

IN THE CIRCUIT COURT
OF FAULKNER COUNTY, ARKANSAS,
FOURTH DIVISION

ROSEY PERKINS and RHONDA COPPAK, PLAINTIFFS
Individually and as Co-Administratrixes
and Personal Representatives of the Estate
of Martha Bull, deceased

v.

NO. 23-CV-2014-862

MICHAEL MORTON, GILBERT BAKER, DEFENDANTS
and JOHN DOES 1-5

DEPOSITION OF:

JUDGE JIM MOODY

(Taken August 13th, 2015, at 10:00 a.m.)

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ALSO PRESENT

Rosey Perkins and Rhonda Coppak,
Plaintiffs



	INDEX	Page 4
1	WITNESS	PAGE
2	JUDGE JIM MOODY	
3	Examination by Mr. Buchanan	6
4	Certificate of Reporter	105
5	Errata Sheet	107
6	EXHIBITS	
7	Exhibit 1 - Notice to Take Oral and Video Deposition of Judge Jim Moody	23
8	Exhibit 2 - Memorandum Dated 7/8/2015	32
9	Exhibit 3 - Correspondence Transmitting Three Cases	32
10	Exhibit 4 - Order Dated 2/15/13	32
11	Exhibit 5 - Court of Appeals Case No. 13-1468 Townsend v. Bayer	32
12	Exhibit 6 - Invoice, Check, and Correspondence	32
13	Exhibit 7 - E-mails	32
14	Exhibit 8 - Order on Defendants' Motion for New Trial or Remittitur	89
15	Exhibit 9 - Notes	91

Page 5

C A P T I O N

ANSWERS AND ORAL DEPOSITION OF JUDGE JIM MOODY, a witness produced at the request of the plaintiffs, taken in the above-styled and numbered cause on the 13th day August, 2015, before Mike Mirelez, Registered Professional Reporter, Certified Court Reporter, Certified Realtime Reporter, at 10:00 a.m., at 200 West Capitol Avenue, Suite 2300, Little Rock, Arkansas, pursuant to the agreement hereinafter set forth.

* * * * *

S T I P U L A T I O N S

IT IS STIPULATED AND AGREED by and between the parties through their respective counsel that the oral deposition of JUDGE JIM MOODY may be taken for any and all purposes according to the Arkansas Rules of Civil Procedure.

* * * * *

Page 6

WHEREUPON,

JUDGE JIM MOODY,

having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. BUCHANAN:

Q Good morning. Would you tell us your name, please?

A My name is Jim Moody.

Q And, Mr. Moody, you and I haven't met before, we just met a few minutes ago, I believe. Nice to meet you.

A Uh-huh, thank you. Nice to meet you.

Q Where do you live at?

A Where do I live in Little Rock?

Q Yes.

A 5414 Stonewall.

Q All right. Do you have some other places that you live?

A Well, I have a summer home in Michigan, in Ludington, Michigan.

Q All right. But in terms of Arkansas, do you live anywhere else?

A No. That's -- that's my only residence.

Q Who all lives with you there at Stonewall?

Page 7

A My life, Lisa.

Q All right.

A And her son, Brugh, spelled B-R-U-G-H.

Q How old is Brugh?

A He's 40.

Q What do you do for a living?

A I'm of counsel here with Wright, Lindsey & Jennings, which is just part-time employment. I'm actually retired from the federal bench.

Q All right. What does of counsel mean in your situation?

A Well, of counsel means that I have a separate financial arrangement with the firm. I'm not a partner, I don't participate in the firm revenues in any way, and I'm compensated essentially for the work that I do on a percentage basis. And I'm under no obligation to produce so many hours or so much money or anything else, I'm here really just as an accommodation because they were kind to me.

Q Because they were kind to you?

A Yes, uh-huh.

Q Okay. When did you go on the federal bench?

A September of 1995.

Q And when did you go off?

A Well, I took senior status, but I continued to

Page 8

work for a period of time. And I actually had to retire and resign my commission when my son was appointed to the bench, and I don't remember the exact date, but I think it was like March of 2014.

Q When did you take senior status?

A I took senior status -- and, again, I don't remember the exact date, but it was about two years before I resigned.

Q September of 1995, who would have appointed you to the bench?

A Bill Clinton.

Q Okay. Did you have any experience as a judge prior to being appointed in '95?

A Well, I -- I had served a few times over in Pulaski County just, you know, filling in for somebody; but other than that, no.

Q Have you ever been appointed to be a special justice on the Arkansas Supreme Court?

A No.

Q Or the court of appeals?

A No.

Q Have you sat special on the Eighth Circuit?

A Yes.

Q Okay. Do you recall how many times you've sat special on the Eighth Circuit?

Page 9

1 A Twice.

2 Q Were those for particular cases or just a

3 particular day or two or?

4 A Well, when I first went on the bench, Richard

5 Arnold was the chief judge in the Eighth Circuit,

6 and he made a practice of bringing all the new

7 district judges to sit on one or more panels just

8 for the experience so you would know how they worked

9 on the appellate level.

10 And I was on one panel in Minneapolis and one

11 panel in St. Louis. And that's about a three-day

12 stint, and you're assigned about 10 to 15 cases to

13 decide. There are three judges on the panel, so

14 each judge divides the number of cases by three.

15 And that was my experience.

16 I also was on the Ninth Circuit toward the end

17 of my career, kind of under the same arrangement. I

18 had taken senior status by then, but I went out

19 there and sat on a three-day session with two other

20 judges.

21 Q Where was that at?

22 A San Francisco.

23 Q Okay. The two times that you've -- you sat in

24 on -- you sat on a panel for the Eighth Circuit --

25 A Uh-huh.

Page 10

1 Q -- I think you said that was during the

2 beginning of your career?

3 A Yes. It was very early, sometime probably

4 between '95 and '97.

5 Q And then towards the end, this was after you

6 had taken senior status, so I guess within the last

7 three or four years or so?

8 A Uh-huh. Probably within the last five years

9 for sure.

10 Q Okay. Where all did you practice prior to

11 sitting on the bench beginning in '95? What firms?

12 A Oh, well, I was at Wright, Lindsey & Jennings

13 one floor below here most of that time.

14 Q Okay. When did you start with Wright, Lindsey

15 & Jennings?

16 A September of 1966.

17 Q And were you --

18 A At that time we were in the tower building

19 over there. We moved here in 1970.

20 Q All right. And did you remain at Wright,

21 Lindsey until 1995?

22 A I did.

23 Q After you retired or resigned in March of

24 2014, did you immediately become of counsel with

25 Wright, Lindsey & Jennings?

Page 11

1 A No. I took a few months off. I have this

2 home in Michigan, so I went to Michigan for the

3 summer months. And then when I came back around

4 Labor Day of 2014, I came to this firm.

5 Q Okay. You said that -- well, I want to make

6 sure I understand. I think you said that you were

7 required to resign for your son to take the bench,

8 the federal bench?

9 A That's correct, I did say that.

10 Q What was the reason for that?

11 A A federal statute that, in effect, says that

12 two members of the same family can't sit on the same

13 court.

14 Q Okay. Now, your son, he practiced here at

15 Wright, Lindsey & Jennings; is that correct?

16 A Yes, he did, uh-huh.

17 Q Okay. Do you recall when he started at

18 Wright, Lindsey?

19 A It would have been sometime around 1980.

20 Let's see. He . . . probably around the latter part

21 of the 1980s. That's just an estimate. I don't

22 remember exactly.

23 Q Was he in any other law firm besides Wright,

24 Lindsey & Jennings?

25 A No.

Page 12

1 Q Have you been in any other law firm besides

2 Wright, Lindsey & Jennings?

3 A Well, not really. When I took the bar in

4 1964, I had six weeks before I had to report for

5 active duty in the Army, and I worked for John Haley

6 at the Rose Law Firm. I wasn't working for the law

7 firm, I was working directly for John, filling in

8 for him while he was sort of taking a leave. But

9 otherwise, no, I was with the Wright firm the rest

10 of the time.

11 Q Okay. When you went active -- did you say you

12 went active in 1964 in the military?

13 A I did, uh-huh.

14 Q Okay. What branch of the military?

15 A Artillery.

16 Q What -- was it Marines, Army, Navy, Air Force?

17 A Army.

18 Q Army?

19 A Uh-huh.

20 Q And at that time, was the Vietnam War going

21 on?

22 A Well, it was just -- yes. But it was just

23 beginning to involve the increased influx of troops

24 over there, so I never was sent to Vietnam. When

25 they -- when they had the big buildup, I had less

Page 13

1 than a year to serve on a two-year commitment, and
 2 so I didn't have to go.
 3 Q So you were not -- were you an officer?
 4 A I was.
 5 Q And then you had a two-year commitment, so you
 6 got out sometime in '66?
 7 A Uh-huh. Got out in September of '66 and came
 8 straight to the Wright firm.
 9 Q Your son -- and that's Jay Moody?
 10 A That's correct, uh-huh.
 11 Q And he -- I think you said he started here
 12 sometime -- "here," meaning the Wright, Lindsey &
 13 Jennings Law Firm -- in the late 1980s?
 14 A Uh-huh.
 15 Q How long was he here before he took the bench?
 16 A Well, he -- he went to the federal courthouse
 17 first as a circuit judge and served two 6-year terms
 18 over there.
 19 Q You mean the state court?
 20 A Yes, uh-huh.
 21 Q Okay.
 22 A Uh-huh. Circuit -- Pulaski Circuit Court,
 23 Third Division.
 24 Q Two 6-year terms, so that would put it roughly
 25 2000, 2002?

Page 14

1 A Approximately, yeah. I don't remember the
 2 exact dates. But he -- he was still at the Wright,
 3 Lindsey & Jennings Law Firm when I took the federal
 4 bench, so that would have been '95.
 5 Q All right.
 6 A And then end of -- sort of the end of '95.
 7 And it was sometime a couple of years later that I
 8 think he went to the Pulaski County Courthouse. I
 9 don't remember exactly. But he -- he was there
 10 12 years and was just finishing up his 12th year
 11 there when he was appointed to the federal bench.
 12 Q Wright, Lindsey & Jennings, has it always been
 13 a defense law firm, meaning they represent
 14 defendants in civil lawsuits typically?
 15 A Well, that -- that may be a fair
 16 characterization. I mean, it -- it is a
 17 full-service law firm, I mean, in that we have a
 18 number of different departments. We have bankruptcy
 19 lawyers, we have securities lawyers, transaction
 20 lawyers, labor lawyers, everything that -- the law
 21 firm got its beginning as part of the Rock Island
 22 Railroad law department, and their main function was
 23 to defend the Rock Island in crossing cases and
 24 other cases.
 25 But it evolved. And -- and when I joined the

Page 15

1 firm in 1966, it had a substantial practice in civil
 2 defense. A few plaintiffs cases, but largely cases
 3 against Mr. Kidd and his bunch.
 4 Q Okay.
 5 MR. KIDD: Thank goodness.
 6 BY MR. BUCHANAN:
 7 Q In terms of -- of a plaintiff's practice, a
 8 plaintiff's personal injury practice, I mean, is it
 9 fair to say that typically folks in the Wright,
 10 Lindsey Law Firm, even though there are a number of
 11 departments, at least in the civil defense
 12 department would be opposite of plaintiff?
 13 A I think that's a fair characterization. I'd
 14 say we would occasionally have a plaintiff's case,
 15 but it was not the usual. And most of our work was
 16 defense work, either for insurance companies or for
 17 self-insured companies. And -- and we did business
 18 litigation as well, so --
 19 Q Sure.
 20 A -- it wasn't just insurance companies or
 21 products cases.
 22 Q The -- did your practice include nursing home
 23 defense?
 24 A Mine personally?
 25 Q Yes.

Page 16

1 A Yes, to some extent. And for a period of
 2 time. I didn't do it exclusively.
 3 Q Can you give us some of the names of the
 4 clients that you represented in nursing home defense
 5 work?
 6 A I think the majority of them were for Beverly
 7 Enterprises. And that came about through Travelers
 8 Insurance Company, who was insuring them while I was
 9 representing them. Most of the time we would be
 10 chosen by the insurance company rather than the
 11 nursing home.
 12 Q Sure.
 13 A And so if they changed carriers, we -- the
 14 business might go somewhere else. But for a period
 15 of time, I was doing a lot of work for Travelers
 16 Insurance Company; and during that time, I had some
 17 cases representing Beverly.
 18 Q Do you recall how long it was that you
 19 represented Beverly Enterprises?
 20 A I really don't.
 21 Q Do you recall how many cases you handled in
 22 your defense of Beverly Enterprises?
 23 A Well, I can only give you an estimate, but I
 24 would say no fewer than five and no more than ten,
 25 but that -- that is just an estimate.

Page 17

1 Q Do you recall any other nursing home companies
2 that you represented while you were at Wright,
3 Lindsey?
4 A It's possible, but I don't recall any. I do
5 remember Beverly.
6 Q Okay.
7 A But I don't remember any -- any of the other
8 by name. You know, sometimes they have a name
9 that -- you know how that they may have an
10 affiliation some way, but I just don't remember.
11 Q Have you ever represented a plaintiff in a
12 lawsuit against a nursing home?
13 A No. The firm has, but I never have.
14 Q So the firm has represented plaintiffs in
15 nursing home litigation?
16 A I know of one case, yes.
17 Q Okay. Who handled that case?
18 A Primarily Sam Jones.
19 Q Do you know when that was?
20 A I was still with the firm, so it would have
21 been before 1995. It was probably sometime around
22 1990, I would think.
23 Q Do you recall who Mr. Jones had that case
24 against in terms of the company that had the nursing
25 home that was the defendant?

