



FILED

IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

MAR 02 2016

CHERLYN HAWKE,)
)
 Plaintiff,)
)
 v.)
)
 STATE FARM FIRE AND CASUALTY)
 COMPANY and ED DATER,)
)
 Defendants.)

In The Office of the
Court Clerk RHONDA HALL

Case No.: CJ-2013-1243

**PLAINTIFF'S MOTION TO COMPEL SUBSTITUTE
CORPORATE DESIGNEE AND REQUEST FOR SANCTIONS**

COMES NOW Plaintiff, Cherlyn Hawke, and requests this Court to Compel State Farm to provide a substitute corporate designee in response Plaintiff's Notice to Take Video Deposition concerning Topic 8 pursuant to 12 O.S. § 3230(C)(5), and this Court's February 5, 2016, February 12, 2016, and February 19, 2016, Orders. Plaintiff further requests this Court enter its order requiring State Farm to reimburse Plaintiff's costs and fees associated with the subject deposition. Pursuant to 12 O.S. 3237, Plaintiff's counsel has conferred with Defendant's counsel in good faith and have been unable to reach an accord. In support of this motion, Plaintiff states as follows:

STATEMENT OF FACTS

1. On December 2, 2014, Plaintiff issued a Notice to Take Videotaped Deposition pursuant to 12 O.S. § 3230(C)(5) (the "Original Notice"). Defendant, State Farm Fire and Casualty Company ("State Farm") filed a Motion for Protective Order, and the Court overruled the request for a protective order regarding Topics 7 and 8 on January 5, 2015.

2. After many months, multiple discovery disputes and an appeal to the Oklahoma Supreme Court, Plaintiff reissued a Notice to Take Videotaped Deposition pursuant to 12 O.S. § 3230(C)(5) regarding Topic 8 on December 2, 2015 (the “Topic 8 Notice”). And, once again, State Farm filed a Motion to Quash the Topic 8 Notice. [See Ex A, Topic 8 Notice].

3. On February 5, 2016, the Court overruled State Farm’s Motion to Quash and compelled the parties to produce an agreed deposition schedule to the Court no later than 1:00 p.m., on February 12, 2016. However, the parties were unable to reach an agreement. [See Ex B, February 5, 2016, Order].

4. As a result, the parties appeared on February 12, 2016, and once again this Court ordered the depositions to proceed in accordance with its February 5, 2016, Order. However, another hearing occurred on February 19, 2016, wherein the Court entered an order setting forth a court-ordered the deposition schedule. This Order notes that “failure to comply with this order shall result in sanctions to the offending party. Counsel has been admonished, on the record, regarding any further attempts to subvert this Court’s discovery orders.” [See Ex. C, February 19, 2016, Order].

5. State Farm identified two (2) designees to testify on Topic 8, they are: (a) Patti Eilbacher, and (b) Marcel Blythe. Plaintiff reissued the Topic 8 Notice for the dates set forth in the Court’s February 19, 2016, Order. Topic 8 concerns “State Farm’s utilization of McKinsey and Company, including but not limited to its involvement, review, analyses, and/or recommendation(s) in building and content estimates or estimatics, as referenced by State Farm Vice President, Susan Hood, in her deposition taken by Plaintiff’s counsel in *Watkins v. State Farm Fire and Casualty*, in 2006. [See Ex. D, Reissued Topic 8 Notice].

6. The deposition of State Farm's designee, Patti Eilbacher, took place on February 24, 2016, in Oklahoma, at the Cleveland County Courthouse. Ms. Eilbacher understood she was designated to testify on Topic 8. [See Ex. E, Depo Eilbacher, 112:8-114:25].

7. Despite the fact that Topic 8 concerned more than a single project, Ms. Eilbacher was only prepared to testify regarding her limited involvement in the "Content Material Spend Review Project" ("CMSR") from 2006 to 2008. In fact, Ms. Eilbacher is an auto company employee and was pulled over to oversee the project. [*Id.* at 8:1-20, 9:13-19, 11:8-21].

8. The CMSR project involved analysis of five (5) work-streams that State Farm had identified as areas where State Farm was spending a lot of money on claims. The five (5) work streams were: (a) contents, (b) water mitigation, (c) roof, (d) electronics, and (e) Premier Service Program ("PSP") [*Id.* at 22:23-24:6, 50:6-14].

9. The CMSR project was developed by and through Cost Leadership. Michael Jenson was the point person from Cost Leadership who offered Ms. Eilbacher the position to work as the project manager on the CMSR project. Warren Farrer and the Cost Leadership area determined the parameters of the CMSR project and selected the five (5) work-streams that the project would involve. The Cost Leadership area is a financial area of State Farm and was working with claims and underwriting. Mr. Farrer and Cost Leadership made the decisions concerning the CMSR project and bringing in McKinsey and Company ("McKinsey") to work on the project. [*Id.* at 29:10-33:10, 84:11-16].

10. Ms. Eilbacher candidly advised she was not privy to any of the specific details of the CMSR project, and that those decisions were made at a different level than her. [*Id.* at 26:18-27:13]. Specifically, she had no knowledge about and could not testify about: (a) the criteria in selecting the five (5) work-streams; (b) how or why the project was developed; (c) what

materials were reviewed in creating the project; (d) the decision to bring McKinsey in on the project; or (e) if the five (5) spend areas were selected because they were affecting the combined ratio. [*Id.* at 24:3-27:9, 28:9-30:6]. Ms. Eilbacher agreed the criteria and decisions that went into creating the CMSR project itself was the very foundation of the entire project, but could not and was not prepared to testify about any of those details. She only knew there were five (5) areas selected for the project. [*Id.* at 24:23-25:23].

11. Ms. Eilbacher could not testify and had no idea why McKinsey was brought into the project. She had assumptions, but could not say with any certainty. She believed it was because of the longstanding history State Farm has with McKinsey and based on past experience. She also stated she could not answer any questions regarding the specifics of McKinsey's prior work on ACE. [*Id.* at 36:1-40:12, 42:13-43:12].

12. McKinsey "was already in contract" with State Farm prior to Ms. Eilbacher's involvement with the CMSR project, and she could not say with any degree of certainty everything that McKinsey was doing for State Farm at that time. [*Id.* at 28:9-29:9]

13. Ms. Eilbacher could not testify and was not prepared to testify about any of the specifics of the five (5) work-streams. She further could not testify and was not prepared to testify on exactly what McKinsey did or contributed to the CMSR project. [*Id.* at 57:24-58:24, 75:24-76:13].

14. Ms. Eilbacher had no obligations as project manager to report-out to anyone. Rather, the team leads were in charge of reporting-out the findings, and Warren Farrar was the point-person for the CMSR project. [*Id.* at 14:16-21, 16:6-17:12].

15. Ms. Eilbacher could not testify and was not prepared to testify about the results of the CMSR project. She speculated that State Farm's use of McKinsey and work on the spend

streams would be realized by the policyholder in the form of reduced premiums, but admitted she was guessing. [*Id.* at 53:15-54:25].

16. Ms. Eilbacher admitted Cost Leadership would have done a Cost-Benefit analysis or a Return on Investment before starting the CMSR project. [*Id.* at 95:20-96:1, 96:20-97:23]. However, Ms. Eilbacher could not testify and was not prepared to testify about financial goals or any benefit analysis of the CMSR project, did nothing to inquire or obtain this information, and did not bother to speak to anyone from Cost Leadership in preparation of her deposition. [*Id.* at 97:19-100:19].

17. Ms. Eilbacher admits State Farm paid McKinsey millions of dollars to work on the CMSR project. She was not surprised State Farm paid McKinsey \$84 Million Dollars in two years, and testified “I’m sure we got our money’s worth from them,” but could not testify and was not prepared to testify as to the specifics of the return State Farm got on its investment. [*Id.* at 100:3-102:22].

18. Ms. Eilbacher could not testify and was not prepared to testify about any of the criteria or specifics findings from the five (5) work-streams, as follows:

(a) She had no knowledge of the criteria in selecting vendors to become part of the PSP or what McKinsey contributed to this work-stream. In fact she wasn’t even involved with this work-stream and therefore had no idea what McKinsey’s involvement was. [*Id.* at 50:19-52:9, 57:24-58:24].

(b) She had no knowledge of the details, format, or results of the focus groups. Ms. Eilbacher recalled at least two (2) were conducted, but could not provide any of the specifics from the focus groups. Ms. Eilbacher admits McKinsey was likely involved in the format for the focus groups. Ms. Eilbacher believed the documents from the focus groups exist, but she did not

look for them or review them in preparation for her deposition. [*Id.* at 68:9-21, 74:17-75:10, 86:10-13]. These documents were not produced by State Farm in accordance with the Court's September 11, 2015, Discovery Order.

(c) She was unable to provide the "nitty-gritty details" of the work-streams and did not remember and could not testify as to the criteria or what information was specifically pulled for McKinsey to review and analyze. [*Id.* at 77:13-79:12, 81:3-18].

(d) Roofing was identified by State Farm as the biggest piece of the spend. Nevertheless, Ms. Eilbacher could not testify whether or not McKinsey was involved in the roof work-stream and had no knowledge of the criteria for the roof spend, any of the details for this work-stream and had no idea how State Farm determined it was the biggest area of spending. [*Id.* at 76:14-77:25, 78:1-80:2, 80:24-81:18, 84:17-85:11].

(e) Ms. Eilbacher admitted closed file reviews occurred and was part of the CMSR project. She admits there would be supporting documents (like a questionnaire) or some kind of data available from this review [*Id.* at 85:12-86:9, 88:17-25, 89:20-90:6, 93:4-94:2]. Ms. Eilbacher did not know what work-streams had closed file reviews, did not recall who was involved in getting the questionnaires together, and could not remember the outcome of these reviews. She admits there are documents from these part of the CMSR project. [*Id.* at 89:1-19, 94:3-17, 103:20-24]. These documents were not produced by State Farm in accordance with the Court's September 11, 2015, Discovery Order. [*Id.* at 94:18-95:9].

(f) She had no knowledge of the specific details of the water mitigation work-stream, or whether or not if there was any discussion or analysis regarding cost-savings for State Farm. McKinsey was a part of this work-stream. [*Id.* at 106:18-107:25, 110:6-22]. Ms. Eilbacher also

believed that a return on investment or cost benefit was done on this particular work-stream, but she could not testify on anything specifically. [*Id.* at 110:3-111:2].

19. Ms. Eilbacher left the CMSR project in May of 2008. However, she stated more testing had gone on after she left, and she could not testify regarding the outcome of the review. [*Id.* at 90:7-13].

20. The Orders made and entered by this Court made clear that State Farm was to produce a designee to testify regarding “State Farm’s utilization of McKinsey and Company, including but not limited to its involvement, review, analyses, and/or recommendation(s) in building and content estimates or estimatics, as referenced by State Farm Vice President, Susan Hood, in her deposition taken by Plaintiff’s counsel in *Watkins v. State Farm Fire and Casualty*, in 2006. [*Id.* at 112:18-114:7; *see also* Ex. D, Reissued Topic 8 Notice].

21. Ms. Eilbacher clearly did not possess the requisite knowledge concerning “State Farm’s utilization of McKinsey and Company.” Rather, as set forth above, she had limited involvement in a single project, of which she was inadequately prepared to testify about. As a result, Plaintiff’s counsel adjourned the deposition and advised that based on her testimony that Ms. Eilbacher was not qualified or competent to serve as a designee on Topic 8. [Ex. E, Depo. Eilbacher, 118:18-119:3]. Counsel for State Farm disagreed. [*Id.* at 119:6-11].

22. The deposition of Marcel Blythe occurred on February 29, 2016. Mr. Blythe was equally unqualified. Specifically, like Ms. Eilbacher, his testimony was limited to a project, not State Farm’s utilization of McKinsey as a whole as noticed. At the conclusion of Mr. Blythe’s deposition counsel for Plaintiff advised counsel for State Farm the designees selected for Topic 8

were insufficient¹. At that time, an additional request for a substitute designee on Topic 8 was made. This request was denied.

