  
3 of people -- did our good neighbors ever have the  
4 courtesy to write you a letter back and apologize for  
5 what they had done to you?

6 MR. SANDS: Objection to the form.

7 A. I received no such letter.

8 Q. (BY MR. LIVINGSTON) Let's talk about  
9 another case called Lucas. Do you have any  
10 information there that State Farm withheld reports of  
11 asbestos contamination from their insureds?

12 A. Yes, I do.

13 Q. Tell us about how State Farm withheld  
14 information surrounding reports of asbestos  
15 contamination from its insured in the Lucas case.

16 A. The property coverage was serious water  
17 loss at the property. It was inspected by large loss  
18 adjuster Ann Heckle. It was denied for coverage as a  
19 wear-and-tear issue. The insured struggled for a long  
20 period of time. She hired an attorney, Jim Cederberg,  
21 and Jim Cedeberg began to try to address case matters.  
22 I think he was first working with Attorney Susan  
23 Lambdin representing State Farm and Attorney Sands was  
24 substituted as counsel. My understanding is there was  
25 two issues that were held. One, there was a coverage

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1 scene, correct?

2 A. I'm sorry?

3 Q. So this crime that you were accused of by  
4 State Farm of tampering with evidence at the scene  
5 and/or actions that justified State Farm fraud  
6 investigation, that theory of what you had done was  
7 conclusively proven not to be the case by photographs  
8 taken by the fire department immediately after the  
9 loss before you were even present that showed the  
10 situation being exactly as it was before you even had  
11 access to it?

12 MR. SANDS: Objection to the form.

13 Q. (BY MR. LIVINGSTON) I'll rephrase.  
14 Basically, what it turned out in the end is photos  
15 taken by the firefighters before you even had access  
16 to the scene showed this exact condition of asbestos  
17 being there that they were accusing you of disturbing,  
18 right?

19 A. That's correct.

20 Q. And State Farm's theory was thoroughly  
21 debunked, wasn't it, at that point?

22 MR. SANDS: Objection to the form.

23 A. Yes.

24 Q. (BY MR. LIVINGSTON) Did the company or  
25 good neighbor, did they ever take the time to write

1 determination made by an outside independent firm that  
2 indicated State Farm had a duty of coverage. This was  
3 done somewhere January -- the loss was January -- or  
4 June of 2006. This was done somewhere around January  
5 of 2007, February 2007. That document was not  
6 disclosed to Attorney Cedeberg until discovery in, I  
7 think, maybe October or thereabouts 2007.

8 Q. Let's focus on the asbestos report.

9 A. Yes.

10 MR. SANDS: I'm going to object to any  
11 questioning about the Lucas matter which has nothing  
12 to do with this case. It's not reasonably calculated  
13 to lead to discovery of admissible evidence.

14 MR. LIVINGSTON: I get to show a pattern  
15 of practice of activities by State Farm and its  
16 agents. There's clearly evidence in this case that  
17 they withheld for an unreasonably long period of time  
18 an asbestos report. Obviously that's on the table in  
19 this case. And I need to establish a pattern and  
20 practice under the Unfair Claims Practices Act.  
21 Certainly, a jury needs to know that State Farm is  
22 extremely cavalier surrounding issues of people's  
23 safety, and particularly the issue of safety in the  
24 context of asbestos. That's something that's laced  
25 throughout this case, intimately. We have people

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1 being exposed to asbestos. We have items being carted  
2 from the scene, et cetera, et cetera, and we have this  
3 specific fact pattern of reports being withheld. I  
4 think this shows that this is not a mistake and this  
5 is the way this company does business. Do you want me  
6 to stop at this point because maybe you know what he's  
7 going to say?

8 MR. SANDS: Actually, I don't know what  
9 he's going say. I don't care whether you stop or not.  
10 I've made my objection.

11 MR. LIVINGSTON: Was the report --

12 Q. (BY MR. LIVINGSTON) Let's keep it very  
13 simple. To your knowledge, was the report withheld  
14 surrounding asbestos results for a number of months in  
15 the Lucas case? Tell me yes or no.

16 A. Yes.

17 MR. LIVINGSTON: That's all I have.

18 MR. SANDS: I have no further questions.

19 WHEREUPON, the within proceedings were  
20 concluded at the approximate hour of 3:38 p.m. on the  
21 13th day of February, 2009.

