

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

MARY ANN BEARDEN, as Conservator of
BRIAN BEARDEN, a Legally Incapacitated
Person,

Plaintiffs,

Vs.

Case No. 02-215852NF
HON. MICHAEL CALLAHAN

AUTOMOBILE CLUB INSURANCE ASSOCIATION,

Defendant.

The Continuing-Deposition of CYNTHIA LEE
REDPATH, taken before Sandra L. Krisfalusi, a Certified
Shorthand Reporter, #0942, and Notary Public in and for
the County of Macomb, State of Michigan, located at 75
North Main Street, Mount Clemens, Michigan, on
Thursday, the 16th Day of June, 2005, at 10:05 a.m.

APPEARANCES:

THOMAS, GARVEY, GARVEY & SCIOTTI
Attorneys at Law
28415 Little Mack
St. Clair Shores, Michigan 48080
BY: JAMES MCKENNA, ESQUIRE.

Appearing on behalf of the Plaintiffs.

SCHOOLMASTER, HOM, KILLEEN,
SIEFER & ARENE
Attorneys at Law
75 North Main Street, ste. 300
Mount Clemens, Michigan 48043
BY: MS. KAREN KULIK.

Appearing on behalf of the Defendant.

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1 with you guys?

2 MS. KULIK: No.

3 BY MR. MCKENNA:

4 Q On page 4 of Exhibit 1, I'd ask the question, just

5 so I can put in the frame of mind here.

6 By the way, have you read the

7 transcript?

8 A Yes.

9 Q When did you read it?

10 A This morning.

11 Q "We're being asked to pay case management by the

12 same firm at equally ridiculous rates. We are

13 contesting those as well and we'll not pay them

14 without a fight. So, for now we bite the bullet."

15 And then a reserve was set.

16 And my question was, has it

17 been the policy of AAA, to your knowledge, to

18 disregard orders from a court to pay rates for

19 attendant care, room and board or a case

20 management fee, and you said you don't know.

21 Just so that we can set that

22 as a backdrop for my next questions, okay?

23 A Okay.

24 Q The report I had asked you, these are kept in the

25 normal course of business as business documents

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1 Mount Clemens, Michigan

2 Thursday, June 16, 2005

3 At 10:05 a.m.

4

5 * * *

6

7 CYNTHIA LEE PEDPATH,

8 Being first duly sworn to tell the truth, the

9 whole truth and nothing but the truth, was

10 examined and testified as follows:

11

12 (DOCUMENTS WERE MARKED

13 AS DEPOSITION EXHIBIT

14 NUMBERS 9 THROUGH 22)

15 DIRECT EXAMINATION

16 BY MR. MCKENNA:

17 Q I think the last time we were here I was going to

18 an Exhibit that we had marked was a letter. I

19 think it's this Exhibit Number 1. I think what

20 Miss Kulik had indicated for us, just as we had

21 ended the last time on this Exhibit was that it

22 was page 1 and 2 were authored by someone.

23 MS. KULIK: Carol Benn. Carol

24 Topol.

25 MR. MCKENNA: Is she still

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1 with AAA?

2 A Yes.

3 Q And the purpose of creating these reports and all

4 of the other reports and what I call the activity

5 logs, you call them CPS.

6 By the way did you find out

7 what CPS means?

8 A No.

9 Q I'm going to still call them activity logs then,

10 if you don't mind.

11 A Okay.

12 Q Is so that if at any point in time anyone picking

13 up the file should be able to go back in time and

14 see what has transpired, correct?

15 A Correct.

16 Q And from the standpoint of documenting a file

17 whether it's by e-mail, these wizard mails, MRR

18 reports or the CPS reports that you put into the

19 computer, you're taught to do that in a clear and

20 concise manner, aren't you?

21 A What do you mean "taught?"

22 Q Well, is it part of your training at AAA when you

23 make these reports and these entries and e-mails

24 about a file and you're documenting the file, that

25 you did so in a clear and concise manner?

1 A Yes.

2 Q That way anyone looking back, wouldn't have any

3 questions as to what was meant?

4 A Yes.

5 Q So you want to make sure that when you're

6 documenting these things, if you're looking at it

7 in a month or a year or ten years, whoever was

8 handling this file, if they've done their job

9 properly, you should be able to look at it and see

10 what was going on, what is going to be the next

11 step, what they were thinking and those types of

12 things?

13 A Yes.

14 Q And in the memo that the wizard mail memo that we

15 were last dealing with, there was a statement in

16 there about we're going to fight this and bite the

17 bullet, correct?

18 A Correct.

19 Q Do you know what it means to be adversarial?

20 A Yes.

21 Q Is that an adversarial statement?

22 MS. KULIK: Objection, you're

23 asking a lay Witness for an opinion and you're

24 asking her to speculate on what was in the mind of

25 the person who wrote it.

1 BY MR. MCKENNA:

2 Q Is that an adversarial statement to you?

3 A I don't know.

4 Q Is AAA supposed to be adversarial to its insureds?

5 A Well, there might be instances when they would be.

6 Q Under what circumstance can you think where AAA

7 should be adversarial to an insured other than a

8 fraud claim?

9 A Other than a fraud claim. There might be an

10 instance in medical where there's a disagreement

11 on whether treatment is necessary or not.

12 Q Well, if you have a policy and a statute that says

13 you pay what's reasonable, what's necessary and

14 what's related, if you say that's just not

15 necessary and the treating doctor says it wasn't

16 necessary and an IME says it wasn't necessary, do

17 you believe that to be an adversarial position?

18 A Well, it would be because the insured has an

19 opposite position from the company, they want a

20 benefit and we wouldn't feel they were entitled to

21 it.

22 Q So do you believe that adversarial means wherever

23 you and the insured disagreed?

24 A Yes.

25 Q So any position where AAA and an insured

1 disagrees, you believe that to be an adversarial

2 relationship from then on as it relates to that

3 issue?

4 MS. KULIK: Objection, you're

5 asking her for an opinion and, secondly, what

6 you're asking is totally irrelevant.

7 BY MR. MCKENNA:

8 Q Go ahead.

9 A Well, again it's a disagreement, so.

10 Q Okay. Now, what you've described for me as a

11 disagreement on the level of an adjuster, correct?

12 A Correct.

13 Q You're not an adjuster?

14 A No.

15 Q People at Medical Management Unit dealing with

16 reserves are not adjusters?

17 A They're specialists.

18 Q They're not adjusters handling the file?

19 A I'm sorry, would you state that question again?

20 Q Sure.

21 You're not an adjuster

22 handling the file, correct?

23 A Right.

24 Q You're not making adjustment decisions regarding

25 the file to pay or not pay a claim, correct?

1 A That's correct.

2 Q Unless you are an adjuster at Medical Management

3 Unit or a supervisor at Medical Management Unit,

4 you wouldn't be adjusting claims?

5 A That's correct.

6 Q All right. Now, can you think of a reason why

7 somebody at Medical Management Unit would be

8 adversarial to a AAA insured, if they were not

9 handling the adjustment of their claims?

10 MS. KULIK: Objection, you're

11 asking for an opinion of a lay Witness. You're

12 also asking for speculation. You're asking her

13 for what is in someone else's mind.

14 MR. MCKENNA: No, I'm asking

15 her what's in her mind.

16 MS. KULIK: Then I'll add the

17 objection of relevance. What's in her mind about

18 that particular statement is totally irrelevant to

19 the Plaintiff in this lawsuit.

20 THE WITNESS: No.

21 BY MR. MCKENNA:

22 Q No, you can't think of a reason for anyone to be

23 adversarial?

24 A Someone that's not handling the claim?

25 Q Right.

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1 A Someone such as myself?
2 Q Right.
3 A No.
4 Q Now, this Exhibit Number 1, Carol Benn allegedly
5 wrote the first two pages?
6 A That's what Miss Kulik indicated.
7 MS. KULIK: So the record
8 should be clear that's my interpretation.
9 MR. MCKENNA: I'll swear you
10 in later.
11 MS. KULIK: I'm just letting
12 you know that's my theory.
13 MR. MCKENNA: You've let us
14 know repeatedly, and that's why I said you
15 allegedly.
16 MS. KULIK: Whatever.
17 MR. MCKENNA: Okay. But if
18 you want to continue to keep interrupting this, it
19 will go a lot longer.
20 MS. KULIK: We'll go as long
21 as it goes.
22 MR. MCKENNA: Okay. I have
23 the time to burn.
24 BY MR. MCKENNA:
25 Q The second two pages, have been represented to be

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1 from a Mr. Stewart.
2 Do you know who Mr. Stewart
3 is?
4 A Yes.
5 Q Who is he?
6 A You asked me that in the last dep and I indicated
7 he was a director, but I was incorrect. He's an
8 assistant vice-president.
9 Q Assistant vice-president of what?
10 A Corporate claims, or I think casualty claims.
11 Q Assistant vice-president of casualty claims.
12 And how does that person
13 interact with you in your job as a reserve
14 specialist?
15 A I don't interact with him.
16 Q Does he have any job duties or responsibilities
17 that deal with reserves, does he oversee your
18 department in anyway?
19 A I don't know.
20 Q He wouldn't be a claims adjuster?
21 A No.
22 Q He wouldn't be someone that should be adversarial
23 correct?
24 MS. KULIK: Objection, you're
25 asking for opinion and conclusion.

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1 THE WITNESS: I don't know.
2 BY MR. MCKENNA:
3 Q Well, I asked you earlier other than a claims
4 adjuster and the supervisor of the claims
5 adjuster, is there anyone else at AAA that should
6 be adversarial towards an insured, correct?
7 A Correct.
8 Q This man, Mr. Stewart, to your knowledge was not a
9 claims adjuster?
10 A I don't know what he was at that time that he
11 wrote that.
12 Q Well, let me do it this way.
13 A Okay.
14 Q We have asked AAA and all of the adjusters we've
15 deposited, no one has ever indicated that
16 Mr. Stewart was an adjuster, no one has ever
17 indicated unless Miss Kulik wishes to change some
18 of the her prior answers to discovery that he was
19 a supervisor of any of the adjusters handling this
20 claim.
21 MR. MCKENNA: Is that correct?
22 MS. KULIK: That's correct.
23 But what this Witness said is
24 she does not know what his role is.
25 MR. MCKENNA: I understand

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1 that, let me.
2 BY MR. MCKENNA:
3 Q You didn't understand what his role was at the
4 time that this 1997 memo was created?
5 A Correct.
6 Q What I'm saying to you, I'm going to ask a
7 hypothetical question and I want you to assume
8 these facts that we've just discussed.
9 If he was neither a claims
10 adjuster or supervisor of a claims adjuster
11 handling this file at the time of this memo, this
12 e-mail, can you think of a reason for him to be
13 adversarial toward the Plaintiff?
14 MS. KULIK: Objection, asks
15 for speculation and it's irrelevant.
16 MR. MCKENNA: See Freud was so
17 right in his theories.
18 BY MR. MCKENNA:
19 Q Go ahead.
20 A I don't know.
21 Q You don't know whether he would be adversarial in
22 a position where he's not adjusting a claim?
23 A I don't know what his role is.
24 Q Ma'am, do you understand what a hypothetical
25 question is?

1 A Right.
 2 Q I want you to assume these facts. We've already
 3 established with you that an adjuster and a
 4 supervisor handling a claim may have disagreements
 5 with an insured which you've said would be
 6 adversarial?
 7 A Correct.
 8 Q And I asked you if there's anyone other than the
 9 adjuster and the supervisor that should be
 10 adversarial toward an insured and you said no,
 11 correct?
 12 A Correct.
 13 Q I want you to assume he was neither an adjuster
 14 nor the adjuster's supervisor at the time of this
 15 memo. Can you do that?
 16 A Yes.
 17 Q All right. And that's based on what other people
 18 have already said. Now, if they're lying, okay,
 19 it may be different, if they're not, then those
 20 facts will be true, okay?
 21 A Okay.
 22 MS. KULIK: Objection, form,
 23 foundation, relevancy.
 24 MR. MCKENNA: Miss Kulik,
 25 you're either going to say he was an adjuster or

1 supervisor or he wasn't. I asked you as a
 2 courtesy was he.
 3 MS. KULIK: There's no
 4 testimony that he was ever an adjuster or
 5 supervisor on the Brian Bearden claim, but you're
 6 asking a question --
 7 MR. MCKENNA: That's all I'm
 8 asking.
 9 MS. KULIK: You're asking a
 10 question if he was a supervisor or an adjuster.
 11 MR. MCKENNA: No, I'm not.
 12 MS. KULIK: Well, maybe you're
 13 not intending to, but you're using the wording,
 14 you're not saying supervisor of this claim or
 15 adjuster of this claim.
 16 MR. MCKENNA: Have you been to
 17 some other deposition seminar lately where you
 18 just want to frustrate the whole purpose? I'm the
 19 wrong guy to do it to, because it will just go all
 20 day long.
 21 MS. KULIK: No, just ask your
 22 questions.
 23 BY MR. MCKENNA:
 24 Q Did you understand my question, ma'am?
 25 A Yes.

1 Q Did you understand that I was asking at the time
 2 that the memo was written whether he was an
 3 adjuster or supervisor?
 4 A Yes.
 5 Q Isn't that what I asked?
 6 A Yes.
 7 Q Not if he ever was one, correct?
 8 A Correct.
 9 MS. KULIK: On this case? Are
 10 you asking whether he was an adjuster or
 11 supervisor on this case?
 12 MR. MCKENNA: On this case.
 13 You understood that, didn't you?
 14 THE WITNESS: Yes.
 15 BY MR. MCKENNA:
 16 Q And I'm telling you what I've represented to you
 17 is we've been told that he was neither on this
 18 case?
 19 A Okay.
 20 Q Do you understand that?
 21 A Yes.
 22 Q Can you think of a reason why he would be
 23 adversarial?
 24 A No.
 25 Q All right. When someone says we're biting the

1 bullet, what does that mean to you if you're
 2 reading this memo and it's part of something that
 3 you had to review in setting reserves, what would
 4 biting the bullet mean to you?
 5 MS. KULIK: Objection,
 6 relevancy and calling for speculation and asking
 7 for an opinion.
 8 THE WITNESS: I guess it would
 9 be doing something that you don't agree with.
 10 BY MR. MCKENNA:
 11 Q What is the statement yuck mean to you?
 12 MS. KULIK: Objection, same
 13 objection, irrelevant, asking for a conclusion and
 14 speculating.
 15 MR. MCKENNA: You know I can
 16 bring out the court rules book, I'm sure you have
 17 one somewhere. We'll mark it as an Exhibit and
 18 preserve all your objections.
 19 MS. KULIK: No, thank you.
 20 MR. MCKENNA: For the record
 21 it's a good indication of the intent of the
 22 defense attorney to frustrate the deposition by
 23 repeatedly objecting when she has been offered a
 24 stipulation of preserving all objections in the
 25 court rules and she will not take it.

1 BY MR. MCKENNA:
 2 Q The statement yuck, when you're reading this memo
 3 that was part of your file, what did it mean to
 4 you?
 5 A Well, yuck means something I don't like.
 6 Q Okay. And these are memos that you said were part
 7 of your file?
 8 A Yes.
 9 Q And things that are part of your file are given to
 10 you for a reason, they become part of your file
 11 for a reason?
 12 A Yes.
 13 Q This wizard mail that was part of your file, why
 14 did you have it?
 15 A I don't know.
 16 Q Somebody thought it should be in the reserve
 17 specialist file?
 18 A Apparently.
 19 Q Okay. And you've had a chance to read these?
 20 A I never read it, of what you read to me in the dep
 21 is all.
 22 Q My point is you had a chance to read these?
 23 A Yes.
 24 Q And were these created in the way that you have
 25 been trained and instructed to create documents

1 like this at AAA in a clear and concise manner?
 2 MS. KULIK: Objection,
 3 irrelevant.
 4 THE WITNESS: I don't know.
 5 BY MR. MCKENNA:
 6 Q You don't know whether it was clear and concise?
 7 A No, I don't.
 8 Q How many times did you read it?
 9 A I haven't read it.
 10 Q You've said you read it in the deposition. You
 11 said you read the deposition transcript before we
 12 came in again today. Did you read the Exhibits?
 13 A No.
 14 Q You just read the transcript?
 15 A Yes.
 16 Q And you didn't go back and read the e-mails?
 17 A No.
 18 Q Yuck is that something that you understand, clear
 19 and concisely what yuck means?
 20 A Well, I know what it means to me.
 21 Q To you, do you know what that means, is that clear
 22 and concise to you?
 23 A Yes.
 24 Q This statement that, quote, "We are contesting
 25 those as well and will not pay them without a

1 fight," unquote. Well, I'll continue. "So for
 2 now we bite the bullet," unquote.
 3 In reference to case
 4 management fees, is that an adversarial position,
 5 we will fight it?
 6 A Yes.
 7 Q We'll bite the bullet?
 8 A Yes.
 9 Q At AAA you said that you started with the company
 10 twice. You took a leave and you came back and you
 11 were adjusting some claims for a while and then
 12 you got your position at MMU, correct?
 13 A Correct.
 14 Q And then your position at MMU had changed a little
 15 bit, but you're doing the same thing with reserves
 16 or you moved to a different location or something;
 17 is that correct?
 18 A Well, they made it a separate department, the job
 19 function's still the same.
 20 Q Okay. So you were put in a separate area?
 21 A Yes.
 22 Q But you're still doing the same things on reserves
 23 that you've done all along?
 24 A Yes.
 25 Q The reserves when you set them, does AAA receive a

1 benefit of any type or a detriment if the reserves
 2 are set too high or too low?
 3 A I don't know.
 4 Q Well, you're aware that the IRS comes through and
 5 audits the books for AAA?
 6 A I was told that.
 7 Q Do you know what it is, has anyone ever told you
 8 what it is that the IRS would be interested in as
 9 far as the reserves?
 10 MS. KULIK: Objection, you're
 11 asking for hearsay.
 12 THE WITNESS: No.
 13 BY MR. MCKENNA:
 14 Q In the documents that we have that have been
 15 marked, there are lines that were blacked out by
 16 Miss Kulik without asking me, she did it on her
 17 own.
 18 My understanding from where we
 19 were in the last deposition is that AAA had an
 20 underwritten policy or an excess policy with
 21 another company to pay up to two million dollars
 22 of benefits that were paid on the Bearden file,
 23 correct?
 24 A Correct.
 25 Q And when AAA was paying benefits for Mr. Bearden

- 1 from 1976 until the two million dollar limit was
 2 met, that was carried forward on these annual cost
 3 projections, Claim Status Reports, whatever you
 4 want to call them to Employers Reinsurance,
 5 correct?
 6 A I don't understand your question.
 7 Q Well, Exhibit Number 9 --
 8 A Okay.
 9 Q -- was given to me today. There were some other
 10 copies of these Claim Status reports that we have.
 11 See where it says "amount?"
 12 A Yes.
 13 Q \$2,614.409?
 14 A Yes.
 15 Q That includes all of the money that has been
 16 documented having been paid on this claim from the
 17 beginning until the time of that report?
 18 A Correct.
 19 Q And that includes -- there is no offsets?
 20 A After the two million?
 21 Q No, there are no offsets. The \$2,614.409 is every
 22 penny that has been spent on Brian Bearden,
 23 correct?
 24 A I don't believe that includes expense payments,
 25 but any medical benefits that would be correct.

- 1 Q What is an expense payment, legal?
 2 A It could be legal. It could be independent
 3 adjustment fees. It could be IMEs.
 4 Q IMEs don't get included in that total?
 5 A No.
 6 Q All right. So as it relates to paying for
 7 attendant care or paying for other first party
 8 benefits for Brian for services, the total on
 9 Exhibit Number 9, \$2,614.409 as of November '04 on
 10 that document, would reflect the total that's been
 11 paid out?
 12 A Correct.
 13 Q Now, to Employers Reinsurance Corporation, if I'm
 14 understanding you correctly, they paid the first
 15 two million?
 16 A Correct.
 17 Q So as of November '04, what AAA has paid would be
 18 -- without the other expense things that you've
 19 talked about just as to the PIP, would be
 20 \$614.409.00?
 21 A Correct.
 22 Q So from here on out if AAA has to pay any back
 23 benefits or future benefits, these will be AAA's
 24 monies dollar for dollar?
 25 A Correct.

- 1 Q And anything that AAA saves on this claim and no
 2 paying whether it's a dollar an hour or not paying
 3 for a PIP service that's owed, would be money that
 4 AAA would be saving for themselves?
 5 A Correct.
 6 Q Can you tell me why then if we're at \$2,614.409
 7 you're still sending forms to Employers
 8 Reinsurance?
 9 A I was told to continue to file on them because
 10 they will continue to pay a portion of expenses.
 11 Q But the expenses you're talking about are not the
 12 PIP benefits, correct?
 13 A Correct.
 14 Q So Employers Reinsurance is still going to pay for
 15 IMEs?
 16 A Correct.
 17 Q Legal services, legal fees?
 18 A Well, I should backup. I was told that they would
 19 pay a portion of the expenses, so I'm only
 20 assuming it. I don't know how they determine what
 21 they would pay for.
 22 Q You don't know what expenses, but there are
 23 expenses that are not included in the \$2,614.409?
 24 A Correct.
 25 Q And they would continue to pay?

- 1 A Correct.
 2 Q What percentage do they pay of those expenses, do
 3 they pay one-hundred percent?
 4 A I don't know.
 5 Q Who would know that?
 6 A I don't know.
 7 Q But as it relates to paying Mr. Bearden's
 8 benefits, now after the two million it's dollar
 9 for dollar coming out of AAA's account?
 10 A Correct.
 11 Q There is no more reimbursement from any other
 12 reinsurance company?
 13 A Correct.
 14 Q Do you remember in your earlier deposition with me
 15 you said that you had been deposed in the Marr
 16 case, we marked that as an Exhibit, right?
 17 A Yes.
 18 Q You said that you had been deposed by my brother
 19 in a case?
 20 A Yes.
 21 Q Mr. List deposed you?
 22 A Yes.
 23 Q Correct?
 24 A Correct.
 25 Q Anyone else you can recall that deposed you?

1 MS. KULIK: Objection,
 2 relevancy.
 3 You can answer.
 4 THE WITNESS: I don't remember
 5 anyone else.
 6 BY MR. MCKENNA:
 7 Q Do you remember being deposed by Mr. Zebrowski?
 8 A Yes.
 9 Q And all of those depositions were taken with
 10 respect to your activities as a reserve specialist
 11 with AAA?
 12 A Yes.
 13 Q None of them were for while you were adjusting
 14 claims?
 15 A Correct.
 16 Let me backup. For those
 17 attorneys that you named, all those depositions were in
 18 regard to reserving issues. Some of my earlier
 19 depositions were from when I handled claims.
 20 Q All I've asked you about were the ones that I've
 21 identified, all right?
 22 A Okay.
 23 Q Those depositions were all done as to how you have
 24 done reserves, and what you've done in your job as
 25 a reserve specialist?

1 A Correct.
 2 Q Have you ever testified in trial?
 3 A No.
 4 Q The reserve specialist job that you have, you said
 5 that you received on-the-job training that
 6 essentially when you got into your position you
 7 had Patricia Robins as a supervisor?
 8 A She was my co-worker at the time and eventually
 9 became my manager.
 10 Q Shortly after you came to MMU she became your
 11 manager?
 12 A Yes.
 13 Q Prior to working for AAA, you didn't have any
 14 accounting background?
 15 A I've had some accounting classes.
 16 Q You're not a CPA?
 17 A No.
 18 Q You're not an economist?
 19 A No.
 20 Q You don't have a business degree in finance or
 21 economics?
 22 A I'm working on an accounting degree right now.
 23 Q You don't have one?
 24 A Correct.
 25 Q Didn't have one when you were hired?

1 A Correct.
 2 Q So essentially AAA hired you into a position that
 3 you had to be taught how to do the job?
 4 A Correct.
 5 Q You've testified that you've also gone to some
 6 seminars?
 7 A Yes.
 8 Q Did you ever go to seminars that dealt with just
 9 home care or providing attendant care benefits?
 10 A Yes.
 11 Q When?
 12 A October of 2001.
 13 Q Is that one of those little round table discussion
 14 seminars that you had?
 15 A Yes.
 16 Q And at that seminar, Patricia Robins was a
 17 speaker?
 18 A Yes.
 19 Q Ed Scritsky (sp) if I'm saying it right?
 20 A No.
 21 Q Who else was a speaker at that?
 22 A I believe Edward Scholte (sp) and I don't remember
 23 the third person. It might have been Patty
 24 Deno (sp), but.
 25 Q Now, what did they know about attendant care that

1 you didn't at the time that you were at that
 2 seminar?
 3 MS. KULIK: Objection, you're
 4 asking for speculation.
 5 BY MR. MCKENNA:
 6 Q Well, you were at a seminar, they told you things
 7 about attendant care, correct?
 8 A Correct.
 9 Q Was there anything they told you about attendant
 10 care that you didn't already know?
 11 A No.
 12 Q So the purpose of you being there wasn't to teach
 13 you -- well, the purpose may have been, but you
 14 didn't walk away learning something new about
 15 attendant care, did you?
 16 A No.
 17 Q Did they teach you anything new about rates or
 18 anything?
 19 A They presented the Plate Moran survey.
 20 Q Well, let me talk to you about that, the Plate
 21 Moran survey, and we may have touched on this
 22 before.
 23 Did anyone from AAA ever tell
 24 you that the Plate Moran survey was what you as a
 25 specialist in reserves were to use as the

- 1 benchmark for setting rates?
 2 A No.
 3 Q Did they ever tell you that it was a statistically
 4 significant objective study to determine all rates
 5 for attendant care?
 6 A No.
 7 Q Did they say you have to use the rates in this
 8 survey?
 9 A No.
 10 Q So it was never intended to be used by you?
 11 MS. KULIK: Objection, you're
 12 asking her to speculate. Sorry.
 13 BY MR. MCKENNA:
 14 Q It was never intended to be used by you in your
 15 capacity in setting reserves to be the benchmark,
 16 the tool for setting rates; is that correct?
 17 A Correct.
 18 Q And if I'm understanding you correctly, what you
 19 have for determining rates is somebody from MMU
 20 tells you what the rates are?
 21 A That was how they used to do it before the Plante
 22 Moran survey.
 23 Q Now, after the Plante Moran survey, how do you
 24 find out what the current rates are?
 25 A I haven't followed up.