23. Because this matter is set on the April 4, 2016, trial docket, time is of the essence, an emergency hearing has been sought. State Farm must be immediately compelled to provide a substitute designee.

24. Sanctions should also be imposed for State Farm's continued gamesmanship and attempts to circumvent the discovery orders entered by this Court.

ARGUMENTS AND AUTHORITY

One of the primary purposes of 12 O.S. § 3230(C)(5) is to provide for designation of employees to testify on behalf of a corporation is to “curb the ‘bandying’ by which officers or managing agents are deposed in turn but each disclaims knowledge of facts that are clearly known in organization and thereby to it.” *Starlight International Inc. v. Herlihy*, 186 F.R.D. 626, 638 (D. Kan. 1999)(quoting *Rainey v. Am. Forest & Paper Ass'n, Inc.*, 26 F.Supp.2d 82, 95 (D.D.C.1998)). Implicit in this rule of law requiring that any person designated to testify on behalf of the corporation must testify “to matters known or reasonably available to the organization” is the requirement that the designated representative review all matters known or reasonably available to the corporation in preparation for his/her deposition. *Starlight*, 186 F.R.D. at 638. Thus, a corporation has an affirmative duty to designate a representative to speak on its behalf, answering questions that are within the scope of the matters described in the deposition notice and which are “known or reasonably available” to the company. *King v. Pratt & Whitney*, 161 F.R.D. 475, 476 (S.D. Fla. 1995)(quoting Fed. R. Civ. P. 30(b)(6)).

¹ A supplemental motion addressing the insufficiencies of Mr. Blythe's testimony will be filed once the transcript is received.

Moreover, a corporation has a duty to make a conscientious, good faith effort to designate knowledgeable persons to testify on its behalf and to prepare such designated representatives to fully and unequivocally answer questions about the designated subject matter. *Starlight*, 186 F.R.D. at 639 (citing *Dravo Corp. v. Liberty Mut. Ins. Co.*, 164 F.R.D. 70, 75 (D. Neb. 1995)). If the designee does not possess personal knowledge of matters set out in the deposition notice then the corporation is obligated to prepare the designee so they may give knowledgeable and binding answers. *United States v. Taylor*, 166 F.R.D. 356, 361 (M.D.N.C.), *aff'd*, 166 F.R.D. 367 (1996). “By commissioning the designee as the voice of the corporation, the Rule obligates a corporate party ‘to prepare its designee to be able to give binding answers’ in its behalf.” *Rainey*, at 94 (quoting *Ierardi v. Lorillard, Inc.*, 1991 WL 158911, at *3 (E.D. Pa. Aug.13, 1991)).

Even if corporate documents are voluminous and the review of those documents would be burdensome, deponents who are corporate designees are still required to review them in order to prepare themselves to be deposed; such preparation is necessary because the individuals so deposed are required to testify to the knowledge of the corporation, not the individual. *Calzaturificio S.C.A.R.P.A. s.p.a. v. Fabiano Shoe Co., Inc.*, D.Mass. 2001, 201 F.R.D. 33. If it becomes obvious during the course of the deposition that the designee is deficient, then the entity is obligated to provide a substitute. *Starlight*, 186 F.R.D. at 639 (quoting *Dravo*, 164 F.R.D. at 75). **Likewise, if the designated deponent cannot answer questions within the scope of matters described in the notice, then the organization has failed to comply with its obligations and may be subject to sanctions.** *Starlight*, 186 F.R.D. at 638 (quoting *Taylor*, 166 F.R.D. at 362) (emphasis added). A corporation’s production of an unprepared witness to testify on its behalf is tantamount to the designated representative’s failure to appear, for purposes of Fed.R.Civ.P. 37(d) authorizing sanctions. *Starlight*, 186 F.R.D. at 639 (citing *Taylor* 166 F.R.D.

at 363). Delay and mounting attorneys' fees can equate to prejudice, such as may support harsh sanctions for discovery violation. *Starlight*, 186 F.R.D. at 648 (citing *Jones v. Thompson*, 966 F.2d 261, 264 (10th Cir. 1993)).

As aptly illustrated by Ms. Eilbacher's testimony, she lacked the requisite knowledge and was inadequately prepared to testify as to the matters regarding the "State Farm's utilization of McKinsey and Company, including but not limited to its involvement, review, analyses, and/or recommendation(s) in building and content estimates or estimatics, as referenced by State Farm Vice President, Susan Hood, in her deposition taken by Plaintiff's counsel in *Watkins v. State Farm Fire and Casualty*, in 2006." [Ex. E, Depo. Eilbacher, at 112:18-114:7]. Specifically, outside of working on the CSMR project, she could not testify and had no knowledge of any of the particulars behind the project or why McKinsey even was brought in to work on it. [See Statement of Facts Nos. 10-11, 13 & 18]. Indeed, Ms. Eilbacher could not even testify to the scope of McKinsey work, what State Farm paid McKinsey for its services, or what the return on investment for this project was. [*Id.* at Nos. 15-17]. Ms. Eilbacher candidly advised that others above her made all of the decisions on this project, and that Cost Leadership in reality is who developed the CSMR project and brought McKinsey in. [*Id.* at Nos. 8-9].

Indeed, it was clear Ms. Eilbacher had limited knowledge and was not qualified to testify. She even admitted she simply could not provide the "nitty-gritty" details on any of the work-streams and could not remember what information they pulled, looked at, or even what McKinsey did throughout the project. [*Id.* at No. 18]. Ms. Eilbacher further admitted at the time the CSMR project began, McKinsey was "already in contract" with State Farm, but was not prepared to talk about anything outside of this single project, because she didn't believe it was necessary. [*Id.* at 17]. While Ms. Eilbacher had general knowledge about the CSMR project, she

was unable to provide any specifics and could not testify with any particularity what McKinsey's role was in this CMSR project. Facts she admitted were important to the foundation of the project itself. [*Id.* at No. 10].

Further, Ms. Eilbacher identified documents which were related to this CMSR project, but which were not produced. State Farm's election to designate a representative who only knows pieces of information, coupled with the fact that it failed to produce all documents associated with the project, in and of itself requires an imposition of sanctions and an order compelling production of all the documents and for State Farm to provide a substitute designee from Cost Leadership and/or corporate official who can testify about all aspects of the project, not just the snippets that State Farm has elected to share.

Lastly, and perhaps more importantly, Topic 8 encompassed more than a single project. Yet, this is the only subject that Ms. Eilbacher was prepared to testify about. This is unacceptable. State Farm had a duty to identify and prepare a corporate designee or designees who could respond to questions pertaining to the entire topic as it was issued. This Court did not limit the scope of this topic. Therefore, State Farm's continued attempts to circumvent the discovery and rewrite the areas of inquiry of these Court-Ordered depositions is sanctionable. This considered, Plaintiff seeks a substitute witness(es) who can testify regarding all matters set forth in Topic 8. *See Starlight*, 186 F.R.D. at 639 (quoting *Dravo*, 164 F.R.D. at 75) (if it becomes obvious during the course of the deposition that the designee is deficient, then the entity is obligated to provide a substitute).

State Farm's failure to produce a knowledgeable and adequately prepared witness to respond to the matters identified in the subject notice has caused unnecessary delay and caused Plaintiff to incur deposition costs and fees. Because Ms. Eilbacher could not answer questions within the

scope of matters described in Topic 8, State Farm has failed to comply with its obligations and may be subject to sanctions. *Starlight*, 186 F.R.D. at 638 (quoting *Taylor*, 166 F.R.D. at 362). A corporation's production of an unprepared witness to testify on its behalf is tantamount to the designated representative's failure to appear, for purposes of Section 3237(d) authorizing sanctions. *Starlight*, 186 F.R.D. at 639 (citing *Taylor* 166 F.R.D. at 363). Delay and mounting attorneys' fees can equate to prejudice, such as may support harsh sanctions for discovery violation. *Starlight*, 186 F.R.D. at 648 (citing *Jones v. Thompson*, 966 F.2d 261, 264 (10th Cir. 1993)). Accordingly, Plaintiff requests State Farm be required to designate a substitute witness(es), adequately prepare him/her (them) for their deposition, and further be required to reimburse Plaintiff for her fees and costs associated with Ms. Eilbacher's deposition.

RELIEF REQUESTED

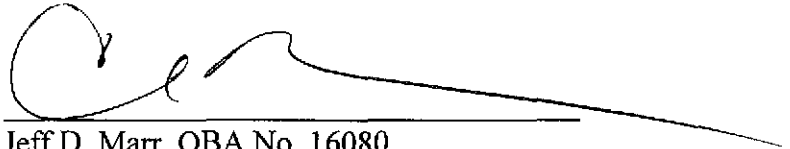
Based on the facts and authorities cited above, Plaintiff requests this Court grant the following relief against State Farm:

1. An Order finding State Farm failed to properly comply with its obligations pursuant to 12 O.S. § 3230(C)(5), with regard to the subject notice, and specifically that it failed to adequately prepare Patricia Eilbacher for testimony on its behalf in response to the Topic 8 Notice;
2. An Order compelling State Farm to designate a substitute witness or witnesses who is/are adequately prepared to testify on all matters contained in the Topic 8 Notice, and to present him/her (them) for deposition in Oklahoma;
3. An Order awarding reasonable attorneys fees and costs to Plaintiff for the inadequate deposition of Patricia Eilbacher as well as the fees and costs associated with the filing of this motion; and

4. Such other and further relief this Court deems equitable, just and proper.

WHEREFORE, premises considered, Plaintiff respectfully prays this Court grant the relief requested herein.

Respectfully submitted,



Jeff D. Marr, OBA No. 16080
Carole Dulisse, OBA No. 18047
MARR LAW FIRM
4301 Southwest Third Street, Suite 110
Oklahoma City, OK 73108
Telephone: (405) 236-8000
Facsimile: (405) 236-8025

-and-

Reggie N. Whitten, OBA No. 9576
Michael Burrage, OBA No. 1350
J. Revell Parrish, OBA No. 30205
WHITTEN BURRAGE
1215 Classen Drive
Oklahoma City, OK 73103
Telephone: (405) 516-7800
Facsimile: (405) 516-7859

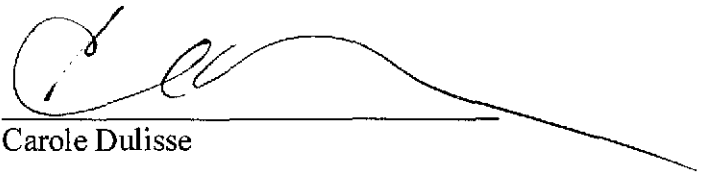
ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

This is to certify that on the ____ day of March 2016, a true and correct copy of the above and foregoing was mailed to the following counsel of record:

David V. Jones
Daniel C. Andrews
Benjamin G. Kemble
Edward J. Batis, Jr.
JONES, ANDREWS & ORTIZ
21 E. Main Street, Suite 101
Oklahoma City, OK 73104

Joseph A. Cancila
Sondra A. Hemeryck
RILEY SAFER HOLMES & CANCILA LLP
Three First National Plaza
70 West Madison Street
Suite 2900
Chicago, IL 60602
Telephone: (847) 951-6981
Email: jcancila@rshc-law.com
shemeryck@rshc-law.com

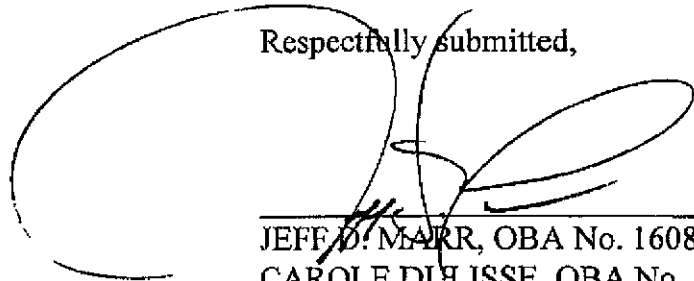


Carole Dulisse

Pursuant to 12 O.S. §3230(C)(5), Defendant State Farm Fire and Casualty Company shall designate and produce for deposition one or more officers, directors, managing agents, or other persons who are most knowledgeable and prepared to speak authoritatively on its behalf regarding each of the topics set forth in the attached Exhibit "A."

