

IN THE SUPREME COURT OF FLORIDA

CASE NO.: SC16-2232

MICHAEL ROHRBACHER

Petitioner,

vs.

GARRISON PROPERTY AND  
CASUALTY INSURANCE  
COMPANY,

Respondent.

\_\_\_\_\_ /

**APPENDIX TO RESPONDENT'S RESPONSE TO**  
**ORDER DATED NOVEMBER 8, 2017**

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## **INDEX**

Transcript of Hearing (August 14, 2013).....	3-186
Final Judgment on Attorney's Fees and Costs (October 2, 2013).....	187-195

IN THE COUNTY COURT  
OF THE EIGHTEENTH JUDICIAL CIRCUIT  
IN AND FOR SEMINOLE COUNTY, FLORIDA

CASE NO. 2010-CC-002026

MICHAEL ROHRBACHER,

Plaintiff,

-vs-

GARRISON PROPERTY & CASUALTY  
INSURANCE COMPANY, a foreign  
corporation authorized to do business in the  
State of Florida,

Defendant.

\* \* \* \* \*

HEARING BEFORE THE  
HONORABLE JERRI L. COLLINS

DATE TAKEN: WEDNESDAY, AUGUST 14, 2013

TIME: 1:43 P.M. - 5:26 P.M.

PLACE: SEMINOLE COUNTY COURTHOUSE  
301 NORTH PARK AVENUE  
SANFORD, FLORIDA 32771

TAKEN BEFORE: CANDICE G. JOHNSON, RPR  
AND NOTARY PUBLIC

\* \* \* \* \*

1 APPEARANCES:

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8 APPEARING ON BEHALF OF THE PLAINTIFF

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15 APPEARING ON BEHALF OF THE DEFENDANT



1	I N D E X	
2	TESTIMONY OF MICHAEL DAVID ROHRBACHER	Page
	DIRECT EXAMINATION BY MS. BRADFORD	16
3	CROSS EXAMINATION BY MS. PEPPER	20
4	TESTIMONY OF MICHELLE KELSON, ESQUIRE	
	DIRECT EXAMINATION BY MS. BRADFORD	28
5	CROSS EXAMINATION BY MS. PEPPER	44
6	TESTIMONY OF MICHAEL DAVID ROHRBACHER	
	DIRECT EXAMINATION BY MS. BRADFORD	47
7	CROSS EXAMINATION BY MS. PEPPER	71
8	TESTIMONY OF RUTLEDGE BRADFORD, ESQUIRE	
	DIRECT TESTIMONY BY MS. BRADFORD	80
9	CROSS-EXAMINATION BY MS. PEPPER	89
10	TESTIMONY OF ROBERT D. BARTELS, ESQUIRE	
	DIRECT TESTIMONY BY MR. BARTELS	94
11	CROSS EXAMINATION BY MS. PEPPER	99
12	TESTIMONY OF KEVIN B. WEISS, ESQUIRE	
	DIRECT TESTIMONY BY MR. WEISS	106
13	CROSS EXAMINATION BY MS. PEPPER	126
14	TESTIMONY OF KENNETH P. HAZOURI, ESQUIRE	
	DIRECT TESTIMONY BY MR. HAZOURI	136
15	CROSS EXAMINATION BY MS. BRADFORD	165
16	CERTIFICATE OF REPORTER	184
17		
18		
19		
20		
21		
22		
23		
24		
25		

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

2 THE COURT: All right. Okay. This is  
3 Michael Rohrbacher versus Garrison Property &  
4 Casualty. This is an attorney's fee trial. And  
5 are the parties ready?

6 MS. BRADFORD: Yes, Your Honor.

7 MS. PEPPER: Yes, ma'am.

8 THE COURT: And you're Ms. Pepper?

9 MS. PEPPER: Yes, ma'am.

10 THE COURT: Okay. And I reviewed the file.  
11 So have the parties agreed on entitlement?

12 MS. BRADFORD: Yes, Your Honor.

13 MS. PEPPER: Yes, Your Honor.

14 THE COURT: All right. So, Ms. Bradford, do  
15 you wish to go forward?

16 MS. BRADFORD: Yes, Your Honor. Thank you.

17 Good afternoon, Your Honor. Rutledge  
18 Bradford on behalf of the plaintiff, Michael  
19 Rohrbacher, who's my client, who's sitting right  
20 here with us today. This is the plaintiff's  
21 motion to tax attorney's fees and costs. And this  
22 is an unusual situation, Your Honor, because we  
23 are seeking a multiplier in this case. The  
24 parties have reached some stipulations, and that  
25 is to the number of hours expended. And I was

1 just going to clarify one thing.

2 (Counsel conferring.)

3 We have agreed to the number hours, Your  
4 Honor, and it is a total of 68.5 hours.

5 THE COURT: 68?

6 MS. BRADFORD: 68.5 expended on behalf of the  
7 plaintiff on this case. The hours are broken down  
8 as follows: 32 of those hours are mine, Rutledge  
9 Bradford; 31.5 of those hours are Rob Bartels';  
10 and five of those hours are Steven Dells'.

11 THE COURT: Okay.

12 MS. BRADFORD: And with respect to costs, we  
13 have agreed on a portion of the costs, that was  
14 \$539. Those are not in dispute.

15 THE COURT: \$539?

16 MS. BRADFORD: Yes, ma'am.

17 THE COURT: Okay. And that's a portion of  
18 the costs?

19 MS. BRADFORD: Yes, ma'am.

20 THE COURT: What does that represent?

21 MS. BRADFORD: Oh, we've got the itemization,  
22 I can give that to Your Honor. It's attached to  
23 one of the depos and I'll grab that for you.

24 THE COURT: Okay.

25 MS. BRADFORD: What is in dispute is

1       \$1,313.85 for five deposition transcripts which  
2       have all been filed with the Court. And \$1,816  
3       for Mr. Rohrbacher's flight and rental car here  
4       today, and \$1,536.03 for Mr. Rohrbacher's flight  
5       and rental care for the deposition about two weeks  
6       ago.

7               THE COURT: The first number was 1,816?

8               MS. BRADFORD: \$1,816.

9               THE COURT: Okay. And second one is how  
10       much?

11              MS. BRADFORD: The second one is \$1,536.03.

12              THE COURT: And three cents. And that was  
13       for the flight to the depo?

14              MS. BRADFORD: Flight and his rental car for  
15       his deposition and his appearance here today. So  
16       what I show as a total amount of costs is --  
17       actually, that's not right because -- what I show  
18       is a total amount of cost is \$5,204.88.

19              THE COURT: And that's in dispute?

20              MS. BRADFORD: The parties have agreed to 539  
21       of that amount. But that's the amount that's in  
22       dispute is the difference between the two. So  
23       it's about 45 -- \$4,700 is in dispute.

24              And I don't know if Your Honor has a  
25       preference on how you'd like to proceed, if you

1 want us to address these costs first or address  
2 that last?

3 THE COURT: Let's go ahead and while we're  
4 talking about costs, let's just go ahead and  
5 address it.

6 MS. BRADFORD: Okay. With respect to the  
7 depositions, Your Honor, in this case Ms. Pepper  
8 took five depositions in preparation for this fee  
9 hearing. She took my deposition. She took  
10 Mr. Bartels' deposition. She took  
11 Mr. Rohrbacher's deposition. And she took two  
12 additional lawyers that are not associated with my  
13 firm, Attorney Todd Miner and Attorney Dan Smith.  
14 All of these depositions have been taken within  
15 the last 15 days, probably closer to 10. All of  
16 them were ordered. All of them were filed by  
17 Ms. Pepper with the Court.

18 We received a copy of these depositions.  
19 Obviously, getting a copy of these is pretty  
20 critical to our presentation here today, in light  
21 of the fact that each of these depositions was  
22 taken with respect to the multiplier that's being  
23 sought. Mr. Miner and Mr. Smith were former  
24 counsel of Mr. Rohrbacher and offered testimony in  
25 that regard. My testimony was about that, as well

1 as our time sheets. Same with Mr. Bartels'. And  
2 Mr. Rohrbacher's deposition was exclusively about  
3 his difficulty in obtaining competent counsel.

4 So I think under the uniform guidelines,  
5 those are taxable. My expert can certainly speak  
6 to that. But that has to do with the depositions,  
7 and then we can address his travel as you wish.

8 I've got the itemization of those costs, Your  
9 Honor. They were provided to Ms. Pepper as soon  
10 as we got them from the court reporter, which was  
11 yesterday.

12 (Counsel conferring.)

13 This actually has Mr. Rohrbacher's -- one of  
14 his two flights attached as well, but the first  
15 several pages are the deposition transcript.

16 THE COURT: Okay. So you wish for these to  
17 be marked and entered into evidence?

18 MS. BRADFORD: Yes, Your Honor.

19 THE COURT: Okay. Mark this as Plaintiff's  
20 Composite 1 having to do with costs.

21 Okay.

22 MS. BRADFORD: And I believe attached to my  
23 deposition, which has been filed with the Court,  
24 are the itemized costs that were agreed to, but  
25 I'm sure we can get you a list of those. Here it

1 is. Here are the ones that were agreed to, Your  
2 Honor.

3 THE COURT: Okay. Mark this as Plaintiff's  
4 Evidence 2.

5 MS. BRADFORD: And then with respect to  
6 Mr. Rohrbacher's flights, Mr. Rohrbacher actually  
7 resides in Hawaii and has resided in Hawaii since  
8 2008. He travelled here from Hawaii for his  
9 deposition in the underlying case and was deposed  
10 in the underlying case. When it came time for the  
11 fee hearing in the last few weeks,  
12 Mr. Rohrbacher's deposition was set here,  
13 Mr. Bartels attempted to arrange for that  
14 deposition to be taken telephonically or by Skype,  
15 which USAA refused to do. Mr. Rohrbacher was  
16 required to travel here.

17 He was actually in Mexico City where his  
18 mother-in-law was undergoing surgery. He flew  
19 here from Mexico City and gave his deposition  
20 testimony. After giving his deposition testimony,  
21 we revisited the issue with USAA, requesting that  
22 they allow us to use his transcript in lieu of  
23 live testimony here at the fee hearing. They  
24 refused that, necessitating Mr. Rohrbacher to fly  
25 back a second time to give testimony regarding the

1 multiplier in this case.

2 And I think, you know, I think that that  
3 makes those costs taxable, when required by law to  
4 have the client here present, they knew he was out  
5 of state, we made every reasonable effort to  
6 secure his testimony otherwise, and USAA has  
7 required his presence. And, again, my expert can  
8 speak to those items of costs, as I'm sure  
9 Ms. Pepper's can.

10 THE COURT: So he was required to give his  
11 depo twice and then subpoenaed here -- I mean  
12 brought here for today's hearing?

13 MS. BRADFORD: He travelled here from Hawaii  
14 for his deposition in the underlying case.

15 THE COURT: The underlying. And then again  
16 from Mexico City?

17 MS. BRADFORD: He was there two weeks ago  
18 solely for the purpose of this hearing. He is  
19 here today again, despite our efforts to try and  
20 read his depo.

21 THE COURT: Okay.

22 All right. Ms. Pepper.

23 MS. PEPPER: Thank you, Judge.

24 With respect to the deposition transcript  
25 that Ms. Bradford has placed into evidence, at



1       this juncture, I think the argument -- I think the  
2       transcripts themselves would speak to the fact  
3       that those depositions were taken only because the  
4       plaintiff is seeking a fee multiplier in this  
5       case. There is case law from the Fifth DCA -- and  
6       please accept my apologies, I can't see seem to  
7       put my finger on it -- where you cannot get fees  
8       for -- and we've already stipulated to their  
9       entitlement back in October of 2012 -- but the  
10      case law is clear that you don't get fees.

11             The same should hold true for costs, Judge.  
12      We never would have taken those depositions but  
13      for the fact that the plaintiff was seeking a  
14      multiplier. There is no separate fee and/or cost  
15      award for the fact that those depositions were  
16      taken with respect to the amount of the fees and  
17      costs to be assessed.

18             Also, Judge, at this juncture there's no  
19      evidence that they're going to be the prevailing  
20      party on that issue such that they would  
21      potentially be entitled to those costs. Again, it  
22      solely relates to the multiplier issue, and as  
23      such, Judge, based on the controlling case law,  
24      they are not taxable costs under the uniform  
25      guidelines because they had nothing to do with the

1 underlying issues in the case.

2 With respect to the travel costs, Judge,  
3 candidly I don't believe that travel costs are  
4 assessable at this juncture. Mr. Rohrbacher has  
5 resided in Hawaii since 2008, yet he chose to file  
6 suit here in 2010, making himself -- according to  
7 case law and statute, he has to fly back to the  
8 jurisdiction for deposition. Again, his  
9 depositions would never have been taken but for  
10 the fact that his counsel is seeking a multiplier  
11 in this case.

12 Also, Judge, I have some questions with  
13 respect to the items that have been offered to the  
14 Court with respect -- I have never seen any sort  
15 of a receipt for the flight or rental car of  
16 \$1,816 that they're claiming for today, I've never  
17 been provided any information on that. The  
18 information that they did produce via -- with  
19 respect the deposition, the fee deposition, flight  
20 and rental car, Judge, I have some questions on  
21 that as to how many people actually flew on this  
22 ticket. And with respect to the rental car,  
23 whether or not the rental car was actually picked  
24 up. All that has been presented is an estimated  
25 trip total. There are no receipts showing

1 Mr. Rohrbacher is actually out of pocket any money  
2 for that. Same holds true for the \$50 baggage  
3 fee, that's just an estimation of what his baggage  
4 fees may have been.

5 But, again, I don't believe travel is a  
6 taxable cost under the uniform guidelines. I  
7 don't think that requires any expert testimony. I  
8 think that's purely a legal issue for Your Honor  
9 to decide as to whether or not it's in the  
10 guidelines.

11 Also, the fact that they are attempting -- in  
12 this hearing they may use USAA and Garrison  
13 interchangeably, I'm not sure which was argued by  
14 the plaintiff, but it is one and the same. We're  
15 used to calling it USAA, but technically it's  
16 Garrison, but they're a subsidy area of USAA.  
17 That Garrison required him to come back here, and  
18 that there was more conversation about that after  
19 his depo two weeks ago, and that is not true. The  
20 only conversations about his attendance at today's  
21 fee hearing was before his deposition when I told  
22 them that we would not agree to it because they  
23 were seeking a multiplier.

24 And, again, there's no evidence here today,  
25 in my opinion, for a multiplier, nor any evidence

1 on the ruling -- of the ruling from the Court that  
2 they are, such that they would be the prevailing  
3 party entitled to those costs, anyway. Again, for  
4 that reason, we are disputing the full \$4,665.88  
5 in those costs. But as she said, we did agree to  
6 the \$539 for the litigation costs that occurred  
7 before we stipulated to their entitlement.

8 THE COURT: Okay. So these documents that I  
9 have, these details for the flight details, you're  
10 indicating that they're not -- you haven't seen  
11 them? You said you have not seen them or you  
12 can't believe that they are actually receipts?

13 MS. PEPPER: No, ma'am, I saw the one for the  
14 deposition.

15 THE COURT: The one from Mexico City?

16 MS. PEPPER: Mexico City, correct.

17 However --

18 THE COURT: But you haven't seen anything  
19 else?

20 MS. PEPPER: Correct. I didn't have -- for  
21 the one for today, I have gotten no information on  
22 that whatsoever. And, candidly, the one that they  
23 did present from Mexico City, I have questions as  
24 to how many people actually flew on that trip  
25 based on what is listed here.

1 MS. BRADFORD: With respect to yesterday's  
2 flight, obviously Mr. Rohrbacher flew in last  
3 night. I got word he arrived at 10 p.m. This  
4 morning I attempted to send him an e-mail and it  
5 apparently did not go through, so as we work here  
6 this afternoon, we're working on obtaining  
7 documentation for Your Honor and opposing counsel  
8 with respect to that cost. Obviously, it was  
9 incurred yesterday. And with respect to the  
10 others, if there's questions about who flew or the  
11 actual amount, we can certainly address that  
12 through Mr. Rohrbacher's testimony.

13 THE COURT: Well, what testimony -- do you  
14 believe you need to offer testimony with regard to  
15 the cost issue? You said you had testimony that  
16 you wanted to offer the Court.

17 MS. BRADFORD: If she's questioning the cost  
18 of the ticket and whether that cost was for one or  
19 two people, she can certainly elicit that from  
20 Mr. Rohrbacher. We've discussed it informally.  
21 He says that is the cost for his ticket only, so  
22 there may be a question of the amount of that  
23 cost, but as a baseline I do believe they're  
24 taxable. And with respect to -- certainly when,  
25 you know, costs are looked at, the guideline --

1 and certainly we're not seeking any attorney time  
2 for all of these depositions -- but when  
3 Mr. Rohrbacher is required to travel here not  
4 once, not twice, but three times in this case,  
5 that's just another example that the Court will  
6 see.

7 THE COURT: Okay. Well, the question is  
8 whether or not those costs are allowed in  
9 determining at this phase of the litigation. You  
10 said you had case law that indicated that costs  
11 were not allowed?

12 MS. PEPPER: Not that costs necessarily are  
13 not, but that obviously -- and I think the other  
14 side has agreed that the fees are not recoverable.

15 THE COURT: Fees, right.

16 MS. PEPPER: Correct. So the logic would  
17 dictate if the fees are not recoverable, the costs  
18 are not recoverable, because the purpose of the  
19 costs are to be in the underlying litigation.

20 THE COURT: But you don't have case law that  
21 says costs are not --

22 MS. PEPPER: Correct.

23 THE COURT: Okay. I thought you said you had  
24 case law.

25 MS. PEPPER: No.

1 THE COURT: All right. Well, I'm not going  
2 to determine one way or the other right now, so if  
3 you wish to elicit testimony or cross-examine on  
4 how many people came in on either one of the trips  
5 from Mexico City -- is that what you're talking  
6 about?

7 MS. PEPPER: Yes, ma'am.

8 THE COURT: You can do so.  
9 Mr. Rohrbacher?

10 THE WITNESS: Yes, ma'am.

11 THE COURT: You can just testify from the  
12 podium, but you'll need to come forward and face  
13 the clerk and raise your right hand to be sworn.

14 MICHAEL DAVID ROHRBACHER  
15 having been first duly sworn to tell the truth, was  
16 examined and testified upon his oath as follows:

17 THE WITNESS: Yes, ma'am, I do.

18 THE COURT: Okay. Do you want to address the  
19 witness?

20 MS. BRADFORD: Sure. I'll be happy to.

21 DIRECT EXAMINATION

22 BY MS. BRADFORD:

23 Q Can you please tell the Court your name?

24 A Michael David Rohrbacher.

25 Q Okay. And, Mr. Rohrbacher, we'll get more

1 into your testimony later, but right now we just want to  
2 address costs. Where is your permanent residence?

3 A Kihei, Maui, Hawaii.

4 Q In Hawaii?

5 A In Hawaii.

6 Q Okay. And over the last two weeks have you  
7 travelled here to Central Florida exclusively for the  
8 purpose of this lawsuit?

9 A Yes, ma'am.

10 Q Okay. And when did you travel and why did  
11 you travel?

12 A I was given a nine-day notice right around --  
13 that I needed to be here on the 24th for a deposition.  
14 It was just real short notice. And then I was given a  
15 secondary notice that I needed to appear today for the  
16 hearing.

17 Q Okay. And both on the 24th of July and  
18 today, the 14th -- let's say yesterday, the 13th of  
19 August?

20 A Yesterday.

21 Q Were you at home in Hawaii or were you  
22 elsewhere when you flew here?

23 A No, my partner's mother has been ill and  
24 we've been in Mexico attending to her.

25 Q That's where she lives?



1 A That's where she resides, correct.

2 Q So both of your flights originated from  
3 where?

4 A My flight originated from Mexico City to  
5 Atlanta, and then from Atlanta to Orlando was the same  
6 flight. So there were two statements that accompanied  
7 the flight from Mexico.

8 Q And I asked you, did I not, to provide me the  
9 documentation associated with your first flight here?

10 A Yes.

11 Q Okay. And did you send that to me via  
12 e-mail?

13 A I did.

14 MS. BRADFORD: I think I may -- I have a  
15 feeling that the Judge might have my copy. May I  
16 borrow your copy back?

17 THE COURT: (Tendered.)

18 BY MS. BRADFORD:

19 Q And let me ask you if you'd look -- ask you  
20 to look through these pages here --

21 A Okay.

22 Q -- for me and tell me what that is.

23 A It's a Delta ticket that I purchased from the  
24 24th to the 27th going from Mexico City to Atlanta and  
25 Atlanta to Orlando on the 24th. Coming back to Orlando

1 the 27th, leaving Orlando and going to Atlanta, and then  
2 Atlanta to Mexico City.

3 Q Okay. And what was the cost of that ticket?

4 A Says \$1,343.50, and that's the total it looks  
5 like.

6 Q Okay. And did you have a baggage fee  
7 associated with that?

8 A I did. I believe it was -- the first bag was  
9 25 and the second was 35, but I only had one bag, ma'am.

10 Q Okay. So 25?

11 A Yes.

12 Q All right. Now, there's been a question  
13 because it looks like there's two sets of seats.

14 A Correct..

15 Q Somebody else flew with you here?

16 A No. Actually, what transpired is that the  
17 24D seat was my Mexico City to Atlanta flight, and the  
18 28D was the Atlanta flight to Orlando. And coming back  
19 my flight from Orlando was 35E, Orlando to Atlanta, and  
20 then Atlanta to Mexico City was 19F. So it was actually  
21 two sets of incumbent seats for the entire reservation  
22 for two separate days, coming and going.

23 Q Does that ticket include the cost of anybody  
24 else to fly here?

25 A Not on this ticket, no.

3 A I did from Alamo Rental Car.

6           A     It was about 132 and change, 132.50, plus  
7     whatever gas I attributed. But it was 132.50, just for  
8     rental itself.

12 THE COURT: Ms. Pepper?

14 BY MS. PEPPER:

17 A Yes.

21                    A            Um-hmm.

22 Q Is that a yes?

23           A     Yes.  Sorry.

24 Q That's okay. And on page one, Delta 686 from  
25 Mexico City to Atlanta, correct?

1 A I have only a page one of a rental car.

2 Q Here it is.

3 A Sorry.

4 Q You're fine. The bottom of page one, Delta  
5 686 from Mexico City to Atlanta, correct?

6 A Yes. Correct.

7 Q All right. And then the flight from Atlanta  
8 to Orlando is 1003, correct?

9 A Yes. Correct.

10 Q Okay. If I understand you correctly today,  
11 nobody travelled with you then from Mexico City to  
12 Orlando?

13 A Somebody did travel with me, my -- I'm  
14 married to my partner, my husband. He did travel with  
15 me, but on this trip there was a separate itinerary  
16 altogether.

17 Q Who paid for his ticket?

18 A Myself.

19 Q He was on the same flights, though?

20 A Yes.

21 Q Okay. Then also for the baggage fee that I  
22 have in front of me it's circled \$60?

23 A As I stated in testimony, my baggage fee was  
24 only \$25, Miss Pepper.

25 Q And for the rental car, what kind of car did

1 you rent?

2 A It was an economy car. It was a Chevy  
3 Aveo or Avao (ph), maybe.

4 Q What color was it?

5 A I don't know. I don't remember.

6 Q Do you remember what state the tags were that  
7 were on the car?

8 A No. I didn't take the time to look.

9 Q Do you own any cars?

10 A I own three cars.

11 Q Do you have any that are housed in the State  
12 of Florida?

13 A I do, two.

14 Q What kind of cars?

15 A I have a Ford Focus and an Infinity. A 2013  
16 Infinity and a 2011 Ford Focus that are registered in  
17 the State of Hawaii but garaged here.

18 Q Do you remember going to Ms. Bradford's  
19 office on the date of your deposition?

20 A In my Ford Focus, yes.

21 Q That's insured in the State of Hawaii?

22 A State of Hawaii, yes.

23 Q What was the purpose of the rental car if you  
24 have two cars here?

25 A Because I needed a ride to get to my house in

1 Sorrento. I live an hour and a half away, north of  
2 here -- I mean north of Orlando Airport. So I need to  
3 rent a car to get to my house. And I have no family in  
4 Florida, I needed a rental car.

5 Q Did you look into the efficiency of getting a  
6 taxi from the airport to your --

7 A Nobody goes out that far, ma'am. It's in the  
8 middle of nowhere. It's on 46A. It's in Sorrento.  
9 They don't go out that far. It's an economy car,  
10 basically a cheap car that got me from point A to point  
11 F. And I drove it less than the few miles to get home  
12 and to get back.

13 Q ~~And when you -- the time you weren't using~~  
14 it, it was just sitting at your house?

15 A It was sitting -- sitting in my driveway  
16 while I was utilizing my car for the sole purpose of my  
17 own benefit, which you saw me in the Ford Focus at my  
18 deposition. So I didn't use the rental car for any  
19 other purpose but to get to my house and back.

20 Q And what was the price of the ticket for your  
21 partner to travel with you?

22 A It probably was about the same, I just don't  
23 have it right in front of me to give you accurate  
24 information on it.

25 Q Okay. And did anybody fly with you for this

1 trip today?

2 A No.

3 Q Did you have a rental car for this trip?

4 A I did, yes.

5 Q Same situation?

6 A Same situation. My Ford Focus is out here in  
7 the parking lot. My rental car was also a Ford Focus,  
8 and it is at my house, sitting at my house, like I do  
9 every time I come to Florida.

10 MS. PEPPER: I don't have any other questions  
11 on that issue.

12 MS. BRADFORD: Nothing further.

13 THE COURT: You may step down.

14 THE WITNESS: Thank you, ma'am.

15 THE COURT: Thank you.

16 All right. Go ahead, Ms. Bradford.

17 MS. BRADFORD: That's all I've got on costs.  
18 We were having the other faxed up, and, of course,  
19 Ms. Pepper will need time to look at that.

20 THE COURT: Do you want to go ahead with your  
21 main case on fees?

22 MS. BRADFORD: Yes, Your Honor. If I can, I  
23 think we had Michelle Kelson. If it's okay with  
24 the Court, let me just give the Court a very brief  
25 overview, and then I'd like to put Ms. Kelson on

1 the stand to respect her time so she can get back  
2 home.

3 THE COURT: Okay.

4 MS. BRADFORD: Or back to her office.

5 THE COURT: Okay.

6 MS. BRADFORD: With respect to this case,  
7 Your Honor, this is a very interesting PIP matter  
8 that my office took well after this accident  
9 happened. This was a case that a wreck had  
10 occurred back in December of 2007, and the very  
11 first unique thing about this is that this  
12 accident occurred during the time that PIP had  
13 sunset in the State of Florida. Okay? One of the  
14 complicating factors here.

