

*Andrew Gholson, et al. v.
State Farm Fire and Casualty, et al.*

*Andre Gonzalez
January 06, 2009*



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1 DISTRICT COURT, COUNTY OF JEFFERSON,
 2 STATE OF COLORADO
 3 Case No. 2008CV317, Division 9
 4 _____
 5 ANDREW GHOLSON, ELIZABETH GHOLSON, WILLIAM GHOLSON,
 6 a minor, by and through his parents, Andrew Gholson
 7 and Elizabeth Gholson, and ERIC GHOLSON, a minor, by
 8 and through his parents, Andrew Gholson and
 9 Elizabeth Gholson,
 10 Plaintiffs,
 11 vs.
 12 STATE FARM FIRE AND CASUALTY, T.L.C. CONSTRUCTION,
 13 INC., d/b/a AMERICAN RESTORATION, INC., OF BAILEY,
 14 TERRY AUMILLER, FOOTHILLS ENVIRONMENTAL, INC.,
 15 ANDRE GONZALEZ, and JOHN DOES 1-9,
 16 Defendants.
 17 _____
 18 VIDEOTAPE DEPOSITION OF ANDRE GONZALEZ
 19 January 6, 2009
 20 Pursuant to Notice taken on behalf of the Plaintiffs
 21 at 1416 Larimer Street, Suite 300, Denver, Colorado
 22 80202, at 1:07 p.m., before Mary S. Parker,
 23 Registered Professional Reporter and Notary Public
 24 within Colorado.
 25

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1 APPEARANCES:
 2
 3 FOR THE PLAINTIFFS:
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 16 THE DEPONENT:
 17 IKE M. ECKERT, ESQ.
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 20 Denver, Colorado 80203
 21
 22 ALSO PRESENT: Andrew Gholson
 23 William McLoughlin
 24 Bill Myers, Videographer
 25

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1 WHEREUPON, the following proceedings were
 2 taken pursuant to the Colorado Rules of Civil
 3 Procedure:
 4 MR. LIVINGSTON: Let's go on the record.
 5 Why don't we state on the record what's
 6 going on here, Jon, okay?
 7 MR. SANDS: We will as soon as I get this
 8 case I want to cite to support my position.
 9 MR. LIVINGSTON: It's time to start the
 10 deposition. Go ahead. Let's start and you can say
 11 what you want to do. You can explain what this case
 12 is, and we can find it, if necessary, but let's
 13 start right now with getting an understanding on the
 14 record of what's going on here.
 15 Okay. We are here and ready to start the
 16 deposition of Andre Gonzalez, which was scheduled
 17 for 1 p.m. today. It's now about eight minutes
 18 after 1. Mr. Bill McLoughlin is present in the
 19 room, who is a Public Adjuster hired by the Gholsons
 20 to assist them in presenting their claim to State
 21 Farm.
 22 He has knowledge and interacted with the
 23 witness on this and, I believe, other occasions.
 24 We'd like him present for our own reasons. I
 25 understand that State Farm venomously objects to

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1 that position. Otherwise, I'd like to proceed.
2 MR. SANDS: Well, in fact, I do object to
3 the presence of Mr. McLoughlin. I anticipate that
4 Mr. McLoughlin will be -- I'm sorry. I don't know
5 if it's pronounced "McLoughlin" or "McLoughlin" --
6 will be a witness in the case, and I've asked for
7 time to -- I learned about this today when I arrived
8 here.
9 I was not advised in advance that the
10 Plaintiffs had the intent to have a third party
11 present during the deposition, so Mr. Livingston
12 insisted on starting without me having the
13 opportunity to pull up the Hamon Contractors case,
14 which I'm going to do, to cite it in support of my
15 position, but if the Plaintiffs persist in their
16 position that Mr. McLoughlin be allowed to be
17 present during the deposition, then, under Rule 30,
18 I will stop the deposition, and I have the right to
19 ask for a protective order, so we can call the Court
20 and get it resolved.
21 MR. LIVINGSTON: What is the basis for
22 saying that someone cannot be here to hear the
23 evidence, especially since he's been hired by these
24 people to assist them in presenting their claim and
25 he can assist relative to technical aspects of what

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1 this witness did?
2 MR. SANDS: My position is that he's
3 potentially a witness and he has no legal right to
4 be present under any circumstances.
5 MR. LIVINGSTON: Can't I have an expert at
6 my choosing be present in a deposition?
7 MR. SANDS: No, you cannot, and that's my
8 position, and I think that Mr. McLoughlin is a fact
9 witness in the case. Even if you do choose to
10 disclose him under Rule 26(a)(2), (b)(1) or (2) -- I
11 assume he would be a (b)(2), but that's up to you,
12 if you do it -- but given that he is, in my opinion,
13 going to be a witness in the case, a fact witness in
14 the case, he has no right to be here.
15 MR. LIVINGSTON: Is it your position that
16 he has a right to review this transcript or become
17 aware of any of the facts surrounding this person?
18 MR. SANDS: I don't know that yet because
19 I don't know what the transcript's going to show, so
20 I don't know that. I don't know the answer to that
21 question, but I think that's irrelevant.
22 MR. LIVINGSTON: Well, it's the same
23 thing, isn't it, Mr. Sands? If he has a right to
24 review the transcript, why wouldn't he have a right
25 to be here to listen to the deposition?

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1 MR. SANDS: I'm not going to engage in a
2 socratic discussion with you, Mr. Livingston. You
3 have no right to question me. I'm stating my
4 position and I'm telling you that, if you persist --
5 MR. LIVINGSTON: First of all --
6 MR. SANDS: -- I'm going to have the
7 Court --
8 MR. LIVINGSTON: Excuse me. First of all,
9 you're going to have to learn to not interrupt when
10 I am talking, which you just did. That's going to
11 have to stop. I'm not finished yet, and what I want
12 to know from you is if you can cite any authority
13 that suggests that this man cannot read the
14 transcript, and if you cannot cite any authority
15 that says this man cannot review the transcript,
16 then I have no idea why he cannot be here.
17 Give me the case that you believe supports
18 the idea that he has no right to review any
19 transcripts in this case or become aware of any of
20 the facts in this case. This is not the trial. He
21 has a right to know what the facts are to assist
22 these people in presenting their claim.
23 MR. SANDS: Okay. I asked for a moment at
24 the beginning of the deposition to get into Westlaw
25 so I can pull up the applicable authority as to

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1 whether he has the right to be present at the
2 deposition, which is the relevant inquiry, and that
3 is the issue, so I'm going to do that right now and,
4 if you persist, you know, I have the right to seek a
5 protective order.
6 I'll stop the proceedings today and we
7 will have the Court resolve it. That's what we'll
8 do, and if the Court is available by phone -- I'm
9 happy to see if we can reach Judge Berryhill by
10 phone and get it resolved today. If not, we'll have
11 to wait until we can each brief the issue, because I
12 anticipate, given what you're doing today and given
13 that you've sprung this on me today, that you
14 anticipate that you're going to have the witness,
15 Mr. McLoughlin, or a witness in the case,
16 Mr. McLoughlin, present, and even if he wasn't going
17 to be a witness in the case, by the way, I don't
18 think he has the right to be here, or at other
19 depositions, and so we need to get this issue
20 resolved.
21 MR. LIVINGSTON: Does he have a right to
22 be present in court? Can he do that if he feels
23 like it, or is that something that needs to be kept
24 secret also?
25 MR. SANDS: Again, Mr. Livingston, I'm