Counsel for Defendants are invited to attend and cross-examine.

Respectfully submitted,



JEFF D. MARR, OBA No. 16080
CAROLE DULISSE, OBA No. 18047
Marr Law Firm
4301 Southwest Third Street
Suite 110
Oklahoma City, OK 73108
Telephone: (405) 236-8000
Facsimile: (405) 236-8025
Email: jeffdmarr@marrlawfirm.com
cdulisse@marrlawfirm.com

-and-

Reggie N. Whitten, OBA No. 9576
Michael Burrage, OBA No. 1350
J. Revell Parrish, OBA No. 30205
WHITTEN BURRAGE
1215 Classen Drive
Oklahoma City, OK 73103
Telephone: (405) 516-7800
Facsimile: (405) 516-7859
Email: rwhitten@whittenburrage.com
rparrish@whittenburrage.com
Attorneys for Plaintiff

CERTIFICATE OF MAILING

This is to certify a true and correct copy of the above and foregoing document was hand-delivered on this 2nd day of December, 2015, to the following counsel of record:

David Jones
Ben Kemble
Edward J. Batis, Jr.
Jones, Andrews & Ortiz
21 E. Main Street, Suite 101
Oklahoma City, Oklahoma 73104
Telephone: (405) 601-8713
Facsimile: (405) 232-8330
Attorneys for Defendants

-and-

Joseph A. Cancila, Jr.
Sondra A. Hemeryck
Matthew G. Schiltz
Schiff Hardin LLP
233 S. Wacker Dr., Ste. 6600
Chicago, IL 60606
Telephone: (312) 258-5500
Facsimile: (312) 258-5600
Attorneys for Defendants



JEFF D. MARR

EXHIBIT "A" - MATTERS TO BE INQUIRED INTO

Topic 8 of original Notice:

State Farm's utilization of McKinsey and Company, including but not limited to its involvement, review, analyses, and/or recommendation(s) in building and content estimates or estimatics, as referenced by State Farm Vice President, Susan Hood, in her deposition taken by Plaintiff's counsel in *Watkins v. State Farm Fire and Casualty*, in 2006.

IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

CHERLYN HAWKE

Plaintiff,

vs.

STATE FARM FIRE &
CASUALTY CO., et al.,

Defendants.

FILED In the District Court of Cleveland County, Oklahoma
Office of the Court Clerk
FEB 05 2016
DOCKET PAGE RECORDED
Rhonda Hall, Court Clerk DEPUTY
CJ-2013-1243

SUMMARY ORDER

This matter comes on for hearing of Defendants' Motion to Quash and Plaintiff's Motion to Enforce Court Order, Motion to Compel and Motion for Sanctions. Upon review of the matters on file herein, this Court finds and Orders as follows:

1. Plaintiff's Motion to Enforce Court Order, Motion to Compel and Motion for Sanctions is sustained in part. It is impossible for this Court to determine which perspective on the production of documents is accurate. Both parties contend that the facts indicate that production was/was not complied with and cite facts to support that position. However, it is clear to this Court that production is "on-going". Therefore, Defendant State Farm shall produce to Plaintiff all documents that have been previously ordered within fifteen (15) days of this Order, if not previously produced. Furthermore, said documents shall be produced in a searchable .pdf format with indicators that demonstrate which request the production is responsive to, if not previously accomplished. This is necessary in order for this Court to make an adequate determination, through the discovery master, if further accusations of non-compliance are alleged. Plaintiff's Motion for Sanctions is denied.

2. Defendants' Motion to Quash is sustained in part and overruled in part as set forth below:

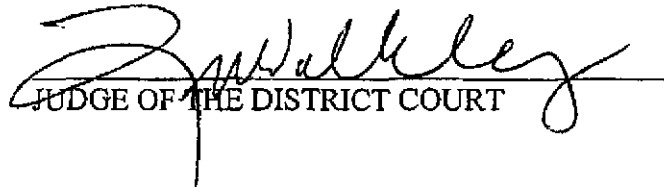
- A. Depositions of corporate representatives who reside within 100 miles of the corporate headquarters in Bloomington, Illinois, shall take place at the corporate headquarters. Defendant shall provide an adequate place for the depositions to take place and the depositions of all representatives that will take place in Bloomington, Illinois shall take place during a time period specified and agreed to by the parties in a continuous time period (so as to avoid multiple trips to Illinois) no later than March 4, 2016, unless otherwise agreed to by the parties.
- B. Depositions of corporate representative who do not reside within 100 miles of the corporate headquarters in Bloomington, Illinois, shall take place at the Cleveland County Courthouse, unless otherwise agreed to by



the parties. Said depositions shall also take place no later than March 4, 2016, unless otherwise agreed to by the parties.

- C. The Motion to Quash the deposition notice for Susan Hood is overruled. Defendant State Farm shall produce Ms. Hood, pursuant to the above provisions.
 - D. Depositions of Plaintiff's experts shall also take place at the Cleveland County Courthouse, unless otherwise agreed to by the parties. Said depositions shall take place no later than March 4, 2016, unless otherwise agreed to by the parties. There is no reason for the deposition of Plaintiff's experts to take place in any particular order in relation to Defendant's witnesses.
 - E. Counsel are directed and ordered to produce an agreed deposition schedule to this Court no later than 1:00 p.m. on February 12, 2016. If an agreement as to the scheduling of all depositions pursuant to this and previous orders cannot be accomplished, counsel shall appear at 2:00 p.m. on February 12, 2016 for a discovery scheduling conference and this Court shall determine the appropriate dates/times for each deposition.
3. Defendant State Farm's Motion to Strike Plaintiff's Expert is rendered moot based upon the rulings herein. This Court has consulted with Judge Balkman in reaching the decisions herein. Hearing of that motion set February 18, 2016 is stricken. All other settings for trial and pre-trial purposes currently scheduled before Judge Balkman shall remain in full force and effect.

It is so ordered this 5th day of February, 2016!


JUDGE OF THE DISTRICT COURT



IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

CHERLYN HAWKE,)	
)	
Plaintiff,)	
)	
vs.)	CJ-2013-1243
)	
STATE FARM FIRE &)	
CASUALTY CO., et al.,)	
)	
Defendants.)	

STATE OF OKLAHOMA } S.S.
CLEVELAND COUNTY }
FILED
FEB 19 2016
In The Office of the
Court Clerk RHONDA HALL

SUMMARY ORDER

Matter comes on for continued hearing on deposition scheduling based upon the inability of counsel to reach agreements as to the setting of depositions in this matter. Arguments taken. Based thereon, the Court finds and Orders as follows:

1. The depositions in Oklahoma shall take place at the Cleveland County Courthouse according to the following schedule:

A.	Greg Simmons:	February 23, 2016
B.	Patti Eilbacher:	February 24, 2016
C.	Kenneth Kwok:	February 25, 2016
D.	Diane Luther:	February 26, 2016
E.	Gary England:	February 26, 2016

2. By agreement of the parties, the deposition of Ed Dater shall take place at the office of Jones, Andrews & Ortiz in Oklahoma City, Oklahoma on February 24, 2016.

3. The depositions in Illinois shall take place in Bloomington, Illinois at a location selected by State Farm which will accommodate the depositions according to the following schedule:

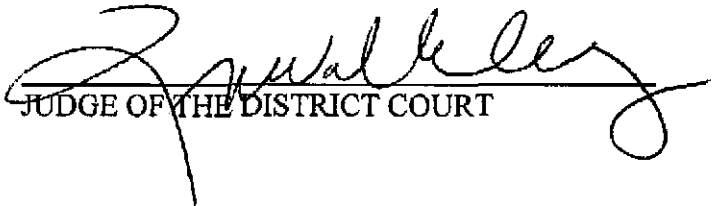
A.	Marcel Blythe:	February 29, 2016
B.	Juan Guevara:	March 4, 2016
C.	Ronda Heidecker:	March 2, 2016
D.	Susan Hood:	March 3, 2016
E.	Dave Gibson:	March 1, 2016

4. By agreement of the parties, the deposition of Mark Romano shall take place in Oakbrook, Illinois on March 2, 2016.

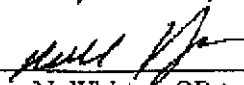


5. All depositions shall commence at 8:30 a.m. unless otherwise agreed to by the parties in writing. The depositions occurring at the Cleveland County Courthouse shall take place in the 4th floor jury room unless otherwise agreed to by the parties in writing.
6. If the deposition of Diane Luther does not yield substantive responses due to the timing of the deposition, Defendants may retake the deposition of Ms. Luther, at Plaintiff's cost, in Oklahoma to supplement her responses only. This shall not be deemed to be a proverbial second bite at the apple but may be used ONLY for supplementing any responses that she was not fully able to provide due to not having been able to review the depositions of State Farm representatives which are to take place the following week.
7. Failure to comply with this order shall result in sanctions to the offending party. Counsel has been admonished, on the record, regarding any further attempts to subvert this Court's discovery orders.

It is so ordered this 19th day of February, 2016!


JUDGE OF THE DISTRICT COURT

Respectfully submitted,



Reggie N. Whitten, OBA #9576

Michael Burrage, OBA #1350

J. Revell Parrish, OBA #30205

WHITTEN BURRAGE

1215 Classen Drive

Oklahoma City, OK 73103

Telephone: (405) 516-7800

Facsimile: (405) 516-7859

Email: rwhitten@whittenburrage.com
mburrage@whittenburrage.com
rparrish@whittenburrage.com

-and-

Jeff D. Marr, OBA #16080

Carole Dulisse, OBA #18047

MARR LAW FIRM

4301 Southwest Third Street, Suite 110

Oklahoma City, OK 73108

Telephone: (405) 236-8000

Facsimile: (405) 236-8025

Email: jeffdmar@marrlawfirm.com
cdulisse@marrlawfirm.com

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that on this the 22nd of February, 2016, a true and correct copy of the above and foregoing pleading was faxed and mailed to the following counsel of record:

VIA FACSIMILE: 405-232-8330

David V. Jones
Benjamin G. Kemble
Edward J. Batis, Jr.
JONES, ANDREWS & ORTIZ
21 E. Main Street, Suite 101
Oklahoma City, OK 73104

VIA FACSIMILE: 312-258-5600

Sondra A. Hemeryck
SCHIFF HARDIN LLP
223 S. Wacker Drive, Suite 6600
Chicago, IL 60606

Joseph A. Cancila, Jr.
RILEY SAFER HOLMES & CANCILA
Three First National Plaza
70 West Madison Street
Chicago, IL 60602



IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

CHERLYN HAWKE,)	
)	
Plaintiff,)	
)	
vs.)	CASE NUMBER
)	CJ-2013-1243
)	
STATE FARM FIRE & CASUALTY)	
COMPANY and ED DATER,)	
)	
Defendants.)	

* * * * *

VIDEO DEPOSITION OF PATRICIA L. EILBACHER
TAKEN ON BEHALF OF THE PLAINTIFF
ON FEBRUARY 24, 2016
IN NORMAN, OKLAHOMA

* * * * *

REPORTED BY: MELINDA R. NIEVEZ, CSR, RPR

EXHIBIT

E

1 A In the 13 years, I have not had
2 responsibility for fire claims during that time,
3 other than working with the fire company for the two
4 years that I was the project manager for the content
5 material spend review.

6 Q Okay. So you worked for the fire company
7 on a special project?

8 A From 2006 to 2008, I was the project
9 manager for the content material spend review
10 project.

11 Q Now, do you all use an acronym for that or
12 do you say the whole thing every time?

13 A We -- for the content material spend
14 review, we use the acronym CMSR.

15 Q Is that okay if I use that today?

16 A I would be fine if you want to use CMSR
17 for the content material spend review.

18 Q If I use it and you use it, we'll agree
19 that that's what we're referring to. Okay?

20 A I am fine with you using CMSR as that.

21 Q Okay. So how is it that you came to be
22 involved in a -- and State Farm uses fire and
23 homeowners interchangeably; correct?