15 So Mr. Rohrbacher had that accident. There  
16 was confusion, which the Court will hear about  
17 later, over who owed coverage, what type of  
18 coverage, whether PIP was available, et cetera, et  
19 cetera. Mr. Rohrbacher, for that and other  
20 reasons, had an eight-month gap before he sought  
21 treatment. We will explain to the Court why that  
22 occurred, but there was an eight-month gap in  
23 seeking treatment.

24 Mr. Rohrbacher has been through a variety of  
25 lawyers, including Sylvia Grunor, Brian Coury,



1 with whom Ms. Kelson worked, Jeff Byrd, Jeffrey  
2 Bordulis, Michael Barszcz, Dan Smith, Todd Miner,  
3 Jeff Byrd, before finally landing at my office.  
4 We took this case with those first two facts that  
5 I told to the Court, along with the fact that USAA  
6 had performed three separate specialty peer  
7 reviews.

8 THE COURT: Did what? I'm sorry.

9 MS. BRADFORD: They had performed three  
10 different specialties -- in three different  
11 specialties they performed peer reviews. There  
12 was a chiropractic peer review that said  
13 absolutely no treatment was reasonable, related or  
14 necessary. There was a neurological review that  
15 said absolutely no treatment was related,  
16 reasonable or necessary. And there was a  
17 podiatrist, I believe we should call it a  
18 podiatric review by a podiatrist that said  
19 absolutely none of the treatment related to  
20 Mr. Rohrbacher's foot was reasonable, related or  
21 necessary.

22 THE COURT: What did you say the first review  
23 was, peer review?

24 MS. BRADFORD: A chiropractor.

25 THE COURT: Chiropractor.

1 MS. BRADFORD: A chiropractor, a neurologist  
2 and a podiatrist. This was a complete denial of  
3 benefits on the basis of lack of causation.  
4 Mr. Byrd filed suit in May of 2010. I substituted  
5 in in August of 2011. A proposal for settlement  
6 for \$1 was filed in November of 2011. And  
7 ultimately, Your Honor, we recovered just shy of  
8 \$70,000 in PIP and med pay benefits and interest  
9 due to Mr. Rohrbacher. We recovered 100 percent  
10 of his PIP benefits, which were \$10,000, 100  
11 percent of his medical payment benefits, which  
12 were \$50,000, and interest on both sides. That's  
13 just a brief overview of the case. Okay?

14 And I would like to call Ms. Kelson to the  
15 stand regarding her previous experience with  
16 Mr. Rohrbacher.

17 THE COURT: Face the clerk and then come to  
18 the podium, please.

19 MICHELLE KELSON, ESQUIRE  
20 having been first duly sworn to tell the truth, was  
21 examined and testified upon her oath as follows:

22 THE WITNESS: I do.

23 DIRECT EXAMINATION

24 BY MS. BRADFORD:

25 Q Good afternoon, Ms. Kelson. I'm Rutledge

1     Bradford. I don't believe we've ever met.

2           A     Nice to meet you.

3           Q     Okay. Have we ever talked on the phone?

4           A     I think we did. No. Actually, no, we've  
5     never talked on the phone.

6           Q     All right. Never met me prior to today?

7           A     No.

8           Q     Okay. With respect to Michael Rohrbacher,  
9     did I contact you a few weeks ago and ask you if you had  
10    previously represented him?

11          A     Yes.

12          Q     Okay. Do you remember Mr. Rohrbacher?

13          A     At the time initially I did not.

14          Q     Okay.

15                THE COURT: Excuse me. Could you spell your  
16    last name for me?

17                THE WITNESS: Yes, K-e-l-s-o-n, first name  
18    Michelle, M-i-c-h-e-l-l-e.

19                THE COURT: All right. Thank you.

20    BY MS. BRADFORD:

21          Q     And I guess what I should establish first,  
22    Ms. Kelson, is what do you do?

23          A     I am a plaintiff's attorney. I do  
24    first-party insurance, auto accidents, med mal,  
25    insurance conflicts.

1 Q Okay. And how long have you been an  
2 attorney?

3 A Since October of 2002.

4 Q 2002? Okay. And back in 2009, did you work  
5 with the Coury Law Firm?

6 A Yes, I did.

7 Q Okay. And was it during your time there at  
8 the Coury Law Firm that you encountered Mr. Rohrbacher?

9 A Yes.

10 Q Okay. Now, he's not sensitive, so be honest  
11 here today. Do you remember anything about his  
12 personality or what he was like to deal with?

13 A Yes.

14 Q Okay. And can you please tell the Court a  
15 little bit about your experiences with Mr. Rohrbacher?

16 A Mr. Rohrbacher has a huge heart, I have to  
17 say that, but he's very demanding. I found he was so  
18 flustered I think from the situation that brought him to  
19 me that he was -- he wanted answers. He wanted it done.  
20 He couldn't understand the process. He couldn't  
21 understand why he wasn't getting anything done, wasn't  
22 getting his medical bills. And I think because of what  
23 he went through, he made it very difficult, very  
24 demanding.

25 Q Okay. Tell the Court, if you can recall,

1 what the facts of his case were.

2 A What I remember -- again, I do apologize. I  
3 don't have the entire file.

4 Q Okay.

5 A Only what I was given. But I do remember  
6 that he came to me and he was involved in a car  
7 accident. His medical bills weren't paid. And he  
8 proceeded to tell me about the events that transpired to  
9 why he had come to me. That he had been through other  
10 attorneys and that he -- he had attempted to contact  
11 USAA with regard to his medical bills. That he made  
12 such efforts as going actually to the corporation, being  
13 escorted out, numerous phone calls, rude phone calls,  
14 just to no avail, trying to get an answer. Trying to  
15 figure out, you know, how do I get medical treatment?  
16 Who pays for it? What am I supposed to do? And he  
17 wasn't go getting any answers. So we had that  
18 situation, as well as the BI situation regarding his  
19 bodily injuries from the accident. I believe it was two  
20 different claims.

21 Q Okay.

22 THE COURT: Hold on. What was the second  
23 claim?

24 THE WITNESS: It was -- one was the bodily  
25 injury claim and then one was the personal injury

1 protection.

2 THE COURT: Okay.

3 BY MS. BRADFORD:

4 Q And did there -- did you all -- did your law  
5 firm send a demand to USAA prior -- the demand that's  
6 necessary prior to filing a lawsuit?

7 A I believe we did.

8 Q Okay. Do you remember following up after  
9 that demand was sent and you got a response from USAA?

10 A Again, I don't have the file, so I don't  
11 remember all the different communications I had.  
12 However, I do know that I had -- I do recall that I had  
13 multiple phone calls or e-mails, transactions, trying to  
14 get this going because of the assistance of Michael. I  
15 do have a fax.

16 Q Okay. Is this --

17 MS. BRADFORD: May I approach?

18 BY MS. BRADFORD:

19 Q Is this the document that you've got there?

20 A Yes, October 15th, 2009.

21 Q Okay. And I provided a copy to counsel.

22 THE COURT: Are you submitting that into  
23 evidence?

24 MS. BRADFORD: Well, I'll identify it first.

25 Okay. So this has been marked as an exhibit?

1 THE CLERK: This will be Number 3.

2 BY MS. BRADFORD:

3 Q Okay. Ms. Kelson, with respect to this  
4 document that's been marked for --

5 MS. PEPPER: Judge, if I can interrupt? Is  
6 that just marked for identification or is it  
7 coming into evidence?

8 THE COURT: Just for right now it's marked  
9 for identification.

10 MS. PEPPER: Okay.

11 THE COURT: Let's mark it as A for  
12 identification.

13 MS. PEPPER: Thank you.

14 THE COURT: Okay.

15 BY MS. BRADFORD:

16 Q Okay. And with respect to this document  
17 that's been marked as Exhibit A for identification, do  
18 you recognize this document?

19 A Yes, I do.

20 Q Okay. And what is this document?

21 A Basically, I was once again reaching out for  
22 them to reconsider their position. It is in response to  
23 -- from looking at it, clearly they denied my demand.  
24 And so I was reaching out once again to say, you know,  
25 reconsider this, these are some serious issues. He

1 needs medical attention, you're responsible. And kind  
2 of like described some of the issues that he went  
3 through in the letter and asked them to reconsider their  
4 position. And if they don't reconsider, that we'll  
5 probably be filing suit.

6 Q Okay. Is that something that you normally  
7 do, send a follow-up letter when a demand -- a pre-suit  
8 demand is denied on a PIP suit?

9 A Not necessarily. Normally we do the demand,  
10 we file suit. Sometimes -- it really depends on a  
11 case-by-case. I think in Michael's particular situation  
12 there was -- there was a lot of issues. A lot of  
13 issues. And I really didn't want to pursue the suit  
14 because I wasn't sure, due to the gap, due to the  
15 issues, due to the problems, I didn't think I'd be able  
16 to prevail.

17 Q Okay. And so you authored this letter that  
18 went to Ms. Palomino?

19 A That's correct.

20 Q Okay. And can you read this letter for us?

21 A I'll try.

22 Q Oh, do you need some glasses?

23 A I'm good. Dear Mrs. Palomino --

24 THE COURT: Is this what's been marked as --

25 MS. BRADFORD: Exhibit A.



1 THE WITNESS: Proceed?

2 MS. BRADFORD: Can she proceed, Your Honor?

3 THE COURT: Well, is she going to read it  
4 into the record?

5 MS. BRADFORD: Yes.

6 THE COURT: Well, do you want to offer it  
7 into evidence then at this point?

8 MS. BRADFORD: Yes. I'm sorry, I apologize.

9 THE COURT: If there's an objection --

10 MS. PEPPER: Yes, there's an objection  
11 because I don't think the proper predicate's been  
12 laid. And certainly I would object to relevance.  
13 We're not here --

14 (Simultaneous speakers.)

15 THE COURT: Overruled. Exhibit A will be  
16 marked and entered into evidence as Plaintiff's  
17 Evidence 3.

18 BY MS. BRADFORD:

19 Q Go ahead, Ms. Kelson.

20 A Dear Mrs. Palomino. As you are aware, a  
21 demand for payment for medical bills was previously sent  
22 to your attention. You denied benefits claiming that  
23 due to the six-month lapse in treatment that the medical  
24 bills -- injuries, were -- are not related to the  
25 automobile accident of December 23rd, 2007. Please note

1 that my client has made numerous requests pleading for  
2 assistance via telephone and e-mails to USAA in an  
3 effort to help him get the medical attention he needed.  
4 However, USAA refused to help him and has told him that  
5 his case has been closed.

6 I seriously request that you reconsider your  
7 position after reviewing the attached documents, which  
8 are only a few of the many that were sent. Please note  
9 that these requests for assistance to USAA began on  
10 January 18th, 2008, just three weeks after the accident,  
11 and continued through July 16th, 2008, when after no  
12 response our client was forced to seek legal assistance.

13 If suit is filed, each of the individuals'  
14 names in the multiple e-mails will be called for  
15 depositions to find out why our client, your insured,  
16 was refused any cooperation or assistance from his own  
17 insurance company in obtaining help with benefits under  
18 his policy and was denied assistance.

19 Please contact our office to further discuss  
20 this matter.

21 Sincerely, Michelle L. Kelson.

22 Q Now, do you recall getting any response to  
23 that letter of October 15th, 2009?

24 A Sitting here right now I cannot say one way  
25 or the other. I'm assuming I did, but I don't know.

3                    A        Yes.

6           A     Preferred communication, because of the fact  
7     that he was in Hawaii, was by e-mail.

9 MS. BRADFORD: Do you have her e-mail that  
10 was attached to Mr. Ronrbacher's deposition?

12 MS. BRADFORD: You've got it the e-mail?

15 BY MS. BRADFORD:

19           A     I've reviewed it.

22           A       November 3rd, 2009, it was  
23   michellekelson@coreylawfirm.com.

00-639

1 A Yes, I do.

2 Q Okay. Is this an e-mail that you wrote?

3 A Yes, it is.

4 Q And was it sent from your e-mail address to  
5 Mr. Rohrbacher?

6 A Yes.

7 MS. BRADFORD: Okay. At this time, the  
8 plaintiff would move this into evidence as  
9 Plaintiff's Exhibit 4.

10 THE COURT: Any objection?

11 MS. PEPPER: No, Your Honor.

12 THE COURT: All right. Plaintiff's Exhibit A  
13 marked for identification will be marked in  
14 evidence as Plaintiff's Evidence 4.

15 MS. BRADFORD: It was B for identification.

16 THE COURT: Wait a minute. How many -- I  
17 have three -- 2, 3 -- do I have a 1? Oh, yes, 1,  
18 2 -- I've got it all. It will be Plaintiff's  
19 Evidence 4.

20 BY MS. BRADFORD:

21 Q And, Ms. Kelson, can you read the letter that  
22 you wrote to Mr. Rohrbacher and sent via e-mail on  
23 November 3rd, 2009?

24 A All right. November 3rd, 2009, addressed it  
25 to Michael Rohrbacher with his home address in Sorrento,

1 e-mailed to his e-mail address.

2 Michael, I hope you are feeling well. We do  
3 not represent you for any property damage aspect in your  
4 claim. We do not intend on pursuing any aspect  
5 whatsoever with regards to any property damage claim.

6 And then Allstate bodily injury claim. Based  
7 on your authorization, we had offered to settle the pain  
8 and suffering aspect only with Allstate for \$15,000,  
9 which was accepted by Allstate. However, Allstate  
10 wanted proof that the outstanding attorney lien was  
11 resolved prior to finalizing the settlement. This has  
12 not been done yet and is still an outstanding issue  
13 since you had second thoughts after we had initially  
14 accepted Allstate's offer.

15 USAA medical bills/PIP. USAA is only  
16 responsible for your medical bills that are related to  
17 the car accident. We have tried numerous times to try  
18 to get USAA to reconsider their position without  
19 success. The medical bills are not related based on the  
20 gap in treatment and the peer review.

21 Q Let me just ask you there, that part that the  
22 medical bills are not related based on the gap in  
23 treatment and the peer review, is that in parentheses?

24 A Yes.

25 Q Okay. Continue.

1           A     Our most recent attempts to resolve your  
2     outstanding medical bills with USAA have failed as well.  
3     USAA had a supervisor review your entire claim file  
4     again. They have not changed their position. In  
5     addition, they claim that they had not breached any duty  
6     to you as their insured. We have claimed that they have  
7     failed in their duty to protect you, their insured, via  
8     lack of communication. Specifically, they claim that  
9     there is no record -- in parentheses -- via e-mail, of  
10    you attempting to communicate with USAA with regard to  
11    any of your medical questions or with regard to any  
12    attempt by you to seek their help in obtaining medical  
13    care. They indicate that there is no record that they  
14    ever received any of your e-mails which you have  
15    provided to us. They have indicated that there is no  
16    record that you ever attempted to speak with the CEO in  
17    Tampa or that you were escorted out of the Tampa office.  
18    Basically they claim that there is no record that you  
19    attempted to contact USAA with regard to you needing  
20    help getting medical care for your injuries from the  
21    auto accident.

22               Michael, please know that this does not mean  
23    that we believe USAA. However, what this does mean is  
24    that we are back to square one. That you did not seek  
25    medical treatment with regard to your injuries until

Page 41

1 eight months after. Your EUO statement. The fact that  
2 USAA has a solid good faith position in denying your  
3 benefits for lack of treatment from the time of the  
4 accident until the time USAA first received any medical  
5 bill submitted from the accident. It is reasonable for  
6 them to believe that during that timeframe, eight  
7 months -- in parentheses -- many things could have  
8 happened to you which could of caused the injuries.  
9 Further, your lack of comments made to the doctors with  
10 regard to the injuries related to accident and USAA's  
11 belief that based on your records that you were involved  
12 in an abusive relationship, around and after the time of  
13 the accident, all of these things go against your case  
14 and make it extremely difficult and costly for us to  
15 move forward and prevail on this matter against USAA.

16           We have invested a great deal of time and  
17 energy attempting to show USAA how and why you did not  
18 seek treatment for eight months and/or why treatment was  
19 delayed so long. Therefore, it is my legal opinion that  
20 your case is very complicated and will be extremely if  
21 not impossible for me to establish USAA's responsibility  
22 for your medical bills without the necessity of going to  
23 trial, and even then I cannot give us a better than 50  
24 percent chance of prevailing. The amount of time  
25 involved and additional expense in pursuing this matter

1 would not be cost effective.

2 I apologize that I must state these things to  
3 you as you have been a wonderful client and have become  
4 our friend. We have done everything we could do without  
5 success. I do not want to delay this matter any further  
6 for you. We have taken your case as far as we can. I  
7 believe that you'd be better served with another  
8 attorney. I understand that I am your fourth attorney  
9 who has failed you and I apologize for your frustration,  
10 however, I only want what's best for you.

11 Again, I want to make this very clear -- in  
12 caps, underlined -- that the above-stated opinions are  
13 only my opinions, and other attorneys may have different  
14 opinions and may believe that they can win this case for  
15 you. Thus, it is imperative that you contact another  
16 attorney as soon as possible. Your accident happened on  
17 12/23/07. Under the law to bring a negligence action  
18 you have four years to bring your suit, five years to  
19 bring a breach of contract action.

20 This letter has been very difficult to write,  
21 but I cannot ethically continue to pursue this matter on  
22 your behalf if I no longer believe that I can prevail on  
23 your case.

24 Upon receipt of this message and  
25 acknowledgment of this message by you, we will be



7 Michael, you are a wonderful person with a  
8 very big heart. I wish you only the best. Michelle  
9 Kelson.

14 A As indicated in the letter, yes.

16           A     I can't say for sure. I do know there were a  
17 lot.

19 A No.

22           A     I'm not sure. I think that more than likely  
23     I probably gave him a list of trial attorneys, maybe  
24     Aggressive or something, or I told him probably to go to  
25     The Florida Bar. I mean something I'd normally do.

1 Q All right. And with respect to this case,  
2 have you had any discussions with Ms. Pepper prior to  
3 today?

4 A I had one phone call.

5 Q Okay. And what did you tell her about this  
6 case?

7 A I told her that I remembered the e-mail and  
8 that it was an extremely difficult case. And if there  
9 was ever a multiplier --

10 MS. PEPPER: Objection, Judge.

11 THE COURT: What's the basis?

12 MS. PEPPER: What Ms. Kelson was getting  
13 ready to state or give an opinion about is a  
14 multiplier in this case --

15 THE COURT: Sustained.

16 MS. PEPPER: -- which I believe Mr. Weiss is  
17 going to be their expert and it would be  
18 duplicative.

19 THE COURT: Okay.

20 MS. BRADFORD: All right. I have no further  
21 questions. Miss Pepper may have some for you.

22 CROSS EXAMINATION

23 BY MS. PEPPER:

24 Q Good afternoon Ms. Kelson. Ms. Kelson, you  
25 and I have had PIP cases against each other over the

1 years, correct?

2 A Yes, we have.

3 Q Although we've never met in person, we've  
4 talked on the phone a lot. You were employed with the  
5 Coury Law Firm I believe you said back in 2009, correct?

6 A That's correct.

7 Q Okay. At that time the law firm was  
8 considered competent, correct?

9 A Correct.

10 Q Okay. You, yourself, would consider yourself  
11 a competent attorney, correct?

12 A Absolutely.

13 Q And yet you -- I believe you testified that  
14 Mr. Rohrbacher came to you. Was it the case that he  
15 sought out the Coury Law Firm or was that considered  
16 something that was another attorney that did that on his  
17 behalf?

18 A I believe it was Michael.

19 Q Okay. When you discussed this case at the  
20 onset with Michael, was there any discussion of the case  
21 warranting a fee multiplier?

22 A Not at that time.

23 Q Okay. Was there any discussion -- well, let  
24 me ask you this. You obviously had a retainer agreement  
25 executed with Mr. Rohrbacher, correct?

1 A Correct.

2 Q So you took the case?

3 A Correct.

4 Q Without a discussion about a fee multiplier,  
5 correct?

6 A At the time, correct.

7 MS. PEPPER: All right. I don't believe I  
8 have any further questions.

9 MS. BRADFORD: Nothing further.

10 THE COURT: All right.

11 MS. BRADFORD: She can be excused as far as  
12 we're concerned.

13 Thank you very much for your time.

14 THE COURT: Do you wish to call your next  
15 witness?

16 MS. BRADFORD: Yes. Let me just ask  
17 Ms. Pepper something.

18 THE COURT: All right.

19 (Counsel conferring.)

20 MS. BRADFORD: The plaintiff would call  
21 Michael Rohrbacher.

22 THE COURT: Sir, you've already been sworn  
23 in. You can have a seat up there.

24 THE WITNESS: All right.

25 MICHAEL DAVID ROHRBACHER

1       having been previously sworn to tell the truth, was  
2               examined and testified as follows:

3                       DIRECT EXAMINATION

4       BY MS. BRADFORD:

5               Q     Good afternoon, Mr. Rohrbacher, again. Can  
6       you please --

7               MS. BRADFORD: Hang on one second. Let me  
8       get this marked. I'll cross this out.

9               Do you want to stipulate?

10              MS. PEPPER: I'll stipulate.

11              MS. BRADFORD: The parties stipulate into  
12       evidence the plaintiff's --

13              THE COURT: It's stipulated.

14              MS. PEPPER: Yes.

15              THE COURT: Okay. I'm going to note the  
16       stipulation has been made. And this is your fee  
17       agreement?

18              MS. BRADFORD: Yes, ma'am.

19              THE COURT: Okay. And that's going to marked  
20       in evidence as Plaintiff's Evidence 5.

21       BY MS. BRADFORD:

22              Q     Okay. Good afternoon again, Mr. Rohrbacher.

23              A     Good afternoon.

24              Q     You previously gave deposition testimony a  
25       couple weeks ago in this case, correct?

1           A     Yes, ma'am.

2           Q     Okay. And at that time you went through the  
3 various lawyers that had you retained or been associated  
4 with, correct?

5           A     Involved with, yes.

6           Q     Okay. We're going to go through that list  
7 again for the Court's benefit. But before I get there,  
8 can you tell the Court a little -- just a little bit  
9 about yourself?

10          A     I was born in Pittsburgh, Pennsylvania, and  
11 moved to Florida in 1999. And then relocated to Hawaii  
12 after we married and I'm still residing in Hawaii.

13          Q     Okay. How would you describe what it's like  
14 to deal with you?

15          A     Hmm. Unbearable at times. I think that I  
16 have a lot of work, past, present, and future. I don't  
17 think that there's an easy answer for explaining me as a  
18 person.

19               THE COURT: Sorry. What did you say?

20               THE WITNESS: I don't think there's an easy  
21 answer for me -- explaining me as a person, other  
22 than me having a good heart, trying to do the  
23 right things in life, regardless of whatever and  
24 regardless of what past has happened to me that  
25 has destroyed my life. I still try to remain

1 positive and move forward with that mindset.

2 BY MS. BRADFORD:

3 Q And just so we can put this in proper  
4 context, prior to this automobile accident --

5 A Um-hmm.

6 Q -- can you tell the Court a little bit about  
7 your family history and what was going on with your  
8 family?

9 A Everything or just pieces or what has  
10 transpired prior to the accident?

11 Q So the Court has an idea of what your mindset  
12 was, how you were psychologically and emotionally before  
13 the accident.

14 A As a child, I mean I was physically abused.  
15 As a -- you know, I was molested as a kid for years.  
16 And after being physically abused by my stepfather and  
17 being molested, my father, mother, brother and sister  
18 were killed in a car accident 1999 in Pittsburgh. That  
19 left me with a lot of questions about life.

20 Q All right. Prior to your family's tragic  
21 accident, had you had psychiatric care or treatment?

22 A I've been in psychiatric care since I was  
23 nine.

24 Q Okay. And then following obviously the death  
25 of your family, I assume that you had some --

1 A A lot of expenses.

2 Q -- additional problems?

3 A Yes, I had additional problems. I've been  
4 diagnosed with generalized anxiety, post-traumatic  
5 stress disorder, major depression disorder, and  
6 obsessive/compulsive disorder. Prior to the accident,  
7 that's the only health condition I had.

8 Q Okay. And can you tell the Court a little  
9 bit about your interactions with me over the last few  
10 years as I've worked to represent you in this case?

11 A I've been -- you and I haven't always seen  
12 eye to eye, but you took a leap of faith and tried to  
13 help somebody in need. We've had our problems. We've  
14 had our arguments and they've been pretty extensive.  
15 And I think for me, individually, that's the way I've  
16 been my whole life is argumentative towards other  
17 people. Whether it's right, whether it's wrong, it's  
18 me. But at the end of the day you believed in me, so  
19 we're here.

20 Q Okay. Would you describe yourself as low  
21 maintenance? How would you describe yourself?

22 A Beyond the top of the maintenance attribute.  
23 To the point where the only answer now is I want to know  
24 why. I want to know what is going on. I think I have  
25 some trust issues based on my past and what this USAA



1 thing has done to me for years -- five, six years. And  
2 I have some deep anger issues.

3 Before the accident, the anger issues weren't  
4 there. I moved from Pittsburgh to Florida to start a  
5 new life, to put my past behind me so I could focus.  
6 Then when this happened, it opened up Pandora's box and  
7 started --

8 Q Was the accident that involved your family,  
9 that was in Pittsburgh?

10 A That was in Pittsburgh, Pennsylvania, and I  
11 was not in that accident.

12 THE COURT: When you talk about the accident,  
13 are you talking about the accident in Pennsylvania  
14 or the one here, the underlying --

15 THE WITNESS: The history of --

16 THE COURT: The one that opened up Pandora's  
17 box, which one --

18 THE WITNESS: This accident basically  
19 re-presented itself. I had gotten some extensive  
20 treatment in Pittsburgh related to my  
21 psychological problems, so much that before I  
22 wasn't able to work, to function, to do things  
23 that normal people can do. And after the  
24 accident --

25 BY MS. BRADFORD:

1 Q The one in Pittsburgh?

2 A The one in Pittsburgh, yes, I was able to  
3 function, maintain a full-time job, be promoted. I was  
4 working for Wells Fargo at an executive level. I was  
5 doing very well. And then when this transpired, I  
6 haven't been able to function right, which is the reason  
7 that -- although I have a house here in Florida, I  
8 haven't lived in it because I relive it in my mind here.

