

Poole + Rainford

**Phillip Hawkins v.  
Anstar Biotech Industries**

***Case ReportBook***

Authored by:

**Your Name Here  
Poole + Rainford**

Thursday, January 24, 2008

Poole + Rainford

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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 STATE OF FLORIDA )  
12 COUNTY OF DADE )

13  
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  
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1 A P P E A R A N C E S

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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  
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Horizontal lines for deposition transcript.

1            T A B L E   O F   C O N T E N T S

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PHILIP MARK HAWKINS

    Direct Examination

        by Ms. Onofrey                                 4

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(No Exhibits)

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1            S T I P U L A T I O N

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            D I R E C T   E X A M I N A T I O N

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?

A series of horizontal lines intended for handwritten notes or signatures during the deposition process.





1 a trooper or had your title changed?

2 A Corporal.

3 Q How did you get from trooper to corporal?

4 How did you make that transition? What were the steps

5 along the way?

6 A With the Florida Highway Patrol, a corporal

7 -- the duties and responsibilities are that of a

8 traffic homicide investigator.

9 Once you've been on the patrol for two

10 years, you can take a promotional examination. Based

11 on your numerical score on the promotional

12 examination, you can elect to promote to the rank of

13 corporal.

14 Q So corporal is the next rank after trooper?

15 A Yes, ma'am.

16 Q So you obviously took the test and passed

17 it.

18 A Yes, ma'am.

19 Q When did you become a corporal?

20 A October the 1st of 1988.

21 Q As a trooper, what were your duties?

22 A To patrol highways and roadways outside of a

23 municipality, enforce traffic law, investigate

24 crashes, apprehend fugitives; just the duties of a

25 state trooper.

1 Q Okay. And then, when you became corporal in

2 1988, what were your duties and how had they changed

3 from being a trooper?

4 A The traffic homicide investigator does not

5 routinely work the road, the highway. On holidays,

6 weekends, special occasions, you may be selected to

7 participate in enforcement details.

8 Ninety percent of what I do is strictly

9 investigate fatal crashes.

10 Q At the time of this accident that we're here

11 about today, you were obviously called to a scene on

12 that day, is that correct, the scene of a fatal

13 accident?

14 A No, ma'am, it wasn't a fatal accident.

15 Q It was not?

16 A No, ma'am.

17 Q Okay. So just tell me what happened on that

18 day. How did it come to be, first of all, that you

19 arrived at that location?

20 A On the morning of this wreck, I heard the

21 dispatcher dispatch another trooper to the wreck. I

22 was fairly close by. I monitor emergency medical

23 services and the fire department in my patrol car.

24 They were on the scene and they were asking for an

25 expediated response for us due to the highway being

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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?

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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

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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?

A series of horizontal lines for handwritten notes.

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

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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.

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1 A Yes, ma'am.

2 Q And then apparently that was denied by  
3 worker's comp, and that's how you got to Garcia?

4 A Yes, ma'am.

5 Q When did you first see Dr. Garcia,  
6 approximately?

7 A February the 22nd, 23rd, somewhere right in  
8 that.

9 Q How did you identify him as the doctor that  
10 you wanted to have the surgery done by?

11 A When I started having difficulties with  
12 worker's comp, I contacted Arndt & Arndt and, in  
13 talking with them --

14 MR. ARNDT: I'm going to object to  
15 attorney-client privilege information.

16 BY MS. ONOFREY:

17 Q You don't have to tell me what they told you  
18 or any conversations you had with them. I'll just  
19 leave it at that.

20 A Okay.

21 Q Had you ever seen Dr. Garcia prior to this  
22 accident?

23 A No, ma'am.

24 Q Then you ended up having the surgery by Dr.  
25 Garcia, and that was approximately when?

1 A February the 29th.

2 Q That one you know, right?

3 A (Nods head affirmatively.)

4 Q And obviously this entire time up to that  
5 point, from the coughing episode to February 29th, you  
6 did not work.

7 A No, ma'am.

8 Q You did work?

9 A No, ma'am, I did not.

10 Q To your knowledge, has Dr. Garcia been paid  
11 for that surgery?

12 A Yes, he has.

13 Q Do you know who paid that?

14 A A majority of it was paid through my health  
15 insurance, Blue Cross & Blue Shield. The remainder,  
16 we paid. I paid out of my personal -- myself  
17 personally.