Page 18

1 A The nursing home was in Saline County and the
2 case was tried in Saline Circuit Court, but I don't
3 remember the name of the nursing home.
4 Q Okay. Can you recall any other examples of
5 the firm representing plaintiffs in litigation
6 against a nursing home or nursing home company other
7 than the instance with Mr. Jones?
8 A That's the only one that comes to mind.
9 Q Do you know anything about Wright, Lindsey's
10 practice with respect to whether they continued to
11 defend the firm, at least continued to defend
12 nursing home companies while you were on the bench?
13 A No, I don't know.
14 Q Okay. Do you know anything about Jerry
15 Sallings' practice?
16 A Well, I know Jerry. He's -- he has an office
17 down the hall from mine, but -- and I know he does
18 some nursing home defense, but I -- I haven't been
19 involved in any of his cases, so I don't have any
20 intimate knowledge of them.
21 Q Have you had any other family members here at
22 Wright, Lindsey & Jennings?
23 A Other than my son?
24 Q Yes.
25 A No. Well, I take that back. I had another

Page 19

1 son who worked here as a courier briefly.
2 Q Okay. What about have you had any family
3 members, at least by blood -- by marriage that have
4 worked here?
5 A No.
6 Q Is Kristi Moody related to you?
7 A I know Kristi, but, no, she's not related.
8 Q Okay. Do you know if your son -- when I say
9 "your son," Jay.
10 A Uh-huh.
11 Q -- did any nursing home defense when he was
12 here at Wright, Lindsey?
13 A I don't remember that he did. He did casualty
14 defense work, but I don't remember any representa --
15 could have, but I just don't remember it if he did.
16 Q It looks like you brought some information
17 here to the deposition.
18 A Uh-huh.
19 Q And I'm just curious what all you've got over
20 there.
21 A Okay. Well, you -- you sent a request
22 attached to your deposition notice --
23 Q Uh-huh.
24 A -- and I tried to respond to that. So that --
25 I've typed up a brief resumé. And then you asked

Page 20

1 for correspondence, which I included a couple of
2 letters here and then one bill that I have sent that
3 was back in February of 2015. That's what is
4 attached to the deposition notice.
5 Q Okay.
6 A But I went ahead and included a few other
7 things here. This is the file from which I got the
8 correspondence, this is the file I have. And in
9 that file, I also have some pleadings that
10 Mr. Everett sent me in this present lawsuit.
11 Q All right.
12 A A complaint and a couple of answers. And
13 there were a couple of other pleadings in the case
14 against Greenbrier Care Center, which I obtained on
15 my own.
16 In this same file, there are some cases that I
17 decided on the federal bench involving remittitur,
18 and I think Mr. Everett has already provided those
19 to you.
20 Q I think I -- he gave me some documents here
21 right before we started. I haven't had a chance to
22 go through them yet, but I will.
23 A Well, I think this is the same thing.
24 Q All right.
25 A And then finally, I had a paralegal here --

Page 21
1 or -- a law clerk, I should say, not a paralegal --
2 do a memo which basically pulled up some of the
3 Arkansas appellate decisions on remittitur cases.
4 Q All right.
5 A And although that didn't seem to fit the
6 request exactly, I wanted you to know I had looked
7 at most of that stuff, so if you want me to ask
8 about it, you --
9 Q Sure.
10 A Now, this -- this binder is just pleadings,
11 primarily posttrial pleadings in the Greenbrier
12 case.
13 Q All right.
14 A Which I think you have.
15 Q Okay.
16 A These are some notes, this is a legal pad with
17 some of my handwriting on it that basically are my
18 notes when I reviewed the pleadings, the trial
19 transcript, and all of the trial exhibits.
20 Q All right.
21 A And that -- I didn't see that that was
22 specifically requested, but I brought it. And
23 that --
24 Q Well, I appreciate that.
25 A And I have at least one extra copy.

Page 22
1 THE WITNESS: Does anybody want a copy of
2 my --
3 BY MR. BUCHANAN:
4 Q What was that of the -- your --
5 A That's the same thing I just handed you.
6 Q Okay.
7 A Uh-huh.
8 Q This is a cop -- these two are the same?
9 A I hope so. I did some of my own copying, so I
10 can't guarantee that all the pages got in there, but
11 I did the best I could.
12 MR. EVERETT: I know how that works.
13 MR. KIDD: Not good at collating?
14 THE WITNESS: Not good at collating.
15 BY MR. BUCHANAN:
16 Q Looks the same, with the exception of there
17 was one document that was double-sided, and so we'll
18 attach the copies as Exhibit A; and whenever we take
19 a break or something, we'll copy the back of this
20 one --
21 A Okay.
22 Q -- to stick it in here, if that's okay with
23 you?
24 A I have no objection. Is that the -- oh, you
25 may keep it.

Page 23
1 Q That's your original.
2 A Well, no. I -- you asked me to produce that,
3 so I did.
4 Q Okay.
5 A So that's yours, if you want to --
6 Q All right. Well, I'll keep it and you can
7 have this.
8 A Have this copy? All right.
9 Q You can keep that.
10 MR. BUCHANAN: We'll just attach all of
11 this as Exhibit 1.
12 (Exhibit 1 was marked for identification.)
13 A All right.
14 BY MR. BUCHANAN:
15 Q And of all this that -- this appears to be a
16 lot, at least, of what you were talking about that
17 John handed me before the deposition started.
18 Is there . . .
19 MR. EVERETT: Tom, to explain that, you
20 had asked for communication --
21 MR. BUCHANAN: Uh-huh.
22 MR. EVERETT: -- and I discovered that
23 Judge Moody sometimes deletes his E-mails or
24 frequently deletes his E-mails -- I don't
25 blame him. But I was -- managed to capture

Page 24
1 what I think is all the communication between
2 us. I wouldn't bet my life on that either.
3 But what he's produced and what I've produced
4 would be, in many ways, duplicated.
5 MR. BUCHANAN: Okay.
6 BY MR. BUCHANAN:
7 Q I guess, what I'd like to do is kind of take a
8 look at what you've got over there just to make sure
9 that there's something that -- that -- like I know,
10 obviously, your notes are probably not in here.
11 MR. EVERETT: Yeah, they're not there.
12 BY MR. BUCHANAN:
13 Q I'd just kind of like to take a look at it to
14 make sure that we have everything that is at
15 least --
16 A Sure, you're welcome to. The -- as I say,
17 there are really -- let's see -- five components.
18 This on the backer is the correspondence, which you
19 have.
20 Q Right. Okay. So we could skip it, because I
21 have it.
22 A Right.
23 Q What else do we have? Like the -- the clipped
24 info, meaning the documents with those black clips.
25 MR. BUCHANAN: John, do I have all that?

Page 25

1 MR. EVERETT: I think you do, Tom, but you
 2 might want to look at it.
 3 A Well, one is a letter from John Everett dated
 4 January 21st, 2015, forwarding a copy of the
 5 complaint and the answer of defendants Morton and
 6 Baker.
 7 MR. EVERETT: I know you have the letter.
 8 You might not have the enclosures to it.
 9 MR. BUCHANAN: Right.
 10 MR. EVERETT: They're just pleadings.
 11 MR. BUCHANAN: Right. Okay.
 12 BY MR. BUCHANAN:
 13 Q Okay.
 14 A And I have two -- two pleadings, one an
 15 amended judgment and one order granting separate
 16 defendant Michael Morton's motion to dismiss and for
 17 summary judgment. These were obtained in that same
 18 case -- or -- I mean in the original case against
 19 Greenbrier. And I think my secretary obtained
 20 those.
 21 The next binder is the list -- or -- the
 22 opinions of the Eighth Circuit involving cases that
 23 I decided where remittitur might have been an issue
 24 while I was on the federal bench.
 25 Q All right. And --

Page 26

1 A I think that's duplicated by what Mr. Everett
 2 gave you, but I can't be sure.
 3 MR. EVERETT: I think that I gave you,
 4 Tom, three cases, and I believe Judge Moody
 5 has four, I think. One of the ones he has is
 6 not in the packet I gave you.
 7 BY MR. BUCHANAN:
 8 Q It looks like there are three cases that folks
 9 in Kirk Dougherty's office found and sent to
 10 Mr. Everett, who, in turn, sent them to you. Do
 11 you -- is that --
 12 A Probably true, yeah.
 13 Q One looks like this Randy Bennett and Richard
 14 Turney versus Riceland Foods, an order that you
 15 signed in 2012 that went up on appeal. One of them
 16 is the Boerner versus Brown and Williamson Tobacco
 17 Company. It looks like there's an Eighth Circuit
 18 opinion on it.
 19 A There was.
 20 Q Looks like there's one called Hart and Dyer
 21 versus the City of Little Rock, an order that you
 22 signed back in June of 2004 and looks like it went
 23 up on appeal. So those are the three cases that I
 24 have.
 25 A Uh-huh.

Page 27

1 Q And do you have another one that's over there?
 2 A I do. I have one styled Mike Townsend against
 3 Bayer Healthcare Pharmaceuticals.
 4 Q Okay.
 5 A It was tried in Pine Bluff, and it was
 6 appealed to the Eighth Circuit.
 7 Q All right. And so you have copies of those
 8 opinions there with you?
 9 A I do.
 10 Q All right. So I'm trying to make a list of
 11 stuff that we're going to need to copy. And you
 12 said it's the Bayer case?
 13 A Uh-huh, Bayer, uh-huh.
 14 Q And then we have this memo that I think you
 15 said there was a -- was it a law clerk?
 16 A A law clerk, uh-huh, Kirby Miraglia, prepared
 17 it.
 18 Q Is this somebody who's still in school at --
 19 A She works -- she works here. She's actually
 20 been employed as an associate when she completes law
 21 school, but she works here while she's in school as
 22 a -- as a law clerk.
 23 Q So was she -- so she's still in school right
 24 now?
 25 A Yes. She has one more year of law school.

Page 28

1 Q All right. And has the firm made her an
 2 offer? Is that the --
 3 A That's my understanding, yes, that it's to
 4 become an associate here in the firm when she
 5 completes law school.
 6 Q Did she work here in the past?
 7 A Well, she was here when I joined the firm, but
 8 I don't know how long she's been here.
 9 Q Is she somebody who went to school later on in
 10 life, to law school?
 11 A I don't know.
 12 Q I guess what I'm getting at, how old is she?
 13 A I don't know.
 14 Q Would you reckon, estimate?
 15 A I would never attempt that.
 16 Q All right. Well, we won't tell her you said
 17 it.
 18 A I don't have to answer that. No, I'm not
 19 trying to be facetious with you. She actually
 20 worked for Jay for a year or two over in Pulaski
 21 County, and she was a case coordinator over there.
 22 And so I think she's been out of school for a few
 23 years before she went back to law school. But
 24 beyond that, I really don't know.
 25 Q Well, I knew I recognized the name

Page 29
1 somewhere --
2 A Yeah, yeah.
3 Q -- and now I've put it together.
4 A Yeah. She worked for Judge Jay Moody when he
5 was at Pulaski County for a num -- several years at
6 least.
7 Q Okay. So the next would be your memo.
8 A Uh-huh.
9 Q And then is this my copy or yours?
10 A You may have a copy, yes.
11 Q Okay.
12 A Or at least a copy --
13 Q All right.
14 A -- to copy. And then you wanted the Townsend
15 stuff.
16 Q Right. And then your notes.
17 A All right. This is the opinion of the Eighth
18 Circuit on Townsend.
19 Q All right.
20 A And this is a copy of my order.
21 Q Okay.
22 A And there was a request for a remittitur in
23 that case that I denied, and then it went up on
24 appeal, and the circuit granted a remittitur.
25 Q Okay. And then in terms of that stuff over

Page 30
1 there, that information, we've got your notes --
2 A Yeah, the notes, these --
3 Q -- which we can copy?
4 A Yeah, you -- if you want to copy them, you
5 may. And then this is the -- just the pleadings, if
6 you want to look at them.
7 Q From the original case?
8 A Yes. These are the posttrial motions, pretty
9 much, just that I picked out for -- to bring home
10 from Michigan. Most of the stuff that I reviewed
11 was in Michigan, so I couldn't bring it home, it was
12 too voluminous.
13 Q Uh-huh.
14 A And then the rest of the stuff you already
15 have that I produced in response to the deposition
16 notice.
17 Q Okay.
18 MR. EVERETT: I think everything the judge
19 has given you need not be copied except those
20 notes, Tom. I don't want you to keep the
21 original of those. I want to copy them if you
22 want them.
23 MR. BUCHANAN: Okay. That's fine. So,
24 John, I can have this but not this; right?
25 MR. EVERETT: You can have copies of

Page 31
1 what's in your right hand --
2 MR. BUCHANAN: Right.
3 MR. EVERETT: -- if you want it.
4 Everything else I gave you, I think, are
5 copies themselves.
6 Aren't they, Judge?
7 THE WITNESS: I think so, yeah.
8 MR. BUCHANAN: Okay.
9 MR. EVERETT: The Townsend case, I'm not
10 sure of, because I didn't send you that. You
11 don't need to copy that stuff, you can have
12 it.
13 MR. BUCHANAN: Okay.
14 BY MR. BUCHANAN:
15 Q And for purposes of the record so we know
16 exactly what you--all -- what you have looked at here
17 for your deposition, I'm going to start marking some
18 of these as exhibits to your deposition. And so I'm
19 going to mark as Exhibit 2 the memorandum from Kirby
20 Miraglia to you.
21 We'll mark the correspondence between
22 Mr. Everett and you transmitting the three cases,
23 the Riceland Foods case, the Brown and Williamson
24 case, and the Hart and Dyer versus City of Little
25 Rock case as Exhibit 3.

