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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MARIN

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HON. LYNN DURYEE, JUDGE DEPARTMENT NO. L

ROY SMALLY, JR., an individual, and
VIVI MITCHELL, an individual,

Plaintiffs,

-vs-

NATIONWIDE INSURANCE COMPANY, a
corporation, et al.,

Defendants.

No. CV 095999

AND RELATED CROSS-ACTION.

REPORTER'S TRANSCRIPT OF JURY TRIAL

TUESDAY, MARCH 15, 2011

Volume 7-A (Pages 870-972)

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1 Tuesday, March 15, 2011 9:34 a.m.

2 --000--

3 P R O C E E D I N G S

4 THE COURT: All right. Good morning. Welcome
5 back.

6 So we will continue with the cross-examination
7 of Mr. Dawson. I'll call on you, Mr. Fitzgerald.

8 JUROR: Your Honor, notebooks?

9 THE COURT: what is happening?

10 (Off-the-record discussion held.)

11 THE COURT: I think we're now ready for the
12 cross-examination.

13 CROSS EXAMINATION (Resumed)

14 BY MR. FITZGERALD: Very well, your Honor.

15 Q. Good morning, Mr. Dawson.

16 A. Good morning, sir.

17 Q. Mr. Dawson, in this case, you sort of wear
18 three hats, you have sort of three capacities, and let
19 me explain what I mean by that. You're a percipient
20 witness, a fact witness to certain events that happened
21 while you were working on the claim, correct?

22 A. That is correct.

23 Q. You are also a public adjuster, subject to all
24 the rules of public adjusters, correct?

25 A. That is correct.

□

1 Q. And you have also been retained and designated
2 as an expert witness in this case by Mr. Doherty,
3 correct?

4 A. That is also correct.

5 Q. Let's go back, and let me ask you this: In
6 connection with your services as an expert witness,
7 have you reviewed the claims file that was produced by
8 Nationwide in this case?

9 A. I have, yes.

10 Q. And you've also reviewed depositions that were
11 taken in the case?

12 A. No, I have not reviewed depositions.

13 Q. You have not, okay. So, for example, you did
14 not review the deposition testimony given by Wendy
15 Bennett, is that right?

16 A. That is correct.

17 Q. And Kevin Paxton as well?

18 A. That is correct.

19 Q. When did you get the claim file from Mr.

20 Doherty to review in this case?

21 A. Oh, I received it -- seemed like it was last
22 summer, 2010. I reviewed it once, and then I reviewed
23 it again last week.

24 Q. Now, did you have an understanding as to when
25 Marin got the Nationwide Insurance policy?

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□

1 A. I have a recollection that it was -- well,
2 they didn't receive it from me. I don't have a
3 recollection. I know they did not have it in September
4 of 2008.

5 Q. Okay. And you know that how?

6 A. Because I talked to Charles Flynn and his
7 consultant, Karen. They did not have the policy, and I
8 did not provide it to them.

9 Q. All right. Now, just to refresh everyone's
10 recollection, you were retained on or about
11 September 3rd of 2008, correct?

12 A. That's correct.

13 Q. Now, in your review of documents, do you
14 recall seeing a letter or memo from Mr. Smally to
15 Mr. Flynn regarding the insurance policy?

16 A. On what date, if you have a date?

17 Q. Don't know exactly the date, but it says,
18 "Enclosed you'll find a copy of the insurance policy on
19 the Georgia Street property, and we have also retained
20 Kevin Dawson. A copy of his card is enclosed."

21 A. Oh, I recall that letter, I got that. It was
22 after September 3rd, shortly after.

23 Q. Shortly after?

24 A. Yes.

25 Q. So sometime in September you knew, from seeing

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1 that, that Mr. Smally wrote that Mr. Flynn had received
2 a copy of the insurance policy from Mr. Smally,
3 correct?

4 A. That's correct, that refreshes my
5 recollection.

6 Q. All right. Now, I'd like you to take a look
7 at what's been marked as Exhibit 28, and this is
8 Plaintiffs' 28.

9 THE COURT: Let me give you my copy.

10 THE WITNESS: Thank you. I'm familiar with
11 the letter, yes.

12 BY MR. FITZGERALD:

13 Q. Okay. While we're waiting for technology to
14 set in, Mr. Dawson, this was one of the first letters
15 you wrote to Nationwide, right?

16 A. It is absolutely the first letter.

17 Q. Okay, all right.

18 Now, in fact, let me go to the next document
19 instead, it's going to be Exhibit 29, which is in
20 evidence, I believe. Mr. Doherty showed you this
21 yesterday.

22 THE COURT: Is this in evidence? 29?

23 THE CLERK: Yes, your Honor.

24 THE COURT: Okay. Mine wasn't marked for some
25 reason, but -- yes, it is. Yes, I remember this now.

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1 THE WITNESS: Yes, I'm familiar.

2 BY MR. FITZGERALD:

3 Q. Okay. This is a letter you wrote to Mr.
4 Flynn, correct?

5 A. Correct.

6 Q. At this point in time, do you believe that
7 Mr. Flynn, based on what you just said a moment ago
8 about Mr. Smally sending the policy, had the policy by
9 the time of your letter of September 9th, or you're not
10 sure?

11 A. I am not sure.

12 Q. Okay. Now, in this letter, you say: "I have
13 been requested to inform you that unless and until you
14 are expressly authorized to release information on the
15 loan or borrowers, no information can be released to
16 any parties without our express consent and approval."

17 Did you mean that Mr. Flynn was not allowed to
18 provide anything to Nationwide about the loan until you
19 had given them an authorization by the Smallys?

20 A. That's correct.

21 Q. All right. And then it says: "Although we do
22 not explicitly represent the interest of the lender,"
23 meaning Marin?

24 A. Correct.

25 Q. "The interests of the borrower and lender in

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□

1 this matter are intertwined."

2 Now, let me ask you about that.

3 A. Yes.

4 Q. In fact, throughout the process, into January,
5 February of 2009, the interest of Marin and the Smallys
6 were at times adverse to one another, were they not?

7 A. I don't have a recollection of any adversity
8 at all.

9 Q. Are you aware of any adversity in this case at
10 all between Marin and the Smallys?

11 A. No.

12 Q. Are you aware that on the caption of the
13 complaint when you saw it that the Smallys sued Marin?

14 A. Oh, I'm very aware of that. That was my
15 recommendation.

16 Q. And that's because the Smallys have a claim as
17 to monies that Marin might get that they think they
18 should get some of it, right?

19 A. That's not why, no. That's not correct.

20 Q. Okay.

21 A. It was a different reason. I had a
22 recommendation to Mr. Doherty and to Mr. Smally.
23 Mr. Smally did not want to sue Marin. My
24 recommendation was, given the conduct of Nationwide and
25 Long & Levit, through Irene Yesowitch and John Hook, I

1 thought that Mr. Smally may become disenfranchised by
2 some sidebar deal, and I thought it was in Mr. Smally's
3 interest, and he thought it was against his interest,
4 but I thought if you brought Marin into the litigation,
5 when it all resolved, Marin and the Smallys would be
6 made whole. And that, to this day -- they have
7 reconciled. I have talked to Mr. Flynn, Mr. Smally,

8 Mr. Doherty and their lawyers, and they have the same
9 interests. I thought they were intertwined then, I
10 believe they are intertwined now.

11 Q. Do you believe that Marin believes that?

12 A. Well, I don't know what Marin believes, but I
13 know Mr. Flynn is an honorable man, and he's accepted
14 my guidance, advice, assistance, and he did not
15 foreclose on the Smallys, he did not take adverse
16 actions against the Smallys, and he didn't take that
17 \$345,000 offer that was forced upon him by Long &
18 Levit. Mr. Flynn and Marin Mortgage, they are entirely
19 honorable. They are not adverse to the Smallys.

20 Q. Did you ever speak to Mr. Scheer?

21 A. Yes.

22 Q. Mr. Scheer was counsel for Marin, correct?

23 A. That's correct.

24 Q. And Mr. Scheer was authorized to represent
25 Marin, as far as you know, in communications with

□

1 Ms. Yesowitch, correct?

2 A. Yes.

3 Q. You weren't authorized by Mr. Flynn or Marin
4 to negotiate anything on behalf of Marin, is that
5 correct?

6 A. There was no explicit authorization to
7 negotiate. There was an authorization to try to bring
8 the case to a resolution, and there was a tacit
9 approval by Mr. Flynn that all my actions that were
10 calculated to resolve the claim were with his approval,
11 and Mr. Scheer also.

12 It was only when the claim was denied that I
13 withdrew from any active participation, and Mr. Scheer
14 went forward without my assistance.

15 Q. Okay. That's your recollection of it?

16 A. That is.

17 Q. Now, you talked yesterday about Ms. Yesowitch.

18 Before we get to Ms. Yesowitch, I'd like you
19 to take a look in the jurors' notebook, Exhibit 8.
20 This is the letter of November 14th, 2008 that you
21 wrote to Nationwide, correct?

22 A. Correct.

23 Q. And in this you -- was it your intention that
24 you were making a demand on behalf of the Smallys and
25 Marin?

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□
1 A. Yes.

2 Q. And had Mr. Flynn specifically authorized you
3 to send this on behalf of Marin?

4 A. No, and neither did Mr. Smally. I don't take
5 instructions. The clients rely on me to do what's in
6 their best interests. And Mr. Smally engaged me for
7 that purpose, and Mr. Flynn agreed with me, do what's
8 necessary to bring the claim to a resolution. And this
9 was my decision, and I advanced it on both their
10 interests.

11 Q. Okay. And did you -- in your mind, at that
12 point, if Nationwide had paid this demanded amount, who
13 should the check have been made payable to?

14 A. It would have been made payable to Mr. and
15 Mrs. Smally, Marin Mortgage and Professional Insurance

16 Evaluations.

17 Q. That's your company?

18 A. Correct. That's standard for all claims that
19 name me as an authorized agent.

20 Q. Now, about a week later you received the
21 letter you referred to yesterday from Ms. Yesowitch,
22 that's Exhibit 37, correct?

23 A. I believe it was November 21st, I don't know
24 the exhibit number.

25 Q. 37, it's in evidence.

□

1 And you had dealt with Ms. Yesowitch before on
2 claims, correct?

3 A. Yes, I had her on one claim a few years ago.

4 Q. More than one?

5 A. Just one.

6 Q. Just one, okay.

7 And you had telephone conversations with
8 Ms. Yesowitch from November 21st on for the next month
9 or two, correct?

10 A. No. We only had one telephone conversation,
11 and it was on December 16. After she wrote this
12 letter, I responded by letter. Then I got her December
13 9 letter, and I called her up. We only had one call.

14 Q. That's the only call you recall, is that
15 right?

16 A. That is the only call we had.

17 Q. Okay. Now, you responded to her November 21
18 letter, I believe, with what we have seen yesterday,
19 Exhibit 38, which I also believe is in evidence.

- 20 A. December 3rd?
21 Q. December 3rd, correct. This is after the
22 Thanksgiving holidays, right?
23 A. I do recall, yes.
24 Q. And you just acknowledged it and said you were
25 waiting for her review essentially, correct?

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- 1 A. That's correct, I thought she was newly
2 retained.
3 Q. Then she sent you a letter --
4 A. December 9th.
5 Q. -- December 9th, less than a week later,
6 Exhibit 39.
7 Now, prior to receiving this letter, this is
8 the letter where she says essentially that the
9 cancellation -- the policy had been cancelled and that
10 there really is nothing they can do because the policy
11 has been cancelled. And you said, I think, that you
12 were shocked when you got this letter; is that right?
13 A. I was surprised. I mean, and there was no
14 evidence of the cancellation. That's what was
15 shocking, there was no cancellation evidence attached.
16 Q. Now, do you recall having a discussion with
17 Ms. Yesowitch within a week or so before this letter
18 wherein she told you what her review had shown and
19 that, in fact, she would write you a letter telling you
20 that the policy had been cancelled?
21 A. You know, that may have occurred, now that you
22 mentioned it. It sounds familiar.
23 Q. Does that refresh your recollection?

24 A. Yeah, it does.

25 Q. Did you, by the way, keep notes of all your

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1 conversations with Ms. Yesowitch?

2 A. I keep notes of most of my conversations with
3 everyone. But sometimes I'm in a car, and I may not
4 have a note, but now that you've mentioned that, that
5 does refresh my recollection.

6 Q. And prior to that even -- in fact, when you
7 got the November 21st letter -- well, strike that.

8 Even before, when Mr. Smally first came to
9 you, you were informed that he had been told that
10 Nationwide's position was that the policy had been
11 cancelled, correct?