9 Q Okay. And do you like to e-mail?

10 A Huh? Yes.

11 Q Okay. Do you like to text?

12 A Yes.

13 Q Okay. And how many times during the course  
14 of representation -- my firm's representation, how many  
15 times do you think you have e-mailed, texted myself or  
16 Mr. Bartels, Mark Cederberg, my assistant?

17 A How many times? I don't think there's a  
18 number to match it because it's so excessive. I would  
19 say if I were to guess, several thousand, maybe three to  
20 4,000 e-mails in the period of time that you've  
21 represented me. And the texting, the same demographic,  
22 three to 4,000. I mean it was pretty extensive. And  
23 not to be, you know, wrong in any -- but it was pretty  
24 extensive. I was very demanding of your time and  
25 Mr. Bartels's time. Despite your patience level with

1 me, and me getting under your skin, you still helped me.

2 Q And did you get responses to your e-mails and  
3 your texts?

4 A Immediately. Immediately. Even if I was not  
5 being right, I still got them. I still got responses.

6 Q Evenings?

7 A Yes, evenings, weekends, holidays, odd hours,  
8 every time. And because of the time difference, it was  
9 just really hard to get ahold of you and I. And there  
10 was a lot of talk of USAA and going back and forth with  
11 numbers about the settlement offers that they were  
12 proposing. So the hours that you've billed the Court is  
13 beyond that based on my interaction with you and with  
14 Mr. Bartels and with the firm.

15 Q All right. Now, this accident happened back  
16 in December of 2007, correct?

17 A Yes.

18 Q Okay. And was there any question who was at  
19 fault in this accident?

20 A No. The police ticketed -- the FHP ticketed  
21 the woman that hit me.

22 Q A T-bone collision?

23 A It was a T-bone collision on Flagg Lane and  
24 Lake Emma in Lake Mary.

25 Q Okay. And was your vehicle drivable from the

1 scene?

2 A No, it was not. It was a BMW and it was not  
3 drivable.

4 Q Okay. Now, tell the Court briefly, you don't  
5 have to go on for 30 minutes, but tell the Court what  
6 transpired after you had this accident. What did you do  
7 to try and get treatment?

8 A To my recollection, USAA called me, I called  
9 Allstate, I called USAA.

10 Q Allstate was the insurer of the at-fault  
11 driver?

12 A The tort feason's insurance company, yes.  
13 And I told them that -- you know, what had transpired.  
14 They took my recorded statement. USAA took my recorded  
15 statement. And there was a conflict to who was liable  
16 for the accident. USAA said that under the PIP statute  
17 they weren't liable, Allstate said they weren't liable  
18 because it doesn't follow the guidelines with the normal  
19 Florida law, and it just went back and forth forever.  
20 And then USAA tried to say I didn't pay for my policy or  
21 my policy had lapsed, that I didn't have coverage. I  
22 mean just things that I knew were not logical and  
23 realistic based on my OCD and my paying bills on time  
24 and making phone calls and such.

25 Q Okay. Did you attempt to seek medical care

1 right after the accident?

2 A I tried, yes.

3 Q And where did you go?

4 A It was Jewett Orthopaedic, I believe.

5 Q Okay. And did you pay for that treatment  
6 yourself?

7 A Oh --

8 Q Did you?

9 A I made a mistake. Okay. The first time that  
10 I sought treatment was at the hospital, and then -- at  
11 the Central Florida -- Centra Care.

12 Q Okay. You went to a Centra Care?

13 A Centra Care in Sanford. I'm sorry.

14 Q Okay. So you went to Centra Care in Sanford.  
15 Was that relatively close in time to when the  
16 accident --

17 A Yeah, it was right off the road in Sanford.  
18 It was in Sanford and I was in Lake Mary, so I went to  
19 Centra Care in Sanford, yes, that night.

20 Q And how did you pay for that visit?

21 A I paid it on my own.

22 MS. PEPPER: Judge, can I just interject an  
23 objection. We're getting a little far from the  
24 fee issue in this case. He keeps rehashing --

25 THE COURT: What are we trying to elicit

1 here, Ms. Bradford?

2 MS. BRADFORD: I'm sorry?

3 THE COURT: What are we trying to elicit?

4 MS. BRADFORD: The history of the  
5 complications that he had through this, that's  
6 all. I want to get that he went to Centra Care  
7 and paid for it for himself.

8 THE COURT: Because we're only here till 5.

9 MS. BRADFORD: Okay.

10 BY MS. BRADFORD:

11 Q Over the next eight months, did you attempt  
12 to communicate with USAA regarding extending PIP  
13 benefits to you?

14 A Yes.

15 Q Okay. Did that ever occur in that  
16 eight-month gap?

17 A No.

18 Q Okay. Did you send e-mails?

19 A Yes.

20 Q Okay. How many e-mails do you think you  
21 sent?

22 A I left voicemails -- I mean e-mails alone in  
23 that timeframe? Six to 10.

24 Q Okay.

25 A Phone calls, I mean quite a bit. I called

1 the CEO's office. I went down to --

2 Q Okay. Did you --

3 A -- on College Park Drive. I did everything I  
4 could do.

5 Q Okay. Did you eventually go and seek the  
6 assistance of legal counsel?

7 A Yes.

8 Q Okay. And who did you first go seek?

9 A Michael Barszcz and Michael Mandeville --

10 Q Okay.

11 A -- at their law firm.

12 Q Those two lawyers work together?

13 A Yes.

14 Q The MDJD?

15 A Um-hmm.

16 Q Okay.

17 A mdjd.com.

18 Q All right. And how long did they represent  
19 you?

20 A It was a short period of time. I'm not sure  
21 of the duration.

22 Q Okay. Were they able to accomplish anything  
23 with respect to your PIP claim?

24 A No.

25 Q Were they able to get any cooperation getting

1 policy information from USAA?

2 A No, they were refused.

3 Q Okay. Were you able to get medical care  
4 while you were being represented by them?

5 A No.

6 Q Okay. Your relationship with them ended?

7 A Yes.

8 Q Okay. And where did you next go?

9 A Jeff Bordulis, B-o-r-d-u-l-i-s.

10 Q Jeff Bordulis?

11 A B-o-r -- I'm sorry, ma'am.

12 THE COURT: What's the first name?

13 THE WITNESS: J-e-f-f B-o-r-d-u-l-i-s.

14 THE COURT: Okay.

15 THE WITNESS: Thank you, ma'am.

16 BY MS. BRADFORD:

17 Q And with respect to Mr. Bordulis, same thing,  
18 were you able to get any treatment while being  
19 represented by Mr. Bordulis or make any progress with  
20 your PIP claim?

21 A With Mr. Bordulis I believe there was some  
22 preliminary treatment being done with Dr. Bornstein and  
23 Dr. Sharfman. And I believe that those referrals were  
24 given to me somewhere in that timeframe.

25 Q Okay. And you sought some medical treatment



1 with Dr. Bornstein, and he's a podiatrist?

2 A He's a podiatrist for my right foot that was  
3 injured, yes.

4 Q And Dr. Sharfman is what?

5 A A neurologist for my brain injury and -- my  
6 closed-head brain injury.

7 Q Okay. And who else did you seek treatment  
8 with?

9 A At that point it was only Dr. Sharfman and  
10 Dr. Bornstein.

11 Q Okay. And did USAA pay any of those bills?

12 A They have now, but before -- initially, when  
13 it first transpired, no.

14 Q Okay. None of your bills were being paid? .

15 A None of my bills were being paid. They sent  
16 me a letter saying they were refusing to pay them.

17 Q Okay. Did you also seek chiropractic care?

18 A Yes, I did.

19 Q And who was that with?

20 A Dr. Gerald Mattia, M-a-t-t-i-a.

21 Q And did any of his bills get paid by USAA?

22 A No.

23 Q Okay. Did there come a time when USAA had  
24 physicians review your medical records?

25 A Yes, Dr. Denise Griffin, Dr. Marvin Meritt

1 and Dr. Joseph Funk.

2 Q Okay?

3 A The foot doctor is Joseph Funk. Marvin  
4 Merrit is the chiropractor. Dennis Griffin is the  
5 neurologist.

6 Q All right. And did they send you letters?  
7 Did you receive letters from USAA?

8 A I received -- I received letters that said,  
9 based on the medical evidence -- it was a year after the  
10 accident, December 10th, 2008, I got my first letter  
11 from Dr. Denise Griffin that said, based on the medical  
12 evidence, the treatment was not medically necessary or  
13 related to the accident, and thus they're not covering  
14 it. But in reality, I was told all along that my file  
15 had been closed by the claims person that was handling  
16 my claim, Donna Palomino, so --

17 Q Did you get similar letters from Dr. Merrit  
18 and Dr. --

19 A Yes.

20 Q -- Funk?

21 A Peer reviews that said that, based on their  
22 professional opinion, based on looking at the file, that  
23 it's not medically necessary or related, but they'd  
24 never seen me.

25 Q Okay. Now, after Mr. Bordulis, you landed at

1 Brian Coury's office?

2 A Yes, and that's when I met Michelle Kelson.

3 Q Okay. And we've kind of gone through her  
4 testimony, so we know what happened there and that she  
5 released you as a client. Where next did you turn for  
6 help?

7 A After Michelle Kelson, I believe -- you know,  
8 I saw other attorneys just for consultation, not for --  
9 I mean I couldn't get representation from them, but just  
10 for them to look at my file. Elizabeth Folgeman, Todd  
11 Miner, Dan Smith, and then Jeff Byrd's office, Adam  
12 Saxe.

13 Q Okay. And Adam Saxe is with Mr. Byrd?

14 A Right. He was, yes.

15 Q All right. Ms. Folgeman was not able to  
16 obtain any PIP results for you?

17 A She wasn't able to get any -- she was trying  
18 to get a copy of the policy to see the provisions and  
19 exclusions and tried to figure out, you know, why they  
20 were doing what they were doing.

21 Q Okay. And how about Mr. Miner?

22 THE COURT: You said Miner?

23 THE WITNESS: Miner.

24 BY MS. BRADFORD:

25 Q Todd Miner.

1 A Mr. Miner was also doing the same thing.

2 Q Okay. And how about the Dan Smith?

3 A Same thing. Same thing.

4 Q Okay. And then you went from either  
5 Mr. Smith's office or Mr. Miner's office and were  
6 represented by Attorney Jeff Byrd's office?

7 A Jeff Byrd's office, yes.

8 Q Okay. And there you worked with Adam Saxe?

9 A Yes, for quite awhile.

10 Q All right. And did there come a time when  
11 Mr. Saxe no longer represented you?

12 A Two -- two perspectives. The PIP case that  
13 you and I are a part of, he referred my PIP case to you  
14 because he wasn't getting answers from USAA. And the  
15 other from when he had left the law firm shortly  
16 thereafter.

17 Q On your UM claim?

18 A Yes, on my UM claim --

19 Q Okay.

20 A -- that he doesn't represent me on.

21 Q Okay. And I did not handle your UM claim?

22 A No, you did not.

23 Q Didn't have any involvement it?

24 A Nothing to do with my UM, only the PIP  
25 portion of my case.

1 Q And you wanted me to take the UM claim?

2 A I absolutely did.

3 Q Okay. So I actually won that battle.

4 A Yes.

5 Q All right. Now, while you were represented  
6 by Mr. Miner, did you communicate with him via e-mail?

7 A Mr. Miner? Yes, I did.

8 Q And while you were represented by Mr. Smith,  
9 did you communicate with him via e-mail?

10 A Yes, I did.

11 Q All right. And while you were represented by  
12 Mr. Saxe at Jeff Byrd's office, did you communicate with  
13 him via e-mail?

14 A Yes, I communicated with all the lawyers by  
15 e-mail.

16 Q Okay. And when you gave your deposition  
17 testimony back on July 24th, did you have copies of the  
18 e-mails that you had received from these various people?

19 A I did.

20 Q Okay. And they were attached to your  
21 deposition transcript?

22 A Yes.

23 Q Do you recall that?

24 A Yes, they were exhibits, like 1 through 6.

25 Q Okay. I'm going to give you a copy of your

1 deposition transcript --

2 A Okay.

3 Q -- that is dated July 24, 2013. You've seen  
4 your actual deposition, right?

5 A I have seen it --

6 Q Okay. We've got some exhibits attached here,  
7 too. I would like for you to look at these exhibits for  
8 me.

9 A Okay.

10 Q Okay. All right. And are each of these  
11 e-mails, e-mails that were sent to you by lawyers that  
12 represented you at different times?

13 A Yes.

14 Q Okay. And were these e-mails forwarded from  
15 one of your two e-mail addresses to me at my office in  
16 July of this year?

17 A Yes.

18 Q Okay. And for the record, can you tell me  
19 what e-mail addresses you have?

20 A mauiboyinhawaii@hotmail.com, all one word, no  
21 space, and mike96753@hotmail.com.

22 Q Okay. And do you currently have those e-mail  
23 addresses?

24 A I do.

25 Q And how long have you had those e-mail

1 addresses?

2 A Since 2008.

3 Q Okay. You keep both of them simultaneously?

4 A I do. One's primarily for, you know,  
5 documents I get in through e-fax and other things, and  
6 then the other one is professional, because my last  
7 name's hard to do in an e-mail, so --

8 Q Okay. And with respect to your relationship  
9 with Mr. Miner, did there come a point when he no longer  
10 represented you?

11 A It never -- you know, he was trying to  
12 represent me from what I remember, but we never got  
13 through with the executed retainer. He was trying to  
14 see if he could make any headway, but then directed me  
15 to Jeff.

16 Q Okay. All right. And back in February 2010  
17 did Mr. Miner e-mail you about your case?

18 A He did.

19 Q And is that an e-mail that you received from  
20 him?

21 A I did.

22 Q Okay. And can you tell the Court what  
23 Mr. Miner told you?

24 MS. PEPPER: Objection, Judge. Hearsay.

25 THE COURT: Sustained.

1 MS. BRADFORD: Respectfully, Your Honor, this  
2 was sent to him at his e-mail address which has  
3 been established. It's established --

4 THE COURT: Well, are we going to put that --  
5 are you putting them --

6 MS. BRADFORD: Um-hmm.

7 THE COURT: Do want to go ahead and mark  
8 them?

9 MS. BRADFORD: They're already marked as  
10 exhibits to his deposition. We can start with  
11 Mr. Miner's and have that marked separately if the  
12 Court would like.

13 THE COURT: These are e-mails received by  
14 you, sir?

15 THE WITNESS: Yes, ma'am. I would  
16 communicate primarily with the lawyers by e-mail  
17 because of the travel and the time difference in  
18 Hawaii, it just makes it hard.

19 MS. BRADFORD: That has been marked as -- it  
20 says Plaintiff's Exhibit 6. I don't know if the  
21 Court --

22 THE COURT: It should be -- how many are  
23 there?

24 MS. BRADFORD: There's about three or four.

25 THE COURT: Are you going to mark them as a



1 composite?

2 MS. BRADFORD: We can mark them as a  
3 composite if the Court would like.

4 THE COURT: Yes.

5 MS. BRADFORD: Okay. So the composite --

6 MS. PEPPER: And, again, this is just for  
7 identification purposes?

8 THE COURT: Well, that's what I wanted you  
9 know. You registered an objection based upon  
10 hearsay?

11 MS. PEPPER: Yes, ma'am.

12 THE COURT: And these are e-mails that he  
13 received?

14 MS. PEPPER: Correct, ma'am, but they haven't  
15 been authenticated by the sender, and there's  
16 nothing to prevent an e-mail from being altered  
17 once it's received.

18 MS. BRADFORD: Well, that's not --

19 MS. PEPPER: Well, these are out-of-court  
20 statements only submitted for the truth of the  
21 matter and they're completely unauthenticated.

22 THE COURT: But they're his e-mails that he  
23 has received. I'm going to allow -- you can  
24 question him on the trustworthiness of them.

25 MS. BRADFORD: What we are marking as

1 Composite 6 is -- Wendy, do you have any objection  
2 if the contingency agreement is included here,  
3 just so we can mark all these at once?

4 MS. PEPPER: It's already been marked, so --

5 MS. BRADFORD: So Composite 6 will be  
6 Mr. Rohrbacher's -- of the exhibits labeled B, C,  
7 D and E to Mr. Rohrbacher's July 24th deposition.

8 BY MS. BRADFORD:

9 Q And what did Mr. Miner tell you back in  
10 February 2010 about your case, Mr. Rohrbacher?

11 A You want me to read it? Read it?

12 Q Yes, that's fine.

13 MS. PEPPER: Judge, again, I'm going to  
14 object to hearsay.

15 THE COURT: Noted for the record.

16 Go ahead.

17 THE WITNESS: Is that okay?

18 THE COURT: Yes.

19 THE WITNESS: Okay. I'm sorry.

20 THE COURT: That's okay. No, that's fine.

21 THE WITNESS: You have a very difficult case,  
22 Michael. I know you've been through a lot.  
23 However, USAA is ignoring my request for a copy of  
24 your policy. Despite a signed retainer, they will  
25 not give me any information. I don't know what

1 effort I can place (ph) upon the case. I know  
2 you've had five lawyers in Central Florida,  
3 however I don't feel that I can give you a  
4 favorable outcome since USAA thinks (inaudible).  
5 They're obviously hiding something (inaudible)  
6 with your case. The PIP law causes you to be  
7 unable to (inaudible). I don't think that I'll be  
8 able to win this case based on USAA's delays,  
9 denying their (inaudible) with you.

10 You have four years from the date of 12/23/07  
11 to bring suit.

12 Todd Miner. Sent from my Blackberry,  
13 T-Mobile.

14 BY MS. BRADFORD:

15 Q And, likewise, you got an e-mail from Adam  
16 Saxe in September of 2011?

17 A Yes.

18 Q Okay. And what did Mr. Saxe have to say?

19 A Adam Saxe says, Michael, attached please find  
20 a motion to withdraw from counsel. I respectfully  
21 request that you sign and fax it back to me. First and  
22 foremost, today is my last day with the firm. We are  
23 moving out of the country. Only very view clients  
24 know -- in parentheses. Unfortunately, Attorney Byrd  
25 (inaudible) will not allow me to devote the time

1 necessary to adequately represent your interest in this  
2 case. This is not a statement about merits of your  
3 case, but rather a decision based upon -- based on the  
4 above and your unreasonable expectations.

5 This case will not settle and it will not go  
6 away. Rather, it will go to trial and you'll be  
7 questioned quite extensively about your prior medical  
8 (inaudible) care. This is your trial and you need to be  
9 fully invested. And I fear the scrutiny you will be  
10 placed under will not be conducive to arguing  
11 (inaudible). This is not to be taken as a personal  
12 attack on you, but rather a thoughtful business  
13 decision.

14 We will not be asserting any liens on your  
15 case. Once I get the signed motion back, I will submit  
16 it to the Judge for his signature. Your case will not  
17 be dismissed and you are advised to seek new counsel  
18 right away. I certainly wish you the best of luck.

19 Adam Saxe.

20 Q All right. And after working with Jeff  
21 Byrd's firm, you came to me?

22 A Um-hmm. Yes, ma'am.

23 Q Okay. And what happened as a result of my  
24 representation?

25 A You got me to the finish line and gave me a

1 favorable outcome in that case.

2 Q Okay. And do you know how much was recovered  
3 for you?

4 A A little less than \$70,000, which was my PIP  
5 and my med pay. And Rob negotiated the rest with  
6 Ms. Pepper, I believe.

7 MS. BRADFORD: That's all the questions I  
8 have. Ms. Pepper may have some.

9 MS. PEPPER: I do.

10 CROSS EXAMINATION

11 BY MS. PEPPER:

12 Q Mr. Rohrbacher, you listed seven, if I  
13 counted them correctly, lawyers prior to Ms. Bradford,  
14 correct?

15 A I'd have to look. Do you have a list there  
16 that I can see?

17 Q Michael Barszcz --

18 A Michael Barszcz, Michael Mandeville, which I  
19 don't know if you're considering those one entity.

20 Q Same firm, correct?

21 A Same law firm, yes, ma'am.

22 Q Okay. Number two was Jeff Bordulis?

23 A Jeff Bordulis would be number two, yes,  
24 ma'am.

25 Q And how did you learn about the Coury Law

1 Firm, Ms. Kelson?

2 A As I mentioned to you in the deposition, we  
3 discussed -- well, it was referred -- my case was  
4 referred from Jeff to the Coury Law Firm.

5 Q So you didn't actively seek out Brian Coury's  
6 office as representation?

7 A No.

8 Q They were referred by Jeff Bordulis?

9 A Correct, they were.

10 Q Did you have any say-so in who you were being  
11 referred to?

12 A I was asked if it was okay based on -- but in  
13 respect to your question, no.

14 Q And after Brian Coury's office was Elizabeth  
15 Folgeman? Did you sign a retention agreement with her?

16 A Yes.

17 Q And after Ms. Folgeman, I believe you listed  
18 Todd Miner at Morgan & Morgan, correct?

19 A Yes.

20 Q And did you sign a retainer with Mr. Miner?

21 A I signed a retainer, but he didn't -- like I  
22 mentioned, some of them weren't fully executed, but they  
23 were investigating the case.

24 Q Do you still have the e-mail that you read  
25 from Mr. Miner?

1 A Yes.

2 Q And the second sentence of that e-mail says,  
3 despite a signed retainer, correct?

4 A I'd have to look at it. Give me a second.  
5 Despite a signed retainer, yes. So I guess I did have  
6 one then, yeah.

7 Q After him was Mr. Smith, correct?

8 A Yes.

9 Q And did you have a signed retainer with  
10 Mr. Smith?

11 A I'm going to refer to my e-mail. Yes, I did  
12 sign a retainer with him, yes.

13 Q And up to that point, none of those lawyers  
14 had filed a lawsuit on your behalf, correct?

15 A Jeff, well --

16 Q Up to Mr. Smith. We haven't gotten to  
17 Mr. Byrd yet.

18 A Oh. I believe the PIP lawsuit was -- I'm  
19 trying to think. Jeff? No, no. Lawsuit had not been  
20 filed yet, no.

21 Q All right. And when you went to see Jeff  
22 Byrd, how did you learn of Mr. Byrd's office?

23 A Todd Miner referred me to him. And my  
24 doctor, Dr. Marc Sharfman, also referred me to him as  
25 well.

1 Q It was actually Jeff Byrd's office that filed  
2 the PIP complaint, correct?

3 A Yes, I believe they filed both complaints.

4 Q And how was it that you got from Jeff Byrd's  
5 office to Ms. Bradford?

6 A Jeff Byrd referred -- or, I'm sorry.  
7 Correction. Adam Saxe and Ms. Bradford discussed my  
8 case and Adam referred the case to Ms. Bradford.

9 Q And you didn't have any say-so in who they  
10 selected to handle the potential PIP suit?

11 A No, I did not.

12 Q Did you at any point try to contact any  
13 lawyers, other than the ones that we've mentioned, to  
14 discuss the potential PIP suit?

15 A I did call numerous lawyers to discuss the  
16 entirety of both the PIP and the UM case. But like I  
17 said in the deposition, I don't remember who all it was  
18 other than those specifics.

19 Q You recall giving the deposition that keeps  
20 being referring to, correct?

21 A I'm sorry?

22 Q You recall giving that deposition that keeps  
23 being referred to, correct?

24 A Which? You mean the July 24th deposition?

25 Q Yes, sir.



1 A Yes.

2 Q And you were under oath that day, correct?

3 A Yes, I was.

4 Q Much as you are today?

5 A Yes, I am.

6 Q Okay. I'm going to show you -- for counsel's  
7 benefit, it's page 38 to page 21.

8 If you can, for line (sic) 38 of your version  
9 of the transcript, page --

10 A Oh, is it in here?

11 Q Yes, you have to flip back here. It's in  
12 this part.

13 A Oh, sorry. I didn't know.

14 Q That's okay. Page 38.

15 A This one?

16 THE COURT: What line?

17 MS. PEPPER: Line 19.

18 BY MS. PEPPER:

19 Q In that deposition you were asked, were there  
20 any other lawyers that you called specifically about the  
21 PIP part of your case, correct?

22 A Correct.

23 Q What was your answer?

24 A I answered no.

25 Q Your answer wasn't that you couldn't

1 remember, correct?

2 A No, my answer was no. And the reason it was  
3 no was because I did call other lawyers, but I didn't  
4 specifically discuss about the case on the PIP portion,  
5 specifically, it was discussed as a whole. So the  
6 answer to that question was no, based on the fact that I  
7 didn't call any lawyers about the PIP. I did discuss my  
8 entire case with lawyers as a whole, and it wasn't  
9 sectioned, so that's the reason I answered no.

10 Q And with all the lawyers that we've discussed  
11 so far you've had signed retainer fees, correct?

12 A Correct.

13 Q You are familiar with the concept of an  
14 attorney fee multiplier, correct?

15 A Yes. As I mentioned to you, I'm the one that  
16 did the research on it myself.

17 Q Okay. Had you ever discussed the concept of  
18 an attorney fee multiplier with Michael Barszcz or  
19 Michael Mandeville?

20 A No.

21 Q Did you ever discuss the concept of an  
22 attorney fee multiplier with Jeff Bordulis?

23 A No.

24 Q Did you ever discuss the concept of an  
25 attorney fee multiplier with anyone at Brian Coury's

1 office?

2 A No.

3 Q Did you ever discuss the concept of an  
4 attorney fee modifier with -- multiplier with Elizabeth  
5 Folgeman?

6 A No.

7 Q Any fee multiplier discussions with Todd  
8 Miner?

9 A No.

10 Q With Dan Smith?

11 A No.

12 Q With Jeff Byrd or Adam Saxe?

13 A No.

14 Q Did you ever discuss the concept of a fee  
15 multiplier with anyone at the Bradford Cederberg firm  
16 prior to signing a retention agreement?

17 A Prior to signing the retention agreement, no.

18 Q With respect to the results that were  
19 obtained, I believe your testimony was something  
20 slightly less than 70 -- slightly less than \$70,000 when  
21 she asked you?

22 A I believe it was -- I think you had tendered  
23 a 62,829 -- \$62,825.49 check. And then the check was  
24 held with Rob, and then -- with Rob Bartels. And then  
25 afterwards, you guys negotiated additional -- some type

1 of money, and I don't -- you know, I wasn't privy to  
2 that conversation between you and him.

3 Q I believe your testimony was it was a little  
4 less than \$70,000, correct?

5 A Right, a little less than 70, that's the --  
6 to break it down, I'm giving you the itemization, yes.

7 Q Do you know what the amount in controversy  
8 was in the complaint when it was filed by Jeff Byrd's  
9 office?

10 A No. I never saw it.

11 Q There was never a trial of the PIP portion of  
12 this claim, was there?

13 A No, you based your -- I'm sorry. USAA cured  
14 it on the eve of the civil remedy notice, the CRN that  
15 was filed.