24 A There -- State Farm uses fire company, and
25 then homeowners is part of fire company.

1 Q Okay. So if I say "fire," you understand
2 it doesn't mean a fire, per se. That's particular
3 to the way the company is structured.

4 A If I need clarification, I'll ask you if I
5 don't understand what you're asking.

6 Q Okay. But that's not uncommon?

7 A No. I don't think that's uncommon to use
8 fire in that way.

9 Q All right. Had you rather me use fire or
10 homeowners?

11 A Fine with me whichever you use. If I need
12 more explanation from you, I'll be sure to ask.

13 Q Well, did you consider this -- this
14 project that you worked on, was it for the fire
15 company or was it for the homeowners?

16 A Content material spend review was for the
17 fire company.

18 Q Okay.

19 A Yes.

20 Q So how is it that you came to be involved
21 in something on the -- in the fire company when
22 you're an auto company employee?

23 A The content material spend review was an
24 area where I had some prior fire company knowledge,
25 but it was more of an opportunity to oversee as a

1 A As far as I can recall, I don't ever
2 remember adjusting a fire claim for State Farm.

3 Q Okay. So no structure, no contents, no
4 ALE, none of the aspects of a traditional fire
5 claim; correct?

6 A I don't ever remember adjusting any kind
7 of fire claim.

8 Q Okay. Was there any prerequisite or any
9 requirement that corporate had for you as an auto
10 employee to become involved in this fire company
11 CMSR project?

12 A As far as I know, there were no
13 requirements to become the project manager for the
14 content material spend review.

15 Q So not only were you involved, you were
16 the project manager?

17 A I was -- I was the project manager for the
18 content material spend review.

19 Q Was there just one project manager or were
20 there several? How did that work?

21 A I was the only project manager for CMSR.

22 Q Okay. And how -- how large was this
23 project? And to put some parameters on it for you,
24 how many -- how many folks were -- were involved
25 that you were responsible for overseeing?

1 MR. JONES: It's M-i-e-r.

2 THE WITNESS: It's M-i-e-r. Okay. And
3 he -- I think at the time, Greg Mier was a staff
4 assistant in fire estimatics in corporate.

5 Q (BY MR. MARR) Okay.

6 A I'm trying to think who else might have
7 been. Peggy Miles was a staff assistant, but she
8 came later on in the project. Glenn Peterson was a
9 staff assistant based out of corporate and he was
10 involved in the project. I can picture some other
11 people.

12 Q Who was the sponsor?

13 A When you say sponsor --

14 Q Well, don't --

15 A -- what do you mean by sponsor?

16 Q Don't most of the time you all have these
17 projects, you have a sponsor -- a named sponsor of
18 the person who's --

19 A Well, the person who I would probably most
20 closely put with a sponsor role would have been
21 Warren Farrar. He was an assistant vice president.

22 Q Okay. Now, did you have any
23 responsibility in -- in filling this team, or was
24 this a team that was already assembled and then you
25 came in as the project manager to preside over it?

1 or four years ago.

2 Q Okay.

3 A Time passes.

4 Q Quickly.

5 A Very quickly.

6 Q But he was kind of the point man, as you
7 understand it, for this project?

8 A I would consider Warren more the point
9 person for the CMSR.

10 Q And as far as who he reported to, who
11 would that have been?

12 A At that time, I'm pretty sure that Warren
13 reported to Maurine Willett.

14 Q And who was that?

15 A She -- Maureen Willett at the time was --
16 I think her title would have been OVP, so
17 operational vice president.

18 Q Okay. And who did Ms. -- and how are you
19 spelling Willett?

20 A W-i-l-l-e-t-t, I think.

21 Q I probably wouldn't have got that. And
22 who did Ms. Willett report to?

23 A Mrs. Willett reported to Susan Hood.

24 Q Okay. Now, as part of your responsibility
25 as the project manager for the CMSR program, did you

1 have any reporting obligations?

2 A As project manager, on the whole, I did
3 not report out. I would be the one that facilitated
4 getting every -- the team lead to get ready to
5 report out. It was rare that I would report out.

6 Q With respect to the PowerPoints -- which
7 I've seen and there are many, and you can correct me
8 if I'm wrong -- whose -- whose area or cup of tea
9 would that have been?

10 A So when I think back, the report-outs were
11 usually done by the team leads. So whoever was the
12 team lead at the time.

13 Q Would prepare the PowerPoints?

14 A The PowerPoints, on the whole, were
15 prepared by McKinsey & Associates.

16 Q And who is McKinsey?

17 A McKinsey was an outside firm that worked
18 with us on the project.

19 Q Okay. And why did you need an outside
20 firm to work with you on the project?

21 A We had McKinsey work with us because they
22 are more of an expert in the data mining area, and
23 they were a thinking partner to work with us and
24 stir some of the juices, if you'd like to say.

25 Q Okay. And why -- why did -- when you say

1 how those came to be something that McKinsey looked
2 at.

3 A So -- I'm not sure if I totally understand
4 what you're asking me. But the teams would give
5 McKinsey the information, and McKinsey would use
6 that information to then figure out, okay, what
7 is -- what is it we're paying, on what kind of
8 claim, and -- I'm not sure if that is answering what
9 you're --

10 Q Kind of. It wasn't a great question, but
11 we'll get through it.

12 These folks that came from contents and
13 came from -- I guess some that handled roofs and
14 some that handled water mitigation, they all kind of
15 brought their own experiences to the team; correct?

16 A Yes. All the team members brought
17 experience with them.

18 Q Okay. Experience for the particular area.
19 And I guess, would that be an initiative that was
20 part of this --

21 A I'm not sure I understand what you're
22 asking.

23 Q Okay. You said early on that this dealt
24 with -- one was contents, there was mitigation,
25 there was roof. What were the other things and what

1 did you call those, if not initiatives?

2 **A** So there were -- the work streams -- there
3 were originally five work streams. There was an
4 electronic work stream that dealt with car stereos
5 and that was auto-based.

6 Then there was the contents work stream,
7 and that dealt with contents claims.

8 We had the PSP work stream, and that dealt
9 with our -- how we pay providers in our PSP program.

10 We had the roofing work stream, which
11 dealt with how we can possibly provide better
12 service and better pricing when we are handling
13 roofing claims.

14 And then we had the water mitigation that
15 dealt with how we handle water claims and is there
16 maybe a better way to have that process done.

17 **Q** Okay. So for lack of a better word, what
18 I was referring to incorrectly as initiatives, you,
19 in fact, at State Farm referred to as work flows?

20 **MR. JONES:** Work stream.

21 **Q** (BY MR. MARR) Work streams. I'm sorry.
22 I can't read my own writing.

23 **A** Work streams?

24 **Q** Yes.

25 **A** Yes. Work streams would be how we

1 identify the different areas of the content material
2 spend review.

3 Q That's where you decided what areas you
4 wanted to focus on?

5 A So those were the areas that were given to
6 focus on to me.

7 Q That were given to you by whom?

8 A Well, when I joined the project, I was
9 told there's five different work streams, and these
10 are what they are. So somewhere before me, it was
11 decided that this was the areas -- or these were the
12 areas that we were going to focus on for work
13 streams.

14 Q Okay. Well, who at State Farm selected
15 these work streams that were going to be focused on
16 with the assistance of McKinsey?

17 A I believe that that came from Warren
18 Farrar's area and cost leadership's area, that this
19 is where -- prior to going into content material
20 spend review, that was where the -- there were
21 people that knew we -- that's where we were spending
22 a lot of money.

23 Q Okay. And so the decision or how the --
24 how the -- these five work streams were selected as
25 being the areas that you were spending a lot of

1 money and needed to look at, you don't know the
2 particulars of that; is that correct?

3 A I don't know -- I know that those were the
4 work streams that were decided on prior to me coming
5 in.

6 Q Okay. But that is the very foundation of
7 the CMSR. Wouldn't you agree?

8 A The foundation being the five work
9 streams?

10 Q Yes, ma'am.

11 A Yes. That would be correct.

12 Q So how the foundation was built, so to
13 speak, and what materials went into deciding how to
14 build the foundation, that's not something that
15 you're prepared to or able to tell me about?

16 A I just know that those were the five work
17 streams that were part of CMSR when I came into it.

18 Q Right. But how it happened and how it was
19 selected and what criteria was used, you're not able
20 to tell me, are you?

21 A No. I can't talk about what went into
22 deciding those five areas, other than the fact that
23 I know that that was where our spends were.

24 Q Right. But there are -- I mean, you would
25 agree with me that there are many, many, many areas

1 that could have been on there in addition to the
2 five.

3 **A** We are always looking at State Farm at
4 different things that we can do to improve our
5 service, provide our customers with better products,
6 make our products less expensive for our customers.
7 So there's always things that we can be looking at.
8 **As** I sit here today, I am sure that we are -- we are
9 looking at and have projects going on looking at
10 different things.

11 **Q** Okay. Well, I guess my point was, there
12 were a lot more than the five that ended up on the
13 list to draw from.

14 **A** I believe that those were the five areas
15 that were at that time our biggest spends, so that
16 was why we decided to look into those areas and see
17 what could we improve.

18 **Q** All right. So were those five areas
19 having an effect on the combined ratio, or is that
20 something that was made at a level up above you?

21 **A** That kind of decision would have been made
22 at a level different than mine.

23 **Q** Okay. That would have been made at a
24 Warren Farrar or a Susan Hood or a chairman's
25 council level?

1 A I don't know what level it would be made
2 at. I just know that wasn't -- I came in and knew
3 that we were going to be looking at these five
4 areas.

5 Q Okay. Well, you know that it wasn't you
6 or anybody below you that made that type of
7 decision; correct?

8 A That would be correct. It was neither me
9 nor any of my work streams that made the decision.

10 Q So the table was set, so to speak, at the
11 time you came on board as project manager; correct?

12 A I was given the content material spend
13 review and the areas that we would be looking at.

14 Q Now, I suppose that once you were given
15 those areas and you were told that these are our
16 major areas of spend, there were documents or some
17 type of support that you looked at to validate that
18 that's true, these five were major areas of spend
19 for us?

20 A I don't remember what I first looked at
21 because that was so long ago. I just know as we
22 came through and were doing our work in the spend
23 review, that it was extremely clear that we were
24 looking at some areas that really affected our
25 spend.

1 Q Okay. So you had no doubt -- once you got
2 into it as a project manager and you started looking
3 at these areas with your people, there was no doubt
4 that you all were spending a lot of money in these
5 particular five areas, and it made sense to you why
6 they were part of the project?

7 A Yes. It absolutely made sense to me that
8 they would be part of the project.

9 Q Now, was the decision to -- you said that
10 you were involved to some extent on putting the
11 players together who would make up this team. Was
12 the decision to get an outside consultant,
13 McKinsey & Company -- was that something that was
14 made by you?

15 A The decision to hire McKinsey was not made
16 by me. They were already in contract, I guess you
17 could say, prior to me coming into the project.

18 Q What do you mean, they were already in
19 contract?

20 A There was -- I think there was -- or I
21 believe there was already a contract ongoing with
22 McKinsey.

23 Q For what?

24 A My -- my recollection is that they had
25 been involved in looking at some of our internal

1 spend reviews that we did that included hotel,
2 rental cars, wireless communications. And I think
3 McKinsey -- or I believe McKinsey was involved with
4 that.

5 Q Okay. But you're not -- the details
6 you're not certain about?

7 A I don't know the -- I was not involved in
8 those spend reviews. Those -- those were all done
9 internally and by people in our corporate office.

10 Q Okay. But as was the case with the
11 decision as to what would be the five work streams
12 that would make up this CMSR, you likewise were
13 already given McKinsey & Company as part of it?