18 Q Approximately how much have you paid out of  
19 your own pocket for the surgery?

20 A I'm looking at her (indicating Mrs.  
21 Hawkins).

22 MR. ARNDT: If you don't know, that's  
23 fine. If you can find out later, we can get that  
24 information to her.

25 I don't want you to guess at anything. This

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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.

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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 or signatures.

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?

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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.)  
6 ---  
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CERTIFICATE OF OATH

STATE OF FLORIDA )
COUNTY OF DADE )

I, CINDY COOKER, certify that PHILIP MARK
HAWKINS personally appeared before me and was duly
sworn.

WITNESS my hand and official seal this 14th
day of October 2000.

CINDY COOKER
Notary Public-State of Florida

CERTIFICATE

STATE OF FLORIDA )
COUNTY OF DADE )

I, CINDY COOKER, Notary Public, State of
Florida at Large, certify that I was authorized to and
did stenographically report the deposition of PHILIP
MARK HAWKINS; that a review of the transcript was
requested; and that the transcript is a true and
complete record of my stenographic notes.

I further certify that I am not a relative,
employee, attorney or counsel of any of the parties,
nor am I relative or employee of any of the parties'
attorney or counsel connected with the action, nor am
I financially interested in the action.

Dated this 14th day of October, A.D., 2000.

CINDY COOKER,
Notary Public-State of Florida

ERRATA SHEET

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2  
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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8

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

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23

1 APPEARANCES:

2

3 GEORGE F. SHOW, ESQUIRE  
4 Show, Tukker, Chartered  
5 5000 Seal Avenue East  
6 Bradenton, Florida 34205  
(562) 354-2344

7 Counsel for the Plaintiff

8

9 GARY G. WALSH, ESQUIRE  
10 Walsh & Associates, P.A.  
11 999 West Colonial Drive  
12 Orlando, Florida 32803  
13 (407) 123-2345

14 Counsel for the Defendant

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1 INDEX

DEPONENT	EXAMINATION	PAGE
2 SUSAN SHERIDAN		
	Direct by Mr. Thorn	4
3	Cross by Mr. Walsh	41
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11 EXHIBITS

NUMBER	DESCRIPTION	PAGE
12 A	Letter dated September 25, 2002	12
13		
14		
15		
16		
17		
18	REPORTER'S NOTE: Exhibit A retained by Mr. Thorn.	
19		
20		
21		
22		
23		

1 THEREUPON:  
 2 SUSAN SHERIDAN,  
 3 a witness herein, having first been duly sworn, was  
 4 examined and testified on her oath as follows:

5 DIRECT EXAMINATION

6 BY MR. THORN:

7 Q. Melissa, I'm John Thorn. I'm the Plaintiff's  
 8 attorney in this case. I'm going to ask you some  
 9 questions about this loss today.  
 10 Can you just state your name for the record?  
 11 A. Melissa Ann Burton.  
 12 Q. And where do you work?  
 13 A. Presently?  
 14 Q. Yes.  
 15 A. I'm a realtor.  
 16 Q. With who?  
 17 A. Progressive Real Estate.  
 18 Q. And where is that located?  
 19 A. In Melbourne.  
 20 Q. Where in Melbourne is that?  
 21 A. 2320 South Babcock Street.  
 22 Q. So you're a licensed realtor in the state of  
 23 Florida?  
 24 A. Yes, I am.  
 25 Q. And how long have you had your license?

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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

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1 Q. That includes due diligence; that's one of  
them.  
2 A. (Nods head.)  
Q. Is that a "yes"?  
3 A. Yes.  
4 Q. And so when she represented to you that  
5 Mr. Remetz would be acting on her behalf, after that time  
6 frame did you deal directly with him?  
7 A. Actually I only dealt with him the one time  
8 when I went out and did the inspection. From that point  
9 on, I dealt with her.  
10 Q. All right. Did you go over to the property at  
11 any time?  
12 A. Yes, I did.  
13 Q. Do you recall the approximate time frame when  
14 you did that?  
15 A. I spoke to him within 30 or 45 minutes of  
16 receiving the claim, trying to see it the day I got the  
17 claim, and he said he could not make it, that it had to  
18 be the next day. So I met with him the next day after  
19 receiving the claim. I'm not sure of the date.  
20 Q. Okay. Where does she live, do you know,  
21 Mr. Hawkins?  
22 A. Her home in Florida or --  
23 Q. No.