- 1 Q The Plate Moran survey was done when?
 2 A It was presented --
 3 Q 2001?
 4 A -- 2001.
 5 Q All right. When it was done you don't know?
 6 A I don't know.
 7 Q Just when you got it, it was 2001?
 8 A Correct.
 9 Q Since 2001, how do you know what rates MMU says to
 10 pay?
 11 A They did an updated Plante Moran survey, but I
 12 don't really know what MMU paid.
 13 Q I didn't ask you any of that. I asked you a very
 14 simple question.
 15 Since 2001, how do you know
 16 what rates to pay?
 17 A I don't.
 18 Q You send these e-mails we've talked about before
 19 indicating that when you looked at a file and you
 20 see that the same rate has been paid for a year,
 21 that you would advise them of what MMU is
 22 currently authorizing?
 23 A I haven't done it since they did the home care
 24 survey in 2001.
 25 Q So since 2001 you have not advised any adjusters

- 1 of underpayment?
 2 A Correct.
 3 Q Did somebody from AAA, before we talked about
 4 Mr. Berkebile and Dick Herman telling you the
 5 don't ask don't tell policy, correct?
 6 A Correct.
 7 Q Since 2001 has anyone else at AAA told you to stop
 8 sending these e-mails?
 9 A I think I discussed it with Patty and it was felt
 10 that everyone in the company had been trained, so
 11 they didn't feel it was necessary anymore.
 12 Q When did you speak to Patricia Robins and she told
 13 you to stop sending e-mails?
 14 A I believe we talked about it in October when the
 15 training was done. I think it was completed in
 16 November for everybody.
 17 Q So since 2001, you haven't sent memos?
 18 A No, I haven't.
 19 Q Even though you've seen -- strike that.
 20 If you see a file that you're
 21 reviewing that pays the same amount year after
 22 year you still don't send memos?
 23 A I don't think I've seen anything like that.
 24 If I see a file that I think
 25 something isn't right on, I refer it to a manager.

- 1 Q So you do that by e-mail as well?
 2 A Yes.
 3 Q And those e-mails, of course, are destroyed just
 4 like the other ones we talked about?
 5 A I don't know.
 6 Q Well, your destroy yours?
 7 A I delete mind, yes.
 8 Q You have been reviewing this file, the Bearden
 9 file since when?
 10 A '98.
 11 Q '98. And your file that you have, would you be
 12 able to tell what rate was being paid to the
 13 Bearden family on an hourly basis?
 14 A No.
 15 Q Why not?
 16 A I was never able to determine that.
 17 Q You were never able to determine the hourly rate
 18 the Beardens were being compensated?
 19 A That's right.
 20 Q Well, if you weren't able to determine the hourly
 21 rate that they were being compensated, you
 22 wouldn't be able to tell what the reserves should
 23 be, would you?
 24 A I reserved this claim based on the past history.
 25 Q Could you answer my question?

1 A Would you repeat your question.
 2 MR. MCKENNA: Read it back to
 3 her. We went through this before, Ma'am, don't
 4 change my question.
 5 (QUESTION READ BACK)
 6 THE WITNESS: I'm sorry, I
 7 don't understand that question.
 8 BY MR. MCKENNA:
 9 Q You told me before when we first met that in order
 10 to properly set reserves, you needed to know what
 11 was being done, correct?
 12 A Correct.
 13 Q You needed it know who was providing the care and
 14 at what rates, correct?
 15 A No.
 16 Q That's what you told me before. You would set
 17 reserves in the future based upon what was being
 18 done in the past and you would increase reserves
 19 when you found there was underpayments, even if,
 20 even if they didn't change the underpayment.
 21 Do you remember telling me
 22 that under oath?
 23 A I said --
 24 Q Do you remember telling me that under oath?
 25 A That I would correct the reserve?

1 Q You would increase the reserve even if they didn't
 2 correct the underpayment, you would make the
 3 change to the reserve, correct?
 4 A Correct.
 5 Q You told me that before under oath?
 6 A Correct.
 7 Q So in order for you to know what the reserve
 8 should be, if the past reserve was set based upon
 9 the rate being paid at that time, you would need
 10 to know what that rate was in order to increase
 11 the reserve in the future, wouldn't you?
 12 A I didn't know --
 13 Q I didn't ask you that.
 14 A No.
 15 Q I asked you you'd need it know what they were
 16 being paid in order to make a change to reflect an
 17 increase in the reserves, wouldn't you?
 18 A No.
 19 MS. KULIK: Object to the form
 20 of the question.
 21 BY MR. MCKENNA:
 22 Q If they were paying \$5.00 an hour, we used this
 23 example in the past. You go from \$5.00 to \$10.00.
 24 If the previous reserve was set at \$10,000.00 for
 25 the year, and that's based on \$5.00 an hour being

1 paid, and you know that it should be paid at
 2 \$10.00 an hour and you sent the e-mail asking them
 3 to redo their home care evaluation and the current
 4 rate is \$10.00 an hour, you're going to set a new
 5 reserve based on \$10.00 an hour, aren't you?
 6 A Not necessarily.
 7 Q Why wouldn't you if you knew that was the rate
 8 that was supposed to be paid?
 9 A Because on this claim --
 10 Q I didn't ask you about this claim.
 11 I asked you if you knew they
 12 were paying \$5.00 an hour and they should be
 13 paying \$10.00, earlier you told me you had set the
 14 reserve based on the \$10.00 rate that should be
 15 paid, that's what you told me under oath.
 16 Are you changing that answer?
 17 A Well, I don't do that in all instances.
 18 Q Are you changing that answer?
 19 A Yes, I am.
 20 Q So why would you not set the reserve based upon
 21 the amount that should be paid?
 22 A I only did those in those cases where I advised
 23 them to make a change and I anticipated that they
 24 would be making a change.
 25 I can only do that in cases

1 where there's not an agency involved. When
 2 there's agency involved and family care involved,
 3 if I don't know how many hours are paid on each
 4 one, then I can't get that specific in my reserve.
 5 Q Well, it's not that hard to figure those things
 6 out, is it?
 7 MS. KULIK: Objection,
 8 relevancy.
 9 BY MR. MCKENNA:
 10 Q Is it hard for you to figure out what an agency is
 11 being paid and what a family is being paid?
 12 A Yes.
 13 Q How hard is that?
 14 A What do you mean "how hard?"
 15 Q You've got an adjuster that you deal with on a
 16 regular basis, correct? Correct?
 17 A No.
 18 Q You don't deal with adjuster?
 19 A I don't very often contact adjuster.
 20 Q But an adjuster would have the information that
 21 you just said you didn't have?
 22 A They should.
 23 Q All you would have to do is call the adjuster,
 24 send a memo, an e-mail, a CPS note to the file,
 25 correct?

1 A Correct.
 2 Q You never did that in this case, did you?
 3 A I don't know.
 4 Q Well, I haven't seen any, have you?
 5 A No.
 6 Q You said you didn't on this file know what was
 7 being paid, correct?
 8 A That's correct.
 9 MS. KULIK: Wait, I'm going to
 10 object to that question, the form of the question.
 11 You are misstating what she said.
 12 BY MR. MCKENNA:
 13 Q If you wanted to find out what was being paid,
 14 whether it was being paid correctly, underpaid or
 15 overpaid, all you had to do was contact the
 16 adjuster, correct?
 17 A Correct.
 18 Q But you never did that, correct?
 19 A I may have tried.
 20 Q Well, can you show me, you have your file there,
 21 and we've got all the time today, I want you to go
 22 through that file right now it's marked Exhibit 8,
 23 show me something in there where it says you tried
 24 to contact the adjuster to get that information?
 25 A I don't have anything that says that.

1 Q Well, I don't, either.
 2 So there's nothing in the file
 3 that says you tried to contact an adjuster to find
 4 out what was being paid; is that correct?
 5 A That's correct.
 6 MS. KULIK: I'm going to
 7 object to that. It's totally irrelevant whether
 8 this Witness contacted an adjuster or not.
 9 BY MR. MCKENNA:
 10 Q And your testimony, if I'm understanding it
 11 correctly then, is you were advised by
 12 Mr. Berkebile or Mr. Herman to send these memos
 13 because adjusters didn't know what they were doing
 14 in setting these rates, correct?
 15 A I wasn't told that in those words.
 16 Q What were you told?
 17 A I was told if you see -- just to send them a
 18 reminder and tell them what the current rate was.
 19 Tell them to look at their home care for every
 20 year and tell them what the current rate was.
 21 Q Did you read, by the way, the Marr's deposition
 22 again today or since the last deposition, have you
 23 read it again?
 24 A No.
 25 Q In that deposition -- and I can point you to the

1 page if you want. In that deposition there was a
 2 conversation you said that you had. There's a
 3 question asked anyway, "Would it surprise you that
 4 in 2001 there were adjusters that didn't
 5 understand how to do their job as it related to
 6 catastrophic claims?"
 7 MS. KULIK: Are you asking her
 8 whether that question was asked?
 9 BY MR. MCKENNA:
 10 Q Do you recall that being asked of you?
 11 A I would recall something along that lines. I
 12 don't remember the exact question.
 13 Q Do you recall giving the answer that it wouldn't
 14 surprise you that in 2001, there were still
 15 adjusters that didn't understand how to deal with
 16 catastrophic claims?
 17 MS. KULIK: Objection,
 18 relevance.
 19 THE WITNESS: I thought I
 20 answered prior to 2001, it wouldn't surprise me if
 21 they didn't know.
 22 MS. KULIK: What page?
 23 BY MR. MCKENNA:
 24 Q The question I asked did not deal with subsequent
 25 you're correct, it was prior, it's page 37.

1 "Question: Would it surprise
 2 you that their adjusters handling catastrophic
 3 losses for AAA prior to the fall of 2001, never
 4 asked the caregiver what services they were
 5 providing for a catastrophic injured love one?"
 6 And you said that would not
 7 surprise you.
 8 You were then asked, "Do you
 9 think AAA is doing a service to their catastrophic
 10 injured insureds when they did not talk to the
 11 caregiver about what services are being provided?"
 12 And you indicated, "No, that's
 13 why we've told them that in their home care
 14 training they need to do that."
 15 Do you recall those questions
 16 and those answers?
 17 A Yes.
 18 MS. KULIK: At this point, I'm
 19 going to put an objection as to relevancy, form
 20 and foundation on the record as to the questions
 21 you're asking pertaining to the Marr deposition.
 22 And I'd like to try to make that a standing
 23 objection.
 24 BY MR. MCKENNA:
 25 Q And then you were asked a question on page 38,

1 quote, "And would it surprise you that an adjuster
2 who is deposed after the attendant care seminar
3 still doesn't know what a high tech aide is?"
4

5 And your answer was, "That
6 would surprise me."

7 Do you recall that question
8 and that answer?

9 A Yes.

10 Q So is it your testimony, your understanding that
11 since this seminar in October of 2001, every
12 adjuster handling catastrophic claims for AAA in
13 the State of Michigan, should be fully
14 knowledgeable of catastrophic claims and what they
15 entailed?

16 A I don't know if they should be fully knowledgeable
17 about all catastrophic claims, but they should be
18 pretty competent in home care issues.

19 Q Okay. Would you agreed that someone that's not
20 competent in home care issues, shouldn't be
21 handling these kind of files?

22 MS. KULIK: Objection, you're
23 asking this lay Witness for her opinion. Her
24 opinion is irrelevant to AAA.

25 BY MR. MCKENNA:

1 Q Now, you're irrelevant to AAA, but you can go
2 ahead and answer for me.

3 A Probably not.

4 Q It wouldn't be fair for an insured to have
5 somebody -- when they're catastrophically injured,
6 to have somebody that didn't know what they were
7 doing handling their file, would it?

8 MS. KULIK: Same objection.

9 THE WITNESS: No.

10 BY MR. MCKENNA:

11 Q In order for you to determine a level or rate of
12 pay, you'd need to know what level of service is
13 being provided, wouldn't you?

14 A You're speaking the adjuster or myself?

15 Q You. As a specialist setting reserves, if you
16 were going to set a reserve that resembled any
17 part of truth as opposed to fiction, you'd need to
18 know whether there were home health aide rates,
19 whether there were RN services being provided,
20 high tech aide services being provided, correct?

21 MS. KULIK: Objection, form
22 and foundation.

23 THE WITNESS: No, I wouldn't
24 necessarily need to know the exact services as
25 long as I know what's being paid.

1 BY MR. MCKENNA:

2 Q Then you need to know what the rates were then, if
3 there are services being provided you would need
4 to know what hourly rates for those services were
5 being paid, correct?

6 A Not necessarily, it might be just a daily rate.
7 It might be a combination of those things.

8 Q You've got an RN there twenty-four hours a day,
9 that would give you a daily rate at an RN level,
10 correct?

11 A Correct.

12 Q If you've got a home health aide there for
13 twenty-four hours a day, you're going to get a
14 different daily rate?

15 A Correct.

16 Q So you could have files where you see daily rates
17 that differ dramatically?

18 A Yes.

19 Q Wouldn't you want to know why they were so
20 different from one file to the other?

21 A No.

22 Q You would just assume that that was being paid
23 correctly?

24 A Yes.

25 Q And you would base your future reserves on an

1 assumption?

2 A Yes.

3 Q And that assumption would never be checked or
4 verified by you?

5 A What do you mean?

6 Q Well, if you're looking at a daily rate of payment
7 that's going out historically for the last six
8 months when you're reviewing a file, you would
9 look at that and say, okay, for the next six
10 months I expect the same thing to be paid and set
11 the reserves accordingly?

12 A Correct.

13 Q Without ever checking to see that the rate that
14 was being paid was being paid properly?

15 A Correct.

16 Q Although you told me earlier in the other
17 deposition that you were advised to make sure and
18 send these e-mails when the rates weren't being
19 paid properly?

20 A That was before they did the home care training,
21 correct.

22 Q And you're saying that after the home care
23 training in October 2001, you were advised by
24 management at AAA to never send another e-mail
25 about it?

1 A No.
 2 Q Is that correct?
 3 A That's correct -- no, that's not correct. I was
 4 advised not to ever send another e-mail.
 5 I just wasn't taking
 6 responsibility to make sure the rates are being
 7 paid. The adjusters have that information now,
 8 there's no need for me to constantly send that
 9 information out.
 10 Q Your adjusters should have had that information
 11 before 2001, shouldn't they?
 12 MS. KULIK: Objection, you're
 13 asking for expert opinion.
 14 BY MR. MCKENNA:
 15 Q You were an adjuster at AAA?
 16 A Yes.
 17 Q You had the information on what should be paid
 18 when you were an adjuster, didn't you?
 19 A No.
 20 Q So you were doing a job that you were incompetent
 21 to handle?
 22 A I never handled any attendant care claims.
 23 Q Were you ever trained on how to pay attendant care
 24 as an adjuster?
 25 A No.

1 Q Were you ever trained how to determine whether it
 2 was a benefit that they were entitled to?
 3 A No.
 4 Q So how many years were you an adjuster?
 5 A Eight years.
 6 Q In eight years you were never involved in an
 7 attendant care claim?
 8 A Correct.
 9 Q And you did first party cases?
 10 A Yes.
 11 Q And that lack of knowledge for eight years
 12 qualified you for a job setting reserves on claims
 13 involving attendant care?
 14 MS. KULIK: Objection,
 15 argumentative, asking for speculation.
 16 THE WITNESS: Could you repeat
 17 that?
 18 MR. MCKENNA: Sure.
 19 BY MR. MCKENNA:
 20 Q Was your lack of knowledge and lack of experience
 21 in setting attendant care rates and handling
 22 attendant care claims, one of the reasons why AAA
 23 gave you the job you have?
 24 MS. KULIK: Objection, you're
 25 asking this Witness to speculate.

1 THE WITNESS: I don't know
 2 what reason they gave me the job.
 3 BY MR. MCKENNA:
 4 Q Well, were you interviewed for the job?
 5 A Yes, I was.
 6 Q And did you ever get asked what experience you had
 7 with attendant care during your interview?
 8 A I don't remember.
 9 Q Would you agree having experience with attendant
 10 care payments and rates would be a plus for your
 11 job?
 12 A Yes.
 13 Q The setting of rates after 2001, you believe Miss
 14 Robins told you you don't need to send these
 15 e-mails anymore?
 16 A Right.
 17 Q But prior to 2001, Berkebile and Herman told you
 18 it was part of your job responsibility to do that?
 19 A They asked me to do that in addition to my
 20 reserving job.
 21 Q They made that part of your job responsibility, is
 22 what I asked you?
 23 A Yes.
 24 Q And then Patricia Robin said it's not part of your
 25 job responsibility anymore, don't do it?

1 A Yes.
 2 Q And you haven't sent another e-mail to another
 3 adjuster since then regarding attendant care
 4 rates?
 5 A Correct.
 6 Q Even if they were underpaying those rates?
 7 A If I saw something that didn't look right, I would
 8 refer it to a manager.
 9 Q That's not what I asked you, ma'am. Could you
 10 please not change my questions.
 11 A Okay.
 12 Q By the way, have you been to the AAA seminars on
 13 how to testify?
 14 A No.
 15 Q You haven't gone to those?
 16 A No.
 17 Q My question to you was, you haven't sent another
 18 e-mail to an adjuster about attendant care rates.
 19 You said yes.
 20 My follow-up question was,
 21 with respect to the lack of e-mails to adjusters
 22 regardless of whether they were being underpaid or
 23 not, correct?
 24 MS. KULIK: Objection, to the
 25 form of that question.

1 THE WITNESS: You're asking me
 2 have I sent any e-mails since --
 3 BY MR. MCKENNA:
 4 Q You sent an e-mail to an adjuster about an
 5 underpayment since you were told by Patricia
 6 Robins not to send them anymore?
 7 A No.
 8 Q Even if they were being underpaid, you haven't
 9 sent another e-mail to an adjuster, correct?
 10 A I don't recall seeing anything like that, but
 11 correct.
 12 Q The earlier policy that Mr. Berkebile and/or
 13 Mr. Herman told you about was the don't ask don't
 14 tell?
 15 A Correct.
 16 Q Correct. And now it's don't tell don't tell?
 17 MS. KULIK: I'm going to
 18 object to the form of the question.
 19 BY MR. MCKENNA:
 20 Q Correct?
 21 A As far as I'm concerned?
 22 Q Yes.
 23 A That's correct. I don't get involved in it now.
 24 Q Who at AAA, to your knowledge, is involved in
 25 insuring if it's not part of your job duty

1 anymore, that the adjusters are paying the
 2 appropriate rates for services provided?
 3 A I believe it would be the branch manager.
 4 Q Now, when you came to AAA in your reserve
 5 specialist capacity in '97, I think you said that
 6 there was a study, an intervention I think is what
 7 you called it, that was either underway or just
 8 getting started, correct?
 9 A Correct.
 10 Q And then there was another one in 2001?
 11 A There was another one sometime between I think it
 12 was before 2001.
 13 Q Was it close to 2000, was it in the 2000s, was it
 14 in the 1990s?
 15 A It might have been '99 or 2000, I don't know.
 16 Q But there were two of them?
 17 A Correct.
 18 Q And I took the depositions of Mr. Berkebile and
 19 Mr. Herman about why it was AAA was doing this,
 20 what you call an intervention, and they indicated
 21 to me that the reason was because there were
 22 branch offices that were handling as maintenance
 23 files catastrophic cases and that they were
 24 noticing problems in the rates that were being
 25 paid.

1 Did they ever discuss that
 2 rationale with you as to why these interventions
 3 were being done?
 4 A No.
 5 Q You were part of some of these interventions at
 6 different branch offices, correct?
 7 A Correct.
 8 Q In fact, you've even -- and I don't know the
 9 correct term, you've presented cases to the CAT
 10 fund committee on behalf of adjusters?
 11 A I don't think I ever presented anything to the CAT
 12 loss committee. I think I took a case to a home
 13 care committee for an adjuster.
 14 Q Do you recall testifying that you had handled
 15 cases to the CAT loss committee?
 16 A No, I don't.
 17 Q On page 62 of your deposition you were asked a
 18 question, "Ma'am, why would you as a reserve claim
 19 specialist presenting a file to the home care
 20 committee?"
 21 So you've done it with a home
 22 care, but you haven't presented a file to the CAT
 23 loss?
 24 A Correct.
 25 Q But you have participated in CAT loss committee

1 meetings?
 2 A I have attended, yes.
 3 Q Why would a person as you described your job
 4 duties that just set reserves go to a CAT loss
 5 committee?
 6 A My boss asked us each reserve specialist to attend
 7 three meetings a year.
 8 Q Why?
 9 MS. KULIK: Objection, you're
 10 asking for speculation.
 11 MR. MCKENNA: No, I'm not.
 12 I'm asking her what she knows.
 13 THE WITNESS: I'm assuming she
 14 just wants us to keep current on issues.
 15 BY MR. MCKENNA:
 16 Q What issues?
 17 A Issues that would be discussed at the CAT loss
 18 meeting.
 19 Q But those issues being discussed at CAT loss
 20 committee would have nothing to do it with what
 21 you're doing as your job, would they?
 22 A Not really. The only instance --
 23 Q It doesn't make much sense, does it?
 24 A No.
 25 MS. KULIK: Objection, you're

1 asking for speculation.
 2 BY MR. MCKENNA:
 3 Q The only instance what, ma'am?
 4 A Sometimes if there's somebody presenting something
 5 about home care, if it's going to affect the
 6 reserve, we can get that information.
 7 Q Like paying more money in the future?
 8 A Correct.
 9 Q But you told me you don't need to know whether
 10 they're going to pay more money in the future, you
 11 just set your reserves based on what they've been
 12 paying?
 13 A Well, if you're going to start paying a certain
 14 rate, I would adjust that at that time.
 15 Q But you've told me under oath here today that the
 16 way you do your job since 2001, was that you set
 17 reserves based on what was being paid at the time,
 18 not what would be expected to be paid in the
 19 future, correct?
 20 A Not what would be expected, what we're paying at
 21 the time or what we know were going to pay in the
 22 future?
 23 Q But you don't know what you're going to pay in the
 24 future you told me, because you don't know what
 25 was being paid in the past, correct?

1 MS. KULIK: Objection to the
 2 form of the question.
 3 THE WITNESS: Sometimes I do,
 4 sometimes I don't.
 5 BY MR. MCKENNA:
 6 Q You told me with respect to this case you didn't
 7 know what was being paid in the past?
 8 A That's correct.
 9 Q You wouldn't know what was being paid in the
 10 future?
 11 A Correct.
 12 Q But you're saying sometimes you do?
 13 A Yes, each case is individual.
 14 Q Sometimes you might do more work and find out the
 15 information on other cases; is that correct?
 16 A Correct.
 17 Q But on this case you didn't do more work and
 18 didn't find out what was being paid, correct?
 19 A No, I never found out what was being paid.
 20 Q And you could have found out what was being paid
 21 and set reserves based on what should have been
 22 paid, correct?
 23 A I would never reserve based on what should have
 24 been paid. I would pay based on what we were
 25 paying or what we know we're going to pay.

1 Q Should a AAA insured -- if someone at AAA that has
 2 the responsibility of reviewing their file for any
 3 reason, should a AAA insured ever be underpaid
 4 when someone at AAA knows they're being underpaid?
 5 MS. KULIK: Objection, you're
 6 asking her for a legal conclusion.
 7 THE WITNESS: I don't know.
 8 BY MR. MCKENNA:
 9 Q Go ahead.
 10 A I don't know.
 11 Q Do you think it would be reasonable from the
 12 standpoint of a AAA insured to learn that someone
 13 such as yourself was aware that they were being
 14 underpaid and did nothing?
 15 MS. KULIK: Objection, you're
 16 question's irrelevant and you're asking for a
 17 conclusion and speculation.
 18 THE WITNESS: You're asking me
 19 would be the reason for it?
 20 BY MR. MCKENNA:
 21 Q Do you think it would be reasonable if you were an
 22 AAA insured to learn that someone at AAA, such as
 23 yourself, learned that they were being underpaid
 24 and did nothing, would you consider that
 25 reasonable?

1 A No.
 2 Q Would you consider it unreasonable?
 3 MS. KULIK: Same objection,
 4 you're asking her for a legal conclusion.
 5 THE WITNESS: I don't know.
 6 BY MR. MCKENNA:
 7 Q Do you know what unreasonable means?
 8 MS. KULIK: Objection,
 9 irrelevant.
 10 THE WITNESS: Not reasonable.
 11 BY MR. MCKENNA:
 12 Q Do you know what reasonable means?
 13 A Yes.
 14 Q What does reasonable mean?
 15 MS. KULIK: Same objection.
 16 THE WITNESS: Doing what makes
 17 sense.
 18 BY MR. MCKENNA:
 19 Q What's fair?
 20 A Yes.
 21 Q What you're supposed to do?
 22 A Yes.
 23 Q Under the No-Fault Statute you are to pay benefits
 24 to someone when you are presented with reasonable
 25 proofs, correct?

1 A Well, I don't pay benefits.
 2 Q I understand that.
 3 A But the company, yes.
 4 Q Did you understand my question? Did you
 5 understand my question?
 6 A Is your question --
 7 Q Did you understand my question?
 8 A No, I didn't.
 9 Q Please don't change the question.
 10 A Okay.
 11 Q Under the No-Fault Act there are things AAA has to
 12 do and uses the word reasonable. Are you aware of
 13 that?
 14 A Yes.
 15 Q There are things that you are to do that when
 16 reasonable proofs are submitted, the company has
 17 to pay, correct?
 18 A Correct.
 19 Q You are to pay the reasonable amount for services
 20 provided, what's reasonable, what's necessary and
 21 what's related, correct?
 22 A Correct.
 23 Q And there are penalties in the statute and the
 24 policy for unreasonable activities by AAA, where
 25 you would have to pay attorney fees and interest,

1 correct?
 2 A Yes.
 3 Q So reasonable would be to do according to what
 4 you've been trained at AAA as an adjuster and now
 5 in your capacity now as a reserve specialist,
 6 reasonable would be to do what's fair?
 7 MS. KULIK: Objection, you're
 8 asking for a legal conclusion.
 9 BY MR. MCKENNA:
 10 Q Is that correct?
 11 A Correct.
 12 Q You have to make decisions on files when you're an
 13 adjuster to pay or not pay benefits, correct?
 14 A Correct.
 15 Q You have to interpret the policy and the statute
 16 in order to pay benefits, correct?
 17 A Correct.
 18 Q So what you're doing is not acting as a lawyer,
 19 you're acting as an adjuster, correct?
 20 A When I was an adjuster, correct.
 21 Q But as an adjuster is part of their job to look at
 22 a statute and look at a policy and make
 23 interpretations and decisions based on whether
 24 they should or shouldn't pay, correct?
 25 A Correct.

