

Poole + Rainford

**Phillip Hawkins v.
Anstar Biotech Industries**

Case ReportBook

Authored by:

**Your Name Here
Poole + Rainford**

Friday, January 18, 2008

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Introduction

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

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

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

Thank you for your assistance!

**Phillip Hawkins v.
Anstar Biotech Industries**

Deposition of Philip Hawkins

10/21/2000 10:00 AM

Condensed Transcript for Note-taking

1 STATE OF FLORIDA
 DEPARTMENT OF LABOR AND EMPLOYMENT SECURITY
 2 OFFICE OF THE JUDGE OF COMPENSATION CLAIMS
 DISTRICT "C"

3
 4
 5 CLAIM NO: 263-55-6571
 6 EMPLOYEE: PHILIP M. HAWKINS
 7 EMPLOYER: ABI
 8
 9 CARRIER: STATE OF FLORIDA
 10 D/A: 12/10/00
 11

12 STATE OF FLORIDA)
 13 COUNTY OF DADE)
 14

15 Deposition of PHILIP MARK HAWKINS, taken
 16 on behalf of the Employer/Carrier, pursuant to
 17 Amended Notice of Taking Deposition, on Thursday,
 18 October 21, 2000, commencing at 10:00 a.m., at
 19 4741 Atlantic Boulevard, Suite F, Miami,
 20 Dade County, Florida, before Cindy Cooker, a Notary
 21 Public in and for the State of Florida at Large.

22 - - -
 23
 24
 25

1 A P P E A R A N C E S
 2
 3

4 PETER S. ARNDT, ESQUIRE
 5 Arndt & Arndt
 One National Drive
 6 Miami, Florida 32202
 7 Attorney for Employee/Claimant.
 8
 9

10 SUSAN A. ONOFREY, ATTORNEY-AT-LAW
 11 Onofrey & Straight, P.A.
 4700 Ocean Boulevard
 12 Miami, Florida 32207
 13 Attorney for Employer/Carrier.
 14

15
 16 ALSO PRESENT: Mrs. Hawkins
 17
 18
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12 (No Exhibits)

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STIPULATION

2 It was stipulated and agreed by and between
3 counsel for the respective parties, and the witness,
4 PHILIP MARK HAWKINS, that the reading and signing
5 of the deposition not be waived.

6 ---

7 WHEREUPON,
8 PHILIP MARK HAWKINS,
9 having been produced and first duly sworn as a witness
10 on behalf of the Employer/Carrier, was examined and
11 testified as follows:

12 DIRECT EXAMINATION

13 BY MS. ONOFREY:

14 Q Would you state your full name, please?

15 A Philip Mark Hawkins.

16 Q And your date of birth?

17 A October 13th, 1959.

18 Q Are you 40?

19 A Yes, ma'am.

20 Q Your current address?

21 A 2646 East Cloud Street, Palm Beach,
22 Florida. The ZIP Code is 32980.

23 Q How long have you lived at that address?

24 A Approximately six years.

25 Q Do you live in a house or rent an apartment?

Horizontal lines for deposition content.

1 A It's a house.

2 Q Do you own it?

3 A Yes, I do.

4 Q What's your Social Security number?

5 A 106-55-6571.

6 Q Were you basically born and raised in

7 Southeast Florida?

8 A Yes, ma'am.

9 Q Where did you go to high school?

10 A Dade County High School, Miami.

11 Q What year did you graduate?

12 A 1988.

13 Q Do you have any college education beyond

14 high school?

15 A I have some. I attended Dade County Community

16 College, but I did not receive a degree.

17 Q How much did you complete?

18 A Ma'am, I'm not real sure. I had some time

19 that I went to regular structured classes, and I got

20 some credit hours through the law enforcement

21 academy. I'm not sure the amount.

22 Q When did you attend the law enforcement

23 academy?

24 A The one through Dade County Community College

25 was in 1980, I believe. It was the latter part of

1 '81, early part of '82. That was the corrections

2 academy.

3 Q So was that only through the Dade County

4 Community College, or was it something you attended

5 independent of that?

6 A It was actually -- the credit hours, it's

7 certified -- accredited through Dade County Community

8 College. It's actually put on by the State,

9 Department of Corrections.

10 Q And was that one of the steps you took in

11 becoming a state police officer?

12 A No, ma'am.

13 Q That's what I was getting at.

14 When did you take steps to become a state

15 police officer?

16 A I started the Florida Highway Patrol

17 Training Academy January the 7th, 1985.

18 Q Prior to that time, what sort of work did

19 you do?

20 A Leading up to that, I worked for Speed-O-Mart

21 Stores, Incorporated.

22 Q Approximately how long did you work for

23 Speed-O-Mart?

24 A I started part time with Speed-O-Mart in 1976

25 and worked 'till 1984. During that time, I left

1 Speed-O-Mart for a year and a half and worked for the
2 Department of Corrections.
3 Q What were you doing for Speed-O-Mart when you
4 left in '84?
5 A I was a -- the title was junior assistant
6 store manager.
7 Q So you were the store manager at a
8 particular location?
9 A Yes, ma'am, the Speed-O-Mart in High Springs.
10 Q Where is that in relation to Dade County?
11 A It's about 22 miles south of Dade County.
12 Q You said during that time, sometime between
13 1976 and 1984, you worked for approximately one and a
14 half years at the Department of Corrections?
15 A Yes, ma'am.
16 Q What facility were you working at then?
17 A Baker Correctional Institution.
18 Q What was your job title there?
19 A Correctional officer.
20 Q What caused you to leave there after a year
21 and a half?
22 A Dissatisfied with the job.
23 Q What caused you to leave Speed-O-Mart around
24 1984?
25 A To get on the highway patrol.

1 Q How long did you attend the Florida Highway
2 Patrol Academy?
3 A Thirteen weeks.
4 Q And while you did that did you work, or was
5 that exclusively attending school at that time?
6 A It was an academic-type setting.
7 Q So you left Speed-O-Mart and you went into the
8 patrol academy, and you did that for 13 weeks
9 exclusively?
10 A Yes, ma'am.
11 Q And you completed that program, obviously.
12 A Yes, ma'am.
13 Q When you completed that program, were you
14 then a highway patrol officer, or did you have to go
15 through further training or education?
16 A You were considered a trooper. You still
17 had to complete a short in-service training under a
18 field training officer when you reported to the field.
19 Q Approximately how long would that have
20 taken?
21 A About 30 days.
22 Q And then were you still considered a trooper
23 at that point, or did you have a different title?
24 A No, ma'am; it's trooper.
25 Q At the time of your accident, were you also

1 blocked.

2 And that's why I went, was actually to help
3 the other trooper with traffic.

4 Q And when you got there, what did you see at
5 the scene? How was it arranged?

6 A The initial wreck was a single-vehicle wreck
7 that had driven -- the car had driven off the road,
8 hit a guardrail. After striking the guardrail, the
9 car careened off of the guardrail and came up onto the
10 through-traffic lanes of Interstate 75.

11 The car was at its final rest position on
12 the roadway. The occupant of the car was over close
13 to the west shoulder. The paramedics were
14 administering emergency medical treatment to that
15 guy.

16 Trooper Kraszewski, who was the first
17 trooper to respond, she was on the scene probably a
18 minute, minute and a half before I got there.

19 Q Were there any other vehicles stopped in the
20 roadway other than the car that had careened off the
21 railing?

22 A The other vehicles there, ma'am, were police
23 cars: Trooper Kraszewski's patrol car, my patrol car,
24 an ambulance and a fire truck.

25 Q Okay. So what exactly was happening at the

1 time that you were struck?

2 A The road was pretty much blocked. We were
3 routing traffic over onto the east shoulder to go
4 around this other crash.

5 Q And this was 75 South?

6 A North.

7 Q North? Okay.

8 A I went to my patrol car, I removed a handful
9 -- I believe there was four -- road flares, a device
10 we use that's lit and illuminates a bright light
11 that's used to route traffic.

12 I went to the edge of the closed lane where
13 we were moving traffic to. I set out one flare
14 there. I went back probably 25, 30 feet, I set
15 another flare out. In doing this, I was coming across
16 on an angle closing off the traffic lanes. I set a
17 total of three flares out.

18 The fourth flare that I had in my hand would
19 not light, so I turned to actually walk off the road.
20 A vehicle came close to me. I turned and looked at
21 that vehicle, and the next thing I realized, I was on
22 the hood of a car.

23 Q Is that the same vehicle that you had
24 noticed was coming close to you or --

25 A No, ma'am.

Horizontal lines for handwritten notes on the right side of the page.

1 Q You noticed a vehicle close to you and it
2 had passed, and then the next thing you knew you were
3 on the hood of a car?

4 A Yes, ma'am.

5 Q What type of vehicle struck you?

6 A It was a Dodge or a Plymouth Neon. I can't
7 remember the year. I believe it was a '99 or a 2000
8 model.

9 Q Do you have an idea as to how fast the car
10 was going when it struck you?

11 A Ma'am, I'm going to guess 35 to 45 miles an
12 hour.

13 MR. ARNDT: Object to form.

14 BY MS. ONOFREY:

15 Q Do you know, though, as you were setting the
16 flares, had the traffic slowed down, or was it still
17 going -- had the traffic slowed down compared to what
18 you would typically see on a highway without an
19 accident?

20 A No, ma'am; it had to be at a slower pace.

21 Q And at the time that you -- first of all,
22 describe the impact for me. Where did the car impact
23 with your body?

24 A Along my left side and back.

25 Q At the time of impact, what did your body

1 do? You said you were on the hood of a car. You were
2 thrown backwards onto the hood?

3 A Yes, ma'am. I went onto the hood of the
4 car. I basically rode the car 'till the car was
5 stopped or nearly stopped. I then rolled off of the
6 fender and landed on the paved shoulder.

7 Q Do you know approximately how long you rode
8 the car until it stopped?

9 A No, ma'am.

10 Q I think you just said you landed on the
11 shoulder. Do you mean your shoulder or the shoulder
12 of the road?

13 A The shoulder of the road.

14 Q Okay. And when you were thrown or rolled
15 off the hood of the car, how did you land? What part
16 of your body came in contact with the pavement?