22 \* \* \* \* \*

23  
24  
25

REPORTER'S CERTIFICATE

STATE OF COLORADO )  
 ) ss.  
COUNTY OF ARAPAHOE )

I, TIFFANY D. GOULDING, Registered Professional Reporter and Notary Public, State of Colorado, do hereby certify that previous to the commencement of the examination, the said WILLIAM McLOUGHLIN was duly sworn by me to testify to the truth in relation to the matters in controversy between the parties hereto; that the said deposition was taken in machine shorthand by me at the time and place aforesaid and was thereafter reduced to typewritten form; that the foregoing is a true transcript of the questions asked, testimony given, and proceedings had.

I further certify that I am not employed by, related to, nor of counsel for any of the parties herein, nor otherwise interested in the outcome of this litigation.

IN WITNESS WHEREOF, I have affixed my signature this 27th day of February, 2009.

My commission expires October 14, 2010.

Reading and Signing was requested.

Reading and Signing was waived.

Reading and Signing is not required.

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1 I, WILLIAM McLOUGHLIN, do hereby certify  
2 that I have read the above and foregoing deposition  
3 and that the same is a true and accurate transcription  
4 of my testimony, except for attached amendments, if  
5 any.

6 Amendments attached ( ) Yes ( ) No

7  
8  
9

\_\_\_\_\_  
WILLIAM McLOUGHLIN

10  
11  
12  
13 The signature above of WILLIAM McLOUGHLIN  
14 was subscribed and sworn to before me in the county of  
15 \_\_\_\_\_, state of Colorado, this \_\_\_\_\_ day of  
16 \_\_\_\_\_, 2009.

17  
18  
19

\_\_\_\_\_  
Notary Public  
My commission expires

20  
21  
22

23  
24

25 Andrew Gholson, et al. 2/13/09 (tdg)

February 27, 2009

Mr. William McLoughlin  
10583 Serengeti Drive  
Littleton, Colorado 80124

Re: Andrew Gholson, et al. v. State Farm Fire and Casualty, et al.  
Deposition(s) of: William McLoughlin

Dear Mr. McLoughlin:

Enclosed you will find a complimentary copy of your deposition taken in the above matter. Also enclosed are amendment sheets for changes if necessary. Please return the signed and notarized signature page and amendment sheet(s), if any, to our office for filing within 30 days from the date of this letter to comply with the statute. Thank you for your attention to this matter. Sincerely,

Tiffany D. Goulding, RPR  
HUNTER + GEIST, INC.  
Registered Professional Reporters

cc: John F. Sands, Esq.  
Samuel G. Livingston, Esq.

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TIFFANY D. GOULDING  
NOTARY PUBLIC  
STATE OF COLORADO

*Tiffany D. Goulding*  
\_\_\_\_\_  
Tiffany D. Goulding  
Registered Professional Reporter



Hunter + Geist, Inc.

(303) 832-5966

1900 Grant Street, Suite 800  
Denver, Colorado 80203  
Fax: (303) 832-9525  
Toll Free: 1-800-525-8490  
www.huntergeist.com  
depo@huntergeist.com

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Samuel G. Livingston, Esq.