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1 not going to engage in a socratic discussion with
2 you about irrelevant issues. The issue is: Does
3 Mr. McLoughlin have a right to be present at today's
4 deposition, okay? That is the issue, and you can
5 make those arguments to the Court if you want when
6 the time comes.
7 If you believe that, because someone has
8 the right to be present in court, they have the
9 right to be present at a deposition, you're simply
10 wrong, in my opinion, and we'll, again, get the
11 Court to rule on the issue, but if you'll give me
12 just a moment . . .
13 (A pause occurred in the proceedings.)
14 MR. SANDS: I guess this is as far as your
15 Colorado Reporter goes, is through this volume here,
16 850?
17 MR. LIVINGSTON: No, we have them through
18 P 3rd. We have them through current.
19 MR. SANDS: Do you know where I could find
20 Volume -- oh, I'm sorry. They're down here.
21 (A pause occurred in the proceedings.)
22 MR. SANDS: All right, under Hamon
23 Contractors, Inc., H-a-m-o-n, in the District Court,
24 877 P 2nd 884, it is only -- in the case of an
25 effort to exclude a party from a deposition, a party

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1 has a right to be present at a deposition except
2 under exceptional circumstances, and I'm not
3 contending that the parties don't have a right to be
4 present.
5 However, under Rule 26 C 5, there is no
6 basis to have a witness in the case, like
7 Mr. McLoughlin, present during a pretrial
8 deposition, and so I think that --
9 MR. LIVINGSTON: You seem to be suggesting
10 you're reading that from the book. Is that what the
11 book said, what you just said?
12 MR. SANDS: In part, yes, it's what I just
13 said, and, in part, no. In part, what I just said,
14 it is my position that he doesn't have a right to be
15 present.
16 MR. LIVINGSTON: What does the book say?
17 MR. SANDS: Well, here, you can read the
18 case yourself.
19 MR. LIVINGSTON: Where is it that it says
20 that someone like Mr. McLoughlin can't be here?
21 Perhaps you can enlighten us by pointing out the
22 specific language.
23 MR. SANDS: The case doesn't make that
24 statement. However, it stands for the proposition
25 that it's only under exceptional circumstances that

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1 a party can be excluded. However, a nonparty who is
2 a witness -- I don't need to have exceptional
3 circumstances to have him excluded from a
4 deposition.
5 MR. LIVINGSTON: On what basis?
6 MR. SANDS: The basis of that opinion.
7 MR. LIVINGSTON: Show me where this case
8 in any way would --
9 MR. SANDS: You can read the case
10 yourself.
11 MR. LIVINGSTON: I'm not done. Show me in
12 any way or anywhere that this case says that an
13 individual who, as you've suggested, Mr. McLoughlin,
14 can simply be excluded because you wish him to be
15 excluded. Show me where --
16 MR. SANDS: Well, the case doesn't say --
17 MR. LIVINGSTON: I'm not finished. Show
18 me where this case says anything remotely along
19 those lines. I'm providing you with the book.
20 MR. SANDS: I will acknowledge that the
21 case doesn't say that a witness can be excluded
22 simply because I wanted him to be excluded. I agree
23 that the case does not say that.
24 MR. LIVINGSTON: Where does it provide any
25 support for what you're trying to do here? That's

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1 what I'm getting at. You said, "There's this case
2 that says I'm doing the right thing," and the only
3 thing that I heard you cite from the case or that it
4 appeared that you were actually reading from the
5 case is that a party cannot be excluded except under
6 extraordinary circumstances.
7 That's the only thing I heard that
8 appeared to be listed from the case. If there's
9 anything other than that that you can cite to me
10 from that case, I'd be willing to listen, but to
11 suggest that you can say, "Well, there's a case that
12 I have that says you cannot exclude a party and,
13 therefore, I believe that case means I can just
14 start excluding anybody I want," I think, is a --
15 it's a leap. It's a stretch, and it's, frankly,
16 frivolous.
17 MR. SANDS: Okay. Well, I understand your
18 position, and then, I guess, what we're going to
19 have to do is I will stop the deposition and seek a
20 protective order, and we can try to see if --
21 MR. LIVINGSTON: Can you give us a
22 basis -- I'm sorry. Go ahead.
23 MR. SANDS: We can try to get the Court on
24 the line and have the Court rule on it today so the
25 deposition can go forward.

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1 MR. LIVINGSTON: Can you give us any
2 rationale why this man's presence would in any way
3 harm the administration of justice or any of the
4 other general principles set forth in Rule 1 that
5 the Rules of Civil Procedure are to be construed to
6 afford the administration of prompt and fair justice
7 between the parties?
8 Can you cite one single basis upon which
9 Mr. McLoughlin's presence in this room today would
10 somehow interfere with the general notion of justice
11 being achieved between the parties? If you could,
12 please.
13 MR. SANDS: Well, you know,
14 Mr. Livingston, again, I don't need to respond to
15 your socratic inquiry about Rule 1 of the Rules of
16 Civil Procedure and, you know, frankly, I think it's
17 very common that witnesses are -- utter witnesses in
18 a case are not allowed to be present at depositions,
19 and the fact is that I anticipate that
20 Mr. McLoughlin will be called on to testify in this
21 case and I may very well be taking his deposition.
22 MR. LIVINGSTON: So what?
23 MR. SANDS: Well, again, you and I might
24 as well not continue to have this argument, with
25 your insulting tone.

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1 MR. LIVINGSTON: Excuse me. My insulting
2 tone?
3 MR. SANDS: Absolutely, so let's just see
4 if we can --
5 MR. LIVINGSTON: Now, wait a minute.
6 MR. SANDS: -- get Judge Berryhill on the
7 line.
8 MR. LIVINGSTON: Now, wait a minute. Now
9 we're going on the record and making personal
10 insults? I'm saying to you, Mr. Sands, that you're
11 trying to stop a deposition. Can you give me one
12 single reason why you're trying to do that, other
13 than that you want it that way from a personal point
14 of view?
15 Can you give me a case that says that, or
16 can you give me a logical reason as to how this
17 man's presence is going to interfere with this
18 process in such a way that the process cannot move
19 forward? Can you give me one single reason?
20 Because, if you can, maybe I'll tell him
21 to leave, but if you can't, and this is just some
22 type of a bullying tactic which is going to be
23 accompanied by personal insults, then I'm not going
24 to stand for it, so please give me your reason for
25 what you're trying to do here because I'd like to

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1 hear it before we waste the time of going to the
2 Court.
3 MR. SANDS: Well, again, Mr. Livingston, I
4 think it's highly unusual and highly inappropriate
5 for a witness in a case to sit in on the deposition
6 of another witness in a case, except for parties and
7 representatives of parties.
8 MR. LIVINGSTON: He is a representative of
9 a party.
10 MR. SANDS: No, he's not. He's a
11 representative of an entity, and I'm going to ask
12 you to instruct Mr. McLoughlin not to make gestures
13 like he just did or to enter into the conversation,
14 okay?
15 MR. LIVINGSTON: He did what? He did
16 what?
17 MR. SANDS: I think everybody in the room
18 knows what he just did.
19 MR. LIVINGSTON: You tell me what he just
20 did.
21 MR. SANDS: He just attempted to say
22 something and he pointed to Mr. Gholson.
23 MR. LIVINGSTON: He can't make gestures?
24 MR. SANDS: Yeah, I'm suggesting he can't
25 because I think that that sort of thing should not

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1 be going on during a deposition, and so --
2 MR. LIVINGSTON: Okay. Call the judge,
3 and, you know, I'm going to make it clear on the
4 record that I've asked you repeatedly if you can
5 tell me one good reason how this man's presence
6 would in any way interfere with the process, and you
7 have repeatedly refused to provide me with one
8 single justification as to how this man's presence
9 would interfere with the process, and you've also
10 declined to answer my question about whether he can
11 even review the transcript. I mean, Jon, can he
12 review the transcript? Is that illegal also?
13 MR. SANDS: Mr. Livingston, that isn't the
14 issue here. The issue is that, under Rule 26 C 5, I
15 have a right to ask that a deposition be taken only
16 with certain persons or parties present, that
17 certain people be excluded, and that's what I'm
18 doing.
19 I'm saying that, under Rule 26 C 5, I do
20 not want Mr. McLoughlin, who is a witness in the
21 case, a fact witness in the case, to be present
22 during this deposition. I think it does interfere
23 with the administration of justice. I think it
24 interferes potentially with the testimony of the
25 witness, and I think that it may very well affect

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1 your questioning, and I think that he should not be
2 here.
3 MR. LIVINGSTON: How does it interfere
4 with the administration of justice?
5 MR. SANDS: Well, because I think that
6 witnesses should be free to testify in the
7 deposition process free of other witnesses being
8 present in the room, except the parties to the case.
9 That's what I believe.
10 MR. LIVINGSTON: I want this man present
11 because he had a lot to do with how this claim was
12 handled, as you know, and he knows a lot about
13 asbestos testing, as you know, and if I want to talk
14 to him --
15 MR. SANDS: Well, I don't know that,
16 actually.
17 MR. LIVINGSTON: Well, he's written
18 numerous letters that are in your file, Mr. Sands.
19 MR. SANDS: Okay.
20 MR. LIVINGSTON: And if I want to have him
21 present so that I can ask the witness a question and
22 then I want to take a break and talk to
23 Mr. McLoughlin about his knowledge of certain rules
24 and regulations that might apply, it seems like
25 that's a resource at my disposal.