16 Q And you did give a deposition in the  
17 underlying case, correct?

18 A Well, you deposed me in December of 2010 or  
19 '11, and then Phil King also deposed me as well.

20 Q And while Phil King deposed, who was your  
21 counsel at that time?

22 A For Phil King's portion?

23 Q Yes.

24 A Doug Martin.

25 Q And Doug Martin, do you happen to remember

1 the name of the firm where Doug Martin worked?

2 A Dellecker, King, McKenna, Ruffier & Sos.

3 Q And did you -- you retained -- you signed a  
4 retainer with Doug Martin, obviously?

5 A Correct. And I am the one that seeked him  
6 out myself, voluntarily, because he had a relationship  
7 with Phil King for being promoted. So I thought maybe  
8 they had a relationship that would be conducive to this  
9 case.

10 Q And you never discussed the concept of a fee  
11 multiplier with Mr. Martin, correct?

12 A Not with Mr. Martin. After the retainer was  
13 signed, a long time later towards the end of the case I  
14 did discuss it with Rutledge. And I did send her an  
15 e-mail with my research and why and my beliefs, based on  
16 the -- the situation fit based on fact.

17 MS. PEPPER: I don't think I have any other  
18 questions of Mr. Rohrbacher. Thank you.

19 THE COURT: Ms. Bradford?

20 MS. BRADFORD: Nothing further, Your Honor.  
21 He can be excused as far as I'm concerned.

22 THE COURT: You're free to go.

23 We're going to take a short recess before  
24 your next witness, a 10-minute recess.

25 (Hearing in brief recess.)

1 THE COURT: All right. Please be seated.  
2 Let's go on with the next witness.

3 MS. BRADFORD: The plaintiff would call  
4 myself, Your Honor, Rutledge Bradford.

5 THE COURT: All right.

6 MS. BRADFORD: I don't know how to do that  
7 without being dumb and dumber, unless I can  
8 testify in the narrative with maybe some  
9 opportunity for Ms. Pepper to object.

10 THE COURT: Well, that's usually what  
11 happens.

12 MS. PEPPER: Yes.

13 RUTLEDGE BRADFORD, ESQUIRE  
14 as an Officer of the Court testified as follows:

15 DIRECT TESTIMONY

16 BY MS. BRADFORD: Okay. Your Honor, my name  
17 is Rutledge Bradford. And I'm an AV-Rated  
18 Board-Certified civil trial lawyer, and I've been  
19 practicing here in Central Florida since 1991.

20 I am the owner of Bradford Cederberg, which  
21 is a law firm that employs eight lawyers and a  
22 support staff of the 22. I've been doing  
23 exclusively plaintiff's PIP work since 2003. I am  
24 considered an expert in this field, probably one  
25 of the preeminent lawyers in the state that

1 handles this type of work. My practice is devoted  
2 almost exclusively to representing healthcare  
3 providers, as opposed to individual people, like  
4 Mr. Rohrbacher. And I took his case because I  
5 believed in it and I believed in him.

6 When I got this case, I got it from Jeff  
7 Byrd's office. Jeff is a colleague, a  
8 professional colleague of mine. We go back 20  
9 years. We've tried many lawsuits against one  
10 another in our young careers. And the information  
11 I got came in a letter form with a series of  
12 attachments that were signed by Adam Saxe, and  
13 this is after having a series of conversations  
14 with Mr. Byrd about Mr. Rohrbacher. Because of  
15 Mr. Byrd's and my history, he was fairly blunt and  
16 straightforward about Mr. Rohrbacher. Then I got  
17 the letter and the attachments from Mr. Saxe, who  
18 I did not know well, which was a little bit more  
19 politically correct. But when this case was  
20 referred to me and I got this letter, they asked  
21 me if I would look at it. They didn't call and  
22 say, we're sending you a case. They said, we've  
23 got a problem. We've got a big problem case and a  
24 problem client, would you be willing to look at  
25 this case? I said, sure.

1 THE COURT: What date was this?

2 MS. BRADFORD: The date that I got the packet  
3 of information was August 15th, 2011. At this  
4 time the lawsuit had already been filed. The  
5 complaint had been filed. The multiple peer  
6 reviews were in the possession of Mr. Byrd, and  
7 they were sent to me, a series of EOBs showing  
8 that there would be no payment, a series of  
9 letters from USAA confirming no payment based on  
10 the peer reviews, and things of that nature, which  
11 is all attached.

12 Also included was a copy of the October 15th  
13 letter that Ms. Kelson testified to regarding her  
14 efforts to secure payment for Mr. Rohrbacher, as  
15 well as a series of e-mails that they had told me  
16 about that Mr. Rohrbacher had sent to people at  
17 USAA that Ms. Kelson also mentioned. As well as  
18 the psychiatric note where he had mentioned the  
19 accident in close proximity to when it had  
20 happened. And I think the letter is very  
21 important, I think, for understanding the posture  
22 of this case and the history of it when I got  
23 involved. Which was really no different than the  
24 history of the case at its inception, whenever you  
25 consider an inception to be. When the accident



1           happened? When suit was filed? When the first  
2           lawyer was consulted?

3           The only thing worse was that so much time  
4           had passed. This was now 2011 and this was a 2007  
5           accident. And Mr. Rohrbacher had burned a trail  
6           through lawyers that was quite extensive, which  
7           obviously is a red flag to any lawyer.

8           But I received this packet of information  
9           which I would like to admit into evidence and read  
10          the letter that was sent to me from Mr. Saxe as  
11          the overview of the case.

12          THE COURT: Did you rely upon this material  
13          in making a decision whether to accept  
14          Mr. Rohrbacher as a client?

15          MS. BRADFORD: Yes, I did.

16          THE COURT: All right. Any objection?

17          MS. PEPPER: I'd object as hearsay, Judge.

18          THE COURT: All right. And these are your  
19          documents that you've kept in your possession?

20          MS. BRADFORD: Yes, ma'am.

21          THE COURT: I'm going to admit it as Evidence  
22          -- what is that, 7 now?

23          THE CLERK: Seven.

24          THE COURT: As a composite.

25          MS. BRADFORD: Can I borrow the Court's copy

1 so I can --

2 THE COURT: Just go ahead. I don't need it.

3 MS. BRADFORD: This is a letter dated  
4 August 15th, 2011 to me, sent via fax to my fax  
5 number 407-926-8711. Re: Michael Rohrbacher  
6 versus Garrison -- parentheses -- PIP. Date of  
7 accident 12/23/2007.

8 Dear Rutledge. Enclosed, please find the PIP  
9 complaint and other relevant documentation  
10 regarding this PIP suit. In summary,  
11 Mr. Rohrbacher was involved in a pretty severe  
12 crash back in 2007. The story goes like this:  
13 After the paramedics cut Mr. Rohrbacher out of his  
14 vehicle, he went home. Later he presented to  
15 Centra Care and was apparently denied treatment  
16 under his health insurance.

17 Due to Michael's lack of knowledge of Florida  
18 law, he contacted who he logically thought would  
19 be the party ultimately responsible to pay his  
20 bill and compensate him for his losses, namely the  
21 tort feason's insurer, who promptly told him they  
22 were not going to pay for any of his medical care  
23 or treatment.

24 He then contacted the only other logical  
25 party, USAA, who in turn allegedly told him they

1        were not going to take care of any medical bills  
2        related to this accident. Due to this confluence  
3        of events, he did not know where to turn and  
4        decided to let things lie for the time being.

5        Michael attempted to contact a Ms. Weiss,  
6        Mr. Elifson and a Ms. Casanova at USAA. At no  
7        time did any of these USAA representatives point  
8        him in the right direction or simply say he could  
9        go to any doctor he wished and USAA would pay for  
10       it under the available PIP and ample med pay  
11       provision to the USAA policy.

12       Five days after the accident, Michael went to  
13       the psychiatrist and mentioned the motor vehicle  
14       accident and that he was, in fact, injured  
15       following the motor vehicle accident -- parens --  
16       see attached notes from Family Psychiatric  
17       Services.

18       He did not seek formal care and treatment  
19       until six months later in June of 2008. Based on  
20       several peer reviews, all medical care and  
21       treatment has been denied. I am not aware of any  
22       IMEs, but he seems to think that a USAA doctor  
23       examined him. There is no evidence for this and  
24       discovery has turned up nothing. Be that as it  
25       may, USAA has denied everything based on several

1 peer reviews.

2 We filed suit according in the -- it says  
3 according -- in the PIP and UM cases, both against  
4 the same carrier. Some of his care and treatment  
5 has been paid by health insurance and he has  
6 received some disability benefits through several  
7 policies that he purchased while working for Wells  
8 Fargo.

9 Personally, Michael is a 31-year-old gay male  
10 with a lot of emotional issues and psychiatric  
11 problems due to the death of his parents in a very  
12 bad auto accident -- parents -- he was not  
13 involved. He has been raised by his grandparents,  
14 who live in Pittsburgh and who are now getting up  
15 in years. He is a very nice guy but a bit needy.  
16 He sounds intelligent but very naïve. He now  
17 lives in Hawaii and is willing to travel back.

18 The last paragraph basically discusses -- I  
19 don't wish to disparage anybody -- discusses some  
20 difficulties in getting depositions set between  
21 the parties, which I don't think is really  
22 relevant. So unless you want me to --

23 MS. PEPPER: No.

24 MS. BRADFORD: I don't think we need that  
25 last paragraph.

1           Let me know if there's anything else you  
2           need. Again if it seems like it will take up too  
3           much time, just so no. I think what he meant to  
4           put is just say no, but he put "just so no."

5           Sincerely, Adam Saxe.

6           And the exhibits that he provided to me are  
7           all attached hereto.

8           The only thing I would offer on my own  
9           behalf, Your Honor, with respect to my hourly rate  
10          is that I am here before the Court today seeking  
11          \$500 an hour. I have been awarded \$500 an hour  
12          recently in Orange County. I have been awarded  
13          \$450 since probably 2010. I've recently asked for  
14          an increase and I received it.

15          I do think I am at the top of the PIP lawyers  
16          that do this. I have testified extensively across  
17          the state. I have spoken at seminars across the  
18          state. I have been an active participant in the  
19          legislative process in drafting legislation up in  
20          Tallahassee for probably the last eight years.  
21          I'm recognized by my peers as, you know, one of  
22          the go-to persons if things are complicated and  
23          difficult cases.

24          I have not sought a multiplier in this a case  
25          since the Schultz decision.

1 THE COURT: Since what?

2 MS. BRADFORD: And this is the first time --

3 THE COURT: Since when?

4 MS. BRADFORD: Since the Schultz decision.

5 We had a decision that came out --

6 THE COURT: What year was that?

7 MS. BRADFORD: Excuse me?

8 THE COURT: What year was that?

9 MS. BRADFORD: 2007? I have the case. But  
10 it is a case that came out from the Fifth DCA that  
11 sort of reset the tone and the standards for  
12 awarding a multiplier in cases.

13 THE COURT: Okay.

14 MS. BRADFORD: And I'll go through the  
15 multiplier when we get to that argument and the  
16 case law. But just for the record, this is the  
17 only time I have ever sought a multiplier since  
18 the Fifth DCA's opinion in Schultz versus  
19 Progressive. I think it was styled Progressive  
20 versus Schultz at that time.

21 I've also testified on many occasions, both  
22 here in Central Florida, Lake County, Volusia  
23 County, Orange County, down in South Florida, the  
24 Fort Lauderdale area, as an expert in PIP matters.  
25 And I don't know that there are many people that

1 hold the credentialing that I hold or have the  
2 number of years of experience that I have or the  
3 expertise that I have in this field.

4 So that is why what I have for myself. I  
5 believe Mr. Bartels needs to give the Court some  
6 background.

7 MS. PEPPER: I do have some questions for  
8 Ms. Bradford.

9 THE COURT: Let's do that part and then  
10 Mr. Bartels can testify.

11 CROSS-EXAMINATION

12 BY MS. PEPPER:

13 Q Ms. Bradford, I know you testified that you  
14 received \$500 an hour in Orange County. How many times  
15 has that occurred?

16 A Only one time.

17 Q Have you asked for 500 an hour more than  
18 once?

19 A No, ma'am.

20 Q And when was that ordered?

21 A It's been within the last 45 days. I know I  
22 provided you a copy of that order, but it's been within  
23 the last 45 days.

24 Q And you testified that you've received 450  
25 per hour in other cases, correct?

1           A     Yes, ma'am.

2           Q     And you may have said it, Ms. Bradford, I  
3 apologize, but how many times, do you know?

4           A     450? I definitely have received 450 from  
5 Judge Marblestone, Judge Jordan, Judge Brewer. I just  
6 received 450 from a Judge whose name I don't recall in  
7 Lake County. I just received 450 from Judge Fields in  
8 Volusia. Those were all earlier this year. The  
9 Volusia, Lake -- Jordan was last year, right before he  
10 left the bench. Marblestone was before he left the  
11 bench, so more than two years ago.

12          Q     And other than those fees, is there any other  
13 evidence to support the hourly rate that you're seeking?

14          A     I do. I actually have quite a bit of  
15 evidence. Oh, the Judge's name in Lake County is Judge  
16 Neal, N-e-a-l.

17               MS. BRADFORD: Mark that as an exhibit.

18               MS. PEPPER: Judge, I'm going to object to it  
19 being marked as an exhibit. It appears to be --

20               THE COURT: Is it case law?

21               MS. PEPPER: No, it appears to be a summary.

22               MS. BRADFORD: Ms. Pepper just asked me if I  
23 had any other evidence to support my claim for my  
24 hourly wage and here it is.

25               MS. PEPPER: Judge, I'm going to object. I



1 believe that the evidence code is quite specific  
2 about summaries and when summaries are to be  
3 presented. In fact, 98.956 on summaries clearly  
4 says, the party intending to use such a summary  
5 must give timely written notice of his or her  
6 intention to use the summary, proof of which shall  
7 be filed with the Court and shall make the summary  
8 and the original duplicates of the data from which  
9 the summary is compiled available for examination  
10 or copying by other parties at a reasonable time  
11 and place.

12 THE COURT: Okay. So are we in agreement  
13 that these are summaries?

14 MS. BRADFORD: No. There's a summary page on  
15 top of the supporting documentation. If she would  
16 like to pull off the summary page, that's fine.

17 THE COURT: Okay. All right. Then pull off  
18 the summary page. And then the other  
19 documentation is --

20 MS. PEPPER: Ms. Bradford, what is the other  
21 documentation?

22 MS. BRADFORD: The other documentation are  
23 fee orders.

24 THE COURT: Are what? Fee orders. Okay.

25 MS. BRADFORD: Fee orders entered across the

1 state and chart --

2 THE COURT: The fee orders don't need to be  
3 marked as evidence, do they?

4 MS. BRADFORD: No, I just marked it as an  
5 exhibit.

6 THE COURT: Okay. All right. Then let's  
7 forget about the summary, and then you can just --  
8 if you want to submit those for me to consider  
9 later, that's fine.

10 MS. BRADFORD: The question that was posed to  
11 me that I was trying to answer was: Do you have  
12 any other information that supports your claim for  
13 fees here today? And the information that I have  
14 is a compilation that I personally have put  
15 together of what lawyers in Central Florida who  
16 handle PIP matters have been awarded, with the  
17 supporting fee order showing what county it was  
18 entered in, whether the lawyer's AV-Rated,  
19 Board-Certificated or none of the above, the  
20 hourly rate awarded, and what year they were  
21 admitted to The Bar, along with the lawyer's name.

22 THE COURT: Okay.

23 MS. BRADFORD: And that is what -- that is  
24 something else in addition that, not only have I  
25 relied on, but I believe my expert has relied on

1 as well.

2 THE COURT: Well, I don't need the summary.

3 MS. BRADFORD: Okay.

4 THE COURT: Okay.

5 MS. PEPPER: Thank you.

6 MS. BRADFORD: That's all right.

7 MS. PEPPER: Judge, again, the question was  
8 what other evidence did she have to support the  
9 hourly rate she's seeking, other than her own fee  
10 orders. If I understand her correctly, she's  
11 indicating that they're fee orders of other  
12 counsel that she's going to rely on.

13 BY MS. PEPPER:

14 Q But, Ms. Bradford, do you have any  
15 hourly-rate-paying clients?

16 A I do not. I do not do hourly work.

17 Q Have you ever had hourly-rate-paying clients?

18 A I guess when I did defense work back in the  
19 early '90s.

20 Q That was the last time?

21 A To the best of my knowledge, it was.

22 Q And you've been doing plaintiff's work since  
23 when?

24 A Exclusively plaintiff's work since about --  
25 I've had my own firm since 2003, but I think since about

1 2000.

2 Q Regardless of whether it was --

3 THE COURT REPORTER: I'm sorry, I can't hear  
4 you.

5 BY MS. PEPPER:

6 Q Regardless of whether it was when you were  
7 doing defense work or plaintiff's work, what's the  
8 highest hourly rate you've ever been paid by an  
9 hourly-rate client?

10 A Zero. Well, I think it would be zero. I  
11 mean I was salaried when I did defense work. I mean  
12 what my law firm collected was hourly or a flat fee.

13 Q Do you recall what the hourly was back then?

14 A I sincerely don't.

15 MS. PEPPER: I don't have any further  
16 questions of Ms. Bradford.

17 THE COURT: All right. Mr. Bartels.

18 ROBERT D. BARTELS, ESQUIRE

19 as an Officer of the Court testified as follows:

20 DIRECT TESTIMONY

21 BY MR. BARTELS: Thank you, Your Honor.

22 Robert Bartels for the plaintiff. Like  
23 Ms. Bradford, I am AV-Rated by Martindale.

24 I have done PIP cases since I started  
25 practice in September of 2000, and during my time

1 I've handled probably 3,000 PIP cases. I started  
2 out in the firm George Hartz, it was in Orlando.  
3 I did a variety of work as the youngest associate  
4 at the firm. But in June or July of 2002, I took  
5 a position at Rissman, working in their PIP SIU  
6 Department. The SIU Department focused on fraud  
7 as well as PIP cases, and I worked in that  
8 department the entire time during my employment at  
9 Rissman. I ultimately became a partner at the  
10 firm in 2009, and was in charge of the PIP SIU  
11 section.

12 Actually, that was the firm where Ms. Pepper  
13 and I worked together; she was in the Tampa  
14 office, I was in the Orlando office.

15 THE COURT: Wait. So you did insurance  
16 defense?

17 MR. BARTELS: Correct.

18 THE COURT: Okay. And you became a partner  
19 in 2009?

20 MR. BARTELS: 2009 at that firm. And at that  
21 time I was the youngest partner in the firm, and  
22 actually the youngest partner, I believe, to make  
23 partner at that firm. But Rissman is a large  
24 insurance defense firm that does work all over the  
25 State of Florida.

1           During my time on the defense side, I  
2           testified as an expert witness. I've been  
3           qualified as an expert witness in PIP cases. I've  
4           handled appellate cases. I've handled cases in  
5           Federal Court. Like I said, I've handled  
6           thousands of PIP cases. And during my time of  
7           handling PIP cases, I have personally never seen a  
8           case with facts of this circumstance where there  
9           was a six to eight-month gap in treatment and  
10          multiple peer reviews. I have never seen a PIP  
11          case that involved those factors whatsoever, so I  
12          considered this case to be very unique in my  
13          experience of handling PIP cases.

14                I have been recognized as an outstanding  
15          lawyer in 2012 and 2013 for professionalism and  
16          ethics. And I was also just recently advised that  
17          I was identified as a top attorney in civil  
18          practice in Orlando for the 2013 year.

19                I have been awarded \$450 an hour. That was  
20          awarded by Judge Allen in May of this year. We  
21          have a copy of that order if Your Honor would like  
22          to see it. Ms. Pepper does have a copy of that.  
23          That is the only time that I have gone to a fee  
24          hearing prior to today. And as I indicated, Judge  
25          Allen did award 450, that's what we sought in that

1 particular case for me.

2 And I joined the Bradford Cederberg firm in  
3 February of 2012. And shortly upon arriving to  
4 the firm, Ms. Bradford transferred this file to  
5 me. And with her, I worked on it and brought it  
6 to its ultimate resolution with Ms. Pepper.  
7 Ultimately confessed and tendered settlement  
8 proceeds.

9 There was an issue as to whether we were  
10 entitled to additional interest, and we continued  
11 to litigate that matter, but shortly thereafter  
12 Garrison USAA tendered additional proceeds, which  
13 brought Mr. Rohrbacher's portion of the case to a  
14 conclusion. And obviously we weren't able to  
15 resolve the fees, so we're here today to wrap up  
16 that portion.

17 THE COURT: I'm sorry, Mr. Bartels, when did  
18 you start practicing law?

19 MR. BARTELS: September of 2000, Your Honor.

20 THE COURT: Oh, 2000. So right -- okay.

21 MR. BARTELS: Right -- yes, I graduated in  
22 May of 2000, with Ms. Pepper. Actually, we went  
23 to law school together.

24 THE COURT: So you started right out working  
25 in PIP then?

1 MR. BARTELS: Correct.

2 THE COURT: Okay.

3 MR. BARTELS: My first job was with George  
4 Hartz, and I started in the beginning of  
5 September of 2000. I started working on PIP cases  
6 and I continued to work on PIP cases. Every now  
7 and then I did -- while I was at Rissman, I did  
8 handle some commercial litigation briefly, but  
9 consistently during my entire time at Rissman  
10 handled exclusively PIP cases.

11 THE COURT: Okay. Ms. Pepper?

12 CROSS EXAMINATION

13 BY MS. PEPPER:

14 Q Mr. Bartels, while you were at Rissman  
15 handling PIP cases, what was your hourly rate?

16 A That varied depending on the client. I want  
17 to say that USAA was the lowest hourly-paying client. I  
18 really wasn't privy to those bills, since that was  
19 actually a client you worked on. So I want to say that  
20 the hourly rate was about 115 to 125. GEICO I know paid  
21 135. State Farm paid up to 165, and that was based off  
22 of years of experience and your status in the firm,  
23 whether you were a junior associate, senior associate or  
24 a partner, that was the agreement at that point in time.  
25 And the various other insurance companies paid on a



1 scale somewhere in there.

2 When I did expert work, I was paid \$200 an  
3 hour for that when I was on the defense side. But, of  
4 course, those lower hourly rates don't take into the  
5 fact the contingency, you get paid regardless of the  
6 outcome, win or lose; whereas now on a contingency you  
7 only are entitled to compensation if you ultimately  
8 prevail.

9 Q And you mentioned that you did expert work --  
10 you've been an attorney's fee expert before?

11 A Yes.

12 Q Have you done that since you've been a  
13 plaintiff's attorney?

14 A I have. I was actually retained. I was  
15 going to do a fee hearing as an expert, but the hearing  
16 got rescheduled, which conflicted with me, and  
17 Ms. Bradford actually attended that hearing.

18 Q You have then testified as an attorney's fee  
19 expert while you were a defense attorney, correct?

20 A Correct.

21 Q And you're familiar with the testimony you  
22 provided in your -- is it Ramgood (ph) versus United  
23 Auto case?

24 A Yes, there were actually three separate fee  
25 hearings. And I know there were different orders that

1 were entered, so I'm not sure which order or which one  
2 of the three fee hearings you're referring to, but I did  
3 offer testimony in that particular case.

4 Q And what was the hourly rate you charged for  
5 that expert work?

6 A The insurer paid me \$200 an hour.

7 Q And in that case you were asked to give  
8 opinions about Attorney Glenn Klausman, correct?

9 A Correct.

10 Q And in that case as a defense expert you  
11 opined that Attorney Glenn Klausman -- that \$500 per  
12 hour was too excessive for him, correct?

13 A At that point in time, yes, that was my  
14 opinion, but --

15 Q And you --

16 A Hold on. I'd like to finish answering.

17 THE COURT: Go ahead.

18 MR. BARTELS: At that point in time, that was  
19 my opinion, but that was based off doing entirely  
20 defense work, and my perception at the time was  
21 that plaintiffs always prevailed on cases. And  
22 having now switched to the plaintiff's side and  
23 actually doing plaintiff's practice, I was  
24 actually surprised at the number of times that  
25 I've had to dismiss the case without recovery due

1 to benefits exhausted or other issues that pop up.

2 So, you know, at the time I was thinking 500  
3 was unrealistic, but now having been on this side,  
4 experiencing what it's like to be a plaintiff's  
5 attorney, recognizing you do not collect on every  
6 case, you do have to dismiss without being paid,  
7 those hourly rates help to offset those losses;  
8 where on the defense side, you were paid  
9 regardless of the outcome by the insurance  
10 company.

11 BY MS. PEPPER:

12 Q What did you opine was the reasonable rate  
13 for Attorney Glenn Klausman in that case?

14 A I don't recall. I don't know if it was 400  
15 or 450. But the Court disagreed with my opinion, and I  
16 believe Judge Ansbro awarded Mr. Klausman \$500 an hour.

17 Q Back to this case. You, if I understand what  
18 you're saying correctly, and if I recall your deposition  
19 testimony, you got involved in the case sometime after  
20 either February or March of 2012, correct?

21 A I believe -- I joined the firm in February,  
22 and I think I -- my notice of appearance was filed in  
23 March and -- mid to late March.

24 Q And the Confession of Judgment that was done  
25 by Garrison in this case was in October, October 3rd of

1 2012, correct?

2 A That was the first one.

3 Q So you had the file for approximately seven  
4 months?

5 A Approximately.

6 Q And at that point was when the stipulation to  
7 entitlement was, correct?

8 A There was a stipulation to entitlement, but  
9 we disputed the interest money that was tendered. And  
10 we continued to litigate for additional interest, which  
11 was conceded shortly thereafter. I don't remember the  
12 exact date. So there was a second confession as to the  
13 additional interest that was paid.

14 Q And in the seven or eight months or so that  
15 you had the file, were there any depositions that  
16 occurred?

17 A No. The depositions were set in  
18 January before I joined the firm and they were  
19 cancelled. And we reset the depositions to occur -- I  
20 believe they were set to occur in October, but they  
21 ultimately did not go forward because Garrison confessed  
22 judgment.