17 A It was more my left side.

18 Q Were you able to get up at that time?

19 A Yes, ma'am.

20 Q Obviously you had some pain at that point,
21 but, if you could, describe for me what you were
22 feeling at that time in terms of complaint of pain or
23 injuries.

24 A At that time, I had a large laceration on my
25 left elbow. It was bleeding quite a bit. The left

Horizontal lines for handwritten notes or answers.

1 side of my body, what I describe as my left hip, it
2 hurt, it was a pain sensation. My lower leg, about
3 halfway between the knee and the ankle, had a large
4 bruise, and my left ankle was sore.

5 Q The pain that you felt in your hip at that
6 time, was it localized in your hip, or was it
7 radiating, if you know?

8 A Ma'am, I don't really know. All I know is
9 it hurt.

10 Q Okay. And did you receive emergency medical
11 treatment on the scene?

12 A Yes, ma'am. The paramedics with Columbia
13 County MS were there due to the other wreck. They
14 examined me. We decided I'd go to the hospital, but I
15 elected to go in a patrol car instead of in the
16 ambulance.

17 Q What hospital did you go to?

18 A Dade County Medical Center.

19 Q And you were seen there in the emergency
20 room?

21 A Yes, ma'am.

22 Q And you were released that day?

23 A Yes, ma'am.

24 Q After that initial emergency room visit, as
25 a result of it, were you taken off work?

1 A Yes, ma'am.

2 Q For approximately how long?

3 A The emergency room doctor that day, Dr.
4 Starbuck, released me on the 13th. I actually
5 returned to work on the 14th.

6 Q So that was about three or four days off?

7 A Yes, ma'am.

8 Q When you returned to work on the 14th, were
9 you returned regular duty, or was it modified duty?

10 A No, ma'am; it was regular duty.

11 Q You're still currently employed as a
12 corporal, correct?

13 A Yes, ma'am.

14 Q Have you actually returned to work? Are you
15 currently working?

16 A Yes, ma'am.

17 Q And are you working regular duty?

18 A Yes, ma'am.

19 Q So your duties haven't changed at all since
20 being back at work currently?

21 A Well, when I came back to work, I was on
22 light duty.

23 Q You're talking after the surgery?

24 A Right.

25 Q Okay. So going back, though, when you

1 returned on December 14th, how long did you work
2 regular duty before being taken back off work?

3 A The last day I worked was January the 18th.

4 Q So you worked from December 14th through
5 January 18th as scheduled and at your regular duty?

6 A Yes, ma'am.

7 Q Was it Dr. Garcia that took you off work
8 beginning January 18th?

9 A No, ma'am.

10 Q What happened that caused that to be your
11 last day?

12 A I had actually scheduled leave time. The
13 18th was scheduled to be my last day of work for a
14 week. I had scheduled time to hunt. Due to my back
15 hurting, I couldn't hunt, I wasn't able to.

16 On January the 20th, which is my father's
17 birthday, my family and I went to my father's house,
18 which is just a few miles from ours, to celebrate his
19 birthday. While at his house, I coughed, and, when I
20 coughed, I ended up on the floor. They had to
21 physically help me get up.

22 The next morning, I returned back to Lake
23 City Medical Center.

24 Q The hunting, I don't want to call it a trip
25 because I'm not sure you were going anywhere, but you

1 were scheduled to hunt. Were you scheduled to
2 actually go somewhere to hunt?

3 A No, ma'am. Dade County is rural. The hunting
4 club I'm in is about 12 miles from my house.

5 Q What club is that? What's the name of the
6 club?

7 A Palestine Hunting Club.

8 Q Palestine?

9 A Yes, ma'am.

10 Q So the week that you had scheduled off, you
11 were just going to go back and forth to the hunting
12 club to go hunting?

13 A Yes, ma'am.

14 Q You weren't going anywhere away for a week
15 at a time, you were just going to go back and forth to
16 the hunting club?

17 A Yes, ma'am.

18 Q Did you do that at all during that week
19 prior to your father's birthday?

20 A No, ma'am.

21 Q And you didn't go on a camping trip or
22 anything like that?

23 A No, ma'am.

24 Q Had you been camping at all between the time
25 of the accident and your father's birthday party?

Series of horizontal lines for handwritten notes or answers.

1 A No, ma'am.

2 Q What did you do the -- you were off the
3 18th? Were you actually off the 18th, or was that --

4 A No, ma'am; I worked the 18th.

5 Q So the 19th was your first day off?

6 A Yes, ma'am.

7 Q And then the 20th was the birthday party.
8 What did you do on the 19th?

9 A Stayed home.

10 Q Do you recall what you did while you were at
11 home?

12 A No, ma'am.

13 Q Up until the coughing episode at your
14 father's birthday, while you had returned to work,
15 what sort of pain were you having in your back during
16 that time? And I don't mean while you were at work.
17 That was probably a poor question.

18 But during the time period between your
19 returning to work and then the coughing episode on the
20 20th, could you describe what your back pain was like
21 during that time?

22 A From the day the wreck happened on December
23 the 10th, I had a constant pain that I described as
24 being in my left hip.

25 The doctor at Dade County Medical Center gave

1 me some -- the day I was struck by the car, gave me
2 some 800 milligram Motrin, and, as long as I took the
3 Motrin, it was tolerable. I could function while I
4 was taking the Motrin.

5 Q Was the pain in your left hip at that time
6 localized, or did you feel it radiating down into your
7 leg, your left leg?

8 A Ma'am, I would call it localized.

9 Q And then on your father's birthday, you're
10 saying that you -- well, describe what activities you
11 were doing at the time that you coughed. Were you
12 doing anything physical or were you just -- what were
13 you doing at the time that you coughed?

14 A It was in the late evening. We went out to
15 his house and he was actually cooking outside,
16 grilling out. I was drinking a Coke-Cola, and I was
17 standing in my mother's kitchen with the Coke-Cola,
18 and I reached over and I dropped the can in the
19 garbage can. And I coughed, and that was -- again,
20 the next thing I realized I was on the floor.

21 Q Did you have a cold at that time? Was the
22 cough as a result of a cold, or do you know?

23 A I hadn't -- I had been coughing for two or
24 three days, yes.

25 Q And at the time you coughed, describe for me

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

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

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

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

1 is your deposition, not hers. It's really not
2 proper for you to ask her.

3 BY MS. ONOFREY:

4 Q You don't recall offhand how much you paid?

5 A No, ma'am.

6 Q After the surgery you stayed under the care
7 of Dr. Garcia, or were you again referred out?

8 A No, ma'am; I'm still under the care of Dr.
9 Garcia.

10 Q When did you last see him?

11 A Physically saw him around April the 1st.

12 Q Are you seeing him about once a month, or
13 more or less?

14 A No, ma'am. The last time that I physically
15 saw him was around April the 1st. I've been in
16 contact with his office a couple of times by phone.

17 He put me on physical therapy for well over
18 a month. Most of what I've done since then has either
19 been with physical therapy or by telephone.

20 Q To your knowledge, has he released you yet,
21 or are you still actively scheduled to see him, or has
22 he said: Look, see me as needed?

23 A Basically, see me as needed.

24 Q Are you still undergoing physical therapy,
25 or has that stopped?

1 A No, ma'am.

2 Q Other than being seen at the emergency room
3 on the two times that you mentioned, the initial day
4 that the accident happened and then the day after your
5 father's birthday party, and being seen by Dr.
6 Nasrullah, Dr. Padget, Dr. Wiss and Dr. Garcia,
7 have you been seen by any other health care provider
8 for this injury?

9 A No, ma'am.

10 Q Following the 2/29 surgery, when did you
11 first return to work?

12 A Ma'am, I believe it was on May -- it was
13 either May 1st or May 15th.

14 Q Since that time, whatever date it was,
15 sometime in May --

16 A Around the 1st of May.

17 Q -- you've been working full time regular
18 duty?

19 A No, ma'am. I was on what we call light duty
20 from May 1st to June the 15th.

21 Q Did you receive your regular rate of pay
22 during that time --

23 A Yes.

24 Q -- or was it reduced? It was regular?

25 A Yes, ma'am.

Series of horizontal lines for notes or additional text.

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

3 A Yes, ma'am.

4 Q Are you on salary?

5 A Yes, ma'am.

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

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

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

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

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

18 A Yes, ma'am.

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

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

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

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

7 A Yes.

8 Q Were you working your regular hours?

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

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

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

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

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

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

Horizontal lines for handwritten notes on the right side of the page.

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

3 A Yes.

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

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

11 Q March of 2000?

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

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

19 A Yes, ma'am.

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

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

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

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

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

4 A I had between 1400 and 1500 hours.

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

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

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

12 A Yes, ma'am.

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

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

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

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

Horizontal lines for handwritten notes or signatures.

1 to get balanced.

2 Q Do you have a lawsuit pending against the
3 driver or any third party?

4 A Yes.

5 Q Who are you suing or have claims against?

6 MR. ARNDT: If you're not sure off the top
7 of your head, just tell her that.

8 THE WITNESS: It's the insurance carrier for
9 the Alachua County School Board. I don't know
10 the name of it.

11 BY MS. ONOFREY:

12 Q What about the driver of the vehicle that
13 hit you?

14 A In other words, am I seeking settlement from
15 him personally?

16 Q From him or his insurance carrier. Or do
17 you believe that to be his insurance carrier?

18 A I believe that to be his insurance carrier.

19 Q So what you just mentioned was pertaining to
20 the vehicle that hit you?

21 A Yes.

22 Q Okay. Do you know, have you actually filed
23 a lawsuit, or are you trying to settle without filing
24 lawsuit?

25 A Without; trying to settle.

1 Q But you haven't settled it yet?

2 A No, ma'am.

3 Q Had you ever had a back injury or any
4 complaints relating to your low back prior to this
5 accident?

6 A No, ma'am.

7 Q Have you ever had an injury on the job prior
8 to this accident?

9 A No, ma'am.

10 Q Have you had any accidents involving
11 personal injury since this accident?

12 A No, ma'am.

13 Q Who is your primary care physician under
14 your health insurance?

15 A I really don't have one.

16 Q Had you ever had one?

17 A No, ma'am.

18 Q You really haven't had to go to the doctor
19 for any reason, say, in the past five years?

20 A No, ma'am.

21 Q Other than this surgery that you had on
22 February 29th, have you had any other surgeries in
23 your lifetime?

24 A When I was two years old, I had eye surgery.

25 Q Eye surgery?

Horizontal lines for handwritten notes or answers.