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1 Unless the insurance company can explain
2 why its insureds shouldn't have those resources at
3 my disposal, then the insured is going to insist
4 that they have all those resources at their
5 disposal.
6 MR. SANDS: I think what we probably need
7 to do is just get the Court on the line.
8 MR. LIVINGSTON: Again, if you get the
9 Court on the line, I want to make it clear that you
10 cannot justify in any way how this man's presence is
11 in any way detrimental to what we're trying to
12 accomplish here.
13 MR. SANDS: Well, I think I've articulated
14 it. You don't agree, and --
15 MR. LIVINGSTON: I'm still waiting. You
16 just keep saying you're not going to answer it, that
17 you're not going to engage in this socratic
18 dialogue, that you're not going to do anything to
19 justify this other than your conclusion that you
20 don't like it.
21 MR. SANDS: Well, it's interesting that
22 you didn't give me a warning about this as well,
23 Mr. Livingston. You know, as a professional
24 courtesy, at a minimum, I certainly would have let
25 you know of my plans to have a third-party witness

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1 present at a deposition so that you would have had
2 an opportunity, if you wanted to, to do something
3 about it before the deposition. That is what pretty
4 much everybody in this practice does and --
5 MR. LIVINGSTON: They do?
6 MR. SANDS: Yeah.
7 MR. LIVINGSTON: Because I thought a
8 minute ago you said that you've never heard of this,
9 and now everybody in the practice is running around
10 giving you notice that it is happening, so which is
11 it? Has it never happened before, or is it, when it
12 does happen, you're expecting to get this
13 professional courtesy?
14 MR. SANDS: No, what I'm telling you is
15 that, yeah, I think, if people are planning to have
16 third-party witnesses present during depositions,
17 they advise opposing counsel so that opposing
18 counsel have an opportunity to seek a protective
19 order under Rule 26 C 5 so the Court can deal with
20 it before the deposition.
21 You didn't give me that opportunity here
22 and so I'm having to react as best I can under the
23 circumstances, so, you know, look, Mr. Livingston,
24 it's real clear that, no matter what I say, no
25 matter what I do, you're not going to agree with me.

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1 I mean, I think that that's apparent, so
2 there's really not much point in you and I
3 continuing with this dialogue on the record. Let's
4 ask Judge Berryhill, if he's available, to rule on
5 the issue.
6 MR. LIVINGSTON: You do that.
7 MR. ECKERT: While you guys are figuring
8 out this issue, my client and I are going to step
9 outside while you guys handle that.
10 MR. LIVINGSTON: Right.
11 (A pause occurred in the proceedings.)
12 MR. LIVINGSTON: Mr. Sands, I understand
13 that you have been attempting to get some kind of
14 resolution of your issue; is that right?
15 MR. SANDS: Well, I don't know that I
16 would put it that way. As we agreed I would do, I
17 attempted to reach the Court, so, yes, I suppose so.
18 I attempted to call to reach the Court. I left a
19 message with Division 9, Jefferson County District
20 Court, indicated that we had a discovery issue, and
21 that, if the judge had a few minutes available, we
22 would like to get it resolved today if at all
23 possible so that we can move forward with the
24 deposition. I've left that message and I've left my
25 number on the cell phone so that they can call us

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1 back here.
2 MR. LIVINGSTON: Well, I'd ask the witness
3 to be sworn in. How do you intend to proceed?
4 MR. SANDS: My intention, then, is to stop
5 the deposition. I have a right under Rule 30 to
6 stop the proceedings to seek a protective order and
7 that's what I'm doing.
8 MR. LIVINGSTON: I believe the rule states
9 that there has to be undue annoyance, suppression,
10 harassment, something along those lines. Could you
11 articulate for us what the undue annoyance,
12 suppression, or harassment is in these
13 circumstances.
14 MR. SANDS: Well, I don't think that's
15 what the rule says. Can you show me that.
16 MR. LIVINGSTON: Yeah, it's Rule 26. It's
17 about what you get a protective order under.
18 MR. SANDS: No, Rule 26 C 5 says that I
19 can seek a protective order and that the deposition
20 be taken with only certain persons present. I'm
21 seeking the protective order under Rule 26 C 5 and I
22 also have the right under Rule 30, since I didn't
23 get notice of your intention to have Mr. McLoughlin
24 here until I arrived here and he's present for this
25 deposition, I didn't have a chance to raise this

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1 issue before the deposition and, A, talk to you
2 about it and, B, if necessary, file a motion with
3 the Court to get it resolved before today, so my
4 only option is to stop the proceedings under Rule 30
5 and I will file a motion for protective order with
6 the Court and get this issue resolved, I anticipate,
7 for this and future depositions.
8 MR. LIVINGSTON: Can you articulate for us
9 today how this person's presence is in any way
10 harmful to this case or justify why he should not be
11 here.
12 MR. SANDS: You know, I've answered your
13 questions, Mr. Livingston. You don't like my
14 answers, so I'm just going to move for a protective
15 order, and that's all I think we need to discuss
16 about it. We don't need to have a long discussion
17 about it.
18 MR. LIVINGSTON: What I need to decide
19 right now is should I tell Mr. McLoughlin to leave
20 and move forward in light of what I believe to be an
21 effort to move the case forward, in spite of what I
22 believe to be frivolous conduct by State Farm, in
23 insisting that consultants necessary to assist the
24 insured cannot be present when they proceed against
25 a major financial institution.

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1 It would seem to me that they would have
2 an absolute right to have the assistance of people
3 who have particular knowledge and specialized
4 knowledge when they move forward against a large
5 financial institution like State Farm. I would like
6 a clear statement on the record from you when I make
7 this decision as to how I'm going to proceed as to
8 exactly what your position is about how this man's
9 presence brings about harassment, annoyance, undue
10 prejudice, or any other basis that would in any way
11 suggest that this deposition should not proceed with
12 him being in the room. I would like that stated so
13 I will have an understanding of how to proceed.
14 MR. SANDS: I do not believe that a
15 witness in a case like Mr. McLoughlin, who is a fact
16 witness in this case, should be present during the
17 discovery examination of another witness in the
18 case, Mr. Gonzalez, and so given that I have not had
19 an opportunity to do any further research on this
20 particular issue, Mr. Livingston, until I was
21 surprised with Mr. McLoughlin's presence today, this
22 is as much as I'm going to say right now, and I'm
23 going to be filing a written motion for protective
24 order and I will address the issue in greater detail
25 then.

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1 I did not have that opportunity because
2 you did not give me the opportunity by telling me
3 before today that Mr. McLoughlin would be present.
4 So that's as much as I'm going to tell you right
5 now, and that may or may not be good enough for you
6 as to whether you advise Mr. McLoughlin to leave and
7 proceed with the deposition today. That is up to
8 you. I'm not going to help you make that decision,
9 in other words.
10 MR. LIVINGSTON: It's your position at
11 this time that solely because you believe he would
12 be a witness in the case that he cannot be present
13 during the deposition of any other witness? Is that
14 my clear understanding?
15 MR. SANDS: I don't know what your clear
16 understanding is. I've told you what my position is
17 and I am not limiting my position to Mr. McLoughlin.
18 I don't know who else you might have the intent of
19 having present at other depositions, so, you know, I
20 think that it's inappropriate to have nonparty
21 witnesses present during the testimony of other
22 parties' or nonparties' discovery deposition
23 testimony and I'm going to maintain that position,
24 so there's really no point in us having further
25 discussion about it.