12 A. That's correct. And there was a letter, I
13 believe from the first adjuster, Anna Etter, I'm
14 thinking August 7th, that indicated that was a
15 preliminary finding, but no evidence had ever been
16 published.

17 Q. I understand the evidence part. I'm just
18 saying the position of Nationwide that, in fact, the
19 policy had been cancelled, that was something you sort
20 of knew right from the beginning of your engagement
21 that was their position?

22 A. Oh, yeah, sure, from the first day I met
23 Mr. Smally, yes.

24 Q. Now, at the time that Ms. Yesowitch was
25 talking with you and sending you the December 9th

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1 letter, were you aware that she was also talking with
2 Mr. Scheer on behalf of Marin?

3 A. I think I do know that, yes.

4 Q. Were you getting copies of correspondence
5 between Mr. Scheer and Ms. Yesowitch?

6 A. I don't think so.

7 Q. Was Mr. Scheer keeping you advised as to what
8 he was communicating with Ms. Yesowitch about Marin?

9 A. No. I think Irene informed me what she was
10 talking to Scheer about.

11 Q. Okay. Now, let's talk about this meeting.
12 You mentioned -- I think you said about December 16th,
13 is that your recollection, you had a telephone
14 discussion within Ms. Yesowitch?

15 A. That's correct, and we were trying to set a
16 meeting for Tuesday, I think it would have been
17 December 22nd.

18 Q. Let me go back one moment to the December 9th
19 letter. And in that letter, at the end of it,
20 Ms. Yesowitch says: "Accordingly, because neither Vivi
21 Mitchell nor Roy Smally corrected the failure to pay
22 the premium, the policy was correctly cancelled on July
23 18, 2008. Thus, at the time of the loss, there was no
24 coverage afforded under the policy to Ms. Mitchell or
25 Mr. Smally. Therefore, unless you can provide

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1 documentation that establishes that the premium was in
2 fact paid, we will finalize our conclusions and send
3 another letter setting forth those finalized
4 conclusions."

5 Did you provide anything regarding
6 documentation of paid premium to Ms. Yesowitch after
7 you got this letter?

8 A. No, I did not. And that was her position, but
9 that wasn't the only position to be taken or considered
10 in restoring the policy --

11 Q. I understand.

12 A. -- but understanding we had never gotten
13 evidence of cancellation, a cancellation notice. So I
14 appreciated her explanation from her point of view, but
15 it was simply inadequate to give us this narrow
16 perspective.

17 Q. I understand, you were waiting for information
18 and documentation from her. At the same time, she was
19 asking if you had any documentation, and you didn't
20 provide anything to her; am I right?

21 A. Correct, she wanted to draw the conclusion
22 simply based on evidence of payment, and I wanted to
23 draw a conclusion based on review of all of the
24 relevant facts.

25 Q. Now, let's talk about the December 16th

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1 conversation. You and she talked about setting up a
2 meeting to have a three-way meeting with Mr. Scheer and
3 you and her and if any of the principals wanted to be
4 involved; is that right?

5 A. That's correct.

6 Q. And shortly after that conversation, she sent
7 you the December 19th, 2008 letter, which is the --

8 A. Denial letter, yes.

9 Q. Okay. And now she says: "This follows our
10 recent discussions concerning the above-captioned
11 matter," and she, in fact, at that point, then encloses
12 a copy of the notice regarding nonpayment of premium
13 and the proof of mail, correct?

14 A. She enclosed those documents, but I will not
15 admit, as I'm sitting here today, that that was a proof
16 of mailing. It was what I thought was, and I think,
17 honestly, she thought it was, too.

18 Q. You talked yesterday about what's been marked
19 as Exhibit 545, this document, correct?

20 A. I spoke of that, yes.

21 Q. And you said the first that you became aware
22 of this was last wednesday; is that right?

23 A. Yes.

24 Q. Do you see this number here NICA; do you know
25 what that refers to?

□
1 A. Nationwide Insurance Company of America?

2 Q. Yes. This is part of the claims file, is it
3 not?

4 A. I'm not sure. I know it's part of the
5 production in this case.

6 Q. Did you -- right, the production that you
7 received a copy of last summer, correct?

8 A. No, that wasn't produced last summer.

9 Q. And what do you base that on?

10 A. Based on the documents I received.

11 Q. This was included in the original production.
12 We can get Mr. Doherty up here to testify to that, but
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13 your recollection is that you don't remember seeing it
14 last summer?

15 MR. DOHERTY: Objection, your Honor. It was
16 not part of the original, and to quote me -- it was not
17 part of the original. It was a subsequent at the very
18 end of the case.

19 THE COURT: Right. Well, anyway, he doesn't
20 recall seeing it as part of the original production.

21 BY MR. FITZGERALD:

22 Q. Do you see this stamp here, December 1st,
23 2010?

24 A. That's the Exhibit No. 17?

25 Q. Right, "Paxton"?

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□
1 A. I see that.

2 Q. And you didn't read the deposition and see the
3 exhibits to Mr. Paxton's deposition taken in December,
4 did you?

5 A. That's correct.

6 Q. Did you talk to Mr. Doherty about the fact
7 that he asked questions about this document in December
8 at Mr. Paxton's deposition?

9 A. No, I have not talked to him about that.

10 Q. So you haven't talked with Mr. Doherty at all
11 about this document?

12 A. We have talked about the document.

13 Q. Okay. And did Mr. Doherty tell you that, in
14 fact, he knew about it back months ago?

15 A. I don't know what Mr. Paxton knew about it,
16 and I don't know what Mr. Doherty knew about it. I

17 just know what I see when I look at a document that's
18 been materially altered and was used to effectuate the
19 denial of a claim.

20 Q. My question is on timing only, sir. And that
21 is that you know that Mr. Paxton's deposition was taken
22 in this case, and you were told so in connection with
23 being an expert, right?

24 A. Right, and it looks like it was December 1,
25 2010.

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1 Q. Right, and this was an exhibit to Mr. Paxton's
2 deposition which Mr. Doherty took. You know that
3 Mr. Doherty took that deposition, correct?

4 A. I presume so.

5 Q. Mr. Scheer wrote you a letter on
6 December 23rd, we talked about it yesterday,
7 Exhibit 43; is that right?

8 A. I recall, yes.

9 Q. And in this he says: "As you know, I
10 represent Marin Mortgage Bankers."

11 A. Correct.

12 Q. It says here as well that, "MMB will cooperate
13 in connection with your clients' claims so long as
14 doing so does not jeopardize MMB's investors' claims or
15 other interests"?

16 A. I agree with that.

17 Q. Okay. So you knew that they were claiming an
18 interest and a priority interest to whatever Nationwide
19 might pay under the policy, true?

20 A. I don't know what you mean by "priority

21 interest," I'm sorry.

22 Q. In other words, they get their money first?

23 A. I don't agree with that. I don't think that's
24 what it says.

25 Q. Was that your understanding?

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1 A. No. I handle insurance claims. That money is
2 used for the benefit of the rehabilitation of the
3 property.

4 Q. So who would get money in that event, who
5 would get money first: If money were coming from
6 Nationwide, who would get it first, Marin or the
7 Smallys?

8 A. I think their interests arrive simultaneously.
9 The money goes toward the rehabilitation of the
10 property.

11 Q. You mean the repair?

12 A. Of course, yes, the fire repair.

13 Q. And if the property wasn't repaired, who would
14 get the money?

15 A. Well, if the property wasn't repaired, I would
16 presume it would apply to the loan balance.

17 Q. First?

18 A. Well, last. First it goes to the property
19 repairs. Marin Mortgage --

20 Q. No, my question is if the Smallys and Marin
21 both were not going to agree -- if they were not going
22 to repair this property at all, and instead just wanted
23 whatever money the insurance company was going to
24 pay --

25 A. It would pay down the loan, yes.

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1 Q. So they would have a priority in that event on
2 the payment from the insurance company, correct?

3 A. What I'm suggesting, it would be mutual.
4 Because you just said, if they agreed, it would be a
5 mutuality.

6 Q. And so if, going back to your demand letter
7 before, the \$338,000 --

8 A. That's correct.

9 Q. If that amount had been paid, and there was an
10 understanding that no one was going to make repairs to
11 the property, all of that money would go to Marin
12 because they had a \$420,000 mortgage which had grown
13 because of nonpayment?

14 A. I won't agree with you because, ultimately,
15 what you're saying would be correct, but what's
16 incorrect about your comment is this: The 338,000
17 would have been paid hypothetically. It would have
18 been named payable to Smally and Marin or just Marin,
19 however Nationwide issued it.

20 It would not have ended the case because I
21 asked for the undisputed actual cash value. My
22 intention would be then to present the claim for the
23 full actual cash value, supplementing Mr. Gonzalez'
24 scope, as it turned out to be 623,000, that was our
25 next step. And if it wasn't paid, we would have

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1 triggered a 2071 Insurance Code appraisal, and we would
2 have recovered the money. But the denial really
3 disrupted those plans.

4 Q. When did you first talk to Mr. Doherty about
5 this case?

6 A. Oh, I'm going to say the spring -- mid, late
7 spring of 2009.

8 Q. After Ms. Yesowitch sent you her December 19th
9 letter, you didn't write her again; is that right?

10 A. That's correct.

11 Q. Ms. Yesowitch contacted you, did she not, in
12 late December, early January, to tell you that the
13 meeting that you had talked about with her to set up
14 with Mr. Scheer was not going to occur, correct?

15 A. No, I don't have any recollection. I got that
16 letter. As I said, it was the first week of January,
17 probably later in the first week of January because I
18 was actually gone at Christmastime, and I saw the
19 letter, and that looked like it was a conclusion to me,
20 that the claim was denied. I never talked to Irene
21 about it again.

22 Q. So the December 19th letter you didn't see
23 until early January?

24 A. Yeah, like January -- I don't have a calendar,
25 but 4th, 5th, 3rd, something like that.

□

1 Q. And between December 19th and the first week
2 in January, you're saying you didn't have any
3 conversation with Ms. Yesowitch; that's your
4 recollection?

5 A. That's correct.

6 Q. And after you saw the letter in early January,
7 did you have a conversation with Ms. Yesowitch after
8 that?

9 A. No.

10 Q. And so you just assumed this meeting was not
11 going to occur because --

12 A. Assumed? It was pretty clear. You denied the
13 claim. We had no standing. I had no standing. It was
14 a legal matter at that point, and I don't have the
15 capacity to sue.

16 Q. Okay. Now, in connection with your review of
17 this file as a preparation to testify as an expert, did
18 you review all the communications between Mr. Doherty
19 and Long & Levit as well?

20 A. I reviewed several, and I'm not sure they were
21 directly between Doherty and Levit. There were some
22 between Doherty and John Hook of Long & Levit and some
23 between Scheer and John Hook of Long & Levit. So I saw
24 a number of letters.

25 Q. All right. Take a look, if you would, sir, at

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1 Exhibit 620.

2 A. Yes, I have it in front of me.

3 Q. Is this one of the letters that you received
4 and reviewed?

5 A. Yeah, I saw this, uh-huh.

6 Q. And this is a letter regarding the claims sent
7 to Ms. Yesowitch from Mr. Doherty representing the
8 Smallys, right?

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A. No, this is -- wait.

THE COURT: This is a letter from Mr. Doherty to Ms. Yesowitch?

MR. FITZGERALD: Right.

THE COURT: November 13, 2009?

MR. FITZGERALD: Right. Is that the letter you have in front of you, sir?

THE WITNESS: Yes, I do.

MR. DOHERTY: Your Honor, I'd like to object. This letter has an errata sheet, and it was changed in its full form, that was corrected, and this is the original letter that was changed. So if this is the letter they want to use, it's no longer applicable because I made my errata sheet, and then I recopied it over again so they didn't have to fill it in for themselves. And if they want to show the jury the whole letter plus the errata sheet and then the other

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letter, then I have no objection, but not the letter I made a mistake to it and I sent back my errata sheet.

THE COURT: Let's see. Do you have a question about this?

MR. FITZGERALD: Yes.

THE COURT: It sounds like there's an objection to its being received into evidence. I'm not really familiar with this issue, but --

MR. FITZGERALD: Well, this is a letter that got sent by Mr. Doherty when he was dealing -- representing the Smallys, to Ms. Yesowitch, about this claim and certain demands that they made and certain

13 positions that have been espoused. This is a letter
14 just like all the other letters that have been sent.

15 THE COURT: Was this letter sent?

16 MR. DOHERTY: This letter was sent followed by
17 an errata sheet and the letter changed.

18 THE COURT: Okay. But is there some reason
19 why both of those letters can't be shown?

20 MR. DOHERTY: Well, I would -- no, as long as
21 they are going to do that, the errata sheet and the
22 full letter, then I have no objection.