Page 32
1 We'll mark as Exhibit 4 the order -- your
2 order in the Bayer Healthcare case.
3 Exhibit 5 will be the court of appeals case in
4 Townsend versus Bayer.
5 Exhibit 6 is going to be, basically, the
6 invoice, the check, and the correspondence that
7 you've had with looks like Jeff Hatfield and
8 Mr. Everett.
9 (Exhibit 2 was marked for identification.)
10 (Exhibit 3 was marked for identification.)
11 (Exhibit 4 was marked for identification.)
12 (Exhibit 5 was marked for identification.)
13 (Exhibit 6 was marked for identification.)
14 A Yeah, I never really corresponded with
15 Mr. Hatfield. He did send me some of the material
16 that I reviewed in Michigan, and I'm sure there was
17 a cover letter there, but I've never really had any
18 direct contact with him by mail or otherwise.
19 Q All right. And Exhibit 7 will be another
20 packet of, looks like, primarily E-mails between you
21 and Mr. Everett. So --
22 (Exhibit 7 was marked for identification.)
23 A I haven't looked at those lately, but I don't
24 doubt what you say. Mr. Buchanan, I think the
25 copies of the materials that I looked at in Michigan

Page 33

1 are over here in the corner that were -- that
 2 consist of trial transcript, pleadings, and trial
 3 exhibits. I haven't looked at them since they were
 4 brought over, but the reason they were brought here
 5 from Little Rock was that I couldn't get all of that
 6 material back from Michigan on the airplane.
 7 Q Okay. So did you actually look at a hard copy
 8 of the transcript?
 9 A I did, uh-huh.
 10 Q And on your notes -- and we'll copy them
 11 during a break. But on your notes, there are -- I
 12 notice there are various references to -- it would
 13 say like "T345, T346, T353." I assume those
 14 correlate to the pages in the record?
 15 A Yes, they do.
 16 Q Have you looked at any depositions in this
 17 case?
 18 A Which is this case?
 19 Q Meaning the civil case. I'm not talking about
 20 the underlying case --
 21 A Oh.
 22 Q -- I'm talking about the civil case against
 23 Mr. Morton and Mr. Baker.
 24 A No, no, no, sir. I did review the two
 25 depositions that were part of the trial transcript,

Page 34

1 Ms. Treat, I believe, and Ms. Henson, that were
 2 probably read to the jury, but I have not reviewed
 3 any depositions that were taken in the present case.
 4 Q Have we covered the universe of documents and
 5 information that you've looked at in forming your
 6 opinions in this case?
 7 A I believe we have, yes. I mean, I can
 8 reiterate them for you, if you want me to.
 9 Q No. I'm just saying have we -- is there
 10 anything else out there that you've looked at that
 11 you believe is somehow significant in forming your
 12 opinions in this case?
 13 A I don't think so. I think we've covered it
 14 all. I mean, I primarily focused on the trial
 15 transcript and the pleadings, the trial exhibits,
 16 the memorandum that I showed you from the law clerk,
 17 and I reviewed some of my prior decisions in federal
 18 court, but that's pretty much it.
 19 Q Looks like you've testified once before in a
 20 legal malpractice case?
 21 A Uh-huh, that's correct, uh-huh.
 22 Q Is there any other case where you've given
 23 expert testimony?
 24 A Not that I remember. I didn't keep any
 25 records, but I think I would have remembered that,

Page 35

1 and I don't remember any case.
 2 Q What's the nature of your practice right now?
 3 A Well, I'd say it's eclectic. I don't -- I
 4 don't intend to handle any cases. I mean, I'm sort
 5 of here to advise when -- when the lawyers are
 6 handling cases, sometimes they'll form teams and
 7 consult with each other, and I'm sometimes involved
 8 in that. I am available for mediations, and I've
 9 done a few of those. And I'm also serving as a
 10 receiver in a case where the principals to the thing
 11 couldn't agree on how to handle litigation, so I'm
 12 stepping in in their -- their role doing that.
 13 Q Is that the case that Mr. Cearley is involved
 14 in?
 15 A Yes, uh-huh.
 16 Q Are you -- have you become a certified
 17 mediator?
 18 A No. I'm taking private mediations, but I've
 19 not taken the course or been certified to handle
 20 domestic relations or anything like that, I wouldn't
 21 do that anyway, but -- so I'm just handling those
 22 that do not require certification.
 23 And I'm also enrolled with an arbitration -- a
 24 federal judge arbitration panel. I haven't been
 25 assigned any cases yet, but they do have my name and

Page 36

1 they've called a few times to see if I would be
 2 willing to take some cases.
 3 Q Is that -- a federal judge arbitration panel,
 4 is that when a federal court would order a case to
 5 arbitration?
 6 A I don't -- I don't think so. It -- I mean,
 7 this is something that the parties -- most of the
 8 judges that are on that panel in that association
 9 are retired, and I think they're doing it for
 10 private people, I don't think they're taking
 11 referrals from courts.
 12 Q Okay.
 13 A But as I say, I have not taken one yet, so I
 14 don't really know all the particulars.
 15 Q But in terms of cases that you're actually
 16 working on in some capacity, whether it's as a
 17 receiver or as an expert witness, sounds like it's
 18 this case, meaning the one we're talking, the
 19 present case, and then the case where you're the
 20 receiver; is that true?
 21 A And I'm scheduled for a mediation next week.
 22 And as I say, I -- I consult on cases. They usually
 23 charge for my time if I do, but I don't keep a
 24 record of them, all of them.
 25 Q When you consult on cases for the firm, is

Page 37

1 that -- you said you charge for your time. Do you
 2 charge the firm for your time?
 3 A No. I should say that the firm charges my
 4 time to the client.
 5 Q Okay.
 6 A If -- if they think it's of any benefit to the
 7 client, they -- they will add that as an additional
 8 charge.
 9 Q I know that Mr. Everett has provided me with a
 10 letter that has your opinions. What are they?
 11 A What are my opinions?
 12 Q Yes. In this -- in this case.
 13 A All right. Well, I think there are three in
 14 number, and they're probably adequately set out in
 15 that letter. But, one, just by way of background, I
 16 could give an opinion that there are federal rule --
 17 I mean civil procedural rules in state court that
 18 tell a judge what he's to do in case of a motion for
 19 remittitur or to just review any verdict for
 20 excessiveness.
 21 Then based on my review of the trial
 22 transcript and all of the other material that we've
 23 discussed here today, it was my opinion as an
 24 impartial judge that if I had been sitting in
 25 judgment on this case -- or any judge, any impartial

Page 38

1 judge, that a remittitur would and should have been
 2 granted given the evidence in this case and the --
 3 and the limited amount of the damages.
 4 And then the only final thing would be to
 5 explain the rule that a party who has -- or a party
 6 that has been told that there will be a remittitur
 7 in the case has the option of either accepting the
 8 remittitur or electing to retry the case and refuse
 9 the remittitur.
 10 Those are essentially the three opinions that
 11 I was asked to consider and the opinions that I
 12 have.
 13 Q Okay. I want to make sure that I understand.
 14 This very first opinion that there are several
 15 procedural rules that a trial judge should consider
 16 when evaluating a motion for remittitur and for
 17 excessiveness of the verdict.
 18 A Well, maybe I better clarify that.
 19 Q Okay.
 20 A What -- what I really mean is that the law
 21 provides a mechanism that tasks a sitting trial
 22 judge to review a verdict for excessiveness and
 23 usually at the request of one of the parties. And I
 24 mean, I don't think there's any dispute about that,
 25 the law is what it is. But just so the jury

Page 39

1 understands that this is not something that a judge
 2 just does on a whim, there is a process by rule
 3 where the court is obligated to look at verdicts and
 4 review them for excessiveness.
 5 And that would, of course, be a motion to
 6 either set it aside or grant a new trial or for
 7 remittitur if -- if they meet the criteria of the
 8 rule. That -- that would be the first opinion.
 9 Q Okay.
 10 A Yeah.
 11 Q And what rule is that in Arkansas?
 12 A Well, the statute is at Arkansas Code
 13 Annotated 16-64-124, is the remittitur statute. The
 14 section that precedes that, 123, I believe, is the
 15 one that defines excessiveness or what an excessive
 16 verdict would be.
 17 Q Okay. 16-64-124 gives the court inherent
 18 authority to remit a verdict if it's -- the -- in
 19 the trial judge's view, excessive?
 20 A That's -- that's the way I read the statute,
 21 yes, sir.
 22 Q And 123 -- 16-64-123 defines what is
 23 excessive? That's your reading?
 24 A Yes, sir.
 25 Q Okay. So when you analyze this case, are you

Page 40

1 using the definition for excessive set forth in
 2 16-64-123?
 3 A Well, that -- that's part of it, yes. I mean,
 4 there are some cases, I think, that say that the
 5 court is to decide whether a verdict shocks its
 6 conscience. And, I mean, that's not set out in the
 7 rule itself or the statute. But, I mean, when you
 8 read the rule in conjunction with the other case
 9 law, I mean, the case law seems to be pretty well
 10 settled, that it's the obligation of the trial court
 11 then to determine, first of all, whether a verdict
 12 is excessive and whether it's excessive because it
 13 shocks the conscience, I guess, is sort of like what
 14 Steven said about pornography. I mean, it is if you
 15 see it that way. You know, if the judge believes
 16 that the evidence does not support the verdict, then
 17 it's excessive, or if it's obtained as a product of
 18 passion and prejudice. I think that's set out in
 19 the rule. So that defines excessiveness, I believe.
 20 So you -- well, does it shock the conscience
 21 of the court and is it influenced by or the product
 22 of passion and prejudice, and then you go to the
 23 124, which is the -- the remedy for that, which
 24 would be a remittitur. And that sets out that the
 25 court can grant a remittitur, and then the parties

Page 41

1 have -- the party against whom the remittitur has
 2 been granted has the option then of taking the
 3 remitted amount or retrying the case.

4 And, I mean, that really is not an opinion
 5 that the jury necessarily needs to hear, they just
 6 need to know that there is a process in place for a
 7 court to react to what might be perceived to be an
 8 excessive verdict.

9 Q Okay. What is the difference between the
 10 federal authority for remittitur and the state
 11 authority for remittitur?

12 A Well, it's -- it's very similar, I'd say, at
 13 least as far as the case law is concerned. And I
 14 haven't tried to make a comparison for this case;
 15 but, I mean, my understanding is that the process
 16 that a judge would follow would be the same. I
 17 think the federal authorities talk about shocking
 18 the conscience of the court, that it's influenced by
 19 passion and prejudice, all of those are catchwords
 20 that appear in both the federal decisions as well as
 21 the state decision.

22 Q Let's take a federal case. Let's say you
 23 enter an order of remittitur.

24 A Okay.

25 Q My understanding is that, basically, what the

Page 42

1 trial judge is doing is ordering a new trial.
 2 However, if the plaintiffs want to forgo a new
 3 trial, they can accept the -- the amount of the
 4 verdict as it's remitted by the trial court; is that
 5 a fair understanding?

6 A Well, I think that's the effect of it, that
 7 the order itself may just say that the verdict was
 8 excessive and that you can take a remittitur or you
 9 can take a new trial. I don't know that the wording
 10 necessarily would be ordering a new trial, but the
 11 effect is that the party has a choice.

12 The court would say what the remitted amount
 13 would be and -- and say this -- this verdict is
 14 excessive and should be remitted to X dollars -- or
 15 whatever. And then the party, by rule, has -- has
 16 the option of either taking that remitted amount or
 17 the alternative would be for a grant of a new trial.

18 So I guess you're right as far as the court is
 19 ordering a new trial, with the exception that if the
 20 party accepts the remitted amount, that would --
 21 that would be the result.

22 Q Okay. And so let's say that the party rejects
 23 the remittitur under the federal system --

24 A Right.

25 Q -- and opts for a new trial, can they appeal

Page 43

1 before having to retry the case?

2 A I don't think so, no.

3 Q You have to retry the case, then appeal?

4 A Yes. Otherwise you wouldn't know whether
 5 there was any prejudicial error by the rule.

6 Q Does that work that way in the state system?

7 A As far as I know, yes.

8 Q So if the plaintiffs in this case would
 9 have -- would have opted for the new trial, they
 10 would have had to have another trial in front of the
 11 same trial judge and -- before the case went up on
 12 appeal?

13 A That's my understanding, yes. Now, it might
 14 be a little different in the sense that the jury
 15 reached verdicts on punitive -- I mean, not on
 16 punitive damages, the court directed a verdict on
 17 that, but on the wrongful death claim. So I don't
 18 think you would retry the wrongful death claim.

19 Q You would retry the other -- the estate
 20 claims; right?

21 A That's my understanding, yeah. The surviving
 22 claims, yes.

23 Q And so then after another new trial, you know,
 24 or another trial --

25 A Uh-huh.

Page 44

1 Q -- in front of the same trial judge --

2 A Yes.

3 Q -- at that point, if the plaintiffs disagreed
 4 with the jury's verdict, they could appeal?

5 A Yes.

6 Q Okay. Assuming, of course, that -- well, what
 7 happened -- I mean, can this just go on to infinity
 8 in front of a -- I guess what I'm getting at is can
 9 judges keep remitting the case and the party not get
 10 to the Eighth Circuit?