Page 25

1 MR. LIVINGSTON: All right, here's what
2 I'm willing to do: I'm going to ask Mr. McLoughlin,
3 in light of the circumstances, so we can complete
4 the deposition today, or at least start the
5 deposition today, to acquiesce to State Farm's
6 demand, which I'll characterize as an unreasonable
7 and frivolous demand, and I believe that it
8 fundamentally deprives the insured of his right to
9 move forward with his claims against the insurance
10 company, which is part of an ongoing effort to
11 deprive the insured of his ability to even get his
12 claim paid, and I think it's part of an ongoing
13 pattern of extreme bad faith that's been exhibited
14 in this case from the outset.
15 The fact that now he can't even have the
16 assistance of people that he's retained years ago to
17 move forward with this case in depositions -- that's
18 your choice, and I think you have no basis under the
19 rules for what you're doing today. You've cited
20 some case that had nothing to do with what you were
21 trying to say.
22 You then started reading into it all of
23 these nuances and suggestions that weren't even in
24 the book and then started saying it supported your
25 position. It was all utter nonsense. I'm going to

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1 get the deposition done today, or at least started.
2 If we have to come back with the advice of
3 technical consultants, I'll raise this with the
4 Court. All I'm saying at this point is that this
5 might well prolong the deposition. If I decide that
6 there's areas that I want to cover at a later time
7 when someone can be present to be of assistance,
8 that's going to be raised with the Court, and we're
9 going to move for sanctions against State Farm and
10 its counsel for how this has been handled because
11 there is just absolutely no basis for what you're
12 doing here.
13 MR. SANDS: Well, I think you will do, of
14 course, Mr. Livingston, being the capable attorney
15 that you are, what you believe you need to do on
16 behalf of your clients. This is a litigation issue
17 and it is not -- unequivocally, this has nothing to
18 do with claim handling on the part of State Farm.
19 This is purely a litigation issue and
20 recent case law addresses this issue and you know
21 that as well as I do and so, you know, I don't even,
22 you know, I don't even think that it's productive
23 for us to engage in this sort of debate, you know.
24 We can have this debate, if you want to
25 pursue your motion for sanctions, or whatever you

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1 wish to do, in writing with the Court. You can do
2 that.
3 MR. LIVINGSTON: This is a claim issue.
4 It's about my client being able to get his claims
5 paid and we'll see who, in the end, pays for this
6 kind of conduct. This is wrong. He has every right
7 to have somebody here with him to help with the
8 questioning if he feels like it.
9 MR. SANDS: No --
10 MR. LIVINGSTON: I'm not done.
11 MR. SANDS: I'm sorry.
12 MR. LIVINGSTON: And for the insurance
13 company to try and restrict that on qualm by just
14 grabbing a book and start reading things that aren't
15 even in it and say "That's our basis for stopping
16 this guy for getting what he's owed under an
17 insurance contract" is ridiculous.
18 MR. SANDS: Well, I didn't say that.
19 That's what you're saying, Mr. Livingston. You're
20 mischaracterizing. I am saying that, under
21 Rule 26 C 5 I have a right to exclude
22 Mr. McLoughlin, and Mr. Gholson certainly does have
23 that have one someone here to assist him, and that's
24 you, and this is a litigation issue and that's what
25 the rules provide for, in my opinion, and so it's

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1 your call whether you want to move forward or not.
2 My position is, once again, I will tell
3 you that, if I had been advised of your intention to
4 do this before today, we could have had this
5 resolved before today, I'm confident, because I
6 think that the Court would have addressed it very
7 quickly and, because you surprised me with this
8 today, we are where we are. This isn't my fault.
9 This is yours.
10 MR. LIVINGSTON: There is my office. I
11 can invite who I want to help me in a deposition,
12 period, end of story. If you would have wanted to
13 get some kind of protective order saying this entire
14 case is secret and nobody can learn about this case,
15 I guess that's up to you, but you haven't done that
16 yet.
17 That means I have a right to have anybody
18 I want in here for whatever purpose I want, and this
19 person is not just somebody off the street. It's
20 somebody who can assist in the case. All right.
21 Enough said, Mr. Sands. You've made your position
22 clear and now you're going to have to live in the
23 little bed you've made for yourself and your client
24 in terms of how you've handled this today. I don't
25 think it was wise. I don't think it accomplished

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1 anything.
2 Mr. McLoughlin, why don't you leave and
3 we'll get this deposition moving.
4 (Mr. McLoughlin left the deposition room.)
5 MR. SANDS: Mr. Livingston, I'm going to
6 leave my cell phone on in case the Court does call.
7 Is that okay with you, or would you prefer that I
8 turn it off? Because I gave them that that number,
9 or I can put it on some sort of buzz so that, you
10 know, we can recognize hopefully the number if the
11 Court does call.
12 MR. LIVINGSTON: He's left. You do what
13 you want with yourself.
14 MR. SANDS: Well, no, I thought that
15 maybe --
16 MR. LIVINGSTON: Swear in the witness,
17 please.
18 MR. SANDS: Can I finish, please. I
19 thought that maybe, if the Court would rule in your
20 favor, you could make your argument today. Do you
21 want me to turn the phone off or not?
22 MR. LIVINGSTON: I'd like to hear whatever
23 it is that you can drum up to support what you're
24 doing at any time, so why don't we move ahead. You
25 can leave your cell phone in any position you want.

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1 I want to move ahead with this deposition. It's now
2 45 minutes since the scheduled time we were to
3 commence.
4 MR. SANDS: Well, if you had advised me
5 before today that this was going to happen, we would
6 have had it resolved.
7 (A pause occurred in the proceedings.)
8 THE VIDEOGRAPHER: We're going on the
9 record at 1:44 on January 6th, 2009, at 1416 Larimer
10 Street, Denver, Colorado. We're here for the
11 videotaped deposition of Andre Gonzalez in the
12 matter of Andrew Gholson, et al., versus State Farm
13 Fire and Casualty, et al., this to be heard in
14 Jefferson County District Court, Case No. 2008 CV
15 317.
16 The videographer is Bill Myers. The court
17 reporter is Mary Parker. And if counsel would
18 please introduce themselves, beginning with
19 Plaintiffs' counsel.
20 MR. LIVINGSTON: Sam Livingston,
21 No. 15128, for the Plaintiffs.
22 MR. SANDS: This is Jon Sands appearing on
23 behalf of Defendant State Farm Fire and Casualty
24 Company.
25 MR. ECKERT: Do you want me on the record

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1 too?
2 THE VIDEOGRAPHER: No, just counsel.
3 MR. ECKERT: Well, I represent
4 Mr. Gonzalez, so my name is Ike Eckert and I
5 represent Andre Gonzalez and Foothills
6 Environmental.
7 MR. SANDS: Because we only have one
8 microphone for the two of us, is there a way that
9 this will pick us up if we put it in the middle
10 somehow?
11 THE VIDEOGRAPHER: Yes.
12 MR. SANDS: Because I assume that Mr. --
13 how is that?
14 THE VIDEOGRAPHER: Yes.
15 ANDRE GONZALEZ,
16 having been first duly sworn to state the whole
17 truth, was examined and testified as follows:
18 EXAMINATION
19 BY MR. LIVINGSTON:
20 Q. Please state your name.
21 A. Andre Gonzalez.
22 Q. Have you testified before?
23 A. Yes.
24 Q. How many times?
25 A. I think two, two times.