1 A. Up North?  
Q. Where she resides.  
2 A. I don't remember, honestly.  
Q. Okay. Would Massachusetts refresh your memory?  
3 A. Okay.  
4 MR. THORN: Okay. Would you mark that as  
5 Exhibit A.  
6 (Exhibit A was marked for identification.)  
7 MR. THORN: Thanks so much.  
8 BY MR. THORN:  
9 Q. I'm going to show you a letter dated  
10 September 25, 2002, and ask you if you could take a look  
11 at that.  
12 A. (Perusing document.)  
13 Q. Did you look at that letter when you prepared  
14 for this deposition?  
15 A. I recall the letter, yes.  
16 Q. Is that a letter authored by you or sent by  
17 you?  
18 A. I don't know. The bottom is not on there.  
19 Q. My question is not about that. Whether you  
20 recall authoring a letter that contains these contents --  
21 A. I believe so.  
22 Q. -- in Exhibit A. Okay. What is the date on  
23 that letter?

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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  
 to the property itself?  
 A. Oh, yeah.

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

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1 there was water everywhere, and that he had shut the  
water off, and then he went on a rampage about how he  
2 hates insurance companies and how he hated Nationwide and  
how they never pay for anything and various other  
3 comments. And after that, he really didn't say much.

4 Q. So you didn't care too much for his comments.

5 A. I took them with a grain of salt. I've been  
6 doing that a long time.

7 Q. I can relate to that. So other than his  
8 editorial comments, you inspected the property?

9 A. Uh-huh, yes, I did.

10 Q. And you walked through the property?

11 A. Yes, I did.

12 Q. And was mold present?

13 A. Yes, there was.

14 Q. How would you describe the amount of water  
15 damage to the property that you saw? Light? Medium?  
16 Heavy? Substantial?

17 A. It was heavy. There was substantial water  
18 damage.

19 Q. Okay. And where was the damage on the  
20 property, from your memory?

21 A. Everywhere except the kitchen, from what I  
22 recall.

23 Q. And can you describe to me the type of unit?

1 Is it one level? Two level?

A. Two-story townhome with the bedrooms upstairs.

2 Q. Okay. And did you go upstairs and take a look  
at the property?

3 A. That's the first place I went.

4 Q. And what did you see when you went upstairs?

5 A. Everything was saturated, water had wicked up  
6 the bedspreads, the recliner, the walls. It was soaked.

7 Q. Okay. And had you talked to the county  
8 officials prior to September 25?

9 A. I don't recall the date that I spoke to --  
10 (shakes head).

11 Q. It could have been after you were on the  
12 property?

13 A. Quite possibly. I really -- Mr. Remetz wasn't  
14 very cooperative, so I really didn't know what I was  
15 looking at or what had transpired until I actually went  
16 out there.

17 Q. But he wasn't under any contractual duty to  
18 cooperate with you.

19 A. No. His sister had indicated that he would be  
20 handling the claim for her in her absence.

21 Q. Okay. And at some point did you talk to the  
22 county officials?

23 A. I called the Water Department of the City of

Horizontal lines for handwritten notes or signatures.

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 A. Yes, it is, other than my manager and his Walshs.

Q. Yeah, I want to ask you some questions later  
2 about that.

Now, when you spoke with Mr. Hawkins by  
3 phone, did you take a recorded statement from her?

4 A. I honestly don't recall.

5 Q. Would that be your standard practice?

6 A. No.

7 Q. And when you take -- you do interview insured  
8 about losses, water losses --

9 A. Normally it's verbal unless it's a theft loss  
10 or, you know, a questionable loss, and then we would do a  
11 recorded statement.