1 A Yes, ma'am.

2 Q Anything other than that?

3 A No, ma'am.

4 Q Any major illnesses in your lifetime?

5 A No, ma'am.

6 Q Other than relating possibly to the surgery,
7 were you ever hospitalized for any reason?

8 A No, ma'am.

9 Q Do you have any sense of whether you're
10 about to settle your case or not, or do you know?

11 A I don't know, ma'am.

12 MS. ONOFREY: I don't think I have any
13 further questions. I'm just going to review my
14 notes for a second. (Examining documents.)

15 BY MS. ONOFREY:

16 Q Who else was at your father's party? Was
17 your wife there?

18 A My wife, my mother and father, and I believe
19 our children were there.

20 Q How many children do you have? I didn't ask
21 you that.

22 A Two.

23 Q How old are they?

24 A One is 17 and one is 11.

25 MS. ONOFREY: I don't have any further

1 questions.

2 MR. ARNDT: We'll read.

3 (Witness excused.)

4 (Thereupon, the deposition was concluded at
5 10:45 a.m.)

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1 ERRATA SHEET
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3 IN RE: PHILIP HAWKINS vs. STATE OF FLORIDA
4 CLAIM NO.: 263-55-6571 D/A: 12/10/99

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7 PAGE LINE WHERE IT READS SHOULD READ

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16 With the above corrections, if any, and by my
signature affixed hereon, I hereby sign my
17 deposition.

18 PHILIP MARK HAWKINS

19
20 Sworn to and subscribed before me
this ____ day of _____ A.D. 2000

21
22 Notary Public, State of Florida

23 My Commission expires:
24 RETURN TO: STATEWIDE REPORTING SERVICE
606 Blackstone Building
25 Miami, Florida 32202
(904) 353-7706

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**Phillip Hawkins v.
Anstar Biotech Industries**

Deposition of Susan Sheridan

5/23/2003 11:47 AM

Condensed Transcript for Note-taking

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

2

CASE NO.: 9078-001-CA-02

3

PHILLIP HAWKINS,

4 Plaintiff/Counter-Defendant,

vs.

5 ANSTAR BIO TECH

OF FLORIDA,

6

Defendant/Counter-Plaintiff.

7

_____ /

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9 DEPOSITION OF
10 SUSAN SHERIDAN

11

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

19

20

21

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23

1 APPEARANCES:

2

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14 Counsel for the Defendant

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1 A. Since January 30th, 31st, something like that.
 Q. Of this year?
 2 A. Yes.
 Q. Okay. Did you work for Nationwide prior to
 3 this job?
 4 A. Yes, I did.
 5 Q. Okay. How many years did you work for
 6 Nationwide?
 7 A. It would have been 10 years in October of this
 8 year, so 9 1/2, I guess.
 9 Q. Okay. And when did you obtain your real estate
 10 license?
 11 A. I just told you; January 30th of this year.
 12 Q. Strike that. You did tell me that. Did you
 13 work in real estate prior to that at all?
 14 A. No.
 15 Q. What type of claims did you handle during that
 16 nine years that you were at Nationwide?
 17 A. Everything: homeowners, auto, bodily injury.
 18 Q. Did you handle mold losses?
 19 A. Yes, I did.
 20 Q. How many?
 21 A. I have no idea.
 22 Q. Less than a hundred? More than a hundred?
 23 A. More than a hundred.

1 Q. What years did you start working with mold
 losses?
 2 A. Probably the end of 1999 and after it became
 more prevalent.
 3 Q. I just want to go back to that question I asked
 4 you about real estate. Did you get your -- my
 5 understanding is it's a two-step process. You have to
 6 get your sales associate first and then broker license,
 7 or --
 8 A. You only take the brokers exam if you want to
 9 be a real estate broker. If you just want to be a real
 10 estate salesperson or a realtor, you just take the
 11 salespersons exam.
 12 (Discussion off the record.)
 13 BY MR. THORN:
 14 Q. Okay. So you think in '99 or so you started
 15 working on mold losses?
 16 A. Yeah. I'm sure I handled some prior to that
 17 when I did homeowners claims way back when, earlier with
 18 the company, but I don't recall.
 19 Q. Okay. Your counsel just represented you
 20 haven't had any depositions. This is the first
 21 deposition you've ever had in a legal matter?
 22 A. Yes.
 23 Q. Have you ever testified in a civil or criminal

1 trial?

A. No.

2 Q. All right. Just some ground rules: I'm sure
3 your counsel has already gone over this. There's a
4 record of this, and so therefore your answers have to be
5 verbal. Shaking of the head and nodding of the head --

6 A. Correct.

7 Q. Also you may anticipate your answer while I'm
8 formulating a question. I give the same advice to my
9 clients all the time, so even though if you know the
10 answer, wait, because it's very helpful to the court
11 reporter.

12 Okay. What type of training, if any, did you
13 have with mold losses?

14 A. There were several seminars and training
15 courses that Nationwide provided us, and we also attended
16 some outside seminars and training courses.

17 Q. What do those courses entail? Can you educate
18 me on that?

19 A. Examples of various types of mold, how the
20 cleanup occurs.

21 Q. So can you give me some examples of molds, the
22 types of molds that are out there?

23 A. By name?

Q. Yes.

1 A. No.

Q. Do you know what Stachybotrys is?

2 A. Sure I do.

Q. Okay. And Aspergillus?

3 A. Yes.

4 Q. Penicillium?

5 A. Yes.

6 Q. How many of those seminars or training courses
7 did you take approximately?

8 A. A lot -- six or eight.

9 Q. Okay. And is all that from '99 forward?

10 A. Yes.

11 Q. Okay. Now, have you ever talked to Pauline
12 Phillip Hawkins?

13 A. Yes, I have.

14 Q. Okay. And was that by telephone?

15 A. Yes.

16 Q. Do you know when the date of loss was in this
17 claim?

18 A. I don't recall.

19 Q. Would September 23, 2002, refresh your memory
20 in any way?

21 A. That sounds like it could be it.

22 Q. And when did you first learn about this loss?

23 A. I think it was in November.

Horizontal lines for handwritten notes or signatures.

1 Q. In November?
 A. I think.
 2 Q. Of 2002?
 A. Best I recall.
 3 Q. Okay. And who reported the claim to you; do
 4 you remember?
 5 A. No.
 6 Q. Have you reviewed the file at all for
 7 preparation of this deposition?
 8 A. Briefly.
 9 Q. Was that today?
 10 A. Actually the day before yesterday. I haven't
 11 had a chance to today.
 12 Q. And don't comment on any discussions you had
 13 with your attorney. Have you talked to anyone else about
 14 this case?
 15 A. No.
 16 Q. And you reviewed the file, you said, briefly
 17 yesterday?
 18 A. The day before yesterday.
 19 Q. Day before yesterday. Can you tell me, did you
 20 speak with Phillip Hawkins' brother in this loss?
 21 A. Yes, I did.
 22 Q. Do you remember his name?
 23 A. Remetz something.

1 Q. Okay. Laurence Remetz, would that refresh your
 memory?
 2 A. Yeah.
 Q. And is Mr. Remetz the insured in this loss?
 3 A. No.
 4 Q. What was your understanding of his relationship
 5 with his sister? Was he living down here in Florida?
 6 A. I was told he was living in Florida, that he
 7 was watching her property while she was out of state, and
 8 that he would be handling the loss for her.
 9 Q. Who told you that he would be handling the loss
 10 for her?
 11 A. She did and he also did.
 12 Q. Did you send back a letter confirming that with
 13 her that she authorized --
 14 A. I don't recall.
 15 Q. Did you get any release from her indicating
 16 that he would step into her shoes and act --
 17 A. No. It was reported in that manner, I believe.
 18 Q. And you're -- you were a licensed adjuster in
 19 the state of Florida.
 20 A. I still am.
 21 Q. Okay. There are certain rules, that you're
 22 familiar with, in terms of maintaining your license.
 23 A. Uh-huh.

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

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

1 Vero Beach.

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

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

6 Q. Have you reviewed your log notes?

7 A. Briefly, but not dates.

8 Q. And what happened when you called over to the
9 county?

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

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

19 A. Yes, she did.

20 Q. Okay. So someone had to turn that valve back
21 on.

22 A. Apparently.

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

25 A. No.

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

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

7 Q. Did you interview Beth Jordan?

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

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

11 A. No.

12 Q. Have you ever interviewed Terry Southard?

13 A. No.

14 Q. Have you ever interviewed anyone from Meeks
15 Plumbing?

16 A. No.

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

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

23 Q. That's it?

24 A. Uh-huh.

25 Q. That's a "yes"?

Horizontal lines for handwritten notes or signatures.

1 photographs and documents in this case, unfortunately.
This is Exhibit A of Mr. Reinhart's deposition that just
2 finished. And so for purposes of trying to save time
here, I'm going to show you this Exhibit A. Is that the
3 complex where Mr. Hawkins resides?

4 A. Yes.

5 Q. Okay. And I think you described it as a
6 two-level unit.

7 A. Correct.

8 Q. I'm going to show you Exhibit B of the Reinhart
9 deposition and ask you if you recognize that, and tell me
10 where within that unit that would be.

11 A. That's underneath the stairs.

12 Q. Okay. And Exhibit C of the Reinhart
13 deposition, can you indicate where that would be, if you
14 know?

15 A. I believe the downstairs bathroom.

16 Q. And Exhibit D of the Reinhart deposition, do
17 you know where that is located?

18 A. The stairwell downstairs, underneath the
19 stairs.

20 Q. Okay. Can you indicate to me what this black
21 is, if you know?

22 A. Mold.

23 MR. Walsh: Are you referring to Exhibit C?

1 MR. THORN: I'm sorry. Exhibit C.

BY MR. THORN:

2 Q. That's mold?

A. Mold.

3 Q. Okay. As well as in Exhibit D?

4 A. Correct.

5 Q. Okay. And was that mold present when you were
6 in the unit?

7 A. Yes, it was.

8 Q. Okay. And had that unit been altered in any
9 way? And what I mean by altered, had someone taken the
10 rugs up or removed any items?