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1 Q. In what contexts?
2 A. Are you referring to like depositions only
3 or any type of thing?
4 Q. Any type of testimony.
5 A. I gave a deposition years ago for a case
6 in which -- it was an asbestos issue on that one.
7 There was some faulty work done by a plumbing
8 contractor, so something related to that, and then I
9 gave a deposition as an expert witness in another
10 case for mold, and then I also, I guess, was in a --
11 what do you call it? I was a witness in a criminal
12 case, and that's it.
13 Q. Relative to this deposition today, what
14 did you do to prepare for the deposition?
15 A. I just met with my attorney.
16 Q. When did you receive the subpoena?
17 A. I don't think the date's on here, but I
18 think it must have been in December.
19 Q. Mid December?
20 A. Early December, something like that, mid
21 December.
22 Q. And what did you do after you received it?
23 A. I sent an e-mail to my attorney.
24 Q. And what else did you do?
25 A. That's it.

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1 Q. Did you obtain records or attempt to
2 search for records?
3 A. No.
4 Q. How did you obtain the records that you
5 brought today?
6 A. I gathered them together pretty much
7 yesterday.
8 Q. After you e-mailed this document to your
9 attorney, did you have any discussions with anyone
10 about it? That is, pointing to the subpoena. Did
11 you have any discussions about it?
12 A. About the subpoena? No.
13 Q. About the deposition?
14 A. About the deposition? No, I mean no.
15 Q. Throughout the month of December after you
16 were subpoenaed, did you contact State Farm --
17 A. No.
18 Q. -- to discuss the matter? Have you ever
19 contacted State Farm to address the matter of your
20 subpoena in this case?
21 A. No.
22 Q. Or your deposition in this case?
23 A. No.
24 Q. Who have you talked about your deposition
25 in this case with?

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1 A. My wife and my attorney.
2 Q. And how did you prepare, if at all, for
3 the deposition?
4 A. Last week I met with my attorney, you
5 know. We just sat down and talked.
6 Q. And how long did you meet?
7 A. About an hour and a half.
8 Q. And at that time, had you already obtained
9 the documents in response to the subpoena?
10 A. Some.
11 Q. What did you obtain at the beginning in
12 terms of the documents?
13 A. At the beginning? What do you mean?
14 Q. You said, when you met with your attorney,
15 you had some of the documents --
16 A. Correct.
17 Q. -- that were in response to the subpoena.
18 A. I had a copy of the file for the Gholsons
19 and then the other file that had been requested was
20 for the Dale Court -- the Dale Court project.
21 Q. And [Exhibit](#) -- we'll mark Exhibit A as a
22 copy of the subpoena. It's a personal subpoena to
23 produce documents that you've received; is that
24 correct?
25 A. Yep.

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1 (Deposition [Exhibit](#) A was marked.)
2 Q. And what did you bring today in response
3 to [Exhibit](#) A?
4 A. I brought a copy of my file for the
5 Gholson property --
6 Q. Okay. Could you --
7 A. -- and --
8 Q. I'm sorry. Go ahead.
9 A. And also the Dale Court project, which was
10 requested in the subpoena.
11 Q. Can you hand me the file that you say
12 relates to the Gholson property.
13 A. Sure.
14 Q. And is this a copy that you just handed
15 me?
16 A. That's a copy. I have the original here.
17 Q. So the Gholson file is within your file
18 system as AS070711?
19 A. That's correct.
20 MR. LIVINGSTON: And, Counsel, if you
21 don't mind, I'd like to just mark this as [Exhibit](#) B.
22 MR. ECKERT: That's your copy, so . . .
23 MR. LIVINGSTON: Why don't we keep it in
24 here then.
25 (Deposition [Exhibit](#) B was marked.)

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1 Q. (BY MR. LIVINGSTON) [Exhibit](#) B represents
2 the documents that you have relative to the Gholson
3 project?
4 A. (Deponent nodded.)
5 Q. And how about -- what else did you bring?
6 A. I brought the file for -- this is for the
7 Colonial Manor condominium project, which is on Dale
8 Court.
9 Q. And then what's the third folder?
10 A. The third folder was a subsequent project
11 that was done at the same place, at Colonial Manor
12 Apartments.
13 Q. Why don't we put those aside for now and
14 we'll talk about them later in the deposition.
15 A. Okay.
16 Q. Let me just take your stuff and put it
17 down here.
18 A. Okay.
19 Q. Let's go over what's in your file. The
20 first thing we have is your report of February 7th?
21 A. That's correct.
22 Q. Then this is the second document dated
23 2-6-07, and this appears to be from Reservoirs
24 Environmental, Inc.?
25 A. Yes.

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1 Q. And that's the report back to you of the
2 actual samples?
3 A. That's the chain of custody.
4 Q. And then there's another document from
5 Foothills Environmental called Asbestos Bulk
6 Sampling Form?
7 A. Yes.
8 Q. And is that something that would be
9 equivalent to field notes?
10 A. Yes.
11 Q. And that shows where you put various
12 things, various containers, or took various samples
13 from?
14 A. Yes.
15 Q. And the next document is from Foothills
16 Environmental, a bill in the amount of \$759.93?
17 A. Yes.
18 Q. To State Farm?
19 A. Yes.
20 Q. And the next document is a pricing
21 worksheet from Foothills Environmental; is that
22 correct?
23 A. Yes.
24 Q. And what is that?
25 A. It's our spreadsheet that, when we do

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1 projects, we have our equipment, materials, labor,
2 the trip charge, and we put it into our spreadsheet,
3 and it basically comes up with the calculation as to
4 what the cost of the project was.
5 Q. And this would define the scope of your
6 work, "This" being the pricing worksheet, to a
7 certain extent?
8 A. It doesn't really define the scope. It's
9 just really what the labor and costs were involved
10 in the project.
11 Q. What's the next document? It says,
12 "Resources Environmental, Inc." on the top?
13 A. "Reservoirs Environmental, Inc."
14 Q. And it's dated 2-6 of '07?
15 A. It's another copy of the chain of custody.
16 Q. And then there's a MapQuest?
17 A. Yeah.
18 Q. And that's it?
19 A. Yeah.
20 Q. Did you bring copies of any of the checks
21 by which you were paid in this case?
22 A. No, I did not.
23 Q. Would that be available in your system?
24 A. I don't know that we actually make a copy
25 of a check once we get a check from a client. We

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1 usually just cash it.
2 Q. Can you tell me when you got paid on this
3 job?
4 A. Not off the top of my head, I can't, but
5 in our books I can.
6 Q. You have been paid?
7 A. Yes.
8 Q. When did you visit the location that's
9 involved in my client's claim? That is, the
10 Gholsons' home.
11 A. On February 5th of 2007.
12 Q. And who was present when you arrived?
13 A. Mr. Gholson.
14 Q. And did you understand that there had been
15 other people present at the site on that day,
16 February 5th, 2000 -- I'm sorry. Did you say 2005?
17 A. '7.
18 Q. 2007? Okay, you got there on the 5th the
19 first time with Mr. Gholson, correct?
20 A. On February 5th.
21 Q. And prior to that time, had Mr. Gholson,
22 to your knowledge, already met with the insurance
23 people?
24 A. I believe so, yes. That was my
25 understanding.