12 Q. All right. And so when you interviewed  
13 Mr. Hawkins, did you take any notes of that interview?

14 A. Yes.

15 Q. Okay. Was there any lawyers involved at that  
16 point in the case?

17 A. No.

18 Q. You hadn't called your counsel or anything like  
19 that?

20 A. No, no reason to.

21 Q. She didn't have any lawyers send you a letter?

22 A. No.

23 Q. So you were doing those notes in the normal

1 course and scope of your job?

A. Correct.

2 Q. And those notes, what did you write down?

A. That I spoke to her. She had indicated that  
3 when she left for the summer, she had shut the water  
4 valve off, had not asked for the assistance of the county  
5 in doing so -- because had she asked for their  
6 assistance, there would have been a lock put on it --  
7 that her brother was to check her residence for her  
8 weekly, and as far as she knew, he had been checking it  
9 weekly, and then she found out that there was water  
10 damage to the unit.

11 Q. Okay. Other than the discussion that you had  
12 prior to September 25 with Mr. Remetz, did you have any  
13 subsequent discussions with him after the 25th?

14 A. I don't believe so.

15 Q. Okay. So is it your testimony the only  
16 discussions you had with Mr. Remetz would have been at  
17 the time you met him at the unit?

18 A. Other than prior to setting up the appointment  
19 on the phone.

20 Q. Okay. But that would be it?

21 A. Correct, to the best that I remember.

22 Q. Okay. Now, I'm going to show you some  
23 photographs. I'll represent to you there's a lot of

Ruled lines for handwritten notes, consisting of approximately 38 horizontal lines.

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 determined there was a thousand gallons within a 30-day 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 because it's important. All right. Did someone tell you about the water bill, or you actually reviewed the water bill?

16 A. When I called the county, they had indicated that they showed no excessive water usage, and I asked them what they considered excessive, and they could not give me a number. I later received a letter from a public adjuster who indicated he was representing Mr. Hawkins, and he said that there was a thousand gallons of water usage, and I called to confirm that 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 American Insurance Consultants, Pat Garrett, from Tampa?

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

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

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

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

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

20 A. Yes.

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

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

Series of horizontal lines for handwritten notes or answers.

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 handwritten notes or signatures.

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  
question, that you know of, as we sit here today in 2003?

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

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

5 A. William Lang.

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

10 A. No.

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

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

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

22 A. Based on my investigation.

23 Q. Your personal investigation?

24 A. Correct.

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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.

Q. Okay. And so he then advised you to send this  
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?

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

Horizontal lines for notes or additional text.



1 Mr. Hawkins represented to you that she had shut the  
valve off.  
2 A. Yes.  
Q. And so therefore, in order for water to come  
3 into this unit, somebody had to turn that valve back on.  
4 A. Correct.  
5 Q. And then after that valve was turned on, there  
6 was water damage to this unit somehow.  
7 A. Correct.  
8 Q. Okay. And that would have been after she left  
9 to go back to Walshton.  
10 A. Correct.  
11 Q. And your testimony is that the physical  
12 evidence showed the likelihood that water was running  
13 downward.  
14 A. It started in the master bathroom upstairs.  
15 Q. Okay. I'm going to ask you some questions on  
16 coverage issues. What type of policy was involved here,  
17 do you know?  
18 A. Elite II.  
19 Q. Okay. Can you give me a little education on  
20 that, what type of policy that is, how it works, briefly?  
21 A. I believe it was an Elite II. I said that  
22 pretty quick, but --  
23 Q. That's all right.

1 A. Assuming that they had a homeowners association  
and not a condo association, it might have been a unit  
2 owners policy. Do you have that letter?  
Q. Yes.  
3 A. It's an Elite policy.  
4 Q. Okay. Can you just tell me what typically  
5 would be covered in that type of policy?  
6 A. It's an all-risk policy unless it's excluded  
7 specifically.  
8 Q. What type of water loss would be covered in  
9 Mr. Hawkins'?

10 A. Sudden and accidental.  
11 Q. So if the evidence would show that it was  
12 sudden and accidental, she'd be covered?  
13 A. If it was sudden and accidental.  
14 Q. Okay. At some point you did deny the claim.  
15 A. Yes.  
16 Q. And did you send a letter to the your insured  
17 telling her why?  
18 A. Yes.  
19 Q. Can you tell me what you told her?  
20 A. Continuous and repeated seepage or leakage  
21 resulting in wet rot, dry rot, mold, and deterioration  
22 was excluded under the policy.  
23 Q. And that was based on your investigation.