11 A. When I was there?

12 Q. Yes.

13 A. No, nothing had been touched.

14 Q. And was there evidence, physical evidence, of
15 water on the stairway?

16 A. The carpet was saturated, the drywall had
17 wicked up, and there was mold on the walls.

18 Q. Was it evident to you that the water had
19 indicated a downward angle?

20 A. Yes.

21 Q. Okay. And in your investigation, did you
22 review the water bill in this loss?

23 A. I later confirmed that there was a thousand

Horizontal lines for handwritten notes or answers.

1 gallons of water in -- between June and July or something
to that effect.

2 Q. Okay. My question was: Had you reviewed the
water bill?

3 A. No, I had no water bill.

4 Q. Okay. You just testified that later you
5 determined there was a thousand gallons within a 30-day
6 time frame.

7 A. Uh-huh.

8 Q. Is that a "yes"?

9 A. Yes, it is. I'm sorry.

10 Q. Unfortunately, other people may read this.

11 A. I understand.

12 Q. Okay. I want to be clear on the time frame
13 because it's important. All right. Did someone tell you
14 about the water bill, or you actually reviewed the water
15 bill?

16 A. When I called the county, they had indicated
17 that they showed no excessive water usage, and I asked
18 them what they considered excessive, and they could not
19 give me a number. I later received a letter from a
20 public adjuster who indicated he was representing
21 Mr. Hawkins, and he said that there was a thousand
22 gallons of water usage, and I called to confirm that
23 fact.

1 Q. Okay. Was that confirmed?

A. Yes.

2 Q. Was that before or after you denied the claim?

A. That was after.

3 Q. Okay. And that would be with -- is that North
4 American Insurance Consultants, Pat Garrett, from Tampa?

5 A. Yes, I believe so. I had spoken to
6 Mr. Hawkins, and she had indicated that she had not
7 received a bill that was any different than prior months
8 or months after that.

9 Q. I'll go back to that retroactively. Trust me,
10 you'll have more than an opportunity to testify.

11 Now, when you were at the unit, did it appear
12 to you that this had been a surge of water or a slow
13 leak?

14 A. A slow leak, based on the fact that the toilet
15 valve was severely corroded, and the baseboard underneath
16 it was rotted in the master bath upstairs.

17 Q. So it's your belief and your testimony that you
18 believe that the damage caused in this unit was by a slow
19 leak?

20 A. Yes.

21 Q. Have you subsequently learned that there was
22 work being done by the county in the area?

23 A. I was aware of that at the time, and I could

Horizontal lines for handwritten notes or signatures.

1 not confirm with the county that they had done anything
with the valve to Mr. Hawkins' home in reference to
2 that work being done by the county.

Q. And your one call was to Tessa?

3 A. Uh-huh.

4 Q. Okay. What was her role in the county?

5 A. She was in the water department in the customer
6 service department.

7 Q. Okay. Did you go over there and search the
8 records at all?

9 A. No.

10 Q. Did you go over there and meet with anyone in
11 the water department?

12 A. No.

13 Q. Did you go over there and meet with the risk
14 manager?

15 A. No. I'm trying to remember if I spoke to him
16 on this claim or another one. They all kind of run
17 together after a while.

18 Q. All right. Now, did you interview any of the
19 people that lived in the Waverly apartment complex?

20 A. No. I made several phone calls to the
21 association's office, which were not returned.

22 Q. Okay. But did you drive over there and talk to
23 anyone or assign an outside adjuster or anything?

1 A. An outside adjuster?

Q. Yeah. Would you do that at all in your work?

2 A. Yes. I never could find a person in the office
to talk to.

3 Q. Okay. My question is not whether you found
4 someone, whether or not you actually drove over or sent
5 someone else to go over.

6 A. No. I would do that myself.

7 Q. Okay. And you didn't do it in this case?

8 A. I did. I couldn't find anyone.

9 Q. You drove over there?

10 A. Yes.

11 Q. Okay. Was that the same day that you met with
12 Mr. Remetz?

13 A. Yes. And there were actually city workers
14 there that day.

15 Q. And you believe that there were city workers
16 from the county there that day?

17 A. Uh-huh.

18 Q. Okay. What were they doing?

19 A. They were fixing a valve, but it was not -- had
20 nothing to do with that unit. They had a water pipe
21 break, they said.

22 Q. And the water pipe break was in the same
23 apartment complex?

Horizontal lines for notes or additional text.

1 A. Yes, but it didn't have anything to do with
that unit.

2 Q. That wasn't my question. My question was: The
3 county officials were fixing a pipe break, and it was the
4 same complex and it was the same day that you were there?

5 A. It was a very large complex.

6 Q. Okay. I appreciate your editorial comments,
7 but my question, again, is whether or not --

8 A. Yes, they were there.

9 Q. Okay. Did you go right over to them and talk
10 with them about this loss?

11 A. No. I asked that on the telephone when I
12 followed up with the City of Vero Beach Water Department.

13 Q. I understand all that. But did you --

14 A. No, I did not ask the workers.

15 Q. When you were there that day and saw the county
16 officials on that day when you were there that you met
17 with Mr. Remetz and you met with Chris Reinhart, did you
18 go over to them, the county officials, and speak with
19 them?

20 A. No, I did not.

21 Q. All right. When you subsequently called the
22 county, did you ask them whether they were working in
23 that area in June or July?

24 A. No.

1 Q. Has anyone from Nationwide ever asked that
2 question, that you know of, as we sit here today in 2003?

3 A. I have no idea. I can only speak for myself.

4 Q. Okay. Who else worked on the file besides you?
5 Who was your supervisor there?

6 A. William Lang.

7 Q. So after the -- strike that. Prior to
8 September 25, prior to sending this letter marked as
9 Exhibit A in this deposition, had you made a
10 determination whether you would pay this claim at all?

11 A. No.

12 Q. Had you ever represented to anyone that you
13 would not pay this claim?

14 A. I had explained to Mr. Hawkins what the policy
15 stated as far as continuous and repeated seepage or
16 leakage and explained to her that I had to conference the
17 file with my Walshs and his Walshs, and after that telephone
18 conference and the photo review and everything, that a
19 determination would be made.

20 Q. But you had already testified in this
21 proceeding that you determined it was a slow leak when
22 you were in there.

23 A. Based on my investigation.

24 Q. Your personal investigation?

25 A. Correct.

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

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

4 Q. Why would that be?

5 A. That was procedure.

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

9 A. Yes.

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

12 A. No.

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

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

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

19 A. Correct.

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

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

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

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

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

5 A. What I found?

6 Q. Yes.

7 A. Yes.

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

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

13 Q. Who is Natalie Simons?

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

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

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

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

1 the second sentence "reported to have occurred on
2 9/23/02."

3 A. Right.

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

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

12 Q. But there's no question the meeting with
13 Mr. Remetz and Mr. Reinhart would have been before the
14 25th.

15 A. Correct.

16 Q. Okay.

17 A. I sent that out at the direction of my manager,
18 William Lang.

19 Q. Right. Did Mr. Varvaro call up the county --
20 strike that.

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

23 A. I believe so.

24 Q. Okay. And so he then advised you to send this
25 document up?

1 A. Correct.

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

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

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

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

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

15 A. Since the date of loss?

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

17 A. Oh, yes.

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

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

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

24 A. I'm sure, not -- probably not him, but his
25 office.

Horizontal lines for notes on the right side of the page.

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

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

1 Beach Water Department.

Q. Was that a true statement by Mr. Garrett?

2 A. Yes. My question to them was: Who turned the
water off if it was only one month?

3 Q. Okay. Did you find out?

4 A. They had no record of any report ever being
5 filed that the water had to be turned off and on at that
6 unit.

7 Q. My question was: Who turned it on; do you
8 know? Did you ever find out?

9 A. No. Somebody had to turn it on.

10 Q. Right. Well, because you know Mr. Hawkins
11 represented to you that it was turned off.

12 A. Yes.

13 Q. And you didn't have any reason to doubt that.

14 A. No.

15 Q. Okay. But for the water being turned on, it
16 wouldn't have reached this unit.

17 A. It might have from another unit, but there did
18 not appear to be any water damage from any of the other
19 units surrounding hers.

20 Q. So your investigation didn't reveal some
21 collateral unit was responsible.

22 A. Correct.

23 Q. Okay. In your investigation, did you ever seek

1 any records from the county about any claims in the area
by any of the other units?

2 A. I don't believe so.

Q. Did you ever interview any neighbors or people
3 in the area?

4 A. No.

5 Q. Did Mr. Garrett indicate to you what the extent
6 of the loss was in terms of what she's claiming the
7 damage was?

8 A. No.

9 Q. Have you reviewed any documents relative to
10 that?

11 A. I would have only dealt with him briefly prior
12 to my leaving.

13 Q. Prior to Mr. Garrett's involvement, had you
14 ever reviewed any documents of the extent of the damages
15 in this unit?

16 A. I heard a dollar figure for the amount of the
17 bill from Servpro.

18 Q. All right. Other than Servpro, anyone else
19 ever represent a number to you?

20 A. No.

21 MR. THORN: Give me a second.

22 (Short pause.)

23 MR. THORN: I don't have anything else.

Horizontal lines for notes or additional text.

CROSS-EXAMINATION

BY MR. Walsh:

2 Q. You're operating under the assumption that
3 Mr. Hawkins turned off the water when she left in April
4 or whenever it was?

4 A. Correct.

5 Q. And you have no way to independently verify
6 that, do you?

7 A. No.

8 Q. And if she had left the water on and everything
9 was closed up in the house and no valves were running,
10 there wouldn't be any water usage either, would there?

11 A. No.

12 Q. All right. And there was also -- you were
13 given information that there had been a thousand gallons
14 of water usage between June and July; is that correct?