1 Q And you then are also told that you have to do
 2 things that are reasonable?
 3 A Correct.
 4 Q And you've been taught and trained at AAA what
 5 they believe reasonable is, correct?
 6 A Correct.
 7 Q And what you have been taught and trained at AAA
 8 to understand reasonable to be is what is fair?
 9 A Correct.
 10 Q And you have been taught what is unreasonable is
 11 the opposite, what would be unfair?
 12 A Correct.
 13 Q Do you believe it would be unfair as an adjuster
 14 to pay less for a claim then you know that claim
 15 is entitled to receive?
 16 MS. KULIK: Objection, you're
 17 asking for a legal conclusion of a lay Witness.
 18 MR. MCKENNA: Nope. I'm
 19 asking for an opinion of an adjuster.
 20 THE WITNESS: If they knew
 21 what they weren't doing is right, they shouldn't
 22 do that.
 23 BY MR. MCKENNA:
 24 Q Would you believe it to be unreasonable for an
 25 adjuster to pay less than what they knew they

1 should be paying?
 2 A Yes.
 3 Q Do you believe it would be unreasonable for anyone
 4 at AAA who knew there was less being paid then
 5 what was reasonable, do you believe it would be
 6 unreasonable for them to allow that to occur?
 7 MS. KULIK: Objection, same
 8 objection.
 9 THE WITNESS: Not if it's not
 10 their job responsibility to review that.
 11 BY MR. MCKENNA:
 12 Q Well, if it's not your job responsibility to
 13 review fraud, do you still report it?
 14 A I've never came across an instance of fraud.
 15 Q I didn't ask you that.
 16 I asked if it's not your job
 17 responsibility to review fraud, when you see it do
 18 you still report it?
 19 MS. KULIK: Objection, asked
 20 and answered.
 21 THE WITNESS: I don't know. I
 22 haven't come across a situation.
 23 BY MR. MCKENNA:
 24 Q If you saw someone committing fraud at AAA and
 25 it's not part of your job duties, would you report

1 it?
 2 A If I knew it to be fraud, yes.
 3 Q If you saw someone stealing supplies from AAA and
 4 you knew that they weren't supposed to steal
 5 supplies, would you report it?
 6 A Yes.
 7 Q Is it part of your job responsibility?
 8 A No, I don't think so.
 9 Q But you would do it anyway?
 10 A Yes.
 11 Q You would advise somebody of what you saw?
 12 A Yes.
 13 Q And you would do that because it's in the best
 14 interest of the company?
 15 A I would do it just because it's the right thing to
 16 do.
 17 Q And it would be in the best interest of the
 18 company?
 19 MS. KULIK: Objection, you're
 20 asking for a conclusion.
 21 THE WITNESS: Yes.
 22 BY MR. MCKENNA:
 23 Q Would you advise an insured of someone taking
 24 benefits from them that they were entitled to?
 25 MS. KULIK: Objection, you're

1 asking for speculation from a person who does not
 2 handle claims.
 3 BY MR. MCKENNA:
 4 Q Go ahead.
 5 A No, I don't communicate with the insureds.
 6 Q You don't communicate with people at work about
 7 fraud either, correct?
 8 A No.
 9 Q But if you saw it, you would report it to them,
 10 somebody?
 11 A Yes.
 12 Q And if you saw benefits -- I mean if you saw
 13 someone stealing legal pads, printer cartridges
 14 from work, those cost money, don't they?
 15 A Yes.
 16 Q That's money that belongs -- it's a product that
 17 AAA paid money for that belongs to the company,
 18 correct?
 19 A Correct.
 20 Q Someone taking it that doesn't have entitlement to
 21 it would be stealing?
 22 A Correct.
 23 Q Or committing fraud taking it away from someone
 24 that shouldn't have, correct?
 25 A Correct.

1 Q An insured is entitled to be paid for benefits and
 2 services, correct?
 3 A Correct.
 4 Q That entitlement is to money under the policy and
 5 under the statute that they have a right to?
 6 A Correct.
 7 Q If you don't own the cartridges at work and the
 8 legal pads at work that are being fraudulently
 9 taken or stolen, you would report that because
 10 it's the right thing to do?
 11 A Right.
 12 Q But if you see an insured that's being underpaid
 13 money that they are entitled to for services under
 14 the policy and under the act, you wouldn't notify
 15 the insured because that's not the right thing to
 16 do?
 17 MS. KULIK: Objection, form
 18 and foundation.
 19 You can answer.
 20 THE WITNESS: I wouldn't do
 21 it, because it's not my decision to make whether
 22 it's the right thing to do or not. I don't know
 23 what adjusters are doing.
 24 BY MR. MCKENNA:
 25 Q I didn't ask you about adjusters. I asked you, do

1 you know the difference between right and wrong?
 2 A Yes, I do.
 3 Q So you can recognize right and wrong at work when
 4 it's taking money from the company by taking
 5 products and supplies, correct?
 6 A Correct.
 7 Q But you don't recognize right and wrong when it's
 8 an insured that's involved not getting all of the
 9 money that they're entitled to, you can't
 10 recognize that as right or wrong?
 11 MS. KULIK: Objection, form
 12 and foundation and relevance.
 13 THE WITNESS: No, because I
 14 don't always have all the facts.
 15 BY MR. MCKENNA:
 16 Q You might not have all the facts with the person
 17 that walked out with four toner cartridges and was
 18 just taking back the ones that they brought in
 19 earlier, but you'd still report it, wouldn't you?
 20 A Only if I really thought they were stealing
 21 something.
 22 Q Right. But when you look at someone getting paid
 23 for example \$5.00 an hour year after year for ten
 24 years for services with no increase, is that
 25 right?

1 MS. KULIK: Objection, form,
 2 foundation, asking for speculation and an opinion
 3 of a lay Witness.
 4 BY MR. MCKENNA:
 5 Q Is that right?
 6 A I don't know.
 7 Q You don't know?
 8 A I don't know because they might -- I don't know
 9 the reasons why somebody might only be being paid
 10 \$5.00. There might be a reason for it.
 11 Q I didn't ask you the reason for the \$5.00. We've
 12 used the \$5.00 and \$10.00 example.
 13 What I'm saying to you is for
 14 ten years in a row, getting paid the same rate
 15 without any increase; is that right?
 16 MS. KULIK: Same objection.
 17 THE WITNESS: I don't know.
 18 BY MR. MCKENNA:
 19 Q Why don't you know that?
 20 A Because it's not my decision to make.
 21 Q Well, earlier, ma'am -- you know, this is why I
 22 don't like taking breaks in depositions because
 23 suddenly things change.
 24 You told me during the last
 25 deposition under oath that you would send e-mails

1 if you noticed that they paid the same amount year
 2 after year and advise them that they were paying
 3 less than what was authorized. So you would have
 4 had to know what the rate was for the service that
 5 was being paid and that it was being underpaid,
 6 correct?
 7 A I wasn't advised --
 8 Q Isn't that correct?
 9 A No, that's not correct.
 10 Q You couldn't advise that there was more authorized
 11 for payment without knowing what the service was,
 12 could you?
 13 A I'm sorry, would you ask that again?
 14 Q If someone's providing home health aide and
 15 they're getting \$10.00 an hour, and you're
 16 authorized to pay \$15.00, you'd have to know what
 17 a home health aide service was in order to know
 18 whether they get 10 or 15, correct?
 19 A I wouldn't always know what is being provided.
 20 Q Ma'am, I didn't ask you what you always know.
 21 A No.
 22 Q My question was, you have to know what a home
 23 health aide was in order to know that they get
 24 \$15.00 an hour according to MMU, correct?
 25 A Correct.

1 Q And for you to send an e-mail that says we now pay
 2 \$15.00 an hour for that service, you'd have to
 3 know what that service was, wouldn't you?
 4 A Correct.
 5 Q But you didn't send any e-mails and make any
 6 corrections on this file from the time you've had
 7 it to the present, indicating that the amount of
 8 money that was being paid was underpaid, did you?
 9 A I don't know if I did or not, because I haven't
 10 kept them.
 11 Q You don't have anything in this file, any speed
 12 memos in this file, any CPS memos in this file,
 13 where you've indicated that this file is being
 14 underpaid, do you?
 15 A No.
 16 Q CPS memos are kept, they're not destroyed, aren't
 17 they?
 18 A That's right.
 19 Q And there's no indication from you in any of them
 20 that there's an underpayment, correct?
 21 A That's correct.
 22 Q And the payment of \$5.00 an hour for ten years,
 23 for providing attendant care to Mr. Bearden, the
 24 condition that he's in, would that be fair,
 25 reasonable?

1 MS. KULIK: Objection, you're
 2 asking this lay Witness for an opinion.
 3 BY MR. MCKENNA:
 4 Q Go ahead.
 5 A I don't know. I don't know what his condition is.
 6 I don't know what arrangements were made.
 7 Q Okay. We can play games all day today, ma'am.
 8 MS. KULIK: Objection, you're
 9 getting argumentative with the Witness.
 10 MR. MCKENNA: I haven't asked
 11 her a question.
 12 MS. KULIK: But you're making
 13 statements that are argumentative.
 14 MR. MCKENNA: That may be
 15 true, but it's not an argumentative question.
 16 MS. KULIK: I said you're
 17 getting argumentative with the Witness. I didn't
 18 say you asked an argumentative question.
 19 MR. MCKENNA: You don't think
 20 that you happen to have like an Exhibit 6 without
 21 your poststick that's left in the middle of it, do
 22 you?
 23 BY MR. MCKENNA:
 24 Q Ma'am, let me ask you this, I'll come back to this
 25 area we're at, but I just want to make sure that I

1 have this clear.
 2 We're agreed that whenever a
 3 claim for AAA on a case like this that's now AAA's
 4 money dollar for dollar doesn't get paid, that's
 5 more money AAA has, correct?
 6 A Correct.
 7 MS. KULIK: Objection, asked
 8 and answered.
 9 BY MR. MCKENNA:
 10 Q Now, under the pre-don't ask don't tell policy, if
 11 the adjusters didn't know what they were doing,
 12 you were not advised to correct it. Is that a
 13 fair statement?
 14 A Correct.
 15 Q What underpayments were there or the poor
 16 management of attendant care claims, at some point
 17 you were told by Mr. Berkebile and or Mr. Herman
 18 send these e-mails and advise them, correct?
 19 A Advise them of the current rate.
 20 Q And if the adjuster took your advice, AAA would
 21 pay more money?
 22 A Correct.
 23 Q But AAA still had the policy that if we correct
 24 what they're underpaying, we are not going to make
 25 back payments unless they specifically ask for it,

1 correct?
 2 MS. KULIK: Objection, you're
 3 asking this Witness to speculate and for a
 4 conclusion.
 5 BY MR. MCKENNA:
 6 Q No, I think it's pretty clear from her testimony
 7 before.
 8 You were told unless they
 9 specifically asked, you were not to make any back
 10 payments, correct?
 11 A Yes. I was told not to address it with the
 12 adjusters.
 13 Q And that way it wouldn't get paid?
 14 MS. KULIK: Objection, you're
 15 asking for a conclusion and speculation.
 16 BY MR. MCKENNA:
 17 Q Correct?
 18 A Probably not.
 19 Q And if it didn't get paid, that was more money
 20 that AAA kept in a case like this dollar for
 21 dollar that was now their money, correct?
 22 A Correct.
 23 Q Now, that policy didn't change when you went to
 24 the directive for your new job duty of sending
 25 these e-mails and correcting the underpayments,

1 you still didn't go back and tell them unless they
 2 asked about back payment, correct?
 3 A Correct.
 4 Q Now, the policy changed from don't ask don't tell
 5 with respect to the underpayment of the benefits
 6 with Patricia Robins telling you don't do that
 7 anymore, correct?
 8 A Correct.
 9 Q So if you're not doing that anymore and the
 10 adjusters continue to pay at a lower rate, AAA is
 11 again having more money now for AAA than they
 12 would have if they were paying the appropriate
 13 rates, correct?
 14 MS. KULIK: Objection,
 15 relevance and you're asking this Witness to
 16 speculate.
 17 BY MR. MCKENNA:
 18 Q Correct?
 19 A If we pay less out we have more money.
 20 Q You have more money, okay.
 21 Two pockets in your pants,
 22 left pocket and right pocket. If they both have
 23 money in that you pay out as either a claim or
 24 expense however you do it, the less you spend on
 25 claims and the less you spend on expenses, the

1 more money you have in your pants?
 2 A Correct.
 3 Q Now, when they changed the policy and Patricia
 4 Robins said, I don't even want you to tell the
 5 adjusters anymore about the underpayment --
 6 MS. KULIK: Object to the form
 7 of the question.
 8 BY MR. MCKENNA:
 9 Q -- if the adjusters continued doing what they were
 10 doing, AAA would have more money than they would
 11 if the adjusters were paying the appropriate
 12 rates.
 13 Would you agree with that?
 14 MS. KULIK: Objection,
 15 relevancy.
 16 You can answer.
 17 THE WITNESS: I thought you
 18 were asking me two questions.
 19 BY MR. MCKENNA:
 20 Q You tell me you don't understand, ma'am, and I
 21 will rephrase the question for you.
 22 A I'm sorry.
 23 Q It works a lot easier than having you change the
 24 question.
 25 A Okay. I don't understand.

1 Q Okay. When AAA in '97, '98, whenever it was when
2 Mr. Berkebile or Mr. Herman said to you, I want
3 you to send these e-mails to these adjusters, when
4 they did that, if the adjusters were reminded that
5 they're paying less or advised of something they
6 didn't even know and started paying at a higher
7 rate, AAA would lose money?
8 A Right.
9 MS. KULIK: Objection,
10 relevancy.
11 BY MR. MCKENNA:
12 Q Correct?
13 A If they were paying at a higher rate, they would
14 have more money going out, yes.
15 Q And then in 2000 something, 2001, 2002, you said
16 Patricia Robins told you to stop sending these
17 e-mails, correct?
18 A Correct.
19 Q And if the adjusters that you were correcting with
20 e-mails stopped getting those corrections and
21 continued to pay the same amount of money, even if
22 it was less than what was being authorized, AAA
23 would have more money?
24 A AAA would have more money, but Patty never said
25 don't ever send an e-mail. She has said if we

1 notice something that wasn't right to bring it to
2 someone's attention.
3 Q But you were told not to send anymore e-mails to
4 adjusters?
5 A Right.
6 Q Correct?
7 A Correct.
8 Q And if the adjusters had been repeatedly being
9 paying less, we talked about this before, if they
10 paid less and they paid the same amount the next
11 year and the next year, obviously that branch
12 manager is not catching that, are they?
13 MS. KULIK: Objection, asking
14 for speculation.
15 THE WITNESS: Well, one reason
16 I might see payments, the rates haven't gone up
17 since the 2001 survey as far as I know. So if
18 they were still paying -- since that time if they
19 were still paying --
20 MR. MCKENNA: That's not my
21 question, ma'am, please don't change my questions.
22 THE WITNESS: Okay, repeat
23 your question, please.
24 BY MR. MCKENNA:
25 Q When you have an adjuster paying a claim, above

1 the adjuster is a claims supervisor, correct?
2 A A manager.
3 Q Claims manager. And above the claims manager is
4 the branch manager for claims, correct?
5 A I don't know the exact title, but there would be a
6 manager above the branch manager.
7 Q There's a branch manager and actually my
8 understanding is that there are two branch
9 managers, one that deals with claims and one that
10 may deal with other issues?
11 A I think they've taken all the claims out of the
12 branches. I think there's more claim centers.
13 Q Then you would have a claims manager, a claims
14 supervisor and a claims adjuster. You're going to
15 have a hierarchy of supervision, correct?
16 A There's some higher hierarchy, yes.
17 Q If the adjuster screws up, doesn't know what
18 they're doing, pays less than what they're
19 supposed to, who's supposed to catch that mistake?
20 A The manager.
21 Q If the manager doesn't catch the adjuster's
22 mistake, who's supposed to catch the manager's
23 mistake?
24 A I don't know.
25 Q So back to my question that you didn't understand.

1 A Okay.
2 Q If you are a claims reserve specialist, and after
3 Mr. Berkebile or Mr. Herman tells you if you see
4 underpayments as we discussed in the last
5 deposition, send an e-mail to them and advise them
6 of the current rate.
7 In order for them to have
8 continued to pay a rate less than what they were
9 supposed to, the claims adjuster and that claims
10 supervisor or claims manager all would have had to
11 have either agreed that it was the right rate or
12 not, supervised the payment.
13 Would you agree with that?
14 A Yes.
15 MS. KULIK: Object to the form
16 of the question.
17 BY MR. MCKENNA:
18 Q So after you're told to stop sending e-mails to
19 the adjusters by Patricia Robins, AAA would then
20 be back to having an expectation that the adjuster
21 knew what the correct rates were and was paying
22 them, correct?
23 MS. KULIK: Objection, you're
24 asking for speculation as to what AAA knew.
25 BY MR. MCKENNA:

1 Q Is that correct?
 2 A I would think so.
 3 Q And understanding the hierarchy, you were a claim
 4 adjuster of how claims supervision occurs, if the
 5 claim adjuster is not being advised by you or
 6 someone like you, then the only one left to
 7 correct them would be their immediate claims
 8 supervisor or claims manager, correct?
 9 A Correct.
 10 Q You don't know of any other procedure that AAA has
 11 in place today on these catastrophic loss cases,
 12 for supervision to correct underpayment than the
 13 adjuster, the adjuster's immediate supervisor and
 14 the claims manager for that supervisor and
 15 adjuster, do you?
 16 A No.
 17 Q But prior to 2001, you were part of the
 18 educational correction, if you want to call it
 19 that, when you found something wrong that a
 20 manager, a supervisor or an adjuster missed, you
 21 would send the e-mail directly to that adjuster?
 22 A If it was on a home care rate, yes.
 23 Q That's all we're talking about.
 24 A Yes.
 25 Q But today we don't do that anymore?

1 A That's right.
 2 Q And by not doing that, if the same mistakes in the
 3 past were repeated, AAA would have more money?
 4 MS. KULIK: Objection, form
 5 and foundation.
 6 THE WITNESS: Yes.
 7 BY MR. MCKENNA:
 8 Q And the insureds would be getting cheated?
 9 MS. KULIK: Objection, form,
 10 foundation. You're asking her for a conclusion,
 11 an opinion and to speculate.
 12 BY MR. MCKENNA:
 13 Q Go ahead.
 14 A I'm sorry, could you repeat that question?
 15 Q And the question was, and the insureds would be
 16 getting cheated?
 17 A If what?
 18 Q If you didn't correct the underpayments that you
 19 had a procedure set-up to correct in the past and
 20 stopped it?
 21 A Correct.
 22 Q And that wouldn't be fair and reasonable, would
 23 it?
 24 MS. KULIK: Objection, you're
 25 asking for a legal conclusion.

1 THE WITNESS: I don't know.
 2 BY MR. MCKENNA:
 3 Q Well, do you think it's fair and reasonable for
 4 someone to be cheated?
 5 A No.
 6 MS. KULIK: Objection, form
 7 and foundation of a question.
 8 BY MR. MCKENNA:
 9 Q So you do know whether it's fair and reasonable to
 10 be cheated, don't you?
 11 A Yes.
 12 Q Do you know what fraud is?
 13 A Cheating someone.
 14 Q Taking something from them or keeping something
 15 from them that they're entitled to without them
 16 knowing about it, correct?
 17 A Right.
 18 MS. KULIK: Objection. You're
 19 asking this lay Witness for legal opinions.
 20 BY MR. MCKENNA:
 21 Q It would be fraudulent to not say something about
 22 an insured being underpaid when someone at AAA
 23 knew about it, wouldn't it?
 24 MS. KULIK: Objection, form
 25 and foundation, relevance. You're asking this

1 Witness for a legal conclusion.
 2 BY MR. MCKENNA:
 3 Q Wouldn't it?
 4 MS. KULIK: And an opinion.
 5 THE WITNESS: Would you repeat
 6 the question?
 7 MR. MCKENNA: Sure.
 8 BY MR. MCKENNA:
 9 Q It would be fraud to not pay an insured what they
 10 are entitled to if somebody at AAA knew about it
 11 and did nothing?
 12 A Probably.
 13 Q Probably. Is there some hesitation there, it's
 14 either it is or it isn't?
 15 MS. KULIK: Again, that's a
 16 new question. All the same objections.
 17 MR. MCKENNA: You know, I can
 18 tell when I get to the good stuff because it just
 19 gets your dander up.
 20 THE WITNESS: No, I just have
 21 a hard time --
 22 BY MR. MCKENNA:
 23 Q Ma'am, do you know what fraud is in the capacity
 24 of an insurance claim?
 25 As an adjuster you were taught

1 how to deal with fraud, weren't you?
 2 A Yes.
 3 Q Fraud would be an insured asking for something
 4 they're not entitled to, making a claim for a
 5 benefit that they knew they weren't entitled to,
 6 that would be fraudulent, wouldn't it?
 7 A I don't know if that would be fraud just because
 8 they were asking for it.
 9 Q If I knew I didn't get injured in an accident and
 10 said I was in an accident and was injured and made
 11 a claim, would that be fraudulent?
 12 A Yes.
 13 Q If I knew I didn't miss work and made a wage loss
 14 claim, that would be fraudulent, wouldn't it?
 15 A Yes.
 16 Q I would be asking for money from AAA that I wasn't
 17 entitled to?
 18 A Yes.
 19 Q A doctor charging money on a claim that you're
 20 handling for a service that was never rendered,
 21 would be fraudulent, correct?
 22 A Yes.
 23 Q Correct?
 24 A Correct.
 25 Q Overbilling for procedures, renaming the procedure

1 so they could receive more money from AAA would be
 2 fraudulent, wouldn't it?
 3 A Correct.
 4 Q So fraud as it relates to insurance claims as you
 5 understand it, deals with the issue of getting
 6 money or keeping money you're not entitled to,
 7 correct?
 8 MS. KULIK: Object to the
 9 form. Object form, foundation and misstating what
 10 the Witness agreed with.
 11 BY MR. MCKENNA:
 12 Q Is that correct?
 13 A Could you repeat that last half of your statement?
 14 Q Sure.
 15 Fraud in the capacity of an
 16 insurance claim involves getting money you're not
 17 entitled to or keeping money that you're not
 18 entitled to, correct?
 19 A Correct.
 20 Q And it works both ways, both from the insurance
 21 company and from the insureds or the claimants,
 22 correct?
 23 MS. KULIK: Objection, form
 24 and foundation. You're asking her to speculate
 25 and you're asking for a legal conclusion and it's

1 irrelevant.
 2 BY MR. MCKENNA:
 3 Q Go ahead.
 4 A If somebody was deliberately not paying that would
 5 be fraud.
 6 Q Someone at AAA deliberately not paying a benefit
 7 would be fraud?
 8 A I think so.
 9 MS. KULIK: Same objection.
 10 BY MR. MCKENNA:
 11 Q And when management knows that benefits aren't
 12 being paid and tells somebody that's checking to
 13 make sure that the benefits aren't being paid to
 14 stop doing that, that's fraudulent as well, isn't
 15 it?
 16 MS. KULIK: Objection, you're
 17 asking this Witness for a legal conclusion.
 18 THE WITNESS: No, I don't
 19 think so.
 20 BY MR. MCKENNA:
 21 Q When you were told by Berkebile or Herman to send
 22 the e-mails, that was so that insureds would get
 23 paid what they're entitled to, correct?
 24 MS. KULIK: Objection, you're
 25 asking for speculation.

1 THE WITNESS: That would be so
 2 that the adjusters would know what the current
 3 rates were.
 4 BY MR. MCKENNA:
 5 Q And the conclusion from that, the ultimate goal
 6 was to make sure that the insureds received what
 7 was fair?
 8 MS. KULIK: Objection, you're
 9 asking for speculation.
 10 THE WITNESS: Correct.
 11 MS. KULIK: When I object
 12 don't answer until I'm finished.
 13 THE WITNESS: Okay.
 14 BY MR. MCKENNA:
 15 Q If an insured is paid less money than they're
 16 entitled to, and the adjuster's supervisor or
 17 reserve specialist at AAA or anyone in the chain
 18 of supervision and management knows about it and
 19 doesn't correct it, that would be fraud, wouldn't
 20 it?
 21 MS. KULIK: Objection, form
 22 foundation. You're asking this Witness for an
 23 opinion and for a legal conclusion.
 24 THE WITNESS: No. As a
 25 reserve specialist I don't see that as my

1 obligation.
 2 MR. MCKENNA: I didn't say it
 3 was your obligation.
 4 BY MR. MCKENNA:
 5 Q I said if someone at AAA knows that there is
 6 someone that is being underpaid and does nothing,
 7 you said you would advise a manager.
 8 My question didn't include
 9 that, it said did nothing, whether you were an
 10 adjuster, a supervisor, a claims specialist, a
 11 reserve specialist, if you see someone being paid
 12 less than what they are entitled to and do
 13 nothing, that would be fraudulent, wouldn't it?
 14 MS. KULIK: Objection, form,
 15 foundation. You're asking this Witness for a
 16 legal conclusion and for an opinion.
 17 BY MR. MCKENNA:
 18 Q Correct?
 19 A Seems like it.
 20 Q Now, with respect to the payment of benefits
 21 question I had asked you about earlier. You said
 22 that I didn't know about Mr. Bearden's condition.
 23 Do you remember that?
 24 A Correct.
 25 Q I want to show you thirteen documents, I'll

1 identify them later, and just ask you to take a
 2 look at the bottom of these Claim Status Reports
 3 and see whether or not of those thirteen they are
 4 all signed by or completed by Cindy Redpath?
 5 A Yes, they are.
 6 Q On Exhibit Number 10, Bate's Number 00126, this
 7 appears to be a 10-29-98 Claim Status Report that
 8 you completed, correct?
 9 A Correct.
 10 Q Exhibit Number 11, there might not be a Bate's
 11 number on this one.
 12 Anyway, this one is Exhibit 11
 13 from 12-10-01. This is again a Claim Status
 14 Report that you've completed, correct?
 15 A Correct.
 16 Q Can you read for me the part on here where it
 17 says, "Describe claimant's present condition and
 18 level of care being provided."
 19 A It says, "Brian continues to receive 24 hour care
 20 that is provided by family and agency. Receives
 21 O.T. and P.T. provided by the family."
 22 Q And that's something that you wrote on there?
 23 A Yes.
 24 Q And that's something that you would write on there
 25 based on your personal knowledge from reviewing

1 the file and reviewing medical reports or
 2 reviewing something in the AAA file?
 3 A From reviewing the file.
 4 Q You wouldn't just make that up?
 5 A Correct.
 6 Q And that's truthful?
 7 A Yes.
 8 Q All right. And it's your job to make those
 9 truthful statements about his current condition
 10 and what's wrong with him?
 11 A Yes.
 12 Q And on Exhibit Number 12, I'll ask you the same
 13 question, that's yours?
 14 A Yes.
 15 Q It's dated 6-28-01?
 16 A Yes.
 17 Q And under the part where it says, "Describe
 18 claimant's present condition and level of care
 19 being provided," what did you write?
 20 A "Brian continues to receive 24 hour care that is
 21 provided by the family. He has limited ability to
 22 care for himself and short-term memory problems.
 23 Family provides O.T. and P.T. requires office
 24 visits and prescriptions as necessary."
 25 Q Same question for Exhibit 13, this one's dated

1 1-01.
 2 A "Brian continues to receive 24 care that is
 3 provided by the family and agency. The family
 4 provides O.T. and P.T. Requires office visits and
 5 prescriptions as necessary."
 6 Q Same question for Exhibit 14, 2-00.
 7 A "Brian continues to receive 24 hour care that is
 8 provided by the family and agency. Using a
 9 different agency and costs have gone down. Family
 10 provides O.T. and P.T. Requires office visits and
 11 prescriptions as necessary."
 12 Q Same question for Exhibit 15 from 2-00.
 13 A "Brian continues to receive 24 hour aide care that
 14 is provided by the family and agency. The family
 15 provides O.T. and P.T. Requires office visits and
 16 prescriptions as necessary."
 17 Q Same question for Exhibit 16 from September 1999
 18 A "Brian continues to receive 24 hour aide care that
 19 is provided by family and agency. The family
 20 provide O.T. and P.T. Requires office visits and
 21 prescriptions as necessary."
 22 Q Same question for Exhibit 17 from April of '99.
 23 A "It appears that legal issues are being dropped.
 24 Brian continues to receive 24 aide care provided
 25 by family and agency. Office visits and

1 prescriptions as necessary."
 2 Q From 10-29-98, there's no indication in that
 3 document as to his needs, is there?
 4 A No.
 5 MS. KULIK: That's Exhibit 18?
 6 MR. MCKENNA: I'm sorry,
 7 Exhibit 18.
 8 MS. KULIK: 10-29 what?
 9 THE WITNESS: '98.
 10 BY MR. MCKENNA:
 11 Q So you apparently forgot to put in there that
 12 information, correct?
 13 A I don't know.
 14 Q Well, under where the information is called for it
 15 says, "Describe claimant's present condition and
 16 level of care being provided."
 17 You didn't put that in there,
 18 did you?
 19 A No, I didn't.
 20 Q Exhibit Number 19 from 5-98, again you didn't put
 21 that in there, did you?
 22 A No, I didn't.
 23 Q Exhibit Number 20, I'm sorry, I believe that's
 24 3-11-98, you didn't put that in there again, did
 25 you?