23 Q So you never took any depositions in this  
24 case?

25 A I didn't get the opportunity to.

1 Q Did you file any motions in this case?

2 A I don't believe that we did.

3 Q Did you --

4 A They were already done.

5 Q Did you send out any written discovery in  
6 this case?

7 A No. I did -- I reviewed the records. I  
8 communicated with you, attempting to get it resolved. I  
9 communicated with Mr. Rohrbacher. I got records from  
10 his doctors, which -- and records from you, which were  
11 quite extensive.

12 Q Did you respond --

13 A Actually, in those documents that I got from  
14 you to go through to send new demand letters seeking  
15 payment for Mr. Rohrbacher's meds that Garrison denied  
16 payment for.

17 Q Did you prepare any written discovery  
18 responses on behalf of Mr. Rohrbacher?

19 A No, that was already -- that was already  
20 done. The suit had been filed by Mr. Byrd's office, and  
21 Ms. Bradford had been litigating it for a couple of  
22 months before I got to the firm, so that was all done.

23 Q You didn't attend any hearings on behalf of  
24 Mr. Rohrbacher?

25 A No, I did not.

1 Q And there was no mediation in this case,  
2 correct?

3 A I don't -- not while I was handling the file.  
4 I don't know if there was one prior to when Mr. Byrd  
5 handled it.

6 Q So there was no trial in this case, correct?

7 A No, Garrison confessed judgment on the eve of  
8 the civil remedy notice expiring.

9 Q And that was -- the crux of that was based on  
10 the fact that Garrison had tendered the UM limits to  
11 Mr. Martin on behalf of Mr. Rohrbacher, correct?

12 A Garrison had taken a very strange position in  
13 this particular case, intending that Mr. Rohrbacher's  
14 injuries weren't caused as a result of this accident.  
15 PIP is obviously the primary insurance, but yet tendered  
16 benefits to Mr. Rohrbacher on his UM claim, which is an  
17 even higher standard of proof, and where you have to  
18 establish the causation. It's a higher standard of  
19 proof in UM, but they tendered those benefits, but were  
20 saying that his medical bills as a result of the  
21 automobile accident weren't reasonable, related or  
22 necessary and were denying the PIP benefits. So it was  
23 a very strange position which I have never seen before.

24 Q And we touched on the rates that you were  
25 paid at Rissman. What's the highest hourly rate you've

1 ever been paid by an hourly-rate client?

2 A I believe back in 2006 or '07, when I was  
3 doing some commercial litigation. When I was a six-year  
4 lawyer I was receiving \$300 an hour.

5 Q And what type of litigation was that?

6 A We represented Grantown (ph) Motors, and it  
7 was -- there was all sorts of various aspects there;  
8 injunctions, things of that nature.

9 MS. PEPPER: I don't have any further  
10 questions of Mr. Bartels.

11 THE COURT: All right.

12 Your next, Ms. Bradford?

13 MS. BRADFORD: The plaintiff would call  
14 Mr. Weiss, Kevin Weiss.

15 THE COURT: All right. Mr. Weiss. Madam  
16 Clerk, would you please swear Mr. Weiss in.

17 KEVIN B. WEISS, ESQUIRE  
18 having been first duly sworn to tell the truth, was  
19 examined and testified upon his oath as follows:

20 THE WITNESS: I do.

21 THE COURT: Okay.

22 MS. BRADFORD: Can the expert testify in the  
23 narrative?

24 MS. PEPPER: Yes. Obviously he can. They  
25 both can.

1 MS. BRADFORD: The parties have stipulated  
2 that the experts can testify in the narrative and  
3 that they are both experts.

4 THE COURT: All right. Okay, Mr. Weiss, you  
5 may proceed.

6 DIRECT TESTIMONY

7 BY MR. WEISS: Thank you. I'm going to try  
8 to get through this as quickly as we can. And if  
9 there's something that I miss, I'd ask you to just  
10 ask me on direct.

11 My name is Kevin Weiss. My qualifications  
12 have been stipulated to. A copy of my resumé I  
13 believe is in the court file. I was asked to  
14 review the file that's before you,  
15 Mr. Rohrbacher's file. I did review three bankers  
16 boxes that were delivered to my office. I also  
17 had conferences with all -- most of the attorneys  
18 that were involved in representing Mr. Rohrbacher,  
19 some by e-mail correspondence, but also had the  
20 opportunity to read the depositions that were  
21 taken in this matter in preparation for this  
22 particular hearing.

23 I also found it important to review the  
24 correspondence that occurred between  
25 Mr. Rohrbacher and the prior attorneys. I will



1 admit I did not review all of the correspondence,  
2 because there's more than a thousand e-mails that  
3 were provided to Ms. Bradford's law firm.

4 I also conducted some research in the  
5 community, just to update myself with regard to  
6 the hourly rates that have been awarded, even over  
7 the last month, in the Central Florida area.  
8 Being that I've testified in hundreds and hundreds  
9 of fee hearings, I do keep many of these orders  
10 that become available, somebody sends me a copy of  
11 an order from the Judge. And from my experience  
12 as an expert, as a litigant. In addition to what  
13 I've reviewed in a case that I wasn't involved in,  
14 I'm familiar with the hourly rates that are  
15 awarded.

16 I've only been to maybe two fee hearings for  
17 myself over the last three or four years. I  
18 usually am able to resolve these things prior to  
19 hearing. This particular case you're probably  
20 seeing that that's not happening because Your  
21 Honor has not ruled on the hourly rates for the  
22 attorneys before you. So this is probably  
23 something that will establish some type of a  
24 precedent, which is why you're seeing what you're  
25 seeing with this particular law firm. That's just

1 my guess.

2 This particular case, in my opinion, is the  
3 model case for a multiplier. If you look at the  
4 Quanstrom -- Standard Guaranty Insurance versus  
5 Quanstrom, and you look at the other cases that  
6 discuss a multiplier -- which is not a statutory  
7 creature, it was created by case law. The purpose  
8 behind it or the policy behind it is to encourage  
9 or entice lawyers to get involved in unpopular  
10 cases. That's the policy behind it. We're not  
11 supposed to look at it with regard to this  
12 attorney's being paid a thousand dollars an hour,  
13 you know, with the multiplier, or, you know, that  
14 it's -- the amount is so much greater than the  
15 actual recovery obtained.

16 And I'm citing from State Farm versus Palma,  
17 which is a Florida Supreme Court case where the  
18 Court specifically addressed State Farm's denial  
19 of a procedure called a thermogram. And State  
20 Farm -- and I quote from case, the Court said  
21 State Farm went to the mat over that particular  
22 issue, and it knew that a day of reckoning would  
23 happen, and, if so, it would owe attorney's fees  
24 and costs. That was State Farm's response to the  
25 Palma case, which was a PIP case out of Orlando.

1           So when I look at this particular case, and  
2           it's very rare that I do recommend a multiplier.  
3           I can't even remember in the last few years where  
4           I've ever asked for a multiplier or suggested a  
5           that a multiplier was appropriate. The last case  
6           I testified for the plaintiffs, they were seeking  
7           a multiplier and I did not support the use of a  
8           multiplier in that case.

9           In this particular case, I think when it was  
10          first discussed with me by Ms. Bradford, I  
11          poo-pooed the multiplier issue until she said,  
12          well, wait till you see the facts of this case,  
13          this is a little bit different. After reviewing  
14          the facts of this case -- and it's important that  
15          the Court know -- and I'm reading an outline I did  
16          for the National Business Institute here. One of  
17          the things I state in my attorney's fee outline is  
18          -- well, it hasn't been discussed today. It says  
19          the Court cannot determine the risk regarding a  
20          multiplier after the fact. And it relies on a  
21          case called Dreese versus Craftsman Auto, and  
22          that's at 620 So.2d 1097. It says, a multiplier  
23          should be awarded based on the risk when the case  
24          first was accepted, even if recovery was achieved  
25          through a default. The Court is required to look

1 at the risk as it appears from the plaintiff's  
2 attorney at the outset. And then it goes on to  
3 cite Stack versus Lewis, which is 641 So.2d 969.

4 Interestingly, I haven't look at these cases  
5 in many, many years. Multipliers used to be much  
6 more common until the case of Progressive versus  
7 Schultz came out of the Fifth District Court of  
8 Appeal. And I would urge the Court to look at the  
9 Schultz case and determine whether or not this  
10 particular case could be distinguished from the  
11 Schultz case. Since Schultz, there's been a few  
12 opinions with regards to a multiplier that have  
13 come out where they've allowed a multiplier. Most  
14 of them have been PCA'd, but there are some that  
15 have actually come out with a particular decision,  
16 one of which I sent to Ms. Bradford.

17 Do you have that case?

18 MS. BRADFORD: Yes.

19 MR. WEISS: I think it would be important  
20 that we discuss the cases that have come out since  
21 Schultz because it's very few and far between.  
22 The case that I would just -- you can provide it  
23 to the Court. The cases that I'm familiar with,  
24 one of them is called Sunshine State Insurance  
25 Company versus Davide, which is D-a-v-i-d-e. It's

1 from the Third District, 2013. It awarded \$450 an  
2 hour, plus a 2.0 multiplier. It was affirmed.  
3 And in that particular case it goes to --

4 THE COURT: I'm sorry, do you have the cite  
5 on that?

6 MR. WEISS: Yes, it's --

7 MS. BRADFORD: I have copies.

8 MR. WEISS: Well, why don't you provide it to  
9 everybody.

10 THE WITNESS: These are just cases I sent to  
11 Ms. Bradford over the last few days that I thought  
12 would be helpful.

13 THE COURT: Okay. So go ahead. Continue  
14 testifying. You based your opinion on these  
15 cases?

16 MR. WEISS: Yes, ma'am.

17 THE COURT: Okay.

18 MR. WEISS: Let me know when you're ready.

19 THE COURT: Okay, Mr. Weiss, did you wish --

20 MR. WEISS: Okay. Thank you. In addition to  
21 the Sunshine State Insurance Company case, which  
22 gives us a comprehensive review of the multiplier  
23 and discusses the use of discretion standard, the  
24 other cases where I have been involved in from the  
25 18th Judicial Circuit acting in an appellate

1 capacity, one was a multiplier case that just came  
2 down, where the plaintiff prevailed on a 2.5  
3 multiplier that was awarded by a County Judge in  
4 Osceola County, Judge Legendre. The panel, Judges  
5 Dawson, Higbee and Polodna, affirmed the 2.0  
6 multiplier that was awarded to Mr. Copeland's law  
7 firm, and then it affirmed all the hourly rates  
8 which were specifically challenged. I've provided  
9 Ms. Bradford with the order on that appeal that's  
10 dated July 26, 2013.

11 MS. BRADFORD: This is the underlying fee  
12 judgment.

13 MR. WEISS: Yes, I also provided her with the  
14 underlying fee judgment.

15 THE COURT: Oh, okay.

16 MR. WEISS: That is the only multiplier case  
17 that I know of that has come out of the Ninth  
18 Judicial Circuit, the appellate division. As you  
19 can see, that was up there for many years. We  
20 literally just got that in the mail about a week  
21 ago.

22 THE COURT: What do you mean? You mean --

23 MR. WEISS: It's the only --

24 THE COURT: -- on appeal?

25 MR. WEISS: It's the only appeal involving

1           whether or not a multiplier is appropriate in the  
2           Ninth Judicial Circuit from an appellate  
3           perspective that I'm aware of that's come down  
4           since Schultz.

5           MS. BRADFORD: You should have that opinion,  
6           the appellate opinion that supports that, Judge.

7           THE COURT: Okay. Right, I've got that.

8           MR. WEISS: And I also provided Ms. Bradford  
9           with the actual underlying final judgment.

10          And then, secondly, this particular circuit  
11          appellate division came up with a -- with an  
12          opinion, and that was Judge Rudisill's. It's  
13          included in your packet, and that's dated -- let's  
14          see. Judge Rudisill decided this on -- does it  
15          tell us?

16          THE COURT: I don't have Judge Rudisill's.

17          MR. WEISS: Yes, May 7th 2010. It should be  
18          in there. It's called Progressive versus Duramo  
19          (ph).

20          MS. PEPPER: Did you give me a copy?

21          MR. WEISS: And just in that particular case  
22          Mr. Klausman's rate from three or four years ago  
23          -- actually more than that -- of 450 was affirmed.  
24          Judge Rudisill actually affirmed all the hourly  
25          rates in the case.

1 And then as to the multiplier, which there is  
2 another case called Harthon, H-a-r-t-h-o-n, and  
3 that was a case from Brevard where the attorneys  
4 -- I was the consulting expert on that case. And  
5 I was the actual appellate attorney on the  
6 Ochinero/Duramo (ph) case.

7 And in Harthon, the circuit appellate  
8 division affirmed the use of a multiplier. And  
9 the reason why that's important again is because  
10 these are cases that I'm aware of that came out  
11 since Schultz that apply to Your Honor, which is  
12 the 18th Judicial Circuit, as well as the Fifth  
13 District Court of Appeal. The Fifth District  
14 Court of Appeal has affirmed hourly rates, but we  
15 can get into that with regard to fees.

16 So let me get back to the multiplier, now  
17 that you have some of the cases that I've  
18 provided. So the multiplier is determined when  
19 Ms. Bradford gets the correspondence from  
20 Mr. Byrd's office specifically discussing this  
21 particular client and whether or not she wants to  
22 get involved. I can tell you that it's my expert  
23 opinion as a practitioner, as somebody who runs an  
24 11-person law firm, that I would not have gotten  
25 involved in this particular case. I never would



1 have accepted it.

2 Not only the fact that there was so many  
3 attorneys who had turned it down for reasons that  
4 we know about because it's been documented, but  
5 the fact that is one of those cases you learn  
6 about in professional responsibility class. I  
7 remember my professional responsibility professor  
8 gave us a red flag sheet. And it was a these are  
9 things to look out for when you accept a client.  
10 One of them is the client who comes in with a  
11 notebook that's more organized than you. The  
12 other one is the client who has had prior  
13 attorneys, and it's more than one attorney. And  
14 the suggestion was you contact those prior  
15 attorneys and find out what the problem was.

16 As a firm owner and somebody who practices in  
17 this area of law, I would say, okay, well, what's  
18 the issue here? Apparently there was a client  
19 control issue, which is why the Court heard so  
20 much testimony about the stress and anxiety and  
21 what you get as a person. When you take on a  
22 client, that client will call you and e-mail you,  
23 text you and show up in your office, and that  
24 would be the type of client that we have involved  
25 in this particular case.

1           That's why that's relevant. Because we look  
2           at the whole package about what would encourage  
3           Ms. Bradford and her firm to get involved with  
4           Mr. Rohrbacher and all this that comes with him.  
5           And we know that it was significant, not only  
6           through the correspondence, but through the --  
7           through the testimony that you've heard.

8           So at the outset -- so you have the  
9           individual and those issues. You have the delay  
10          in treatment, which is significant, because the  
11          jury at least wants to know why the delay. If  
12          you're hurt badly -- when I did defense work, one  
13          of the first things that we used to do is say, if  
14          you're hurt badly and you fall down and trip and  
15          hit your head, what's the first thing you're going  
16          to do if you're dizzy and you have pain? Well,  
17          you're going to go to the doctor. Well, if this  
18          person didn't go to the doctor and didn't continue  
19          with treatment, how could they have been hurt?  
20          Well, we know it may be because of  
21          Mr. Rohrbacher's issues or whatever, but that is  
22          the hardest argument to overcome.

23          One of my first PIP cases that I tried, there  
24          was a delay in treatment, it was Mark Henders (ph)  
25          versus State Farm. And that was a case against

1 the Rissman Weisberg law firm, and I lost. And it  
2 was because of the delay in treatment. That is  
3 the toughest argument.

4 Next you have several peer reviews from  
5 respected physicians. You have the neurologist,  
6 Dr. Griffin. You have Dr. Funk, who's the  
7 podiatrist. And then you have Dr. Merrit, who's  
8 the chiropractor. So USAA was prepared. And  
9 they're allowed to use peer reviews to terminate  
10 benefits, so they were prepared to battle this  
11 case.

12 There's correspondence in the file that no  
13 one really spoke about. Two things. Number one,  
14 .. and I put it in my -- I have like seven pages of  
15 notes here. With regard to the civil remedy  
16 notices, I'm sure the Court knows what a CRN is,  
17 but just to remind for the record, a civil remedy  
18 notice is what you have to file in a first-party  
19 insurance case in order to subsequently file a bad  
20 faith action against an insurance company. You  
21 must give the insurance company 60 days in which  
22 to correct the wrong. If they correct it within  
23 60 days, even on the 60th day by paying the  
24 benefits, there is no bad faith action. Okay?

25 In this particular case there were four CRNs

1 filed; September 6th, 2009, June 1st, 2010;  
2 January 10th, 2012; and March 26th, 2012. This  
3 was the fifth one which occurred in May. And in  
4 response, Ms. Pepper responded for her insurance  
5 company that we are paying the claim. And that's  
6 where it ended up, they actually paid it I think  
7 close or on the 60th day, they tendered \$60,000.

8 THE COURT: On the fifth?

9 MR. WEISS: Yep, which was the 50,000, plus  
10 the 10. And by doing that, Mr. Rohrbacher is not  
11 allowed to pursue any bad faith remedy against  
12 USAA for what they did.

13 But it's my belief that that's the only  
14 reason why this case ended up settling. That,  
15 plus the fact that you had what's known as a  
16 bulldog attorney, Ms. Bradford, on the case.  
17 Ms. Bradford is one of the toughest -- most  
18 ethical, toughest, Board-Certified PIP attorneys  
19 in town that will give you a run for your money.  
20 I say that because I used to try cases against  
21 her.

22 When we first went up against each other on a  
23 PIP case, I can tell you doors were slammed, a  
24 chair was thrown, and I was asked to leave the  
25 room. That was in Allstate's corporate office's

1 in St. Petersburg. And that wasn't Ms. Bradford  
2 throwing the chair or slamming the door, it was  
3 her client, because we were professional but very  
4 aggressive with the cases. And so we -- and I've  
5 litigated against her, I've testified for her,  
6 I've watched her abilities over the years. And if  
7 anybody can get this done -- and the reason why I  
8 say bulldog, it's because that's what Mr. Byrd  
9 said in his correspondence -- or Mr. Saxe said in  
10 his correspondence, that if anyone can get this  
11 done, it's Ms. Bradford.

12 So when I look at all the factors of the  
13 multiplier which requires us to determine -- and  
14 I'm reading from my outline here. Various  
15 factors. Whether the market requires the  
16 contingency fee multiplier seeking to retain  
17 competent counsel for this particular case?  
18 Absolutely. I don't know of anybody who would  
19 have taken this case without the ability to obtain  
20 a multiplier.

21 When you look at the wealth of attorneys that  
22 were involved in this case, there's Keith Mitnik  
23 at the Morgan & Morgan firm. If Morgan & Morgan  
24 thinks they can make a dime off a PIP case, they  
25 will fight over it. There was Elizabeth Folgeman,

1 she knows what she's doing. She declined this  
2 case. Jeff Byrd, aggressiveattorneys.com, that's  
3 his website. Jeff has not been known to ever turn  
4 down a case. I spoke to Jeff on the phone and he  
5 said, oh, this is never a case you would take to  
6 trial. And when Adam left his firm to go to  
7 England, Jeff turned the case down. You had other  
8 attorneys that were involved in this case. You  
9 had -- no one talked about Wade Coy's firm. There  
10 was Mr. Smith at Wade Coy's firm, and he actually  
11 testified about the reasons why he wouldn't pursue  
12 this case.

13 In any PIP case there's attorneys out there  
14 who can handle any PIP case. Then, there's  
15 attorneys out there who can only handle certain  
16 PIP cases. This case fulfills the policy behind  
17 the multiplier, which is to encourage people like  
18 Ms. Bradford to put her costs, her time and her  
19 sanity on the line to represent this person and  
20 come up with a result, which in this case was  
21 excellent. And that is one of the particular  
22 factors, is the results obtained. She obtained  
23 everything she could possibly get in this case.  
24 50,000, plus 10, plus I think it was \$6,000 in  
25 interest that was paid to the insured. I don't

1 think there was any way that she was able to  
2 mitigate the risk of non-payment in any way.  
3 That's another factor. The fact they tried to  
4 mitigate the risk of non-payment through pleading  
5 with USAA to pay this claim.

6 I mean -- the other things that weren't  
7 discussed in this claim is Mr. Rohrbacher  
8 contacted the vice president of claims at USAA.  
9 And they basically told him, we've researched your  
10 concerns, we want nothing to do with you. You  
11 don't get -- you don't get benefits.

12 And part of the problem is that this happened  
13 during the gap period. PIP ended, and then PIP  
14 didn't begin until June 1. And The Bar was  
15 completely uncertain whether even PIP applied at  
16 all. So what happened, though, is they reenacted  
17 the statute and made it retroactive. So we kind  
18 of knew after the fact how we were supposed to  
19 handle those cases.

20 So when I look at the multiplier factors, I  
21 believe that this case would have a less than 50  
22 percent chance of success, and therefore the Court  
23 should apply a 2.0 to a 2.5 multiplier on whatever  
24 the Court determines to be the lodestar, which is  
25 going to be your hours times your hourly rate.

1           Now, we know about the hours. That's been  
2           agreed to. That was agreed to right when we  
3           walked into the -- when Your Honor stepped into  
4           the courtroom.

5           With regard to the hourly rate, my opinions  
6           are as follows: I believe Ms. Bradford, based on  
7           her experience, reputation, ability, and where the  
8           prevailing market rates are, is definitely at \$500  
9           an hour. After being awarded in the 400s for many  
10          years, she did up her rate last year to 500. We  
11          know of at least one Judge who's agreed to that  
12          from a fee order. She's never applied for that  
13          here in Seminole County. I believe that based on  
14          the other attorneys who are regularly getting  
15          awarded \$500 -- for example, Mark Nation, an  
16          excellent attorney. I just merged my practice  
17          with Mark, so now I'm a member of the Nation Law  
18          Firm. And Mark has been getting \$500 an hour in  
19          Seminole County, as well as Orange County, for the  
20          last year to two years at least.

21          In fact, his hourly rate at \$500 an hour was  
22          just affirmed by the Fifth District Court of  
23          Appeal in a case called Jiminez versus GEICO.  
24          And, unfortunately, it was just a PCA, but if you  
25          watch the oral argument, they went on for about



1 five minutes about hourly rates here. And there  
2 was no concern whatsoever during that dialogue  
3 about Schultz.

4 In Schultz there was a footnote about a  
5 concern that Mr. Klausman was awarded \$400 an  
6 hour. It was dicta and it was never addressed by  
7 the Courts. So based on what I know the appellate  
8 courts are doing, based on this particular  
9 appellate court in the 18th, both in the Harthorn  
10 case, as well as the Ochinerio/Duramo case, the  
11 \$500 an hour is reasonable for Ms. Bradford.

12 With regard to Mr. Bartels, I've litigated  
13 with Mr. Bartels, not as aggressively as I did  
14 with Ms. Bradford, but we've had -- we've probably  
15 had more than four or 500 cases together at least.  
16 Mr. Bartels knows that there's probably 100 of  
17 those cases that my firm dismissed based on his  
18 good work and establishing that it was either a  
19 standing problem or some type of coding problem or  
20 an IME issue. But you win some and you lose some,  
21 so I'm familiar with his good work at the Rissman  
22 Weisberg law firm. I didn't know him when he was  
23 at the George Hartz firm that I remember. I  
24 certainly believe that \$450 is reasonable with  
25 someone of Mr. Bartels' experience. I know that

1 Judge Allen awarded him \$450 an hour in a fee  
2 hearing.

3 And, again, I looked at his contemporaries,  
4 and the cases, the fee orders that were provided  
5 to Your Honor from all the different lawyers that  
6 had similar or less experience than Mr. Bartels  
7 are being awarded in Volusia County, Seminole  
8 County, Brevard County and Osceola County, more  
9 than \$400 per hour. So I don't know of any other  
10 attorneys with his years of experience and his  
11 background that are being awarded less than \$400  
12 an hour for this type of work.

13 And just for the record, I have reviewed the  
14 rules regulating the Florida Bar, 4-1.5, which  
15 gives us the factors that we should consider  
16 regarding hourly rate, as well as the Rowe case,  
17 which is 472 So.2d 1145.

18 I think I've hit on everything. There's so  
19 much material in this case. But if I didn't, I'd  
20 invite Ms. Bradford or Mr. Bartels to inquire.

21 Lastly, I would just say my particular  
22 agreement with opposing counsel -- I'm sorry, with  
23 the counsel who've hired me is \$450 an hour. They  
24 paid me for my testimony. I've been paid that for  
25 about three years now. I have not increased my

1 fee with Ms. Bradford. I have with other  
2 attorneys. I do expect to be paid. This is an  
3 inconvenience. This took up my entire day  
4 yesterday and half of my day Sunday. After today,  
5 if I get out of here by 5, I will probably be paid  
6 about 18 hours, not including my travel time. And  
7 I do expect to be paid and I will submit an  
8 invoice to Ms. Bradford.

9 MS. PEPPER: I'm sorry, I didn't hear the  
10 number.

11 MR. WEISS: One eight.

12 MS. PEPPER: 18?

13 MR. WEISS: Yes.

14 .. Oh, I was asked to comment about Mr. Dell.  
15 He's a six-and-a-half-year lawyer. He started out  
16 at the State Attorneys's Office. I actually made  
17 him a job offer. Ms. Bradford got him before I  
18 got him. I'm familiar with some of his work  
19 product. He's doing a good job in insurance.  
20 Experience, I think he's been there, what, two  
21 years?

22 MS. BRADFORD: Three.

23 MR. WEISS: Three years now? My feeling is  
24 at the low end he's 300, at the high end he's 350,  
25 with regard to his hourly rate. I know he's been

1 awarded a higher hourly rate in the past, but  
2 that's the low and high end with regard to his  
3 minimal time that he's been involved in this  
4 particular case.

5 Do you have anything that I forgot,  
6 Ms. Bradford?

7 MS. BRADFORD: All right. So you've got 18  
8 hours?

9 THE WITNESS: Yes.

10 MS. BRADFORD: Through 5:00 today?

11 THE WITNESS: Correct.

12 MS. BRADFORD: I don't think I have anything  
13 further of Mr. Weiss.

14 THE COURT: Ms. Pepper?

15 MS. PEPPER: Thank you. I have a few  
16 questions for Mr. Weiss.

17 CROSS EXAMINATION

18 BY MS. PEPPER:

19 Q You testified with respect to the multiplier,  
20 that it's based on your review of the file, the multiple  
21 attorneys that turned down the case. What evidence can  
22 you point to about the attorneys that turned down the  
23 case?