15 A. Yes.

16 Q. All right. And at some point in time, were you
17 advised by Mr. Garrett or by the city that there had been
18 no water usage between July and the time that the loss
19 was reported in September?

20 A. Correct.

21 Q. And do you have any information or knowledge as
22 to who would have turned off the water in July in order
23 for there not to be any water coming into the apartment,

1 condominium?

A. No.

2 Q. And did anybody ever provide any explanation to
3 you as to why there would be a two-month delay in
4 reporting this claim?

4 A. Mr. Hawkins said that her brother was
5 supposed to be checking the home weekly, and when I had
6 repeated to her what he had told me the day I met him
7 that he hadn't been there for at least six weeks, she
8 said, "Well, I thought he was watching it every week, but
9 I can't count on him."

10 MR. Walsh: Okay. That's all the questions I
11 have. Thank you.

12 MR. THORN: Nothing else. Thanks for
13 coming in. Good luck to you.

14 THE WITNESS: Thanks.

15 THE REPORTER: Did you want to read this or
16 waive?

17 THE WITNESS: I'll waive. That's fine.

18 (Thereupon, the reading and signing of this
19 deposition were waived, and this deposition concluded
20 at 12:34 p.m.)

21
22
23

Horizontal lines for notes or additional text.

1 CERTIFICATE OF OATH
2 STATE OF FLORIDA)
) SS
3 COUNTY OF BREVARD)
4

I, JOAN D. BARTON, Registered Professional
5 Reporter, the undersigned authority, do hereby certify
that SUSAN SHERIDAN personally appeared before me
6 and was duly sworn.

7 WITNESS MY HAND and official seal this
8 31st day of July, 2003, at the City of Melbourne,
9 County of Brevard, State of Florida.

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JOAN D. BARTON, RPR
Notary Public, State of Florida

1 CERTIFICATE OF REPORTER
2 STATE OF FLORIDA)
) SS
3 COUNTY OF BREVARD)
4

I, JOAN D. BARTON, Registered Professional
Reporter, do hereby certify that I was authorized to and
5 did stenographically report the deposition of MELISSA
6 BURTON; that a review of the transcript was not
7 requested; and that the foregoing transcript, pages 1
8 through 42, is a true record of my stenographic notes.

9
10 I FURTHER CERTIFY that I am not a relative,
11 employee, attorney, or counsel of any of the parties,
12 nor am I a relative or employee of any of the parties'
13 attorney or counsel connected with the action, nor am
14 I financially interested in the event of this cause.

15
16 DATED this 31st day of July, 2003, at
17 the City of Melbourne, County of Brevard, State of
18 Florida.

19
20
21
22
23

JOAN D. BARTON, RPR

Horizontal lines for signature and notes on page 43 and page 44.

**Phillip Hawkins v.
Anstar Biotech Industries**

Deposition of Wayne Varvaro

5/23/2003 1:05 PM

Condensed Transcript for Note-taking

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

2

CASE NO.: 3003-5453-CA-07

3

PHILLIP HAWKINS

4 Plaintiff/Counter-Defendant,

vs.

5 ANSTAR BIO TECH

OF FLORIDA,

6

Defendant/Counter-Plaintiff.

7

_____ /

8

DEPOSITION OF

9

Wayne Varvaro

10

11

12 The Deposition of Wayne Varvaro, a witness

13 in the above-entitled cause, taken by the Plaintiff

14 herein, before MARY K. HIGGINS, RPR, Court Reporter

15 and Notary Public in and for the State of Florida at

16 Large, at 9900 90th Street, Suite F, Vero Beach, Florida,

17 commencing at 1:05 p.m. and concluding at 1:51 p.m. on

18 May 23, 2003, pursuant to Notice.

19

20

21

22

23

1 APPEARANCES:

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9 EXHIBITS

10 NUMBER DESCRIPTION PAGE

11 1 Interoffice Memorandum dated 10/8/02 29

12 2 Work orders of water breaks at 29

13 Waverly Place

14

15 3 Water Consumption History for 475 East 34

16 Waverly Place, Apartment 7C, photos

17

18

19

20

21

22

23

1 THEREUPON:

Wayne Varvaro,

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

3 DIRECT EXAMINATION

4 BY MR. Wallace:

5 Q. Tom, we've had an opportunity to meet. I'm

6 John Wallace. I represent Mrs. Sheridan in this matter.

7 A. Yes.

8 Q. I'm going to ask you questions, it's not going

9 to be that long, relative to this lawsuit that is pending

10 in Indian River County.

11 Can you just state your name for the record?

12 A. Wayne Varvaro, V-A-R-V-A-R-O.

13 Q. And where do you work?

14 A. Indian River County Utilities.

15 Q. Can you tell me in what capacity, Tom?

16 A. Operations manager.

17 Q. What does that encompass?

18 A. I oversee all the operations of water and sewer

19 relating to Indian River County.

20 Q. Okay. And have you had an opportunity to

21 investigate a water claim out at the Waverly apartment

22 complex involving this lawsuit?

23 A. The only investigating that I did was looking

1 at the back bills to see when water consumption was used.

2 Q. Okay. Have you talked to anyone from the
3 county about this case?

4 A. No, sir, other than our risk management officer
5 and my director.

6 Q. Is that Beth Jordan?

7 A. Yes, sir.

8 Q. Is that the woman that's in the hallway?

9 A. Yes.

10 Q. Okay. And what did you talk to her about?

11 A. Just what this is relating to. She was -- I
12 called her the day that I was notified of it, and she
13 went to the site.

14 Q. And did she speak to any representative at the
15 site from the complex?

16 A. I believe there was just a homeowner that was
17 there, as far as I know.

18 Q. Have you looked at any records relative to
19 whether or not the county was engaged in any business out
20 at that facility in the summer of 2002?

21 A. Just looking to see if there was other breaks,
22 what other breaks that might have occurred during that
23 time.

24 Q. During that time frame, had the county done any
25 work in that area?

1 A. There was -- I don't have specific dates, but
2 there was times that the water main within the Waverly
3 Place did have breaks in it that required shutting down
4 the water and doing repairs.

5 Q. Do you have an idea approximately what that
6 time frame was?

7 A. No, sir, I don't. I don't have the dates, no,
8 sir.

9 Q. Would it be during the summer of 2002 at some
10 point?

11 A. Yes. When you say "summer," if you're talking
12 June, July, and so forth, yes.

13 Q. Okay. Thank you. And what would the county
14 have been doing out there to begin with?

15 A. The county would get a call saying that there
16 was water coming up out of the ground, and we would go in
17 and shut the main off and cut the asphalt or concrete and
18 make repairs and turn the water service back on.

19 Q. Does that require you to shut down the water
20 within the facilities that are close by or affected by
21 that?

22 A. We turn off the mains, six-inch mains or so
23 forth like that. Yes, that's off.

24 Q. Okay. In terms of educating me on this, what
25 does that encompass? How do you do that?

Horizontal lines for handwritten notes on the right side of the page.

1 A. There is a valve that feeds certain sections
within that subdivision that we can turn off and isolate
2 certain sections and not affect the other customers.

Q. Okay. And who actually does that? Do you have
3 a crew who works for the water department that do all of
4 that?

5 A. Yes, sir, service workers.

6 Q. And do you keep records of the locations that
7 you work on and the employees?

8 A. There's records of breaks and -- but no details
9 of who was on that job at that time or whatever.

10 Q. Okay. And the records of the breaks indicate
11 the areas that were affected in Indian River County?

12 A. No, sir. It just basically -- in most cases
13 it's the address of the individual that called it in.

14 Q. Okay. And that would be citizens within the
15 community?

16 A. Somebody within Waverly Place could have called
17 it in, and we'll ask for their address, and that's
18 generally the case where that's what goes on the work
19 order and then, of course, as the service crew drives up,
20 they can see it bubbling up within the parking lot of
21 that area close to that address.

22 Q. Okay. And if that's the case, do you have to
23 go and turn off the water, the main valve there, for the

1 complex itself?

A. The main -- you know, there's, like I said,
2 there's individual valves that would shut down certain
sections within that area, yes.

3 Q. Okay. And somebody has to manually do that?

4 A. Yes, sir.

5 Q. What if the valve is off; is that possible?

6 A. No.

7 MR. ROSS: We're talking about the mains.

8 A. I think you might be confusing the main with
9 the home service.

10 BY MR. Wallace:

11 Q. You're right. I'm sorry. Relative to the home
12 service?

13 A. No, sir. We don't touch the individual
14 service. We just shut the main itself, because when we
15 shut the main, it shuts any water that's flowing into the
16 homeowner's, so we don't touch the individual valve for
17 the homeowner's.

18 Q. Okay. So in other words, once you hit that
19 main, it essentially kills any power to the home from
20 that connection.

21 A. Flow of water to that service, yes, sir.

22 Q. All right. What happens when you turn it back
23 on? What, if any, effect would that have on the home?

Horizontal lines for notes on page 7 and page 8.

1 A. If the valve was on already in the home, if it
was already on, none. It would -- could have some air in
2 it, it could have some dirt in it, but we in most cases
issue a boil water notice so that they know to boil the
3 water.

4 Q. What if it's off?

5 A. Then it's a dead valve. It should have no
6 effect on the house at all.

7 Q. So if you turn on the main line and it connects
8 to an existing valve, you're saying there's no -- it
9 shouldn't have any effect on it.

10 MR. ROSS: Let me just object to the form.

11 You're saying "existing valve." Are you talking
12 about -- there's a lot of valves. Are we
13 talking about a valve to an individual unit?

14 MR. Wallace: Yes.

15 MR. ROSS: Okay.

16 A. Yeah. If the valve to the unit homeowner's is
17 off, us turning the water back on, the crew knows that
18 you have to turn the water on slow. They've been in this
19 business for years and you just don't turn the valve on.
20 And at the same time when you're turning a valve that
21 size on, it takes quite a few turns to bring the water
22 flow back to normal, so it's not . . .

23 BY MR. Wallace:

1 Q. Yeah, I think counsel is correct when we talk
about this word "valve," I want to be real clear here for
2 the record.

A. The valve on the six-inch main when they're
3 restoring service back to the residents, they turn the
4 valve on slowly.