23 THE COURT: All right. So, I mean, I would
24 let you put in the errata sheet. I'm not going to tell
25 him how to do his examination.

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1 MR. DOHERTY: Well --

2 THE COURT: Why don't you approach for a
3 moment. I'm not understanding.

4 (Off-the-record discussion held at the bench
5 between the court and counsel.)

6 THE COURT: Continue.

7 MR. FITZGERALD: 620 is in, right?

8 BY MR. FITZGERALD:

9 Q. Then I'd like to direct your attention,
10 Mr. Dawson, to page four of the letter, 620.4.

11 THE COURT: So we're offering this exhibit
12 into evidence?

13 MR. FITZGERALD: Yes, your Honor.

14 THE COURT: And I'll receive it, and I'll also
15 allow Mr. Doherty to put in his corrected version
16 during his redirect, if he wishes. This is 620.

17 (Whereupon, Exhibit No. 620 was marked for
18 Identification and received into Evidence.)

19 BY MR. FITZGERALD:

20 Q. Mr. Dawson, you see this, it says:
21 "Nationwide cannot show that Smallys' failure to pay
22 premiums caused it to pay Marin Mortgage policy
23 benefits"?

24 A. What does that mean?

25 Q. Well, the person who retained you as an expert

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1 is the one who wrote it. I guess you can ask him. I'm
2 not sure exactly, but it then says: "Before the loss,
3 Nationwide was aware of Smallys' nonpayment of premium,
4 it sent cancellation notice, and it successfully
5 cancelled the policy, extinguishing its liability to
6 Marin Mortgage through Smally. Nationwide remained
7 liable to Marin Mortgage through the loss because it
8 failed to provide notice of cancellation as specified
9 in the policy of insurance."

10 Now, basically, it's just the same thing again
11 here again. You received this letter, correct?

12 A. I'm not sure I received it. I mean, I've seen
13 this letter before, yeah, or some version of it, but --

14 Q. All right. Now, let me ask you a little bit
15 about your background. I'm sorry I'm going back --

16 A. Is there a question about this?

17 THE COURT: No. So you're just going to wait
18 for the next question.

19 THE WITNESS: Okay.

20 BY MR. FITZGERALD:

21 Q. Your experience/background is in claims,
22 correct?

23 A. Correct.

24 Q. Have you ever been an underwriter before?

25 A. No. I've interfaced, interacted, investigated

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1 underwriting activities for a number of years.

2 Q. I understand, but you've never been an
3 underwriter?

4 A. That's correct.

5 Q. You've never been an insurance agent, is that
6 correct?

7 A. That's correct.

8 Q. Or an insurance broker, is that correct?

9 A. That is also correct.

10 Q. Okay. Now, one of the views that you have in
11 this case is that the damage to the property, the
12 structure, was not a total loss; is that right?

13 A. Absolutely, correct.

14 Q. And you said yesterday, I think, that to
15 properly repair this -- I thought replacement would be
16 around somewhere around \$750,000. Did I get that right
17 yesterday or no?

18 A. Replacement cost?

19 Q. To replace the building.

20 A. Yeah, I estimated 750,000, yes.

21 Q. And that's what would need to be done to
22 remedy this property, correct?

23 A. No, absolutely not. Remember yesterday I said
24 if you strip the interior linings -- so we have a scope

25 somewhere to Tony Gonzalez. You strip all the interior

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1 linings to the wood structural framing, floor framing,
2 wall framing on both the first floor, second floor and
3 the finished basement, there's a lot of structure left.
4 I think some pictures would probably be appropriate.
5 You have all the exterior wall coverings left. There's
6 probably, I'd say, a third of -- a third to 40 percent
7 of the value remaining in this structure.

8 Q. And you believe that the cost to repair the
9 structure is somewhere in the neighborhood of 650 some
10 odd thousand dollars, is that right?

11 A. That's correct.

12 Q. And this is a 2,500 square-foot house,
13 correct?

14 A. A little smaller, could be, maybe 2,300, plus
15 the finished basement.

16 Q. And based on a \$650,000 repair that you still
17 believe is a partial loss, isn't that right?

18 A. Right, because you have to look at things that
19 are bigger than just a -- installation, you have the
20 demolition, you have the removal, and it's piecemeal
21 work. For example, the floor framing where it's
22 burned, you remove all the interior linings and then
23 you pull out the structural girders would be a common
24 term, or floor joists. So there's inefficiencies in a
25 repair, but yes --

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1 Q. Let me ask you this: Did you read any of the
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2 deposition testimony taken in this case, as part of
3 your expert duties, of another expert, Mr. Peter
4 Occhialini?

5 A. No, I have not.

6 Q. Did Mr. Doherty tell you about what
7 Mr. Occhialini testified to?

8 A. Generally, he did.

9 Q. Did he tell you Mr. Occhialini said that if it
10 was a \$650,000 repair on this that it was definitely a
11 total loss?

12 A. Well, I don't know what Mr. Occhialini said,
13 but he's incorrect as to that.

14 Q. Did Mr. Doherty tell you that's what he said?

15 A. No. He told me he said that the conduct of
16 Nationwide was reprehensible, oppressive, fraudulent,
17 malicious, and calculated to deprive Smally and Marin
18 Mortgage of benefits under the policy. That's what he
19 told me.

20 Q. Right, I didn't ask you that. I just asked
21 you if he told you what Mr. Occhialini said about a
22 \$650,000 repair or if that was a total loss?

23 A. The answer is no, and he would be incorrect if
24 he testified to that, and his experience on this case
25 would be borne out by the facts that he's wrong.

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1 Q. Okay. But Mr. Doherty told you that was
2 somebody he retained, correct?

3 A. I don't know who retained him. I don't know
4 if he retained him or Marin Mortgage retained him. I
5 know that there was a talk about experts by both

6 counsel.

7 Q. So your involvement in this case, essentially,
8 Mr. Dawson, was from early September until early
9 January when you read the letter, and after that what
10 you did, essentially, was to talk to Mr. Doherty and
11 refer the Smallys to Mr. Doherty; is that a fair
12 statement?

13 A. I think it's fair. So four months I was on
14 the case hands-on, and then I didn't do really much of
15 anything until Mr. Smally retained Mr. Doherty, and I
16 had some conversations with Mr. Doherty, I gave him a
17 copy of my file. And after I saw a letter like the one
18 that you showed me, which I didn't proofread, I didn't
19 agree with everything he wrote. You know, he didn't
20 know the case like I did, but Mr. Smally needed a
21 lawyer. Mr. Doherty is a good lawyer. They made an
22 arrangement, and the litigation commenced.

23 I didn't really do much until documents were
24 being produced in discovery. I read copies of the
25 filings and the briefs. Mr. Doherty sent me

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1 everything --

2 Q. Now you're talking about what you did as an
3 expert, right?

4 A. Right.

5 Q. Right. My question was limited to what you
6 did with regard to just as a PA?

7 A. I'm sorry. Thank you. You're correct.

8 Q. All right. Thank you.

9 I have nothing further at this time, your
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10 Honor.

11 THE COURT: Redirect?

12 MR. DOHERTY: Yes, your Honor.

13 RE-DIRECT EXAMINATION

14 BY MR. DOHERTY:

15 Q. Mr. Dawson, did you take photographs of the
16 building as it exists currently?

17 A. Yes, I did.

18 Q. And when did you take those photographs?

19 A. I believe about two weeks ago.

20 MR. FITZGERALD: I think it's beyond the scope
21 of direct.

22 MR. DOHERTY: Well, we just talked about the
23 condition of the building and whether it was a partial
24 or a complete loss, and I want to introduce these
25 recent photographs taken of the building.

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1 MR. FITZGERALD: That's fine, I'll withdraw my
2 objection.

3 THE COURT: Okay.

4 MR. DOHERTY: Can I have this identified as
5 plaintiffs' next exhibit for identification?

6 THE COURT: Yes.

7 THE CLERK: Plaintiffs' D marked for
8 identification.

9 (Whereupon, Plaintiffs' Exhibit No. D was
10 marked for Identification.)

11 BY MR. DOHERTY:

12 Q. Mr. Dawson, can you identify the photographs
13 that are before you?

14 A. Yes. It's a photograph of the Georgia Street
15 property owned by Mr. Smally and with the lienholder's
16 interest of Marin Mortgage. It's the front and right
17 elevation. You can see two stories above ground, and
18 at the bottom it's the finished basement --

19 Q. May I interrupt? I apologize. If you could
20 just look at all of the photographs and tell us if they
21 are of the subject property, and then what we can do is
22 get them in evidence and then have the jury look at
23 them as you explain them.

24 A. I'm sorry, thank you.

25 Yes, there are 11 photographs. I took these

1 photographs.

2 Q. Thank you.

3 Your Honor, I would move these photographs in
4 evidence.

5 THE COURT: Any objection?

6 MR. FITZGERALD: I have no objection as long
7 as we know when they were taken.

8 THE COURT: Two weeks ago?

9 THE WITNESS: Yes, Tuesday -- it was the day
10 after my deposition. President's Day I gave a
11 deposition. It was the following day, that Tuesday.

12 (Whereupon, Plaintiffs' Exhibit D was entered
13 into Evidence.)

14 BY MR. DOHERTY:

15 Q. Okay. Let's look at first -- let me get
16 around here so I can -- will you please tell the jury
17 what that photograph shows?

18 A. Yes. This is a residential structure,
19 two-and-a-half stories. I call the lower level -- you
20 can see the security bar on the lower window, that's
21 the finished basement. It's above grade, half of it is
22 above grade, which means that half of -- that portion
23 of the building is below the foundation line. Above
24 that is the main living area. To the left you see the
25 chain link fence. The entry is to the left. You can

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1 see the opening, that would be the front porch.

2 Q. Does that photograph accurately show the
3 building as it existed two weeks ago?

4 A. Yes, it looks like that today. It looked like
5 this two weeks ago. It looked like this when I was
6 hired September 3, 2008.

7 Q. The next photograph, please.

8 A. It's just a broader shot of the front and side
9 elevation. As you can see on the side now, two windows
10 are exposed. The major damage is in the roof
11 structure, as you see at the top. There is an attic in
12 the front on the left side. The roof eaves and gutter
13 and the roof structure has major burn activity at the
14 top.

15 Q. Thank you. The next photograph?

16 A. The third photograph is even a broader shot,
17 wider angle. On the front elevation you can now see
18 the large boards, maybe the jurors can't -- yeah, you
19 can see it -- on the overhang -- those are sliding
20 doors, there's a deck there, the deck is burned off.
21 You can see the full side elevation, two-story, and at

22 the rear there's a laundry porch. The roof is intact,
23 and the gutters and downspouts are intact. So this is
24 a full wide angle shot.

25 Q. Thank you. And the next photograph?

1 A. This one shows the lateral elevation at the
2 driveway. You can see the full view of the finished
3 basement. To the left there's two windows, two windows
4 on the first floor and two windows on the second floor.

5 Q. Now, is this exterior and so forth that we
6 have been looking at usable in a rebuild?

7 A. Yes. And under that exterior stucco are wood
8 framing members that are salvageable. And wall
9 framing, floor framing, you know, that's -- including
10 the foundations, make up at least a third of the cost
11 of a new construction, so all of that is intended to be
12 salvageable.

13 Q. And the next photograph?

14 A. This is a rear view. As you can see, there's
15 no evidence of fire at all. Some many years ago it
16 probably was an addition. You can see the downspout in
17 the middle. You can see the window to the right and to
18 the left. There is no damage to those windows, but
19 they may need to be replaced anyway. The doors at the
20 bottom right are boarded up. At the very far right,
21 you can see that pipe that goes from the roof line all
22 the way down, that's a vent for the sewer line; that's
23 certainly undamaged.

24 Q. The next photo?

25 A. Yes. That's just a full side view showing the

1 three levels, a closer-up view of what we have seen
2 earlier. The damage is at the roof line, at the
3 gutters and at the roof structure. The stucco on both
4 the rear addition and this wall may be salvageable.
5 The windows are boarded up. Of course the windows are
6 gone.

7 Q. In the middle seems to be a darker color and
8 these are the lighter sides. Do you know what accounts
9 for that?

10 A. Well, actually, what it is is stucco to the
11 left and there's wood siding -- it's vertical wood
12 siding to the right. And you see the gutter up above
13 in the lower elevation to the right?

14 Q. Yes.

15 A. That's the old laundry porch addition. Many
16 years ago it was added on, probably in the 40s, so it's
17 different materials.