1 A No.
 2 Q Exhibit 21 from 5-29-02, what did you indicate
 3 regarding his present condition and level of care?
 4 A "Brian continues to receive 24 care that is
 5 provided by family and agency. Rate increased for
 6 agency to \$20.00 per hour. Receives O.T. and P.T.
 7 provided by the family."
 8 Q And Exhibit 22 is another one that has 10-29-98,
 9 and again you apparently forgot to put in there
 10 the claimant's present condition and level of care
 11 being provided?
 12 A I didn't put it in there. I don't know what my
 13 reason was.
 14 Q I didn't ask you what the reason was.
 15 I said you apparently forgot
 16 to put it in there?
 17 A I don't know if I forgot.
 18 Q Well, you wouldn't have intentionally not put in
 19 the information that the document called for,
 20 would you?
 21 A These were some of the first statuses I did, so
 22 maybe I just didn't do them correctly.
 23 Q Well, is there something about "Describe
 24 claimant's present condition and level of care
 25 being provided" you didn't understand?

1 A No.
 2 Q I mean certainly what you would do if you read
 3 that, if I read a document and I was a claims
 4 specialist or a reserve specialist and it says,
 5 "Describe the claimant's present condition," it
 6 would give you a clue when they say present
 7 condition of what their medical condition was
 8 like, correct?
 9 A Correct.
 10 Q And level of care being provided, what is going on
 11 in the home and what are they doing for them?
 12 A Correct.
 13 Q But you didn't put that in for some of these?
 14 A No, I didn't.
 15 Q Okay. The reason we started with these documents,
 16 was because you answered a question for me and
 17 told me that you didn't know Brian's level of care
 18 and his condition.
 19 Do you remember that answer?
 20 A Yes, I do.
 21 Q Well, if you were doing your job correctly and
 22 weren't lying when you signed these documents, you
 23 did understand the level of care being provided
 24 and his condition?
 25 A No, that was pretty vague information.

1 Q You told me you wouldn't put down vague
 2 information when you fill these out, you would
 3 fill out all your forms in a clear and concise
 4 manner?
 5 MS. KULIK: Object to the form
 6 of the question, misstating what was previously
 7 testified to.
 8 BY MR. MCKENNA:
 9 Q Correct? Isn't that what you told me you were
 10 taught to do when you filled out of these forms,
 11 put down the information in a clear and concise
 12 manner?
 13 MS. KULIK: Object to the form
 14 of the question.
 15 THE WITNESS: I don't remember
 16 those exact words.
 17 MR. MCKENNA: I do.
 18 THE WITNESS: Well, I said
 19 that I would report the information that I have.
 20 That was all the information I had.
 21 BY MR. MCKENNA:
 22 Q I asked you a question today, you were taught
 23 whether it was the activity logs or CPS notes or
 24 Claim Status Reports or the reinsurance
 25 information, you were taught to put that

1 information down in a clear and concise manner and
 2 you testified under oath yes?
 3 A Yes.
 4 Q And now you're telling me that these documents you
 5 filled out weren't done in a clear and concise
 6 manner?
 7 A No, that's not what I'm saying.
 8 Q Okay. You know in order to fill these documents
 9 out that Brian has needed twenty-four hour care
 10 from the time you've had this file through the
 11 present, correct?
 12 A I don't know. Do you have the status that was
 13 done prior to when I started?
 14 Q Ma'am, I'm asking you based on these from the time
 15 you started with this file until the present,
 16 you've known, you have known Brian needed
 17 twenty-four hour care?
 18 A I don't know.
 19 Q You don't know, okay.
 20 MS. KULIK: What was the date
 21 on the first one?
 22 MR. MCKENNA: I don't know
 23 what her first one was. I only know what I have
 24 here. I can't answer that.
 25 THE WITNESS: I think it was

1 May of '98.
 2 MS. KULIK: So can you answer
 3 his question from May of '98?
 4 THE WITNESS: Can I see the
 5 statuses?
 6 MR. MCKENNA: Here's the May
 7 '98, that's the one you forgot to write anything
 8 on.
 9 MS. KULIK: Wait, I'm going to
 10 object to that statement. The Witness testified
 11 she didn't write anything on, she doesn't know --
 12 MR. MCKENNA: Is it form or
 13 foundation you're concerned about or are you
 14 trying to tell this Witness how to answer the
 15 question?
 16 MS. KULIK: I'm not telling
 17 the Witness how to answer the question.
 18 MR. MCKENNA: I don't need you
 19 to tell me a damn thing. You can make all your
 20 speeches you want, tell her what to say. I mean
 21 if we're going to watch a marionette show, just
 22 reach over and pull.
 23 MS. KULIK: I don't need to
 24 tell her what to say because she already said it.
 25 You're misquoting her.

1 MR. MCKENNA: I don't need you
 2 or she doesn't need you to tell us that. It's
 3 form or foundation.
 4 THE WITNESS: My first status
 5 doesn't say twenty-four hour care, so I don't know
 6 if I knew it was twenty-four hour care.
 7 BY MR. MCKENNA:
 8 Q Do you have a file there, does it have the status
 9 reports from Miss Robins prior to you?
 10 A Yes.
 11 Q You would have read those?
 12 A I would have read the file, the last one she did.
 13 Q The one she did before yours?
 14 A The one that Patty did before mine said, "Brian is
 15 home with agency and family aide care. Brian
 16 requires and has regular office visits."
 17 Q Are you saying 5-98 was the first one you did?
 18 A No, 3-98.
 19 Q After 3-98 doesn't mention anything about
 20 twenty-four hour care?
 21 A No.
 22 Q What was the next one you did?
 23 A It looks like I did it again in 5-98.
 24 Q Why don't you do this, why don't you take a look
 25 at your Claim Status Reports and tell me when the

1 first one is that you found that Brian needs
 2 twenty-four hour care?
 3 A April of '99 is the first one I indicated
 4 twenty-four hour care.
 5 Q Now, is it your testimony that Brian didn't need
 6 twenty-four hour care prior to April of '99?
 7 A No.
 8 Q Is it your understanding that Brian has needed
 9 twenty-four hour care since he was released from
 10 the hospital?
 11 A I don't know what he needed prior to this.
 12 Q You don't know what he needed prior to what?
 13 A Prior to the April '99 one where I indicated
 14 twenty-four hour care.
 15 Q So you're saying you had handled this file for
 16 over a year, thirteen months, and didn't know what
 17 level of care he needed?
 18 A Correct.
 19 Q And that was the job you were doing for AAA?
 20 A Correct.
 21 Q That was the job that you weren't qualified to do
 22 when they hired you?
 23 MS. KULIK: Objection, form
 24 and foundation, argumentative.
 25 BY MR. MCKENNA:

1 Q Is that correct?
 2 A I wasn't trained when I started, no.
 3 Q You wouldn't have been qualified to do the job
 4 when you were hired, correct?
 5 A Correct.
 6 Q Did it take you over a year to become qualified to
 7 do that job?
 8 A No.
 9 Q Why did it take you a year to fill out a form and
 10 put the information in the form that it called
 11 for?
 12 MS. KULIK: Objection, form
 13 and foundation and argumentative.
 14 THE WITNESS: I don't know.
 15 BY MR. MCKENNA:
 16 Q As of April of '99, however, you were aware that
 17 Brian needed twenty-four hour care?
 18 A Right.
 19 Q You were aware after April of 1999, that in
 20 addition to twenty-four hour care, he also
 21 received O.T. and P.T. provided by his family,
 22 correct?
 23 A Correct.
 24 Q O.T and P.T. are abbreviations for what?
 25 A Occupational therapy and physical therapy.

1 Q And again that's information that you learned from
 2 the file?
 3 A That he was receiving those services.
 4 Q From his family?
 5 A Yes.
 6 Q And was AAA paying for those services?
 7 A I don't know.
 8 Q Is there a different rate for O.T. and P.T. than
 9 home aide care?
 10 A I don't know.
 11 Q Do you know what an O.T. was paid in 1998?
 12 A No, I don't.
 13 Q Would you agree with me that it is the value of
 14 the service being provided and not the provider of
 15 the service that determines the rate of
 16 compensation?
 17 MS. KULIK: Objection, you're
 18 asking the Witness for an opinion.
 19 THE WITNESS: I don't know.
 20 BY MR. MCKENNA:
 21 Q When you were an adjuster, if a neurosurgeon
 22 provided home health care for a child or spouse,
 23 would you pay them the rate of a neurosurgeon or
 24 the rate of the home health aide?
 25 MS. KULIK: Objection, form

1 and foundation.
 2 THE WITNESS: I would probably
 3 pay them the home health aide rate.
 4 BY MR. MCKENNA:
 5 Q Because it's the value of the service not the
 6 provider of the service that determines the rates,
 7 correct?
 8 MS. KULIK: Same objection.
 9 THE WITNESS: I don't know
 10 what determines the rate.
 11 BY MR. MCKENNA:
 12 Q You have no idea what determines the rate of
 13 compensation?
 14 A No.
 15 Q How can you do your job?
 16 A It's based on what we're paying. I don't
 17 determine what we're going to pay. I reserve
 18 based on what we're paying or what we're going to
 19 pay.
 20 Q So you're saying as long as AAA continues to pay a
 21 certain amount, you'll project that into the
 22 future?
 23 A Correct.
 24 Q Even if it's totally wrong?
 25 A Correct.

1 Q Even if it's fraudulent?
 2 A That wouldn't be my determination to make.
 3 Q I didn't ask you that, ma'am. Don't change my
 4 question.
 5 A Yes.
 6 Q Even if it's fraudulent?
 7 A Yes.
 8 Q Even if you're cheating the insured?
 9 A Yes.
 10 Q And since 2001, you've been told not to say
 11 anything to the insureds or the adjusters if you
 12 feel they're being cheated and defrauded, correct?
 13 MS. KULIK: Objection, form,
 14 foundation, argumentative, asking for speculation
 15 and opinions.
 16 BY MR. MCKENNA:
 17 Q Go ahead.
 18 A No, that's not correct.
 19 Q In 2001 who told you to tell the insureds they're
 20 being defrauded?
 21 A No one instructed me to tell insureds they're
 22 being defrauded.
 23 Q Who told you to tell insureds in 2001 they were
 24 being cheated?
 25 A No one.

- 1 Q Who told you to tell an adjuster that you were
2 cheating an insured since 2001?
- 3 A No one.
- 4 Q Who told you to tell an adjuster that they were
5 defrauding an insured since 2001?
- 6 A No one.
- 7 Q The question I asked you was, since 2001 you have
8 been told not to tell them those things --
- 9 MR. KULIK: Objection, form
10 and foundation and misstating what the Witness has
11 testified to.
- 12 MR. MCKENNA: Okay. Before I
13 was so rudely interrupted and didn't get to finish
14 my question.
- 15 BY MR. MCKENNA:
- 16 Q My question was since 2001, you have been told not
17 to tell insureds or adjusters those things.
- 18 Are you saying that's not
19 true?
- 20 A No. I've been told it's no longer my
21 responsibility, but I have been told if you see
22 something that doesn't look right to bring it to
23 someone's attention.
- 24 Q And you would document that?
- 25 A I would send an e-mail to a manager.

- 1 Q Why wouldn't you send a CPS to the adjuster?
- 2 A Because I don't think I should be addressing
3 issues with the adjuster.
- 4 Q Why don't you just send and CPS then to the
5 manager? Managers review these files. If you
6 send a CPS to the manager, it's going to come up
7 on that manager's review, isn't it?
- 8 A I send it to my manager.
- 9 Q You can send a CPS to the manager of the file?
- 10 A I could update the file, yes.
- 11 Q You don't do that?
- 12 A No, I don't.
- 13 Q If you did that and there was litigation like
14 this, I'd be able to see those updates on the
15 screen when they're printed out, wouldn't I?
- 16 A Yes, you would.
- 17 Q So if you throw away the e-mails, I wouldn't be
18 able to see those things, would I?
- 19 A No, you don't.
- 20 (LUNCHEON RECESS TAKEN)
- 21 THE WITNESS: Can I make a
22 correction to an answer?
- 23 MR. MCKENNA: Sure.
- 24 THE WITNESS: One question you
25 asked me and I had said, if I found something

- 1 wrong I would send it to my manager.
- 2 I've been spending them to the
3 MMU manager, not my manager.
- 4 BY MR. MCKENNA:
- 5 Q To what manager?
- 6 A Either Scott Alkemo or Sandy Poke.
- 7 Q So if you saw something where there was an
8 underpayment, nonpayment on an issue involving an
9 insured that you felt needed to be paid or fairly
10 to be paid, you would go to Sandy Poke or Scott
11 Alkemo?
- 12 A Yes.
- 13 Q And you would send them an e-mail?
- 14 A Yes.
- 15 Q Which again would get destroyed?
- 16 A I don't know.
- 17 Q You would destroy yours eventually, right?
- 18 A I would, yes.
- 19 Q And I guess I have to just to be consistent.
- 20 Had you sent it as a CPS or
21 updated the file on the computer screen, it
22 wouldn't get destroyed and everybody would know
23 what you were thinking?
- 24 A Correct.
- 25 MS. KULIK: I object to the

- 1 form of that question.
- 2 BY MR. MCKENNA:
- 3 Q Well, you have been taught at AAA when you
4 document CPS memos or screens, to put down in a
5 clear and concise manner so that everyone knows
6 why you're doing it and what you're thinking for
7 doing it, correct?
- 8 A Correct.
- 9 Q Have you been taught at AAA not to use the CPS
10 memos or screens?
- 11 A No.
- 12 Q Why would you use a wizard mail or e-mail if you
13 can do the same thing with a CPS memo?
- 14 A Because I don't think I should be putting
15 directives into the CPS.
- 16 Q But if they're not doing it correctly?
- 17 A It might just be my opinion.
- 18 Q Okay.
- 19 MS. KULIK: Can I ask her a
20 question?
- 21 MR. MCKENNA: Can you ask her
22 a question, sure.
- 23 MS. KULIK: If you were
24 working on a file at the branch and you notice --
25 from the branch you were setting reserves and it

1 needed to be looked at, if you put anything in the
 2 CPS, is that anything that Sandra Poke or Scott
 3 Alkemo would ever see?
 4 THE WITNESS: No.
 5 BY MR. MCKENNA:
 6 Q If you give an e-mail to Sandy Poke or Scott
 7 Alkemo, you are at that point expecting, hoping
 8 they would do something to correct it?
 9 A I'm sending it to them because sometimes I don't
 10 even know what the right thing to do is, but.
 11 Q It seems wrong to you and you want something done?
 12 A Yes.
 13 Q My point is when you're doing that, if you're
 14 right, you expect that they will fix it?
 15 A Yes.
 16 Q If you're not right and it's something you're not
 17 familiar with, you're going to expect them to come
 18 back and let you know?
 19 A They don't usually come back to me.
 20 Q So you're usually right?
 21 A I don't know.
 22 Q They've never come back to you?
 23 A They don't let me know either way.
 24 Q How would you know if you were ever wrong?
 25 A I wouldn't.

1 Q Okay. Would you agree that the purpose for claims
 2 people when you were working in claims, is to make
 3 sure that an insured who has a claim is properly
 4 taken care of?
 5 A Yes.
 6 Q In reserves a big part of what you're doing is to
 7 make sure the insured is properly taken care of
 8 both at the current time and into the future by
 9 setting the correct reserve so that there's enough
 10 money to pay their claim?
 11 A No, I wouldn't agree with that.
 12 Q So you don't think that in your job the insured
 13 plays any role?
 14 A No.
 15 Q If that's true, then why would you advise people
 16 when you see something wrong?
 17 A Because I've been instructed to.
 18 Q But you told me you were also instructed not to on
 19 other occasions?
 20 A What I was instructed was that it wasn't necessary
 21 for me to send e-mails and remind people of the
 22 rates, they had that information now. They had
 23 the training. So it wasn't necessary for me to do
 24 that.
 25 Q But if you see something wrong --

1 A If you see something wrong, bring it to someone's
 2 attention.
 3 Q So it is part of your job if you recognize a
 4 problem for an insured to advise somebody?
 5 A Yes.
 6 Q So ultimately making sure that the insured is
 7 receiving the benefit they're entitled to, would
 8 be your job and everyone else's job at AAA?
 9 MS. KULIK: Objection, form
 10 and foundation.
 11 You can answer.
 12 THE WITNESS: Well, no,
 13 because I'm ultimately not responsible for that
 14 claim.
 15 BY MR. MCKENNA:
 16 Q I didn't say you were.
 17 Ultimately you're responsible
 18 if you see it making sure that the insured is
 19 properly taken care of?
 20 A If I see it, yes.
 21 Q That would be the same for anyone at AAA if they
 22 see it, make sure that it's been taken care of
 23 properly?
 24 MS. KULIK: Objection, form
 25 and foundation and you're asking for speculation.

1 BY MR. MCKENNA:
 2 Q Correct?
 3 A No, I don't think it's up to every employee to
 4 make sure it's being handled properly.
 5 Q I'm not saying you have to go out of your way to
 6 do something.
 7 A If you bring that to somebody's attention, it's up
 8 to them.
 9 Q If you see something wrong, shouldn't anyone at
 10 AAA if they see something wrong if it relates to
 11 the way an insured's claim is being handled, to
 12 bring it to someone's attention to correct it?
 13 MS. KULIK: Objection, form
 14 and foundation. You're asking her for her
 15 opinion.
 16 THE WITNESS: I think they
 17 should bring to it somebody's attention. I don't
 18 think it's up to them to follow-up for changes.
 19 BY MR. MCKENNA:
 20 Q Ma'am, please don't change my questions.
 21 Did I ask you about following
 22 up for a change?
 23 A Would you repeat your question?
 24 Q Did I ask you about following up for a change?
 25 A I'm not sure. Could you repeat the question?

1 Q Well, then you should just tell me that before you
 2 go answering questions that I didn't ask.
 3 A Okay.
 4 Q Let me try to make it a little clearer.
 5 You have an employee at AAA
 6 that as part of their job discovers that an
 7 insured is not being reasonably or fairly taken
 8 care of the way they're treated by AAA.
 9 Don't they have an obligation
 10 to bring that to someone at AAA's attention?
 11 MS. KULIK: Objection, you're
 12 asking her for opinion outside of her scope.
 13 She's not an expert. You're asking for an
 14 opinion. I'll object to the form and foundation
 15 and relevance.
 16 THE WITNESS: I don't know if
 17 they have an obligation.
 18 BY MR. MCKENNA:
 19 Q Okay. So if someone at AAA is stealing from an
 20 insured, what people at AAA as far as you know are
 21 obligated to advise management at AAA of that?
 22 MS. KULIK: Object to the form
 23 of the question.
 24 You can answer.
 25 THE WITNESS: Could you repeat

1 the question?
 2 MR. MCKENNA: Sure.
 3 BY MR. MCKENNA:
 4 Q If an insured at AAA is having money, benefits
 5 that they're entitled to stolen from them because
 6 they're not being paid and they should be --
 7 MS. KULIK: Object to the form
 8 of the question.
 9 MR. MCKENNA: Can I finish the
 10 question first?
 11 MS. KULIK: Well --
 12 MR. MCKENNA: You're what?
 13 MS. KULIK: Never mind. It's
 14 so objectionable.
 15 MR. MCKENNA: So objectionable
 16 that you thought you could breach all of the
 17 procedures --
 18 MS. KULIK: I thought maybe
 19 you were done.
 20 Mr. MCKENNA: -- and rudely
 21 interrupt me.
 22 MR. MCKENNA: Is that it?
 23 MS. KULIK: Nothing quite so
 24 sinister.
 25 BY MR. MCKENNA:

1 Q If an insured is entitled to receive benefits and
 2 be paid cash reimbursement for services rendered,
 3 and someone at AAA is not paying them
 4 unreasonably, fraudulently, intentionally, who at
 5 AAA is responsible to ensure that that doesn't
 6 continue?
 7 A I think if somebody had the expertise to recognize
 8 that, then they would want to report it to
 9 someone.
 10 Q So anyone along the chain in a claim process that
 11 can recognize entitlement to a benefit, the right
 12 to the benefit, the amount of the benefit and sees
 13 it and doesn't do anything, what do you call that?
 14 A I don't know.
 15 MS. KULIK: Object to the form
 16 of the question.
 17 BY MR. MCKENNA:
 18 Q What do you call it?
 19 A I don't know.
 20 Q Is it stealing?
 21 MS. KULIK: Same objection.
 22 You're asking her for opinion.
 23 THE WITNESS: No, I don't
 24 think so.
 25 BY MR. MCKENNA:

1 Q Is it fraud?
 2 A No, I don't think so.
 3 Q It's not fraud to know someone's entitled to
 4 something and do nothing about it?
 5 MS. KULIK: Objection, you're
 6 asking for a legal conclusion.
 7 MR. MCKENNA: No, I'm not.
 8 BY MR. MCKENNA:
 9 Q Ma'am, you told me that at AAA if someone has the
 10 specialized knowledge and recognizes something,
 11 they should let management know, correct?
 12 A Yes.
 13 Q All right. As an adjuster, you would have dealt
 14 with issues of fraud in claims, specialists
 15 reserves, there still has to be issues of fraud
 16 that you have to consider and deal with, isn't
 17 there?
 18 A In reserving?
 19 Q Yes. If you're reviewing a file and you see
 20 something that doesn't make any sense, you'd have
 21 to be able to recognize what it is or use what you
 22 did as an adjuster and say maybe there's some
 23 fraud going on here, you'd let someone know about
 24 that, wouldn't you?
 25 MS. KULIK: Object to the form

1 of the question.
 2 THE WITNESS: You're talking
 3 about on the end of the insured if I thought it
 4 was fraud?
 5 MR. MCKENNA: On anybody, on
 6 anyone's part.
 7 BY MR. MCKENNA:
 8 Q An insured, a reinsurance company, the MCCA,
 9 anybody, if you see fraud you would let management
 10 know about it, wouldn't you?
 11 A I don't know that I would recognize fraud on the
 12 insurance part. I would leave that decision up to
 13 the adjuster.
 14 Q My question was, if you recognized fraud in any
 15 capacity at AAA, whether as an adjuster or a
 16 claimant specialist in reserves, you would let
 17 management know?
 18 A Yes.
 19 Q And that would be part of your job, wouldn't it?
 20 A Yes.
 21 Q So if you see a situation whether it's a fraud on
 22 the part of an insured, a provider or someone at
 23 AAA, and as you said you have been trained by AAA
 24 to know what benefits people are entitled to, what
 25 rates they're to be paid and, you know, this is

1 going on, you should do something?
 2 MS. KULIK: Objection, form
 3 and foundation.
 4 BY MR. MCKENNA:
 5 Q Go ahead.
 6 A Yes, I would do something.
 7 Q And as we talked earlier, fraud would be the
 8 intentional act of not paying something, or acting
 9 for payment for something you're not entitled to?
 10 MS. KULIK: Objection, you're
 11 asking for a legal conclusion and an opinion.
 12 BY MR. MCKENNA:
 13 Q Go ahead.
 14 A Yes.
 15 Q And that's from your standpoint as an adjuster,
 16 that's what you've been taught by AAA, correct?
 17 A Yes.
 18 Q Now, AAA has a department that deals with the
 19 investigation of what might be fraud, don't they?
 20 A Yes, they do.
 21 Q And what do you call that department?
 22 A CIU.
 23 Q Claims Investigation Unit?
 24 A Yes.
 25 Q There's a whole bunch of those acronyms you guys

1 use.
 2 What's the name of the
 3 department that AAA has for investigation of fraud
 4 on the part of the company?
 5 A I don't know of one.
 6 Q What's the name of the department for
 7 investigation of fraud on the part of management?
 8 A I don't know.
 9 Q What do you call the department that investigates
 10 fraud by the adjusters?
 11 A I don't know.
 12 MS. KULIK: Objection, form
 13 and foundation.
 14 BY MR. MCKENNA:
 15 Q Is there one?
 16 A I don't know.
 17 Q You've never heard of one?
 18 A No.
 19 Q Claims Investigation Unit deals with investigating
 20 insureds and providers, correct?
 21 A I'm not sure what all they investigate.
 22 Q To your knowledge, do they deal with anything
 23 other than providers and insureds at Claims
 24 Investigation Unit?
 25 A Not that I know of.