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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

Horizontal lines for handwritten notes.

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.

1 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 handwritten notes or signatures.

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  
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21  
22  
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JOAN D. BARTON, RPR

Horizontal lines for signature and notes on page 43 and 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

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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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Counsel for the Defendant

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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 or additional text.

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 or signatures.

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.

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1 Q. And that would be the cause of it?  
A. That was clearly speculation on our service  
2 workers' part. They dig it up and see how the work is  
done, so that's all it is.

3 Q. Okay. Had people complained about any damage  
4 in their units; do you know?  
5 A. No, sir, not that I'm aware of.

6 Q. And you said you thought you might have some  
7 notes.  
8 A. I'd have to see if I had any notes where his  
9 name -- the gentleman's name.

10 Q. If you do come across those, I would also  
11 respectfully ask you can send those also.  
12 A. Sure.

13 Q. And so what were the county workers doing there  
14 in September or October at the --  
15 A. At that date in October, early October, we were  
16 on the other side of the complex repairing a major water  
17 main break.

18 Q. Okay. And how did that happen; do you know?  
19 A. The line just broke.

20 Q. Okay. And when you say "repair," what do you  
21 do?  
22 A. They dig it up and have to cut the broken part  
23 out and replace the piece of pipe.

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1 Q. Okay. And you said "at that time." You  
weren't there in the summertime, in June, July, August.  
2 A. No.  
Q. Do you have any knowledge as to whether or not  
3 the county water officials were working anywhere in that  
4 area during that time frame?  
5 A. I couldn't -- I have no clue. During what time  
6 frame? The June, July?  
7 Q. June, July, and August.  
8 A. I have no clue.

9 Q. Do you have a particular person, a supervisor  
10 or someone, that handles that particular region?  
11 A. Yes, sir.  
12 Q. Who is that?  
13 A. Phil Hawkins, and I couldn't begin to spell  
14 that.

15 Q. And what's his title and what's his  
16 responsibilities?  
17 A. He's the supervisor of maintenance. He would  
18 have been dispatching the crews and overseeing the crews  
19 doing repairs in that complex.

20 Q. And he keeps records?  
21 A. I couldn't tell you how extensive, but nowadays  
22 they're starting to.

23 Q. Okay. Unfortunately that's the way it goes.

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1 A. I know.

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

A. He oversees all the water main repairs.

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

4 A. Yes, sir.

5 Q. And does he kind of have his own autonomy out  
6 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.

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

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

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

8 A. James Lang.

9 Q. Lang.

10 A. He works under Beth Jordan.

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

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

14 A. And he works under Beth.

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

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

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

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

23 Q. Okay.

Multiple horizontal lines for handwritten notes.

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 Q. And does the county read the meters on a  
 monthly basis?

2 A. Yes, sir.

Q. Okay. And then the county maintains those  
 3 records?

4 A. Yes, sir.

5 Q. Your department maintains those records?

6 A. Our billing department has them, yes, sir.

7 Q. And how accurate are those records in terms of  
 8 the readings by the meter reader?

9 A. Hopefully very accurate.

10 Q. What I mean is, I mean, discounting the fact  
 11 that someone could probably willfully try to alter the  
 12 meter.

13 A. I think they read it to the thousands of  
 14 gallons. It's been years since I've dealt with meters,  
 15 but I think it reads -- any usage, a thousand gallons, it  
 16 keeps a reading.

17 Q. Okay. Do you deal a lot with snowbirds, people  
 18 that come down here, in units down here?

19 A. Yes, sir.

20 Q. And is it typical for a snow bird to turn off  
 21 their valve?

22 MR. ROSS: Do you know?

23 A. That I don't know. We get calls to turn them

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1 off when they're leaving to go back up North, and then we  
 get calls to turn them back on in some cases a couple  
 2 weeks before they get home.

BY MR. Wallace:

3 Q. Okay. So since you work around water, okay,  
 4 when you turn it off to someone, hypothetically, can they  
 5 get water in the unit?