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1 Q. Tell me what was your understanding of
2 what had happened that day before you got there.
3 A. There had -- State Farm had responded to
4 the Gholsons because of the fire and they were there
5 and I got a phone call from Tim Thomsen indicating
6 that they needed me to go up there to do asbestos
7 testing because there had been damage and they
8 wanted me to go up and test the materials, and
9 that's really all I know.
10 Q. What time do you think you got there on
11 the day of the 5th?
12 A. I think it was -- it must have been in
13 kind of the middle of the day. I think it was maybe
14 right after lunch or something like that. I don't
15 really know specifically.
16 Q. So your understanding is that the
17 insurance people had been up to the scene sometime
18 in the morning, inspected it generally, and
19 contacted you?
20 MR. SANDS: Objection to the form of the
21 question.
22 MR. ECKERT: You can answer.
23 THE DEPONENT: Okay.
24 A. Yes.
25 Q. (BY MR. LIVINGSTON) And do you know how

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1 long they had been out there, that being the
2 insurance people?
3 A. No.
4 Q. When you met Mr. Gholson, was Mr. Gholson
5 wearing any kind of respiratory equipment?
6 A. I don't recall.
7 Q. Why do you believe the site needed to be
8 tested at that time?
9 A. Because there was damage to some of the
10 materials inside the residence.
11 Q. Was the age of the building relevant to
12 your analysis of whether it needed to be tested?
13 A. Yes and no.
14 Q. Tell me how, or explain your answer.
15 A. Regardless of the age, you have to test,
16 unless you have some definitive test that it does
17 not contain asbestos.
18 Q. And does the age of a building matter in
19 terms of whether or how it would be tested?
20 A. Buildings built before 1988 may have a --
21 or prior to 1988 -- could have a higher likelihood
22 of having asbestos.
23 Q. Would it be fair to say that buildings
24 built prior to 1988 are presumed to be asbestos
25 contaminated until established otherwise?

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1 A. Yes.
2 Q. And that's according to Regulation 8?
3 A. Yes.
4 Q. And tell me about your background and
5 training with Regulation 8 as well as -- well, let's
6 just start with your educational stuff. You
7 graduated from high school where?
8 A. Century High School in Bismarck, North
9 Dakota.
10 Q. And what did you do after that?
11 A. I went to the University of Iowa in Iowa
12 City, Iowa.
13 Q. Did you graduate?
14 A. I did.
15 Q. What year?
16 A. 1987.
17 Q. And what was your degree?
18 A. Biology.
19 Q. And give us the background between then
20 and now in terms of certifications, that type of
21 thing.
22 A. I moved to Denver right after graduation.
23 In 1988, I started working for ATC Environmental as
24 an asbestos inspector, or doing asbestos consulting,
25 and I became an asbestos inspector, and I've been

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1 consulting ever since.
2 Q. And tell me about your certifications.
3 A. I'm a Certified Asbestos Inspector,
4 Certified Asbestos Management Planner, Certified Air
5 Monitoring Specialist, and a Certified Product
6 Designer.
7 Q. In this case involving the Gholsons, did
8 you act as a Certified Asbestos Planner? That was
9 one of your roles?
10 A. No.
11 Q. Let's go through each one of those roles
12 that you say you're certified in. The first one
13 was -- you said you're a tester of air?
14 A. Air monitoring specialist.
15 Q. Air monitoring specialist, and did you act
16 in that capacity in this case?
17 A. No.
18 Q. And what's the next thing you were
19 certified to do?
20 A. Asbestos inspector.
21 Q. And you were acting in that capacity in
22 this case?
23 A. Yes.
24 Q. And that's when you inspect a physical or
25 a hard sample, as opposed to sucking air through a

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1 device?
2 A. Yes.
3 Q. So you did act in that capacity in the
4 Gholsons' case?
5 A. Yes.
6 Q. And then you said you're a certified
7 asbestos manager? Did I get that right?
8 A. Management planner.
9 Q. Okay, and what is a Certified Asbestos
10 Management Planner?
11 A. A management planner would determine
12 response actions, given the inspection results,
13 whether you want to do operations and maintenance,
14 repair, removal.
15 Q. So he comes in after the samples are taken
16 of either the air or the material?
17 A. Yes.
18 Q. And in this particular case, did you act
19 as a management planner, an asbestos management
20 planner, in the Gholsons' case?
21 A. No.
22 Q. And what was the other capacity you said
23 you had?
24 A. Project designer.
25 Q. And what is that?

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1 A. In the event that there's an abatement
2 project, the designer would generate a scope of work
3 or develop a scope of work. He would develop the
4 protocols that would be used for doing asbestos
5 abatement, containment set-up, air flow, personal
6 protective equipment, stuff like that.
7 Q. And did you act in the capacity of the
8 project designer in the Gholsons' case?
9 A. No.
10 Q. And what other certifications did you have
11 that we haven't covered yet?
12 A. I'm a Certified Industrial Hygienist.
13 Q. Did you act in that capacity in the
14 Gholsons' case?
15 A. It's part of being an asbestos inspector
16 too sort of.
17 Q. So is that yes, that you did act in that
18 capacity?
19 A. I'm an industrial hygienist. Every time I
20 work I'm working, so yes.
21 Q. So any time you do testing, whether it's
22 air testing or sample testing, you would consider
23 that part of the hygienist role?
24 A. Yes.
25 Q. Anything other than that that you're

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1 certified in that we haven't covered yet? I think
2 we've covered testing of air, testing of samples,
3 management planner, and project designer. Are you
4 certified in anything other than those?
5 A. No.
6 Q. And in this particular case, who hired
7 you?
8 A. State Farm.
9 Q. Do you believe the Gholsons hired you?
10 A. No.
11 Q. Did you have any obligation to the
12 Gholsons?
13 A. No.
14 Q. Do you know why State Farm hired you?
15 A. Well, as part of a claim.
16 Q. Had you worked with State Farm in the
17 past?
18 A. Yes.
19 Q. How many times do you think you've worked
20 with State Farm in the past?
21 A. About a half dozen times.
22 Q. Prior to this?
23 A. Yes.
24 Q. And how many times did your company work
25 for State Farm in the past?

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1 A. Prior to -- that was about it, about a
2 half dozen times.
3 Q. And when you were hired by State Farm to
4 go up there on the -- I believe you said the 5th --
5 what did you do?
6 A. Went up there, and I was trying to
7 identify materials that had been damaged by the
8 fire.
9 Q. And do you believe that at this point,
10 particularly in retrospect, that you took a complete
11 and accurate sampling of the materials that were
12 involved in that particular location?
13 A. Yes.
14 Q. Did you ever have discussions with
15 individuals from the Department of Health about the
16 nature of samplings that you took?
17 A. Yes.
18 Q. And what was the nature of those
19 discussions?
20 A. The nature of those conversations had to
21 do with some properties being removed from the
22 Gholsons' residence.
23 Q. Personal property items?
24 A. Correct.
25 Q. And did you say that you had sampled when

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1 you were interviewed about this? That was Mr. Tom
2 Bain, wasn't it, who interviewed you?
3 A. It was Mr. Tom Bain.
4 Q. And what did you tell Mr. Bain about that
5 during this interview?
6 A. I had told him that I did not -- at that
7 time, I told him that I did not authorize anybody to
8 take anything out. Well, now, I told him that items
9 had been removed but the protocols that they
10 followed I did not tell them to do that way.
11 Q. Did you -- should items have been
12 removed --
13 A. No.
14 Q. -- from that site after you tested it?
15 A. No.
16 Q. Did your results, based on the sampling
17 that you undertook on the 5th of February, 2007,
18 demonstrate that this was, indeed, a major spill, as
19 that term is defined?
20 A. Yes.
21 Q. And what is a major spill?
22 A. A major spill would be the -- the exact
23 quantity I can't recall off the top of my head, but
24 it's a certain square footage of damage. If that
25 square footage amount is damaged, it's considered a

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1 major spill, and less than that amount would be a
2 minor spill.
3 Q. And it's a minor -- well, let me put it
4 this way: If the contamination is over 1 percent,
5 is that the criteria for a given -- I think it's
6 3,600 square feet, or 3,000 square feet. Is that
7 the criteria for determining the existence of a
8 major spill?
9 A. No.
10 Q. Can you tell me the definition of what
11 constitutes a major spill.
12 A. A major spill in a residence -- I believe
13 it's greater than 35 square feet.
14 Q. Okay.
15 A. I believe that's the correct number.
16 Q. And what's the percentage?
17 A. An asbestos-containing material is defined
18 as a material that contains greater than 1 percent
19 asbestos.
20 Q. And I've got here for you some questions
21 that -- I'm going to mark this as [Exhibit C](#), and
22 these are questions written by a Public Adjuster.
23 (Deposition [Exhibit C](#) was marked.)
24 Q. To the building -- or excuse me -- the
25 environmental department, Mr. Bain, and let me get

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1 copies for everyone.
2 (A pause occurred in the proceedings.)
3 MR. SANDS: Here you are, Mr. Sands.
4 MR. SANDS: Thank you.
5 Q. (BY MR. LIVINGSTON) Have you had a chance
6 to look at [Exhibit C](#), Mr. Gonzalez?
7 A. No, I have not.
8 Q. Could you please do so, starting with -- I
9 believe the questions he's posing are at the bottom
10 and it scrolls up in a typical, I guess, e-mail
11 fashion.
12 (A pause occurred in the proceedings.)
13 A. I'm sorry. Do you have another copy?
14 This is cut off over here. I don't know what that
15 word is.
16 Q. Excuse me. I think it says, "Thank you
17 for spill" -- let's see. I'll grab -- why don't we
18 take a quick break and I'll grab the --
19 THE VIDEOGRAPHER: Off the record at 2:06.
20 (A break was taken.)
21 THE VIDEOGRAPHER: We're back on the
22 record at 2:08.
23 Q. (BY MR. LIVINGSTON) I'm going to mark as
24 [Exhibit C-1](#) my original copy.
25 (Deposition [Exhibit C-1](#) was marked.)