14 A Yes. McKinsey was part of the people that
15 I would be working with on the CMSR.

16 Q And how was that conveyed to you, that,
17 well, you got these five areas that we've already
18 picked for you and we've also already got you a
19 consultant and the consultant is McKinsey & Company?

20 A That was what was told to me. We have a
21 contract material spend review, we're looking at
22 these five areas, and we have McKinsey as a
23 consultant.

24 Q Okay. And who told you that?

25 A I believe that it was during my call with

1 Michael Jensen when I accepted the position to work
2 as the project manager with the CMSR.

3 Q Okay. And who is Michael Jensen?

4 A Michael Jensen was a -- I think he might
5 have been considered a staff assistant or consultant
6 at the time in our cost leadership area.

7 Q Okay. So was this -- this a project that
8 came out of Quest?

9 A I don't know. What's Quest?

10 Q I thought you just said Quest leadership.

11 MR. JONES: Said cost. Cost, c-o-s-t.

12 THE WITNESS: It must be my accent.

13 Q (BY MR. MARR) That's all right. Where
14 are you from?

15 A New Jersey.

16 Q Well, if you can understand mine, I can
17 certainly understand yours.

18 Okay. So cost leadership. What is cost
19 leadership?

20 A At the time, cost leadership was an area
21 on our financial side of State Farm.

22 Q Okay. And how -- how do the two get
23 together? How do we go from cost leadership to a
24 CMSR project, here's the five areas that we're
25 paying out on and here's McKinsey?

1 you were told -- or from whom you were told that
2 McKinsey was going to be involved?

3 A Like I think I said before -- I believe I
4 said before, is when I had the first phone call with
5 Michael after I accepted the position, he had -- he
6 had advised that, you know, here's your content
7 material spend review and the work streams and we
8 also have McKinsey as an outside source to work with
9 you. So cost leadership, that's -- cost leadership
10 was involved from that standpoint.

11 Q Okay. Why was -- why was it that
12 State Farm wasn't able to do those things that it
13 had hired McKinsey to do for this project?

14 A We -- we in the claims area -- we know how
15 to work claims. We work claims. We don't
16 necessarily mine data. I think as a -- I can say
17 personally, I'm getting better at looking at data as
18 I get older. And I -- I look at more data than I
19 probably ever looked at in my time. But that's not
20 our area of expertise, you know.

21 We do have people who have Six Sigma and
22 Lean. But that is McKenzie's specialty, that
23 they're also an outside source to use to just get
24 ideas from, to generate ideas for us. When -- when
25 you work in any organization, when you work in any

1 Q Okay. So if I'm hearing you correctly,
2 the reason -- first of all, you don't really know
3 the reason why McKinsey was hired, but you believe
4 McKinsey was necessary because of their data mining
5 expertise?

6 A I do know that McKinsey was hired to help
7 us with their expertise in data mining, and I do
8 know that they were hired to be an outside firm that
9 could help as a thinking partner.

10 Q Okay. What did you want them to help you
11 come up with? What was it that State Farm couldn't
12 come up with on its own that it needed McKinsey
13 brought in on this?

14 A So that's why we had McKinsey come in,
15 because we don't know what we don't know. So why
16 not have somebody come in from the outside who is a
17 source that we could, you know, think with and
18 stimulate some maybe new ideas or different ways to
19 do things.

20 Q Okay. How do you reconcile the fact that
21 you have certain duties and responsibilities with
22 respect to the adjustment and payment of a claim and
23 McKinsey is not in the insurance business and does
24 not?

25 A We weren't necessarily asking McKinsey how

1 to adjust claims. We know how to adjust claims.
2 That wasn't what we were asking them for.

3 What we were using McKinsey as was, you
4 know, what can we do with this data, what can you
5 tell us from this data, what can you tell us about
6 how we can maybe streamline the process we have, you
7 know, where do you see, where maybe we haven't seen
8 it, where we might hit like bottlenecks in our
9 processing, what do you think maybe we need, you
10 know, do we --

11 Back in 2006 to 2008, we didn't have the
12 programs that were coming down the line and we
13 weren't sure what was coming down the line, from
14 just an electronics standpoint. And so those were
15 the kind of things that we knew McKinsey could maybe
16 provide us with information on.

17 Q How did you know that?

18 A Because they're an -- McKinsey is an
19 outside firm that was known in that field for being
20 able to stimulate that kind of -- of thinking.

21 Q Well, hadn't -- had you all had any
22 experience with McKinsey's expertise and
23 recommendations prior to this project?

24 A My understanding is, like I said, they
25 were also working on the internal spend reviews that

1 we had regarding hotels and rental cars.

2 Q Well, hadn't you had them involved in
3 looking at claim-handling work flows and work
4 streams in the past?

5 A My belief is they did look at claim
6 handling back in the late '90s.

7 Q And what was that about?

8 A Back in the late '90s, McKinsey worked
9 with State Farm on auto claim handling with injury
10 claims.

11 Q And how, specifically?

12 A My belief and what I remember is they
13 worked with how we were doing evaluations of injury
14 claims.

15 Q Okay. So you needed their expertise in
16 that situation as well?

17 A In reflecting back what -- what was being
18 asked of McKinsey at that time, as far as I know,
19 was not necessarily how, but how to evaluate an
20 injury claim, because we had been doing that for
21 years and years and years, but was there a maybe
22 different way to evaluate injury claims and
23 streamlining the process.

24 Q Okay. Was what you were paying on those
25 types of claims an issue like what you're paying out

1 on these five areas and CMSR was an issue?

2 A I don't know that. I wasn't involved with
3 that whole -- that project back when it was
4 happening.

5 Q Is that the project that you're referring
6 to called Auto ACE?

7 A At the time, it was called ACE and it
8 stood for auto claims excellence.

9 Q Was that part of the State Farm 2000
10 project?

11 A Now you're asking me for years. And I
12 think it was the late 1990s, so that might have
13 fallen in there, but I don't know the exact year.

14 Q Is that the one where McKinsey identified
15 in dollars the amount of economic opportunity that
16 would be available to State Farm for capture if it
17 followed McKinsey's recommendations?

18 A I can't answer that. I don't -- I don't
19 know the answer to that.

20 Q Okay. And you've been there how long?

21 A 30 -- going on 34 years. But, you know,
22 keep in mind, I was a section -- auto section
23 manager at the time, and I was not involved in the
24 ACE project.

25 Q Okay. So you have no knowledge on that?

1 A I can't really tell you any details
2 with -- with ACE.

3 Q Okay. And then here we now have
4 State Farm getting McKinsey involved again for these
5 five topics that you all are spending a lot of money
6 on; correct?

7 A McKinsey was involved with us, yes.

8 Q And these are five areas that you all --
9 somebody had identified you all were spending a lot
10 of money on; correct?

11 A Somebody had identified there was a need
12 there or an interest.

13 Q Now, tell me about what McKinsey did for
14 you with respect to contents. You told me earlier
15 that you would pull all the information off the
16 contents list, put it in an Excel spreadsheet, and
17 send it off to McKinsey; correct?

18 A That would be correct.

19 Q Did you have any instruction or insight
20 for them before you sent it, or did you just send
21 it?

22 A Well, we would have given it to them and
23 said, here is what we're spending, can you, you
24 know, see if there's trends and -- and, you know,
25 dive down and tell us what you find.

1 A So currently we have people who work just
2 in process. But back in that time, we didn't have
3 that kind of position on a regular basis. Now we
4 do.

5 Q Okay. Well, my question wasn't about
6 process. My question was, back at the time, did
7 State Farm have people under its employ that were
8 capable of identifying and quantifying trends from
9 contents?

10 A And back at that time, we did have people
11 who could do that, but that was not their primary
12 job.

13 Q Okay. I understand. And so primarily out
14 of -- did you say convenience -- McKinsey was
15 afforded that job?

16 A I think it was because -- McKinsey was
17 brought in because that -- that's areas that they're
18 known for being very good at. And not only could
19 they do the data mine, but they could also be
20 thinking -- thinking people with us.

21 Q Okay. So you wanted more than just
22 somebody to identify trends from contents. You
23 wanted a thinking partner, so to speak?

24 A Yes. That would be accurate.

25 Q And State Farm had a longstanding history

1 and experience with McKinsey & Company, and it knew
2 that McKinsey could do both those things?

3 A Based on previous experience with
4 McKinsey, I would say that that was the reason why
5 they continued to work with us on the content
6 material spend review.

7 Q Okay. They had done a good job for you in
8 the past, you were comfortable with them, and all
9 the more reason to use them going forward?

10 A I would say that that would be correct, in
11 that we had that past experience, and, you know,
12 they would be a good partner going forward.

13 Q Okay. All right. So back to the contents
14 list. You sent it off to McKinsey. What -- what --
15 what happens next?

16 A Well, then they would -- McKinsey would
17 mine the data and come back and say, okay, this is
18 what we found, so where would you like to go from
19 here. You know, here's the data. Okay, team, what
20 would you like to do with it.

21 Q Now, are we talking now about like the pie
22 charts that show the percentages of what makes up an
23 average content claim or most of the content claims?

24 A That would be correct. It would be some
25 kind of either bar charts or pie charts that they

1 A Yes, I am.

2 Q Okay. One of the -- I believe one of the
3 other work streams that you mentioned out of the
4 five was PSP; is that correct?

5 A PSP was one of the work streams.

6 Q What is PSP, for our jury?

7 A PSP was the premier service program.

8 Q And what is the premier service program?

9 A At the time, the premier service program
10 was where we had contractors that had agreements
11 through State Farm to provide services for insureds.

12 Q What kind of services?

13 A It would be contractors who would do home
14 repairs.

15 Q Such as --

16 A Whatever needed to be done. If you needed
17 drywall, if you -- whatever needed to be done to
18 repair a home.

19 Q Okay. How do these folks become preferred
20 service --

21 A Premier.

22 Q -- provider -- or premier service
23 provider? Sorry.

24 A I don't remember ever knowing the criteria
25 for that. I know that it was a program that was

1 like we had on the auto side, but I don't -- I don't
2 remember what they used as criteria.

3 Q Well, was it -- you said it was like the
4 one on the auto side. What was its counterpart on
5 the auto side?

6 A On the auto side, we had -- it was also a
7 P. Oh, my God.

8 Q Was it like you had certain --

9 A Select service. And there was another one
10 that we had on the auto side, where we had body
11 shops that would agree to certain conditions for our
12 insureds.

13 Q Okay. All right. So how these folks,
14 these vendors get on the premier service program,
15 you really don't know. That's not something that
16 you were assigned to figure out. Yours was just --
17 this was one of the work streams that you needed to
18 work on; correct?

19 A It was one of the work streams we were
20 looking at to see if we could make the work
21 stream -- that area any better or any different,
22 improve. It was all about what can we do to help
23 our policyholders get through losses. That's what
24 we were looking at in every one of the work streams,
25 what's an easier, simpler, quicker way to get

1 services to our policyholders to make their lives
2 back to what they were before they had losses.

3 Q Okay. So this CMSR program and the use of
4 McKinsey was all for the benefit of making it
5 easier, simpler, and quicker on the policyholder; is
6 that right?

7 A If we could possibly do that for our
8 policyholders, that's what -- that was what we were
9 trying to do.

10 Q Okay. So that was the motivation for it?

11 A That was -- the primary motivation is that
12 we're always trying to give a better product to our
13 policyholders. We want to continue to remain
14 competitive in the marketplace. And so anything we
15 can do to make our product better, easier, less
16 expensive for our policyholders, that's -- that's
17 our responsibility.

18 Q Right. Were there other motivations other
19 than just making it easier, simpler, and quicker for
20 the policyholder?

21 A Well, and -- and you can add to that that
22 if we can get them products that are less expensive,
23 then that's money that goes back to them in the form
24 of -- not dividends, but what they pay on their
25 premiums, which means --

1 Q How so?

2 A Because, you know, you, of course, base
3 your premiums on what you spend. And if we cannot
4 spend as much, we don't have to charge as much for
5 our product.