5 Q. Could the -- strike that. So your records
6 would reflect if the county was in fact working in or
7 about the area of the Waverly apartment complex in the
8 summer of 2002.

9 A. Yes, sir. There should be some form of
10 records, yes, sir.

11 Q. I'm going to ask you on the record without a
12 subpoena to produce those records to my firm, if you can.

13 A. Sure.

14 Q. Through your counsel, whoever handles that.

15 A. Just give me the dates that you're looking for,
16 and I can supply that.

17 Q. And I will gladly send it over in the mail to
18 you. I appreciate that.

19 A. Okay.

20 Q. Now, from your investigation, do you know
21 whether or not in the summer of 2002 there was any
22 complaints from anyone at Waverly?

23 (The witness hands business card to Mr. Ross.)

Horizontal lines for handwritten notes on the right side of the page.

1 MR. Wallace: Thank you very much for your
card.

2 MR. ROSS: Can I have one of those, too?

THE WITNESS: Sure. I just got promoted.

3 MR. ROSS: Thanks.

4 A. I'm sorry, can you repeat the question?

5 BY MR. Wallace:

6 Q. Oh, I'm sorry. My question was, do you know
7 whether or not in the summer of 2002 there was any
8 complaints in the Waverly area by anyone?

9 A. I couldn't tell you. I know when I was in that
10 area in October when this all took place, that the
11 residents were concerned that there had been quite a few
12 breaks within a short period of time, but I don't know
13 what that time frame was. I was acting as an
14 intermediate operations manager at that time, and June

15 July, August was before my time frame, so I couldn't --

16 Q. You weren't even involved in that?

17 A. I couldn't tell you.

18 Q. All right. Do you know who would have been the
19 person then?

20 A. Well, the person I replaced was Gene Rauth.

21 Q. How do you spell that?

22 A. R-A-U-G -- R-A-U-T-H. He's no longer with us.

23 Q. Sorry to hear that.

1 A. No, he moved on.

Q. Oh, I thought you said he was permanently no
2 longer with us.

All right. Now, you said you had some
3 complaints from the residents in September or October.

4 A. At that time I was dealing -- when I was in
5 that at that site watching the cleanup and making sure
6 that it was all being done properly, the president of the
7 homeowners association contacted me, because he lived in
8 the same complex -- what's your --

9 Q. My client.

10 A. Your client, yeah.

11 Q. Okay.

12 A. And I can't remember his name. I'd have to see
13 if I could find some records or notes that I took, but
14 he's no longer in that area either, but there was
15 concerns about some of the breaks in the last several
16 months, cleaning up, restorations, and so forth.

17 Q. Okay. What were his concerns? What did he say
18 to you, if you have a memory of that?

19 A. The volume of breaks that were taking place in
20 there, and through research we were trying to find out
21 why the breaks were happening. It was through poor
22 construction, poor inspections back in the '80s when the
23 complex was built.

Horizontal lines for handwritten notes on the right side of the page.

1 A. I know.

2 Q. All right. And what is his role? What does he
do?

3 A. He oversees all the water main repairs.

4 Q. Okay. And he's under you?

5 A. Yes, sir.

6 Q. And does he kind of have his own autonomy out
at the location to make decisions?

7 A. Yes.

8 Q. And you say there's some notice that you send
9 around?

10 A. Well, if we have to shut the main off, anything
11 less than 20 PSI in the water main, we have to notify
12 everybody to boil their water for 48 hours to make sure
13 there is no -- for us to do some testing to make sure
14 that we don't have any dirt or bacteria in the lines. So
15 we send boil-water notices out to people.

16 Q. Do you know whether or not that's ever happened
17 in the year 2002 over at the Waverly apartments?

18 A. I'm sure it has. The mains were big enough
19 that we've had to shut them down completely.

20 Q. Okay. Once again on the record I'm going to
21 ask you if you have any documents reflecting that, that
22 you send them to me and send them on to counsel as well.

23 A. You'll have to remind me of all of this.

1 Q. Yeah. I'll send a letter to you and a copy to
defense counsel indicating what I'm seeking.

2 A. Sure.

3 Q. Okay. And then what does that form tell you?

4 A. Just requesting them to boil water for 48 hours
5 or until further notice. If a sample fails, we will have
6 them boil water a little bit longer.

7 Q. Do you have an individual who works for the
8 county, a black male whose name is James?

9 A. James Lang.

10 Q. Lang.

11 A. He works under Beth Jordan.

12 Q. The mysterious last name we've been looking
13 for. Okay. Nothing badly reflecting on him.

14 All right. Now, and Beth is the risk manager?

15 A. And he works under Beth.

16 Q. Okay. And part of his job is to go out and
17 deal with claims or complaints by customers?

18 A. Yes. He was the first person I notified.

19 Q. Okay. And did you talk to Mr. Lang about
20 this claim?

21 A. No, because he got to the site, and for some
22 reason, he said he'll get with Beth, and then he left,
23 and Beth Jordan showed up.

24 Q. Okay.

Blank lined area for notes or additional text.

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

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

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

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

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

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

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

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

15 A. It was October and --

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

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

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

1 A. Yes.

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

A. Yes.

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

4 A. Yes.

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

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

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

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

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

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

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

Horizontal lines for handwritten notes or answers.

1 about the people he spoke to inside the complex?

A. No, sir.

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

3 A. No, sir.

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

5 A. Yes.

6 Q. What have you guys talked about?

7 A. I just asked her what to do, and she said just

8 go tell the truth, so --

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

11 A. Yes.

12 Q. Have you testified in any court proceedings?

13 A. No, sir.

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

18 A. No, sir.

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

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

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

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

2 A. No, sir.

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

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

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

11 A. Yes, and for billing purposes.

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

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

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

20 A. It would show --

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

23 A. Yes, sir.

Ruled lines for handwritten notes.

- 1 Q. Okay. I haven't been out to the complex. What
- 2 is the size of it? Is it a big complex, Waverly complex?
- 3 A. The whole complex?
- 4 Q. Yeah.
- 5 A. It's probably a 10-acre complex. There's quite
- 6 a few units.
- 7 Q. Okay. And I'm assuming there's people there
- 8 year-round as well.
- 9 A. Yes, sir.
- 10 Q. And they have an active association.
- 11 A. Yes, sir.
- 12 Q. Have you ever gone out on behalf of the county
- 13 and speak to any of the homeowners or the association in
- 14 general meetings?
- 15 A. No, sir. I've called and talked to them after
- 16 the water main breaks to ensure -- make sure they were
- 17 pleased with the repairs and restoration, but that was in
- 18 October also.
- 19 Q. That would have been -- is that after you went
- 20 out with Mr. Lang?
- 21 A. Yes, sir.
- 22 Q. Okay.
- 23 A. This was for a water main break for another
- 24 part of the complex away from this area.
- 25 Q. Okay. And do you know if the county has gone

- 1 in and done any repair work or paid someone to do repair
- 2 work for anyone that's claimed damage in those units in
- 3 Waverly, any unit?
- 4 A. I can't answer that.
- 5 Q. Unfortunately, I may have to go to someone else
- 6 to ask some more questions. I appreciate your time, and
- 7 I will take a look at those other documents that you
- 8 have, but I have to --
- 9 A. If you can remind me to -- if you send me the
- 10 list of the three items that you're looking for, I would
- 11 appreciate it.
- 12 CROSS-EXAMINATION
- 13 BY MR. ROSS:
- 14 Q. Mr. Southard, how long have you been involved
- 15 in working with the Indian River County Utilities?
- 16 A. Twenty years today.
- 17 Q. Twenty years, okay. Now, in a residence or
- 18 even in a condominium such as this one or townhouse, is
- 19 there more than one valve between where the water main
- 20 breaks off into the individual units?
- 21 A. I'm sorry. Say that one more time.
- 22 Q. You have the water main.
- 23 A. Yes, sir.
- 24 Q. And then you have feeders into each individual
- 25 unit; correct?

1 Q. And you went and then did some further
investigation; did you not?

2 A. I just had the -- the water, yeah, because we
wanted to see what water was used and attach that to the
3 work order at Waverly complex, yes.

4 Q. Okay. And you asked her further that, you
5 know, who had told her -- you asked her if she had
6 notified the utility department that she was leaving and
7 wanted the water turned off; correct?

8 A. Uh-huh.

9 Q. And what did she tell you, sir?

10 A. It says here she had turned it off herself, and
11 someone employed by the utility department had showed her
12 how to turn it off five years ago.

13 Q. Okay. And does your -- does the utility
14 department encourage people to turn off their water meter
15 at the water meter valve?

16 A. No, sir. If an employee did that, it was wrong
17 on their part, and I can't -- I'm just -- I just stated
18 what she had told us, but, no, we don't encourage that.
19 We don't allow that.

20 Q. Okay. Now, you said, "Attached are work orders
21 of water breaks within the Waverly Place Complex." Did
22 you limit yourself in terms of period of time when you
23 were trying to put that together?

1 A. Honestly, I can't remember. I can look and see
what we got there. I know there was concerns that there
2 was a lot of breaks at that point in time.

Q. These are what were attached.

3 A. Okay. This is in October. This is in
4 September. This is September and October.

5 Q. September 19?

6 A. Uh-huh. It says, "Break flooding parking
7 area," and "Possible water break, water bubbling up from
8 ground." That's how we get the calls, and these are the
9 addresses of whoever called it in.

10 Q. Okay. So one would be October 7.

11 A. Uh-huh, and that was the one that I was most
12 likely on doing the repairs.

13 Q. Okay. And the other one was September 19?

14 A. Uh-huh.

15 Q. Correct?

16 A. Yeah.

17 Q. And was this in the same area where
18 Mrs. Sheridan's unit was located?

19 A. Yes.

20 Q. And this --

21 A. Her address is -- it's on this memo.
22 MR. Wallace: 475, Apartment 7C.

23 A. One of these shows 475 East Waverly Place, 7A5.

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

3 BY MR. ROSS:

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

6 A. Right.

7 Q. All right.

8 MR. ROSS: We'll Phil it as the next
9 exhibit.

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

11 MR. ROSS: Yeah, sure.

12 (Exhibits 1 and 2 were Philed for
13 identification.)