18 Q. Any of this salvageable?

19 A. Yes. And the structure within it is
20 salvageable. There's no fire damage within those
21 walls.

22 Q. Now, this photograph?

23 A. This is a shot from the rear. The driveway is
24 to the left. You can see the full height, the roof
25 structure damage again on the left side of the

1 building, but the full stucco wall, all three stories.

2 And then you can see the wood siding and the roof
3 elevation to that lower laundry porch. See the stairs?
4 There's no fire damage here.

5 Q. Can you tell us what that shows?

6 A. Yes. This is at the rear. The laundry porch
7 is the lower roof structure. There's no evidence of
8 fire. The upper roof structure clearly has evidence of
9 burn and fire in the roof structure. So that roof
10 structure, as I said, from the front to the back would
11 have to be removed and rebuilt. As you can see, the
12 stucco to the right of the laundry porch, there's no
13 damage. The gutter and the siding above does show some
14 fire damage to the windows. Again, the overhead is
15 probably a little dark.

16 So the intent here is -- in a fire rebuild, is
17 to salvage all repairable components that are
18 undamaged. And by removing the damaged components, you
19 nail to and salvage those which are of value. They
20 call it fire repair for that reason.

21 Q. Standard practice to repair fire damage,
22 right?

23 A. Insurers promote it because they want to
24 finance fire repair, they try to save -- I mean, I did
25 it for a career for Chubb and now for policyholders.

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1 It's standard procedure. If you have nothing
2 salvageable, you knock it down. But you have lots
3 that's salvageable: The foundation, the floor
4 structure, the wall structure on both levels, all
5 three, the lower level, middle and top. But it's the

6 finishes, the linings, the cabinets, the drywall, the
7 carpet, you know, and the burned studs and the roof
8 structure, all that needs to be repaired and replaced.
9 And that's what the scope of repair was that we
10 developed subsequent to Tony Gonzalez.

11 Q. And this photograph is of the same area but
12 just a little bit off -- little bit further away?

13 A. Yeah, it's a wider angle again showing, as you
14 can see, on the left side, that's the driveway side.
15 To the right side, it's the laundry porch addition, and
16 then there's a second addition again where the window
17 is to the right --

18 Q. Here?

19 A. Yes. So it looks like those additions may
20 have occurred at different points in time.

21 Q. And then the --

22 A. And all that is salvageable.

23 Q. Excuse me?

24 A. All of this is salvageable.

25 Q. And then this is the last photograph. Can you

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1 tell us what that shows?

2 A. Yeah. That's the rear elevation. We looked
3 at this earlier, but this is a wider angle. And to the
4 far right, you see that roof line, that's a carport,
5 detached carport.

6 Q. Over here you mean?

7 A. Yes, yes. And there's been discussion about
8 that, but there's no damage in that area.

9 And what you see, you see the downspout on the

10 vertical -- or the aluminum downspout, the telephone
11 switches, all the stucco wall, all this is salvageable,
12 there's no damage in this area.

13 Q. Is there fire damage visible here in this
14 area?

15 A. There's no fire damage. There's water damage
16 so all of the linings have to be taken out, the
17 drywall, the plaster, the floor coverings. So there's
18 damage, smoke, water, but there's no burn damage in
19 this area.

20 Q. Now, Mr. Fitzgerald asked you questions about
21 the two proofs of mailing register in
22 cross-examination, remember that?

23 A. I do, yes.

24 Q. Did you, first of all, have any background in
25 determining whether a document was altered, in your

1 experience?

2 A. Yes. I was appointed by Chubb -- I had a
3 background in handling fidelity claims, which were
4 claims under a fidelity policy for embezzlement, fraud,
5 by employees against an employer. Chubb was a leader
6 in those policies, and early in my career I got
7 training and handled primarily fidelity losses in
8 addition to property, and then after I became a general
9 adjuster -- I had previous experience at Aetna in
10 investigating fraud claims and arson claims, and Chubb
11 assigned me to a secret team, if you want to call it
12 that, where we investigated white-collar claim against
13 the company, fraudulent claims. So as part of my

14 claims investigation, I researched and studied
15 documents for their authenticity, and we used altered
16 documents as evidence of fraud in denying claims, and
17 oftentimes policyholders -- there's a very small
18 percentage who will submit a fraudulent claim and try
19 to support it with an altered or fraudulent document.
20 I had many years experience on that team.

21 Q. In your experience, have you ever seen a
22 document altered by an insurance company in this
23 manner?

24 A. In my entire career working for policyholders
25 the last 11 years, and 20 years working for major

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1 insurers, I've never seen anything like I've seen in
2 this case with a document that was used to effectuate a
3 denial or in any other matter. It is not acceptable
4 practice by an insurer. It may be criminal, but that's
5 my opinion.

6 Q. Without having the signatures of the postal
7 employees and so forth, is there any assurance from
8 that document that the letters were delivered or
9 deposited with the post office?

10 A. The 263 letters that were paid for by postage
11 certainly were paid, that postage was paid, and both
12 versions of the documents indicate that. But by
13 looking at the verification, and it's missing, we don't
14 know if 263 denial letters were delivered that day or
15 someone was paying their mortgage payment in addition
16 to sending 258 letters, we don't know. We don't know
17 what letters were sent. We don't know.

18 And when I look at that, that document itself,
19 it tells me that when I demanded that notice of
20 cancellation proof of mailing, remember my first letter
21 was September 4, from that day until I received the
22 fraudulent document, I was never convinced that it was
23 properly cancelled. Once I received the altered
24 document, it affected the way I looked at the case.
25 When that document now resurfaces and I look at it, it

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1 tells me that, yes, postage was paid. It tells me,
2 yes, 263 letters were listed on the register. But it
3 also tells me whoever altered that document knew it was
4 defective to prove mailing of the cancellation notice,
5 and they concealed that defective document from me.

6 Q. In your experience then, are you saying one
7 way or the other that it's not a mistake, this was an
8 intentional act?

9 MR. FITZGERALD: Objection, leading.

10 THE COURT: Overruled. Go ahead.

11 THE WITNESS: What I will say is this:
12 Whatever Kevin Paxton said in his deposition, he
13 doesn't know, he received the altered document.
14 Whatever Shawn Roessler says, she doesn't know, she
15 received the altered document. Irene Yesowitch, I have
16 respect for Irene. She sent me the altered document.
17 I would not believe one moment that Irene knew she was
18 sending me a fraud and a forged document.

19 I believe whoever initiated the transmission
20 of that altered document into this chain of business
21 transactions had every intent to deceive me into

22 believing that the cancellation was effective. I
23 believe that was the intent. They improperly denied
24 this claim.

25 BY MR. DOHERTY:

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1 Q. In the March 24th letter of 09 from John Hook
2 to Mr. Scheer, do you have that in front of you?

3 MR. FITZGERALD: What exhibit is this?

4 THE WITNESS: I don't have it.

5 MR. DOHERTY: It's number 81.

6 THE COURT: We'll mark it.

7 THE CLERK: Exhibit 81 marked for
8 identification.

9 (Whereupon, Exhibit No. 81 was marked for
10 Identification.)

11 BY MR. DOHERTY:

12 Q. Have you had a chance to take a look at that
13 letter?

14 A. I've seen it before, yes.

15 MR. KNUDSEN: Your Honor, this is in the
16 jurors' binder, it's No. 10.

17 THE COURT: Yes.

18 BY MR. DOHERTY:

19 Q. Is there anything in that letter that makes
20 your opinion one way or another whether Nationwide
21 treated their policyholders fairly?

22 A. Well, this was a communication from John Hook
23 to Mr. Scheer on behalf of Marin Mortgage. You know,
24 in the opening paragraph, Mr. Hook -- and, again, I --
25 you know, I'm going to suggest that Long & Levit was

1 not involved in the fraudulent transmittal of the
2 cancellation notice and proof of mailing. I'm going to
3 give them certainly that courtesy, I believe that.

4 Q. Okay.

5 A. So when John Hook says that the policy was
6 cancelled for nonpayment, perhaps he really believed
7 that.

8 what's unfair about this is Hook effectively
9 tried to shove down the throat of Charles Flynn the
10 345, -345,000 as though that's the only benefit that
11 accrued to Marin Mortgage. We all know that Rapid
12 Survey did replacement cost estimate of 461,000. We
13 also know that Rick Knaus promised and confirmed with
14 me that extended replacement cost applied. So the
15 limits were six-ninety-one-five.

16 So this letter is evidence of now the
17 deception being taken against Marin Mortgage by
18 Nationwide and their counsel. I'm out of the case,
19 recall. We've been denied as of March 24th. I'm not
20 talking to Ms. Yesowitch or Hook or Flynn or Scheer.
21 So now that really the most knowledgeable person at the
22 table is off the table. They are making an action
23 against -- I mean, it's an aggressive action against
24 Marin Mortgage. So there's a deception here. 345 was
25 wrong. That was a wrong position to take with Marin

1 Mortgage.

2 Q. So they get the Smallys out of the picture
Page 42

3 with a denial, and then they work on Marin Mortgage; is
4 that what you're saying?

5 MR. FITZGERALD: Objection, your Honor,
6 argument.

7 THE COURT: why don't you rephrase the
8 question?

9 BY MR. DOHERTY:

10 Q. Okay. Then can you give us the sequence then
11 of how they were able to put the pressure on Marin
12 Mortgage to accept \$345,000?

13 MR. FITZGERALD: Your Honor, again, argument.

14 THE COURT: He's already told us what he felt
15 that Long & Levit did, that it was not a fair claim.
16 He's answered that question.

17 THE WITNESS: That's correct, and at the end
18 of this letter --

19 MR. FITZGERALD: Is there any question
20 pending?

21 THE COURT: Is there anything else about their
22 handling of the claim that you find to be unfair?

23 THE WITNESS: Yes. In this letter, on page
24 two, Mr. Hook says, "Nationwide apparently has agreed
25 to pay the policy limit of 345,000."

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1 This was an offer. You take it, or we're
2 going to take you down a different road, we're going to
3 do a fair market value appraisal. Well, Marin Mortgage
4 didn't accept it, and they were then forced down a
5 different path that resulted in a lower payment. But
6 this was the beginning of that strategy by Nationwide

7 to deprive Marin Mortgage of the benefit of the
8 bargain.

9 BY MR. DOHERTY:

10 Q. And you have Marin Mortgage's Document 38 in
11 front of you?

12 A. What is it, an exhibit?

13 Q. It's a June 12, 2009 letter to Spencer Scheer.

14 MR. KNUDSEN: Your Honor, that's Juror 11.

15 THE COURT: It's Juror 11, okay, thank you.

16 BY MR. DOHERTY:

17 Q. Is there anything about that letter that makes
18 you feel one way or another about the way Nationwide
19 treated the Smallys and Marin Mortgage?

20 MR. FITZGERALD: Your Honor, I'm going to
21 object to this line of questioning. This is now
22 regarding Marin's -- and dealing with Marin. Mr.
23 Dawson's is testifying as an expert with regard to --
24 and he's out of the picture as of this date, and he's
25 testified as a percipient witness, and he's now asking

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1 questions as an expert with regard to conduct towards
2 Marin.

3 THE COURT: Hasn't been designated as an
4 expert in whether the claim was fairly handled? okay.

5 MR. FITZGERALD: The claim of the Smallys.
6 Marin has got their own expert.

7 THE WITNESS: It's one claim, same claim.

8 THE COURT: All right. So it's overruled. Go
9 ahead.

10 THE WITNESS: Thank you.
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11 In going back to intertwined interests,
12 remember early on, the first letter I sent to
13 Nationwide, and then a letter I follow up with
14 Mr. Flynn, their interests are intertwined --

15 THE COURT: Okay, so we're just trying to wrap
16 up this discussion here. How does Exhibit 11 relate to
17 your opinions about the handling of this claim?

18 THE WITNESS: Okay. In this letter, Mr. Hook
19 informed Mr. Scheer on behalf of Marin Mortgage that
20 since the \$345,000 offer was not accepted, Nationwide
21 elected to obtain a fair market value of the
22 improvements prior to the fire at \$153,000.

23 So I believe, it's my opinion that Marin
24 Mortgage's failure to accept this artificial and false
25 policy limit of 345,000 led them to be offered nearly

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1 \$200,000 less.

2 MR. DOHERTY: And, your Honor, there's just
3 two documents that, at the end of yesterday, I was
4 looking around, and you said just sit down for a few
5 minutes. I've got two documents --

6 THE COURT: All right.

7 BY MR. DOHERTY:

8 Q. Did you do an actual cash value determination
9 in this case?

10 A. Yes.

11 MR. DOHERTY: I'd like to have the statement
12 of loss and actual cash value identified as the next
13 exhibit in evidence, please.