6 Q So the premiums are supposed to be based
7 on what you spend?

8 A Well, premiums -- that's -- I'm sure
9 that's part of the calculation. You know, it's like
10 anything else. If you're going to sell a loaf of
11 bread for \$1.49, you know, but it costs how much to
12 run the store and pay the clerk and pay the manager,
13 you have to make sure you can cover it. But, you
14 know, we're a mutual company, so we're not --

15 Q So any savings that are derived from the
16 use of McKinsey or that these work streams come up
17 with are going to be realized by the policyholder in
18 the form of reduced premiums?

19 A That would -- my understanding is that
20 would be what could happen.

21 Q I guess it could happen. But is it your
22 testimony that that is what happens?

23 A Well, I would think that anytime we save
24 money, it's going to go back toward the bottom line
25 of what we have to charge for our product.

1 Q Well, my question is a pretty specific
2 one. Did the moneys saved from these work streams
3 that were selected and reviewed by McKinsey -- did
4 it result in saved premium dollars for the
5 policyholder?

6 A Well, it would depend on whether or not
7 there were implementations of what came out of the
8 different work streams.

9 Q That's what I'm asking.

10 A Well, and it depended what results we got.
11 So, for instance, on the water mitigation side, I
12 don't know after water mitigation was instituted
13 what kind of savings came out of that. So I don't
14 know how that happened. That was after my time.

15 Q Okay. Can you tell me with any degree of
16 certainty that this CMSR program and the partnership
17 with McKinsey and the work streams that came out of
18 it resulted in a savings to policyholders via
19 premium dollars?

20 A I cannot say whether or not there was a
21 savings or not.

22 Q Okay. But you say that it should because
23 that was one of the goals?

24 A Well, it was one of the areas that could
25 potentially happen. I don't know if it did or not.

1 making a dashboard, the group did.

2 Q What's a dashboard?

3 A A dashboard that would just have data on
4 it that could be derived from the information that
5 comes in. And I think that ended up not going
6 anywhere. I think what ultimately came out of PSP
7 was just -- and I shouldn't say just. But I think
8 we ended up with an agreement with ABC Roofing to be
9 able to purchase directly from them instead of
10 through, say, the middleman.

11 Q And was that something -- was McKinsey
12 involved in that contract, that negotiation?

13 A I would say that McKinsey wouldn't be
14 involved in that. That would be our vendor
15 procurement area. Any contracts that we have go
16 through internal State Farm, not -- McKinsey had
17 nothing whatsoever to do with that.

18 Q Right. But I'm talking about the idea and
19 how it came about, just like you referenced earlier
20 with the jewelry stores.

21 A Again, that would -- it would come from
22 the work stream. I don't think that was necessarily
23 McKinsey's idea.

24 Q Okay. So what is it that you use McKinsey
25 for with respect to the PSP work stream?

1 A Now, I wasn't as involved with the PSP
2 work stream, so I don't even know how much
3 involvement McKinsey had with the PSP work stream.
4 They might have had one person that worked with them
5 that would literally do -- again, take notes and
6 prepare decs from what the team was doing. But I
7 don't know if they actually had much involvement or
8 gave much input to the PSP work stream.

9 Q Okay. Well, isn't the PSP work stream
10 part of the CMSR project?

11 A It was -- yes. PSP was one of the work
12 streams of the CMSR.

13 Q And you were the project manager for CMSR;
14 correct?

15 A I was the project manager for CMSR.

16 Q Okay. But as far as what McKinsey's
17 contribution or involvement was in the PSP work
18 stream within the CMSR project, you can't really
19 tell me?

20 A It was very limited. I know that their
21 involvement was very limited.

22 Q But you can't tell me any specifics?

23 A I can't -- I don't remember what
24 specifically they did.

25 Q Okay. What did you do to get ready for

1 think it was a contents document.

2 Q So would it have been all the documents
3 that made up the -- the project?

4 A Well, it wouldn't have been all of them
5 because there were tons and tons of documents, I
6 mean, paper. Probably killed several trees.

7 Q That's what we do.

8 A It was just a lot of paper.

9 Q What -- what happened with the focus
10 groups?

11 A What focus groups?

12 Q The focus groups that were done as part of
13 this project.

14 A We -- I -- I recall we did focus groups in
15 like Jacksonville and maybe somewhere else, where we
16 talked to customers about how claims were handled,
17 more a flow -- regarding flow and that type of
18 thing.

19 Q Right.

20 A And -- and that -- that was in the
21 contents work stream, and they just -- they brought
22 that forward and they had discussions about it.

23 Q Who was responsible for doing the focus
24 groups?

25 A I recall that Jeff Showalter was the one

1 A I have always been under the impression
2 that we use wordsmith as I use wordsmith.

3 Q Okay. Had you ever dealt with McKinsey &
4 Company in these prior instances wherein focus
5 groups were done?

6 A When you say prior instances, what
7 prior --

8 Q The auto. The Auto ACE.

9 A I never worked with McKinsey until I went
10 onto the content material spend review.

11 Q So to answer my question, no, you haven't
12 had any dealings with or experiences with McKinsey
13 in focus groups prior to this project?

14 A That would be correct. I didn't have -- I
15 didn't know McKinsey before going into content
16 material spend review.

17 Q Okay. So if we wanted to find out where
18 the focus group documents were, where would you
19 start?

20 A I'd maybe ask Jeff Showalter where they
21 might be.

22 Q And you know of one that was done where?
23 In Mississippi?

24 A If I recall, I thought there was a focus
25 group done in Jacksonville, Florida --

1 Q Jacksonville, Florida.

2 A -- at some point, but I couldn't even tell
3 you when it was done.

4 Q There was more than one, was there not?

5 A I was under the impression there were at
6 least two, but I don't remember where the other one
7 was.

8 Q And how did you gain that impression?

9 A Literally, just from remembering from back
10 when.

11 Q Okay. Earlier you said something about
12 PSP to make me think -- and maybe it's just wrong on
13 my part -- that that was a discontinued program. Is
14 it?

15 A I'm under the impression that now we
16 don't -- we no longer have a PSP program at
17 State Farm.

18 Q Okay. And when did that change?

19 A I left the project back in 2008 and went
20 back in auto, and it was sometime after that, but
21 I'm not sure when.

22 Q Okay. So you don't know?

23 A I do not know.

24 Q But it was alive and well when you were
25 project manager over CMSR?

1 A PSP was still in effect when I was on the
2 project through 2000 --

3 Q Okay.

4 A -- through June of 2008.

5 Q And as far as the work stream goes, you
6 can't really tell me much about what was done in
7 this project in CMSR with --

8 A The PSP work stream just wasn't a large
9 work stream, and their -- their focus was more
10 narrow. So there wasn't as much done there as there
11 were in other areas that we were looking at.

12 Q But you can't give me the specifics?

13 A I don't -- I just don't remember.

14 Q Okay. Well, what about the roofing work
15 stream? Tell me how that worked. Tell me like you
16 did with the contents. You were nice enough to
17 describe the process. I want you to do the same
18 with respect to the roofing.

19 A So for the roofing work stream, we had a
20 group. And that was probably our larger group. And
21 we were looking at ways to make it much easier for
22 our policyholders when we had storms come through.

23 Q Now, I think I saw in the documents that
24 roofing was a big spend, a big portion of what
25 State Farm was spending. Am I correct?

1 A Roofing was a large spend.

2 Q Okay. So you -- what, did you gather
3 up -- did you use cause of loss or damage code or --
4 what did you do? Did you put it all into an Excel
5 spreadsheet, as you did with contents? Tell me how
6 it worked.

7 A This was so long ago. I don't remember
8 totally how we gathered all of the information for
9 the roofing spend. I know that what the work stream
10 did was they did pull estimatics information. And
11 we pulled the information and then gave that
12 information to McKinsey to mine.

13 Q Okay. Now, I don't mean to interrupt you,
14 but I need to. When you say estimatics information,
15 for purposes of our jury, what do you mean?

16 A Estimates. Estimates from claims.

17 Q Electronically?

18 A Yes. State Farm. The work stream would
19 pull the information, and then we would give it to
20 McKinsey to mine that information.

21 Q How was it determined which to pull --
22 which claims to pull?

23 A Now you're asking for nitty-gritty
24 details. And I don't remember how we decided what
25 information to pull.

1 Q Okay. Well, if you want to have an
2 accurate assessment, you need to have a structured
3 or a consistent manner in which you pull the files;
4 correct?

5 A I would agree that you want to pull using
6 some kind of criteria.

7 Q Right. You have to?

8 A You would, in order to narrow down what
9 you're pulling. Otherwise, we get that many more
10 documents to have to mine.

11 Q Or you have problems with validity?

12 A I would think you would want to pull for
13 something that makes sense.

14 Q So what was the criteria and how were
15 these files selected for being pulled to be
16 considered as part of the information that would be
17 passed along to McKinsey?

18 A And I don't remember what we used as
19 criteria to pull. That would have been something
20 that the work stream would have determined and gone
21 forth and done.

22 Q So is that something that was determined
23 before you came on board?

24 A I don't remember if that was -- I think we
25 pulled data after we were already started. There

1 might have been pulls before, but I don't recall.

2 Q Well, what -- for example, was there a
3 certain portion of large losses? Was there an
4 amount paid criteria? What?

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

6 Q Because depending on how that is decided,
7 that can have an effect on the analysis, can it not?

8 A Well, I would -- just in talking in
9 general, I would think based on what we were doing
10 on the roofing work stream, we maybe would have
11 pulled something to do with maybe catastrophes we
12 handled.

13 Because when we were looking at the
14 roofing work stream, we were looking at how can we
15 make the process for our policyholders -- when
16 catastrophes come through an area, have their claims
17 processed in a quicker time frame, easier, simpler,
18 with reputable contractors that would be available
19 to literally be able to repair these homes within
20 like 12 weeks versus six months, a year, two years.

21 Q But that goes exactly to what I'm saying.
22 When I'm asking you the criteria by which you
23 decided to pull these claims, those are types of
24 things that you just mentioned. Were those
25 considered? If so, where is that information?

1 A And I don't -- I don't remember what they
2 used as the criteria.

3 Q Because the only thing that I've seen and
4 the only thing that I've really heard you say is the
5 only thing that's being looked at is the price, the
6 amount paid for the roof claim. Am I incorrect?

7 A You're incorrect. Because, I mean, we
8 were looking at -- even like time frames, how long
9 from -- you know, from what I understand, what we
10 looked at on the roofing work stream, we looked at
11 even time frames from when an insured was contacted
12 after they reported the claim to when a roofer would
13 have been in touch with them, to when a roofer would
14 have started, to when a roofer would have completed
15 their -- their business.

16 Q Right. But the very first thing that
17 you're looking at is -- you know that roofing,
18 what's being paid by State Farm on roofing, is the
19 largest --

20 A We know that --

21 Q -- piece of the pie; correct?

22 A We know that roofing is the largest part
23 of the pie.

24 Q That's what you know from the outset;
25 correct?

1 A Somehow, yes, we knew that from the
2 outset.

3 Q That's my question, is how did you know
4 that from the outset?

5 A And I have to assume that somebody ran
6 something at some point to know that roofing was the
7 largest part of what we are involved with on
8 homeowners claims.

9 Q Okay. Because it's the amount of money
10 that's spent on the roofing claims is what got it on
11 the list of five things in the work streams?

12 A Well, I think that --

13 Q Correct?

14 A Well, I don't know if that's correct,
15 necessarily, because --

16 Q Do you know that it's not?

17 A I don't know that it's not and I don't
18 know that it is.

19 Q Okay. Why don't you? Since you are the
20 corporate designee on this project.

21 A I know that everything that we were doing
22 on the different work streams were looking at both
23 process and spend. So we weren't just looking at
24 one criteria for what we were doing in each of our
25 areas, each of the work streams. We were looking at

1 biggest piece of the money pie as far as what
2 State Farm paid out; correct?