1 Q All right. The seminars that you went to since
 2 you had come back to AAA, did any of them involve
 3 training on dealing with fraud issues?
 4 A I don't think so.
 5 Q All right. Were you ever taught by management at
 6 AAA at any time up to they present that when you
 7 discover an underpayment or a nonpayment that you
 8 have to go back and correct it?
 9 A I don't know if I was ever told that or not.
 10 Q Well, you've read the No-Fault policy that AAA
 11 has?
 12 A Yes.
 13 Q And you're familiar with the Michigan No-Fault
 14 Act?
 15 A Yes.
 16 Q How far back do you go when you discover that a
 17 claim was underpaid to correct it?
 18 MS. KULIK: Objection to the
 19 form and foundation. Form, foundation and
 20 relevance to this Witness.
 21 THE WITNESS: Any claim that
 22 I've had I found them, an underpayment, I would
 23 have went back to the date of the error.
 24 BY MR. MCKENNA:
 25 Q That would be the fair thing to do?

1 A Yes.
 2 MS. KULIK: Objection,
 3 relevance.
 4 BY MR. MCKENNA:
 5 Q If it was your error?
 6 A If it was my error.
 7 MS. KULIK: Same objection.
 8 BY MR. MCKENNA:
 9 Q Otherwise to not do that would be cheating people
 10 out of benefits they were entitled to, correct?
 11 MS. KULIK: Objection, you're
 12 asking this Witness for an opinion.
 13 BY MR. MCKENNA:
 14 Q Is that correct?
 15 A If I knew it was wrong and I intentionally didn't
 16 pay it, yeah.
 17 Q Do you know what it means to cover-up mistakes?
 18 A What do you mean?
 19 Q Well, to make sure they never come to the light of
 20 day. If you found a mistake, an error on a file
 21 and you were constantly putting in CPS updates
 22 when you discovered these to expose these errors,
 23 the insureds, the insureds' lawyers or anyone else
 24 looking at those CPS notes, would discover the
 25 same thing, wouldn't they?

1 A Yes.
 2 Q But when you don't put those CPS updates on the
 3 screen, the only one that would know about those
 4 mistakes are the people that have committed them
 5 and the ones that were not disclosing them,
 6 correct?
 7 MS. KULIK: Objection, form
 8 and foundation and relevance.
 9 THE WITNESS: Would you repeat
 10 it?
 11 MR. MCKENNA: Sure.
 12 BY MR. MCKENNA:
 13 Q If you discover that there's been a mistake, once
 14 the mistake has been discovered, going back to
 15 what we talked about earlier about the don't ask
 16 don't tell?
 17 A Yes.
 18 Q Once the mistake has been discovered, unless
 19 somebody specifically asks, you wouldn't document
 20 that file in a way that anyone other than people
 21 at AAA would be able to see it, would you?
 22 MS. KULIK: Objection, form
 23 and foundation and relevance.
 24 THE WITNESS: No, I wouldn't
 25 document the file.

1 BY MR. MCKENNA:
 2 Q AAA doesn't document the file in any way for
 3 people other than AAA to know that that occurred,
 4 do they?
 5 A I don't know what anyone else does.
 6 Q Have you ever seen a file documented in a way
 7 after the misstate or nonpayment was discovered so
 8 that insureds or an attorney would be able to see
 9 it?
 10 A I don't remember.
 11 Q Can't recall of any?
 12 A No.
 13 Q These wizard and e-mails that we've talked about,
 14 if they were produced and not destroyed, they
 15 would be to the extent that they were discussing
 16 issues of nonpayment, underpayment or fraud, would
 17 be brought to the light of day, wouldn't they?
 18 A Yes.
 19 Q Your files as far as your job is concerned are
 20 reviewed at least twice a year; is that correct?
 21 A Yes.
 22 Q And you said that files were reviewed as part of
 23 an intervention globally at least twice since
 24 you've come back to AAA?
 25 A Yes.

1 Q By that I'm just going to talk about these CAT
 2 files.
 3 A Well, when you said reviewed, the files were
 4 reviewed only one time that I was aware, but there
 5 were two interventions.
 6 Q All right. But since you've been here, you review
 7 a file but you don't review the whole file?
 8 A Correct.
 9 Q And you review the file, and if you want
 10 additional information you can send a CPS memo to
 11 an adjuster or manager asking for the information
 12 that you need, correct?
 13 A Yes, I could.
 14 Q But you don't do that, you send wizard mails or
 15 e-mails or make phone calls?
 16 A Usually.
 17 Q Correct?
 18 A Yes.
 19 Q And again if you had done the CPS memos or written
 20 letters that were part of the file, we'd all know
 21 what you were doing and why, correct?
 22 A Correct.
 23 Q The files themselves to your knowledge are they
 24 ever reviewed historically to ensure that over
 25 time the insureds have been paid all of what

1 they're entitled to?
 2 A What do you mean by that?
 3 Q Well, you do work on files at least twice a year?
 4 A Correct.
 5 Q Your review you've told me is not historical, you
 6 go back as far as where you were the time before,
 7 correct?
 8 A Correct.
 9 Q To your knowledge, while you were an adjuster or
 10 while you're currently employed in your position
 11 now, does AAA select these files on a rotating
 12 basis or pull them out at random and review the
 13 file from beginning to end to make sure that the
 14 insureds were being paid everything they were
 15 entitled to?
 16 A I don't know.
 17 Q That would make sense to do that, wouldn't it?
 18 MS. KULIK: Objection,
 19 relevancy. You're asking her for an opinion.
 20 BY MR. MCKENNA:
 21 Q Wouldn't it?
 22 A I don't think the adjusters got time for that.
 23 Q I didn't say they had time for it. That would
 24 make sense?
 25 A In a perfect world.

1 Q Right?
 2 A Yes.
 3 Q Okay. By the way to follow-up on what you said
 4 about on what you said about the adjusters you
 5 don't think have time for that.
 6 The adjusters at AAA are
 7 overworked, aren't they?
 8 A I don't know.
 9 Q You're sure you don't know?
 10 A I don't know. I haven't handled claims in a long
 11 time.
 12 Q Do you recall testifying in the past that
 13 adjusters are overworked?
 14 A No.
 15 MS. KULIK: Objection,
 16 relevancy.
 17 BY MR. MCKENNA:
 18 Q Do you believe AAA is understaffed?
 19 MS. KULIK: Objection,
 20 relevancy and you're asking her for an opinion.
 21 THE WITNESS: Not at this
 22 time.
 23 BY MR. MCKENNA:
 24 Q Not at this time. So today you think they're
 25 properly staffed?

1 A We've been told we're overstaffed.
 2 Q I didn't ask you what you've been told. I asked
 3 you your opinion in doing your job are you
 4 understaffed, properly staffed or overstaffed?
 5 MS. KULIK: Same objection.
 6 You're asking for her opinion. She's a lay
 7 Witness.
 8 THE WITNESS: Are you talking
 9 about my job?
 10 BY MR. MCKENNA:
 11 Q Your job?
 12 A We're understaffed right now.
 13 Q What about adjusters handling catastrophic claims
 14 same question, overstaffed, understaffed, properly
 15 staffed?
 16 MS. KULIK: Same objection,
 17 you're asking for opinion.
 18 THE WITNESS: I don't know.
 19 BY MR. MCKENNA:
 20 Q Don't know?
 21 A I don't know.
 22 Q When you were an adjuster at AAA, did you feel
 23 that you were overworked because you were
 24 understaffed?
 25 A No, I didn't.

1 Q Do you recall being asked that question in the
 2 past and answering differently?
 3 A No, I don't.
 4 Q The testimony you're giving today, I want to make
 5 sure that I understand this correctly, is that
 6 since 2001, you don't pay attention anymore to
 7 what the current MMU payment rates are?
 8 A No.
 9 Q Is that correct?
 10 A That's correct.
 11 Q And you do your entire job whether the claim is
 12 being paid at \$5.00 an hour or \$10.00 an hour, you
 13 go off of what they paid before?
 14 A What they're currently paying.
 15 Q And how do you determine what they're currently
 16 paying?
 17 A A lot of them put it in the CPS memos now or
 18 they'll put it on the check screen.
 19 Q Well, you have a payment screen or payment log
 20 somewhere, don't you?
 21 Is that a yes?
 22 A Yes.
 23 Q You can look on there and see the number of hours
 24 and what they're paying?
 25 A Well, on the payment log you can't always tell

1 from that. It depends sometimes the number of
 2 hours would vary from month to month, so on those
 3 cases it's hard to determine.
 4 Q But you can use that as a tool?
 5 A Yes.
 6 Q And you can look at the CPS notes?
 7 A Yes.
 8 Q And if it's not there you can call the adjuster?
 9 A Yes.
 10 Q Or send a CPS screen requesting the information?
 11 A Yes.
 12 Q But you usually don't do that, either?
 13 A No, I usually don't.
 14 Q You send the e-mail that eventually gets destroyed
 15 by you, correct?
 16 A I rarely send e-mails anymore.
 17 Q Now, the information, just so I understand this
 18 correctly, if you can't find out from looking at
 19 the file on the computer and you have to know what
 20 it is that they're currently paying, you'd have to
 21 get that information from someone else, wouldn't
 22 you, you'd have to ask somebody to give you the
 23 information?
 24 A Would you state that question again?
 25 Q Sure.

1 If you're looking at your
 2 computer screen for a particular file, let's say
 3 Bearden, and you can't determine how much they
 4 were being paid hourly, and you're going to try to
 5 set a reserve for the next six months or next
 6 year, and you can't find it in the payment log or
 7 check log, you'd have to actually get the
 8 information from someone else, wouldn't you?
 9 A I may just go based on past history, if the past
 10 histories were remaining stable.
 11 Q So if you look, for example, at one of these Claim
 12 Status reports, and it said monthly cost for care,
 13 \$10,333.00, you may just continue that?
 14 A Yes.
 15 Q Now, does the future pay out on a claim -- sorry,
 16 future reserve you've told me, you will not change
 17 a reserve on a file unless you are told there's
 18 going to be a change in what gets paid, correct,
 19 not a might be paid, but it will be paid, correct?
 20 A You mean told specifically?
 21 Q Yes.
 22 You told me that if there was
 23 a \$5.00 payment and a \$10.00 payment that should
 24 be made, you will not reserve the \$10.00 unless
 25 you were told that they were going to start paying

1 at \$10.00?
 2 A Yes, unless I know that.
 3 Q Unless you know that, you're going to continue to
 4 reserve based on what is currently getting paid,
 5 correct?
 6 A Correct.
 7 Q So any change in reserves that you make, either
 8 increasing or decreasing is based on someone
 9 telling you they're going to pay more or less in
 10 the future?
 11 A Well, not always based on someone. If the
 12 increase has taken place during the last six
 13 months and I can tell that, then I'll adjust that.
 14 Q I'm not talking about that. I'm talking about
 15 where there hasn't been an increase --
 16 A Okay.
 17 Q -- and you make a change. For the example I've
 18 been using all along is the \$5.00 and \$10.00.
 19 A Okay.
 20 Q If there's a \$5.00 an hour payment being made for
 21 attendant care and you know that MMU finally
 22 discovers the misstate and says we're now going to
 23 pay \$10.00 an hour, you don't need to talk to the
 24 adjuster about it, you know you're going to be
 25 reserving in the future at a \$10.00 an hour rate,

1 correct?
 2 A If someone has told me they're going to pay it?
 3 Q Someone's told you that?
 4 A Correct.
 5 Q Now, by the same token, if you're paying at \$5.00
 6 an hour, okay, you're saying that the reserve will
 7 be set based upon that amount?
 8 A Correct.
 9 Q Not some future projection that there may be more
 10 paid?
 11 A Correct.
 12 Q Because you wouldn't set a reserve based on
 13 anything other than the certainty that you're
 14 going to pay it, correct?
 15 A Based on what we know, yes.
 16 Q Based on what you've been told at AAA, that's how
 17 you do it?
 18 A Correct.
 19 Q So someone at AAA would have to tell you to
 20 increase the reserve and give you a reason for it,
 21 correct?
 22 A Yes, when they're making a change, that's correct.
 23 Q If you haven't changed the hourly rate that you're
 24 paying, but you've changed the reserve, the reason
 25 you would have changed that reserve would be

1 because somebody in management above you told you
 2 to do it, you wouldn't do that on your own?
 3 A I wouldn't change a reserve unless I saw a reason
 4 to.
 5 Q That's my point.
 6 So if they continue to pay at
 7 the same rate, and you show a change in reserves,
 8 an increase, that increase wouldn't be based on
 9 the continued payment of the old hourly rate, it
 10 would be based on somebody in management telling
 11 you, giving you the information that causes you to
 12 increase that reserve?
 13 A That would be based on some information from
 14 someone, yes.
 15 Q All right. And my question is, where do I get
 16 that information from? Is that an e-mail, a
 17 wizard mail, is it a CPS memo, how do you get that
 18 information from management that causes you to
 19 increase reserves, even though the hourly rates
 20 haven't been changed?
 21 MS. KULIK: Objection, form
 22 and foundation, and I believe misstating what the
 23 Witness testified to.
 24 THE WITNESS: It wouldn't come
 25 from management. It would usually be from the

1 adjuster. If somebody felt they needed more money
 2 in their reserve and called me and said, you know,
 3 this is why.
 4 BY MR. MCKENNA:
 5 Q But my point is, an adjuster if they said I'm
 6 going to go from \$5.00 to \$10.00, would be giving
 7 you the information you know that you're now going
 8 to pay \$10.00 an hour in the future at a minimum,
 9 correct?
 10 A Correct.
 11 Q My point is, and my question is, and the point of
 12 it is, if there's \$5.00 an hour being paid and
 13 that doesn't change and that stays the same, the
 14 adjuster's not increasing it, yet I see from your
 15 Claim Status Report that there's an increase in
 16 the reserves.
 17 According to what you told me
 18 if I'm understanding you correctly, and I've gone
 19 over the foundational element of it, you wouldn't
 20 increase a reserve on the expectancy of a future
 21 payment, you would increase the reserve only when
 22 you knew they were going to pay more in the
 23 future?
 24 A Correct.
 25 Q So if the reserve is based on what is currently

1 being paid and being projected to continue to get
 2 paid, you wouldn't make a large increase in
 3 reserves --
 4 A Correct.
 5 Q -- if the rate was staying the same?
 6 A Correct.
 7 Q There would have to be another reason for the
 8 increase in the reserve. That would be a reason
 9 other than an adjuster telling you something,
 10 wouldn't it?
 11 A It would have to be some change in the claim.
 12 Q I understand that, but the adjuster is only going
 13 to tell you that they're increasing the amount
 14 they're paying, that's from an adjuster, that
 15 would affect what you set for a reserve. But if
 16 the adjuster is going to continue to pay the same
 17 amount, a raise in reserve wouldn't be based on
 18 information coming from the adjuster, would it?
 19 A I wouldn't have raised a reserve unless I had a
 20 reason.
 21 Q I didn't say that. Would you please listen to the
 22 questions and just answer them.
 23 MS. KULIK: If you understand
 24 the question.
 25 BY MR. MCKENNA:

1 Q If the adjuster isn't changing the rate of
 2 compensation, yet you have changed your reserves
 3 and increased them, that change in increasing the
 4 reserve wouldn't be based on the adjuster telling
 5 you I'm going to pay more, would it?
 6 A Correct.
 7 Q But you said you wouldn't change the reserves
 8 unless there's certainty as to why you're going to
 9 spend more in the future, correct?
 10 A I don't know that I would have to have certainty
 11 as to why.
 12 Q Well, the only thing you change a reserve for is
 13 an expected payout that's larger than what you're
 14 paying, correct?
 15 A Correct.
 16 Q So if at \$5.00 an hour the adjuster continues
 17 paying, yet your report show that you've increased
 18 the reserves, where would the information come
 19 from that you relied upon to increase the
 20 reserves?
 21 MS. KULIK: Objection to the
 22 form and foundation.
 23 THE WITNESS: If there were no
 24 changes in the claim and I increased the reserve,
 25 the only reason I can think of is that the

1 difference between my projection and the net
 2 reserve fell below or more than ten percent.
 3 BY MR. MCKENNA:
 4 Q Okay. Do lawyers set reserves?
 5 A No.
 6 Q Only claims reserves specialist set reserves,
 7 correct?
 8 A We set the reserves, but if the claim is in
 9 litigation, I would contact the attorney and ask
 10 him how much do you want for the litigation.
 11 Q The question is does lawyer set reserves and the
 12 answer was no?
 13 A No.
 14 Q You're the only one that set reserves?
 15 A Yes.
 16 Q So, for example, if I understand what you're
 17 saying then, if there's a claim in litigation, but
 18 you're still paying the same amount of money --
 19 A Yes.
 20 Q -- say \$5.00 an hour, you wouldn't increase in the
 21 reserves just because it was in litigation?
 22 A I would contact the attorney and ask him how much
 23 do you need.
 24 Q My question was, if you have \$5.00 an hour and the
 25 claim was put into litigation and the adjuster's

1 not paying more than the \$5.00 an hour, based on
 2 everything you've told me you would not increase
 3 the reserves just because it was in litigation,
 4 would you?
 5 A I would add a projection for the litigation.
 6 Q The projection for the litigation would be based
 7 on a cost other than the payment of PIP benefits,
 8 though?
 9 A It would be based on the recommendation from the
 10 handling attorney, what they think.
 11 Q So you're going to have an attorney set reserves
 12 for you?
 13 MS. KULIK: Object to the form
 14 of the question.
 15 BY MR. MCKENNA:
 16 Q You're going to have an attorney set a reserve
 17 amount?
 18 A I need him to tell me, the attorney to tell me
 19 what's their exposure is.
 20 Q Can you answer the question, you're going to have
 21 an attorney tell you what the reserves are,
 22 correct?
 23 A I would have them tell me what they want for that
 24 portion for the litigation portion.
 25 Q So you're going to have an attorney tell you what

1 the reserves are, correct?
 2 MS. KULIK: Objection, asked
 3 and answered.
 4 You don't have to answer it
 5 again.
 6 MR. MCKENNA: Yes, she does.
 7 BY MR. MCKENNA:
 8 Q Answer the question, don't change the question.
 9 MS. KULIK: Answer.
 10 BY MR. MCKENNA:
 11 Q You're going to have an attorney set the reserves,
 12 aren't you?
 13 A I would have them tell me how much to put in. If
 14 you're calling that setting the reserve, I would
 15 have them set the reserve.
 16 Q Thank you.
 17 Now, when I look at these
 18 reports, here's Exhibit 10, and it says, "Monthly
 19 cost for care \$10,333.00, that's the monthly cost
 20 for the PIP portion, correct?
 21 A Correct.
 22 Q And it says "plus legal issues," that's separate?
 23 A Yes.
 24 Q Those are costs and expenses that are separate,
 25 correct?

1 A Yes.
 2 Q Those are costs and expenses that don't go into
 3 the reports to the reinsurance company showing the
 4 actual dollars spent on the claim, correct?
 5 A I'm sorry, would you repeat that?
 6 Q Those legal costs are costs and expenses that are
 7 not part of the PIP claim that are not reflected
 8 on the reinsurance reports showing actual dollars
 9 spent for PIP benefits?
 10 A That's correct.
 11 Q There's a separate column for IMEs and lawyers
 12 fees and things like that, correct?
 13 A We just don't report on those.
 14 Q But there's a separate column for that, isn't
 15 there, that you keep a running tally of?
 16 A A separate column where?
 17 Q Somewhere in the file or in the computer as to
 18 what the other incidental costs, legal,
 19 depositions, IMEs, on a given file are?
 20 A It would be just listed in the list of checks that
 21 are issued and it would be an expense code on it.
 22 Q Okay. This report anyway October 29, '98, says,
 23 "File remains in litigation over home care and
 24 management issues. Our legal department is still
 25 negotiation. We are reserving for at least --" it

1 says here, "-- \$120,000 per year for life for home
 2 care." Correct?
 3 A Correct.
 4 Q What was being paid at that time per month?
 5 A I don't know.
 6 Q Was it \$10,333.00 per month that was being paid?
 7 A That figure would be I just would have taken the
 8 yearly figure and divided it by twelve.
 9 Q I understand that. Would you have been paying
 10 that much?
 11 A I don't know.
 12 Q How would you know? How would I know what you
 13 were paying at that month?
 14 A You'd have to look at the check screens to see
 15 what payments were being made?
 16 Q So if I look at the check screens for the month of
 17 October, September, October and November, I should
 18 be able to figure out what was being paid on
 19 average?
 20 A Yes.
 21 Q And if it is less than that be \$10,333.00 that was
 22 being paid, what would account for that?
 23 A The rate hadn't been adjusted yet.
 24 Q What rate hadn't been adjusted?
 25 A This 120,000 that I put.

1 Q So you're saying they might actually be getting
 2 paid less and hadn't had that rate adjusted to
 3 what was being reserved at?
 4 A Could be.
 5 Q But you said you wouldn't set a reserve in the
 6 future for what you expect the payment to be, you
 7 would set a reserve based upon what the actual
 8 payment was?
 9 A Unless somebody told me something was going to
 10 change. Somebody would have to have told me that
 11 figure. Somebody would have to say what we
 12 anticipated.
 13 Q And that's kind of my dilemma here when I'm asking
 14 you this, when you say I set these based on what
 15 was being paid.
 16 So if that's true, I can go to
 17 the file, I should be able to find evidence of
 18 what was being paid, right?
 19 A Yes.
 20 Q But when you say, well, if it doesn't match up, it
 21 must be because somebody else told me something?
 22 A Well, this case is in litigation, so we must have
 23 been planning on settling in that area.
 24 Q Where am I going to find the information that
 25 tells me how you arrived at 120,000 a year for

1 life for home care when you're not paying that
 2 amount?
 3 A I don't know.
 4 MS. KULIK: I object to the
 5 form of the question. There's been no showing
 6 that they weren't paying that amount.
 7 MR. MCKENNA: Oh, there is.
 8 BY MR. MCKENNA:
 9 Q But there's no evidence that I can look to, no
 10 document that I can see that would tell me who
 11 told you to do this or what you relied on?
 12 A No.
 13 Q Because whatever those were were destroyed?
 14 MS. KULIK: Object, to the
 15 form of the question.
 16 THE WITNESS: If I documented
 17 that in my MRR.
 18 BY MR. MCKENNA:
 19 Q And they would be either available or destroyed,
 20 correct?
 21 A Yes, they disappear every time you update. The
 22 system only holds two.
 23 Q That's rather convenient, isn't it?
 24 MS. KULIK: Objection,
 25 argumentative, asking for an opinion.

1 BY MR. MCKENNA:
 2 Q I am.
 3 A I don't know.
 4 Q You have a system that's in place with this CPS
 5 screens that holds everything, correct?
 6 A Correct.
 7 Q And an MRR is, what, a two or three page document
 8 A I think five.
 9 Q Five pages. And I mean I've got boxes of stuff
 10 with CPS stuff.
 11 Who controls what documents
 12 get kept and what documents get purged,
 13 management?
 14 A I don't know.
 15 Q Who selected the computer system that purges
 16 documents, you or management?
 17 A It would have been management.
 18 Q So if management wanted to keep these documents
 19 around, all they had to do was make copies and put
 20 them in the file, correct?
 21 MS. KULIK: Objection, you're
 22 asking for opinions and it's irrelevant.
 23 BY MR. MCKENNA:
 24 Q Is that correct?
 25 A Yes, if you wanted copies we could have made

1 copies.

2 Q And if I wanted to know the rationale for changing

3 these reserves and you made copies of all of the

4 information when someone told you to do something,

5 we'd all know why, wouldn't we?

6 A Yes.

7 Q But by destroying these things the only ones that

8 know are the people that were involved, correct?

9 A Correct.

10 MS. KULIK: Object to the form

11 of the question.

12 BY MR. MCKENNA:

13 Q And if you can't remember why later on, no one may

14 ever know, correct?

15 A Correct.

16 Q And that's convenient sometimes?

17 MS. KULIK: Objection to the

18 form of the question.

19 THE WITNESS: Could I take a

20 quick break?

21 MR. MCKENNA: Sure, ma'am.

22 THE WITNESS: Thank you.

23 (RECESS TAKEN)

24 BY MR. MCKENNA:

25 Q Ma'am, I have looked at these reports that we've

1 had marked as Exhibits, and we've got some from

2 '98, '99, 2000, 2001, 2002, and then I think we

3 just got one from 2004. But in '98, the ones we

4 were looking at show a reserve of 120,000 and you

5 have a \$10,333.00 a month rate that you put on

6 here, correct?

7 A Correct.

8 Q And so on Exhibit 20 and Exhibit 19 and Exhibit 18

9 and Exhibit 10, they all have those rates? I'll

10 hand you those to take a look to confirm that.

11 A That's correct.

12 Q All right. And then Exhibit 22 from 10-29-98,

13 same rates?

14 A Correct.

15 Q Exhibit 17, from April 28, '99, same rates?

16 A Correct.

17 Q Exhibit 16 from September '99, same rates?

18 A Correct.

19 Q Exhibit 15 from February 2000 same rates?

20 A Correct.

21 Q And I think 14 is probably a duplicate. Am I

22 missing something, let me see this for a second.

23 Well, there's two of them here

24 apparently done by you. I'm sorry, here's what it

25 is the date is 3-1-2000 on Exhibit 15, correct?

1 A Correct.

2 Q And then August 31, 2000, by you again actually

3 this one is different.

4 So the ones that I have in

5 front of you, Exhibit 15, 16, 17, 18, 19, 20, 22

6 and 10, go from October 29th, 1998, which I think

7 is the earliest, correct me if I'm wrong, I'm

8 sorry, May of 1998, this one is at March of '98,

9 Exhibit 20?

10 A No, I don't know. It doesn't make sense that I

11 would have done one in May of '98. I mean one in

12 March of '98 and one in May of '98.

13 Q So it's not March?

14 A It might be '99.

15 Q Well, then I that wouldn't make any sense because

16 here's one April 28th of '99?

17 A I don't know.

18 Q To me that looks like a '98 on there?

19 A It might be.

20 Q All right. In any event, you've got March of '98

21 or May of '98 is the earliest, correct?

22 A Correct.

23 Q And of the ones that we've gone through, let me

24 see how far we go, I have this one is March of

25 2000. That would be about a two year time period.

1 correct?

2 A Yes.

3 Q Now, it's my understanding that there is a thing

4 called a Consumer Price Index. Here's another

5 one, actually it's August of 2000. That's

6 definitely more than a two year time period.

7 Almost two and a half years depending on when that

8 first one was, correct?