11 A Well, I guess it's theoretically possible,
 12 although I've never heard of that happening.

13 Q Let's just say that the plaintiffs wanted to
 14 take up the issue of the judge's directed verdict on
 15 punitive damages and they opted for a new trial;
 16 they retry the case; there's an appeal. Is it at
 17 that point, after they've had two trials, that they
 18 can finally appeal the judge's decision on the
 19 directed verdict in the original trial on punitive
 20 damages?

21 A Well, the reason that I said that you couldn't
 22 appeal from the grant of a remittitur or a new trial
 23 is that there hasn't been a final decision on that.
 24 If there has been a directed verdict or a verdict
 25 that the court accepted on the wrongful death claim

Page 45

1 or the punitive damage claim, then I think you have
 2 a final judgment of those claims and it may be right
 3 for appeal on those.

4 I mean, I'm not -- I'm not sure I'm following
 5 your question. But the -- once the judge enters a
 6 judgment on the jury verdict against the plaintiffs
 7 on the wrongful death claim and the directed verdict
 8 on the punitive damage claim, I think that's
 9 appealable.

10 Q But in order for the judgment to be final, it
 11 would have to dispose of all claims and all parties;
 12 right?

13 A Well, no. I mean, I think the -- I think the
 14 claims are discreet. I may be wrong. I haven't
 15 looked at this in a while, but I -- I don't think
 16 you would have to wait until you resolve the
 17 survivor claims as the result of the finding of a
 18 remittitur or new trial before your time would
 19 appeal on the wrongful death claim.

20 I may be wrong about that, but that's my
 21 impression. But that's a final judgment. And
 22 the -- the time for appeal starts to run, you -- you
 23 can have a -- maybe -- maybe in the nature of an
 24 interlocutory appeal, but it's an issue that would
 25 be appealable.

Page 46

1 Q So the -- in terms of this first opinion where
 2 you talk about there are civil procedure rules and
 3 statutes that a trial judge can use to review a
 4 verdict for excessiveness, is there anything --
 5 that's an opinion that basically kind of speaks for
 6 itself to me. I mean, is there anything about that
 7 opinion that we haven't covered?

8 A No. As I say, it's really only by background
 9 so that the jury understands why a judge would
 10 consider an excessive verdict in the first place. I
 11 think the -- that the -- the more important opinion
 12 probably is that an impartial judge had heard this
 13 case. I mean, me, as an impartial judge, having
 14 reviewed the record, would find that motion for a
 15 remittitur to have merit and would have granted it.
 16 And that if I had not granted it, then I think the
 17 probabilities are that the case would -- would have
 18 been reversed on appeal. That is if the motion for
 19 remittitur had been denied and the defendant took
 20 that up on appeal, I think it's more likely than not
 21 that the supreme court or the court of appeal,
 22 whoever heard the case, would have reversed it and
 23 order some type of remittitur.

24 Q Okay. So is that another opinion --

25 A Well, it's --

Page 47

1 Q -- on what the -- you think the supreme court
 2 would have done?

3 A Well, I guess if you want to separate it out.
 4 But, I mean, it's that a remittitur should have been
 5 granted; and had it not been granted by an impartial
 6 judge, that the supreme court would, in all
 7 probability, have reversed it. And, I mean, I'm
 8 treating that as one opinion. If you want to treat
 9 them separately, that's fine.

10 MR. EVERETT: Tom, when you get to a good
 11 place, you're going to have to let some of us
 12 old fellows go to the bathroom.

13 MR. BUCHANAN: That's fine. I think now
 14 is a good time.

15 MR. EVERETT: Thanks.

16 (A brief recess is taken.)

17 BY MR. BUCHANAN:

18 Q Do you have any opinions about whether or not
 19 Judge Maggio was bribed?

20 A I really don't have any information about
 21 that.

22 Q Okay. So is your opinion in this case related
 23 to damages?

24 A Well, I think my opinion is related to what an
 25 impartial judge would have done if that impartial

Page 48

1 judge had been trying this case and was presented
 2 with a motion for remittitur and new trial.

3 Q And I guess my question is: How is that --
 4 given the nature of what the judge has pleaded
 5 guilty to, how is that relevant to an issue in this
 6 trial?

7 A Well, that's not my job to decide whether the
 8 opinions that I have are relevant or not. That --
 9 I'll defer to Judge Laser on that. I mean --

10 Q Sure.

11 A -- I've known him since law school and I have
 12 every confidence that he'll do the right thing on
 13 that. So I'm -- I don't have an opinion. I haven't
 14 been asked an opinion as to whether it has any
 15 bearing on the trial of this case because I have
 16 this limited assignment, and I'm not that familiar
 17 with the strategy of either side or how it would
 18 factor into that strategy.

19 Q Okay. How many -- I know you pulled your
 20 cases. Do you intend to do any additional research?
 21 And you have this memo from Ms. Miraglia. Do you
 22 intend to do any additional research, rely on any
 23 additional cases?

24 A Not unless I'm asked to.

25 Q Sure.

1 A I mean, as far as I'm concerned, I've
2 completed the assignment that I was given to this
3 point in time, so I don't presently have any
4 intention of doing any more research.

5 Q You think that your opinions are fully
6 supported by the research that's already been done,
7 at least to the present date?

8 A Well, when you say "research," a lot of the
9 case law that I brought here today has to do with
10 the procedures in place for a remittitur, and I
11 think that law is well settled. And I don't think
12 there's any dispute about that -- if that's an
13 opinion, that that opinion is accurate and supported
14 by the law.

15 The cases that deal with a remittitur are of
16 very limited value in determining whether any
17 particular case or any particular verdict is
18 excessive, and I think that depends on a review of
19 the evidence. They're all unique, and a judge has
20 to make an independent judgment on that just based
21 on looking at the evidence and making a
22 determination in his opinion as to whether it was
23 excessive or not.

24 So I don't think when you say the research
25 supports that opinion, I don't think the research

1 was all that helpful. There are some cases which
2 set out parameters. There are cases that have
3 decided remittitur issues, and they're of some
4 benefit. But I don't think, unlike the cases that
5 set out the procedure for granting a remittitur,
6 that they're that important.

7 Q Okay. And so I hope -- I'm going to try to
8 make sure I understand what you just said.

9 A Uh-huh.

10 Q The case law that you brought primarily deals
11 with procedure and not with whether or not, in your
12 view, the Bull case should have been remitted,
13 because that depends more on the evidence that was
14 presented at that trial?

15 A I think that's right.

16 Q Okay. Did you make the assignment to
17 Ms. Miraglia to do this memo?

18 A I did.

19 Q And what specifically -- I mean, I know she --
20 she's got some -- in her memo, she -- which is
21 Exhibit 2, she's got a section on large nursing home
22 verdicts.

23 A Uh-huh.

24 Q Did you ask her to pull that up?

25 A Yes. I ask her just to look to see what case

1 law she could find that dealt with remittiturs in
2 nursing home cases or in cases in general and
3 particularly to tell me what the standard that a
4 judge sitting in judgment of a motion of remittitur
5 would -- would be guided by.

6 Q Sure. And in terms of the -- was there a
7 reason that you asked her -- or -- did you ask her
8 in particular, look for large nursing home verdicts?

9 A I don't recall that I did, although I told
10 her, you know, some of the background about what I'd
11 been asked to consider here. So nursing homes was
12 the -- was the topic of interest, and if -- if there
13 were nursing home cases on point, then that would be
14 helpful. But I was mainly interested in just seeing
15 what -- what law was out there on -- on remittiturs.

16 Q Did you believe there were nursing home cases
17 that were on point?

18 A Yes. I mean, I had some familiarity with
19 supreme court decisions on nursing home cases where
20 a remittitur had been granted, specifically that
21 Sauer case, I believe it is, Advocat, Sauer. I just
22 remember that case. Why? I don't know. But I
23 remember that case when it went to the supreme
24 court.

25 Q And you're talking about Advocat, Inc., versus

1 Sauer?

2 A Yes.

3 Q Okay.

4 A I mean, I don't -- I don't remember the exact
5 style, but that's my memory of it.

6 Q Well, what you remember is -- and I think what
7 most people remember is -- a verdict for over
8 \$78 million; correct?

9 A Well, I don't -- I don't remember the
10 particulars about it, but that sounds right, uh-huh.

11 Q I mean, it was a -- it was pretty big news in
12 Arkansas for a \$78 million verdict to come down, was
13 it not?

14 A I agree, yes.

15 Q And the supreme court did remit it. Do you
16 know why they remitted it?

17 A They remitted it because it was excessive.

18 Q Did they also say the reason that they
19 remitted it by two-thirds in the opinion?

20 A Well, they may have. I don't remember exactly
21 what they said at this point.

22 Q Do you recall a discussion of the Court saying
23 that the reason they're remitting it by two-thirds
24 is because there were three different defendants who
25 essentially acted as one company and the Court felt

Page 53

1 like they were being punished times three for each
 2 defendant?
 3 A I do remember something about that, yes.
 4 Q Okay. Is there a particular amount you would
 5 have remitted this case to?
 6 A The Sauer case?
 7 Q The Bull case.
 8 A Well, I think the remittitur to a million
 9 dollars was reasonable.
 10 Q But what would you have remitted it to?
 11 A Well, a million dollars.
 12 Q That's what you would have done?
 13 A Uh-huh.
 14 Q Why?
 15 A Well, because I think that's all that the
 16 evidence would support in the -- in the way of a
 17 verdict.
 18 Q Did it support a million dollars?
 19 A Well, I don't think that that was an
 20 unreasonable amount.
 21 Q Well, do you believe that the evidence
 22 supported a million dollar verdict?
 23 A Yes, I do.
 24 Q Do you believe that the evidence supported a
 25 million and a half dollar verdict?

Page 54

1 A Well, I don't know that I've given it that
 2 much thought. I did decide that it was reasonable
 3 to remit it to a million dollars, but I didn't try
 4 to evaluate precisely what the damages would be.
 5 Q Well, my question to you is: Would the
 6 evidence have supported a million and a half dollar
 7 verdict?
 8 A I don't know. I don't have an opinion about
 9 that.
 10 Q Do you have an opinion as to whether or not
 11 the evidence would have supported a \$1,100,000
 12 verdict?
 13 A Well, again, I haven't made that analysis, so
 14 I don't have that opinion.
 15 Q Well, you've looked at the -- you've looked at
 16 the trial transcript; right?
 17 A Uh-huh, sure.
 18 Q Is there anything that you can sit here right
 19 now that you think you need to look at to answer
 20 that question?
 21 A Well, I'd have to give it some thought
 22 probably. I mean, my -- my principal analysis was
 23 was the verdict excessive, and my conclusion was
 24 yes. So a remittitur should have been granted.
 25 I was less concerned about the amount of the

Page 55

1 million dollars. I frankly didn't give that as much
 2 consideration. And I probably have to go back and
 3 look at some of the information again just to be
 4 sure. I didn't focus on that, frankly. Although, I
 5 don't have any dispute that that was a reasonable
 6 amount.
 7 Q A million dollars?
 8 A Uh-huh.
 9 Q Okay. My question is. As you sit here right
 10 now, can you give us an opinion one way or the other
 11 as to whether a \$1,500,000 verdict for the
 12 plaintiffs would have been reasonable?
 13 A Well, can I give you an opinion? Yes, I can
 14 give you an opinion that I think a million dollars
 15 is as much as this case could be supported by the
 16 evidence.
 17 Q Okay. And anything above a million dollars
 18 is, in your view, would shock your conscience?
 19 A Yes.
 20 Q Okay. And anything above \$1 million, you
 21 would believe to be influenced by passion and
 22 prejudice?
 23 A Yes.
 24 Q And so even a \$1.1 million verdict, in your
 25 view, would have been excessive?

Page 56

1 A Yes.
 2 Q Okay. Why is the million dollar cutoff?
 3 What's the significance of \$1 million?
 4 A Well, you mean why -- why do I think that
 5 that's adequate? Because I think that in my
 6 judgment, in my experience -- and as I say, I have
 7 to make a subjective determination based on the
 8 trial transcript that I reviewed -- that anything in
 9 excess of that amount, anything more than a million
 10 dollars would be excessive and could not be
 11 justified by the evidence that the jury heard.
 12 Q And --
 13 A It's sort of a cutoff point.
 14 Q Okay.
 15 A Yeah.
 16 Q And I want to make sure that I understand.
 17 And I'm not asking about adequate. You used the --
 18 A Oh, I understand.
 19 Q -- phrase "adequate." And the standard is
 20 what would shock the trier of fact's conscience,
 21 and --
 22 A Right.
 23 Q -- and so it's your testimony that a million
 24 dollars is the absolute cutoff and that anything
 25 above that would shock your conscience?

1 A Yes, that's correct.

2 Q And is it your view that it would shock any
3 reasonable trial judge's conscience?

4 A Yes.

5 Q And so, in your view, there is no reasonable
6 trial judge who could have looked at this transcript
7 and determined that -- let me back up because I'm
8 about to ask a terrible question, which isn't
9 unusual, but --

10 A That's all right. Go ahead.

11 Q In your view -- or -- help me with this.
12 Is it your opinion that any reasonable --
13 there is no reasonable trial judge who could look at
14 this transcript and say that \$1.5 million is
15 reasonable?

16 A No, I -- I'm not sure I can go that far.
17 Because I think reasonable minds can differ on any
18 opinion like this. I mean, this is not -- this is
19 not science, this is not math where you just add up
20 figures and -- and get one result, this is a matter
21 of judgment. A reasonable judge might conclude that
22 a million one five or a million five would be the
23 cutoff point.

24 But I think that a -- a reasonable judge, a
25 reasonable, impartial judge -- and -- and I put

1 myself in that role, trying to be reasonable and
2 impartial here -- would conclude that anything more
3 than a million dollars would be excessive and
4 influenced or the product of passion and prejudice
5 and would shock the conscience of the court.