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1 Q. Does this help in your transcription of
2 what's going on?
3 A. Yes, yes.
4 Q. If I may, there's a series of questions
5 asked that says, "Does CDPHE consider" -- do you see
6 that?
7 A. (Deponent nodded.)
8 Q. Do you know what that acronym stands for?
9 A. Yes.
10 Q. What is it?
11 A. Colorado Department of Public Health and
12 Environment.
13 Q. "Does the Colorado Department of Public
14 Health and Environment consider the entire house to
15 have been a major asbestos spill site immediately
16 after the fire?" Do you see that question?
17 A. Yes.
18 Q. And how would you answer that question?
19 A. Yes.
20 Q. And you see up above that apparently
21 Mr. Bain says, "The short answer is yes," so he
22 agrees?
23 A. Yes.
24 Q. The next question is: "Should all
25 contents that were in the house at the time of the

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1 fire be considered asbestos contaminated?" Do you
2 see that question?
3 A. Yes.
4 Q. How would you answer that question?
5 A. Yes.
6 Q. And then the next question is: "Should
7 all contents of the home be disposed of as
8 asbestos-contaminated material or cleaned, then
9 tested, in accordance with the Division-approved" --
10 A. "Plan."
11 Q. -- "plan submitted by a licensed asbestos
12 abatement contractor in conformance with the
13 Colorado DPHE?" Do you see that?
14 A. Yes.
15 Q. How would you answer that?
16 A. Yes.
17 Q. So you agree, then, with Mr. Bain that the
18 answer to all those questions is yes?
19 A. Yes.
20 Q. And you -- so you, after, I guess, doing
21 testing on the 5th, you learned for the first time
22 that this was a spill, major spill, land?
23 A. Once I had my sample results.
24 Q. And that was the 6th?
25 A. When did I get the results? Their report

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1 is dated the 7th of February, 2007.
2 Q. The report is, but didn't you have the
3 results back sooner than that?
4 A. No.
5 Q. From the people that you -- where did you
6 send the samples?
7 A. To Reservoirs Environmental.
8 Q. And then Reservoirs Environmental -- isn't
9 their invoice and information dated the 6th?
10 A. Let me see.
11 (A pause occurred in the proceedings.)
12 A. I don't see an invoice from them here.
13 Q. Why don't we keep this clear. This is
14 [Exhibit B](#) you're digging through. Why don't we just
15 put it all together and then, at the end of the
16 deposition, we'll clip it so that we make sure that
17 all this stays together.
18 A. Sure.
19 Q. I'm not trying to be difficult, just for
20 purposes of clarity.
21 A. Sure.
22 Q. You charged State Farm directly on the --
23 at the time your service was performed and completed
24 on the 7th, you charged State Farm directly \$759.93,
25 correct?

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1 A. Yep, that's correct.
2 Q. And you did prepare a report which is
3 dated the 7th of 2007, correct, even though there's
4 a typo?
5 A. Correct, that's a typo. The report was
6 the 7th. It should have been 2007.
7 Q. And who did you understand you were
8 dealing with at State Farm at this time?
9 A. Tim Thomsen.
10 Q. And did you understand that Mr. Thomsen
11 had some background in asbestos?
12 A. Some.
13 Q. Did you consider that he would be
14 basically someone off the street in terms of
15 understanding asbestos issues, or was he more of a
16 sophisticated customer than the average bear?
17 MR. SANDS: Objection to the form.
18 MR. ECKERT: Join.
19 MR. LIVINGSTON: Do you want me to use
20 something other than "The average bear"? Is that
21 the nature of the objection? Because I can.
22 Q. (BY MR. LIVINGSTON) Did you get the
23 question, Mr. Gonzalez? Did you gather that, when
24 you were dealing with Mr. Thomsen, that you were
25 dealing with a sophisticated customer?

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1 MR. SANDS: Objection to the form.
2 MR. ECKERT: Join. You can go ahead and
3 answer.
4 A. Yes.
5 Q. (BY MR. LIVINGSTON) Did you understand
6 that Mr. Thomsen had training when he received your
7 report about how to interpret these types of reports
8 and asbestos in general?
9 A. Yes.
10 Q. Did you believe that the content of your
11 report was sufficient to advise Mr. Thomsen of the
12 nature of your results?
13 A. Yes.
14 Q. Did you believe that the report was clear
15 in extrapolating the nature of your results?
16 A. Yes.
17 Q. Did you believe that the report which you
18 transmitted to Mr. Thomsen, given the data which you
19 conveyed, relayed to State Farm that this was a
20 major asbestos spill?
21 A. Yes.
22 Q. Did you have any discussions with
23 Mr. Thomsen prior to sending this report where you
24 verbally told him that this was a major asbestos
25 spill?

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1 A. I spoke with him. I don't recall whether
2 I specifically -- we discussed a major spill, minor
3 spill, or what we discussed regarding the spill. I
4 don't recall.
5 Q. But this written report that you conveyed
6 showed 3 percent asbestos results in the popcorn
7 ceiling texture, correct?
8 A. Yes.
9 Q. And do you believe that the popcorn
10 ceiling texture throughout the house was made of an
11 asbestos material?
12 A. Yes.
13 Q. And --
14 Where is that coming from? Let's take a
15 break here for a minute.
16 (A pause occurred in the proceedings.)
17 Q. MR. LIVINGSTON: I apologize.
18 Can I have the last question and answer
19 read back.
20 (The question and answer beginning on
21 page 56, line 9, were read back.)
22 Q. And do you believe that damaged areas of
23 the house where the roof had been either affected by
24 fire or torn down by the building -- or excuse me --
25 by the fire department was a dangerous situation in

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1 terms of asbestos contamination?
2 A. Yes.
3 Q. And do you believe -- well, given the
4 conclusion that you've expressed earlier that any
5 house built before 1988 is presumed to have been an
6 asbestos hazard until proven otherwise -- do you
7 recall our discussion about that?
8 A. I do.
9 Q. -- would you agree with me that, if
10 someone like Mr. Thomsen who had a knowledge of
11 asbestos was aware that that house was built prior
12 to 1988, that it would not have been a good idea to
13 go through the house with the insured prior to your
14 arrival?
15 MR. SANDS: Objection to the form of the
16 question.
17 Q. (BY MR. LIVINGSTON) Correct?
18 A. Yes.
19 Q. Why would it not have been a good idea for
20 the insurance adjuster, who has a background with
21 asbestos matters, to go through a house with the
22 insured under these circumstances before it was
23 tested? Why would that not be something you would
24 recommend?
25 A. Well, I'd say there's potential hazards,

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1 including asbestos, and other hazards.
2 Q. And does just simply walking the scene in
3 itself before you have come to test -- does that
4 have a tendency to spread asbestos-containing dust
5 or other debris from the fire?
6 A. Possibly.
7 Q. Would it be a good idea under the
8 circumstances that you observed at my client's home
9 to have the home tested first before people started
10 walking through it and examining it for hours?
11 Would that have been, in your view, the right thing
12 to have done?
13 MR. SANDS: Objection to the form of the
14 question.
15 A. Yes.
16 Q. (BY MR. LIVINGSTON) And did you know that
17 State Farm the day -- well, let's go to what State
18 Farm did do. Did you know that State Farm was
19 present at the home, according to their log
20 entries --
21 And I'm looking at, Jon, State Farm 050,
22 Log Entry No. 21.
23 Did you know that they met with the
24 insured at the premises on February 6th at
25 9:51 a.m.? Were you aware of that?