6 A. We lock it.

7 Q. But the question is, can they get water into  
 8 the unit?

9 A. No, sir.

10 Q. So in order to get water into the unit,  
 11 somebody has to turn it on?

12 A. From the utilities -- if they call and ask the  
 13 utilities to shut it off, we shut it off and lock it.  
 14 And from that point, they can't get water until we're  
 15 called again to unlock the meter.

16 Q. Outside of a lock, the only way to get it back  
 17 on again is it turn it on manually to turn it on?

18 A. Yes.

19 Q. Other than the discussion you had with someone  
 20 from the association, have you ever after that discussion  
 21 spoke with him again or any other association member?

22 A. I never heard nothing more about it until the  
 23 subpoena showed up this week.

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

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

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1 A. Yes, sir.  
 Q. And there is a valve by your water meter?  
 2 A. There is a valve in front of the water meter, a  
 corporation stop, yes.  
 3 Q. Okay. Is there another valve that is closer to  
 4 the unit that's after the meter?  
 5 A. In most cases each home has its own house  
 6 valve.  
 7 Q. Okay. Now, would the county, at any time when  
 8 it's working on any of these mains, service the meter or  
 9 the valve that would be the one closest to the house?  
 10 A. No, sir.  
 11 Q. All right. And when working on these water  
 12 mains, would the county turn off the valves going into  
 13 the individual unit owner's residence?  
 14 A. No, sir.  
 15 Q. Okay. There would be no reason or need to?  
 16 A. When we turn the main off, it turns them off.  
 17 Q. Okay. And it's easier just to do the one than  
 18 doing hundreds or thousands, whatever is on the break.  
 19 A. Yes, sir.  
 20 Q. Now, did anybody, to your knowledge, ever  
 21 request or report that the valve, either at the meter --  
 22 or at the meter going into the Sheridan residence, was  
 23 broken at any time?

1 A. Not that I'm aware of.  
 Q. Okay. And by the way, would you all be  
 2 involved in repairs of a valve that would be closer to  
 the house, or is that the homeowner's?  
 3 A. Anything after the meter is the homeowner's.  
 4 Q. Homeowner's. Okay. Now, you did talk to  
 5 Mrs. Sheridan; did you not?  
 6 A. Yes. She came out and approached us on this.  
 7 Q. All right. And what did she tell you?  
 8 A. She had some water damage in her house that she  
 9 would like for us to see.  
 10 Q. Okay. Did she indicate to you that somebody  
 11 had turned her water meter on while she was away?  
 12 A. I can't remember that far back.  
 13 Q. Did you make a memorandum of your meeting with  
 14 her?  
 15 A. I sent one to Beth Jordan. Is this -- can I  
 16 look at that?  
 17 Q. Sure, to refresh your recollection.  
 18 A. Okay. According to this, she told me she had  
 19 turned the water meter off, the water off herself, and  
 20 that was apparently the conversation.  
 21 Q. Did she ever tell you which water meter she had  
 22 turned off, or which valve?  
 23 A. No.

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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.

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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?

Lined area for handwritten notes or signatures, consisting of horizontal lines across the right side of the page.

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 notes on page 35 and 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

Series of horizontal lines for handwritten notes or signatures.

1 there was a thousand gallons consumed, and then the two  
 2 readings after that, there was zero consumption.

3 Q. And there is no way that a thousand gallons  
 4 could have been consumed without someone turning it back  
 5 on.

6 A. Correct.

7 Q. Mr. Hawkins --

8 A. Hawkins.

9 Q. -- he works for the county still?

10 A. Yes, sir.

11 Q. Okay. In the water department?

12 A. Yes, sir.

13 Q. Okay. Don't tell him I butchered his name that  
 14 bad. The meter reader has his name on this, and they  
 15 check --

16 A. I couldn't --

17 Q. -- when they check particular meters?

18 A. I couldn't answer that either. I'm not with  
 19 the meter reading division. I'm not sure if they label  
 20 who read the meter at that time or not.

21 Q. Do you know a Derek Ross or Eddrick Willis?

22 A. No, sir.

23 Q. Jerry Johnson?

24 A. I don't know any of the meter readers. That's  
 25 a completely different division.

1 Q. Do you know who took these two photographs? Do  
 2 you have any idea?

3 A. If any photographs were taken, it would  
 4 probably have been our risk management.

5 Q. James Lang?

6 A. Or Beth Jordan.

7 Q. Was Mrs. Sheridan alleging that the county was  
 8 responsible for the water coming into her property?

9 A. She didn't indicate nothing to me about that.  
 10 It was just at the time when I went in there, it was  
 11 just -- there was a problem, and we notified risk  
 12 management right away.