6 Now, I can't speak for every other reasonable
7 judge, they may -- they may come to a different
8 conclusion.

9 Q Sure. And so if -- if we get an expert
10 witness --

11 A Uh-huh.

12 Q -- that has been a judge, are you going to
13 be -- if he comes to the opinion that -- he or she
14 comes to the opinion that, you know, let's say
15 2 million would not have been excessive, you're not
16 going to say that that's an unreasonable opinion,
17 are you?

18 A Well, I haven't heard that opinion or who that
19 opinion came from, but -- so I can't just
20 automatically say no. But, I mean, I -- I recognize
21 that other people similarly qualified to me could
22 reach a different conclusion. I'm not -- I'm not
23 saying that I'm the ultimate arbiter here.

24 Q Sure.

25 A I'm just saying this is my opinion.

1 Q Right. And I think you phrased the question
2 better than I did. And that is, you would agree
3 that similarly qualified people to you could reach
4 different opinions on this issue?

5 A I don't -- I don't doubt that, no.

6 Q And you would agree that similarly qualified
7 folks to you could reach an opinion that the motion
8 for remittitur should not have been granted?

9 A Oh, yes. I don't -- I mean, there could be
10 people out there that disagree with my opinion. I
11 concede that, yes.

12 Q And you could see that some of those people --
13 I mean, would you at least con -- make room for the
14 notion that it would not be unreasonable for someone
15 to have the opinion that the amount of the
16 remittitur was too much?

17 A Well, they may have that opinion. Would I
18 agree with it, no. I mean, I can see that somebody
19 qualified to make that judgment could come to a
20 different conclusion than I just did, but I
21 wouldn't -- I wouldn't just agree with it because
22 somebody else made that statement.

23 Q Well, sure, sure. I mean, that's reason that
24 we have dissents even at the United States Supreme
25 Court; true?

1 A I guess, yeah. I don't know why we haven't,
2 but we do.

3 Q Well, because people disagree?

4 A Yeah, that's true.

5 Q Do you know anything about the jurors in this
6 case?

7 A I don't know any of the jurors.

8 Q Have you thought about the fact that you could
9 be wrong in your opinion?

10 A Well, yes, I have. I mean, I -- I'm
11 frequently reminded that I can be wrong about a lot
12 of things. As I said, I'm not a king. I mean,
13 I'm -- I'm just giving you an opinion based on my
14 experience.

15 Q Do you have any opinion as to whether or
16 not -- if the plaintiffs' allegations are true,
17 whether or not the plaintiffs have suffered any
18 damages?

19 A I'm not sure I understand your question.

20 Q Sure.

21 A You're talking about the plaintiffs in this
22 case or --

23 Q Yes.

24 A -- the plaintiffs in the case below?

25 Q Well, they're the same people.

Page 61

1 A The same. All right.

2 Q Do you have an opinion as to --

3 A The claims are different, that's what I mean.

4 Q Sure. And -- and that's -- that's a good

5 question. And that is, do you have an opinion as to

6 whether or not the plaintiffs, if their allegations

7 are true, have experienced any damages?

8 A Are you talking about --

9 Q In this case.

10 A "In this case" being the one against Morton

11 and Baker?

12 Q Right.

13 A If their allegations are true, have they been

14 damaged --

15 Q Right.

16 A -- is that what you're saying?

17 Q Right.

18 A Well, be a little more specific about what

19 allegations you mean and damaged in what way.

20 Q Well, damaged in any way in the sense that --

21 in the sense that -- I think -- let me step back.

22 One of your opinions deals with the right to

23 appeal; correct?

24 A Yes.

25 Q All right.

Page 62

1 A Well -- well, the fact that if there had been

2 an appeal -- is that what you mean when you say

3 "right to appeal"?

4 Q Well --

5 A You asked me some questions about the right to

6 appeal from the -- the verdict in favor of the

7 defendants on wrongful death. I mean, I don't want

8 to get confused about that.

9 Q Sure. Well, I guess my question is: I

10 thought you had an opinion about how when a trial

11 judge makes a ruling on a motion for remittitur,

12 that the plaintiffs can either take the remitted

13 amount or take a new trial and at some point there

14 can be an appeal?

15 A Well, yes. I mean, I do have -- I mean, I'm

16 not sure it's an opinion, but that is a fact, that

17 if there's a grant of a remittitur but the party

18 elects to take a new trial. If they take the

19 remittitur, there won't be an appeal because that

20 ends the case. If they take a new trial and they

21 lose, then they would have a right to appeal.

22 Q Right.

23 A And the appeal would say, I suppose, if the

24 remittitur shouldn't have been granted, then the

25 appellate court could then restate the original

Page 63

1 verdict. And to that extent, if an appellate court

2 had reversed -- I mean, if there had been a new

3 trial and an adverse verdict against the plaintiffs

4 in that lower case, in Judge Maggio's case, then

5 they could have appealed to the appellate court.

6 And if -- if they had an adverse verdict in the

7 lower court then and the court of appeals agreed

8 that the remittitur should not have been granted,

9 they could reinstate the original verdict.

10 So to that extent, yes, there could have been

11 damages to the plaintiffs, if I'm understanding your

12 question.

13 Q And that's my -- that's my question, is that

14 could there have been damage to the plaintiffs if

15 they accepted the remitted amount not knowing that

16 there was bribery that was taking place.

17 A Well, that makes some assumptions. They --

18 they could -- they could have refused the remitted

19 amount for any reason and taken their chances on a

20 new trial. And they may have gotten more, they may

21 have gotten less, but then they would have had a

22 right to an appeal, I suppose.

23 Q And one of the assumptions that they're going

24 to make is that the judge isn't going to be bribed;

25 true?

Page 64

1 A Well, yeah, I'm assuming that they would --

2 wouldn't believe that, no. I mean, I don't know

3 what influenced the plaintiffs to accept the

4 remitted amount. I don't know whether they -- I

5 don't -- I don't have any information about that.

6 But I do know they accepted it.

7 Q Sure.

8 A But I don't know what influenced them to do so

9 or -- or what different information would have

10 persuaded them not to. I want to make it plain.

11 I'm not trying to justify what Judge Maggio did. If

12 he accepted a bribe, that's not good. I acknowledge

13 that. I'm not trying to defend Judge Maggio.

14 Q Sure. And you do know that he's pleaded

15 guilty to that charge?

16 A Well, I know to the extent that I read it in

17 the newspaper. That's all I know.

18 Q Have you looked at his plea agreement?

19 A No, sir.

20 Q Do you believe that there were -- that you

21 ever entered plea agreements with criminal

22 defendants who were not guilty?

23 MR. EVERETT: State your question over.

24 BY MR. BUCHANAN:

25 Q Well, do you believe that you typically

Page 65

1 authorized or allowed plea agreements to be entered
 2 in cases where you think that the defendant isn't
 3 guilty?
 4 A No, no. I -- as a matter of procedure, when
 5 we accepted a plea of guilty from a defendant, we
 6 had to have his assurance that he committed every
 7 essential element of that offense, his admission,
 8 and I had to be satisfied that he was being sincere
 9 about it, yes. I mean, I -- there were times when I
 10 would reject a plea when either the defendant
 11 wouldn't admit to all of the elements, even though
 12 he said, I'm guilty, he wouldn't admit to intent,
 13 for example, or something like that, then I would
 14 refuse the plea, yes, and obligated to do so.
 15 Q And so the judge in Judge Maggio's case, Judge
 16 Miller --
 17 A Uh-huh.
 18 Q -- Judge Miller would have been obligated to
 19 not accept the plea if he was not satisfied that the
 20 defendant in this ca -- the defendant in that
 21 criminal case, Judge Maggio, committed every element
 22 of the offense that was charged?
 23 A I don't know that for a fact, but I'm -- I
 24 think it's a reasonable assumption because I know
 25 Judge Miller knows his stuff. I mean, he's a very

Page 66

1 capable judge. And that certainly is the procedure,
 2 that he would not ordinarily accept a plea unless he
 3 was satisfied that he was in fact guilty of what he
 4 was charged with. I don't have any question about
 5 that. I mean, I'm not questioning it, I'm just
 6 saying that I wasn't personally involved, and I am
 7 under oath, so I can't say that for certain.
 8 Q Is there a value to actually seeing the
 9 testimony in terms -- or seeing the witnesses and
 10 their demeanor?
 11 A You mean is it preferable to have heard the
 12 testimony as opposed to looking at the transcript?
 13 Q Right.
 14 A Oh, I agree with that, yes.
 15 Q Is there value in actually listening to the
 16 testimony and how the witness's voice inflects and
 17 things of that nature?
 18 A I agree with that.
 19 Q And you would agree that Judge Maggio had an
 20 opportunity to see the witnesses and hear the
 21 testimony as it came out of their mouths?
 22 A I don't have any reason to doubt that, no.
 23 Q And you've not had an opportunity to do that;
 24 correct?
 25 A That's correct, yes.

Page 67

1 Q In terms of the -- you mentioned a couple
 2 depositions.
 3 A Uh-huh.
 4 Q And you said, Well, I think they probably
 5 would have been read to the jury. Which depositions
 6 were you talking about?
 7 A Ms. Treat -- I may get these names wrong, but
 8 I think it's Ms. Henson and Ms. Treat. They were
 9 referred to in the trial transcript, but the actual
 10 deposition testimony was not included in the
 11 material prepared by the court reporter, which is
 12 typical, but -- so I asked for the depositions, and
 13 I read the depositions.
 14 But it appeared to me from the trial
 15 transcript that they had been presented to the jury
 16 in deposition form, so I treated it as just like any
 17 other testimony.
 18 Q Could you tell what part was admissible and
 19 what part was actually played to the -- or read to
 20 the jury, in your words, and what part wasn't?
 21 A Well, I recall there was an exercise there
 22 where there may have been some objections to some of
 23 the deposition testimony, and the Court ruled on
 24 those. But, frankly, I just took what the jury
 25 heard. I mean, I wasn't concerned about whether

Page 68

1 some of the evidence that was excluded was
 2 admissible or not.
 3 Q Well, I guess what I'm trying to get at is did
 4 the transcript somehow indicate that the jury heard
 5 this part but not this part?
 6 A Well, I think you could have figured that out,
 7 I mean, by -- as I say, there was a dialogue, I
 8 think, between you or -- or -- and the other
 9 attorneys about certain objections to the deposition
 10 testimony, and the Court ruled on those.
 11 As I say, I didn't analyze that as to whether
 12 the judge made the correct decision or not. I did
 13 see what I thought was -- what was actually read to
 14 the jury.
 15 Q Okay.
 16 A And I just factored that in. Because all I
 17 was interested in was what the jury heard and
 18 whether their -- what the evidence they heard
 19 supported a verdict in the amount of \$5.2 million.
 20 Q Okay. Is it significant to you in your
 21 opinions that the -- those witnesses, the videos of
 22 their depositions and actually -- were actually
 23 played to the jury instead of read by someone else?
 24 A Well, I think that's preferable to just
 25 reading a cold transcript to them, yes.

1 Q Do you recall if both of those ladies talked
2 about the amount of suffering that Martha Bull --
3 A I do, yeah.
4 Q -- endured?
5 A I do. And I was impressed with their
6 testimony. And I found it to be credible, even in a
7 transcript form.
8 Q Is it fair to say that Martha Bull went
9 through a great deal of pain and suffering prior to
10 her death?
11 A Well, you know, those are your terms. I mean,
12 I don't question that she had a significant amount
13 of pain. It's hard for me to delineate the pain
14 that she may have been experiencing before it became
15 intense in those last hours. Because I do think
16 from the record that I saw, the medical records and
17 the other testimony, that when she entered the
18 facility, she still had some abdominal pain and
19 maybe pain from other sources.
20 But I do acknowledge, based on what I saw,
21 that it became more intense either during the
22 evening hours of April the 6th or at least by
23 breakfast on April the 7th, it was -- it was
24 getting intense. I also know that she received pain
25 medication that may not have been as strong as -- as

1 some that could have been available, but she did
2 receive pain medication at intervals during that
3 time.
4 But I don't -- I don't doubt that she was in
5 pain. The severity of the pain is hard for me to
6 evaluate based on just the transcript I read.
7 Although, giving her the benefit of the doubt, that
8 is resolving any doubts in her favor, I acknowledge
9 that she was in intense pain, yes.
10 Q Do you acknowledge that she was in intense
11 pain at least prior to her death due to the
12 negligence of the facility?
13 A Well, to some extent, yes. I mean, I think
14 that at a minimum, the failure of the nurses to
15 respond to -- or to adequately communicate among
16 themselves and to convey the doctor's orders to take
17 her to the hospital would amount to negligence, in
18 my opinion. And that occurred sometime around
19 2:00 o'clock, I think, 2:00 to 4:00 o'clock sometime
20 on the 7th. Am I right about that?
21 Q Well, I -- yes and no. Yes and no. Yes,
22 there was a --
23 A Or I should say --
24 Q -- fax --
25 A -- am I wrong about that.