24 A I would rely on Ms. Kelson's testimony when  
25 she was in Brian Coury's office. Before she came in --

1 I heard her testimony today, but before she came here  
2 today, I read the e-mails, correspondence that went back  
3 and forth. She's a very passionate lawyer. One of the  
4 things I said to her outside was that was a heck of a  
5 letter she wrote to a client. I probably would have  
6 said -- told my paralegal to tell him to get away from  
7 my office and never come back again. But -- with all  
8 due respect.

9 Other ones would be Wade Coy's firm. I mean  
10 I did read Mr. Smith's deposition, and I know Wade to  
11 have filed PIP suits. I know that -- I actually was  
12 involved in defending a PIP suit with Mr. Coy's law  
13 firm.

14 .. Morgan & Morgan and Mr. Mitnik, I mean Keith  
15 doesn't --

16 MS. BRADFORD: Miner.

17 THE WITNESS: Todd Miner, I'm sorry. Todd  
18 doesn't do much PIP. But if Morgan & Morgan is  
19 going to let go of a case, it's going to go  
20 through a very thorough process over there. And  
21 if they can't make a buck off a PIP suit, you know  
22 they're going to get rid of it.

23 The other -- Ms. Folgeman, discussed the PIP  
24 particular issue. I think she tried to get with  
25 USAA.

1           The other attorneys -- well, Jeff Byrd. I  
2           mean Jeff Byrd will try anything, generally. I  
3           used to mediate PIP cases until I got too  
4           frustrated doing it. And Jeff Byrd always had the  
5           most interesting, novel arguments with regard to  
6           PIP. And he used to just pursue these things  
7           aggressively. When I spoke to Jeff I said, I  
8           don't get it. Why wouldn't you try this case?  
9           And his main reason was because of the client  
10          control and that he didn't feel like this was a  
11          case he could go to trial with this particular  
12          client.

13          The other information that I reviewed, Coury,  
14          Folgeman, Kelson -- oh, Jeff Bordulis, I know  
15          Jeff, he used to be with the Nation Law Firm.  
16          Jeff does PIP litigation. This wasn't something  
17          that Jeff was prepared to handle.

18          The other ones, Michael Barszcz and Michael  
19          Mandeville, I did not speak with them. I don't  
20          believe Michael Barszcz does PIP and I don't know  
21          if Mandeville does. In all sincerity, I don't  
22          know.

23          So those are the attorneys that I'm aware of  
24          that turned down the case.

25        BY MS. PEPPER:

1 Q Do you know whether or not they terminated  
2 their retainer agreements, if they had retainer  
3 agreements, or whether or not Mr. Rohrbacher did that?

4 A I think it was a little bit of both. For  
5 example, there's an e-mail from Todd Miner dated  
6 February 17th, 2010, I quoted from it. I know you have  
7 had five lawyers in Central Florida. I'm sorry I can't  
8 represent you. So that's him terminating  
9 representation.

10 There's the letter from Michelle Kelson  
11 turning him down dated November 3rd, 2009.

12 Q Well, you think you read Mr. Smith's  
13 deposition, right?

14 A I'm looking at it now. Insured terminated  
15 him. He terminated Mr. Smith on February 16th, 2010. I  
16 have that in my notes.

17 There's a depo that was taken at the Coury  
18 Law Firm, that was the most recent deposition.

19 Ms. Folgeman, I wrote down here November 2009  
20 she fired him. She said that she didn't want to  
21 represent him anymore due to the USAA denials. I'm just  
22 reading from my notes.

23 Q Do you have in your notes what happened with  
24 Jeff Bordulis?

25 A Jeff? No. I sent him an e-mail, I didn't

1 hear back. Jeff and I used to practice workers' comp  
2 together about 18 years ago.

3 Also, Michael Green and I talked when he was  
4 at the Nation Law Firm.

5 Q And did you read Mr. Rohrbacher's deposition?

6 A I did.

7 Q Do you know what happened with the Barszcz  
8 Law Firm?

9 A Hang on. Here are my notes. First attorney  
10 was Michael Barszcz and Michael Mandeville, June 2008.  
11 USAA told them that the insured had no coverage and thus  
12 no claim. Also, they did not get along. Therefore, he  
13 went to Jeff Bordulis. That's what I have in my notes  
14 with regard to that particular attorney.

15 And then I have Jeff Bordulis, who referred  
16 him to Brian Coury. And Brian's, again, not one to turn  
17 down a PIP suit. Brian at one point was probably one of  
18 the leading PIP filers -- I'm not saying he was  
19 successful in all of them -- but one of the leading PIP  
20 filers in Central Florida until Judge -- our former  
21 Chief Judge gave him the ax and reported him to The Bar,  
22 and then he didn't practice anymore.

23 Q Who --

24 A Judge Simmons.

25 Q Judge Simmons.



1 A Yes.

2 Q With respect to Jeff Bordulis, do you recall  
3 Mr. Rohrbacher saying in his deposition that he sent  
4 Mr. Bordulis a letter firing that firm and told him to  
5 terminate the contract?

6 A I don't recall that specifically. I didn't  
7 put it in my notes. I just -- my notes only say that he  
8 was referred to Brian Coury.

9 MS. PEPPER: For the record, I'm referring to  
10 page 17 of Mr. Rohrbacher's deposition.

11 THE WITNESS: If it's in his deposition, I  
12 don't doubt it.

13 MS. PEPPER: Just for the record, it's on  
14 page 17, lines 19 through 23.

15 BY MS. PEPPER:

16 Q Question: Did you send a similar letter to  
17 Mr. Bordulis that you sent to the first firm asking him  
18 to --

19 Answer: Yes.

20 Question: -- terminate the contract  
21 essentially?

22 Answer: Yes.

23 And then it goes on about how they were not  
24 going to assess a lien.

25 All right. You also in your testimony

1 indicated that you haven't testified that -- and I don't  
2 want to mischaracterize, so please correct me.

3 A Sure.

4 Q That you haven't testified that a multiplier  
5 was appropriate, other than I believe you said the  
6 Davide case. I want to get it correct, Is that your --

7 A Which case? There was a case that was before  
8 Judge Allen where Herb McMillan and Craig (ph) Anthony  
9 wanted a multiplier and I couldn't support it. They  
10 withdrew the multiplier at the hearing.

11 The other case before that where I probably  
12 testified where there was a multiplier would have  
13 probably been in Polk County, and those were the cases  
14 involving Kim Driggers and the disclosure and  
15 acknowledgment form issue, which I brought up to the  
16 Fifth District and eventually won. We were awarded a  
17 multiplier by Judge Abdoney. It was eventually  
18 overturned by the Second District Court of Appeal,  
19 stating that there wasn't specific evidence from the  
20 doctor, that he went to different lawyers -- that the  
21 insured went to enough lawyers, which he didn't. And  
22 the issue in that case really was -- during oral  
23 argument, is if the insured shows up at the one law firm  
24 and that law firm decides to take the case, but only if  
25 there had been a multiplier, that's not enough evidence,

1 because you need to show that the insured went to  
2 multiple lawyers. And in that particular case from Polk  
3 County, there was no evidence that other multiple  
4 lawyers were contacted. In fact, what the testimony was  
5 is they called the FCA, which is the Florida  
6 Chiropractic Association, and was given Miss Driggers'  
7 name, who was the general counsel of the FCA, and Miss  
8 Driggers filed the suit. That was the issue in that  
9 case and I handled that appeal.

10 Q And just for the record, the case was USAA  
11 Casualty Insurance versus Prime Care Chiropractic  
12 Centers, as assignee of Darlene Woodard?

13 A Yes, that's the case.

14 Q And you were the expert witness in that case  
15 and you took the appeal to the Second DCA?

16 A I did.

17 Q If I read the opinion correctly, testimony  
18 actually was that the plaintiff contacted three law  
19 firms in Polk County but none of the firms would handle  
20 the case and then called the FCA, correct?

21 A They law firms they contacted didn't handle  
22 PIP. One was a corporate attorney. The other one --  
23 well, was their corporate attorney. The other one was a  
24 PI firm that didn't handle PIP that had referred cases  
25 to somebody else. And then they called the FCA, and

1 that was discussed in oral argument.

2 Q And in that case your opinion was that a 2.0  
3 multiplier --

4 A Yeah, it was a disclosure and acknowledgment  
5 issue where the courts were ruling -- as you know, the  
6 courts were ruling that if you didn't have a D&A form  
7 completely filled out, you lose, and some courts said  
8 it's not critical. And eventually the Fifth issued the  
9 21-page opinion stating that the plaintiff was correct,  
10 so I figured it was a 50/50.

11 MS. PEPPER: I don't have any other questions  
12 of Mr. Weiss.

13 THE WITNESS: Thank you.

14 MS. BRADFORD: Nothing further of Mr. Weiss  
15 and he can be excused.

16 THE WITNESS: That would be great. May I?

17 THE COURT: Yes.

18 MR. WEISS: Thank you very much.

19 THE COURT: All right, Ms. Pepper -- are you  
20 finished, Ms. Bradford?

21 MS. BRADFORD: Excuse me?

22 THE COURT: Are you finished?

23 MS. BRADFORD: I think the only thing I would  
24 like to do, Your Honor, is make sure I've made a  
25 proper record for Steven Dell, my associate, who

1 has time in this case. He only has five hours in  
2 this case, but as a managing partner I can  
3 certainly testify about his time and his  
4 qualifications.

5 Mr. Dell is a seven-year lawyer. Prior to  
6 coming to my office where he's been for three  
7 years, he was a State Attorney. And he started in  
8 the County Court bureau as a trial attorney, then  
9 moved to the Juvenile Court as a trial and intake  
10 attorney, and then was moved to felony trials.  
11 Then in 2010 he became a Domestic Violence  
12 Specialist and handled all domestic violence  
13 claims in Osceola County, whether they were  
14 misdemeanor or, felonies prior to joining my  
15 office.

16 So I wanted to give the Court -- he is a  
17 graduate of the University of -- excuse me -- of  
18 Florida State College of Law 2006, and has been  
19 with me since 2010.

20 Oh, and I would like to mark as an exhibit --  
21 do you have any objection to Steven's CV going in?

22 MS. PEPPER: No, I've already stipulated to  
23 his qualifications.

24 THE COURT: That would be Plaintiff's  
25 Evidence 8.

1 Do you have a CV, also, that you wish to --

2 MR. HAZOURI: I did not bring one, Your  
3 Honor. I can tell you about myself, if that's  
4 okay.

5 THE COURT: All right. Do you want to go  
6 ahead and raise your right hand -- you've finished  
7 your case then? I'm just trying to get everybody  
8 out of here.

9 MS. BRADFORD: Yes.

10 THE COURT: Do you want to stand and raise  
11 your right hand.

12 KENNETH P. HAZOURI, ESQUIRE  
13 having been first duly sworn to tell the truth, was  
14 examined and testified upon his oath as follows:

15 THE WITNESS: I do.

16 DIRECT TESTIMONY

17 BY MR. HAZOURI: Would it be okay if I use  
18 the podium?

19 THE COURT: Whatever you're comfortable is  
20 fine.

21 MR. HAZOURI: I have a notebook with the  
22 authorities that I'm going to be quoting from.

23 THE COURT: Okay.

24 MR. HAZOURI: Hello, Your Honor. I don't  
25 think I've met you before. I'm Ken Hazouri. They

1 have stipulated to me being an expert, but just to  
2 give you a little background.

3 THE COURT: How do you spell your last name?

4 MR. HAZOURI: H-a-z-o-u-r-i.

5 THE COURT: Okay.

6 MR. HAZOURI: I'm an attorney. I've  
7 practiced my entire career in the Orlando/Central  
8 Florida area. I was licensed in 1994. I'm a  
9 partner in my lawyer firm, de Beaubien, Knight,  
10 Simmons, Mantzaris & Neal, LLP. I've been a  
11 partner now for 10 years, been practicing for 18.  
12 I am AV-Rated. I have been named Florida Trends  
13 Legal Elite the last three years.

14 . . I've been doing PIP since about 1996. I've  
15 handled probably hundreds of cases at trial court  
16 level. I do a substantial amount of appellate  
17 work in PIP. I've been to the Supreme Court on a  
18 PIP issue and actually prevailed on the issue of  
19 whether proposals for settlement apply in PIP  
20 cases. There was long-running debate on whether  
21 they actually do. That was my opinion, Nicholas  
22 versus State Farm. I've had several opinions out  
23 of the Fifth DCA on PIP issues, one out of the  
24 First DCA, in which we prevailed on many Circuit  
25 Court opinions.

1 I've also done BI and UM. I've actually  
2 represented plaintiffs in homeowner's property  
3 damage claims. And I would characterize myself as  
4 a civil or commercial litigator. I don't focus  
5 exclusively on insurance law. In fact, the bulk  
6 of my practice right now is -- I would  
7 characterize as commercial litigation. And that  
8 actually forms some of the my opinions I'm going  
9 to give to you on the hourly rate issue when we  
10 get to that.

11 But I think the big issue in this case is the  
12 multiplier or at least that's the lead issue, I  
13 think, as the parties have framed it. And my  
14 testimony is going to be based on what is the  
15 undisputed evidence in this case and what the  
16 clear law is in the case. We've heard a lot of  
17 testimony about the ins and outs of the case and  
18 the emotions and what have you, but there are some  
19 things that are very clear here. And what's clear  
20 is, based on Mr. Rohrbacher's testimony, he  
21 retained 10 different law firms. Ten different  
22 law firms took his case. And every single one of  
23 those law firms took his case without any  
24 discussion of a multiplier at the outset.  
25 Mr. Rohrbacher himself testified to that, and the



1 evidence is undisputed.

2 You heard Mr. Weiss say a bunch of attorneys  
3 turned down his case. That's not accurate. These  
4 law firms took his case. And then what the  
5 undisputed evidence is, is that the law firms took  
6 the case and then, because of the alleged  
7 difficulties of USAA not paying anything, not  
8 cooperating, essentially, A; B, the difficulty  
9 with the case, the gap in treatment, if you will;  
10 and, C, the difficulty in dealing with  
11 Mr. Rohrbacher, they gave up the case. So they  
12 took the case, they signed a retainer agreement  
13 without any promise or suggestion or discussion of  
14 a multiplier.

15 And, by the way, as I'll point out to you,  
16 the people who took the BI case couldn't get a  
17 multiplier as a matter of law. So they  
18 necessarily took it without the ability of getting  
19 a multiplier. And the issues were basically the  
20 same. You heard Mr. Bartels say the UM case was  
21 actually harder than the PIP case because they  
22 have to prove causation and what have you. But  
23 yet the attorneys took the PIP -- BI and UM claim  
24 with no hope of a multiplier, even though it's  
25 more difficult than the PIP case. So that informs

1 on this whole discussion.

2 So what the undisputed evidence is, is they  
3 took the case and then, based on events that  
4 occurred after they took the case, during the  
5 representation, they decided not to represent  
6 Mr. Rohrbacher anymore. And, of course, there is  
7 some dispute or issue on who fired whom, but I'm  
8 not really going to get into that because I don't  
9 think it's particularly relevant. But when you  
10 take that set of facts, which is undisputed in the  
11 record, and you apply Schultz and some of the  
12 other law I'm going to show to you, I would say  
13 this is a model case for no award of a multiplier,  
14 if you're going to apply the law to the undisputed  
15 facts.

16 And with that I would take you to Schultz,  
17 which is under tab one. And in this district, the  
18 Fifth DCA, Schultz is the bible on multipliers in  
19 PIP cases. It was a PIP case. It came out of, I  
20 believe, Seminole County. It was Mr. Klausman,  
21 who does a lot of work here. And it went up -- he  
22 was awarded a multiplier in a PIP case. It was  
23 affirmed by the Circuit Court, the 18th Circuit  
24 Court sitting in its appellate capacity. And it  
25 went up to the Fifth DCA on a petition for writ of

1 certiorari.

2 Now, why is that significant? As we know, to  
3 prevail on a petition for writ of certiorari, you  
4 can't just prove that the Circuit Court and County  
5 Court were wrong, you have to prove that there was  
6 a departure from the essential requirements of law  
7 that resulted in a manifest injustice. That was  
8 the standard in Schultz, that the insurer,  
9 Progressive, was required to overcome to get a  
10 petition granted reversing the award of the  
11 multiplier. So they've got this big, high, uphill  
12 standard. So that informs us -- that's how  
13 clearly the Fifth DCA felt about this and how  
14 strongly they feel about it, based on the work  
15 which I'll go through with you.

16 And if we start on page three of the opinion,  
17 you see at the top I've highlighted, Progressive  
18 contends that the Circuit Court departed from the  
19 essential requirements of law -- I've told you  
20 that -- by affirming the fee award with the  
21 multiplier.

22 Just going down a little further, just to  
23 give you some context, it says the County Court  
24 approved the 2.5 multiplier. That resulted in a  
25 fee of \$1,000 an hour. I think what the

1 plaintiff's attorneys are looking for in this case  
2 is more than that. I haven't done the math, but  
3 it's 1,250 an hour or 1,500 an hour.

4 And then they -- it just says, Progressive  
5 seeks certiorari review. And I've highlighted  
6 that. It's what I've already told you, that  
7 they've reversed because it's a manifest injustice  
8 and it departs from the essential requirements of  
9 law, the award of a multiplier in that case.  
10 That's on the right-hand side, too, again on page  
11 three.

12 So if we work down the right-hand column on  
13 page three, you get to the federal lodestar  
14 approach. That's what our law is, it's based on  
15 the federal lodestar approach. And you start with  
16 a strong presumption that the lodestar represents  
17 a reasonable fee without a multiplier. So that's  
18 the presumption that this whole analysis on the  
19 multiplier starts with. And then the -- well,  
20 Rowe and Quanstrom at the end of page three.

21 If we go to page four, at the top on the left  
22 there, it sets forth the elements, the three  
23 elements the Court's supposed to look at for  
24 awarding a multiplier, in addition to the  
25 presumption that I told you about. And number

1 one, which has become a dominant factor under this  
2 case, is whether the relevant market requires a  
3 contingency fee multiplier to obtain competent  
4 counsel.

5 And if you look right below there where it's  
6 highlighted it says, in later cases the ability to  
7 obtain competent counsel rose to prominence in  
8 determining under what circumstances a multiplier  
9 was necessary and appropriate. We have nothing --  
10 and then they go on to say, continuing where the  
11 highlighting is, the next highlighting -- because  
12 Mr. Schultz did not testify at the fee hearing, we  
13 have nothing to suggest that he had any difficulty  
14 obtaining competent counsel. Obviously, we don't  
15 have that in our case. I highlighted that to show  
16 you that the big issue is whether a multiplier was  
17 required to obtain competent counsel.

18 Let's stop there. How can that be the case  
19 here, when Mr. Rohrbacher retained different law  
20 firms without any discussion of promise of a  
21 multiplier? You don't even have to look any  
22 further than that to find that under Schultz  
23 there's no multiplier. He retained 10 firms.  
24 There is no evidence that he contacted any firm  
25 and they said, we're not taking your case. Every

1 single firm took his case and then decided --  
2 either he or they or both decided they didn't want  
3 to take it. And I've got a case that addresses  
4 that next.

5 So if we go -- what happened here is the  
6 Fifth DCA cited Tetrault v. Fairchild, 799 So.2d  
7 226. There was actually a concurring opinion in  
8 Tetrault by Judge Harris. And they say a second  
9 reason for denying application of the multiplier  
10 is the Quanstrom limitation; the market conditions  
11 must be shown to require it. In other words, it  
12 must be proved that but for the multiplier,  
13 plaintiff could not have obtained competent  
14 counsel in the area. Plaintiff's counsel  
15 attempted to make this showing by himself  
16 testifying that he would not have taken the case  
17 without the multiplier.

18 As an aside, you heard Mr. Weiss say, I  
19 wouldn't have taken the case without a multiplier.  
20 That's no different than what happened here as the  
21 plaintiff's attorney.

22 Since the test is whether the plaintiff would  
23 have had substantial difficulty in obtaining  
24 competent counsel within the area, to take the  
25 case without the multiplier, whether plaintiff's

1 counsel would have taken the case only on that  
2 basis is immaterial. The question is whether  
3 other competent counsel would have done so. So  
4 the question's been answered. Ten different  
5 competent counsel took this case without any  
6 discussion or promise of a multiplier. The ones  
7 who took it with the BI and UM, all the same  
8 issues, had no chance of getting a multiplier.  
9 So, again, the question is answered.

10 Going to the right-hand side, the court gets  
11 away from the law and moves into what it calls on  
12 page four, the right-hand side, the court says --  
13 it gets into its own words, common sense. Common  
14 sense also plays a role here. We are not so  
15 isolated from the world around us to know that few  
16 people have any difficulty retaining competent  
17 counsel in these circumstances. Our docket -- and  
18 that's a PIP case, retaining competent counsel in  
19 a PIP case. Our docket and the dockets of the  
20 trial courts of Central Florida have hundreds and  
21 perhaps thousands of PIP suits pending at any  
22 given time. It seems that few insureds, if any,  
23 have difficulty obtaining competent counsel to  
24 represent them. To the contrary, every television  
25 station and every television book -- I'm sorry --

1 telephone book and many billboards and buses call  
2 out with ads from lawyers seeking to represent the  
3 injured.

4 Well, Your Honor, there's a plethora of  
5 attorneys, very competent attorneys, the one  
6 sitting here, the one that was sitting there, the  
7 that one who came and testified to you, in this  
8 area that will take a PIP case. And, in fact,  
9 they did take Mr. Rohrbacher's PIP case. And the  
10 Fifth DCA knows it. It's quite obvious. So in  
11 addition to the law, which this is the law now,  
12 the common sense aspect applies here.

13 They also say, we also choose to exercise our  
14 discretionary jurisdiction in this case because  
15 judges have a special responsibility in  
16 determining reasonable fees for both attorneys and  
17 expert witnesses.

18 Skipping down a little to the highlighting.  
19 Lawyers are officers of the court. The court is  
20 an instrument of society for the administration of  
21 justice. Justice should be administered  
22 economically, efficiently and expeditiously. The  
23 attorney's fee is therefore a very important  
24 factor of the administration of justice and it is  
25 not determined with proper relation to that fact



1 -- if it is not determined with proper relation to  
2 that fact, it results in a species of social  
3 malpractice that undermines the confidence of the  
4 public in the bench and the bar. It does more  
5 than that. It brings the court into disrepute and  
6 destroys its power to form adequately the function  
7 of its creation.

8 Your Honor, think about how often you hear a  
9 court say something like that, something that  
10 strong on policy grounds. This is how the Fifth  
11 DCA feels about this. They strongly believe that,  
12 I will submit, almost never, certainly not in this  
13 case, there should not be a multiplier in a PIP  
14 case because attorneys are lining up to take PIP  
15 cases. Thousands of them are filed in this court,  
16 in Orlando, et cetera. There's a bunch of them  
17 across the State of Florida. So I submit to you  
18 that's very strong language, and that's why they  
19 took this up on a petition and found the manifest  
20 injustice and the departure from the essential  
21 requirements of law.

22 They go on and they say, in this case the use  
23 of a multiplier fails in several respects. First  
24 there was no evidence that Mr. Schultz had any  
25 difficulty obtaining competent counsel to

1 represent him. That's our case, he retained 10  
2 counsels -- 10 attorney firms -- 10 law firms to  
3 represent him in this case. There's zero evidence  
4 that he could not retain a law firm to represent  
5 him.

6 And then going on to the last page -- I'm  
7 going to come back to Schultz on the rates --  
8 hourly rate. But going to the last page, page  
9 six, the highlighting on the left column there.  
10 In our view, there is nothing about this case that  
11 calls for a fee multiplier. Fees of this kind  
12 awarded here threaten to make the respect of  
13 non-lawyers reach for judicial control of fees --  
14 indeed, for the very legal system itself -- a  
15 thing of the past. Because of the manifest  
16 justice rule in this instance, we conclude that  
17 this fee award must be set aside. No court is  
18 obligated to approve a judgment which so obviously  
19 offends the most hardened appellate conscience,  
20 which is so obviously contrary to the manifest  
21 injustice -- manifest justice of the case.  
22 Indeed, it is obliged not to.

23 I again state, Judge, that's incredibly  
24 strong language. I mean that's past just a legal  
25 ruling. They feel very strongly about this issue

1 and how it affects the public's view of lawyers  
2 and the legal system.

3 While we're here, this is hourly rate stuff,  
4 but if we go to footnote four, basically without  
5 reading the whole thing, they say they are  
6 concerned about the \$400 an hour that was awarded  
7 to Mr. Klausman. You heard Mr. Weiss reference  
8 that. I will agree with him it's dicta because  
9 that hourly rate was not challenged in this appeal  
10 on a multiplier.

11 And then on paragraph five they say, we are  
12 troubled by the lodestar fee awarded by the County  
13 Court, particularly the hourly rate deemed to be  
14 reasonable, however, we will leave that issue for  
15 another case. I do want to go back and read that  
16 second sentence in footnote four because it's  
17 important for the fee -- the hourly rate issue.  
18 The fee approved here, \$400 an hour before the  
19 multiplier, certainly pushes the upper limit for  
20 hourly fees, even in the most complex litigation.  
21 Even in the most complex litigation. So I'm going  
22 to come back to that.

23 So I would submit to you that you don't  
24 really have to go any further. He retained  
25 counsel without discussion of a multiplier.

1 There's zero evidence that he cannot retain  
2 counsel. What the evidence is, is he retained  
3 counsel, as I said, and based on events that  
4 occurred after retention, the counsel left the  
5 case.

6 Well, we have a case directly on point on  
7 that type of issue, and that's under tab two,  
8 Michnal versus Palm Coast Development, and this  
9 was a construction lien case. And if we go to  
10 paragraph three -- I'm sorry, I keep saying  
11 paragraph -- page three, using the numbers at the  
12 bottom right-hand corner -- right-hand column  
13 where the highlighting starts. It says, since  
14 Palm Coast's lien claim was held to be  
15 enforceable, Palm Coast was deemed to be the  
16 prevailing party for attorney's fees under Chapter  
17 713. I cite that to you just to tell you that  
18 they got a fee claim.

19 Then let's look at what the parties argued.  
20 It talks about a fee hearing on the bottom  
21 right-hand side of page three. The parties argued  
22 below, and continue to do so on appeal, over the  
23 applicability of a multiplier. Specifically,  
24 Palm Coast sought a multiplier of 2.5, whereas  
25 Michnal requested a negative multiplier, a

1 reduction of .5. The trial court ruled that a  
2 1.75 multiplier was applicable to the lodestar.  
3 And then, Your Honor, look at the highlighting  
4 there. This case presents novel issues, both  
5 legal and factual, regarding Florida's  
6 Construction Lien Law. This was a novel complex  
7 case, just like the plaintiff said their case was.