9 A Correct.

10 Q Now, that would appear to indicate that you were

11 paying the family the same amount of money on

12 average for attendant care, month to month for

13 over two and a half years without any increase?

14 A Correct.

15 Q Is that, if we go back to what you were told by

16 Mr. Berkebile and Mr. Herman in '97, right around

17 there, about sending those e-mails, about making

18 changes, you said if you notice that there was the

19 same payment being made routinely, you would check

20 what the current rates are and advise them,

21 correct?

22 A Correct.

23 Q If that system, that procedure were still in

24 place, is it fair to assume that somewhere between

25 this March '98 and August 2000, that you would

1 have done something, because this is the same
 2 amount apparently being paid each month?
 3 MS. KULIK: Objection, form
 4 and foundation and relevance.
 5 THE WITNESS: I probably
 6 wouldn't have picked up on it.
 7 BY MR. MCKENNA:
 8 Q Two and a half years you wouldn't have picked up
 9 on the same amount being paid for two and a half
 10 years?
 11 A Probably not, because I would only have the last
 12 status of what I was doing now. I wouldn't have
 13 pulled five of them and looked.
 14 Q If you would never catch the same payment being
 15 made over two and a half years with as many as two
 16 or three reports per year, we're looking at, I
 17 don't know let me count them out, there's seven or
 18 eight different reports there, you wouldn't catch
 19 the same payment?
 20 A Nope.
 21 Q The ones where you said you had sent the e-mails
 22 in the past, how many years did that payment stay
 23 the same before you caught it?
 24 A They usually brought them up-to-date when they got
 25 the e-mails.

1 Q No, no. You said that you wouldn't have sent an
 2 e-mail because you probably wouldn't have caught
 3 it in this case, in Bearden?
 4 A Correct.
 5 Q And we've got two and a half years according to
 6 these documents of the same rate being paid?
 7 A Yes.
 8 Q You said that two and a half years wouldn't have
 9 been enough for the same payment for you to have
 10 caught?
 11 A It's not that it wasn't enough, I wouldn't have
 12 went back and looked at a long span like that.
 13 Q How was it then in these other cases where you
 14 caught it, that it was different than the Bearden
 15 case, what happened differently?
 16 A Those cases were where the same amount was being
 17 paid every month. So in the APAC would bring up
 18 like the last twelve months worth of payments. So
 19 in those cases I would be able to see that the
 20 same amount had been paid every month. So in that
 21 case I would say it's time to do your annual home
 22 care review.
 23 Q Well, are you saying that at AAA you were never
 24 trained to do what I just did with your own
 25 documents?

1 A Yes.
 2 Q And these documents are all in your file?
 3 A Yes.
 4 Q I mean you and I just went through these. It
 5 didn't take us five minutes to go through them. I
 6 had to put them in order. You would have them in
 7 chronological orders in your file, wouldn't you?
 8 A Yes.
 9 Q It would even take less time to even open it up.
 10 I mean if you're doing a new Claim Status Report
 11 and it's May 2005, you would have all of the other
 12 ones in your file just below it?
 13 A Yes.
 14 Q And if you looked at the May 2005 status report
 15 that you're about to do and looked at the ten just
 16 below it and they all had the same monthly amounts
 17 being paid, wouldn't that be an indication to you
 18 that there hadn't been a change made in the last
 19 three or four years?
 20 A Yes.
 21 Q So the information was there for you to find, you
 22 just didn't find it?
 23 A That's right.
 24 Q Now, aren't you supposed to do what I just
 25 described?

1 A No.
 2 Q So you're taught by AAA, by management, to just
 3 take the last Claim Status Report and compare that
 4 to what you're about to put on there now?
 5 A That's correct.
 6 Q And no more?
 7 A That's correct.
 8 Q You're not going to catch too much underpayment
 9 that way, are you?
 10 A Just what occurred in the last twelve months.
 11 Q That's my point, you're not going to catch a whole
 12 lot of underpayment that way, are you?
 13 A Probably not.
 14 Q And if you set the system up that way in AAA,
 15 you're not going to pay a whole lot out in
 16 underpayments if you set-up the system so you
 17 don't catch it, are you?
 18 MS. KULIK: Objection, form
 19 and foundation. You're asking her for an opinion.
 20 THE WITNESS: I don't know.
 21 BY MR. MCKENNA:
 22 Q Well, the reality is, ma'am, you know whether you
 23 paid benefits for a year or two years which one's
 24 going to cost you more, don't you?
 25 A Right, two years.

1 Q Okay. So if you set-up the system so that you're
2 only going to catch the underpayment on a rotating
3 twelve month basis, you're going to pay a lot less
4 then if you were set-up to catch all
5 underpayments, aren't you?

6 MS. KULIK: Objection, form
7 and foundation. There's been no testimony that
8 this system was ever set-up to catch
9 underpayments.

10 THE WITNESS: That's correct.

11 That's what I was going to say. The purpose --

12 BY MR. MCKENNA:

13 Q Could you answer my question?

14 A Could you repeat it again?

15 Q See the marionette and puppet show should be just
16 objection form and foundation.

17 When she does that it's a
18 shameless attempt to coach you and give you the
19 answer she would like you to give.

20 BY MR. MCKENNA:

21 Q My question was, if you only go back one year
22 instead of going back through all of these to see
23 what the history has been, you're only going to
24 catch one year of underpayment, correct?

25 A Correct.

1 Q And if you're only going to go back one year,
2 you're going to pay a lot less in benefits than if
3 you went back and historically looked at all years
4 for underpayment, correct?

5 A Correct.

6 Q And this is a system that AAA has devised from
7 management telling you how to do this, correct?

8 Your managers told you what
9 your job duties were and what procedures to
10 follow, correct?

11 A Correct.

12 Q You're doing no more and no less than what they
13 told you to do, correct?

14 A Correct.

15 But those duties were added
16 after the time I was trained to do it. Where
17 you're giving the last status, you're giving a new
18 one to write out.

19 Q That was added?

20 A No, that was how I was trained to do. When I
21 first started doing the job, that's all I was
22 doing was observing, I wasn't looking at.

23 Q You're saying you don't look at anything now?

24 A That's correct.

25 Q Well, nothing's change?

1 A I was looking at them during that time period I
2 was told to.

3 Q And during that short time period that you were
4 told to, you would catch underpayments that may
5 have gone beyond a year?

6 A Sometimes.

7 Q But you were still even then told don't ask don't
8 tell, about back payments, correct?

9 A Correct.

10 Q So even though AAA had you looking at it, they
11 were telling you not to do anything about it,
12 unless specifically asked, correct?

13 A Any overpayment that was over a year old, yes,
14 correct.

15 Q Unless specifically asked?

16 A Correct.

17 Q And insureds don't get these documents, do they?

18 A No, they don't.

19 Q And the only time these documents are ever brought
20 out for you to look at with someone other than
21 employees at AAA, is when people like myself are
22 suing AAA and lawyers are putting them under your
23 nose and asking you what these things say and what
24 they mean, correct?

25 A Correct.

1 Q Do you think it would be reasonable to pay the
2 same rate for attendant care for ten years, would
3 you tell us an increase?

4 MS. KULIK: Objection, form
5 and foundation. You're asking for an opinion and
6 relevance.

7 THE WITNESS: I don't know
8 unless it was a legal agreement or something like
9 that.

10 MR. MCKENNA: No legal
11 agreement.

12 BY MR. MCKENNA:

13 Q Do you think it's reasonable for an insured, in
14 this case the Bearden family, to receive the same
15 rate for ten years without an increase?

16 MS. KULIK: Objection, form
17 and foundation. You're asking for an opinion and
18 her opinion is irrelevant, even if she were
19 allowed to give an opinion.

20 MR. MCKENNA: She's allowed to
21 give an opinion.

22 BY MR. MCKENNA:

23 Q You're irrelevant to AAA. It's interesting how
24 they tell you this at times like this.

25 Go ahead.

1 A No.
 2 Q Would you -- by the way, you've worked for AAA for
 3 ten years, haven't you?
 4 A Twenty-two years.
 5 Q Twenty-two years.
 6 And you get raises?
 7 A Yes.
 8 Q You get raises every year based on performance or
 9 based on longevity?
 10 A Based on performance.
 11 Q So if you do a good job you get paid more every
 12 year?
 13 A Yes.
 14 Q So if Mr. and Mrs. Bearden did a good job of
 15 taking care of their son, should they be entitled
 16 to the same treatment you get from AAA?
 17 MS. KULIK: Objection, form,
 18 foundation, relevance, and you're asking for an
 19 opinion.
 20 BY MR. MCKENNA:
 21 Q Go ahead.
 22 A I don't know. We're not their employer, it's just
 23 a benefit.
 24 Q You're not who's employer?
 25 A The Beardens.

1 Q Do you know who your employer is?
 2 A AAA.
 3 Q Do you know who owns AAA?
 4 A No.
 5 Q The Beardens and people like the Beardens own AAA.
 6 AAA is a cooperative owned by its insureds.
 7 Were you aware of that?
 8 A No.
 9 MS. KULIK: Objection, to
 10 whatever your -- I don't really want to call them
 11 questions even though there's an inflection at the
 12 end, so I'll just say form, foundation.
 13 BY MR. MCKENNA:
 14 Q Do you think it would be fair for them to be
 15 treated by their employees in less of a manner
 16 than the employees are treated by the owners?
 17 MS. KULIK: Objection, form
 18 and foundation, relevance and opinion.
 19 THE WITNESS: No.
 20 BY MR. MCKENNA:
 21 Q Do you think it would be fair that you should both
 22 be treated with the same consideration as it
 23 relates to what you're doing for each other with
 24 AAA?
 25 A Could you repeat that?

1 MS. KULIK: Objection.
 2 MR. MCKENNA: Sure.
 3 BY MR. MCKENNA:
 4 Q You drove here today?
 5 A Yes.
 6 Q In a company car or your own?
 7 A My own.
 8 Q Do you get paid mileage when you do that?
 9 A Yes.
 10 Q Do you think you should be paid more mileage or
 11 less mileage than an insured driving the same
 12 amount of miles?
 13 A Same.
 14 Q Do you think that an insured should be given the
 15 same consideration for payment for services
 16 performed than you are for services performed for
 17 AAA?
 18 MS. KULIK: Objection, form
 19 foundation, relevance and you're asking for an
 20 opinion.
 21 THE WITNESS: I think they
 22 both should be paid a fair rate.
 23 BY MR. MCKENNA:
 24 Q Do you think you would continue to work for a
 25 company for twenty-two years that paid you the

1 same amount of money each year?
 2 A Probably not.
 3 Q You'd go looking for something else, wouldn't you?
 4 A Probably.
 5 Q In 2002, when you gave this deposition in the
 6 Marr's case, you testified then that the regular
 7 home aide rate was \$11.00 per hour.
 8 Do you recall that?
 9 A No, I don't. I thought it was 9.
 10 Q Is there a range that you had of \$9.00 to \$11.00?
 11 A Probably 9 to 11, yes.
 12 Q So \$11.00 an hour is something that you would pay?
 13 A Yes.
 14 Q Just for what would be called home aide, correct?
 15 MS. KULIK: Objection, form,
 16 foundation.
 17 BY MR. MCKENNA:
 18 Q Go ahead.
 19 A Yes.
 20 Q Now, a home aide at \$11.00 an hour, that's the
 21 lowest level of care that you compensate, correct?
 22 A Yes.
 23 Q Now, above home aide there are high tech aides?
 24 A Yes.
 25 Q LPNs?

1 A Yes.
 2 Q RNs?
 3 A Yes.
 4 Q In some cases you may have respiratory people that
 5 have to be there above an RN, correct, as far as
 6 grade of pay?
 7 A I'm not familiar with that.
 8 Q O.T. people?
 9 A Yes.
 10 Q P.T.?
 11 A Yes.
 12 Q They all have different rates of compensation?
 13 A Yes.
 14 Q Now, this study that you said that you didn't use
 15 to set home care rates, this Plante Moran study
 16 that you talked about --
 17 A Yes.
 18 Q -- did it have rates in there for O.T. And P.T.?
 19 A No.
 20 Q Okay. So you'd have to find a different
 21 reasonable amount for O.T. and P.T.?
 22 A Yes.
 23 Q Would you agree with me that the payment in a file
 24 of an O.T. and P.T. rate would be an indication
 25 that it was considered to be reasonable?

1 A I'm sorry, could you repeat that.
 2 Q Sure.
 3 If I were to go into the file
 4 and pull out a page that showed that an O.T.
 5 person was paid \$50.00 an hour, the fact that it
 6 got paid would be an indication that AAA
 7 considered it to be reasonable?
 8 MS. KULIK: Objection, form
 9 and foundation, relevance and you're asking for an
 10 opinion.
 11 Please wait until I finish the
 12 objection.
 13 BY MR. MCKENNA:
 14 Q The fact that there's a payment made for P.T. and
 15 O.T. combined or separate in the file would be an
 16 indication that AAA found that to be a reasonable
 17 rate?
 18 MS. KULIK: Same objection.
 19 THE WITNESS: Yes.
 20 BY MR. MCKENNA:
 21 Q All right. Now, in this particular case you
 22 yourself have documented from your own knowledge
 23 that Mr. and Mrs. Bearden were providing O.T. and
 24 P.T. for their son?
 25 A Correct.

1 Q And that meant that by providing it themselves,
 2 AAA wasn't paying someone else to do it?
 3 A Correct.
 4 Q And you told me before that you pay based upon the
 5 service provided, correct?
 6 MS. KULIK: Objection, form
 7 and foundation.
 8 THE WITNESS: Correct.
 9 BY MR. MCKENNA:
 10 Q So if Mr. and Mrs. Bearden were providing a
 11 service that someone else was doing at \$30.00,
 12 \$40.00, \$50.00 an hour and those other people
 13 didn't have to come in, you would pay that amount
 14 to them?
 15 A I don't know what they would pay.
 16 Q I didn't ask you what they were paid.
 17 I'm saying based on what
 18 you've already told me, it's the value of the
 19 service that's provided.
 20 If Mr. and Mrs. Bearden were
 21 unable to provide that service to their son, an
 22 outside person would come in, AAA would be
 23 charged, if it's reasonable they would pay it,
 24 correct?
 25 A Correct.

1 Q So if we go to the time period in the file where
 2 it was paid to an O.T. person P.T. person an
 3 hourly rate, and the parents were now doing that
 4 instead of O.T. or P.T. person, you would then pay
 5 them that hourly rate, wouldn't you?
 6 MS. KULIK: Objection, form,
 7 foundation, relevance and this Witness does not
 8 pay claims.
 9 BY MR. MCKENNA:
 10 Q Go ahead.
 11 A I don't know how that would be paid.
 12 Q Well, you were an adjuster with AAA, weren't you?
 13 A Yes.
 14 Q When you were an adjuster with AAA, if the family
 15 took over for providing as in this case P.T. and
 16 O.T., and you have documented it and you sworn
 17 under oath today that you had knowledge of this
 18 and it was being done, if they were providing
 19 those services and you had a rate that was
 20 previously paid for the provision of that service
 21 by someone doing O.T. and P.T., you would expect
 22 the parents to be compensated the same rate,
 23 wouldn't you?
 24 MS. KULIK: Objection, you're
 25 asking for speculation.

1 THE WITNESS: I don't know. I
 2 never had a claim like that, so I never really
 3 thought about it.
 4 BY MR. MCKENNA:
 5 Q You had claims where you paid for attendant care
 6 didn't you?
 7 A No.
 8 Q P.T.?
 9 A No.
 10 Q O.T., doctors' bills?
 11 A I paid doctors' bills. I haven't paid for family
 12 provided O.T. or P.T.
 13 Q Well, you've been to -- if I'm understanding you
 14 correctly, you've been to a seminar in October of
 15 2001 that supposedly opened the eyes of everybody
 16 at AAA on how to pay for those things, correct?
 17 MS. KULIK: Objection, form,
 18 foundation.
 19 THE WITNESS: How to pay for
 20 attendant care?
 21 BY MR. MCKENNA:
 22 Q Attendant care, right?
 23 A Yes.
 24 Q You've been to seminars and CAT -- what did you
 25 call the meetings?

1 A CAT loss.
 2 Q CAT loss claim meetings?
 3 A CAT loss committee.
 4 Q You've been to those, too, correct?
 5 A Yes.
 6 Q You said they wanted you there in case there was
 7 something you could learn from it?
 8 A Yes.
 9 Q In those meetings and seminars that you've been
 10 to, these issues have been discussed about payment
 11 for services, correct?
 12 A I don't know.
 13 Q Are you telling me that you've been working for
 14 twenty-two years with AAA in a job that you
 15 initially hired into that you've admitted you
 16 didn't know how to do and still --
 17 MS. KULIK: I don't care if
 18 I'm interrupting you.
 19 I'm going to object to the
 20 form and foundation and you're being argumentative
 21 with this Witness and disrespectful.
 22 MR. MCKENNA: You don't need
 23 to yell and point and interrupt, and I don't
 24 really care anymore what you think.
 25 MS. KULIK: I know you don't.

1 MR. MCKENNA: So why don't you
 2 just be professional if nothing else and sit there
 3 and wait your turn.
 4 MS. KULIK: Because you're
 5 degrading this Witness and it's unnecessary.
 6 MR. MCKENNA: I'm not
 7 degrading anybody. If there is anything that I
 8 said that is not true, I defy you to prove it.
 9 Now would be a good time.
 10 MS. KULIK: You are degrading
 11 this Witness by saying the job that you were not
 12 qualified to do.
 13 MR. MCKENNA: I'll rely on the
 14 testimony she's already given. You may not like
 15 it, obviously you don't.
 16 MS. KULIK: Oh, I'll rely on
 17 that testimony, too.
 18 MR. MCKENNA: Good.
 19 BY MR. MCKENNA:
 20 Q Do you remember the question?
 21 A No.
 22 MR. MCKENNA: Read it back to
 23 her.
 24 (QUESTION READ BACK AS FOLLOWS:
 25 "Are you telling me that

1 you've been working, for
 2 twenty-two years with AAA in
 3 a job that you initially
 4 hired into that you've
 5 admitted you didn't know how
 6 to do and still --")
 7 THE WITNESS: What job are you
 8 referring to the that I admitted I did not know
 9 how to do?
 10 BY MR. MCKENNA:
 11 Q The job right now as claims reserve specialist.
 12 And you're saying today, to
 13 finish that question, you still don't know how
 14 these claims are paid?
 15 A For O.T. and P.T. by family?
 16 Q O.T., P.T., attendant care for family, you still
 17 don't know how they're paid?
 18 A I'm familiar with attendant care, not with O.T.,
 19 P.T. by family.
 20 Q Well, is there some reason why you would think
 21 O.T. and P.T. would be treated differently than
 22 attendant care by family, has AAA told you they're
 23 treated differently?
 24 A No.
 25 Q What you do to determine the rate to compensate

1 the family is to determine the reasonable rate for
 2 the service provided, correct?
 3 MS. KULIK: Objection, form
 4 and foundation.
 5 THE WITNESS: I don't know how
 6 they determine it.
 7 BY MR. MCKENNA:
 8 Q That's my point. You've been here for twenty-two
 9 years and you're in charge of setting reserves,
 10 and you sit here in front of me and say, I don't
 11 know how they determine these things?
 12 A Correct.
 13 Q Yet you are qualified to do your job according to
 14 AAA?
 15 A Yes.
 16 Q You weren't qualified to do it when you were
 17 hired, correct?
 18 A Correct.
 19 Q But you feel qualified to do it today, even though
 20 you still don't know how to do your job?
 21 A Yes.
 22 Q Setting reserves involves knowing what gets paid
 23 for O.T. and P.T., doesn't it?
 24 A It's just one of the benefits I would reserve for,
 25 yes.

1 Q Okay. I'm going to go back and if I get accused
 2 of being rude from now on I don't care, because
 3 you've exhausted my patience for changing my
 4 questions, okay?
 5 A Okay.
 6 MR. MCKENNA: Read her the
 7 question back.
 8 (QUESTION READ BACK AS FOLLOWS:
 9 "Setting reserves involves
 10 knowing what gets paid for
 11 O.T. and P.T., doesn't it?")
 12 BY MR. MCKENNA:
 13 Q That's a yes or no, ma'am.
 14 A Yes, it involves that.
 15 Q In this case you don't know how the O.T. and P.T.
 16 rates get set?
 17 A Correct.
 18 Q And I take it in any case you're setting reserves
 19 on, you don't know how O.T. and P.T. rates get
 20 set?
 21 A If it's by a provider it would be based on
 22 whatever amounts being approved.
 23 Q Could you answer my question?
 24 MR. MCKENNA: Repeat the
 25 question for her again.

1 (QUESTION READ BACK AS FOLLOWS:
 2 "And I take it in any case
 3 you're setting reserves on,
 4 you don't know how O.T. and
 5 P.T. rates get set?")
 6 THE WITNESS: That's correct.
 7 BY MR. MCKENNA:
 8 Q Now, you've told me you know -- you believe you
 9 know how attendant care rates are set?
 10 A Yes.
 11 Q That's only one component of PIP claims in CAT
 12 cases, correct?
 13 A Correct.
 14 Q Do you know how mileage, transportation rates get
 15 set?
 16 A No.
 17 Q Do you know how room and board rates get set?
 18 A No.
 19 Q Do you know how any other rate besides attendant
 20 care gets set?
 21 A No.
 22 Q All of those other rates that come into the
 23 services that are being provided or supposed to be
 24 provided for the insureds, go into future payments
 25 and future reserves?

1 A Correct.
 2 Q And you don't know how they get set?
 3 A I don't need to know how they get set.
 4 Q You need to know how they get set in order to know
 5 what you're supposed to be paying for them,
 6 wouldn't you?
 7 A No, all I need to know is what is being paid.
 8 Q Well, if you don't know how to set the rates, you
 9 wouldn't know what was getting paid, would you?
 10 A Yes, I would know what was getting paid by the
 11 payments that are being paid.
 12 Q You told me already you can't tell by looking at
 13 the payment logs what hourly rates were being
 14 paid?
 15 A On the attendant care?
 16 Q On anything. On attendant care you said you can't
 17 even figure out an hourly rate on the Bearden
 18 file, correct?
 19 A Correct.
 20 Q So what would looking at those logs tell you about
 21 an hourly rate for P.T. and O.T.?
 22 A I don't need to know the hourly rate.
 23 Q You do need to know what they're paying for O.T.
 24 and P.T.?
 25 A I don't need to know the hourly rate.

- 1 Q You need to know what they're paying?
 2 A I can see that by the lump payments that are being
 3 made in a month.
 4 Q You're telling me you can see the lump payment for
 5 O.T. and P.T.?
 6 A If it's being --
 7 Q Are you telling me that you can see the lump
 8 payments being made for O.T. and P.T., yes or no?
 9 A On which claim?
 10 Q On Bearden?
 11 A No.
 12 Q So you don't know what they were being paid for
 13 O.T. and P.T. on this claim, do you?
 14 A No, I don't.
 15 Q You don't know how they set it, do you?
 16 A No, I don't.
 17 Q Do you know what they I were paying for room and
 18 board on this claim?
 19 A No.
 20 Q You were not given a copy of the court's order on
 21 room and board on this case, were you?
 22 A No.
 23 Q You said that you rely on attorneys to tell you
 24 what to set for reserves?
 25 A If it's in litigation.

- 1 Q In litigation?
 2 A Correct.
 3 Q So you would rely on an attorney to tell you what
 4 a court has ordered there to be paid?
 5 A I wouldn't need to know what the court ordered, I
 6 would just need to know what's going to be paid.
 7 Q You would need to know from the attorney to pay
 8 something and they tell you why, correct, if it's
 9 in litigation?
 10 A What do you mean tell me why?
 11 Q Are you going to listen to an attorney that says
 12 just set the reserves at five million dollars and
 13 you'll just do it?
 14 MS. KULIK: Right now I'm
 15 going to object to any conversation between Cindy
 16 Redpath and any attorneys.
 17 MR. MCKENNA: No, no.
 18 MS. KULIK: You don't have to
 19 answer it.
 20 MR. MCKENNA: This is a
 21 hypothetical. This isn't about any actual
 22 conversation that has occurred.
 23 If goes on in setting
 24 reserves. These are hypothetical questions to
 25 find out the procedure she used.

- 1 I haven't asked her to
 2 disclose a specific conversation that is
 3 privileged.
 4 THE WITNESS: Could you read
 5 back the question?
 6 (QUESTION READ BACK AS FOLLOWS:
 7 "Are you going to listen to an
 8 attorney that says just set
 9 the reserves at five million
 10 dollars and you'll just do
 11 it?")
 12 MS. KULIK: I'm going to
 13 object to the form of that question.
 14 You can answer it.
 15 THE WITNESS: Yes, if that was
 16 the recommendation, I would set up.
 17 BY MR. MCKENNA:
 18 Q You'd never ask him why?
 19 A Just in general, I don't need all the specifics.
 20 Q Okay. So if, for example, a case was in
 21 litigation, would you want to know from the
 22 attorney what the status was when it came time to
 23 do your next Claim Status Report?
 24 A Yes.
 25 Q And maybe you would have to make a change to your

- 1 future reserves?
 2 A Yes.
 3 Q So if, for example, a case was in litigation and a
 4 court had ordered a type of benefit to be paid,
 5 you'd want to know that, wouldn't you?
 6 A Yes, if we're going to pay something, I would want
 7 to know that.
 8 Q The different levels of aide care you said \$11.00
 9 an hour in 2002 in this deposition in the Marr's
 10 case, but if I understand you correctly you're
 11 saying since then you don't know what the levels
 12 of pay are?
 13 A I don't think it's changed.
 14 Q Do you think for the last three years AAA has
 15 continued to pay the same rate as \$11.00 an hour?
 16 A I believe so.
 17 Q Can you tell me why in this case my client's not
 18 getting \$11.00 an hour --
 19 A I don't know.
 20 Q -- when it's been the rate you said since 2002,
 21 you don't know why that would be?
 22 MS. KULIK: Objection, asked
 23 and answered.
 24 BY MR. MCKENNA:
 25 Q You don't know why that would be?