1 Q Well, there was a fax that came over, yes.
2 A But it was the afternoon of April the 7th,
3 was it not?
4 Q Right. Now, we can -- I think there was also
5 some debate, because I believe the theory of our
6 case was that the negligence didn't start then but
7 it started much earlier for the lack of assessment
8 of --
9 A Oh, oh, I don't agree -- I don't disagree with
10 that. Yeah, I -- I'm -- I'm -- I'm just saying that
11 at a minimum, there was negligence when the nurses
12 failed to respond to the fax. And -- and
13 conceivably, you're right about the assessment. I
14 mean, I know that there was a claim -- and a
15 credible claim -- that if they had assessed her
16 earlier, that she might have been transferred
17 earlier. That's a little more speculative. But
18 there's no question -- I mean, the speculative is
19 about whether she would have been transferred or
20 that there would have been something that responded
21 to that. But -- because I know that it was not that
22 she was totally ignored, I mean, they were making
23 some assessments. But no question in my mind that
24 the failure to respond to the fax amounted to
25 negligence on her part. And if she'd been

1 transferred at that point, she might have had less
2 pain. I mean, I don't know that there was evidence
3 in the record that said how much or -- or if that
4 was necessarily the case, but I think you could
5 infer that from the evidence. And I'm not disputing
6 your point about the assessment, I saw that in the
7 record too.
8 Q Can we agree that pain and suffering are types
9 of damage that can be difficult to quantify?
10 A I agree with that.
11 Q And --
12 A There is no objective standard, is what I'm
13 saying.
14 Q Sure. There's no market price for pain and
15 suffering, is there?
16 A Not that I know of, no. And I think it's
17 probably improper to try to quantify it in those
18 terms.
19 Q But in the end, the jury is asked to quantify,
20 to some extent, pain and suffering in terms of
21 dollars and cents; true?
22 A That's exactly right, yes.
23 Q And they did that; right?
24 A They did.
25 Q And the amount was unanimous; correct?

1 A As far as I know, yes. They have to exercise
2 their judgment as reasonable people and make a
3 decision. But as you say, we can all be wrong. And
4 in my opinion, they were wrong.

5 Q But you don't know anything about them;
6 correct?

7 A No, I don't know anything about them or what
8 their discussions were in the jury room or what
9 motivated them at all. I can only look at the -- at
10 the record. I mean, I saw -- I saw the evidence
11 that was presented to them, the jury instructions
12 they had that guided them, and your arguments.

13 Q Did you see the defense argument?

14 A I saw the defense argument.

15 Q In terms of the testimony that you -- or --
16 the evidence of pain and suffering, have we talked
17 about the -- primarily what you've looked at to
18 determine whether or not the 5.2 was excessive in
19 terms of the amount of the verdict for pain and
20 suffering?

21 A Well, I looked at the testimony of all of the
22 nurses that attended her and I looked at the records
23 of the facility, I looked at some of her previous
24 medical records that were offered by the defendants,
25 so I -- if that's -- I think that's all that we've

1 talked about. I mean, I don't know if that answers
2 your question.

3 Q Were there particular nurses or CNAs or other
4 caregivers that you felt were significant in terms
5 of justifying at least a million dollars in a damage
6 award for pain and suffering?

7 A Well, as I say, the people whose deposition I
8 read were credible witnesses, but I tried to look at
9 the totality of all of the evidence there.

10 Q Do you have an opinion on whether or not it
11 was appropriate to direct the claim for punitive
12 damages?

13 A Well, that was not an opinion I was asked to
14 give, but I considered that, yes. I didn't -- I
15 didn't see any evidence from which I could conclude
16 there was a punitive damage claim.

17 Q What would you have needed to see?

18 A Well, whatever, you know, met the standard of
19 the law there. I mean, there had to be more than
20 just ordinary negligence. And I found -- I agreed
21 with the -- the ordinary negligence there, but I
22 didn't see any -- any kind of malicious conduct or
23 any kind of gross conduct that would rise to the
24 level of a claim for punitive damages.

25 Q Did you read the deposi --

1 A I didn't focus on that, I'll admit.

2 Q Did you see the testimony of Sherry Morgan?

3 A Was she the administrator?

4 Q She would have been the director of nursing.

5 A Director of nursing? Is she the one that
6 talked about the staffing requirements or something?
7 I don't remember. I mean, I'm sure I did if it was
8 included in the trial. I read it, but I --

9 Q It was a -- she would have been -- she would
10 have testified by deposition on video; it was very
11 lengthy; she was the very first witness. Does that
12 ring a bell?

13 A Can I see my notes there a minute? What was
14 her name, Williams?

15 Q Sherry Morgan.

16 A Sherry Morgan. Well, I don't see any notes on
17 her, so I may not have. I don't know. I don't know
18 why. I read the transcript from beginning to end,
19 but I don't -- was her -- was her deposition given?
20 Is that right?

21 Q Yes.

22 A Well, I didn't -- I didn't receive the
23 depositions, so I may not have seen her deposition.
24 I saw the reference to the depositions of the two
25 nurses who, you know, were in attendance on April

1 the 7th, and that was what I was focusing on at
2 the time, not punitive damage claim. So if this
3 other lady was testifying about the need for
4 punitive damages, I may not have read her
5 deposition.

6 Q Well, she didn't testify about the need for
7 punitive damages, but --

8 A Or -- I mean the basis for punitive damages, I
9 should say.

10 Q Sure. Is it fair that before you give an
11 opinion in a case like this that you have all the
12 pertinent information?

13 A Well, yes, I agree that the more information
14 you have, the more likely your opinion would be well
15 substantiated. As I said, I was not asked to render
16 an opinion about whether the Court was correct in
17 granting a motion for directed -- I mean a directed
18 verdict motion for punitive damages. So my focus
19 was mainly on what evidence was there to support the
20 award of \$5.2 million under the negligence claims.

21 I mean, the Court -- the Court took away from
22 the jury any consideration of punitive damages.
23 Whether that was right or wrong is just a different
24 matter, in my opinion. The jury could not have made
25 an award for punitive damages the way the case was

1 presented to them.

2 Q Right. Well, at least once the judge directed

3 that claim out, that claim for punitive damages?

4 A Yes, that's what I mean, yes, yeah. Once the

5 claim was taken away from the jury, the jury was not

6 legally entitled to factor in any conduct that would

7 be punitive or award any damages by way of

8 punishment against the defendant. They could only

9 compensate for pain and suffering and mental

10 anguish.

11 Q Do you have any opinions on whether or not the

12 facility or whether or not -- let me say it this

13 way.

14 Do you have an opinion one way or the other on

15 whether or not the wrongful death claim was decided

16 appropriately by the jury?

17 A Only to the extent that there was evidence

18 both ways. I mean, I think the evidence was support

19 either verdict by the jury, and so I don't -- I

20 don't question the jury's verdict on that. I

21 mean -- I mean, it appeared to me from reviewing the

22 transcript, that the vast majority of the trial was

23 about the wrongful death claim.

24 Q So you don't question the jury's verdict, you

25 think it could have gone one way or the other with

1 respect to wrongful death?

2 A Well, I'm saying that -- that just from --

3 and, again, I wasn't asked to review that, but I did

4 review the whole transcript, except for maybe that

5 deposition that I wasn't sent. But I thought there

6 was sufficient evidence to support a verdict for

7 wrongful death or -- or the other way. I mean,

8 there was sufficient evidence. That's all I'm

9 saying. I wasn't asked to say did I agree with the

10 jury's verdict one way or another, because

11 that's . . .

12 Q And I guess the follow up to that would be

13 you're of the opinion that there was not sufficient

14 evidence for the jury to award anything over or in

15 excess of \$1 million for the pain and suffering

16 claim?

17 A Well, did you say any evidence?

18 Q Right. Well, was there any evidence to

19 support an award of pain and suffering in excess of

20 \$1 million?

21 A Well, I think what you have to do is to

22 evaluate the quality of the evidence, not just a

23 scintilla or any evidence, that type of thing. I

24 mean, you have to decide from the totality there

25 would -- would the evidence that you saw justify a

1 verdict in excess of a million dollars, and I

2 concluded it would not.

3 Q Do you know of any witnesses, any other

4 transcripts or testimony that you might not have

5 reviewed? For example -- and I know that's hard to

6 say, but did you see any reference to folks and then

7 not find a deposition? Meaning -- I'm trying to

8 figure out the best way I can --

9 A Sure.

10 Q -- what else might be out there that have you

11 haven't looked at.

12 A Yeah. No, that's a fair question. No. I

13 mean, I noticed that the depositions of these two

14 nurses was not included in the tr -- and I don't

15 think that was intentional. I mean, since it wasn't

16 part of the court reporter's transcript, I mean, I

17 was just sent what the court reporter typed up

18 first. And it omitted all the depositions, I think.

19 So when I got to that part of the testimony, I

20 saw that these were nurses that were in attendance

21 during the critical time where she was in pain, and

22 so they were important to me. And I ask for them,

23 and I was immediately provided with them and read

24 them.

25 Now, I'm not even sure that I picked up on the

1 fact that the first witness deposition wasn't

2 included, but I'm not sure based on what you've told

3 me that it would have changed my opinion in any way

4 because I didn't think that that was directly

5 involved with what I was being asked about.

6 But, I mean, I don't think I answered your

7 question. I'm not aware of anything that I have

8 asked for that I haven't been provided or that's out

9 there that I haven't reviewed.

10 Q I want to look at the order that Judge Maggio

11 wrote.

12 A All right.

13 Q Is there any -- I mean, do you agree with the

14 way he worded this order?

15 A Well, let me find it.

16 Q Sure. I've got a copy.

17 A You got a copy of it? Yeah. I mean, I think

18 it's in the material that I have here, but I don't

19 know that it is.

20 MR. EVERETT: Tom, it's about 10 after

21 12:00. What's your view of how much time this

22 will take? And, I mean, I hate to wear folks

23 out without taking a break, if anybody needs

24 lunch.

25 MR. BUCHANAN: You know, I can't imagine

Page 81

1 that this will last more than another hour.
 2 Now, if we want to go ahead and take a break,
 3 that's fine. I think we're doing fine.
 4 MR. EVERETT: I don't care. It's kind of
 5 up to Judge Moody, I mean, and anybody else
 6 sitting in here.
 7 MR. BUCHANAN: That's fine. Whatever
 8 you-all want to do. Because I think we're
 9 ahead of schedule, frankly, and we don't have
 10 a witness, another witness until 2:30.
 11 MR. EVERETT: Yeah, I was hoping we might
 12 move the one up at 3:30 to sometime before.
 13 Is that possible?
 14 MR. BUCHANAN: Maybe.
 15 MR. EVERETT: I'm told her office is only
 16 a block or two from here.
 17 MR. BUCHANAN: Move it to what? Move it
 18 earlier?
 19 MR. EVERETT: Well, it depends on the time
 20 you'll be through here. How are you doing,
 21 Judge? I mean, are you --
 22 THE WITNESS: Well, I'm fine. Let me
 23 answer the pending question. But if you want
 24 to take a recess, anybody, I'm comfortable
 25 either way. I mean, I don't want to --

Page 82

1 MR. EVERETT: I'm fine. I mean, I'm
 2 not -- don't care.
 3 MR. BUCHANAN: Well, then, if we don't
 4 need a break or anything -- are you-all okay
 5 over there? Okay. Staci?
 6 THE WITNESS: I may need to take a break
 7 to go back to the restroom, but I'm not sure I
 8 need anything to eat.
 9 MR. BUCHANAN: And at any point when you
 10 want to do that, just let me know.
 11 THE WITNESS: Okay. Sure. I appreciate
 12 it.
 13 A Now, your question was do I find anything
 14 about Judge Maggio's order that I would disagree
 15 with? Or is that --
 16 BY MR. BUCHANAN:
 17 Q Right.
 18 A Let me take a minute and read it again.
 19 (Views document.)
 20 I'm ready to answer your questions.
 21 Q Okay.
 22 THE WITNESS: Can you read it back to me?
 23 (The requested question is read back.)
 24 A Yes, I agree in principle with the way he
 25 ordered it. I think he correctly cited the standard

Page 83

1 that the -- whether it's excessive is whether it's
 2 so great as to shock the conscience of the court or
 3 demonstrate passion or prejudice on the part of the
 4 jury, I think that's a correct statement of the law.
 5 And he -- so he recognized that that was the
 6 standard.
 7 He found that there was no conduct that
 8 warranted the granting of a new trial, that is he --
 9 you know, he -- the claims that you enflamed the
 10 jury some way wouldn't justify the grant of a new
 11 trial at least, but he did think that that may have
 12 been an influence on the jury so that they imposed
 13 punitive damages or damages that were punitive in
 14 nature against the jury, and I -- I think that that
 15 was the correct language to include in here. So I
 16 guess, in principle, I agree with what he said here.
 17 Q Okay. I mean, he controlled the evidence and
 18 the testimony; right? The judge did?
 19 A Well, he -- to the extent there were
 20 objections. I think the attorneys picked out the
 21 evidence they wanted to present. Unless there was
 22 an objection, I assume the judge didn't intervene.
 23 Q Sure. But, I mean, in the end, if there's an
 24 objection, the Court can disallow the evidence?
 25 A Sure, yeah. It's the judge's --

Page 84

1 Q And I guess what I'm --
 2 A -- that's the judge's role in the case in
 3 part.
 4 Q Right.
 5 A Uh-huh.
 6 Q And the sentence I'm focusing on is, "The
 7 Court also finds that the evidence, testimony, and
 8 argument by plaintiffs' counsel enflamed the jury's
 9 passion and prejudice resulting in award that is
 10 punitive in nature, despite the Court's previous
 11 rulings that punitive damages would not be allowed
 12 in this case."
 13 A Uh-huh.
 14 Q That's the sentence I want to focus on.
 15 A Okay.
 16 Q Now, can we at least agree that, to the extent
 17 there was an objection with regard to the evidence,
 18 that would have been something that Judge Maggio
 19 controlled?
 20 A If there -- if one of the parties objected to
 21 the introduction of evidence, he would decide the
 22 objection?
 23 Q Yes.
 24 A Yeah, I agree with that.
 25 Q And the same thing with regard to the

Page 85

1 testimony; correct?