8 So let's go to page five where they take up  
9 the issue of the multiplier. It's on the  
10 right-hand side of the heading attorney's fee  
11 multiplier. We also agree with Michnal's  
12 contention, the final judgment on attorney's fees  
13 must be reversed. In pondering the applicability  
14 of a multiplier in this case trial judge stated --  
15 so here's the trial judge's ruling, Your Honor,  
16 supporting the multiplier. An issue is whether or  
17 not a case that, when filed, does not merit a  
18 multiplier, can become one that does -- justify a  
19 multiplier -- during the progress of the case.  
20 The court determined that it can, in this case  
21 did, and in this case that is, quote, unquote,  
22 fair. If, as in this case, a party elects a  
23 scorched earth defense, raises some defenses with  
24 little or no merit, overdoes discovery, and  
25 relitigates issues, without a multiplier, a

1 plaintiff could be economically overwhelmed.  
2 Without a risk reward mechanism, faced with the  
3 defense in this case, plaintiff would have to  
4 surrender. The court finds that a multiplier is  
5 appropriate so that attorneys may continue -- so  
6 that attorneys may continue in a meritorious case  
7 that has more risk and difficulty as a result of  
8 the defense.

9 So what the trial court says is it was a  
10 scorched earth defense. I don't think you heard  
11 Ms. Pepper make that, but you heard a lot about  
12 how USAA wouldn't pay and went on and on and on.  
13 And what the trial court said was, well, if you  
14 take the case and you're not expecting a  
15 multiplier, it's a scorched earth defense and  
16 things happen, it makes it far more difficult than  
17 you ever thought, then it can become a multiplier  
18 case. That's what the trial court held.  
19 Obviously, the same thing can happen when you take  
20 a case with a client and you find out the client's  
21 very difficult after you've taken the case. Then  
22 get to know the client and he starts calling and  
23 e-mailing you over and over. Events happening  
24 after the retention.

25 Here's what the appellate court said about

1 it. With all due respect to the trial court, we  
2 find all multiplier jurisprudence prohibits a  
3 trial court from doing what it did in the instant  
4 case. They go on and they talk about Quanstrom.

5 Going to page six. And then they're talking  
6 about Rowe, which is the bible for all fee  
7 litigation. And they say, further expounding on  
8 this issue, the Supreme Court has noted a primary  
9 rationale for the contingency risk multiplier is  
10 to provide access to competent counsel for those  
11 who could not afford it. Note that "provide  
12 access" is highlighted by the court itself. It's  
13 to get you to be able to retain counsel.

14 And by the way, it says, "for those who could  
15 not afford it," not those who are difficult and  
16 may make lawyers not want to work with them  
17 because they call and e-mail all the time. "Those  
18 who could not afford it."

19 Going on. I'm going down to the  
20 highlighting. Multipliers are intended to level  
21 the playing field, to provide litigants, who may  
22 otherwise lack the resources, to obtain -- again,  
23 highlighted by the court -- to obtain competent  
24 counsel, as a means of access to the legal system.  
25 As discussed in Quanstrom -- I'm continuing to

1 read what's been highlighted -- and its progeny,  
2 the appropriate time frame for determining whether  
3 a multiplier is necessary is when the party is  
4 seeking to employ counsel -- when the party is  
5 seeking to employ counsel at the outset. And then  
6 in the highlighted case they say, there must be  
7 evidence that a contingent fee agreement was  
8 necessary in order for the prevailing party to  
9 have obtained competent counsel -- highlighted by  
10 the court -- if a multiplier is to be imposed on  
11 the non-prevailing party.

12 Now, the court applies the law to the facts  
13 in front of it and the trial court's ruling.  
14 Here, the trial court found a multiplier -- I'm  
15 sorry -- here, the trial court found a multiplier  
16 was not warranted at the time Palm Coast's case  
17 was filed, an event which occurred after  
18 Palm Coast had already obtained counsel, the same  
19 counsel that followed this case through to its  
20 completion. So after -- the red highlighting is  
21 mine, the italics is the court's. There is no  
22 precedent for using a multiplier as an incentive  
23 for a party's counsel to stay on a case. That's  
24 what they're basically arguing here, the attorneys  
25 will not stay on the case after they took it.



1 While we address only the instant case, we  
2 recognize allowing such a dangerous precedent --  
3 I'm sorry -- while we address only the instant  
4 case, we recognize allowing such could set a  
5 dangerous precedent; one can imagine a whole new  
6 arena of fee litigation, attorneys arguing they  
7 are entitled to a multiplied fee award in  
8 practically every case that is litigated to the  
9 end, asserting the case became harder than they  
10 anticipated, and the incentive of a multiplier was  
11 needed to stay on the case. This is certainly not  
12 the case for expanding multiplier jurisprudence,  
13 and awarding a multiplier on this basis.

14 Going down to the highlighting, we note a  
15 number of the issues in the instant case, which  
16 Michnal vigorously defended, were novel and  
17 complex. Since the findings in the final judgment  
18 on attorney's fees do not support the application  
19 of a multiplier, we hold the application of a  
20 multiplier was inappropriate and reverse the entry  
21 -- reverse for entry of a non-multiplied fee  
22 award.

23 I think you get the gist, Your Honor. It's  
24 the same thing we've got in our case, attorneys --  
25 he obtained counsel. He retained counsel. Events

1 happened after he retained counsel that caused him  
2 not to have them anymore Ten different times. I  
3 think the tenth time he actually stuck with the  
4 Bradford firm. So you put Schultz and Michnal  
5 together, and I just think the law is exceedingly  
6 clear based on the undisputed evidence here.

7 Going to Sarkis (ph). This is a very long  
8 case, but it only stands for one thing that's  
9 important. Sarkis holds that you can't get a  
10 multiplier on an offer of judgment. If your fee  
11 is based on an offer of judgment or proposal of  
12 settlement, no multiplier, period. End of  
13 conversation. The importance of that is, again,  
14 is the firm -- Doug Martin's firm, Dellecker  
15 Wilson, who actually brought in the UM claim,  
16 could have never gotten a multiplier. But they  
17 took the case, anyways, with all the same problems  
18 with Mr. Rohrbacher, the gap in treatment, and  
19 everything else. All the other BI and UM  
20 attorneys, same thing, no hope of a multiplier as  
21 a matter of law, they took the case.

22 By the way, while I'm there, Dellecker  
23 Wilson, in my opinion, is the best BI firm in  
24 town. I've referred multiple clients to them. I  
25 know every partner over there, went to law school

1 with one of them. And they are premier. They  
2 don't need to take cases that they don't think  
3 have merit and value and what have you. In fact,  
4 they don't do it. So the fact that he actually  
5 retained, in my opinion, the best BI firm in town,  
6 and they got his case resolved for him without any  
7 hope of a multiplier, to me it's pretty clear.

8 Moving on. We talked under tab four, USAA  
9 Casualty Insurance versus Prime Care, this was  
10 Mr. Weiss's case where he served as both the fee  
11 expert and the appellate counsel. I don't think I  
12 need to belabor it. You can read it, Your Honor.  
13 Basically, it just says there's some law out of  
14 the First DCA that conflicts with the Fifth DCA,  
15 but the Fifth DCA, you know, governs in this  
16 particular region. And I will note that as  
17 Ms. Pepper pointed out, the opinion says he sought  
18 out three different attorneys and got turned down.

19 Now, Mr. Weiss had an explanation for that.  
20 The court doesn't elaborate on that. They point  
21 out he went to three different attorneys and got  
22 turned down, but that's more evidence of not being  
23 able to get competent counsel, far more than we  
24 have in this case. And the court reversed the  
25 order of a multiplier, as supported by Mr. Weiss

1 in that case.

2 If we can skip tab five, I want to go --  
3 that's really the most for the directly on point  
4 for a multiplier, but there is some other case law  
5 that I think is germane here, if we can skip  
6 forward to tab eight. And this goes to the idea  
7 that nobody wanted to work with Mr. Rohrbacher  
8 because of his eccentricities and emotional issues  
9 and what have you, which they have proffered and  
10 put forth as the reason for the multiplier. What  
11 these two cases I'm going to show you do is  
12 address that particular issue in the context of  
13 the amount of attorney's fees, because they are  
14 multiplier cases but they're amount of hours  
15 cases.

16 And the first one is Barratta versus Valley  
17 Oak Homeowner's, 928 So.2d. 495. And this was a  
18 homeowner's type of case, Your Honor. And very  
19 quickly, if you go to tab -- I'm sorry -- page  
20 four, the first highlight there is a duplicative  
21 time thing that's irrelevant based on our  
22 stipulation. But what they say here in the second  
23 highlight is, in addition, work that is  
24 necessitated by the client's own behavior should  
25 more properly be paid by the client than by the

1 opposing party.

2 We ago to tab nine, Guthrie versus Guthrie,  
3 357 So.2d 247, starting at the bottom of page one.  
4 We also see no justification for the expenditure  
5 of 20 hours conference time with the client for an  
6 appeal. The fact that appellant was very  
7 emotional and persistent in nature does not mean  
8 that all of the time spent with her was reasonably  
9 necessary, and that is the test in assessing fees  
10 against the opposing party. Work done that is not  
11 reasonably necessary but performed to indulge  
12 eccentricities of the client should more properly  
13 be charged to the client rather than the opposing  
14 party. So you don't charge the opposing party  
15 with the client's -- time associated with the  
16 client's eccentricities.

17 As to the number of hours, why should the  
18 conclusion be any different with a multiplier,  
19 Your Honor? They're still trying to assess more  
20 attorney's fees against the opposing party. So  
21 rationale is the same, even these aren't  
22 multiplier cases. They're trying to say, because  
23 of their own client's issues, USAA should pay  
24 more, and these cases say that you should not do  
25 that. So that is my opinion on the multiplier.

1 And, frankly, Your Honor, I just think it's  
2 exceedingly clear.

3 The more controversial issue in my mind, as  
4 I'm going to give some testimony to the contrary  
5 of a lot of fee orders that are floating around,  
6 the big stack of them that Ms. Bradford has. But  
7 it's my view of the law and what have you, my  
8 experience and my understanding of the market. I  
9 showed you the footnote in Schultz where they said  
10 they were concerned about the \$400 an hourly rate  
11 for Mr. Klausman, and that they said even for the  
12 most complex cases, that pushes the upper limits.  
13 Okay? I agree with that.

14 Your Honor, as I told you, I'm a commercial  
15 litigator, primarily, that's how I characterize  
16 myself. I've done a ton of PIP. I'm right now  
17 defending a -- my clients are accused of running a  
18 \$400 million Ponzi scheme and they've been sued by  
19 the United States Securities and Exchange  
20 Commission. My hourly rate with them is \$300 an  
21 hour. It's in Federal Court, the Southern  
22 District of Florida down in Miami. My hourly is  
23 \$300 an hour. I couldn't charge them more than  
24 that because I don't think the market would bear  
25 it.

1           The difference is, is that my clients are  
2           actually writing me a check every month, and  
3           that's what I think the standard should be. We've  
4           lost that. And I recognize what I say is  
5           contradictory to all these orders, but because in  
6           a PIP case the client isn't actually paying, we've  
7           lost the concept that it should be what the client  
8           would pay an attorney. The other side shouldn't  
9           have to pay more than that.

10           And that's right out of Rowe. I don't have  
11           that in my notebook. I can hand you my copy of  
12           it. But it says, the party who seeks -- who seeks  
13           the fees, carries the burden of establishing the  
14           prevailing, quote, market rate; i.e., the rate  
15           charged in that community by lawyers of reasonable  
16           -- reasonably comparable skill, experience and  
17           reputation for similar services. The rate charged  
18           to the client in the community.

19           In the context of hours, the number of hours,  
20           the Rowe court says, counsel is expected, of  
21           course, to claim only those hours that he could  
22           properly bill to his client. Well, I will submit  
23           it's the same as -- the same for hourly rate; if  
24           you can't bill your client -- if they couldn't  
25           properly bill Mr. Rohrbacher \$500 an hour for this

1 case, I don't think USAA should bear that either,  
2 because I think that's the standard in this case.

3 I should say I handle lots of other  
4 commercial -- complex commercial litigation and  
5 the highest fee I've ever charged, which is right  
6 now, is \$350 an hour. I'm an 18-year lawyer who's  
7 been doing both trial and appellate work and all  
8 that time in complex commercial cases.

9 So, Your Honor, that's how I come at this.  
10 And based on that -- and which I think is very  
11 consistent with the Fifth DCA's footnote saying  
12 that 400 is the outer limits of even the most  
13 complex litigation. Here's what I come up with as  
14 far as the -- I come up with a range of fees. And  
15 for Ms. Bradford -- the range of hourly rate, I  
16 should say. The range of hourly rate that I have  
17 for her is 350 to \$400 an hour. I recognize she's  
18 a fine attorney and very good at what she does and  
19 has been doing it for a long time. For  
20 Mr. Bartels, I gave him a range of 300 to \$350 an  
21 hour. For Mr. Dell, who I've never met and  
22 litigated with, I understand that he had been  
23 practicing for a year or less when he worked on  
24 this case, I just -- in a world of complex  
25 commercial litigation, you couldn't get a



1 first-year attorney to be paid \$400 an hour. The  
2 client would throw the bill back in your face. I  
3 gave him 200 to \$250 an hour. So those are my  
4 ranges.

5 I wonder if they -- if you guys might indulge  
6 me, I just did a summary of the hours that we  
7 agreed to. And you could submit this into  
8 evidence instead of me reading it verbatim, the  
9 hours we agreed to and ranges and then the  
10 lodestar range.

11 MS. BRADFORD: Did you rewrite that?

12 MR. HAZOURI: Yes, those are all hours we  
13 agreed to 68.5.

14 MS. BRADFORD: That's fine. You can give her  
15 that.

16 MR. HAZOURI: Is that good?

17 MS. BRADFORD: That's fine.

18 MR. HAZOURI: Enter into it evidence?

19 MS. PEPPER: That's fine.

20 THE COURT: Defendant's Evidence 1.

21 MR. HAZOURI: It's just easier if you can  
22 look at it. And what I did there, Judge, is I  
23 gave a low range. I took the low end of the  
24 lodestar for each attorney that I gave you and I  
25 took the high end -- I'm sorry -- the low range of

1 the hourly rate, the high range of the hourly  
2 rate, and I multiplied it by the hours that we all  
3 agreed to, to come up with a range.

4 And I should say I've known Mr. Bartels for a  
5 long time. Fine attorney. Fine person. I don't  
6 have anything bad to say about him as a lawyer or  
7 a person. Same with Ms. Bradford, I don't want to  
8 leave out Ms. Bradford. Don't know Mr. Dell.

9 Now, I think that -- just let me look at my  
10 cases here. I think I've summarized for you where  
11 we're coming from. I imagine I'll be handed fee  
12 orders that say they got awarded \$500 an hour, and  
13 I'll simply say I respect those rulings. I think  
14 Your Honor is in a position to say that's  
15 persuasive authority, and I would agree with that.  
16 But I do not think that those orders, respectfully  
17 to all the courts that ordered them, reflect what  
18 an actual paying client would pay for a case like  
19 this, and I think that's what the standard should  
20 be.

21 That's my opinion. Obviously, Your Honor,  
22 you make the call on that one. I think that's  
23 probably about it.

24 THE COURT: All right. Do you have any  
25 questions?

1 MS. BRADFORD: I sure do, Your Honor.

2 MR. HAZOURI: Do you want me to sit or do you  
3 want me to go to the stand? I'll go to the stand  
4 if you want.

5 MS. BRADFORD: No, that doesn't matter. You  
6 can go back to your chair, there's one over there.

7 CROSS EXAMINATION

8 BY MS. BRADFORD:

9 Q Mr. Hazouri, what percentage of your practice  
10 in the last two years has been in PIP litigation?

11 A Does that include filing affirmative  
12 litigation -- litigation against claims in Federal Court  
13 over PIP --

14 Q Regular PIP stuff. Just -- .

15 A Trial court? County Court?

16 Q County Court PIP cases.

17 A A small percentage in the last few years.

18 Q How much?

19 A Less than five percent. I actually had a PIP  
20 case just last month.

21 Q All right. And, in fact, you tried a PIP  
22 case last year and lost it?

23 A I did.

24 Q With Mr. Copeland in Orange County?

25 A Absolutely. Only one I ever lost, but yes.

1 Q Did you get paid?

2 A Yes, I did.

3 Q Yes. Okay.

4 A So did --

5 Q And the \$300 an hour that your commercial  
6 clients are paying you, that's an insurance company?

7 A No.

8 Q Who is that?

9 A The clients are Dave Schwarz, Fred Davis  
10 Clark, Junior, and Cristal Clark.

11 Q And you get paid \$300 an hour regardless of  
12 the outcome of that case?

13 A That's correct.

14 Q Okay. Have you checked around with any other  
15 lawyers in Orlando, what --

16 (Simultaneous speakers.)

17 A I have not.

18 Q -- charges?

19 A I don't know.

20 Q All right.

21 A I have a general idea.

22 Q All right. So would it be fair to say that  
23 you do not do a lot of regular County Court PIP  
24 litigation?

25 A Here's what would be fair to say. I do a lot

1 of PIP appellate work, so I'm very familiar with the  
2 law, very familiar with what goes on. I do a lot of  
3 affirmative litigation against healthcare clinics who an  
4 insurance company believes has committed fraud in  
5 billing PIP benefits.

6 Q And how much do you get paid an hour to do  
7 that?

8 A \$190 an hour.

9 Q Okay. You get paid whether you win or lose  
10 for every hour that you put forth?

11 A That's correct.

12 Q Okay. Now you went over Schultz at great  
13 length. You are aware that opinion is six, almost seven  
14 years old?

15 A Yeah, before the great recession.

16 Q Okay.

17 A You might even get less now.

18 Q All right. And, obviously, the bankruptcy  
19 court has changed substantially over the last seven  
20 years?

21 A I don't know if it's changed substantially,  
22 but whatever has changed has changed.

23 Q All right. And certainly the opinion  
24 certainly did not overrule the Supreme Court's decision  
25 in State Farm versus Palma for 1990?

1           A     First of all, the Fifth DCA did not overrule  
2     the Supreme Court. Second of all, the Fifth DCA did  
3     address Palma, and said that in that case there was a  
4     bigger issue that had nationwide significance of whether  
5     thermograms were compensable.

6           Q     Palma is good law?

7           A     I'm sorry?

8           Q     Palma is good law?

9           A     Sure. As explained by the Fifth DCA.

10          Q     All right. And in the Schultz case that you  
11     went over at length, that was a PIP claim that occurred  
12     during -- while PIP was in existence, not during the  
13     never-seen-before sunset period of PIP here in Florida?

14          A     That's correct.

15          Q     Okay. And in the Schultz case, Mr. Schultz  
16     sought medical treatment the day after the accident, not  
17     -- did not have an eight-month gap in treatment like we  
18     have here?

19          A     That's correct.

20          Q     Okay. And in the Schultz case, Mr. Schultz  
21     had chiropractic care only, correct?

22          A     I believe that's correct.

23          Q     All right. He didn't have neurological care,  
24     podiatric care, MD care of any type?

25          A     I believe that's correct.

1 Q And in the Schultz case they claimed that  
2 there was excessive treatment and questionable tests  
3 rendered to run up these PIP bills?

4 A Yes, but --

5 Q Okay.

6 A Can I answer that? I agree with all of that,  
7 and that's all present in this case, but obviously  
8 Mr. Rohrbacher was able to retain counsel despite all  
9 these issues, so --

10 Q Thank you. In the Schultz case, it was a  
11 very low impact accident?

12 A I believe so.

13 Q Okay. And here it was a high impact?

14 A If you say so, I believe you.

15 Q Okay. And in the Schultz case, there was a  
16 single IME, and here we had three peer reviews?

17 A If you say so, I believe you.

18 Q Okay. And in the Schultz case, we didn't  
19 have a client come in and testify on the difficulty in  
20 obtaining competent counsel?

21 A Certainly true.

22 Q Okay. And certainly here Mr. Rohrbacher came  
23 in -- you may have a differing opinion on what his  
24 testimony was -- but he certainly did talk about a lot  
25 of lawyers?

1 A All who were retained, yes.

2 Q Okay. And in the Schultz case what was  
3 recovered from the client was \$1,315?

4 A I believe that's correct.

5 Q Okay. And here we recovered almost \$70,000  
6 for Mr. Rohrbacher?

7 A I think that was ultimately paid. However, I  
8 don't think that's what was at issue in the lawsuit.

9 Q Okay. And in the Schultz case there was 197  
10 and a half hours awarded. And we are seeking -- well, I  
11 guess we've agreed to 68.5 in this case?

12 A Yeah. I guess, in a sense, since you guys  
13 didn't take -- didn't do any discovery or file any  
14 motions and only had that many hours, you could argue  
15 that Schultz is more complicated.

16 Q Now, after Schultz came out, we had the Third  
17 DCA's decision in Sunshine State versus Davide, where  
18 150 hours at 450 an hour and a 2.0 multiplier was  
19 affirmed.

20 A Kevin brought that -- Mr. Weiss brought that  
21 case today. I haven't read it. I'd simply say it's a  
22 Third DCA case, and if that happened to conflict with  
23 Schultz, the Fifth DCA rules.

24 Q Okay. And since Schultz, we have had  
25 Progressive Express versus Harthorn come out of the 18th



1 Judicial Circuit, 180 hours with a 2.0 multiplier?

2 A I would agree with that. And I looked at  
3 Harthon and the court says, there are no attorneys in  
4 the limited market of Brevard County who practice PIP  
5 law exclusively, and thus there was no attorney appellee  
6 could have readily hired to take on the small claim.  
7 That's not the case here in Orange County -- Seminole  
8 County.

9 Q And in the Harthon case, the factors that the  
10 court included in addressing the necessity of a  
11 multiplier included the mental illness of the client,  
12 the carrier's refusal to settle the claim for five  
13 years, settling the claim at the eleventh hour, no  
14 ability to mitigate non-payment, all those factors?

15 A Sure.

16 Q All those, the same that we have here today?

17 A That's what that court considered. I don't  
18 know what was argued to that court and what issues were  
19 presented to that court. I don't know if somebody  
20 pointed out to the court that the Fifth DCA says that  
21 the primary guiding issue that has come to the forefront  
22 of everything is the ability to retain competent  
23 counsel.

24 Q Okay. I'm going to get to that. State Farm  
25 Mutual versus Mid Florida Imaging/Carbora (ph), 18th

1 Judicial Circuit controlled by the Fifth, came out with  
2 a \$400 award and a 2.0, affirmed in July of 2013, just  
3 last month.

4 A I don't have the case in front of me, so I  
5 can't --

6 Q Okay. And in that case they adamantly fought  
7 payment and filed a \$1 proposal for settlement, like we  
8 had had here, right?

9 A Again, I don't have the case in front of me,  
10 so I can't answer that.

11 Q Okay. And we have Garrison versus Levy (ph),  
12 the Fourth Circuit Appellate Division in 2011, affirming  
13 a 2.0 award in a PIP case.

14 A Well, okay, let me let respond to this one.  
15 This one is in Duval County, Fourth Judicial Circuit,  
16 that's governed by the Massey case out of the First DCA,  
17 which reached a different conclusion than did Schultz.  
18 Which was pointed out, as I said, in the USAA versus  
19 Prime Care Chiropractors, they point out the difference  
20 in the two cases and how they lead to different results.

21 Q And that's important, how cases lead to  
22 different results, right?

23 A Cases within those two districts, yes, I  
24 would agree that every case should be decided on its own  
25 facts and merits.

1 Q Right. Exactly. Okay. And so having to --  
2 having chosen to stand and fight here, USAA, you would  
3 agree, made a business decision for which it should have  
4 known a day of reckoning would come should it lose in  
5 the end?

6 A Should it lose in the end, yes. In every PIP  
7 case, if you lose, in the end there's a day of  
8 reckoning.

9 Q All right.

10 A That exists in every single PIP case, so I'm  
11 not sure how that supports a multiplier.

12 Q Okay. That happens to be language straight  
13 out of State Farm versus Palma, which supported the  
14 award of a multiplier...

15 A That explains it, because in that case there  
16 was -- it was a \$600 bill, but there was a bigger issue  
17 of whether thermograms were compensable. Again, Schultz  
18 makes that very clear, that there was an overriding  
19 issue of nationwide significance. And you always hear,  
20 State Farm went to the mat, as the court said, It went  
21 to the mat because it was an issue of statewide  
22 significance.

23 Q And when we talk about cases of statewide  
24 significance, what the court is doing is making an  
25 allowance for those cases in which the amount recovered

1 is minimal. In the thermogram case, in the Schultz  
2 case, the relative amount recovered was very minimal for  
3 the clients. In the Carbona case it was \$360. In  
4 Schultz it was 1,315. And when they talk about that,  
5 what they're doing is making an allowance for the factor  
6 under Rowe that you take into consideration the amount  
7 recovered for the client. That's one of the factors in  
8 awarding a multiplier.

9 A I either don't understand your question or  
10 can't say that I've read the cases from that  
11 perspective, so --

12 Q Okay. Well, there's two types of situations  
13 to award a multiplier. One, based on the recovery for  
14 the client.

15 A I disagree with you.

16 Q Okay.

17 A If you cannot establish -- under Schultz, if  
18 you cannot establish that the client could not have  
19 retained counsel but for -- competent counsel but for  
20 the ability to recover a multiplier, it's over. No  
21 multiplier. That's what Schultz very clearly says. So  
22 what you're saying -- what you said, that other  
23 factor -- if you can't establish competent counsel, you  
24 don't get to that other factor.

25 Q That wasn't my question. My question is,

1 when looking at the factors that are set forth, one of  
2 the factors -- one of the Rowe factors for a multiplier  
3 is the amount in controversy and the results obtained?

4 A Can I look at Schultz real quick?

5 Q I'm not talking about Schultz, I'm talking  
6 about Rowe.

7 A Well, Schultz quotes to Rowe. And, actually,  
8 the multiplier's been changed since Rowe. It was  
9 changed in Quanstrom, so I don't know if I would value  
10 Rowe. Actually, I would because -- no, it's Quanstrom.  
11 The Fifth DCA quotes Quanstrom and Schultz. It's on  
12 page four where I started, on the bottom of page three.  
13 And the three factors -- I won't read them, but they're  
14 listed right there. And the third one is the catch-all.  
15 It says, whether any of the other factors set forth in  
16 Rowe are applicable. But right below there reiterating  
17 it says, in later cases the ability to obtain competent  
18 counsel rose to prominence in determining what  
19 circumstances a multiplier is necessary and appropriate.  
20 That's the starting point. It's not a presumption that  
21 a lodestar is sufficient. It wants to start with that.