14 THE CLERK: Plaintiffs' E marked for
Page 45

15 identification.

16 (Whereupon, Plaintiffs' Exhibit No. E was
17 marked for Identification.)

18 THE COURT: Has counsel seen this exhibit?

19 MR. FITZGERALD: I don't have it.

20 THE COURT: Mr. Doherty, do you want this?

21 MR. DOHERTY: Thank you very much.

22 THE COURT: So tell us what E is.

23 THE WITNESS: E is an actual cash value
24 calculation based on a formula authorized by Insurance
25 Code 2051, replacement cost minus depreciation equals

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1 actual cash value. It's based on the Better Builders
2 bid summary of it, the trade summary is attached, the
3 last two pages of this actual cash value determination.

4 BY MR. DOHERTY:

5 Q. And how do you do it, just in brief?

6 A. It's an Excel spreadsheet. I go to the Better
7 Builders Trade Summary. There are a number of items
8 listed from appliances through ceramic tile, carpentry,
9 masonry, wallpaper, windows. I go through, I list each
10 of these items in the Better Builders bid, they're
11 broken out by room, by item. I take the summary, I
12 apply depreciation consistent with the Fair Claims
13 Settlement Practices Regulations and Insurance Code
14 Section 2051 and appreciate those components that are
15 normally replaced during the life of a building, and I
16 did that under the depreciation column and came up with
17 a total of \$623,232.69.

18 MR. DOHERTY: I'd like to move that into
Page 46

19 evidence.

20 THE COURT: Is there any objection?

21 MR. FITZGERALD: No objection, your Honor.

22 THE COURT: All right. We'll receive it.

23 623?

24 THE WITNESS: Uh-huh, \$623,232.69.

25 ///

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1 (Whereupon, Plaintiffs' Exhibit E was received
2 into Evidence.)

3 BY MR. DOHERTY:

4 Q. And just so the jury can see what you're
5 talking about, along the left-hand column would be all
6 of the different items making up the repair of the
7 building?

8 A. A little more detailed. It's the trade
9 summary of all the detail items that make up the
10 building. And in the bid by Better Builders all of
11 those detail items are shown in the summary attached.
12 They are aggregated by their -- like all the cabinets
13 throughout the building are aggregated into one line
14 item called cabinets.

15 THE COURT: You want to circulate it?
16 Anything else?

17 MR. DOHERTY: I have no questions on this part
18 of the case, and I have two areas that I want to ask
19 Mr. -- that had to do with the Mr. Occhialini's
20 questions that we're not going to have here.

21 THE COURT: Why don't you approach?

22 (Whereupon, an off-the-record discussion was
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23 held at the bench between the court and
24 counsel.)
25 BY MR. DOHERTY:

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1 Q. Now, Mr. Dawson, what is -- can you tell the
2 jury the difference between an agent and a broker?

3 A. An insurance --

4 MR. FITZGERALD: I'm going to object, lack of
5 foundation.

6 THE COURT: Overruled.

7 THE WITNESS: An insurance agent is designated
8 by an insurer, and they have the authority to
9 underwrite and bind in the field coverage. Thereafter,
10 the policy application is sent to the company and then
11 they do a back office underwriting.

12 A broker can submit information to an
13 insurer -- and they are both licensed by the Department
14 of Insurance in California, I should say. But a broker
15 can solicit information, solicit clients from the
16 population and submit it to a variety of carriers
17 simultaneously, but they don't have binding authority.
18 So a broker can't underwrite the policy as it was
19 underwritten in the field by Fairfield in this matter.

20 BY MR. DOHERTY:

21 Q. In this case, is it your opinion that the
22 agents who sold the policy to the Smallys were the
23 agents of Nationwide?

24 A. They are. I was told that by Rick Knaus,
25 their plan agent, eight months before the interview.

1 Q. In the event that an agent of an insurance
2 company makes a promise they are paying \$400,000 when
3 his authority -- his or her authority is only to
4 promise three, is there still a binding effect one way
5 or the other if you're dealing with an agent? I mean
6 if --

7 THE COURT: I thought the area that we were
8 going to ask is Nationwide's contention that it didn't
9 have an obligation to raise the limits because the
10 policy had been cancelled, and I think you were going
11 to ask him about whether or not the nonpayment of
12 premiums related to their obligation to increase it for
13 the field inspection.

14 BY MR. DOHERTY:

15 Q. Okay, let's do that then. what --

16 A. Oh, I understood the question.

17 THE COURT: You understood? Answer it then.

18 THE WITNESS: Yes.

19 THE COURT: Great.

20 THE WITNESS: At the time the bargain was
21 struck --

22 MR. FITZGERALD: Your Honor, is he answering
23 the question Mr. Doherty asked before you interjected?

24 THE COURT: No. You're answering my question,
25 right?

1 THE WITNESS: That's correct.

2 MR. FITZGERALD: Fine.

3 THE WITNESS: The bargain was struck on
4 June 26, 2008, and the bargain was we are going to
5 underwrite the policy for 345,000 because the
6 calculator used by Rick Knaus indicated the value was
7 335, and he gave a margin of error, with the caveat
8 that a field underwriting survey would be done and
9 whatever that value was, that would become the Coverage
10 A limits. And he handed me then what is the Rapid
11 Survey report for 461,000.

12 So in the field, he made that determination,
13 rightly so, and he's an appointed agent. It was an
14 appropriate determination, and he also determined that
15 extended replacement cost on top of the Coverage A
16 limits of 50 percent would also apply. He made that
17 determination. So once he committed Nationwide to the
18 Smallys and Marin Mortgage, that was the bargain.

19 Now, you asked about the policy being frozen
20 because it was in a cancellation status. It was issued
21 wrongly. We talked yesterday about the 80 percent
22 requirement. Under Nationwide's own policy, you must
23 have 80 percent of the replacement value as to Coverage
24 A limit. So when the Coverage A limit went out at 345,
25 it simply violated the agreements made with Smally,

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1 Marin Mortgage on behalf of Smally, and also their own
2 contract. So that binding promise continues on.

3 Marin Mortgage, they are innocent victims in
4 Marin County waiting for a copy of a policy that was
5 underwritten by Nationwide and Vivi using Rick Knaus as
6 that direct binding agent.

7 So, you know, this whole concept of frozen or
8 it didn't exist is simply nonsense, calculated to avoid
9 paying the proper indemnity for a covered loss under
10 the Nationwide policy.

11 MR. DOHERTY: Thank you. No more questions.

12 THE COURT: Marin?

13 MR. COMMINS: Yes. Your Honor, I have a few
14 questions. I would plead for a break for nature.

15 THE COURT: You're begging? All right, that's
16 enough.

17 (whereupon, a recess was taken from 11:02 to 11:16.)

18 THE COURT: All right, we'll continue.

19 MR. COMMINS: Your Honor, thank you for
20 accommodating me.

21 RE-CROSS EXAMINATION

22 BY MR. COMMINS:

23 Q. Mr. Dawson, good morning.

24 A. Thank you.

25 Q. You testified in cross examination by

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1 Mr. Fitzgerald that had there been a payment of
2 approximately \$338,000 that that would not have ended
3 the case. Do you recall that testimony?

4 A. I do.

5 Q. Could you turn to Jurors' No. 2, please, page
6 720?

7 A. Yes, I have the page.

8 Q. I would direct your attention to paragraph
9 number eight, about a third of the way up from the
10 bottom of the page, it's entitled "Appraisal." Do you

11 see that?

12 A. I do see that.

13 Q. Would you have invoked that paragraph had
14 there been a payment of 338,000?

15 MR. FITZGERALD: Objection, calls for
16 speculation.

17 THE COURT: Overruled. Go ahead.

18 THE WITNESS: I would have immediately
19 triggered the appraisal clause in the policy and under
20 Insurance Code Section 2071.

21 BY MR. COMMINS:

22 Q. Could you explain to us what paragraph eight
23 does. I'm afraid if I read it, we will be here all
24 morning.

25 A. Oh, it's easy. You didn't know this, but I

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1 have a case -- actually, a published appellate
2 decision, Kacha vs. Allstate, I was a principal
3 adjuster in that, and it really regulates currently in
4 California how appraisals are conducted and the
5 authority of the appraisers.

6 what an appraisal is, we would have a number
7 -- and when I submitted that November 14th letter, I
8 submitted a number of 475,000, but I demanded the
9 undisputed actual cash value of 338,000, which was
10 determined by Tony Gonzales. Once that was paid, I
11 would have informed Nationwide that there was a
12 disputed value, and from that letter, it obviously was
13 a dispute in value. But by invoking the appraisal
14 provision, we would nominate an appraiser. Nationwide

15 would be required to nominate an appraiser. Both would
16 be competent and disinterested, meaning someone who
17 understands insurance claims and valuation and have no
18 financial interest in the outcome, and the two of them
19 will agree to an umpire. And failing the two to agree,
20 a petition would be filed in Superior Court so that the
21 court could appoint an umpire. I would represent the
22 interests of the policyholder, and indirectly those of
23 Marin Mortgage.

24 I would present the claim that we developed,
25 the Better Builders actual cash value calculation of

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1 623,000, and we would provide convincing evidence of
2 the correctness of our position and would be issued an
3 award, and that award would be binding on both parties,
4 including Marin Mortgage, and we would expect that the
5 award would be approximately what we claimed. And
6 that's how we would have adjudicated the evaluation
7 dispute.

8 Q. would that process have applied regardless of
9 whether repairs had been accomplished beforehand?

10 A. Yes. The appraisal assumes -- in 2071, I
11 referenced the Insurance Code Section 2071 actually
12 supersedes the policy, and by an action of law, if the
13 property is repaired, torn down, never repaired, it's
14 irrelevant.

15 what's relevant in the Kacha decision -- Kacha
16 versus Allstate, what's relevant is the panel
17 determines the value of the damaged components. Once
18 that's done, the company is obligated to pay the award

19 by law and by their policy. There's further language
20 in this policy they were required to pay the award
21 within 30 days, I believe. It matters not if it's
22 repaired or rebuilt.

23 Q. Thank you.

24 Could you turn, please, back to Jurors' No.
25 11 that we were looking at a few moments ago.

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1 Mr. Doherty asked you some questions about your
2 opinions with the correctness of this letter from
3 Mr. Hook to Mr. Scheer.

4 Could you look at the bottom of this second
5 paragraph on the first page, MMB 225, and tell us
6 whether you have an opinion about that 180-day period
7 provided in that letter?

8 MR. FITZGERALD: Your Honor, beyond the scope.

9 THE COURT: It is, but I will allow it.

10 THE WITNESS: Yes, what's your question?

11 BY MR. COMMINS:

12 Q. Do you have an opinion about the propriety of
13 that 180-day statement?

14 A. Well, this applies to the replacement cost
15 differential. So to understand how this works, you
16 have to go back to our formula. Replacement cost minus
17 depreciation equals actual cash value. It's a
18 misstatement as it applies here. What we're speaking
19 of is, if I can use my exhibit -- let's use the exhibit
20 the Statement of Loss, the last exhibit in order for
21 the Smallys.

22 Remember I said that the actual cash value is

23 \$623,232.69. well, the replacement cost is
24 \$678,013.13. what Mr. Hook is attempting to talk
25 about, except it's not accurate and proper the way he's

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1 done it, he's talking about the differential, which is
2 \$45,650.37. So that depreciation number, if our
3 formula is replacement cost minus depreciation equals
4 actual cash value, it's that depreciation number that
5 you have 180 days to claim upon repair and completion.

6 Q. Could you turn, please, back to Exhibit No. 2?
7 And I'd ask you to direct your attention to NICA 725.
8 Would you look, please, at the top of the page, and
9 this is DP300. Are you familiar with that?

10 A. I am.

11 Q. And at the top of the page, it refers to
12 section C-5 in the policy itself. It says: "We must
13 be notified within Part 1 24 months; if there is a
14 state of emergency, 12 months; after our payment for
15 actual cash value in all other cases."

16 Isn't that the correct time limit that Mr.
17 Hook should have invoked?

18 A. well, obviously, you're correct. And what he
19 didn't do, and what you have done, is you've cited
20 special provisions in the policy that's an endorsement,
21 an amendment to the contract that extends the time. So
22 he was incorrect in offering you 180 days as the time
23 frame, that is correct.

24 Q. Is it fair to say that was a false limit?

25 MR. FITZGERALD: Objection, leading.

1 THE COURT: I think you can lead an expert.
2 It's overruled.

3 THE WITNESS: Well, it was a false statement
4 that he made, it was deceptive and misleading, yes.
5 However, what you may not have seen, the actual cash
6 value payment that he offered you, the 153,000, was not
7 based on that formula, so the hold-back for you, of
8 Marin Mortgage, would have been the excess of 153,000
9 to the actual cost of repairs, which we have estimated
10 as 678,000.