2 A Well, that's evidence, yes.

3 Q And then argument, was there -- was there an

4 objection -- I mean, I recall one objection in

5 the -- which argument? Do you know what argument

6 he's referring to?

7 A Well, I know there was a specific objection to

8 include a motion for a mistrial when you mentioned

9 insurance. And -- but he didn't grant a new trial

10 on that basis, so I'm assuming that that's not --

11 maybe not what he's talking about.

12 But I recall that there was an objection and a

13 motion for mistrial, and he declined or denied the

14 motion for a mistrial.

15 Q Right.

16 A And you continued to argue the case. That was

17 one objection that I remember.

18 Q I continued to argue -- I moved on or I did

19 not move on?

20 A Oh, you moved on, yeah. You didn't talk about

21 insurance anymore. I just meant you continued to

22 complete your argument to the jury.

23 Q Do you recall what I said about insurance?

24 A Well, in a general way, I think you said

25 that -- you told the jury that they shouldn't be

Page 86

1 concerned about any effect of a verdict on their

2 insurance rates or something to that effect.

3 Q Right.

4 A I can't remember exact.

5 Q I mean, was that, in your view, some sort of

6 misconduct that would warrant a remittitur?

7 A Well, no, I'm not saying that necessarily.

8 I'm not being critical of you or the argument you

9 made. In fact, I was impressed generally with the

10 way you handled the case. But I think there was

11 some tenor in your argument later about that, you

12 know, what the reaction of the defendant would be if

13 they didn't award substantial damages, that the --

14 that some kind of verdict needed to tell the

15 defendant to avoid this con -- I mean, all of those

16 things would have been more appropriate for a

17 punitive damage award than they were for this type

18 of ordinary negligence, and I -- I think that's what

19 the judge is talking about here. Because if he had

20 found that you committed misconduct in talking about

21 the insurance, then he might have been moved to

22 grant the motion for a mistrial or a new trial.

23 Q And with regard to the -- there was no

24 objection that was made to any argument about --

25 about sending -- about the defendant's reaction

Page 87

1 or -- to the verdict and how they needed to

2 basically impose a substantial award, you know, in

3 this case?

4 A Well, that's true. There was no -- the

5 defendants did not raise a specific objection during

6 your closing argument about those comments, but that

7 wouldn't preclude the judge from deciding that those

8 comments would invoke some kind of passion or

9 prejudice on the part of the jury, because this

10 verdict did appear to be punitive in nature. And --

11 Q Based on what?

12 A Based on what? The argument you made?

13 Q No, no, no. Why do you believe that the

14 verdict was punitive in nature?

15 A Because I think it's clearly excessive, and I

16 don't -- I think -- I don't think it can be

17 justified by the evidence of the pain, I think it

18 had to include some component of either

19 sentimentality or desire to inflate the verdict to

20 allow for things that the jury shouldn't have

21 considered under the instructions.

22 Q Do you believe that the jury did not consi --

23 or -- do you believe there -- do you believe that

24 the jury instructions were adequate to tell the jury

25 what their job was?

Page 88

1 A Well, again, I wasn't asked to review the jury

2 instructions. I do recall one issue, and that

3 was -- there was a claim for violation of her

4 rights, patient rights. Okay. There was no

5 definition of what damages the jury could award

6 under that cause of action. And your only argument

7 was that -- that they should award damages for the

8 pain and suffering and mental anguish because the

9 violation of the rights was that they didn't give

10 her adequate care.

11 But the jury -- the jury instructions were

12 deficient to some extent in that -- in that if

13 there's a claim that her rights were violated, then

14 the jury should have been told what elements of

15 damage they might consider under that claim, and

16 they weren't.

17 Q And so do you -- so you believe that they were

18 deficient in that regard?

19 A Maybe, yeah. I mean, you know, I was not

20 focusing on the jury instruction conference or even

21 the jury instructions, that was just one thing that

22 I noticed. I mean, there were basically AMI,

23 Arkansas Model Instructions, by and large. So

24 having participated in that kind of thing as a

25 lawyer and as a judge, I mean, I know the

Page 89

1 limitations on there, you can't -- you can't be
 2 perfect. But you--all -- there were good lawyers on
 3 both sides here. But that was the only point that I
 4 saw. I wasn't -- I'm not generally critical of the
 5 instructions.

6 Q Do you have any kind of any information that
 7 the jury disregarded the instructions?

8 A No specific information that they did, no.

9 Q Do you at least assume that they read the
 10 instructions and followed them as they were given?

11 A You know, I can't make that assumption either
 12 way. I mean, I've had juries that I felt did and
 13 had that didn't. So I -- you know, I -- I presented
 14 the instructions to a lot of juries, and some of
 15 them acted like they followed them and some of them
 16 obviously didn't. So I can't -- I can't make an
 17 assumption either way.

18 Q Okay.

19 A Let me return this to you before I steal it.

20 Q We'll attach as Exhibit 8, by the way, to your
 21 deposition.

(Exhibit 8 was marked for identification.)

22 A Is that the judge's order?

23 Q Yeah.

24 A Okay.

Page 90

1 Q I'm going to make sure that I understand.

2 Are you going to be critical of the arguments
 3 that I made when we get to the trial of this case?

4 A I'm not going to be critical of you at all. I
 5 do think that there's a potential that the arguments
 6 that you made about the effect on the defendant as
 7 opposed to awarding adequate compensation to the
 8 plaintiff could have influenced the jury to passion
 9 and prejudice. I mean, I think the judge in his
 10 order referred to that specifically. And, I mean, I
 11 find that some of the arguments that you made could
 12 have had that effect. I'm not being critical of you
 13 for making them. I'm not saying that you were
 14 unethical or out of bounds on doing them, but they
 15 could have had that effect.

16 Q Do you have an opinion as to whether or not
 17 the defendants should have objected to those
 18 arguments?

19 A Whether a defendant's lawyer makes an
 20 objection is largely a matter of strategy.
 21 Sometimes an objection just calls attention to
 22 what's just been said. So, I mean, could they have
 23 made an objection in good faith? Yes. Why they
 24 didn't? I don't know. But I can't say that they
 25 were acting improperly in not making an objection.

Page 91

1 Q So my question is: Was I acting -- well, was
 2 I acting improperly, in your view?

3 A No. I said that I didn't think you did
 4 anything unethical.

5 Q Did I do anything improper?

6 A Well, as I say, no, except to the extent that
 7 the things that you said might have influenced the
 8 jury to inflate the verdict beyond what I thought
 9 was reasonable and consistent with the evidence. If
 10 that's improper in your definition, then I guess the
 11 answer is yes. Otherwise no.

12 I mean, I wouldn't have turned you over to the
 13 Ethics Committee or anything like that. I didn't
 14 think your argument was all that offensive, I'm just
 15 saying it may have had unintended consequences that
 16 had to be corrected by the Court.

17 Q I think we're going to take a break right now.
 18 I want to get copies of the notes --

19 A Okay, sure.

20 Q -- and attach them as an exhibit. And I want
 21 to kind of go through some of my notes and visit
 22 with these people who are smarter than I am to
 23 figure out.

(Exhibit 9 was marked for identification.)

24 A All right. Let me find somebody that's better

Page 92

1 qualified than I am to make that copy. I already
 2 failed in my one attempt. You just want a copy of
 3 this; right?

4 Q I do.

5 A Okay. Anything else?

6 Q I think we kind of -- I think everything else
 7 we have, so I think that's it.

8 A Do you have a copy of the Townsend stuff?
 9 That was the only thing that you were shorted, I
 10 believe.

11 MR. KIDD: I think we made that an
 12 exhibit.

13 BY MR. BUCHANAN:

14 Q We ended up making it an exhibit, so we'll be
 15 okay.

16 A Okay. All right. Because that was not in
 17 John's materials.

18 Q Right.

19 A But I gave you the Eighth Circuit opinion now.
 20 Well, if you're satisfied, I am too.

21 Q Well, because here's your order, and that's
 22 Exhibit 4.

23 A Okay.

24 Q And the Eighth Circuit is Exhibit 5.

25 A You have everything, then, that I do. Okay.

(A brief recess is taken.)

BY MR. BUCHANAN:

Q Okay. I think we've talked about -- a little bit about this particular issue, but I'm trying to -- what I want to try to do is to ask you about all of the evidence, argument -- or argument that you believe could have resulted in the jury being enflamed by passion or prejudice. And so we've talked about the closing argument.

A Uh-huh.

Q What else?

A Well, in this -- that's the only thing that I can point to directly. Although, my sense from just experience is that juries sort of have a predisposed notion about nursing homes and the treatment and some of the bad publicity that they've had. So I think that in some instances, they don't need any argument or -- so I think it's more a lack of evidence to support this award than it was evidence that would compel them to reach this verdict.

But I do think that the only way you can explain this verdict is that they injected something in there other than a reasonable evaluation of the pain and suffering and mental anguish. I'm not diminishing the severity of it, but just to award

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5.2 million for something that may have been 20 to 30 hours is excessive.

Now, there was a punitive damage claim, and I'm sure there was evidence in there of bad conduct on the part of the nursing home that have riled the jury up. I don't know. You know, I wasn't on the jury, so I don't know, and I'm not criticizing the jury for doing what they did. I mean, I'm sure they were conscientious.

But a lot of these things -- a lot of these verdicts that you see that are runaway verdicts or excessive verdicts, a lot of them involve nursing homes just because of the attitude people have toward nursing homes when one of their own loved ones has either been mistreated or died or whatever it might be. And I don't mean any criticism of anybody, it's just a fact of life.

Q And I appreciate your answer. I'm just looking to make sure that I've asked you about all of the evidence or argument --

A Uh-huh.

Q -- that you believe could have resulted in a verdict influenced by passion and prejudice. And we've talked about the closing argument. Is there anything else? And I know you said -- you mentioned

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juror attitude towards nursing homes and --

A Well, there was some evidence in there about lack of staffing, there was some other evidence. But, you know, when I focused on the hours at hand, there didn't seem to be any evidence of pure negligent. I mean, the nurses may not have done enough; they were negligent, in my opinion, for not getting her to the hospital; but they were attentive at least in giving her pain medication, all of which would normally mitigate damages.

And for the jury then to turn around -- I mean, if she'd been left there soaked in urine or whatever for long hours and nobody paying any attention to her or some kind of cruel conduct like that, I can understand the jury's attitude. But just from what I saw in the transcript, it appeared that the nurses cared for her -- I mean cared about her and tried to care for her. And that just to me was -- showed a lack of any evidence from which the jury -- jury could award these kind of damages.

Q Okay. So there was no evidence of pure neglect, that's one of your opinions; right?

A Well, yeah. I mean, I'm not sure what you mean by "pure neglect."

Q Well --

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A But there -- you know, there was -- there was positive evidence, I thought, that the nursing staff were at least trying to address her concerns, that they were giving her medication, they were in her room trying to help her. It may be ineffective, but at least they were making an effort.

Q Did you read the deposition of Lorine McClain?

A The name's familiar. I know her name came up in the course of the thing. But as I say, the only two depositions that I --

Q Well -- I'm sorry. And I don't mean to cut you off. I don't think her deposition was played to the jury --

A Yeah.

Q -- and I don't think her testimony was -- was --

A Well, no. If it was a discovery deposition that wasn't part of the trial transcript, I didn't see it, no.

Q What's your understanding of what happened from 2:00 o'clock on?

A From 2:00 o'clock when?

Q 2:00 o'clock that afternoon of Martha Bull's death until the end of her life.

A From 2:00 to 7:00 -- I mean, from 2:00 to

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Page 97

1 10:20 on April the 7th; is that right?

2 Q Right.

3 A All right. Well, I don't know how much detail

4 I can give you. I do know that sometime around

5 2:00 p.m. they discovered that she had blood in her

6 stool, and I think that may have been one of the

7 reasons that they called the doctor.

8 Then shortly after that, the doctor sent back

9 a fax to another part of the facility saying that

10 she needed to be transferred to the emergency room

11 for evaluation. That fax got sent to another fax on

12 a different wing in the facility and wasn't picked

13 up by the nurses. And that, to me, was clearly

14 negligence for not responding to Dr. Bowman, I

15 believe is who it was. And that was about 2:00 to

16 3:00 p.m., something if that time frame.

17 From that point forward, I think Mrs. Bull was

18 continually complaining about pain and that -- and

19 then I won't remember the name probably, but one of

20 the nurses was in pretty close contact with her

21 during the last hours of her life when she came on

22 her shift. I think there was a -- like a 3:00 to

23 11:00 shift -- or something like that -- which would

24 have encompassed these hours I guess you're talking

25 about.

Page 98

1 But in that period of time, my sense was that

2 Ms. Bull was in quite a bit of pain, that she may

3 have been receiving Ultram or some kind of

4 medication that I'm not familiar with, but at least

5 something that was intended to address her

6 complaints of pain. And that she was being

7 assessed, but they weren't relieving her pain. And

8 then they discovered that she was dead as of

9 10:21 p.m.

10 Q Are you aware that those nurses lost their

11 license -- well, that the nurse on duty on the

12 3:00 to 11:00 shift lost her license?

13 A No. I knew that she was no longer with the

14 nursing home. I mean, at the time of the trial, my

15 impression was that she had been terminated, but I

16 didn't know any of the other details.

17 Q Do you know who --

18 A It didn't appear in the trial transcript that

19 I reviewed that there was any disciplinary action

20 taken against her.