- 1 A No, I don't know.
 2 Q The figure that you testified to in my deposition
 3 today and what you testified to in the Marr
 4 deposition, was based on what MMU had told you?
 5 A The 9 to 11 was based on the Plante Moran survey,
 6 the other figures were based on MMU.
 7 Q Well, did someone at MMU tell you that the \$9.00
 8 to \$11.00 in Plante Moran was accurate?
 9 A No.
 10 Q In fact, you were never told to use Plante Moran
 11 to set accurate rates, were you?
 12 A No.
 13 Q So did anyone at MMU tell you that \$11.00 was the
 14 most that you would pay?
 15 A No.
 16 Q You would pay higher?
 17 A No, I never questioned it.
 18 Q Would you agree that the rate paid for high tech
 19 aides would be higher than \$9.00 to \$11.00 for a
 20 regular health aide?
 21 A Yes.
 22 Q And that a rate for an LPN would be higher than
 23 and high tech aide?
 24 A Yes.
 25 Q And a rate for RN would be even higher --

- 1 A Yes.
 2 Q -- than an LPN?
 3 A Yes.
 4 Q You're aware, aren't you, that different things
 5 that are provided to an insured are compensated
 6 for a different rate depending on what they're
 7 doing, for example if it's O.T., P.T., bowel
 8 program, catheter program, administering meds,
 9 those are all at different levels of care?
 10 A Yes.
 11 Q And you would have to compensate on that level?
 12 A That the adjusters would have to compensate?
 13 Q Yes.
 14 A Yes.
 15 Q For example, if you had a home health aide in
 16 watching a patient at \$11.00 per hour and that
 17 patient needed meds, the home health aide would
 18 not be authorized to administer meds?
 19 MS. KULIK: Objection, form,
 20 foundation and you're asking this Witness for an
 21 opinion.
 22 BY MR. MCKENNA:
 23 Q You're aware of that, aren't you?
 24 A I don't believe they can administer meds.
 25 Q So you'd have to have an RN come in or and LPN

- 1 come in that could administer meds?
 2 A I believe so.
 3 Q And you would have to pay the RN and LPN rate to
 4 showup to administer meds as part of the
 5 reasonably, necessary, related charges for their
 6 care, correct?
 7 A Yes.
 8 Q So if the RN or LPN had to come in to administer
 9 those meds once a day, twice a day, three times a
 10 day, you'd have to pay a family member for
 11 providing the same level of care, wouldn't you?
 12 MS. KULIK: Objection, form
 13 and foundation. You're asking this Witness for an
 14 opinion.
 15 BY MR. MCKENNA:
 16 Q Go ahead.
 17 A I believe so.
 18 Q If the home health aide was at the home and an
 19 invasive procedure such as a catheterization or bowel
 20 program would have to be done by someone with a
 21 higher level of skill such as a high tech aide and
 22 LPN or RN, correct?
 23 MS. KULIK: Objection, form
 24 and foundation. You're asking her for an opinion.
 25 BY MR. MCKENNA:

- 1 Q Go ahead.
 2 A Yes.
 3 Q And if the family was providing that level of
 4 service, they would be compensated at the level of
 5 service for those people that would normally and
 6 routinely perform that service, correct?
 7 MS. KULIK: Objection, form
 8 and foundation. You're asking this Witness for an
 9 opinion.
 10 BY MR. MCKENNA:
 11 Q Correct?
 12 A I believe that's been our procedure.
 13 Q However, as it relates to this particular case,
 14 you would not know how to set the rate for
 15 anything above home health aide?
 16 A Correct.
 17 Q You would not know whether or not my clients were
 18 being fully underpaid for performing LPN or high
 19 tech or RN services for their son?
 20 A Correct.
 21 Q And you wouldn't know how to begin to compensate
 22 for O.T. or P.T.?
 23 A Correct.
 24 Q And whether it was being overpaid or underpaid?
 25 A Correct.

1 Q And none of these things have ever been taught to
 2 you at AAA in the last twenty-two years?
 3 A No.
 4 Q Is that correct?
 5 A Well, in the survey they break down the duties of
 6 an aide, a high tech aide, an LPN and RN, but I
 7 haven't made it a point to concern myself with all
 8 of those.
 9 Q My point is twenty-two years of working for AAA,
 10 you don't know how to do it then?
 11 A That's correct.
 12 Q If it was taught you didn't learn it?
 13 A Correct.
 14 Q Yet you're in charge of setting the reserves for
 15 all of these things?
 16 A Correct.
 17 Q Your file showed rates that were being paid to
 18 agencies that involved what you called weekend and
 19 holiday time. Are you aware of that?
 20 A I made a reference to that.
 21 Q Yes. That there were hourly rates that are being
 22 paid to the family and an hourly rate that is
 23 being paid for a weekend and holiday time to
 24 agencies?
 25 A I don't remember.

1 Q Does AAA pay weekend and holiday time?
 2 A To agencies?
 3 Q Yes.
 4 A I believe so.
 5 Q Do they pay overtime to agencies?
 6 MS. KULIK: Objection, you're
 7 asking her for opinion.
 8 MR. MCKENNA: Nope, I'm asking
 9 her for a fact.
 10 MS. KULIK: If you know.
 11 THE WITNESS: I don't know.
 12 BY MR. MCKENNA:
 13 Q I have records in this case that the agencies were
 14 paid for overtime and weekend time and holiday
 15 time?
 16 A Okay.
 17 Q If they were paid what would be considered
 18 reasonable, the very fact that they were paid
 19 would be the fact to determine it was reasonable,
 20 correct?
 21 MS. KULIK: Objection, form
 22 and foundation. You can answer.
 23 THE WITNESS: If the adjuster
 24 approved it they must have felt it was reasonable.
 25 BY MR. MCKENNA:

1 Q If the adjuster approved it was reasonable to pay
 2 weekends and holiday time and overtime for an
 3 agency, the same consideration should be given to
 4 the family, shouldn't it?
 5 A I don't know.
 6 MS. KULIK: Objection to form
 7 and foundation and you're asking her for an
 8 opinion.
 9 BY MR. MCKENNA:
 10 Q Are you aware of anything in the No-Fault Act or
 11 the policy with AAA that says family members are
 12 intentionally to be paid less than agencies?
 13 A No.
 14 Q So it would only be fair that if an agency were to
 15 be compensated for overtime, weekend time and
 16 holiday time, that a family member performing
 17 those same service on weekends, holidays and
 18 overtime be compensated in the same manner?
 19 MS. KULIK: Objection, form
 20 and foundation. You're asking for opinion and
 21 legal conclusion.
 22 THE WITNESS: I don't know.
 23 BY MR. MCKENNA:
 24 Q You don't know that in twenty-two years with AAA?
 25 A No.

1 Q Do you think just personally it would be fair?
 2 MS. KULIK: Objection,
 3 irrelevant. You're asking her for an opinion.
 4 BY MR. MCKENNA:
 5 Q If you worked on a weekend and a holiday and
 6 overtime for AAA, you'd want to be compensated for
 7 it, too, wouldn't you?
 8 A I do that and don't get paid sometimes.
 9 Q I didn't say that.
 10 You would want to be
 11 compensated for it, too, wouldn't you?
 12 A No, I'm salaried.
 13 Q So you're happy to work ninety hours a week and
 14 not get paid for it?
 15 A I don't work ninety hours a week.
 16 Q I didn't ask you that.
 17 You'd be happy to work ninety
 18 hours a week and not get paid for it?
 19 A No, I wouldn't.
 20 Q You'd want to get compensated for it, wouldn't
 21 you?
 22 A Yes.
 23 Q Should families be any different?
 24 MS. KULIK, objection
 25 irrelevant, and you're asking her for an opinion.

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1 THE WITNESS: I don't know.
 2 BY MR. MCKENNA:
 3 Q You don't know?
 4 A I don't know.
 5 Q You're under oath, that's wonderful. You don't
 6 know.
 7 Ma'am, in your deposition, and
 8 I think this goes contrary to what you testified
 9 to here today, so you correct me whether this is
 10 more accurate or today's more accurate, but you
 11 were asked on page 12, quote --
 12 MS. KULIK: Is this the Marr's
 13 dep?
 14 MR. MCKENNA: Yes, I haven't
 15 gotten to the other ones yet.
 16 BY MR. MCKENNA:
 17 Q "So one of the things that you do in your job is
 18 evaluate catastrophic losses and make a
 19 determination as to what is going on with the
 20 claim, where is the claim going, and how much it's
 21 going to cost you?
 22 Answer: Yeah, based upon the
 23 information that the claim rep has put in the file
 24 and any med reports, then I make my best estimate
 25 as to what the claim is going to cost over the

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1 life."
 2 So is that answer accurate and
 3 truthful?
 4 MS. KULIK: If you would like
 5 to read it, you can.
 6 THE WITNESS: Where is it?
 7 MR. MCKENNA: Line 19, page
 8 12.
 9 THE WITNESS: Yes.
 10 BY MR. MCKENNA:
 11 Q So today though you've told me that all you look
 12 at are the prior MRR -- not prior MRRs, all you
 13 look at are these prior Claim Status Reports when
 14 you fill out the new ones, and you don't go any
 15 further back into the file and you don't look at
 16 anything else, which one's the truth?
 17 A No, I didn't say that I didn't look at any med
 18 reports, but I do only go back to the last status.
 19 Q Well, ma'am, if you look at med reports, and if
 20 that's your testimony, and you're saying that what
 21 you said in the Marr dep is truthful, then you'd
 22 have no reason to testify here under oath that you
 23 didn't know my client's medical condition?
 24 A I don't think I ever saw a medical report on him.
 25 Q So you never read a medical report on Mr. Bearden?

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1 A I don't believe so.
 2 Q Yet you say the way you do your job in the Marr
 3 deposition is to look at med reports and talk to
 4 the claim rep?
 5 A If I had a med report available.
 6 Q You have a med report available and it said this
 7 guy needs O.T. and P.T. and the family's providing
 8 it, you have a good idea of what benefits they
 9 should be getting paid for, too, wouldn't you?
 10 MS. KULIK: Objection, form
 11 foundation, relevance.
 12 THE WITNESS: Yes.
 13 BY MR. MCKENNA:
 14 Q But you knew the family was providing O.T. and
 15 P.T.?
 16 A Yes.
 17 Q But you never knew what rate they were getting
 18 paid at?
 19 A Correct.
 20 Q And you would have known that they were getting
 21 O.T. and P.T. provided for a 1976 accident in
 22 1997, '98, '99, 2000, 2001, all the way to the
 23 present time, right?
 24 A Right.
 25 Q And not one time did you ever inquire as to what

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1 they were getting paid for providing med services?
 2 A Correct.
 3 Q If anything?
 4 A Correct.
 5 Q Not even an e-mail that was destroyed?
 6 MS. KULIK: Objection, asked
 7 and answered.
 8 THE WITNESS: Don't know.
 9 BY MR. MCKENNA:
 10 Q Who was it at AAA that told you that the policy
 11 was to send e-mails and then destroy them?
 12 A No one.
 13 Q But you had worked under Mr. Berkebile, correct?
 14 A Correct.
 15 Q Mr. Herman, Ms. Robins?
 16 A I worked -- Yes, I never worked directly for
 17 Mr. Herman.
 18 Q But you worked under them you told me before. If
 19 they came and told you to do something you would
 20 do it?
 21 A Yes.
 22 Q They were one of the managers of MMU?
 23 A Yes.
 24 Q And now you've got other managers at MMU?
 25 A Yes.

- 1 Q And I take it they're all familiar with how you do
2 their job?
- 3 A The current managers?
- 4 Q Yes.
- 5 A I don't know because we're a separate unit now.
- 6 Q Well, has anyone ever told you to stop destroying
7 these e-mails?
- 8 A No.
- 9 Q Has anyone ever sent you a procedure memo at AAA
10 that says all e-mails are to be kept?
- 11 A No.
- 12 Q Do you remember being asked on page 29 and 30 of
13 your deposition in the Marr case, "That in August
14 of '99, someone from MMU asked you in the process
15 of doing your filings if you" -- let me see that
16 for a second. For some reason mine has another
17 poststick error and I don't want to misstate it.
- 18 All right. It's on page 30,
19 continuing your answer, "That someone from MMU
20 asked you in the process of doing your filings if
21 you noticed that someone hasn't increased a home
22 care rate just send them a little reminder. So
23 when I took the payments screens and it goes back
24 twelve months and I see that the rate is the same,
25 I would send them a note and say it's time for you

- 1 to do your annual home care review."
2 That's what you've already
3 talked about, correct?
- 4 A Correct.
- 5 Q Now, on these payment screens that you're
6 referring to --
- 7 A Yes.
- 8 Q -- wouldn't it show the same rates being paid
9 month by month to Mr. Bearden for attendant care
10 as an element for the family?
- 11 A No. The payments weren't the same every time.
- 12 Q How do you know that?
- 13 A Because I've looked at the payments screens.
- 14 Q When?
- 15 A Every time I update the MRR.
- 16 Q So each of these three months or so that you're --
17 three to five months, whatever it is that you're
18 doing, these MRRs, you're looking at the payment
19 screens?
- 20 A Every six months, yes.
- 21 Q But you're not looking at the subsequent or the
22 prior MRRs to determine that the rates are being
23 paid at the same amount?
- 24 A Correct.
- 25 Q So you're saying because of ignorance this

- 1 occurred on your part?
- 2 MS. KULIK: Objection to form
3 and foundation.
- 4 BY MR. MCKENNA:
- 5 Q On your part? Pardon me?
- 6 A I'm not saying that.
- 7 Q Well, ignorance is a lack of knowledge. You had
8 no knowledge you're saying of the same payments
9 being made to the family for a number of years
10 without any increase?
- 11 A Correct.
- 12 Q And that would be from your ignorance that that
13 was allowed to continue, had you known you would
14 have said something?
- 15 MS. KULIK: Objection, form
16 foundation.
- 17 BY MR. MCKENNA:
- 18 Q Is that correct?
- 19 A Correct.
- 20 Q But the information that would have given you that
21 knowledge was at your fingertips, you just didn't
22 look, correct?
- 23 A You mean by going back in and looking at the
24 previously statuses?
- 25 Q Correct.

- 1 A Correct.
- 2 Q It would have taken all of thirty seconds to look
3 it up, wouldn't it?
- 4 A Yes.
- 5 Q Now in your capacity as a reserve specialist in
6 attending these interventions and going to these
7 CAT loss committee meetings, was that so that when
8 issues came up with you and an adjuster on a file
9 that you were working on, that you would be in a
10 better position to explain things to them?
- 11 A No.
- 12 Q Were you there to get an education of your own as
13 to how these claims worked?
- 14 A The intervention?
- 15 Q The intervention, the CAT loss committee meetings
16 the home care committee meetings, all of those?
- 17 A The home care and CAT loss were just
18 informational.
- 19 My purpose in the intervention
20 meetings was basically just to be introduced to
21 the field so they could say if you have any
22 further questions, this is who you talk to.
- 23 Q So the intervention wasn't educational to you at
24 all?
- 25 A Well, by the time we went around the second one --

1 Q I didn't ask you about the first or second.
 2 I asked, is it your testimony
 3 under oath that attending these interventions was
 4 non-educational, you went to say hello and
 5 socialize?
 6 MS. KULIK: Objection, form
 7 and foundation.
 8 THE WITNESS: I don't really
 9 remember. I probably learned some things.
 10 BY MR. MCKENNA:
 11 Q And the CAT loss committee meetings and the home
 12 care meetings committee meetings, those were
 13 educational for you?
 14 A Not necessarily.
 15 Q So you were just there again to say hello and
 16 socialize?
 17 A Just to sit in.
 18 Q Sit in, socialize and say hi and get paid for it?
 19 A No, I don't really socialize.
 20 Q Just sit there bored to tears, didn't learn
 21 anything, didn't meet any friends?
 22 A Yes.
 23 Q Just sat there?
 24 A Yep.
 25 Q And got paid for it?

1 A Yes.
 2 Q Is it your understanding in dealing with adjusters
 3 since this home care seminar in 2001, that when
 4 you deal with them you recognize an increase in
 5 their knowledge and understanding of these claims?
 6 MS. KULIK: Objection, form
 7 and foundation, relevance and you're calling for
 8 an opinion.
 9 THE WITNESS: They seem to,
 10 yes. They seem to be doing better.
 11 BY MR. MCKENNA:
 12 Q Now, you went to these seminars that we talked
 13 about, particularly the home aide seminars, and I
 14 had asked you a question earlier.
 15 Under oath you said that when
 16 you made a mistake, you would go back to the point
 17 of the mistake and correct it?
 18 A When I was an adjuster?
 19 Q When you were an adjuster?
 20 A Yes.
 21 Q Was it your understanding from having been at
 22 these seminars when it was explained to these
 23 adjusters what benefits and what rates that they
 24 were to pay if they were told to go back and
 25 correct the mistakes that they made in the same

1 way you just described?
 2 MS. KULIK: Objection, form,
 3 foundation.
 4 THE WITNESS: I don't think it
 5 was addressed.
 6 BY MR. MCKENNA:
 7 Q Was not addressed at all?
 8 A Not that I remember.
 9 Q If it wasn't addressed at all, then if you were an
 10 adjuster, you would have gone back and done the
 11 right thing and gone back to when you made the
 12 mistake?
 13 MS. KULIK: Objection to the
 14 form, foundation.
 15 BY MR. MCKENNA:
 16 Q Is that correct?
 17 MS. KULIK: You're asking for
 18 speculation.
 19 THE WITNESS: I don't know.
 20 BY MR. MCKENNA:
 21 Q Well, you're saying that it wasn't addressed to
 22 the adjusters in 2001 that you can recall,
 23 correct?
 24 A Correct.
 25 Q At this meeting?

1 A Correct.
 2 Q But shortly after that meeting it was addressed to
 3 you by Patricia Robins, wasn't it, when she told
 4 you to stop sending e-mails to these adjusters?
 5 MS. KULIK: Objection, form,
 6 foundation.
 7 BY MR. MCKENNA:
 8 Q Correct?
 9 A She just said it wasn't necessary that we
 10 follow-up anymore.
 11 Q She told you to stop sending the e-mails to the
 12 adjusters. We've gone through this, whatever
 13 semantic game you want to play with it, that's
 14 what you told me right, correct?
 15 A Yes, correct.
 16 Q And the don't ask don't tell from Berkebile and
 17 Herman was now changed to don't even bother
 18 telling them?
 19 MS. KULIK: Objection, asked
 20 and answered, form, foundation and you're asking
 21 for an opinion.
 22 BY MR. MCKENNA:
 23 Q Correct?
 24 A Yes.
 25 Q And under the old system if they asked, you would

1 tell them according to Berkebile and Herman,
 2 correct?
 3 A I'm sorry, what do you mean?
 4 Q If an adjuster asked or an insured were to ask
 5 specifically about back payment of benefits, but
 6 only if they asked would you tell them?
 7 MS. KULIK: Objection, form
 8 and foundation.
 9 THE WITNESS: I would never be
 10 talking to the insured.
 11 MR. MCKENNA: I'm sorry, let
 12 me change the question.
 13 BY MR. MCKENNA:
 14 Q When that occurred you were a claims reserve
 15 specialist?
 16 A Yes.
 17 Q You were told specifically unless the adjuster
 18 asked about back payment of benefits, don't even
 19 bring it up?
 20 A Right.
 21 Q When the change occurred with Patricia Robins in
 22 2001, it was right after these adjusters had this
 23 seminar on how to take care of these attendant
 24 care issues, correct?
 25 A Correct.

1 Q And that's when she changed the procedure from
 2 Mr. Berkebile and Herman to you?
 3 A Yes.
 4 Q And although you don't recall it specifically
 5 brought up by Patricia Robins and the other
 6 speakers at this seminar about payment of back
 7 benefits, it was clear to you when she spoke to
 8 you that she didn't want you to bringing up even
 9 current benefits, and that the policy of don't ask
 10 don't tell about back benefits still applied?
 11 MS. KULIK: Objection, form
 12 and foundation.
 13 THE WITNESS: No, that wasn't
 14 clear. It wasn't felt that it was necessary
 15 anymore, that's why she said not to do it.
 16 BY MR. MCKENNA:
 17 Q That's one part of it, sending the letters or
 18 e-mails?
 19 A Right.
 20 Q The other part still applied of Mr. Herman and
 21 Mr. Berkebile telling you if they've don't ask
 22 don't tell about back benefits, correct?
 23 A We never talked about it.
 24 Q That's what I'm saying, it still applied, it
 25 didn't change --

1 MS. KULIK: Objection to form.
 2 BY MR. MCKENNA:
 3 Q -- she didn't issue a new edict that said no
 4 longer are you going to do that, I want you to
 5 tell them about all the back benefits?
 6 A No.
 7 MS. KULIK: Objection, form
 8 and foundation.
 9 BY MR. MCKENNA:
 10 Q Correct?
 11 A Correct.
 12 Q So the policy established under Berkebile and
 13 Herman continued under Robins?
 14 A I guess so.
 15 Q Continues to today, correct?
 16 A I don't know. I don't get myself involved in it
 17 anymore.
 18 Q You haven't received anything from AAA telling you
 19 from MMU that the Berkebile and Herman don't ask
 20 don't tell policy doesn't apply anymore, do you?
 21 A No, I haven't.
 22 Q So as far as you know that's still the policy of
 23 AAA, don't ask don't tell about payments of back
 24 benefits?
 25 MS. KULIK: Objection, form

1 and foundation.
 2 BY MR. MCKENNA:
 3 Q Correct?
 4 A I don't know.
 5 Q As far as you know it's still a policy, correct?
 6 A I haven't been told otherwise.
 7 MS. KULIK: Same objection.
 8 BY MR. MCKENNA:
 9 Q When you came to AAA in '97, it was not in the
 10 capacity as an adjuster, correct?
 11 A In January of '97, yes.
 12 Q In '97. You came in -- I'm sorry, when you came
 13 into the Medical Management Unit setting reserves
 14 when Mr. Berkebile and Mr. Herman made this
 15 statement to you about don't ask don't tell --
 16 A Yes.
 17 Q -- you were a reserve specialist?
 18 A Yes.
 19 Q All right. Now, you were asked a question on page
 20 45 of the Marr deposition, at line 9 on page 45.
 21 "Question: And do you think
 22 it's fair for an insurance company not to tell the
 23 insureds that they're entitled to back pay?
 24 Answer: No.
 25 Question: If you didn't think

1 it was fair why didn't you tell Susan Marr?
 2 Answer: It wasn't my decision
 3 to make.
 4 Question: People in
 5 management told you not to tell her?
 6 Answer: Well, they didn't say
 7 not to tell her. I was just told not to address
 8 it unless the insured requested it.
 9 Question: You were told not
 10 to tell her until she posed that question to you,
 11 correct?
 12 Answer: Well, I would have no
 13 contact with Susan, but I did not instruct the
 14 adjuster to tell her."
 15 Are those answers accurate and
 16 truthful that you gave there?
 17 A Yes.
 18 Q Were you instructed specifically not to inform the
 19 insureds unless they asked?
 20 Quote, "I was just told not to
 21 address it unless the insured requested it."
 22 That was under oath and you're
 23 saying that that was an accurate and truthful
 24 statement, correct?
 25 A I would say so.

1 Q You were instructed by AAA not to inform the
 2 insureds, correct, by management?
 3 A I'm trying to remember the exact conversation.
 4 Q Well, your memory of that conversation would have
 5 been fresher in 2002 than it would be today,
 6 correct?
 7 A Correct.
 8 Q You answered that question under oath then
 9 understanding it, correct?
 10 A Correct.
 11 Q So you were -- according to your answer to that
 12 question, you were instructed by AAA management
 13 not -- quote, "I was told not to address it unless
 14 the insured requested it," unquote, correct?
 15 A Correct.
 16 Q Continuing on the bottom of page 45, line 25,
 17 quote, "And you were told by management not to
 18 raise this issue to the adjuster?
 19 Answer: I was told not to
 20 raise the issue."
 21 A I'm sorry, where are you at?
 22 Q Bottom of page 45, top of page 46, line 25 to line
 23 3.
 24 A Okay.
 25 Q Is that an accurate representation of your

1 testimony under oath?
 2 A Yes.
 3 Q So you were advised by AAA not to talk to insureds
 4 and adjusters about back pay, correct?
 5 MS. KULIK: Objection to form
 6 and foundation.
 7 THE WITNESS: I can't remember
 8 if they specifically said insureds.
 9 BY MR. MCKENNA:
 10 Q Well, according to your testimony in 2002, which
 11 you indicated would have been fresher in your mind
 12 of that conversation, that's what you said,
 13 correct?
 14 A That's what I said at the time.
 15 Q You also specifically said adjusters. You were
 16 advised by management not to speak to two classes
 17 of people, insureds and adjusters, about back
 18 payment of benefits, correct?
 19 A I don't remember.
 20 Q You would rely on the testimony?
 21 A I would have to rely on this testimony.
 22 Q Do you know what levels of care you were taught
 23 that a home health aide performs?
 24 MS. KULIK: Objection, form
 25 and foundation.

1 THE WITNESS: You mean today?
 2 MR. MCKENNA: Yes.
 3 THE WITNESS: Yes, I was given
 4 a breakdown.
 5 BY MR. MCKENNA:
 6 Q In your deposition at page 81, you were asked a
 7 question about what a home health aide does, and
 8 you said, "She employs meal prep and taking care
 9 of environment, transporting to medical
 10 appointments."
 11 Is that accurate? It's page
 12 81, line 16.
 13 A It's probably not all inclusive, but those would
 14 be duties.
 15 Q All I'm asking is that accurate?
 16 A Yes.
 17 Q You were then asked with respect to a high tech
 18 aide, back when you were sending these e-mails
 19 that were attached to the Marr dep?
 20 A Yes.
 21 Q Bowel programs you answered and wound care?
 22 A Yes.
 23 Q Again that's not all inclusive?
 24 A Probably not.
 25 Q You were then asked about LPN and RN and you

1 indicated that you weren't really sure. You felt
 2 RNs did sometimes wound care and IV feedings
 3 correct?
 4 A Correct.
 5 Q So between 2002 and 2005, you still haven't
 6 figured out what the different levels of care for
 7 all of these four staffing levels of home aide,
 8 high tech aide, LPN and RN do?
 9 MS. KULIK: Objection, form
 10 and foundation and relevance.
 11 BY MR. MCKENNA:
 12 Q Is that correct?
 13 A No, I haven't committed it to memory.
 14 Q In addition to benefits for attendant care, room
 15 and board, mileage, transportation, there's also
 16 benefits that an insured is entitled to for case
 17 management, correct?
 18 A Correct.
 19 Q And there's also benefits that they're entitled to
 20 for completing guardianship and conservatorship
 21 papers?
 22 A Correct.
 23 Q What rates of compensation did the family receive
 24 for providing those benefits in the last year?
 25 A I don't know.