13 Q. And again, you weren't present for any  
 14 discussions that Mrs. Sheridan may have had with  
 15 Mr. Lang?

16 A. No, sir.

17 MR. Wallace: Okay. Thank you very much.

18 MR. ROSS: Let me just follow up real quick.  
 19 RE-CROSS-EXAMINATION

20 BY MR. ROSS:

21 Q. Would you have any way of knowing if she turned  
 22 the valve off or not herself?

23 A. No, sir.

24 Q. Okay. I mean, if the valve was left on and all  
 25 the faucets and all the places where water could intrude

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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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 5 STATE OF FLORIDA  
 6 COUNTY OF BREVARD

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

12 Dated this \_\_\_\_ day of \_\_\_\_\_, 2003.

13  
 14 The foregoing certificate was subscribed  
 15 to before me this \_\_\_\_ day of \_\_\_\_\_, 2003, by  
 16 the witness who has produced a \_\_\_\_\_  
 17 as identification and who did not take an additional  
 18 oath.

19  
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1 ERRATA SHEET  
 2 IN RE: Sheridan V. NATIONWIDE  
 3 PAGE LINE CORRECTION

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**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 notes 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

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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

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1 know the complete date. Enter 3/?/99 into a date field in  
2 Microsoft Access, and it will give you an error message every  
3 time. If the database software you're using only supports  
4 complete dates, you have at least a couple of alternatives: (1)  
5 When you don't have complete date information, you can leave the  
6 date cell blank and (2) You can assign an approximate complete  
7 date (e.g., the fact we know happened sometime in March could be  
8 dated 3/1/99). Both solutions have obvious downsides. The lesser  
9 of evils depends on your circumstances.

10 INDICATE DISPUTED STATUS

11 Each fact should be flagged as being disputed or undisputed.  
12 I've already argued that your chronology should include  
13 disputed facts. If your chronology contains a mixture of disputed  
14 and undisputed items, it makes good sense to create a column  
15 which indicates whether a given fact is undisputed or disputed,  
16 and if so, by which party. Consider titling your column Disputed  
17 Status and using these values: Disputed by Opposition, Disputed  
18 by Us, Undisputed, Unsure. (If you're working on a case with more  
19 than two parties, revise the options to whatever you deem  
20 appropriate, however, you will probably find that having an  
21 option for all possible permutations is overkill.)

22 Once you've marked facts as being disputed or undisputed,  
23 your chronology becomes a tremendous aid in the preparation of  
24 motions for summary judgment and pre-trial motions. For example,  
25 instead of creating a last-minute list of facts

1 to which you are willing to stipulate, you simply filter your  
2 chronology down to the undisputed items and print. If you've  
3 begun your chronology early in case preparation, you can use this  
4 information to organize your examination of adverse witnesses.  
5 Filter the chronology down to those items that you expect to be  
6 disputed and see if you can obtain admissions regarding them  
7 during depositions or find sources for them in documents.

8 SHOW ISSUE RELATIONSHIPS

9 To create a great chronology, you need issues as well as  
10 facts.

11 The vast majority of cases involve multiple issues.  
12 Assessing the strength or weakness of your case is really an  
13 exercise in assessing your strength or weakness in relation to  
14 each of the issues in it. Here again, your chronology should be  
15 an important aid.

16 Develop a list of case issues (perhaps with the aid of a  
17 brainstorming session -- see our article on Brainstorming). Don't  
18 limit your thinking to those issues tied directly to some legal  
19 claim. Include any topic that might influence juror thinking. For  
20 example, if you are working for the defense in a products case,  
21 you might want to include this issue: The Plaintiff Is Motivated  
22 by Greed, Not a Desire for Justice. Even though you would never  
23 make such an argument explicitly, it would be interesting to see  
24 what facts point to plaintiff greed, allowing jurors to reach  
25 such a conclusion on their own.

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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

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