14 BY MR. ROSS:

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

17 A. Right.

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

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

23 Q. Okay. And was it your understanding from

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

2 A. I don't believe I discussed that with her.

This is all after I went back in the office that
3 afternoon. I never had any more discussions with her
4 afterwards.

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

7 A. According to the reading here, yes.

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

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

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

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

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

19 A. Yes, sir.

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

22 A. Yes, sir.

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

Horizontal lines for notes or additional text.

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

A. Yes, sir.

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

6 A. Yes, sir.

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

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

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

15 A. Water consumption after that time?

16 Q. After September 13, '02?

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

18 Q. Up to --

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

22 Q. It says October 7.

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

1 Q. There is a report on September 19.

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

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

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

14 Q. Okay.

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

18 Q. So there's actually three.

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

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

Horizontal lines for notes or additional text.

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

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

1 A. No, sir.

2 Q. Did Mrs. Sheridan give you any information that
3 when she had gone back up North that she had left a
4 faucet on inside her home?

5 A. No, sir.

6 MR. ROSS: That's all the questions I have.

7 MR. Wallace: Just briefly on these documents
8 because I haven't seen them yet.

9 REDIRECT EXAMINATION

10 BY MR. Wallace:

11 Q. You just testified to counsel's questions as to
12 you're not really knowledgeable on determining the use,
13 what the average use would be of gallons --

14 A. No, sir, I have no clue.

15 Q. Okay. In your discussions with my client, she
16 indicated to you that she had turned meter off; she had
17 turned the water off?

18 A. (Nods head.)

19 Q. That's a yes?

20 A. Yes, sir, I believe so.

21 Q. She also indicated, and this is by way of a
22 memo that was prepared by you on October 8, 2002, that
23 someone employed by the utility department had showed her
24 how to turn the meter off five years ago.

25 A. (Nods head.)

1 Q. I'm assuming that is not a practice that the
2 county would encourage.

3 A. We don't encourage it, and we don't allow it.
4 If that did take place, I'm not sure.

5 Q. And not all of these meters have a lock.

6 A. They all have ears that can be locked if we
7 turn it off, and if it doesn't, we replace the meter.

8 Q. Okay. But there may be some that don't have a
9 lock.

10 A. There is none.

11 Q. In other words, I understand what you're
12 saying, that there may be a lock on it. What if somebody
13 turns it off and doesn't lock it?

14 A. If we as utilities go out there and turn it
15 off, we will put a lock on it, but if the homeowner does
16 something different, I can't account for that.

17 MR. ROSS: You're asking if there's a
18 capacity -- some meters do not have the capacity
19 to be locked; is that what --

20 MR. Wallace: No, I'm not asking that, and
21 I'm not referring to whether or not the county
22 would assist someone in doing that or if someone
23 from up North requests you to do that, and then
24 you do it, and there's a policy to lock it. I
25 understand that.

Horizontal lines for handwritten notes on page 35 and page 36.

1 BY MR. Wallace:

2 Q. What I'm asking is, on their own volition,
3 without the assistance of the county, there may be people
4 that turn it off and don't lock it.

5 A. It's possible, yes.

6 Q. So Mrs. Sheridan represented to you that she
7 had turned it off before going up North in your
8 conversation with her?

9 A. I'm not sure if I stated that she turned it
10 off.

11 Q. I'm just reading from your memo: "Ms. Sheridan
12 said that someone had turned her water meter on while she
13 was away," and there had been damage, flooding in her
14 home. And then it goes on, later on in the memo to say:
15 "With a little more investigation and questioning, I
16 asked her if she had notified the utility that she was
17 leaving and wanted her water meter off. Her reply was
18 that she had turned it off herself." So she --

19 A. She said that she turned it off herself.

20 Q. Okay. But again, that goes back to what I
21 asked you some time ago. Water doesn't get in there
22 unless it comes on.

23 A. Yes. Somebody had to turn the valve on.

Q. I mean, fundamentally this doesn't happen.

A. Right. Somebody has to turn the valve back on.

1 Q. All right. And Mr. Endres -- I'm sorry --

2 A. Bruce Endres was just over there with me. I
3 had a conversation with him about a sewer problem. It
4 wasn't related to any of it.

5 Q. I have the wrong guy.

6 A. It's Phil Hawkins.

7 Q. Right.

8 A. He was in there doing the repairs on the site
9 and had done repairs on the site in the past.

10 Q. Okay. And he was doing those repairs on or
11 about October 2002?

12 A. Yes, sir.

13 Q. Okay. And in the summertime, he would have
14 been involved with any repair work?

15 A. Unless he was on vacation, but, yes, he was
16 most likely involved in it.

17 Q. Okay. And he would be knowledgeable as to
18 whether or not there was, in fact, work being done at the
19 Waverly complex on or about June or July --

20 A. Yes, sir.

21 Q. And there's no question that the water
22 consumption indicated in that summer time frame in July
23 that there was a thousand gallons -- actually July 15,
24 according to your memo of October 8.

25 A. Yes. Sometime between June 13 and July 15

Horizontal lines for handwritten notes or signatures.

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

1 A. I'm sorry?
 2 Q. When you spoke with Mrs. Sheridan --
 3 A. Yes, sir.
 4 Q. Then you reduced to writing a memorandum about
 5 that meeting.
 6 A. That's what that is, yes, sir.
 7 Q. You don't have any reason to believe that
 8 Mrs. Sheridan was lying to you about turning it off?
 9 A. No, sir.
 10 MR. Wallace: Thanks.
 11 You have the right under the Rules to read
 12 and review this and make any changes that you
 13 want, or you have a right to waive it. It's up
 14 to you.
 15 THE WITNESS: I wouldn't mind taking a look
 16 at it.
 17 (Thereupon, the reading and signing of this
 18 deposition were not waived, and this deposition concluded
 19 at 1:51 p.m.)
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 23

1
2 STATE OF FLORIDA)
) SS
3 COUNTY OF BREVARD)
4

I, DENISE P. WALKER, Registered Professional
5 Reporter, the undersigned authority, do hereby certify
that Wayne Varvaro appeared before me and was
6 duly sworn.

7
8 WITNESS MY HAND and official seal this
9 2nd day of September, 2004, at the City of Melbourne,
10 County of Brevard, State of Florida.

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DENISE P. WALKER, RPR
Notary Public, State of Florida

1 CERTIFICATE OF REPORTER
2 STATE OF FLORIDA)
) SS
3 COUNTY OF BREVARD)
4

I, DENISE P. WALKER, Registered Professional
5 Reporter, do hereby certify that I was authorized to
and did stenographically report the deposition of
6 Wayne Varvaro; that a review of the transcript
7 was requested; and that the foregoing transcript,
8 pages 1 through 42, is a true record of my stenographic
9 notes.

10 I FURTHER CERTIFY that I am not a relative,
11 employee, attorney, or counsel of any of the parties,
12 nor am I a relative or employee of any of the parties'
13 attorney or counsel connected with the action, nor am
14 I financially interested in the event of this cause.

15
16 DATED this 2nd day of September, 2004, at the
17 City of Melbourne, County of Brevard, State of
18 Florida.

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DENISE P. WALKER, RPR

Horizontal lines for signature and notes on page 43 and 44.

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CERTIFICATE

STATE OF FLORIDA
COUNTY OF BREVARD

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

Dated this ____ day of _____, 2003.

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

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ERRATA SHEET
IN RE: Sheridan V. NATIONWIDE

PAGE LINE CORRECTION

PAGE	LINE	CORRECTION

Horizontal lines for notes or corrections on page 46.

**Phillip Hawkins v.
Anstar Biotech Industries**

Interview Notes

Condensed Transcript for Note-taking

Taken from "Chronology Best Practices"

1 OK ... We cheated! This isn't really a set of interview notes.
 2 It's a copy of our article on chronology best practices that
 3 brought into TextMap using the Import from Clipboard option on
 4 TextMap's Transcript menu.

5 You can bring any text from your clipboard into TextMap using
 6 this feature. Use it to get in complaints, answers, research
 7 copies from the Web, and even interview note you typed free form
 8 using a word-processor or our NoteMap outlining product.

9 CHRONOLOGY BEST PRACTICES

10 Chronologies help win cases. From the starting gate to the
 11 finish line, assembling case facts in an accessible format can
 12 put you on track to courtroom victory.

13 The advantages are numerous. Chronologies are thinking
 14 tools. The very act of getting facts down on paper or in your
 15 computer clarifies thinking and makes the story of the case
 16 clear. Chronologies help ensure complete discovery. Which facts
 17 are disputed? Which still need sources that will be acceptable in
 18 court? And a chronology is a communication aid. A good chronology
 19 makes it easy for everyone on the trial team to share case
 20 knowledge.

21 Chronologies can also be used in a myriad of concrete ways.
 22 Use them when preparing for depositions, when developing motions
 23 for summary judgment and pretrial motions, in settlement
 24 conferences, and during trial.

25 Despite such benefits, during 15 years of jury research

1 work, I've consulted on many cases where the effort to create a
 2 case chronology was abandoned during the discovery process. Why?
 3 In almost all these instances, work on the chronology ceased
 4 because the word-processing document containing it became an
 5 unwieldy epic. There was no way to isolate facts of particular
 6 interest or view them in meaningful relationships. When
 7 litigators needed reports showing just the facts relating to
 8 specific issues, for example, they were stymied because of the
 9 all or nothing nature of word-processing software.

10 Many litigators throw up their hands and attempt to memorize
 11 the facts or to jot them on legal pads. But this strategy invites
 12 disaster. Even the simplest of cases contains more facts than an
 13 attorney can keep in mind or organize meaningfully on paper. It's
 14 unrealistic to expect anyone to track notes scattered across many
 15 legal pads, much less to memorize 100 critical facts from each of
 16 20 cases. When an opponent is using modern technology to organize
 17 and explore case information, the litigator with a paper system
 18 is operating under a dangerous handicap.