3 A Well, you're saying that's what you see.

4 Q Okay. Is that -- is that -- am I
5 incorrect?

6 A Well, I would say that you are incorrect,
7 in that the money was part of it or the dollars that
8 we spend. That was the leverage spend part. But we
9 still had the two other pieces that we were looking
10 at.

11 Q But these -- these five areas that are
12 part of this project, roofing being one, was
13 something that was -- a decision that was made
14 before you even came on board; correct?

15 A That would be correct. I was given what
16 the work streams were.

17 Q Right. And so how roofing got to be on
18 there in the first place -- we do know that it's the
19 biggest piece of the payout pie; correct?

20 A We know that it's a large piece of the
21 pie.

22 Q It's the biggest piece on the structural
23 policy of the payout pie; correct?

24 A Roofing is the largest piece of that pie.

25 Q So we do know that. And we do know that

1 that was selected by leadership before you came on
2 board; correct?

3 A I know that it was selected by somebody
4 before I came on board.

5 Q Okay. Do you know whether or not McKinsey
6 was involved, since you were told they were already
7 on the project when you came on board, with
8 identifying roofing as the biggest piece of the
9 payout pie for State Farm?

10 A I don't know whether or not McKinsey was
11 involved in that or not.

12 Q Now, you're familiar, I presume, with
13 closed file reviews and open file reviews, are you
14 not?

15 A Yes, I am.

16 Q And that was part of the process for this
17 project; right?

18 A I know that we did look at, in different
19 work streams, closed files and -- I don't think we
20 looked at open files. I think we looked at closed
21 files.

22 Q Okay. Well, I mean closed files, then.
23 So that was part of this project; correct?

24 A That was part of the project.

25 Q The only way you're going to know whether

1 or not all those other problems exist with roof
2 about, well, was it timely, did the policyholder
3 have a difficult time getting paid, did they have a
4 poor contractor -- those are things that you're only
5 going to find out if you do a closed file review;
6 correct?

7 A It would be a closed file review that
8 would determine that, along with potentially
9 speaking with policyholders.

10 Q Well, that could be the focus group. But
11 we don't know where the documents are; right?

12 A I -- I just don't recall, remember -- or
13 remember seeing the documents.

14 Q But anyway, you agree that it's only
15 through a closed file review that you can identify
16 those types of things, barring, I guess, if you want
17 to look at complaints and you see what the
18 policyholder had to say; correct?

19 A Yes. Closed file reviews, along with
20 talking to policyholders, looking at feedback,
21 looking at -- yeah, any kind of surveys.

22 Q Now, and if that's -- if that's the case,
23 then there has to be supporting documentation to
24 back it up; right?

25 A To back what up?

1 closed file review and come up with that form.

2 Q Right. And depending on what your area of
3 focus is, that closed file review questionnaire
4 could vary. True?

5 A Depending on what kind of closed file
6 review you were doing and what you were trying to
7 get out of it, you would kind of put your questions
8 to be able to gather that information.

9 Q Right. And then once you do those closed
10 file reviews, you're able to then have data which
11 supports the -- I guess for lack of a better word,
12 the issues that you identified; correct?

13 A So, yes. Your closed file review form
14 would then be -- all the responses would be
15 consolidated and would give you, hopefully, some
16 overall information.

17 Q Those types of things, if what you're
18 saying is true -- and that is if it's not just about
19 the amount of money that's being paid out on each of
20 these topics -- there would have to be that kind of
21 data, those type of closed review questionnaires for
22 each of those five elements; correct?

23 A If we did closed file reviews for each of
24 the work streams, there should be some kind of data
25 available.

1 Q Did you do closed file reviews to support
2 these five work streams, to support these changes
3 that you were making to claim handling?

4 A So I know that we did closed file reviews
5 for water mitigation. And I know we looked at
6 closed files because we had to gather information
7 for contents. I don't remember if we did a file --
8 closed file review for roofing. I don't know if we
9 did a closed file review for PSP. And I would think
10 we did a closed file review of some kind for the
11 electronics work stream.

12 Q Okay. Now, since you agreed with me that
13 the questionnaires, depending on what your objective
14 is, what you're looking for, may vary from topic to
15 topic. Who was involved in preparing the closed
16 file questionnaires that were used on -- let's deal
17 with the contents first.

18 A I don't recall who was involved with
19 getting the questionnaires together.

20 Q Okay. Because that's part of the project.
21 Without the -- without the closed file reviews, your
22 assumptions and your actions cannot be
23 substantiated; correct?

24 A Well, we would want to have, I would
25 think, the information from the closed file reviews

1 to see where we would want to maybe talk some more
2 and do some more digging or information gathering.

3 Q Right. But that is the foundation for the
4 action that you take, is it not?

5 A If we were taking any action, that would
6 all be part of it, I would think.

7 Q Did you not take any action as a result of
8 this CMSR project?

9 A There were a few things that came out of
10 the content material spend review. More testing had
11 gone on after I had left the project in -- like in
12 May of 2008, and I think there were things that came
13 out later.

14 Q Right. But in any event, you agree that
15 the closed file reviews and the findings from and
16 the summaries from those reviews are the foundation
17 to any subsequent action?

18 A I don't necessarily know if it's the
19 foundation, but it would be one of the aspects of
20 what would make us make certain recommendations.

21 Q If you're called on, if you're -- why you
22 did what you did is called into question, that is
23 precisely -- those closed file review questionnaires
24 and their summaries is exactly what you would offer
25 up as proof of your intentions.

1 be able to do this. We can't support it from an IT
2 standpoint yet. Maybe in the future, it would be
3 something to look at.

4 Q But you did closed file reviews?

5 A There -- there were some closed file
6 reviews that I recall for certain work streams.

7 Q How many -- how did you know how many to
8 do? What was your sampling size?

9 A If I remember correctly, I think we did
10 5,000 closed file reviews. Maybe that was on
11 contents or mitigation. I'd have to go back and
12 look at the documents. And then there was -- I
13 mean, there were different numbers that we did. I
14 just don't remember.

15 Q Different numbers of closed files --

16 A Right.

17 Q -- reviews that you did?

18 A Yeah. And I just don't remember the
19 number.

20 Q Why was -- why did you do a certain
21 number?

22 A I'm sure it was a sampling size of what
23 the total number was.

24 Q Right. You need a statistically valid
25 sampling size, do you not?

1 A I would agree. That's what you would be
2 going for.

3 Q Were you ever provided with either the
4 closed file reviews or the summary of the closed
5 file reviews?

6 A I don't -- I'm sure I was at some point,
7 but I don't remember. I mean, I remember talking
8 about them, but I don't -- I just don't remember.

9 Q But you agree that those documents are
10 part of this project?

11 A Well, I mean, it would have been, because
12 the information would have come forward from the
13 closed file reviews.

14 Q Correct. So they're part of -- those
15 documents are part of the project?

16 A Well, they would have been part of the
17 information we were looking at in the work stream.

18 Q Right. If you're told to produce all the
19 documents relating to this project, those closed
20 file reviews would be included?

21 A Well, I think some of that --

22 Q Or should be?

23 A Well, I think some of that depends on what
24 was in the documents and are they, you know,
25 privileged and confidential to State Farm.

1 Q Okay. Well, I'm talking right now about a
2 court order. If the Court orders -- has ordered you
3 to produce those documents, those would certainly be
4 documents that are part and parcel of the project,
5 would they not?

6 MR. JONES: Object to the form.

7 THE WITNESS: Well, I was going to say,
8 that's something that our attorneys would be working
9 with.

10 Q (BY MR. MARR) Okay. All right. I'm not
11 asking you a legal question. I'm just asking you if
12 you consider those to be part of the project.

13 MR. JONES: Object to form.

14 THE WITNESS: Well --

15 Q (BY MR. MARR) Go ahead.

16 A Oh, again --

17 Q You don't know?

18 A -- that would be up to our attorneys to
19 decide what was --

20 Q Okay. Well, I assume that there had to be
21 either a -- as I've seen in the past, an ROI
22 analysis. Do you know what that is?

23 A Return on investment.

24 Q Right. Or a cost benefit analysis. Do
25 you know what that is?

1 A Uh-huh.

2 Q Tell the jury what each of those are, as
3 far as you understand, at State Farm.

4 A The jury? There's a jury here?

5 Q Well, we're in the -- we're in the jury
6 room right now, right next to the courtroom. But
7 your deposition is as though you were sitting in the
8 courtroom in there on the jury stand, so that's why
9 I put it that way.

10 A So --

11 MR. JONES: Can you read back the question
12 so I know what she's answering? I'm sorry.

13 (The reporter read back the question as
14 follows:)

15 THE REPORTER: Let me back up a little
16 bit. "QUESTION: Well, I assume there had to be
17 either a -- as I've seen in the past, an ROI
18 analysis. Do you know what that is?"

19 "ANSWER: Return on investment."

20 "QUESTION: Or a cost benefit analysis.
21 Do you know what that is? Tell the jury what each
22 of those are, as far as you understand, at State
23 Farm."

24 MR. JONES: Thank you.

25 THE WITNESS: So return on investment, to

1 me, means that whatever money you're putting in, are
2 you -- what are you going to get out of it. And it
3 doesn't matter if it's a -- you put in for 60 bucks
4 a share for Exxon stock. Your hope is that it's
5 going to go up. And if you decide to sell it, it's
6 going to be anything above 60 plus interest.

7 For a cost benefit analysis -- cost
8 benefit analysis is -- is looking at whether or not
9 the -- the cost is, to a certain extent, like an
10 IOI. Is the cost to do something worth your time
11 and investment.

12 Q (BY MR. MARR) Okay. I assume that, as
13 has been the case with other times that State Farm's
14 engaged in projects with respect to its claims
15 handling, there was an ROI or a cost benefit
16 analysis associated with the CMSR. Am I correct?

17 A I would -- or I -- I would assume that
18 that would be the case.

19 Q Okay. Well, you are the designee. You're
20 here speaking as State Farm. So I'm asking you if
21 there was.

22 A It is my understanding that that type of
23 activity would be done by the cost leadership area.

24 Q Okay. Again, since you're here today to
25 speak in particular on this project as State Farm,

1 with all knowledge that State Farm has available to
2 it on this -- this subject, was there a cost benefit
3 analysis or a return on investment analysis
4 associated with the CMSR project over which you
5 presided?

6 MR. JONES: Object to form.

7 THE WITNESS: So let me just make sure I
8 understand. My position here today is to talk about
9 McKinsey's involvement with content material spend
10 review. So I'm not sure how much I'm even expected
11 to know about cost benefit analysis and return on
12 investments, because that's part of our cost
13 leadership area. That's what they do. That's their
14 thing. Yeah.

15 Q (BY MR. MARR) Well, I appreciate that.
16 But I need an answer from you.

17 A Well, and my answer would be that it would
18 be the cost leadership area that would provide that
19 kind of analysis.

20 Q Okay. Well, did you talk to the cost
21 leadership area about that analysis before you came
22 here today to speak on State Farm's behalf?

23 A No. I did not talk to cost leadership
24 about that analysis.

25 Q Why not?

1 A I didn't think there was a reason for me
2 to have to talk about the cost benefit analysis or
3 ROI.

4 Q All right. Well, State Farm would not
5 undertake -- I don't believe they could undertake
6 the expense and time and manpower necessary on a
7 project like CMSR without first conducting a return
8 on investment analysis or a cost benefit analysis.
9 Would you agree?

10 A I would think that somebody would have
11 done it before they decided to proceed with the
12 CMSR.

13 Q Right. There has to be, like you
14 described earlier when you gave me the definition
15 for cost benefit and return on investment, what are
16 we going to put in versus what do we get out;
17 correct?

18 A Again, I would think that would be
19 something cost leadership would do.

20 Q Okay. Well, it's something -- cost
21 leadership is State Farm; right?

22 A Cost leadership is part of State Farm,
23 just like claims is part of State Farm.

24 Q Right.

25 A And underwriting is part of State Farm.

1 Q Right.

2 A And actuary is part of State Farm.

3 Q How is it you're the designee to speak
4 about this project when you can't tell me whether or
5 not that there was a cost benefit analysis or return
6 on investment to give it the green light?