1 Q In the last seven years?
 2 A I don't know.
 3 Q What reserve had to be set for those rates into
 4 the future?
 5 THE WITNESS: You have the
 6 last MRR?
 7 I have 6500 a year under A
 8 expenses.
 9 BY MR. MCKENNA:
 10 Q What's an A expense?
 11 A It is a miscellaneous category, case management
 12 and guardianship fees would be under that.
 13 Q What's the legal expenses, what is that
 14 categorized as?
 15 A The legal expense for setting up guardianship?
 16 Q No, you said that you have those categorized as an
 17 A expense. A as in the alphabetical letter A?
 18 A Yes.
 19 Q What do you categorize legal expenses as?
 20 A Whatever category is in suit.
 21 Q Are they A expenses.
 22 A If that was the issue that was.
 23 Q I don't know. What you're telling me is there and
 24 I'm trying to find out.
 25 MS. KULIK: He's not talking

1 about the attorney fees related to --
 2 MR. MCKENNA: Legal expenses,
 3 the A expenses.
 4 MS. KULIK: Are you talking
 5 about legal expenses associated with setting up
 6 the conservatorship.
 7 MR. MCKENNA: No.
 8 MS. KULIK: Okay. Not
 9 associated with the conservatorship.
 10 THE WITNESS: You're talking
 11 about legal expenses affiliated with a lawsuit?
 12 MR. MCKENNA: Yes.
 13 THE WITNESS: I don't reserve
 14 for those.
 15 BY MR. MCKENNA:
 16 Q You don't reserve for those at all?
 17 A No.
 18 Q Who does?
 19 A No one.
 20 Q Then why were they blacked out from the documents
 21 that I got then?
 22 A That's the actual reserve for not legal expenses
 23 but for a potential settlement that would be
 24 reserved for.
 25 Q Karen went to the trouble of blackening out all

1 sorts of stuff that I didn't get to see.
 2 Here, allowable expenses, one
 3 year, twenty-five years, this was blacked out and
 4 the number was changed?
 5 A Yes.
 6 Q What is the number that's up there, what does it
 7 represents?
 8 A That would be the first year expenses, our medical
 9 allowable expenses, benefits plus what I had
 10 reserved for the litigation.
 11 Q So you do reserve for litigation expenses?
 12 A Not litigation expenses, but for a potential
 13 settlement. That's not considered an expense.
 14 Expense payments are the cost of doing business.
 15 Q On the MRR you have a category on here, for
 16 example, wheelchair, medical devices that you set
 17 a limit on, annual expectation to repeat over a
 18 lifetime, correct?
 19 A Correct.
 20 Q In here in the MRR -- now this was prepared by
 21 you, correct?
 22 A Yes.
 23 Q June 9th, June 9th, 2005?
 24 A It was printed on that day, it wasn't prepared on
 25 that date. It was prepared April 5th through

1 April 11th.
 2 Q April of '05, correct?
 3 A Yes.
 4 Q Your description here is, and this is your
 5 description from your review of the file, "Severe
 6 cranial cerebral injury, brain stem convulsive
 7 disorder?"
 8 A That would be in here, that's whoever did the
 9 original MRR.
 10 Q But you took this from that file and wrote it in
 11 here?
 12 A No, I didn't. That just stays in the system from
 13 MRR to MRR.
 14 Q So this isn't anything you wrote?
 15 A Right.
 16 Q So no one's ever seen fit to change that, so that
 17 must be an accurate description?
 18 A Yes.
 19 Q All right. Current medical condition, this is
 20 something you wrote?
 21 A Yes.
 22 Q "At home receiving O.T. and P.T. in the home by
 23 family and agency. Agency provides 12 to 13 hours
 24 per day. Mother provides the rest of the care."
 25 All right?

1 A Yes.
 2 Q There's another MRR 12-1-04.
 3 Again was this written by you?
 4 A Yes.
 5 Q Printed out on the 9th of June?
 6 A Yes.
 7 Q "Receiving O.T., P.T. in the home by family and
 8 agency. Agency provides 8 to 12 hours a day.
 9 Mother provides the rest of the care." Correct?
 10 A Correct.
 11 Q On the second page it says something blacked out,
 12 something "Possible home care settlement. Family
 13 provides 16 hours per day. The rate will be
 14 \$11.00 per hour. Agency provides 8 hours per
 15 day." And the rate is \$18.50 per hour, \$19.50 per
 16 hour and holidays and weekends, correct?
 17 A Correct.
 18 Q What holiday and weekend pay do the family get?
 19 A None.
 20 Q None. But they're supposed to be getting paid for
 21 the same service they provide, correct?
 22 MS. KULIK: Objection, form
 23 and foundation.
 24 THE WITNESS: Yes, they're
 25 supposed to be paid the same as an aide.

1 BY MR. MCKENNA:
 2 Q Why is the family getting \$11.00 and the aides are
 3 getting \$19.50 and \$18.50?
 4 MS. KULIK: Objection to the
 5 form and foundation.
 6 THE WITNESS: Because the
 7 company's philosophy is that they pay what the
 8 aide gets paid.
 9 BY MR. MCKENNA:
 10 Q What company?
 11 A AAA.
 12 Q And that's in writing somewhere? You said a
 13 philosophy is a thought. A policy is something in
 14 writing.
 15 You're saying that AAA has
 16 thoughts about what should get paid or they have a
 17 policy about what should get paid?
 18 MS. KULIK: I'm going to
 19 object to the form of the question.
 20 If you can answer it without
 21 using one of his two selections, you may also do
 22 that.
 23 THE WITNESS: I don't think we
 24 have it in writing.
 25 BY MR. MCKENNA:

1 Q So it's a thought passed along?
 2 A Yes.
 3 Q It's not in writing. If it was in writing it
 4 would be in the No-Fault Act?
 5 MS. KULIK: Objection, form
 6 and foundation.
 7 THE WITNESS: If it was AAA's
 8 policies.
 9 BY MR. MCKENNA:
 10 Q If it was in writing that said you could treat
 11 people in a disparate way like this, you'd expect
 12 to see that in a No Fault or AAA policy?
 13 MS. KULIK: Objection, form,
 14 foundation and argumentative and you're asking her
 15 for an opinion.
 16 THE WITNESS: I don't think
 17 the No-Fault Act gets that specific, does it?
 18 BY MR. MCKENNA:
 19 Q Does the policy get that specific?
 20 A No.
 21 Q Do you ever tell insureds we're going to pay you
 22 less because you should be happy to take care of
 23 your family member in your own home?
 24 MS. KULIK: Objection, form
 25 and foundation, argumentative.

1 THE WITNESS: I never talked
 2 to an insured about it.
 3 BY MR. MCKENNA:
 4 Q I'm not a wiz at math, but a dollar an hour
 5 difference from \$18.50 to \$19.50 for holidays and
 6 weekends, why wouldn't the insured at \$11.00 an
 7 hour get the same prorated increase?
 8 MS. KULIK: Objection, form,
 9 foundation. You're asking her for an opinion.
 10 THE WITNESS: I don't know. I
 11 don't make that decision.
 12 BY MR. MCKENNA:
 13 Q But you did. You've written it in this form
 14 somehow or another you got this information?
 15 A I wrote that information. I didn't make the
 16 decision that's the rate that would be paid.
 17 Q How did you get this information?
 18 A It's in the claim file, I believe.
 19 Q The \$11.00 per hour and now we're back up to
 20 \$133,000.00 a year?
 21 A Yes.
 22 Q And you think it's fair to treat the family this
 23 way and not pay them --
 24 MS. KULIK: Objection.
 25 MR. MCKENNA: Please.

1 MS. KULIK: I'm sorry.
 2 MR. MCKENNA: Bite your
 3 tongue.
 4 BY MR. MCKENNA:
 5 Q -- and not pay them the same weekend overtime,
 6 holiday that an agency gets?
 7 MS. KULIK: Objection, form,
 8 foundation.
 9 THE WITNESS: I don't know.
 10 MS. KULIK: Don't answer until
 11 I'm done.
 12 THE WITNESS: Sorry
 13 MS. KULIK: Objection, form,
 14 foundation and you're asking her for an opinion
 15 which is irrelevant.
 16 THE WITNESS: I don't know.
 17 BY MR. MCKENNA:
 18 Q Do you have some concern sitting here today
 19 testifying that you may say something and it may
 20 have a negative impact on your career with AAA?
 21 A No.
 22 Q Do you have a memory problem?
 23 A No. Well, it's not the best.
 24 Q The information that we just discussed in the MRR
 25 about the rate for the agency --

1 A Yes.
 2 Q -- you said that you got that from the file?
 3 A Well, probably. It's possible that if it's not
 4 stated in the file and the agency's being approved
 5 through Mitchell, it might have been we go in
 6 there and get the data.
 7 Q My question is very simple.
 8 You just testified under oath
 9 that you got that information from the file,
 10 that's either a yes or a no?
 11 A I don't know.
 12 Q Now, it's an I don't know?
 13 A I guess I should have said I don't know.
 14 Q See, I have this document Exhibit 21 from May 29
 15 2002. This is also in your handwriting.
 16 This one says, "Agency is
 17 receiving \$20.00 an hour."
 18 A Yes.
 19 Q And I've got a document you're saying was done in
 20 2005, that says it's \$18.50?
 21 A That's what it says.
 22 Q Which one's right and which one's wrong?
 23 A I don't know.
 24 Q Are they both right?
 25 A I don't know.

1 Q Don't know. Just one last area if I can find the
 2 document.
 3 Ma'am, earlier I had asked you
 4 about changing reserves, and you said whether they
 5 would go up or down would be based upon what you
 6 were actually paying and not what you were
 7 expected to pay in the future, correct?
 8 A Correct.
 9 Q Now, on Exhibit 21 from 5-29-02, you put on here,
 10 "Brian continues to receive 24 hour care." This
 11 is when we talked about the \$20.00 an hour?
 12 A Right.
 13 Q This one shows at \$20.00 an hour, okay, where as
 14 before they were paying less but the reserve
 15 amount was 10,000 some odd dollars, \$10,300.00.
 16 Here you have an \$8708.00 a month with \$20.00 an
 17 hour rates for O.T., correct?
 18 A Correct.
 19 Q I'm sorry, for home health aide.
 20 Then down here it says,
 21 "Increasing reserves by \$426,658.00 due to the
 22 rate increase by home health agency reports
 23 attached."
 24 What reports are you talking
 25 about that were attached, because this would be an

1 indication that you have something that shows
 2 proof for why you're changing the rates?
 3 A I don't know.
 4 Q What reports?
 5 A I don't know.
 6 Q Because I don't have any reports attached to that,
 7 do you?
 8 A No. I don't keep them and attach them. They
 9 would have been attached to what got mailed to
 10 Employers Reinsurance.
 11 Q My point is where are those reports that you
 12 created that you attach that says this?
 13 A It would have been a medical report.
 14 Q How do you know what it was? You're guessing at
 15 it. I want it know where the reports are so we
 16 don't have to guess at it.
 17 A I don't know. I don't keep track of what reports
 18 I received.
 19 Q This could have been a report from somebody from
 20 O.T., it could have been a report from a doctor,
 21 right?
 22 A Yes.
 23 Q It could have been any number of reports?
 24 A Correct.
 25 Q But it says "see reports attached," but they're

1 not to this?
 2 A No.
 3 Q So why wouldn't you have kept a copy of the
 4 reports that you were sending and attach them as
 5 it says they are?
 6 A Because that's not our procedure. It's telling --
 7 when I write "reports attached," that's telling
 8 Employers that the copy that they received that
 9 reports are attached.
 10 Q I understand that. And it wouldn't have taken
 11 much to attach it to this and put that into the
 12 file, and then we would all know what you're
 13 referring to in a clear and concise manner, right?
 14 A Correct.
 15 Q Right now, it doesn't reflect a clear and concise
 16 process, does it?
 17 MS. KULIK: Objection, form,
 18 foundation.
 19 BY MR. MCKENNA:
 20 Q Does it?
 21 A Not looking back.
 22 Q Well, that's the whole purpose of being clear and
 23 concise so we can look back and see what you're
 24 referring to, correct, that's why we do this
 25 paperwork in the first place?

1 MS. KULIK: Objection to form,
 2 foundation.
 3 BY MR. MCKENNA:
 4 Q Right? That's what you told me earlier, Claim
 5 Status Reports, MRRs, CPS notes, all of them are
 6 documented in a clear and concise manner so that
 7 one month, one year, ten years later, we could go
 8 back and know exactly what it was you're referring
 9 to, correct?
 10 A For a claims file, yes.
 11 Q This is part of the claim file. It's called Claim
 12 Status Report and it's kept in the claim file, and
 13 it doesn't have the reports attached.
 14 So it's another incident where
 15 we're just going to have to just guess what
 16 happened, it's been lost or destroyed?
 17 A Well, until this lawsuit, these last couple of
 18 lawsuits came up, I never anticipated that anybody
 19 else would care what I did.
 20 Q No one at AAA seemed to care what you did then
 21 until a lawyer started asking you questions?
 22 A It was approved at the time, so once it was
 23 approved.
 24 Q So you're saying this litigation process has
 25 helped you understand better how to do your job?

1 MS. KULIK: Objection, form
 2 and foundation.
 3 THE WITNESS: No, I haven't
 4 changed any procedures.
 5 BY MR. MCKENNA:
 6 Q You would attach the report to this report if you
 7 had this to again, wouldn't you?
 8 A Not unless my procedures changed, not unless I was
 9 told to start keeping them.
 10 Q So if someone at AAA doesn't tell you to attach
 11 them, you're going to document files in the same
 12 way you just did this one?
 13 A Unless I'm directed to do otherwise, yes.
 14 Q All right, shift gears then. Exhibit 14, this one
 15 says --
 16 MS. KULIK: What's the date of
 17 that one?
 18 MR. MCKENNA: 8-31-2000.
 19 "Reducing reserves
 20 \$979,000.00. We've reduced our home care
 21 projections to current costs as litigation was
 22 dropped. Family changed agencies and rates are
 23 lower. No reports."
 24 What did you base that on?
 25 A Based on the past history when they changed

1 agencies the costs went down.
 2 Q Well, you got a nine-hundred, almost a million
 3 dollar reserve reduction?
 4 A Yes.
 5 Q How much of that was reserved for litigation?
 6 MS. KULIK: Objection,
 7 irrelevant and don't answer. If you know do not
 8 answer.
 9 MR. MCKENNA: On what basis?
 10 It's not privileged?
 11 MS. KULIK: It's irrelevant.
 12 MR. MCKENNA: You can't
 13 instruct her not to answer based on irrelevance.
 14 BY MR. MCKENNA:
 15 Q How much of that million dollars was litigation?
 16 A I don't think any of it was.
 17 Q Well, that's a shocker, because it says reducing
 18 reserves, home care projections, current costs as
 19 litigation was dropped.
 20 So you're saying there was
 21 none of this that was litigation driven reserve?
 22 A I don't think so.
 23 Q And this reserve, is this a lifetime reserve
 24 reduction of a million dollars?
 25 A What do you mean is it lifetime?

1 Q Is that the reserve estimate that's being reduced
 2 over the lifetime of the claim?
 3 A Yes.
 4 Q The annual life expectancy for him thirty years?
 5 A Yes.
 6 Q So you're looking at a savings of about \$30,000.00
 7 a year?
 8 MS. KULIK: Object to the form
 9 of the question.
 10 BY MR. MCKENNA:
 11 Q Over thirty years, roughly?
 12 A I can't do math in my head.
 13 Q Well, 30,000 times 10 is 300,000, times three is
 14 900,000?
 15 A Okay.
 16 Q That's how I do the long stuff, break it down and
 17 make it simple. Roughly you're talking about
 18 30,000 to 40,000 a year?
 19 A Yes.
 20 Q And you dropped a monthly rate down to \$7416.00?
 21 A Correct.
 22 MS. KULIK: Rate or reserve?
 23 BY MR. MCKENNA:
 24 Q Reserve rate, correct?
 25 A Correct.

1 Q But again you don't know even then or now what was
 2 being paid monthly.
 3 A I would have just went by the past history that
 4 they were averaging.
 5 MR. MCKENNA: I don't have
 6 anything else.
 7 CROSS EXAMINATION
 8 BY MS. KULIK:
 9 Q Are the Claim Status Reports kept in the claim
 10 file or only in your -- what do you call these,
 11 things?
 12 A Pendaflex.
 13 They used to copy them and
 14 mail a copy to the claim file, but we stopped that
 15 at some point, I don't know when.
 16 Q So they're just kept in your file, not the claims
 17 file?
 18 MR. MCKENNA: Currently?
 19 MS. KULIK: Pardon?
 20 MR. MCKENNA: Currently is
 21 that what you're saying?
 22 MS. KULIK: Yes.
 23 MR. MCKENNA: She doesn't know
 24 how current that is?
 25 THE WITNESS: As far as I know

1 they're not copying them and sending them out to
 2 the branches anymore, but I don't remember when
 3 that was started.
 4 BY MS. KULIK:
 5 Q Have you ever seen a situation where a family
 6 switches from one agency to another agency and the
 7 agency rate drops?
 8 A Yes.
 9 Q Do you ever or have you ever in your role as a
 10 reserve specialist with claims reinsurance or when
 11 it was called Medical Management, had personal
 12 contact with an insured?
 13 A No.
 14 Q Do you have any reason to have contact with an
 15 insured?
 16 A No.
 17 MR. MCKENNA: Other than
 18 informing them about fraud?
 19 BY MS. KULIK:
 20 Q Do you have any reason to contact any business
 21 reason to contact an insured?
 22 A No.
 23 Q How long did you handle first party cases?
 24 A About eight years.
 25 Q And during that time did you ever handle a CAT

1 loss case?
 2 A No.
 3 Q Did you ever handle an attendant care case?
 4 A No.
 5 Q Were you ever trained to handle a CAT loss case?
 6 A No.
 7 Q What are your job duties as a reinsurance, claims
 8 reinsurance specialist?
 9 A I reserve the reserves, make the adjustment and
 10 complete the status forms for reinsurers?
 11 Q Do you have any decision-making roles at all on
 12 the files?
 13 A No.
 14 Q What is your understanding of how reserves should
 15 be set?
 16 A We reserve based on what we're currently paying on
 17 what we know we're going to pay in the future.
 18 Q When you talk about the branch interventions,
 19 approximately how many, if you can recall,
 20 branches did you go to?
 21 A I think I went to four.
 22 Q And what was your roles at the intervention
 23 meeting?
 24 A I think at one of them I talked about close-out
 25 procedures.

1 Q Saving Mr. McKenna from having to ask, what do you
 2 mean by "close-out procedures?"
 3 A Once a loss is determined that it's a CAT, the
 4 branches are prevented from closing the reserves,
 5 so they would need to call me and ask me to close
 6 them for them and we have certain guidelines so I
 7 explain those.
 8 Q And other than that?
 9 A I was just mainly there to be introduced to the
 10 field.
 11 Q And why were you being introduced to the field?
 12 MR. MCKENNA: Objection. It
 13 would call for speculation why she was being asked
 14 to be social.
 15 THE WITNESS: They had a
 16 reserving issue and needed assistance.
 17 BY MS. KULIK:
 18 Q What did the file reviews consist of at the
 19 intervention?
 20 MR. MCKENNA: Objection, form,
 21 foundation, calls for her to speculate. She
 22 didn't know what they were doing.
 23 THE WITNESS: I think they had
 24 the working file, one of the working files.
 25 BY MS. KULIK:

1 Q At the time that the interventions were occurring
 2 and you testified that you did not see any of your
 3 e-mails in the file, had you sent any e-mails at
 4 that point?
 5 A No.
 6 MR. MCKENNA: Objection as to
 7 foundation.
 8 BY MS. KULIK:
 9 Q Do you know anything at all about what you
 10 referred to as the second intervention program?
 11 A Do I know anything about it?
 12 Q Do you know when it was?
 13 A No.
 14 Q Do you know who was involved in it?
 15 A There was like one of the MMU managers, a nurse
 16 and an adjuster and someone from reinsurance.
 17 Q You had no personal involvement?
 18 A No.
 19 Q You don't know when those were?
 20 A Not specifically.
 21 Q Did you ever handle Brian Bearden's file?
 22 A No.
 23 Q Did you ever have any contact with the file, other
 24 than what would have been sent to you or what was
 25 in the CPS notes?

1 A No.
 2 Q Do you know how to do your job?
 3 A Yes.
 4 Q Were you trained how to do your job?
 5 A Yes.
 6 Q Is your job to determine whether or not the proper
 7 benefits are being paid?
 8 A No.
 9 MR. MCKENNA: Objection as to
 10 form, leading.
 11 MS. KULIK: No further
 12 questions.
 13 (RECORD READ BACK)
 14 REDIRECT EXAMINATION
 15 BY MR. MCKENNA:
 16 Q By the way, ma'am, the report we were talking
 17 about where you changed the projections, you said
 18 by almost a million dollars?
 19 A Yes.
 20 Q You said none of that you believe was litigation,
 21 it was all about the change in agencies?
 22 A I think so.
 23 Q Okay, fair enough.
 24 There's a wizard mail that we
 25 were looking at earlier, do you recall?

- 1 A From the Marr?
- 2 Q Yes.
- 3 A Yes.
- 4 Q I don't know what Exhibit Number it was marked.
- 5 What was it, 1?
- 6 Anyway, I asked you at the
- 7 beginning of the deposition today about this
- 8 adversarial process and whether it should even be
- 9 involved. And you said the adversarial part would
- 10 come from the insured, thinking that because an
- 11 adjuster or supervisor disagreed with their claim,
- 12 the insured would see it as being adversarial,
- 13 correct?
- 14 A Correct.
- 15 Q I asked you the questions about from the
- 16 standpoint of AAA, it should never be adversarial,
- 17 they're just doing a job, right?
- 18 A Yes.
- 19 Q But certainly as it relates to anybody above
- 20 supervisor to an adjuster there should be no
- 21 adversarial position between them and an insured,
- 22 correct?
- 23 MS. KULIK: Objection, form
- 24 and foundation, asking for an opinion.
- 25 BY MR. MCKENNA:

- 1 Q Is that correct?
- 2 A I wouldn't think so.
- 3 Q All right. There was in this e-mail on the first
- 4 page a statement that "The family has instead
- 5 hired a very costly agency to provide attendant
- 6 care."
- 7 So it's described here as
- 8 being a very costly agency. Do you see that near
- 9 the bottom?
- 10 A On the first page?
- 11 Q Yes.
- 12 A Yes.
- 13 Q Four or five sentences up?
- 14 A Yes.
- 15 Q I didn't see any indication in that Claim Status
- 16 Report of someone from AAA saying, the family has
- 17 hired a very cheap and, therefore, beneficial to
- 18 AAA agency, did you?
- 19 A No.
- 20 Q So AAA appears to be complaining when they hire an
- 21 agency that costs more money, correct?
- 22 MS. KULIK: Objection, form,
- 23 foundation. You're asking for speculation and
- 24 opinion.
- 25 BY MR. MCKENNA:

- 1 Q Well, you've got a letter of complaint about an
- 2 agency that was hired that charges more money,
- 3 correct?
- 4 A Correct.
- 5 MS. KULIK: Same objection.
- 6 BY MR. MCKENNA:
- 7 Q That's a factual issue, isn't it?
- 8 A Yes.
- 9 Q It's in a report in the file?
- 10 A Yes.
- 11 Q And then you have the family apparently hiring an
- 12 agency that charges less, but there isn't any
- 13 complaint from AAA then, is there?
- 14 A No.
- 15 Q Okay. And this complaint letter by AAA continues
- 16 on that these things were submitted.
- 17 "Our insured challenged our
- 18 decision in court and we lost on those claims and
- 19 that as a result of the care, costs are going to
- 20 be very high."
- 21 Is that correct on the second
- 22 page?
- 23 A The second page?
- 24 Q Here it says, the family's is happy with the care
- 25 of the Nancy Kissick Agency, the costs are very

- 1 high.
- 2 Because they've won, you're
- 3 going to have to continue to pay those costs?
- 4 You need to go to the second
- 5 page, though.
- 6 A Where were you reading again?
- 7 Q Where it says, "The family won their case in
- 8 court. We lost. And the costs are going to
- 9 continue to be high with the Kissick Agency."
- 10 Correct?
- 11 A Are you reading exactly?
- 12 Q No, I'm just trying to get you down there to
- 13 paraphrase it.
- 14 A Okay, yes.
- 15 Q Do you see that?
- 16 A Yes.
- 17 Q All right. There's a complaint there from AAA
- 18 that they're going to have to continue to pay for
- 19 Kissick because they lost in court?
- 20 MS. KULIK: Objection, form,
- 21 foundation.
- 22 BY MR. MCKENNA:
- 23 Q Correct?
- 24 MS. KULIK: And you're asking
- 25 her for an opinion and speculation.

1 THE WITNESS: State your
 2 question again?
 3 BY MR. MCKENNA:
 4 Q There's a complaint in this, there's a negative
 5 impact to AAA that they lost in court and they're
 6 going to have to continue to pay for Kissick?
 7 A Correct.
 8 Q Okay. There's no wizard e-mail or e-mail
 9 otherwise indicating, hooray, yippy for us, she
 10 picked a cheaper agency?
 11 A No.
 12 Q The letter that I'm talking about continues that
 13 "The AFC placement no longer seems --" and that
 14 would be adult foster care, the bottom of page 2,
 15 "-- no longer seems realistic since the outside
 16 agency now provides what mom and dad used to."
 17 A Correct.
 18 Q Page 4 talks about biting the bullet. Do you
 19 remember that?
 20 A Yes.
 21 Q And the case management rates being ridiculous on
 22 page 4?
 23 A Yes.
 24 Q Again those would be letters indicating criticisms
 25 and concerns on the part of AAA for high cost?

1 A Yes.
 2 Q It shouldn't be, should it?
 3 A No.
 4 MR. MCKENNA: That's all I
 5 have. Thank you.
 6 (DEPOSITION CONCLUDED
 7 AT 3:40 P.M.)
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1 MS. KULIK: Objection, form,
 2 foundation. You're asking her to speculate and
 3 for a conclusion.
 4 BY MR. MCKENNA:
 5 Q Is that correct?
 6 A At least by the author.
 7 Q I mean you can read it. It's a clear and concise
 8 statement from the author to the file in a
 9 business record, AAA, this author working for AAA
 10 is not happy, correct?
 11 A Correct.
 12 Q But AAA doesn't author the same kind of memos
 13 cheering and congratulating them when it goes the
 14 other way, do they?
 15 MS. KULIK: Objection, form
 16 and foundation, asked and answered.
 17 THE WITNESS: No.
 18 BY MR. MCKENNA:
 19 Q That would be an indication of an adversarial
 20 position, wouldn't it?
 21 MS. KULIK: Same objection,
 22 asked and answered.
 23 THE WITNESS: This memo?
 24 BY MR. MCKENNA:
 25 Q Yes.

A				
AAA 4:17 5:1,22	180:11,24 181:6	204:22	198:14 199:18	86:7 107:15 108:4
7:4,6,25 9:8 12:5	185:10 186:9	add 9:16 135:5	224:16 226:11	110:21 145:20
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