11 So employing that phrase and applying it to
12 the actual cash value that was paid, you could never do
13 these repairs. So he gave you the wrong actual cash
14 value calculation.

15 MR. COMMINS: Thank you. No more questions.

16 THE COURT: Mr. Fitzgerald.

17 RE-CROSS EXAMINATION

18 BY MR. FITZGERALD:

19 Q. Mr. Dawson?

20 A. Yes, sir.

21 Q. Let me ask you about these photos that you
22 took that were shown. Are these all the photos that
23 you took two weeks ago?

24 A. Yes.

25 Q. You didn't take any photos of the interior of

1 the house, did you?

2 A. That's correct.

3 Q. The interior of the house is pretty much --

4 needs to be gutted, doesn't it?

5 A. Absolutely.

6 Q. By the way, when you were taking these
7 pictures, were you doing it with your expert hat on or
8 your public adjuster hat on?

9 A. My expert hat because I'm not doing any
10 adjusting on this case since about January of 2009.

11 Q. Okay. Now, you mentioned when you went out
12 there with regard to some of these pictures, you saw --
13 or pictures depicted water damage and smoke damage,
14 right?

15 A. I'm sorry, could you ask your question again?

16 Q. Sure. You were talking about burn damage, I
17 think you used that term?

18 A. Yes.

19 Q. And then you used water damage?

20 A. Yes.

21 Q. And smoke damage, right?

22 A. Correct.

23 Q. The water damage, smoke damage and the burn
24 damage were all caused by the fire, correct?

25 A. Correct.

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1 Q. Mr. Doherty was asking you about altered
2 documents, and you talked about doing fraud
3 investigation, correct?

4 A. I did, yes.

5 Q. One of the hallmarks of a fraud investigation
6 is you don't accuse anyone of fraud until you've done a
7 thorough investigation, correct?

8 A. That's correct.

9 Q. And in this case, you do not know exactly why
10 one document that you say was altered versus another
11 document that wasn't, you don't know exactly why that
12 situation occurred, correct?

13 A. Yes, I do. I know exactly why it occurred.
14 It's to deceive me into believing that the policy was
15 properly cancelled and there was a certificate of
16 mailing.

17 Q. Okay. Have you spoken with anyone in the
18 mailing department at Nationwide?

19 A. No, I have not.

20 Q. You have not read the deposition of Wendy
21 Bennett who was in charge of the proof of mailing,
22 correct?

23 A. I know that she --

24 Q. Have you read her deposition?

25 A. Excuse me.

□

1 THE COURT: It's a simple question, though.
2 Have you read it?

3 THE WITNESS: No.

4 BY MR. FITZGERALD:

5 Q. But you have said that you don't think that
6 Ms. Roessler or Mr. Paxton or Ms. Yesowitch
7 intentionally meant to do anything with regard to those
8 documents, correct?

9 A. That's my opinion. I believe that they are or
10 were innocent.

11 Q. Let's talk about your ACV estimate that you
Page 58

12 did.

13 A. Yes.

14 Q. Now, your understanding -- have you spoken
15 with Mr. Murariu?

16 A. Steve Murariu.

17 Q. Okay, I'll go with yours. Have you spoken
18 with him?

19 A. Yes.

20 Q. Have you reviewed -- you reviewed his
21 estimate, correct?

22 A. Of course.

23 Q. In fact, that's what yours is based on,
24 correct?

25 A. It is.

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1 Q. You didn't go and actually do your own
2 estimate, you just did an ACV estimate based on Mr.
3 Murariu's estimate, correct?

4 A. Correct.

5 Q. And so you took as true whatever he put down
6 in his estimate, correct?

7 A. No, it's more complex than that. I did a
8 walk-thru with him and his guys, and we would look at
9 the components and make a decision in the field what
10 needed to be replaced, so I was part of --

11 Q. But you didn't make any changes to his
12 estimate, correct?

13 A. That is correct.

14 Q. And am I correct in insurance adjusting and
15 contractors, if you lined up ten contractors and said

16 go out and look at that house and do an estimate to
17 repair, you're likely to get ten different dollar
18 estimates?

19 A. I would guarantee you're right, and it would
20 be a range of about 10 or 12 percent.

21 Q. Now, according to your -- you have \$45,000, am
22 I correct, as the depreciation that you would allow on
23 the ACV, is that right?

24 A. That's correct.

25 Q. And that's based on a total of \$678,000,

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1 right.

2 A. No, it's not. And I know you're doing a
3 calculation. It comes to about eight percent. Look
4 above the line -- and I certainly don't mean to correct
5 you, but it's based on the \$555,316, and then what you
6 do is you add in the overhead and profit.

7 Q. Right, I understand, I understand, okay.

8 A. So it comes to about eight percent of the
9 subtotal replacement cost.

10 Q. Okay, so you didn't mean to correct me, and
11 I'm corrected, okay. So here's my question for you:
12 The house is built in 19 what?

13 A. Eighteen.

14 Q. Eighteen. So in 90 years you're saying the
15 house basically depreciated by eight percent, is that
16 right?

17 A. What I'm saying is --

18 Q. Is that right?

19 A. It is correct according to the Claims

20 Settlement Practices Regulations and the way
21 depreciation is authorized.

22 Q. Now, Mr. Murariu, it's his opinion that a lot
23 of this house needs to be gutted, correct?

24 A. It all needs to be gutted, yes.

25 Q. And part of that is to remove sheetrock,

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1 stucco, correct?

2 A. And plaster, yes.

3 Q. All of it?

4 A. Yes.

5 Q. So if all the stucco is to be removed, why are
6 we depreciating anything on stucco?

7 A. Well, this is my depreciation methodology, and
8 I'll tell you that. Stucco is an exterior surface and
9 it's exposed to weather over the course of years, and
10 periodically, the exterior of a house is painted and
11 stucco is repaired. So, again, I'm conservative, and
12 I'm interpreting the regulations strictly, and I think
13 that the insurer should get the benefit of that bargain
14 also, so I depreciated stucco.

15 Q. So let's be clear now as we look at these
16 pictures again.

17 According to the expert on whom you relied,
18 all of the sheetrock, stucco has to be taken off,
19 correct?

20 A. I believe that is correct. The concern is the
21 waterproofing of the new -- I'm sorry -- the
22 waterproofing of the newly repaired interior.

23 Q. I understand, but I'm just talking about the
Page 61

24 outside for a moment. All the stucco is gone, correct?

25 A. I believe so, yes.

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1 Q. And a substantial portion of the framing is
2 gone too, correct?

3 A. The roof framing, all of it.

4 Q. Not just the roof, other framing?

5 A. No, that's not correct.

6 Q. So let me ask you a question. A 2,500
7 square-foot house -- you've been doing this -- in your
8 opinion, what does it cost to frame a 2,500 square-foot
9 house?

10 A. I'd say about -- I'm just estimating. I'd say
11 about -- from the ground up? New construction or
12 repair?

13 Q. Yes, 2,500 square-foot house.

14 A. Probably 70,000.

15 Q. Okay. And not all the framing on this house
16 needs to be done, correct?

17 A. That is correct.

18 Q. And take a look, if you would, at your framing
19 and rough carpentry. You have \$87,000 -- Mr. Murariu
20 has that, is that right?

21 A. That's right.

22 Q. On the inside of the house, from the outside
23 we see this picture, all the stucco is gone, some of
24 the framing -- I mean to do a repair. All the stucco
25 is gone, some of the framing has to be gone, the roof

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1 is gone. Right so far?

2 A. Right.

3 Q. And inside it's all got to be gutted, right?

4 A. That's correct.

5 Q. Now, let me ask you a little bit about -- you
6 talked about the placement of the policy here, and you
7 said that when the Smallys went in and talked with Rick
8 Knaus, there was an agreement of 461; is that right?

9 A. No, that's not right.

10 Q. In fact, isn't it true that the number 461 was
11 never mentioned on June 26th of 2008?

12 A. That's correct.

13 MR. COMMINS: Objection, it's beyond the scope
14 of the redirect and recross.

15 THE COURT: I don't think so. It's overruled.

16 BY MR. FITZGERALD:

17 Q. That 461,000, in fact, Mr. Knaus, as he sat
18 there, had no idea what the actual number would be
19 after an inspection by Rapid Survey was done, true?

20 A. On June 26th, you're correct, yes.

21 Q. So no one knew -- I mean, it could have come
22 out at 361 or 861?

23 A. Correct.

24 Q. So at the time they sit down, all they are
25 talking about is that an inspection is going to be done

□

1 and, depending upon what the inspection says, then
2 those limits may be adjusted whatever way, based on the
3 inspection, correct?

4 A. No, you're correct except for the comment that
5 "may be done." what they did -- and you're right, it's
6 a floating limit subject to variation upon the
7 appraisal by Rapid Survey, and that did not occur on
8 the 26th. I think it was July whatever, 12.

9 Q. Right. The other thing that's floating at
10 that point is what the premium is going to be, correct?

11 A. That is correct.

12 Q. So there's no agreement on exactly what the
13 premium is going to be or the policy limits are going
14 to be at that point?

15 MR. DOHERTY: Objection, calls for legal
16 conclusion.

17 MR. FITZGERALD: If I can finish.

18 THE COURT: Go ahead.

19 BY MR. FITZGERALD:

20 Q. To use your term, it's sort of a floating
21 number at that point, correct?

22 A. Correct. We know the 345 that was
23 underwritten was on the binder, and we also know that
24 subject to this subsequent condition of Rapid Survey's
25 evaluation, Coverage A would float, yes.

1 Q. Now, let me ask you something you talked about
2 with regard to Marin. You mentioned the appraisal
3 provision in the policy, correct?

4 A. Yes.

5 Q. Now, that appraisal provision is a provision
6 that says either party can make a request for an
7 appraisal, true?

8 A. Correct.

9 Q. So Marin could make a request or Nationwide
10 could make a request of either to submit to an
11 appraisal, true?

12 A. I'm not sure if that's the intent. I think
13 the intent is the policyholder, the insured and the
14 insurer, Nationwide and Smally, but to the extent that
15 you -- if you recall, the question was a hypothetical:
16 Had the 338 been paid. That would presume there was no
17 denial of the claim. So had it been paid, the
18 appraisal provision would apply to the Smallys. I'm
19 not sure what the law would govern the mortgage
20 holder's interest in appraisal.

21 Q. Well, let me ask you: Here is -- and Mr.
22 Commins was asking you about it, NICA 00720 page of
23 Exhibit 2. See where it says here, "If you and we fail
24 to agree on the amount of loss" --

25 A. Yes.

1 Q. "Either can demand that the amount of the loss
2 be set by appraisal"?

3 A. Correct.

4 Q. Now, let me ask you: Appraisal provisions are
5 there to help the parties determine the value of the
6 loss, but not used for coverage purposes, correct?

7 A. That is absolutely correct.

8 Q. All right, thank you.

9 I don't have anything further. Thank you.

10 THE COURT: Redirect?

11 MR. DOHERTY: No, your Honor.

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THE COURT: All right.

RE-CROSS EXAMINATION

BY MR. COMMINS:

Q. Once the Rapid Survey Group went out and did its thing and that number was communicated to Nationwide, how long would it have taken Nationwide to calculate a suitable premium that corresponded to that new replacement cost number?

MR. FITZGERALD: Objection, lack of foundation, calls for speculation.

THE COURT: I mean, I don't know if this is an area that you're qualified to give an opinion on.

THE WITNESS: Immediately.

THE COURT: You are?

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THE WITNESS: Yeah. When underwriters -- you know, I've investigated many claims and many coverage disputes in my career.

Once the company -- it's not just the underwriters. Once the company has knowledge there's a change in value, that's a change in risk. I mean, their duty then is to adjust the limits and bill it. And in this case it didn't happen.

MR. FITZGERALD: Move to strike, nonresponsive.

THE COURT: Sustained.

BY MR. COMMINS:

Q. How long would it have taken Nationwide to calculate a suitable new premium that corresponded to that new replacement cost policy limit?

16 MR. FITZGERALD: Objection, lack of
17 foundation, calls for speculation.

18 THE COURT: I'm not sure he's the witness to
19 answer about Nationwide's practices.

20 BY MR. COMMINS:

21 Q. In your experience over the years with
22 insurance companies and adjusting and claims and so
23 forth, do you know how long it takes to recalculate a
24 premium based on an adjustment and policy limits of
25 that kind?

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1 MR. FITZGERALD: Well, I'm going to object.
2 Number one, it's beyond the scope of this witness's
3 expertise. It's also irrelevant as to what others have
4 done, and it lacks foundation, calls for speculation.