CONCORDANCE

<p style="text-align: center;"><b>A</b></p> <p><b>AARP</b> 20:18  <b>abandon</b> 28:1  <b>abatement</b> 54:5,6 67:21  129:7,10 140:10  142:5 143:16 148:16  148:20,24 149:5  159:14,17  <b>able</b> 8:13 18:11,16  29:13 92:15 113:16  147:11  <b>Absolutely</b> 138:4  <b>absurd</b> 39:21 69:20  <b>Academy</b> 75:25  <b>accepted</b> 112:7  <b>access</b> 30:7 70:7 166:11  166:15  <b>accessed</b> 30:6  <b>accident</b> 16:24  <b>accompanies</b> 110:20  114:19  <b>accompanying</b> 158:4  <b>accurate</b> 62:16 67:4  68:8 89:13,18 96:5,6  100:9 104:20 125:1  153:20,24,25 170:3  <b>accurately</b> 67:22  108:13 122:2 160:24  <b>accused</b> 89:18,19  128:14 166:3  <b>accusing</b> 86:3,6 165:21  166:17 167:1  <b>acknowledge</b> 162:25  163:10  <b>acknowledged</b> 163:12  163:18  <b>acknowledging</b> 163:13  <b>acquisition</b> 17:8  <b>acronym</b> 122:25  <b>Act</b> 168:20  <b>action</b> 22:23 99:24,25  132:16 156:8  <b>actions</b> 132:14 135:24  166:5  <b>active</b> 132:4,9,16  <b>activities</b> 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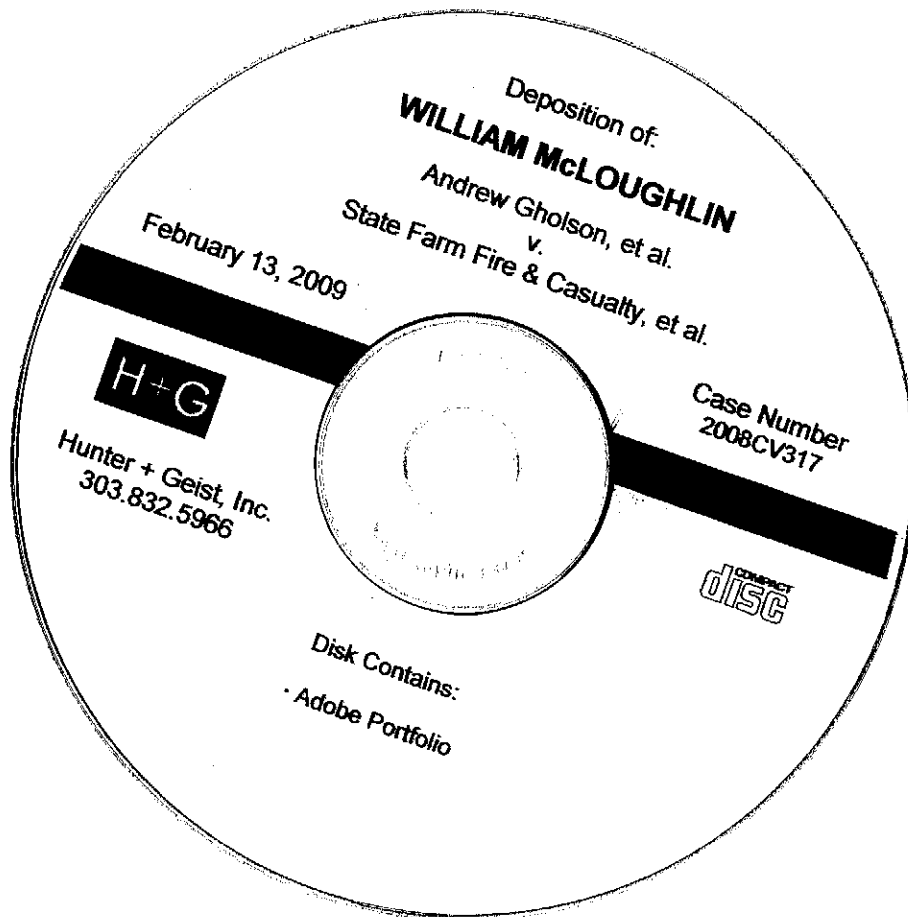
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MASTER INDEX

DISTRICT COURT, JEFFERSON COUNTY, COLORADO

Case No. 2008CV317

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MASTER INDEX OF EXHIBITS

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ANDREW GHOLSON, ELIZABETH GHOLSON, WILLIAM GHOLSON, a  
minor, by and through his parents, Andrew Gholson and  
Elizabeth Gholson, and ERIC GHOLSON, a minor, by and  
through his parents, Andrew Gholson and Elizabeth  
Gholson,

Plaintiffs,

v.

STATE FARM FIRE AND CASUALTY, T.L.C. CONSTRUCTION,  
INC., d/b/a AMERICAN RESTORATION, INC., OF BAILEY;  
TERRY AUMILLER and JOHN DOES 1-9,

Defendants.

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Deposition of Andrew Gholson, February 11, 2009:

- 1 DRI Letter of Intent, 5/14/07
- 2 DRI Estimate for Board-Up
- 3 Letter to Thomsen from Foothills Environmental, Inc., 2/7/06, Re: Asbestos Sampling at 34036 Grouse Lane, Evergreen, Colorado
- 4 Letter to Gholson from Hourihan, 2/12/07, Re: Claim Number 06-K172-312
- 5 Fax to Certified Insulators from Thomsen 2/26/07, with attachment
- 6 Certified Insulators, Inc. Proposal, 3/6/07
- 7 Diamond Hills Services, Inc. Proposal, 3/16/07
- 8 E-mail to bmcloughlin@earthlink.com from Andy G, 7/27/07, Subject: Fw: re: inventories, with attachment
- 9 American Restoration, Inc. Work Authorization and Contract, 2/6/07
- 10 Fax to McLoughlin from Parker, 5/16/08  
Re: Gholson Air Sampling Results
- 11 Fax to McLoughlin from Parker, 5/16/08  
Re: Gholson Air Sampling Results
- 12 Public Adjusters of Colorado, LLC Insurance Claim Adjusting Agreement
- 13 E-mail to McLoughlin from Andy G, 4/22/07  
Subject: 34036 Grouse Lane Evergreen CO
- 14 List of Property, 4/30/08
- 15 Certified Insulators, Inc. Proposal, 4/14/08
- 16 Letter from Carol Turner, M.D., 8/24/07
- 17 ICA, Inc. Change Order, 9/23/08
- 18 Letter to Public Adjusters of Colorado from ICA, Inc., 9/24/08, Re: Andrew and Elizabeth Gholson 34036 Grouse Lane, Evergreen

- 19 Fax to Egger from McCaffry, 7/11/07, Re:  
Andy and Beth Gholson
- 20 Letter to Livingston from Spampinato,  
10/20/08, Re: Gholson vs. State Farm
- 21 Letter to Livingston from Spampinato,  
11/11/08, Re: Gholson vs. State Farm
- 22 ICA, Inc. Estimate, 11/17/08
- 23 E-mail to bmcloughlin@earthlink.com from  
Andy G, 7/26/07, Subject: Fw: Revised Scope
- 24 CoCat Fire Estimate, 3/12/07
- 25 E-mail to fltdpt@ix.netcom.com from  
tstory@cocat.com, 5/4/07, Subject: Re:  
Revised Scope, with attached e-mails
- 26 E-mail to bmcloughlin@earthlink.com from  
Andy G, 7/26/07, Subject: Fw: Re: Revised  
Scope, with attached e-mails
- 27 E-mail to bmcloughlin@earthlink.com from  
Andy G, 7/26/07, Subject: Fw: Revisions,  
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- 28 E-mail to bmcloughlin@earthlink.com from  
Andy G, 7/26/07, Subject: Fw: Re: Revised  
Scope, with attached e-mail
- 29 E-mail to bmcloughlin@earthlink.com from  
Andy G, 7/26/07, Subject: Fw: Work Approval
- 30 DRI, Inc. Fire Estimate
- 31 E-mail to Blackburn, Meyer, Griggs,  
McLoughlin, 6/3/07, Subject: Needed Job  
Updates
- 32 DRI, Inc. Fire Estimate
- 33 Letter to Blackburn from McCaffry, 5/24/07  
Reference: Gholson Estimate Upgrades
- 34 Handwritten note to Thomsen from Gholson,  
10/31/07
- 35 Handwritten note to Tenney from Gholson,  
with attachment

- 36 DRI, Inc. Fire Estimate
- 37 Jim Black Construction, Inc. Estimate,  
10/23/07
- 38 Jim Black Construction, Inc. Estimate,  
6/9/08
- 39 Individual Septic/Leach Field Report, 4/2/02
- 40 Specific Request for Variance, 4/17/07
- 41 Letter to McLoughlin from Davis, 6/5/07  
Re: Engineering Review of Gholson  
Residence, 34036 Grouse Lane, Evergreen
- 42 Jefferson County Board of Adjustment Agenda  
8/8/07
- 43 Fax to McLoughlin from Gholson, 12/19/07
- 44 Property Appraisal for 34036 Grouse Lane,  
Evergreen, Colorado
- 45 Sworn Statement in Proof of Loss Statement  
to Thomsen from Goldman, 1/30/08
- 46 Letter to McLoughlin from Thomsen, 1/16/08  
Re: Claim Number 06-K172-312

Deposition of William McLoughlin, February 13, 2009:

- 47 DRI, Inc. Fire Estimate, 6/9/07
- 48 DRI, Inc. Fire Estimate, 6/20/07
- 49 DRI, Inc. Fire Estimate
- 50 DRI, Inc. Fire Estimate
- 51 American Restoration, Inc. Drawing
- 52 Public Adjusters of Colorado, LLC Estimate  
12/19/07
- 54 Out-of-Pocket Structure Repairs Costs  
Incurred by Insureds, 3/24/08
- 55 Letter to Thomsen from Golman, 1/16/08



56 Letter to McLaughlin from Goldman, 2/20/08

57 Letter to Sands from Goldman, 3/11/08