7 MR. JONES: Object to form.

8 THE WITNESS: And, again, I would put
9 forth that I'm here to talk about my position as
10 part of CMSR and the -- what I know of McKinsey's
11 involvement with CMSR.

12 Q (BY MR. MARR) All right. So you just
13 didn't bother yourself to find that information out?

14 MR. JONES: Object to form.

15 Q (BY MR. MARR) Is that right?

16 A I did not see a need to find that out.

17 Q Okay. Could you have done it?

18 A I'm sure, if I knew that that was part of
19 what I should prepare for, I could do it.

20 Q Okay. Well, so you said that you're here
21 to talk about State Farm's use of McKinsey in --
22 with respect to the CMSR?

23 A Their -- their part of the content
24 material spend review.

25 Q Okay. Well, how much did you pay McKinsey

1 as part of this CMSR project, then?

2 A Oh, I'm under the impression we paid them
3 a lot of money.

4 Q Okay. Well, I'm going to need a little
5 more detail than that.

6 A I'm sure it was in the millions of
7 dollars.

8 Q Still -- I appreciate it, but I still
9 need -- I'm asking you as State Farm's designee.
10 This information is known to State Farm. So I'm
11 asking you for a specific amount of money that you
12 paid McKinsey for this project.

13 A So I don't know a specific amount. I did
14 not pay McKinsey's bills. They all went through
15 cost leadership. That's who paid McKinsey. My
16 impression and my understanding is that it might
17 have been somewhere around 20 million a month.

18 Q 20 million a month?

19 A That's my impression.

20 MR. JONES: A month or for the project?

21 THE WITNESS: Oh, for the project, it
22 might have been 2 million a month. It was
23 million -- millions.

24 Q (BY MR. MARR) Okay. Well, I can tell you
25 that just what few documents were produced, you paid

1 them 84 million in two years. Did you know that?

2 A I knew we paid them millions of dollars.
3 But I also know that McKinsey seemed to work around
4 the clock and had a lot of people there, and we're
5 paying for their expertise in the areas that we
6 wanted from them.

7 Q Sure you are. You're paying for their
8 expertise; right?

9 A We're paying for their expertise in data
10 mining and coming in as a consultant.

11 Q And did you get a good return on your
12 investment?

13 A I'm sure that we got our money's worth
14 from them.

15 Q Okay. Can you tell me how much that was?

16 A How much what was?

17 Q You got your money's worth. Can you tell
18 me how much money you got in return for what you
19 paid out to McKinsey; in other words, your return on
20 investment?

21 A I don't have access to any kind of
22 information like that.

23 Q Did you get your money's worth from
24 McKinsey the last project in Auto ACE, in your
25 opinion?

1 MR. JONES: Object to form.

2 THE WITNESS: And, again, I don't know
3 what -- what was paid out and what was the result.

4 Q (BY MR. MARR) Okay.

5 MR. JONES: When you get a chance, let's
6 take another break.

7 MR. MARR: Okay. We can take one now.

8 (A break was taken from 11:43 a.m. to
9 11:53 a.m.)

10 THE VIDEOGRAPHER: All right. We're now
11 recording.

12 MR. MARR: All right. We're back on the
13 record after a short break.

14 Q (BY MR. MARR) Are you ready to continue?

15 A Yes, I am.

16 Q The one aspect of the CMSR work stream
17 that we haven't covered is the water mitigation;
18 correct?

19 A That would be correct.

20 Q Okay. Tell me how that process came
21 about. We know now that there were closed file
22 reviews. So what happened after the closed file
23 reviews?

24 A So there were closed file reviews. And
25 the team, of course, got together and tried to see,

1 extraction process. And then we were looking at
2 narrowing it down to where they would be done
3 within, say, four or five days.

4 Q Is this the one where I saw that as a part
5 of this work stream, you all came up with a script
6 for the agents to use?

7 A If I remember rightly, there might have
8 been something that was given to agency to use.

9 Q Where it said, you know, when a
10 policyholder comes in -- and depending on what size
11 of water loss they have, how extensive it is,
12 something along the lines, here's the script, you
13 can use these two people, we can connect you, and so
14 on?

15 A That sounds like something that was part
16 of it. It's been a long time since I've looked at
17 that.

18 Q And I believe with respect to this work
19 stream, there was also discussion and maybe even
20 some analysis and some measurements about how much
21 money you all could save by doing this, by being
22 able to clean things instead of replace things. Is
23 that accurate?

24 A Well, there -- I know that there is --
25 for -- for collateral damage, if you don't get to

1 items sooner than later, you can't -- there's a
2 period where you can't clean them.

3 Q I know. But I'm just wanting to know if
4 those were discussions or analyses that were
5 considered.

6 A I don't remember.

7 Q You don't have any recollection of that?

8 A You know, there was a lot going on in the
9 water -- water mitigation work stream, and I just --
10 I don't remember.

11 Q Well, now, when you entered into these
12 contracts with these two vendors that you all sought
13 out, I assume that you somehow used your size to
14 leverage preferred pricing, did you not?

15 A If -- I'd have to look at documents. And
16 I think there was something in the documents that
17 talked about an agreement we had with the vendors.
18 And there might have been a percentage, but I'd have
19 to look at documents to tell you.

20 Q Okay. So you -- is that something that
21 was done with McKinsey? That's still part of the
22 same project that you had McKinsey on; correct?

23 A McKinsey was part of that work stream.
24 They literally just were part of keeping the data
25 for us.

1 would be telling us, you know, how many -- they
2 would be preparing the estimate, slash, bills, yes.

3 Q So the pricing is coming from the folks
4 that you sought out and contracted with; correct?

5 A That would be correct.

6 Q Okay. Did you all calculate the return on
7 investment or cost benefit of this -- this
8 particular work stream?

9 MR. JONES: Object to form.

10 THE WITNESS: I don't remember exactly
11 when or what we did with that, but I'm sure there
12 was something done.

13 Q (BY MR. MARR) But you can't tell me what
14 it was?

15 A I don't remember. Again, I'd have to go
16 back and look at documents as we went through the
17 work streams.

18 Q And did you not look at any of those
19 documents in preparation for your deposition?

20 A I looked at some documents. But, you
21 know, I've slept since then, like about seven years
22 worth.

23 Q Yeah. All right. When's the last time
24 you looked at these documents?

25 A The last time I looked at some documents

1 was last night. But, again, I am almost 59 years
2 old. I have a very short-term memory.

3 Q What's your -- you seem pretty sharp to
4 me. What's your educational background?

5 A My educational background consists of a
6 bachelor's in -- oh, my gosh -- health from the
7 University of South Florida. I have a master's in
8 counseling from the University of South Florida.
9 And I have a law degree from Delaware law school.

10 Q There you go. So this isn't foreign to
11 you?

12 A I don't practice law.

13 Q No. But you've gone through all the same
14 classes that the rest of us have; correct?

15 A Well, I might have gone through those
16 classes, but that was back in the 1980s, so it was a
17 long time ago.

18 Q Okay. So you have a law degree?

19 A I do have a law degree.

20 Q Have you ever sat for the bar?

21 A I sat for the bar in Pennsylvania.

22 Q Okay. Were you admitted in Pennsylvania?

23 A I missed the bar exam by two points.

24 Q Did you ever take it again?

25 A I -- you know, I dimly remember taking it,

1 but -- and I know I missed it by like one point that
2 time. But my whole goal when I went to law school
3 was not to practice. It was literally to educate
4 myself.

5 Q How many times have you taken the bar?

6 A I might have taken it two times in
7 Pennsylvania.

8 Q All right. I'll go ahead and mark as
9 Exhibit 32, since we're continuing from yesterday, a
10 deposition notice that you're here on today.

11 MR. JONES: What happened to 31?

12 Q (BY MR. MARR) Oh, I'm sorry. 31. I
13 misspoke.

14 And if you would, ma'am, first of all,
15 tell me if you've seen that notice before.

16 A I don't know if it's this one I saw or
17 something that looks similar.

18 Q Okay. Well, which topic on the exhibit --
19 to that notice in Exhibit 31 are you here to testify
20 as a corporate designee on State Farm's behalf?

21 A No. 8.

22 Q And would you read that for our record,
23 please.

24 A "No. 8, State Farm's utilization of
25 McKinsey & Company, including but not limited to its

1 involvement, review, analysis, and/or recommendation
2 in building and content estimates or estimatics as
3 referenced by State Farm vice president Susan Hood
4 in her deposition taken by plaintiff's counsel in
5 Watkins versus State Farm Fire & Casualty in 2006."

6 Q Okay. I'm going to -- that was the first
7 notice that was -- as it was originally issued
8 before State Farm sought to quash it.

9 MR. JONES: Object to form.

10 Q (BY MR. MARR) And then I'm going to
11 attach as Plaintiff's Exhibit 32 the second notice
12 that was then issued for specifically topic 8, since
13 it was one that the Court overruled State Farm's
14 motion to quash on. And I'm going to hand it to you
15 as 32 --

16 MR. JONES: Move to strike sidebar.

17 Q (BY MR. MARR) -- and ask you if you've
18 seen that notice. That one, you'll see, has
19 Exhibit A, which only includes the topic 8, which
20 you just read.

21 A I don't know if -- again, I don't know if
22 I've seen this one or that one or --

23 Q Okay. Well, turn to the exhibit page.
24 And it has a topic. Do you see it?

25 A Page 4. Yes.

1 Q And, again, is that the same topic that
2 you just read?

3 A It appears to be the same.

4 Q And, again, that's the topic that you're
5 here today as a corporate designee to speak
6 authoritatively on State Farm's behalf; correct?

7 A That is my understanding.

8 Q Now I'm going to attach the third notice,
9 which was issued after the Court's most recent
10 ruling, naming you in particular, once you had been
11 identified by State Farm as a designee on that
12 topic. I'll attach that as Plaintiff's Exhibit 33
13 to your deposition. Ask you if you had an
14 opportunity to see that notice.

15 A I don't know if I've seen this one.

16 Q And it's quite possible, ma'am, that you
17 may not have seen it, since it was just issued last
18 week.

19 MR. JONES: That's the one that was in
20 yellow paper that I gave you yesterday.

21 THE WITNESS: Oh, okay.

22 Yeah. So I did see -- it was yesterday.
23 I've slept.

24 Q (BY MR. MARR) Okay. All right. Thank
25 you.

1 A Lasik.

2 (Witness reviews document from 12:17 p.m.
3 to 12:26 p.m.)

4 THE WITNESS: Okay.

5 Q (BY MR. MARR) All right. Ma'am, have you
6 completed your review?

7 A Yes, I have. I went through it.

8 Q And is that -- you have recollection, you
9 said, of being at that presentation?

10 A Yes. I was at this presentation.

11 Q So that's an accurate -- appears to be an
12 accurate depiction of what you sat through during
13 your presentation?

14 A Through the presentation, yes.

15 Q The presentation.

16 A Yes.

17 Q Okay.

18 MR. MARR: All right, ma'am. I tell you
19 what. I don't -- I don't think I have anything
20 further for you today. I'm going to -- I believe
21 that you were able to answer some of the questions
22 as the designee on the noticed topics. I don't
23 believe that you were qualified or competent to
24 answer others, so I'm going to possibly seek a
25 substitute on the notice. But I just want to make

1 my record.

2 With that said, I will adjourn your
3 deposition and pass the witness.

4 MR. JONES: Reserve my questions until the
5 time of trial.

6 However, I will state I believe
7 Ms. Eilbacher was the appropriate witness and that
8 with some reference to some of the many thousands of
9 documents that were produced, perhaps could have
10 answered some of the additional questions Mr. Marr
11 asked.

12 MR. MARR: Thank you, Ms. Eilbacher.

13 MR. JONES: Thank you.

14 THE WITNESS: You're welcome.

15 (DEPOSITION ADJOURNED AT 12:27 P.M.)

16 * * * * *

17

18

19

20

21

22

23

24

25