19 Unfortunately, those litigators who do stick with the task
 20 of creating a chronology often end up with unsatisfactory
 21 results. Many times, they end up with a list of case documents,
 22 sorted by date. Well, a document index is certainly useful when
 23 you need to get a piece of paper pronto. But it's hardly a
 24 chronology of case facts. Still other trial teams focus on facts,
 25 not documents, but create chronologies that contain just two or

1 three columns: date, fact, and (sometimes) source. These layouts
2 are a start, but they fail to capture critical information about
3 the facts, information that can make the chronology far more
4 valuable.
5 What's the solution? In the course of conducting jury
6 research work on more than 300 civil and criminal cases, I've had
7 the chance to work with and compare hundreds of case
8 chronologies. Based on this experience, I have developed the
9 following set of chronology best practices.

10 DON'T WAIT

11 Start a chronology as soon as you hear from a client. From
12 your first conversation with a prospective client, you're gaining
13 critical knowledge about the problem that led the individual or
14 corporation to seek counsel. You should begin to create the case
15 chronology immediately upon returning from your first client
16 meeting.

17 No matter how early you are in the case, and no matter how
18 "small" the case may seem, as soon as your client has given you
19 an overview of the dispute, you have been told more facts than
20 you can easily memorize and manipulate in your head. And why even
21 try? Your mind should be reserved for thinking, not memorization.
22 Memorization is a job for your software.

23 If you start your chronology immediately, it can be used to
24 good effect very early in the case. Take copies of the initial
25 chronology to your second client meeting, and use them to clear

1 up any misconceptions. Do the facts listed accurately reflect
2 your client's understanding of the case? Can your client supply
3 any missing dates? Can your client indicate which potential
4 witnesses and what documents might be sources for these facts?
5 Use the chronology also to focus your client on potential sins of
6 omission. Is your client aware of any particularly favorable or
7 unfavorable facts that don't appear in the chronology?

8 DB, NOT WP

9 Use database software, not word-processing software to
10 create your chronology.

11 In contrast to word-processing software, database software
12 makes it easy to create and maintain your chronology. If you
13 employ a multi-user database, several trial team members can
14 simultaneously enter, edit, and explore the facts. Database
15 software automatically sorts your facts into proper date order.
16 It can automatically provide the day of the week for each date
17 you enter, and allows you to enter information using "pick
18 lists," saving input time and eliminating the inevitable
19 misspellings that occur with manual entry. And a database package
20 can also automatically stamp each fact with the name of the
21 individual entering it and the date and time when the fact was
22 entered.

23 While the data-entry advantages of database software are
24 significant, its most important benefit is to make exploring your
25 chronology far easier. When you print your word-processing

1 chronology.

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

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

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

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

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

19 **GET STUPID**

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

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

1 fact into the chronology, you fail to clear your head of the
2 minutiae so that you can focus on thinking. And you derail the
3 communication benefits chronologies offer. If a critical part of
4 the meaning of the fact is still hidden in your head, others on
5 the trial team won't know about it when they read the chronology.
6 Every time you enter a fact into your chronology, pause and
7 read it before you continue. Put yourself in the shoes of someone
8 who doesn't know the case - say a new member of the trial team
9 reading the chronology for the first time. Does what you've
10 written represent your total knowledge regarding the fact? If
11 not, edit the fact. While you're at it, ask yourself, "So what?"
12 Does what you've written make the implications of the fact clear?
13 If not, edit the fact. Further, if there isn't much of an answer
14 to the So What question, give the fact a good once over, and make
15 sure it belongs in the chronology in the first place.
16 **MAKE DEPO SUMMARIES OBSOLETE**
17 Use your chronology in lieu of separate deposition
18 summaries.
19 When you create a deposition summary, you're digesting the
20 deposition down to its critical elements, i.e., to the critical
21 facts found in it. If you follow the traditional path of creating
22 a series of separate deposition summaries, the result is
23 unsatisfactory. You end up with a separate story for each
24 witness, rather than one complete story interlacing the facts
25 found in various depositions and in other sources.

1 Stop creating deposition summaries, and use your chron
2 instead. Enter into your chronology the critical facts you
3 develop from reading a deposition. In the chronology's Source(s)
4 column, list the deposition's name, as well as the volume, page
5 and line number where the fact was found. Anytime you want a
6 summary of a particular witness's deposition, filter the
7 chronology down to just those facts that were sourced from a
8 particular deposition.
9 Even if you use transcript search software, you should still
10 enter in your chronology the key facts that occur to you as you
11 read the deposition online. Transcript search software makes it
12 easy to find the needles in the haystack of deposition
13 transcripts and document OCR-text files. However, once you find a
14 needle, doesn't it make sense to get it out of the haystack?
15 You may have other documents besides deposition summaries
16 where you're storing facts. Consider replacing all of these
17 separate containers with your one master chronology. Instead of
18 searching multiple places for critical case knowledge, you will
19 always have the case facts at your fingertips.
20 **AVOID THE AKA HEADACHE**
21 Refer to one person, organization, or document by one name.
22 Want to filter your chronology down to just those facts
23 about a particular witness, organization or document? Even if
24 you're using a database program to develop your chronology,
25 you've got a big problem if the same thing is referenced by

1 different names. You first have to identify all of the different
 2 name permutations. Then you have to create a compound query that
 3 will find any fact that contains one of these possibilities. What
 4 should be accomplished in an instant becomes an hour-long chore.
 5 It's easy to end up with inconsistent naming. Suppose you're
 6 working up a medical malpractice case that involves Hyde Memorial
 7 Hospital. Unless you're careful, you're likely to have facts that
 8 refer to Hyde, Hyde Memorial, HMH, HM Hospital, and Hyde Memorial
 9 Hospital, among other possible variations.
 10 The solution: develop a cast of characters list and
 11 establish a single alias or nickname to be used for each key
 12 player in the case. Typically, it makes sense to pick something
 13 short (e.g., for Hyde Memorial Hospital, HMH is probably the best
 14 choice). If you do, you save keystrokes in addition to gaining
 15 consistency.
 16 Distribute the cast of characters report to the trial team.
 17 Ask that everyone working on the chronology use this dictionary
 18 if they are unsure of the proper name to use
 19 for a particular person, organization, or document. Naming
 20 consistency requires a little more work up front, but it quickly
 21 delivers a handsome return.
 22 **USE FUZZY DATES**
 23 If possible, substitute question marks for portions of a
 24 date of which you're unsure.
 25 As you build a chronology, you'll find yourself with many

1 facts for which you have incomplete date information. For
 2 example, you may know that a meeting took place in March of 1999,
 3 but have no idea as to the day within March. Or you may know that
 4 a contract was signed sometime in 1998, but have no idea of the
 5 month or day. And you may know the accident took place in the 7
 6 o'clock hour, but not know the minute or second.
 7 What's the best way to deal with this problem when entering
 8 dates? Make it your practice to substitute a question mark for
 9 the portion of the date or time of which you're unsure. Using
 10 this simple tactic: March of 1999 becomes 3/?/99, sometime in
 11 1998 becomes ??/?/98, and sometime in the 7 o'clock hour becomes
 12 7:??.
 13 We call this practice "fuzzy dating." Fuzzy dating allows
 14 you to capture what you do know about a date and makes what you
 15 don't know explicit. Fuzzy dating makes it easy to identify facts
 16 needing date research. When you obtain better information, you
 17 can return to the fact and update its date and time value.
 18 Fuzzy dating is effective if you're working up your
 19 chronology in a word-processor or with some litigation-specific
 20 database packages. However, many database packages do not permit
 21 you to enter any date value other than a complete one.
 22 Off-the-shelf database products are designed for generalized
 23 use and not with the realities of litigation in mind. These
 24 products attempt to help you by validating your date entry.
 25 Unfortunately, these validation routines backfire when you don't

1 Now add another column to your chronology: Related Issues.
2 In this column, name the issue or issues on which each fact
3 bears. You can capture issue relationships as you first enter the
4 facts. Another alternative is to forego entering this information
5 initially and ripple through the chronology at a later point
6 focusing on issue analysis.
7 Establishing relationships between facts and issues is also
8 a logical place to parse work among members of the trial team.
9 Junior members of the team can cull facts from documents and
10 depositions. Senior members of the team can make links between
11 facts and issues.
12 Creating links between facts and issues makes it easy to
13 print chronologies of just those facts that relate to a
14 particular issue - a capability that has great value when you
15 analyze your case and develop strategy.
16 TAKE AN ISSUE-DRIVEN APPROACH
17 Use your issue list to ensure you have a complete chronology
18 and to generate a fact "wish list."
19 As you develop your chronology, consider taking a "top-down"
20 or "issue-driven" approach to your case. As case preparation
21 begins, and one or two times a year thereafter, conduct a
22 brainstorming session in which you think about your facts on an
23 issue-by-issue basis.
24 Prepare by printing for each issue a mini-chronology of the
25 facts that bear on it. Begin the brainstorming session by

1 reviewing the chronology of facts related to the first issue in
2 your issue list. Then set the list of facts aside, and think
3 about other facts of which you're aware that bear on this issue.
4 Enter these additional items into your chron.
5 Next, think about the facts you wish you had for this issue.
6 If you think there's any chance of developing such a fact, enter
7 it in the chronology and list any potential sources that come to
8 mind. Repeat this process for each issue in the case.
9 In the early days of a case, this issue-driven brainstorming
10 process can be an invaluable aid in organizing discovery. As the
11 case matures, it becomes a great way to reflect on case strengths
12 and weaknesses and develop strategies in light of them.
13 EVALUATE EACH FACT
14 Separate the sheep facts from the goat facts.
15 Not all facts are created equal. Some are critical; others
16 are trivial. Some are great; and, unfortunately, others stink. To
17 get the most out of your chronology, you should rate each fact in
18 terms of criticality and goodness/badness. Once this is done, you
19 can filter the chronology down from all facts to just those facts
20 that are critical or just those facts that are particularly good
21 or bad.
22 One solution is to use two columns to capture evaluation
23 information: one for criticality and another for goodness v.
24 badness. A simpler method is to fuse both criticality and
25 goodness/badness criteria into a single scale. For example, if

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

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

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

21 **PUT YOUR CHRONOLOGY TO WORK**

22 Use your case chronology in practical ways.

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

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

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

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

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

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

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

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

15 **SUMMARY**

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

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

19 **ABOUT THE AUTHOR**

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

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