21 Q Okay.

22 A I mean, I didn't know that. I don't know

23 whether the jury knew it or not. I mean, if I'm --

24 if I'm wrong about that being in the trial

25 transcript, I apologize. But I don't -- I don't

Page 99

1 remember reading anything about disciplinary action

2 being taken against the nurses that went to the

3 jury, the evidence that went to the jury.

4 Q Have you been involved in verdicts, either as

5 a lawyer or a judge, where more than \$1 million has

6 been awarded in pain and suffering?

7 A As a lawyer?

8 Q Or a judge.

9 A By a jury you mean?

10 Q Yeah.

11 A As opposed --

12 Q Well -- sure. Well --

13 A -- as opposed to a settlement? I mean, you

14 know, I had some cases where big -- you know, big

15 awards were made by settlement. You know, I can't

16 imagine that I haven't, but I can't recall one

17 offhand. I mean, as a judge, I'm trying to think.

18 I don't know. You know, in federal court, you don't

19 get quite as many of these kinds of cases where

20 there's a lot of pain and suffering, some, but

21 not -- I mean, they're more employment related or

22 other -- I can't answer your question. I'm sorry.

23 Q Okay. Because these -- these cases primar --

24 they don't have a federal component to them, a

25 federal statute or anything like that; right?

Page 100

1 A Not unless there's diversity.

2 Q Sure. Yeah, what about settlements that you

3 can think of? And I'm not after names, but --

4 A Well, I know there were cases where I paid

5 more than a million dollars in settlement; but, you

6 know, to break it down as to how much of that was

7 attributable to pain and suffering, I just don't

8 remember.

9 Q I mean, are we talking -- I know you can't

10 give a specific number, but in terms of an estimate,

11 can you at least estimate the number of times -- or

12 the amount -- number of cases you've been involved

13 in as a lawyer or as a judge, because I assume there

14 are times when you will know about the amount, where

15 pain and suffering exceeds \$1 million?

16 A Oh, I'm sorry. I just can't help you here.

17 I'd be guessing. I just don't have a very good

18 memory of -- like that to answer that question.

19 Q Okay. Is it unusual for a personal injury

20 case to result in a settlement in excess of a

21 million dollars?

22 A Is it unusual?

23 Q Right.

24 A Well, I'd say that's not the run-of-the-mill

25 settlement, but I'd say it's not unheard of or

Page 101

1 unique in any way. I mean, everything is settling
 2 for more dollars in today's environment than it was
 3 when I was a lawyer for sure.
 4 Q When did you first meet John Everett?
 5 A When did I first meet John Everett?
 6 Q Uh-huh.
 7 A Oh, probably 30 years ago, maybe longer than
 8 that.
 9 Q Was that while you were practicing as a
 10 lawyer?
 11 A Yes.
 12 Q Have you -- do you have any kind of
 13 relationship with him now other than just --
 14 A Well, you mean professional or social?
 15 Q Yes, social, professional?
 16 A We don't socialize together except that we're
 17 in some of the same legal organizations. And I've
 18 had cases with John as a lawyer, and he was in my
 19 court as a -- as a lawyer, but we don't -- don't
 20 have any present connections at all that I know of.
 21 I mean, I consider him a friend, but that's about
 22 the extent of it.
 23 Q In terms of in some of the same legal
 24 organizations, what would those be?
 25 A Well, two that I can think of, the American

Page 102

1 College and ABOTA. Mr. Kidd's in those same
 2 organizations. He won't socialize with me either.
 3 Q Do you know Mr. Morton?
 4 A No, never met him.
 5 Q Do you know Gilbert Baker?
 6 A No.
 7 Q I assume you're charging 350 an hour? That's
 8 the hourly rate?
 9 A Yes, that's the firm rate for me --
 10 Q Okay.
 11 A -- for these kinds of things.
 12 Q And we couldn't decide whether or not -- how
 13 this question was answered, so I'm going to try to
 14 get at it a different way.
 15 A Sure.
 16 Q Do you have an opinion on whether the
 17 plaintiffs in the Bull case could just have appealed
 18 from that Judge Maggio's order of remittitur or
 19 would they have had to have faced a new trial and
 20 then appealed from that?
 21 A I think the latter.
 22 Q Okay.
 23 A I think they would have had to retry the case.
 24 If they elected not to take the remittitur, they
 25 would have had to retry the case. I mean,

Page 103

1 conceivably, they could have retried the case and
 2 gotten more than \$5 million. And if Judge Maggio
 3 didn't set it aside for some reason, they wouldn't
 4 have been damaged, there wouldn't have been anything
 5 to appeal. But if they got less, then I think they
 6 could show that they were adversely effected by the
 7 ruling and they might get the verdict reinstated.
 8 Q The last thing that I want to ask you about is
 9 I've been supplied with -- or -- ask John about.
 10 MR. BUCHANAN: We've gotten a lot of stuff
 11 over here. I'd like to get -- to go through
 12 it. If at some point, would you agree to do a
 13 fairly minimal follow-up on these cases?
 14 MR. EVERETT: Sure, sure. One of the
 15 problems with that is that Judge Moody is in
 16 Arkansas only for a very short period of time.
 17 MR. BUCHANAN: Okay.
 18 MR. EVERETT: And he probably would not
 19 want to come back from Michigan to give a
 20 30-minute deposition, but surely we can
 21 arrange it on the phone. I have no objection
 22 to supplementing this, if that's what you want
 23 to do.
 24 MR. BUCHANAN: And it might be that I
 25 don't need to. I'd just like to --

Page 104

1 MR. EVERETT: I understand. I'll
 2 cooperate with you. And keep in mind that
 3 he's not here all the time.
 4 MR. KIDD: I'll be glad to go to Michigan
 5 if he'll put me up.
 6 THE WITNESS: Yeah, we'll put you up. No,
 7 I'll have to leave here a week from Friday to
 8 get my wife back home, and then I'll be back
 9 here sometime after Labor Day permanent, so.
 10 MR. EVERETT: Now, Tom, in connection with
 11 his billing too, it's -- I would -- I have
 12 asked him to send me a bill for his entire
 13 time, including this time, but I'll let you
 14 know how much of that is your fair share, and
 15 I trust you'll sketch me a check. Fair?
 16 MR. BUCHANAN: I will.
 17 MR. EVERETT: Thanks. All right.
 18 MR. BUCHANAN: Okay.
 19 (Whereupon, the taking of the deponent's testimony
 20 was concluded at 1:05 p.m. and does not waive
 21 reading and signing.)
 22
 23
 24
 25

CERTIFICATE
STATE OF ARKANSAS)
COUNTY OF PULASKI)
I, Mike Mirelez, Certified Court Reporter, Registered Professional Reporter, Certified Realtime Reporter, and Notary Public, do hereby certify that the facts stated by me in the caption on the foregoing proceedings are true, and that the foregoing proceedings were reported verbatim through the use of the stenographic method and thereafter transcribed by me or under my direct supervision to the best of my ability, taken at the time and place set out on the caption hereto.
I further certify that in accordance with Rule 30(e) of the Rules of Civil Procedure, review of the transcript was requested.
I further certify that I am not a relative or employee of any attorney or employed by the parties hereto, nor financially interested in the outcome of this action, and that I have no contract with the parties, attorneys, or persons with an interest in the action that affects or has a substantial tendency to affect impartiality, that

requires me to relinquish control of an original deposition transcript or copies of the transcript before it is certified and delivered to the custodial attorney, or that requires me to provide any service not made available to all parties to the action.
WITNESS MY HAND AND SEAL this 19th day of August 2015.
MIKE MIRELEZ
Certified Court Reporter
Registered Professional Reporter
Certified Realtime Reporter

SIGNATURE OF DEPONENT CERTIFICATE
I, JUDGE JIM MOODY, do hereby certify that I have read the foregoing deposition and that, to the best of my knowledge and belief, said deposition is true and accurate with the exception of the following corrections listed below:
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Date:
Signature of Witness:
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COUNTY OF)
SUBSCRIBED AND SWORN TO before me this
day of , 2015.
My commission expires:
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acknowledge
acted
acting
action
active
actual
add
additional
address
adequate
admitted
administrator
101:25
AMI 88:22
amount
41:3 42:3,12
42:16,20
53:4,20
54:25 55:6
56:9 59:15
62:13 63:15
63:6
63:19 64:4
68:19 69:2
69:12 70:17
72:25 73:19
100:12,14
amounted
71:24
analysis
analyze
analysis
amount
68:11
anguish
88:8 93:24
Annotated
39:13
answer
28:18 54:19
81:23 82:20
91:11 94:18
99:22 100:18
answered
80:6 102:13
83:7 74:20
20:12 74:1
anybody
80:23 81:5
81:24 94:17
anymore
85:21
anyway
airplane
allegations
60:16 61:6
61:13,19
allow
allowed
84:11
alternative
42:17
amended
25:15
American
62:6,14,19
62:21,23
63:22 103:5
appealable
45:9,25
appealed
63:5 102:17
102:20
appeals
8:20 32:3
63:7
appear
87:10 98:18
APPEARANC...
2:1
appeared
67:14 77:21
95:16
appears
23:15
appellate
21:3 62:25
63:1,5
appointed
8:3
8:9,13,17
14:11
appreciate
21:24 82:11
94:18
appropriate
74:11 86:16
appropriately
77:16
Approximat...
14:1
April
71:2 75:25
97:1
arbitrator
35:23,24
36:3,5
argue
85:16
85:18
argument
73:13,14
84:8 85:3,5
85:5,22 86:8
86:11,24
87:6,12 88:6
91:14 93:6,6
93:9,18
94:20,24
arguments
73:12 90:2,5
90:11,18
Arkansas
2:6,11,17,23
5:9,18 6:22
8:18 21:3
39:11,12
52:12 88:23
103:16 105:3
Army
12:5,16
12:17,18
Arnold
9:5
arrange
103:21
arrangement
7:13 9:17
Artillery
12:15
aside
39:6
103:3
asked
19:25
23:2,20
38:11 48:14
48:24 51:7
51:11 62:5
67:12 72:19
74:13 76:15
78:3,9 80:5
80:8 88:1
94:19 104:12
asking
56:17
assessed
71:15 98:7
assessment
71:7,13 72:6
assessments
71:23
assigned
9:12
35:25
assignment
48:16 49:2
50:16
associate
27:20 28:4
association
36:8
assume
33:13
83:22 89:9
100:13 102:7
assuming
44:6 64:1

Table with 5 columns of text containing various terms and numbers (e.g., evolved 14:25, exact 8:4.7, 14:2 52:4, 86:4).

Table with 5 columns of text containing various terms and numbers (e.g., 85:24, generally 86:9, 89:4, getting 28:12).

Table with 5 columns of text containing various terms and numbers (e.g., insurance 15:16, 20, 16:8, 10:16).

Table with 5 columns of text containing various terms and numbers (e.g., lady 76:3, language 85:15, 74:24, large 50:21).

60:1,4 64:1	13-1468 4:16	34:12 31:25	72703 2:23
69:3 71:10	13th 1:24 5:5	32:10	7852:8,12
77:4 79:12	159:12	3:00 97:16,22	7th 69:23
80:17 81:11	16-64-123	98:12	70:20 71:2
83:25 84:24	39:22 40:2	3:30 81:12	76:1 97:1
85:20 88:19	16-64-124	3094:2 101:7	
89:24 95:23	39:13,17	30-minute	8
96:14 99:10	1944 2:23	103:20	84:20 89:20
100:2 104:6	1964 12:4,12	30(e) 105:17	89:22
year 13:1	1966 10:16	313 2:11	894:20
14:10 27:25	15:1	324:11,12,14	
28:20	1970 10:19	4:15,17,19	9
years 8:7 10:7	1980 11:19	350 102:7	94:22 91:24
10:8 14:7,10	1980s 11:21	372-1406	914:22
28:23 29:5	13:13	2:18	958:13 10:4
101:7	1990 17:22	375-9901	10:11 14:4,6
you-all 31:16	1995 7:23 8:9	2:12	9710:4
81:8 82:4	10:21 17:21		
89:2	19th 106:7	4	
Z	2	44:14 32:1,11	
0	24:11 31:19	92:22	
1	32:9 50:21	4:00 70:19	
14:8 23:11,12	58:15	407:5	
55:20 56:3	2/15/13 4:14	479)443-02...	
78:15,20	2:00 70:19,19	2:24	
99:5 100:15	96:21,22,23	5	
1-5 1:14	96:25,25	54:15 32:3,12	
1,100,000	97:5,15	92:24 103:2	
54:11	2:30 81:10	5,2 68:19	
1,500,000	20 94:1	73:18 76:20	
55:11	200 2:17,17	94:1	
1.1 55:24	5:8	501 2:7,12,18	
1.5 57:14	2000 13:25	5414 6:17	
1:05 104:20	2002 13:25	6	
10:9:12 80:20	2004 26:22	64:4,17 32:5	
10:00 1:24 5:8	2012 26:15	32:13	
10:20 97:1	2014 8:4	6-year 13:17	
10:21 98:9	10:24 11:4	13:24	
105 4:5	2015 1:24 5:5	66 13:6,7	
107 4:6	20:3 25:4	6th 69:22	
11:00 97:23	106:8 107:21	7	
98:12	215 2:6	74:19 32:19	
115 2:6	21st 25:4	32:22	
12 14:10	23 4:8	7/8/2015	
12:00 80:21	23-CV-2014...	4:11	
123 39:14,22	1:11	7:00 96:25	
124 40:23	2300 5:8	72201 2:6,11	
12th 14:10	296-9820 2:7	2:17	
	3		