5 THE COURT: Sustained.

6 BY MR. COMMINS:

7 Q. Do you know how difficult it would have been
8 for Nationwide to communicate the new premium to Marin?

9 MR. FITZGERALD: Same objection, your Honor.

10 THE COURT: Sustained.

11 MR. COMMINS: No further questions.

12 THE COURT: All right. Anything else?

13 MR. FITZGERALD: No, your Honor.

14 THE COURT: Thank you.

15 THE WITNESS: Thank you. Thank you, jury.

16 MR. DOHERTY: Your Honor, our next witnesses
17 Steve Murariu.

18 THE COURT: Okay.

19 Good morning. Please come forward to the

20 witness stand.

21 STELIAN MURARIU,
22 called as a witness on behalf of the plaintiffs herein,
23 was duly sworn, examined, and testified as follows:

24 THE CLERK: Thank you. Please be seated and
25 state your name for the record, spelling your last.

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1 THE WITNESS: Stelian Murariu.

2 THE CLERK: Can you spell it, please?

3 THE WITNESS: S-t-e-l-i-a-n. Last name
4 M-u-r-a-r-i-u.

5 THE CLERK: Thank you.

6 DIRECT EXAMINATION

7 BY MR. DOHERTY:

8 Q. Mr. Murariu, what is your present occupation?

9 A. I'm a general contractor.

10 Q. And are you licensed?

11 A. Yes.

12 Q. In what state?

13 A. State of California and Nevada.

14 Q. How long have you been a licensed general
15 contractor?

16 A. Since 1990.

17 Q. And did you have any experience prior to 1990
18 in the construction business?

19 A. Yes, I did work for a company as a
20 superintendent.

21 Q. And what is the name of your company today?

22 A. Better Builders.

23 Q. And do you have employees in your company?

24 A. Yes.

25 Q. How many?

1 A. Right now, I think I have 12.

2 Q. Now, do you have active jobs going on now,
3 construction jobs?

4 A. Yes.

5 Q. How many?

6 A. Between 12 and 14 at this moment.

7 Q. Have you had any prior experience in repairing
8 fire-damaged buildings?

9 A. Individual prior experience before I became a
10 contractor?

11 Q. Let me get over here. Yes. Have you any
12 prior experience repairing buildings that were damaged
13 by fire?

14 A. Yes.

15 Q. What percentage of your business is in that
16 area?

17 A. Until last year, about 80 percent, around
18 80 percent is fire damage and water damage repair.

19 Q. That was last year, okay.

20 A. Until last year. Right now probably about
21 70 percent fire damage repair.

22 Q. And how did you meet the Smallys?

23 A. I met through Kevin Dawson.

24 Q. And tell us a little bit about how that
25 happened?

1 A. I was working in Vallejo about ten blocks away
2 from Mr. Smally, and I haven't heard from Kevin Dawson
3 for some years. We've been -- we did some losses
4 together, but then he gave me a call, and I told him
5 I'm working. He asked me how I'm doing. I said I'm
6 working in Vallejo right now. I was working on Roney
7 street on a project.

8 And he told me, "Well, I have a job not too
9 far from you. You know, he's a potential customer. If
10 you are interested, can you come and give us a bid?" I
11 said sure, no problem. And that's how I did. Then I
12 went and I --

13 Q. All right. So you agreed to do an estimate or
14 a bid?

15 A. That's correct.

16 Q. And would you tell us how you went about
17 making your estimate?

18 A. I remember I met -- first time I went there,
19 with Kevin Dawson and three of my estimators. We had a
20 walk-thru, and we spent some time deciding what needs
21 to be replaced, what can be saved, and that's how we
22 start the estimate.

23 Q. Now, did you walk through all of the building,
24 review all of the building in your inspection?

25 A. Yes, we did walk through from upstairs, which

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1 is pretty unsafe, but we did walk through every room
2 and every floor around the building, and then we decide
3 what needs to be done.

4 Q. And the building was somewhat unsafe when you
Page 70

5 were making this tour?

6 A. It was very unsafe. Especially, I remember
7 the front stairs going up, they were completely -- I
8 mean, almost completely burned.

9 Q. Nevertheless, you looked at every room?

10 A. We did. We took the back stairs. They were
11 in better condition. So we did look at every room and
12 we spent some time there.

13 Q. What would then be the next step that you do
14 in determining an estimate?

15 A. When we usually -- like I said, we walk
16 through. Especially this project, we did walk through,
17 we decide what needs to be done. And I had -- one of
18 the estimator is named Dan Dukolesco (phonetic) and
19 another estimator is Ron Purcell. So Ron, that is the
20 one who does the sketch measurement, and I'm the one
21 calling the scope of work, say remove or replace
22 sheetrock or remove or replace floor, or remove -- and
23 then Ron is the one who did input all the information
24 with Dan, and after that they -- we get together, we
25 did get together on this one, we took a copy, a

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1 printout, and we went back to the site to make sure we
2 didn't miss anything.

3 Q. And did you come up with an estimate?

4 A. Yes.

5 Q. Now, we're going to direct the jury's
6 attention to what is in their binder No. 13.

7 THE COURT: Yes, that binder, turn to tab 13.
8 And we'll mark this and receive it into evidence at
Page 71

9 this time.

10 (Whereupon, Exhibit No. 13 was marked for
11 Identification and received into Evidence.)

12 BY MR. DOHERTY:

13 Q. Mr. Murariu, would you please look at
14 Exhibit 13 and go through it, and I'm going to ask you
15 if you know what it is?

16 A. Yes. This is the estimate prepared by Better
17 Builders for Mr. Smally, the job on 1039 Georgia
18 Street.

19 Q. So the scope was measured by actual
20 measurements, calling out measurements and so forth?

21 A. That's correct, yes.

22 Q. So the dimensions were correct in here?

23 A. Yes.

24 Q. How was the pricing done? How do you price a
25 certain room, or how does it work?

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1 A. Well, we use Xactimate program software, which
2 is very common in this insurance industry, and we just
3 have to update it, and we do have our own database
4 based on Xactimate.

5 Q. And how much did you conclude it would --
6 well, let me ask you one more thing.

7 Is this estimate one that is designed to get
8 the building back to the way it was just before the
9 fire took place?

10 A. Yes, this estimate is exactly to put the
11 building back the way it was, like in kind, quality.
12 So, basically, we have to put it exactly the way it was

13 before the fire.

14 Q. And what was the total amount that you
15 concluded was necessary to make those repairs?

16 A. It was \$678,013.13.

17 Q. Is that a fair and reasonable amount of money
18 to make those repairs?

19 A. Yes, I believe this is a fair amount.

20 Q. Do you guarantee the Smallys that you would
21 repair their building for that amount?

22 A. Yes, I did and I do.

23 Q. And I'd like to have the Jury's Exhibit 13 in
24 evidence if it's not already in.

25 THE COURT: Yes.

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1 MR. DOHERTY: Okay, thank you.

2 No further questions.

3 THE COURT: Marin?

4 MR. COMMINS: No questions, your Honor.

5 THE COURT: Nationwide?

6 CROSS EXAMINATION

7 BY MR. BENDEL:

8 Q. Good morning, Mr. Murariu.

9 A. Good morning.

10 Q. You testified when you went to the property
11 that you walked through the whole thing?

12 A. Yes, I did.

13 Q. Generally, when you do a bid, do you take
14 pictures of the property?

15 A. Yes, we do.

16 Q. You consider it important to take pictures,
Page 73

17 correct?

18 A. Yes.

19 Q. You take those pictures so you can go back and
20 use them to make your estimate?

21 A. Yes, and we keep it on file just in case we
22 miss something or in case we have to go back and we
23 don't remember exactly what was in there. So, yes, we
24 do take pictures.

25 Q. And you take notes of your measurements as

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1 well?

2 A. Not necessarily myself, but we do have --
3 somebody takes notes, yes.

4 Q. A part of your team takes notes?

5 A. Yes.

6 Q. And you consider that important?

7 A. Yes.

8 Q. And you consider that important because, when
9 you prepare the estimate, you like to go back and
10 double check the measurements you took when you went to
11 the property, correct?

12 A. Yes.

13 Q. You don't have any notes for your inspection
14 of this property, do you?

15 A. No, I couldn't locate them.

16 Q. And you don't have any pictures either?

17 A. No, I don't.

18 Q. When you prepared your estimate, you testified
19 that you used a program called Xactimate?

20 A. That's correct.

21 Q. And that's an estimating software used by the
22 insurance industry, true?

23 A. Yes.

24 Q. And doesn't that come with standard pricing?

25 A. Yes, but they do give you the option to go

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1 ahead and modify it.

2 Q. But it does include standard pricing based on
3 location of where you're building, correct?

4 A. It does include it, but like I said, again,
5 not necessarily -- those are the update prices.

6 Q. Do you know where Xactimate gets the numbers
7 that it uses?

8 A. Yes, from contractors like me.

9 Q. So contractors like you provide standard
10 pricing to Xactimate so you can use it in the program,
11 correct?

12 A. Yes.

13 Q. But when you prepared your estimate, you
14 didn't use that standard pricing, correct?

15 A. I didn't use some of the standard prices,
16 which I consider they were too low.

17 Q. But you could have used the standard pricing,
18 true?

19 A. I could have used it, but I could not
20 guarantee the work for that prices.

21 Q. But you chose not to use the standard pricing,
22 true?

23 A. I chose because I did my estimate with
24 subcontractor and then I realized -- we even called

25 Xactimate to update the prices, and we did update it

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1 based on the material and the subcontractor prices. So
2 if we find out it is some of the prices -- the
3 subcontractor are not fair, we do --

4 Q. And I understand that, but my question is: So
5 what you did here -- and I just want to understand what
6 you did. You went in, you put in the measurements and
7 what had to be replaced, and rather than accept the
8 standard pricing that's in the program, you went in and
9 you overrode the pricing; isn't that true?

10 A. That's what Xactimate give you the option to
11 go ahead and override if the prices are not correct.
12 Xactimate, they do not guarantee anything over \$10,000.

13 Q. So you go changed the pricing?

14 A. Some of them, yes, we did.

15 Q. So your estimate really isn't based on
16 Xactimate, true?

17 A. Well, I think it is.

18 Q. But it's based on your own prices that you
19 came up with?

20 A. Not all the prices.

21 Q. And you said that you maintain a database of
22 these prices that you use?

23 A. Yes.

24 Q. Now, do you change the pricing that you use
25 based on where you're building?

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1 A. It's very simple how we change the prices.

2 For example, I can give you an example --

3 Q. I'm asking about your database, the database
4 that you maintain of pricing --

5 MR. DOHERTY: Your Honor, can he let him
6 finish?

7 THE COURT: Let's hear a question. And you
8 need to make sure you let him answer the question. So
9 let's hear your question.

10 BY MR. BENDEL:

11 Q. Mr. Murariu, you said you maintain a database
12 of pricing for items that need to be repaired in homes,
13 correct?

14 A. Yes.

15 Q. And you maintain one database with prices, and
16 that's for all the areas where you do work, true?

17 A. That's true.

18 Q. You don't have a separate database for whether
19 you build in Marin versus whether you build in Oakland?

20 A. No.

21 Q. Doesn't it cost more to build in some areas of
22 Northern California than others?

23 A. Not for us because our work area is based on
24 Bay Area, so it doesn't cost any more or less for us.
25 We using the same subcontractors, we using the same

1 material, and we using the same labor, so I don't see
2 why it would cost me more, other than permits or fees,
3 if I build in Marin County or if I build in San
4 Francisco, it would cost me the same thing.

5 Q. So that's your opinion, that it cost you the
6 same to build whether it's in Marin or anywhere else in
7 the Bay Area?

8 A. That's correct, we charge the same prices
9 regardless if it's Oakland Hills or it's in Marin. I
10 believe it cost us the same thing, not based on the
11 area.

12 Q. Would you subcontract any of the work in your
13 bid?

14 A. Yes, we do.

15 Q. What items would you subcontract?

16 A. Insulation, roofing, tiles, sheetrock -- yeah,
17 some of this.

18 Q. Did you get any bids from subcontractors when
19 you prepared your estimate?

20 A. Not in this -- we did not get in this one
21 because we had our data updated before --

22 Q. I think you've answered my question.

23 THE COURT: Wait a minute. Don't interrupt
24 him. Go ahead, finish your answer.

25 THE WITNESS: I did not get a subcontractor

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1 estimate for this job because we did update our
2 database before, which, as I stated before, we had a
3 job right around the corner, same area, and I did not
4 get any subcontractor bids.