22 Q Okay. Let me try my question again.

23 A Please.

24 Q My question is, is the results obtained --  
25 the amount in controversy and the results obtained a

1 factor under Quanstrom or Rowe in determining whether a  
2 multiplier should be applied?

3 A If you get past the first factor, then, yes,  
4 under tab three, under elements where you could consider  
5 that, if you get past the first factor.

6 Q Okay. Now, let's go back to your first  
7 factor. Is your testimony here in front of this Court  
8 that the fact that someone took Mr. Rohrbacher's claim  
9 and could do nothing with it means that I am not  
10 entitled to a multiplier because the risk at the outset  
11 of when I took this case didn't exist?

12 A The fact that Mr. Rohrbacher's -- that the  
13 attorneys took his claim and could do nothing with it?  
14 Well, the Dellecker Wilson firm took the more difficult  
15 UM claim, and they're the best firm in town, and got a  
16 recovery, which led --

17 Q Now --

18 A Can I finish? Which led to the PIP case  
19 being settled. And they had no ability whatsoever to  
20 get a multiplier. So you start --

21 Q Well --

22 A Can I finish?

23 Q Well, you're not answering my question.

24 A I am answering your question.

25 Q No, you're not, but go ahead.

1           A     Okay.  So --

2                   MR. ROHRBACHER:  That was after the fact.

3                   MS. BRADFORD:  That's okay.

4                   MR. ROHRBACHER:  Sorry.

5                   THE WITNESS:  So I start there, that I  
6           disagree with your predicate.

7  BY MS. BRADFORD:

8           Q     Okay.  Well, let --

9           A     But this is how I would answer the question  
10   that you've worded in a way that I don't agree with.  
11   What I would say to you is -- I would answer your  
12   question by saying, yes, my testimony is the fact that  
13   eight or nine different law firms took the case, they  
14   were formally retained by Mr. Rohrbacher.  And then  
15   events that happened, after they signed him up and had a  
16   contractual relationship with a fiduciary duty and  
17   attorney/client relationship, events happened after  
18   that.  If those events caused them to say, we can't go  
19   anywhere with this or we don't want to go anywhere with  
20   this, then under Michnal you do not get a multiplier.

21           Q     Okay.  My question was this.  The facts of  
22   this case when I took it were complicated, were they  
23   not?

24           A     Frankly, and in my world, no.  Not  
25   complicated.

1 Q Well, I'm not as good a lawyer as you, Ken,  
2 so it's a little harder for me.

3 A I jut don't think it's that complicated. Was  
4 the treatment reasonable, related and necessary? Did  
5 you have a gap in treatment? There was the gap period  
6 that you heard Mr. Weiss testify was made retroactive  
7 when the -- when the insurance -- when the legislature  
8 renewed PIP. So by the time the PIP suit was filed, the  
9 PIP law was laid out. It was retroactive. You had a  
10 case of was it reasonable, related and necessary, and  
11 you had a challenge in that you had a gap in treatment.  
12 That's a PIP case. I'm not disparaging you or anything,  
13 but it doesn't strike me as being unbelievably  
14 complicated.

15 Q Really? Even after all the testimony you've  
16 heard here today?

17 A (Nods head.)

18 Q Okay. So when we talk about obtaining  
19 competent counsel, don't you think that we apply common  
20 sense, and that if someone cannot continue with the  
21 representation then they're not competent to handle  
22 Mr. Rchrbacher's case?

23 A Disagree with that entirely.

24 Q Okay.

25 A There's lots of reasons an attorney might not



1 continue with representation unrelated to his or her  
2 competence.

3 Q Okay. Well, it just seems a little bit  
4 bizarre to me that your testimony is that if someone can  
5 retain a lawyer, then no multiplier is warranted?

6 A I point you to the case law that I argued.

7 Q Okay. Well, your case law -- I really don't  
8 think just case law supports that, so we can go back  
9 over that here a little bit.

10 THE COURT: Ms. Bradford, it's 5:20.

11 BY MS. BRADFORD:

12 Q Okay. With respect to the -- let me just  
13 address this one thing because it's annoying. This  
14 Michnal versus Palm Coast, is this the case? In Michnal  
15 what the trial judge did that was wrong was determine  
16 that a case that did not warrant a multiplier at the  
17 outset of the case evolved into something that did  
18 warrant a multiplier because of the defense tactics?

19 A I would agree that's part of it.

20 Q Okay. Those aren't the facts that we have  
21 here, are they?

22 A Yes.

23 Q Those are the facts?

24 A That's what you're trying to argue, because  
25 these attorneys took the case and then it evolved into

1 something that they weren't interested in handling, and  
2 you're saying that that should cause a multiplier to be  
3 awarded.

4 Q Did the date of the accident evolve before or  
5 after Mr. Rohrbacher sought counsel?

6 A I don't think the dates of the events in  
7 Michna1 changed or evolved.

8 Q Did the accident occur before Mr. Rohrbacher  
9 sought counsel?

10 A I believe it would have had to.

11 Q Did the accident occur during the gap period  
12 before Mr. Rohrbacher sought counsel?

13 A That's my understanding.

14 Q Did an eight-month gap in treatment occur  
15 before Mr. Rohrbacher sought counsel?

16 A Yes, and the attorneys took the case, just --

17 Q No, they didn't, not during that time period.

18 A All that -- everything you just described  
19 happened when he retained the attorneys.

20 Q No. You're wrong. You're incorrect.

21 A Okay. So he retained an attorney before he  
22 was in the accident --

23 Q No.

24 A -- before he had the eight-month gap in  
25 treatment?

1 Q No. I'm telling you all of these events  
2 occurred, including the peer reviews, long before  
3 Mr. Rohrbacher retained counsel.

4 A Right. That's what I'm saying. So those  
5 facts were in place and the attorneys took the case --

6 Q Um-hmm.

7 A -- anyways. That's my point.

8 Q And those cases award a multiplier under  
9 Florida law?

10 A No, because they took the case. They took  
11 the case without any discussion of a multiplier.

12 Q Well, where is the law that says you have to  
13 have a discussion with your client about a multiplier in  
14 order to seek a multiplier?

15 A It's an evidentiary issue. Okay? The law is  
16 -- the law is you cannot get a multiplier if one is not  
17 necessary to obtain competent counsel. That's the law  
18 in Schultz, the number one factor.

19 The evidence in this case is that he retained  
20 nine different attorneys without any discussion of a  
21 multiplier. Some of them -- some of them had no ability  
22 to get a multiplier because of Sarkis on the UM claim,  
23 which Mr. Bartels testified was more difficult.

24 Q Does UM have anything to do with this?

25 A I certainly think it does. Was

1 Mr. Rohrbacher any more difficult with his UM attorneys  
2 than he was with his PIP attorneys? Was the gap in  
3 treatment any more of a challenge in the PIP case than  
4 in the UM case?

5 Q What does a UM attorney get paid out of a  
6 \$200,000 settlement, 40 percent?

7 A I think that would depend on whether or not  
8 he did a proposal for settlement, then he'd get an  
9 hourly rate with a --

10 MS. BRADFORD: I have nothing further.

11 THE WITNESS: -- multiplier.

12 THE COURT: All right. Thank you.

13 Anything else?

14 THE WITNESS: I'll just say, as an aside,  
15 Mr. Weiss, I would put him in the same category as  
16 Ms. Bradford on hourly rate. I think he's seeking  
17 450. I think I put Ms. Bradford at 350 to 400. I  
18 would put Mr. Weiss in the same category as an  
19 hourly rate.

20 THE COURT: Okay.

21 THE WITNESS: So other than that, I don't  
22 think I have anything else.

23 MS. PEPPER: Nothing else.

24 THE COURT: All right. I'm going to take it  
25 under advisement. I appreciate your arguments.

1 You guys did a really good job today. I'm  
2 impressed.

3 MS. BRADFORD: Do you want any sort of blank  
4 order?

5 THE COURT: You guys can submit one. Both of  
6 you can submit an order.

7 MS. BRADFORD: Well, I wonder if you -- I  
8 just meant like something very, you know -- never  
9 mind. I guess you have to write a detailed  
10 order. I was trying to at least get --

11 THE COURT: You can submit an order. If  
12 you'd like to submit a proposed order, both of you  
13 can submit a proposed order. All right?

14 MS. PEPPER: Any timeframe?

15 THE COURT: How long do y'all want? Ten  
16 days? Twenty days?

17 MS. PEPPER: Ten days.

18 THE COURT: Ten days? All right. Very good.

19 MR. BARTELS: We'll see if we can get  
20 together to agree on the language of the -- the  
21 form of the order at least.

22 MS. PEPPER: Okay.

23 MS. BRADFORD: Thank you, Your Honor.

24 (End of proceedings.)  
25


CERTIFICATE OF REPORTER

STATE OF FLORIDA  
COUNTY OF VOLUSIA

I, CANDICE G. JOHNSON, RPR, RMR, do hereby certify  
that I was authorized to and did report the foregoing  
proceedings; and that the transcript, pages 1 through  
184, is a true and accurate record of my stenographic  
notes.

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

Dated December 3, 2013, Volusia County, Florida.

  
CANDICE G. JOHNSON, RPR, RMR

IN THE COUNTY COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT, IN AND FOR  
SEMINOLE COUNTY, FLORIDA

CASE NO.10-CC-2026-20P-S

ROHRBACHER, MICHAEL,  
Plaintiff,

v.

GARRISON PROPERTY & CASUALTY  
INSURANCE COMPANY,  
Defendant.

FILED IN OFFICE  
MARYANNE MORSE  
CLERK CIRCUIT COURT  
13 OCT -2 PM 4:22  
SEMINOLE CO. FL

**FINAL JUDGMENT ON ATTORNEYS FEES AND COSTS**

This matter came before the Court on August 14, 2013 upon Plaintiff's Motion for Attorneys Fees and Costs. This lawsuit was filed by the Plaintiff, Michael Rohrbacher, ("Rohrbacher") in May 2010 against his automobile insurance company, Garrison Property & Casualty Insurance Company (hereinafter "Garrison") seeking payment of disputed Personal Injury Protection ("PIP") and Medical Payments coverage pursuant to a contract of insurance issued by Garrison. When the lawsuit was filed, Rohrbacher was represented by Adam Saxe, Esquire of The Jeffrey M. Byrd law firm. In September 2011 the Bradford Cederberg law firm substituted in as counsel for Rohrbacher.

In October 2012, following the settlement of Rohrbacher's Uninsured Motorist case, Garrison confessed judgment in this case and stipulated to Plaintiff's counsel's entitlement to reasonable attorney's fees and costs. Prior to the attorney fee and cost hearing, the parties stipulated to the reasonable amount of hours expended by the Bradford Cederberg firm - 68.5 hours - attributable as follows:

Rutledge M. Bradford - 32.0 hours  
Robert D. Bartels - 31.5 hours  
Steven Dell - 5.0 hours

CERTIFIED COPY - MARYANNE MORSE  
CLERK OF THE CIRCUIT COURT AND  
COMPTROLLER  
SEMINOLE COUNTY, FLORIDA

BY

*Maryanne Morse*

DEPUTY CLERK

10/30/2013



Prior to the attorney fee and cost hearing, the parties also stipulated to a portion of the costs - \$539.00 incurred during the litigation portion of the case, prior to Defendant's confession of judgment and stipulation to entitlement to reasonable attorney's fees and costs. Therefore, the remaining issues to be decided by the Court are the reasonable hourly rates of the attorneys involved, whether any post-confession costs are to be awarded and whether or not the facts of this case give rise to a fee multiplier.

#### REASONABLE HOURLY RATES

At the fee hearing, this Court heard testimony from Rutledge M. Bradford, Esquire and Robert D. Bartels, Esquire regarding their respective backgrounds and experience. The Plaintiff also presented testimony from their retained expert, Kevin Weiss, Esquire on those issues. Ms. Bradford testified that based on her experience and prior Court Orders<sup>1</sup> she was seeking \$500 per hour for herself and \$350 per hour for Mr. Dell. Mr. Bartels testified that based on his experience and one (1) prior Court Order he was seeking \$450 per hour. Mr. Weiss opined that \$500 per hour was reasonable for Ms. Bradford, \$450 per hour was reasonable for Mr. Bartels and that a range of \$300-\$350 per hour was reasonable for Mr. Dell.

The Defendant presented the testimony of its expert, Ken Hazouri, Esquire. Mr. Hazouri testified that, despite those prior Court Orders, a reasonable hourly rate for Ms. Bradford is between \$350-\$400 per hour, a reasonable hourly rate for Mr. Bartels is between \$300-\$350 per hour, and a reasonable hourly rate for Mr. Dell is between \$200-\$250 per hour. Mr. Hazouri testified that, among other factors, he was mindful of the concerns expressed by the 5<sup>th</sup> District Court of Appeals in Progressive Exp. Ins. Co. v. Schultz, 948 So. 2d 1027 (Fla. 5<sup>th</sup> DCA 2007)

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<sup>1</sup> Attorney fee Orders from prior cases were presumably based upon the evidence presented before those Courts, and while they may have some persuasive value, the hourly rates set forth herein were determined by the testimony and evidence presented in this case, along with the applicable law and the factors contained within Rule 4-1.5(b) of the Rules Regulating the Florida Bar.



relating to hourly rates that prevail in the Central Florida market when forming his opinions.<sup>2</sup> Consistent with those concerns, Mr. Hazouri also testified that he has knowledge of the hourly rates charged to, and actually paid by, clients in the Central-Florida market for very complex commercial litigation involving amounts in controversy of millions of dollars, and that those rates are significantly less than the hourly rates Rohrbacher's attorneys are requesting to be paid in this lawsuit.

### TAXABLE COSTS

In addition to the stipulated costs, Plaintiff is seeking \$4,665.88 in taxable costs. The Plaintiff asks for \$1,313.85 for copies of deposition transcripts that were taken after Defendant confessed judgment in the underlying dispute and stipulated to Plaintiff's counsel's reasonable attorney's fees and costs.

Rohrbacher also seeks reimbursement for two (2) separate airline tickets and rental cars for his travel expenses to appear at his deposition related to his counsel's claim for a fee multiplier and for his attendance at the attorney fee and cost hearing.<sup>3</sup> Rohrbacher testified that his airfare and rental car to appear for his deposition was \$1,536.03. He produced his flight itinerary in support of that claim. He also testified that the cost of his flight and rental car to appear for the fee hearing was \$1,816.00. He did not produce any supporting documentation to substantiate that claim.

The Defendant argued that travel expenses of the parties are not taxable as they do not appear on the Uniform Guide for Taxation of Costs. Defense counsel also argued that but for Plaintiff's counsel's request for a fee multiplier none of the depositions would have occurred and, thus, Mr. Rohrbacher would not have had to travel back to Central Florida for the hearing.

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<sup>2</sup> "We, too, are aware of the fees that prevail in the Central Florida market. The fee approved here, \$400 an hour before the multiplier, certainly pushes the upper limit for hourly fees, even in the most complex litigation... We are troubled by the lodestar fee awarded by the county court, particularly the hourly rate deemed to be reasonable..." See *Schultz* at p. 1033, FN 4 & 5.

<sup>3</sup> Mr. Rohrbacher testified that he moved to Hawaii in 2008, two (2) years prior to this lawsuit being filed.

### CONTINGENCY RISK MULTIPLIER

At the hearing, Plaintiff's counsel presented testimony that this case warranted a 2.5 contingency risk multiplier in addition to the lodestar amount being sought. Ms. Bradford testified that she got this case from the Jeffrey M. Byrd law firm after suit was already filed and the written discovery had been completed. Ms. Bradford testified that the facts of this case, specifically the six (8) month gap in treatment from Rohrbacher's date of accident until his first known visit with a medical professional, Garrison's complete denial of all bills submitted on Rohrbacher's behalf based on peer reviews, Rohrbacher's personality, extreme involvement and excessive communications with her and Mr. Bartels during the litigation, and the fact that multiple other attorneys had decided to end their attorney/client relationship with Rohrbacher after being formally retained by him, made this case worthy of a contingency risk multiplier.

Plaintiff's expert, Kevin Weiss, concurred with Ms. Bradford and testified that a multiplier of 2.0 to 2.5 would be warranted. Mr. Weiss testified that the application of the multiplier is determined at the time Ms. Bradford got the case and that he would not have taken the case, nor did he know anyone else that would have taken the case without a multiplier.

In further support of Plaintiff's counsel's claim for a multiplier, Rohrbacher testified that he considers himself "high maintenance" and has been under psychiatric care since he was nine (9) years old. Rohrbacher testified that he had retained attorneys prior to being referred to Rutledge Bradford by Adam Saxe, Esquire of the Jeffrey M. Byrd law firm. Mr. Rohrbacher also testified that some of his previous attorneys ended their contractual relationships with him and that he ended some of the relationships on his own. Plaintiff's own expert, Kevin Weiss agreed that at least two (2) of the previous attorneys had been fired by Rohrbacher. Rohrbacher also testified that no other attorneys were consulted relating to his claim. Furthermore, at no time did Rohrbacher discuss the concept of a contingency fee multiplier with any of his

attorneys, including Ms. Bradford at the time he signed the contingency fee agreement with her in September 2011. In fact, Rohrbacher testified that he did not discuss a fee multiplier with Ms. Bradford until later in her representation of him, when he researched the issue on his own.

Defendant's expert, Ken Hazouri testified that the lodestar amount would be a reasonable fee and that no contingency risk multiplier was warranted in this case. Mr. Hazouri based his opinions on the well settled principal of law that there is a "strong presumption" that the lodestar represents the "reasonable fee" as stated in Pennsylvania v. Del. Valley Citizens' Council for Clean Air, 478 U. S. 546 (1986) and cited by Progressive Exp. Ins. Co. v. Schultz, 948 So. 2d 1027 (Fla. 5<sup>th</sup> DC. 2007). Mr. Hazouri also noted the factors set out by the Florida Supreme Court when evaluating the application of a multiplier as stated in Standard Guarantee Ins. Co. v. Quanstrom, 555 So. 2d 828 (Fla. 1990), the most prominent of which is the ability to obtain competent counsel without a multiplier. See Schultz, 948 So.2d at 1030.

Mr. Hazouri testified that, similar to the facts in Schultz, there was no evidence that Rohrbacher had a difficulty obtaining competent counsel to represent him without a multiplier. Mr. Hazouri testified that the evidence presented suggests that Mr. Rohrbacher had no difficulty obtaining competent counsel to represent him including the Bradford Cederberg all without any discussion about a contingency fee multiplier.

Similar to Plaintiff's own expert, Mr. Hazouri opined that the application of a fee multiplier is determined at the time representation is sought, and not throughout the course of the litigation. Mr. Hazouri cited to the Fourth District Court of Appeals decision in Michnal v. Palm Coast Development, 842 So.2d 927 (Fl. 4<sup>th</sup> DCA 2003). In Michnal the appellate court reversed a final judgment of attorney's fees that awarded a 1.75 multiplier even though the multiplier was not warranted at the inception of the representation. The 4<sup>th</sup> DCA held that relying on "Quanstrom and its progeny, the appropriate time frame for determining whether a multiplier is 'necessary' is when the party is seeking the employ of counsel." See Michnal at 934.

Finally, Mr. Hazouri opined that this case was not an extraordinary PIP case, but rather an ordinary PIP case where the question to be answered was whether or not the treatment at issue was reasonable, related and necessary with respect to the motor vehicle accident. He also opined that nothing about Rohrbacher's personality or apparent "high maintenance" idiosyncrasies would warrant a multiplier. Mr. Hazouri relied upon Baratta v. Valley Oak Homeowners' Assoc. at the Vineyards, Inc., 928 So.2d 495 (Fla. 2<sup>nd</sup> DCA 2006), "In addition, work that is necessitated by the client's own behavior should more properly be paid by the client than by the opposing client", citing Guthrie v. Guthrie, 357 So.2d 247 (Fla. 4<sup>th</sup> DCA 1978) "The fact that appellant was very emotional and persistent in nature does not mean that all of the time spent with her was reasonably necessary and that is the test in assessing fees against the opposing party."

#### CONCLUSION

The Court has reviewed the pleadings, evidence and testimony presented at the fee hearing, along with all applicable case law presented. Applying the law to the facts presented to the Court, the Court hereby finds as follows:

1. The reasonable hourly rate for Rutledge Bradford is \$450 per hour.
2. The reasonable hourly rate for Robert Bartels is \$350 per hour.
3. The reasonable hourly rate for Steven Dell is \$250 per hour.
4. The Court concludes that based upon the undisputed evidence presented at the hearing, Rohrbacher and the Bradford Cederberg firm are not entitled to have a contingency-fee multiplier applied to the lodestar fee award. The determination of their entitlement to a multiplier is primarily guided by the binding authority of Progressive Exp. Ins. Co. v. Schultz, 948 So.2d 1027 (Fla. 5<sup>th</sup> DCA 2007). In that opinion, the Fifth District Court of Appeal issued firm guidance on the award of multipliers in PIP suits like the instant case. First, the Schultz court explained that the "federal lodestar approach establishes a 'strong presumption' that the lodestar

represents the "reasonable fee." See *Id.* at 1030. The court further held that the issue of "(w)hether the relevant market requires a contingency fee multiplier to obtain competent counsel" is the primary factor for determining entitlement to a multiplier," and "it must be proved that but for the multiplier, plaintiff could not have obtained competent counsel in the area." *Id.* at 1030 (quoting *Tetrault v. Fairchild*, 799 So.2d 226, 234 (Fla. 5th DCA 2001), J. Harris concurring).

In the instant case, the evidence was undisputed that Rohrbacher formally and successfully retained 7 - 9 different law firms to represent him on PIP, bodily injury, and uninsured motorist claims arising out of the subject automobile accident, including the Bradford Cederberg firm. Rohrbacher did not have a discussion about the award of a multiplier with anyone at those law firms before retaining them as his counsel. Rohrbacher had no difficulty retaining counsel without the promise of a multiplier. Pursuant to *Schultz*, that fact compels denial of the multiplier requested by the Bradford Cederberg firm. The Bradford Cederberg firm's position that Rohrbacher's prior attorney/client relationships were terminated after formal retention justifies the award of a multiplier is incorrect. First, *Michnal v. Palm Coast Development*, 842 So.2d 927 (Fl. 4<sup>th</sup> DCA 2003) holds that events which are negative to a client's case and occur after an attorney has been retained do not create a right to a multiplier when none existed at the time of the attorney's retention. There is no contrary authority from Florida's District Courts of Appeal or the Florida Supreme Court, and, therefore, *Michnal* is binding on this Court. Pursuant to *Michnal*, the fact that events occurred after Mr. Rohrbacher's formal retention of his former attorneys, which caused the attorney/client relationship to be terminated, cannot, as a matter of law, support the award of a multiplier to the Bradford Cederberg firm.

Second, the undisputed evidence established that in some instances Mr. Rohrbacher himself, not the attorneys, terminated the attorney/client relationship. In those cases, Mr. Rohrbacher successfully retained counsel and could have continued with the attorney/client relationship but for his own decision to terminate the relationship.

Both Rohrbacher and Ms. Bradford testified that Rohrbacher was an extremely difficult and demanding client. The purpose of a multiplier is not to assist a person who has difficulty retaining counsel due to his own idiosyncrasies. Garrison should not be punished with the imposition of a multiplier just because Rohrbacher was a difficult client. See Baratta v. Valley Oak Homeowners' Ass'n at the Vineyards, Inc., 923 So.2d 495, 499 (Fla. 2d DCA 2006) ("Work that is necessitated by the client's own behavior should more properly be paid by the client than by the opposing party."); Guthrie v. Guthrie, 357 So.2d 247 (Fla. 4th DCA 1978) ("Work done that is not reasonably necessary but performed to indulge the eccentricities of the client should more properly be charged to the client rather than the opposing party.").

5. Since no multiplier is being awarded to the Plaintiff's counsel, they are not considered the prevailing party on that issue and therefore no additional costs beyond the stipulated costs of \$539.00 will be awarded. As there are no attorney's fees to be awarded for litigating over the amount of fees to be assessed, the same holds true for costs incurred litigating over the amount of fees. See State Farm Fire & Cas. Co. v. Palma, 629 So. 2d 830 (Fla. 1993).
6. Based on the stipulated amount of reasonable hours noted, the total lodestar amount to be awarded is \$ 26,675 (Rutledge Bradford - \$450 x 32.0 hrs = \$14,400 Robert Bartels - \$350 x 31.5 hrs. = \$ 11,025 and Steven Dell - \$250 x 5.0 hrs = \$1,250).

7. The Plaintiff is entitled to pre-judgment interest on the lodestar amount of \$26,675 in fees plus \$539.00 in costs from the date Defendant confessed judgment, October 3, 2012 at the statutory rate of 4.75%.
8. Plaintiff's expert, Kevin Weiss reasonably expended 4 hours reviewing the file, preparing and testifying at the fee hearing. A reasonable hourly rate for Mr. Weiss is \$400 per hour. Therefore he is entitled to a total expert witness fee of \$ 1,600.

It is hereby ORDERED and ADJUDGED that Defendant Garrison Property & Casualty Ins. Co. shall pay the following:

1. Reasonable attorney's fees and costs totaling \$27,214 plus pre-judgment interest payable to Bradford Cederberg, PA
2. Expert witness fee of \$1,600 payable to Weiss Legal Group.

DONE and ORDERED at the Seminole County Courthouse, Sanford, Florida this 2<sup>nd</sup> day of October 2013.

  
\_\_\_\_\_  
Honorable Jeri L. Collins  
County Court Judge

Copies to:  
Rutledge Bradford, Esquire  
Wendy L. Pepper, Esquire

**CERTIFICATE OF SERVICE**

WE HEREBY CERTIFY that a true and correct copy of the foregoing was sent via e-mail transmission this 15th day of November, 2017 to: Chad A. Barr, Esq., [service@chadbarrlaw.com](mailto:service@chadbarrlaw.com), [chad@chadbarrlaw.com](mailto:chad@chadbarrlaw.com), 986 Douglas Avenue, Suite 100, Altamonte Springs, Florida 32714.

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By: /s/ Douglas H. Stein  
Douglas H. Stein  
Fla. Bar No. 355283