5 BY MR. BENDEL:

6 Q. Did you include any prices for the appliances
7 at the property?

8 A. Could you repeat that again?

9 Q. Did you include -- in your estimate, did you
10 determine that any of the appliances needed to be
11 replaced?

12 A. Yes, we did.

13 Q. But you weren't aware of the brands of the
14 appliances when you prepared your estimate, isn't that
15 true?

16 A. If I was not aware?

17 Q. You weren't aware of the brand of the
18 appliances when you prepared your estimate?

19 A. I don't recall the brand of the appliances.

20 Q. When you plug items into Xactimate, you can
21 plug in whether something is high grade, medium grade
22 or low grade, isn't that true?

23 A. That's correct.

24 Q. And when you prepared your estimate, you
25 considered this home to be high grade, isn't that true?

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1 A. Some of it, yes.

2 Q. Most of it, isn't that true?

3 A. It's a well-built home, 1920, 30, which is
4 colonial style. So I considered it high grade because
5 there was a lot of clear redwood, and so yes, most of
6 it is -- colonial homes are considered high grade in
7 Xactimate.

8 Q. And you also considered the items in the
9 kitchen to be of high grade?

10 A. I don't recall that particular one.

11 Q. But your belief that this home was of high
12 grade factored into your estimate, true?

13 A. From my experience, most of the old Colonial
14 and Victorian houses are considered high grade because
15 of the quality of the material.

16 Q. And you'd agree that had you considered it of
17 low or medium grade, the price would be lower, true?

18 A. If I considered, yes, that's true.

19 Q. And you're familiar with how Xactimate works?

20 A. Yes.

21 Q. And you print out from Xactimate what's been
22 accepted as Exhibit 13, true, your estimate?

23 A. Yes.

24 MR. BENDEL: Your Honor, I'd like to publish
25 page three --

1 THE COURT: Go ahead.

2 MR. BENDEL: -- of Exhibit 13.

3 BY MR. BENDEL:

4 Q. This is a page from your estimate, isn't that
5 true?

6 A. Yes.

7 Q. Now, doesn't Xactimate give you the option to
8 print this out and show more information than you've
9 shown here?

10 A. It does.

11 Q. For instance, you could have shown when you
12 printed this out whether, say, you considered the
13 cabinetry to be of high grade, medium grade or low
14 grade, correct?

15 A. From my experience, I don't -- I never print
16 anything more than what I did this one, so basically --

17 I'm not a certified Xactimator, but I don't know all
18 this little detail so I don't know about that.

19 Q. But you know it can be done?

20 A. I know it can be done, but personally I
21 haven't done it.

22 Q. So you could have presented an estimate that
23 showed that you considered certain items to be high
24 grade, but you didn't?

25 A. From my experience, that's what we presented

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1 to the insurance when we submit insurance carrier so we
2 never had to present it in detail. This is the
3 standard. All the estimates goes to insurance or to
4 the customer, so we don't have any other estimate
5 details presented to the insurance other than this. So
6 this is a standard estimate. We present it to
7 insurance or to the customer. No other format.

8 Q. But you know you're here as an expert witness
9 today?

10 A. Yes.

11 Q. And you're testifying to the reasonableness of
12 this estimate, true?

13 A. Yes, but even expert, I'm not that -- I don't
14 know anything -- everything about it. So even
15 Xactimate, I don't know every little detail to bring it
16 out to, what you're talking about, so even if I'm an
17 expert, I don't know everything.

18 Q. But what I'm asking you is, even though you're
19 here to give your opinion on the reasonableness of this
20 estimate, you didn't print it out showing all the

21 information that you could have, true?

22 A. As I said, I never print it out, and you can
23 see in our office, that's the standard estimate we give
24 it to every customer. I don't see why I should give to
25 this particular customer a detailed estimate, which I

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1 never did, so, honestly, I don't even know how to do a
2 detail, what you're saying. I know it can be done, but
3 I don't, and we don't do it.

4 Q. You don't know how to do it?

5 A. I don't know how to do it.

6 Q. You're not familiar enough with the Xactimate
7 program --

8 A. I'm not because I'm not using.

9 Q. Okay. How much does your estimate have for
10 the amount to frame the home?

11 A. If you look on page 39, you will see framing,
12 87,819.84.

13 Q. Is that to frame the entire house?

14 A. Yes, that's for rough framing.

15 Q. And don't you add 20 percent to that number
16 for overhead and profit?

17 A. After that. This is the actual cost, 87,000,
18 and after that we add 20 percent, which is ten percent
19 profit and ten percent overhead.

20 Q. So you would actually be charging over
21 \$100,000 just to frame this house?

22 A. I would charge \$87,000, which is actual cost,
23 plus ten percent, as I said, overhead and ten percent
24 profit.

25 Q. Can you tell the jury what the framing of the

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1 home is?

2 A. For this particular house? Yeah, this is a --

3 Q. Just framing in general.

4 A. This is a very old house, and it is a special
5 mill this day. Whoever is familiar with old houses,
6 when you call a two-by-four, it's a full two-by-four,
7 which the industry doesn't make it anymore on this day.
8 So what we have to do, we have to go and special mill,
9 we usually do from Channel Lumber. Not too many mill
10 where -- nobody have this in stock.

11 The new two-by-four is actually one-and-a-half
12 by three-and-a-half, which is less thickness than the
13 old particular two-by-four, which is three -- two
14 inches full by four inches, and you have to special
15 mill, and this is very expensive. It's not like a
16 regular two-by-four, you pay probably, let's say, \$3
17 for a two-by-four. For this one, you got to pay at
18 least five times more because, like, it has to be
19 special milled. So that's why it sounds sometime
20 framing like this old house is, it's very expensive,
21 because it is like a special order. So that's
22 including -- the material is -- first of all, it cost
23 more, and also the labor cost more after that. So
24 that's why in particular houses like Colonial or
25 Victorian and all older houses, we have to go back and

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1 replace it like in kind, that's why it sounds sometime

2 people who doesn't know the difference, that's what
3 makes the price higher than the regular two-by-four.

4 Q. Mr. Murariu, so it's your testimony, though,
5 if you used regular two-by-fours, it would be
6 substantially less expensive, is that true?

7 A. That's true.

8 Q. But you didn't prepare your estimate using
9 standard two-by-fours, did you?

10 A. That's correct. I did prepare this estimate
11 remove and replace in kind.

12 Q. Can you tell us how much of this framing cost
13 would be labor versus materials?

14 A. I cannot tell you.

15 Q. But you could have printed out your estimate
16 to show that, true?

17 A. No.

18 Q. That's not your testimony?

19 A. That's -- that's -- I don't print out labor
20 separate so no, I couldn't.

21 Q. Mr. Murariu, wouldn't you need a permit to do
22 this work?

23 A. Yes, we do.

24 Q. And wouldn't you need architectural drawings?

25 A. Yes, we do.

□

1 Q. Wouldn't it be more practical, rather than to
2 do the estimate that you have in your repair, wouldn't
3 it be more practical to demo the whole thing and
4 rebuild it?

5 MR. DOHERTY: Objection, vague, "practical."
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6 THE COURT: Do you mean more economical?

7 MR. BENDEL: More practical.

8 THE COURT: what do you mean by "practical,"
9 though, money or what?

10 MR. BENDEL: More practical as far as
11 obtaining permits and bringing the property up to code.

12 THE COURT: I just don't know what you mean by
13 "practical."

14 MR. BENDEL: well, let me ask a few
15 foundational questions, your Honor.

16 BY MR. BENDEL:

17 Q. Mr. Murariu, when you do this work, it needs
18 to be code compliant, true?

19 A. Yes.

20 Q. And what code would apply to the repair?

21 A. what code would apply to repair?

22 Q. well, wouldn't the California Residential Code
23 apply to the repair?

24 A. Yes, we have to follow Uniform Building Codes,
25 2009 it was at the time.

1 Q. And wouldn't you need Title 24 Certificate of
2 Compliance?

3 A. We need Title 24, yes. We do need Title 24,
4 yes.

5 THE COURT: That's the energy compliance?

6 THE WITNESS: Energy compliance.

7 BY MR. BENDEL:

8 Q. And wouldn't the work require seismic
9 engineering?

10 A. Sometime, yes, but not all the time apply
11 seismic engineering. In this particular estimate, I
12 did not include none of the code upgrades we call it.

13 Q. So you didn't include anything in your
14 estimate to bring the property up to code?

15 A. I did not include anything about seismic or
16 code upgrades, but what I did include is to remove and
17 replace and build it. For example, if I remove a
18 window and I have to put another window, I have to make
19 sure the window is up to this code, which is not going
20 to cost me any extra money just moving that window six
21 inches higher because you got to have it no less than
22 40 inches. Yes, that was included, but I did not
23 include any seismic or any other code upgrades or
24 engineered would be required by the city after the plan
25 would be submitted.

□

1 Q. So as you sit here today, you can't say
2 whether making your repair code compliant, you couldn't
3 even do the repair as you have set forth in your
4 estimate, true?

5 A. I'm sorry, could you repeat that again?

6 Q. As you sit here today, you can't say whether
7 these repairs could actually be done as you have them
8 in your estimate because you don't know if it would be
9 code compliant, true?

10 A. From my experience, I think the extent of this
11 job would not be a lot of code upgrades other than
12 seismic, other than the electrical will be complete,
13 plumbing is pretty much complete, so I have to bring it

14 up to code, so I would not charge any other extra money
15 for electrical plumbing, heating, but it could be some
16 seismic retrofit. We don't know until we submit the
17 plans, so that is -- I cannot tell if that would be a
18 major additional expenses. From my experience of a job
19 not too far from there, we did not have a major change
20 orders for the seismic, so I think would not trigger a
21 huge amount of code upgrades, what you call it.

22 MR. BENDEL: I have no further questions.

23 THE COURT: Anything else?

24 MR. DOHERTY: Just one area.

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1 RE-DIRECT EXAMINATION

2 BY MR. DOHERTY:

3 Q. The Xactimate that you were asked about,
4 that's a software program?

5 A. Yeah, that's a software program used
6 nationwide.

7 Q. And these prices are like recommended and, as
8 you said, change from time to time?

9 A. Xactimate, when we took classes, they said
10 when you feel like the prices are low, that's how we
11 get the prices, the feedback from the contractor,
12 subcontractor. A lot of times, different area,
13 subcontractor and contractor don't call in. And mostly
14 used by the insurance company, we as a contractor feel
15 like it's always about 30 percent below fair market.
16 So, in my opinion, I think the standard Xactimate is
17 below market. The reason we just use it is because we

18 use the same software as the insurance company so we
19 can negotiate and we can compare pretty much the same
20 items, same scope, instead of using different scope of
21 work.

22 Q. Now, you were starting to say something about
23 how much they guarantee their prices?

24 A. Yeah. When we call them up, they say they
25 cannot guarantee anything over \$10,000. So when you

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1 have a \$2 million estimate, they cannot guarantee more
2 than 10,000. So anything over 10,000 is not
3 guaranteed, but they will encourage contractor to go
4 and give them the feedback so they can upgrade it.

5 MR. DOHERTY: Thank you. I have no further
6 questions.

7 THE COURT: Anyone else?

8 MR. BENDEL: Just a few questions.

9 RE-CROSS EXAMINATION

10 BY MR. BENDEL:

11 Q. So Mr. Murariu, you just said that you
12 prepared your estimate using Xactimate to negotiate
13 with insurance companies?

14 A. Yes.

15 Q. Have you negotiated with anyone?

16 A. Always.

17 Q. Okay. So you expected, when you prepared your
18 estimate, that there would be some negotiation, and you
19 wouldn't necessarily be paid what you put in your
20 estimate, true?

21 A. Yes, that's true, I expect --

22 Q. Okay. No further questions.
23 THE COURT: Anything else?
24 MR. DOHERTY: No, thank you.
25 THE COURT: All right. We'll break for lunch.

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1 Let's take an hour, so that will put us here at ten
2 after 1:00.

3 (Whereupon, the lunch recess was taken at 12:14 p.m.)

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1 STATE OF CALIFORNIA)
2) ss.
3 COUNTY OF MARIN)
4

5 I, VICKI A. HAINES, do hereby certify
6 that I am a Certified Shorthand Reporter pursuant to
7 the laws of the State of California;

8 That acting as such reporter, I took down
9 in stenotype the testimony given and proceedings had in
10 the within-entitled action fully, truly and correctly.

11 That I thereafter caused the foregoing
12 proceedings of said cause to be transcribed into
13 typewriting, and that the foregoing pages constitute a
14 true and correct transcript of said stenotype so taken.

15

16 Dated this 15th day of March, 2011.

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VICKI HAINES, CSR No. 5995

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