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1 A. I don't know.
2 Q. Well, assuming that that's true, based on
3 these records that we've received from State Farm,
4 at that point, would you agree with me that you did
5 not have the testing results back yet for the
6 asbestos samples?
7 A. You said "February 6th" there?
8 Q. February 6th of 2007.
9 A. That's correct. I didn't have the results
10 until February 7th.
11 Q. And at that point, did you believe it was
12 appropriate, given your knowledge of the rules and
13 regulations surrounding asbestos issues, for the
14 insurance company's representatives to be meeting
15 with the insured and continuing to walk through the
16 premises the day after your samples were taken but
17 before the results were revealed? Do you believe
18 that was appropriate?
19 MR. SANDS: Objection to the form of the
20 question.
21 A. It's -- I guess it's a personal
22 preference.
23 Q. (BY MR. LIVINGSTON) From the perspective
24 of the rules that you're aware of, before your
25 sample results took place, would you approve of the

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1 insured and the insurance company representatives
2 walking around on the site until they got your
3 results back?
4 A. I wouldn't recommend it.
5 Q. Why would you not recommend it?
6 A. Because potentially it could be asbestos.
7 Q. And if it is asbestos, that could be
8 dangerous?
9 A. Yes.
10 Q. And did you know that the insurance
11 company again met with the insureds at the scene on
12 the 8th --
13 A. No.
14 Q. -- of February?
15 A. (Deponent shook head.)
16 Q. Given your understanding of the
17 regulations surrounding asbestos, would that have
18 been appropriate, for the insureds and the insurance
19 company, or any representatives of the insurance
20 company, to be moving around in the scene after they
21 had received your report on February 8th?
22 A. No.
23 Q. Did you discuss with Mr. Bain the issue of
24 American Restoration removing property from the
25 Gholsons' home?

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1 A. Yes.
2 Q. What did you become aware of in that
3 regard?
4 A. That they had removed, it sounded like,
5 quite a few items.
6 Q. Did you get the idea that it was hundreds
7 of items?
8 A. I don't know the exact number, no.
9 Q. Did you get the idea that it was a
10 considerable number of items?
11 A. Yes.
12 MR. ECKERT: Is this all one document?
13 MR. LIVINGSTON: Yes, I'm handing out what
14 we're going to mark as [Exhibit D](#).
15 (Deposition [Exhibit D](#) was marked.)
16 Q. (BY MR. LIVINGSTON) Which is the
17 Foothills Restoration report that pertains to the
18 activities that took place shortly after your
19 examination. That would have been removal
20 activities and cleaning activities that started on
21 the 8th of February 2007. I'm marking it as
22 [Exhibit D](#).
23 MR. ECKERT: Mr. Livingston, just for
24 clarification, you said, "Foothills Restoration."
25 Do you mean "American Restoration"?

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1 MR. LIVINGSTON: Yes, I'm sorry.
2 MR. SANDS: Do you have another copy?
3 MR. LIVINGSTON: Yes.
4 MR. SANDS: Thank you.
5 Q. (BY MR. LIVINGSTON) Okay. Now let's talk
6 about the results of your report. You said that,
7 based on your report, you concluded that this was a
8 major spill?
9 A. Yes.
10 Q. And what are the ramifications of
11 declaring a major spill under these circumstances?
12 A. There's a protocol to be followed that is
13 pretty clearly defined inside the State regulation,
14 Regulation No. 8, which includes notifying the
15 State, restricting access to the area, establishing
16 basically a clean-up, and preventing the spread of
17 contamination.
18 Q. So you have to notify the State. Okay.
19 Do you believe that -- well, in this case, we talked
20 about the fact that you discussed with Mr. Bain that
21 American Restoration was undertaking activities to
22 remove items from the property on the day after your
23 report was received, or starting the day after your
24 report was received. Do you understand that the
25 State was notified of any of those activities in

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1 removing that property from the premises?
2 A. I do not know.
3 Q. Is it your understanding, based upon how
4 these Regulation 8 rules and regulations work, that
5 removing property from the premises without
6 notifying the State was illegal at that time?
7 A. I'd say it violates the rule, yes.
8 Q. And then what else other than notifying
9 the State do you have to do once you declare -- or
10 once a major asbestos spill is declared? You went
11 over a list of, I think, four.
12 A. Right.
13 Q. I'm sorry.
14 A. Well, obviously you notify the State. You
15 restrict access. You want to prevent the spread of
16 contamination. You establish a containment of some
17 type or a containing of the area. Then items can
18 either be decontaminated and removed or disposed of.
19 Q. Okay.
20 A. And then --
21 Q. Go ahead. I'm sorry.
22 A. And then you would eventually get to the
23 point of declaring the area, you know, clean.
24 Q. And all of that should have occurred in
25 this case following the receipt of your report by

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1 State Farm?
2 A. Yes.
3 Q. And when you say, "Access would have to be
4 restricted," in what way would that take place?
5 A. Oh, you can put up barricade tape. You
6 can -- any particular way you want to restrict
7 access. There's no set protocol.
8 Q. But would you typically be using like
9 plastic and stuff or boards to, you know, block
10 holes in the building and channels between rooms and
11 things like that?
12 A. You could do that. That's for containing
13 the area. I thought you were referring to access to
14 the property.
15 Q. I'm talking about containment at this
16 point.
17 A. Right.
18 Q. I'm talking about a major spill. Your
19 report finds a major spill, right?
20 A. Right.
21 Q. And when you send your report to State
22 Farm, you believe that you're conveying to State
23 Farm "There's a major spill here, guys"? Isn't that
24 what you were thinking?
25 A. Yes.

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1 Q. And you believe the report was adequate to
2 notify State Farm of that conclusion, correct?
3 A. Yes.
4 Q. And so, when that occurred and you
5 believed you were notifying State Farm of a major
6 spill, you believed that State Farm would notify the
7 State, didn't you?
8 A. Yes.
9 Q. And you believed that State Farm would
10 restrict access to the site, didn't you?
11 A. Yes.
12 Q. And you believed that State Farm would
13 undertake containment of the area, didn't you?
14 A. Yes. Well, let me back up on those three
15 particular points: It's not necessarily that State
16 Farm might make that notification. The State --
17 ultimately somebody there has to make the
18 notification, whether it's State Farm or the
19 abatement contractor they hired. Either one can
20 make that notification, but somebody needs to make a
21 notification.
22 Q. Well, in this case, you're aware that
23 State Farm started removing items from the property
24 beginning on February 8th, 2007, undertaken by
25 American Restoration?

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1 A. It came to my attention.
2 Q. And is that something that you would have
3 approved of when you were sending your report?
4 A. American Restoration, as far as I knew,
5 was not an abatement contractor, so no.
6 Q. "No" meaning you would not have approved
7 of this?
8 A. No.
9 MR. LIVINGSTON: Okay, let's take a quick
10 break.
11 THE VIDEOGRAPHER: Off the record at 2:25.
12 (A break was taken.)
13 THE VIDEOGRAPHER: We're back on the
14 record at 2:56.
15 Q. (BY MR. LIVINGSTON) To go back and set
16 the context, I think, of what we were talking about
17 a moment ago, we were talking about would you
18 approve of American Restoration going in on
19 February 8th, 2007, to the Gholsons' premises and
20 beginning removing personal property items? Do you
21 understand that was basically what we were
22 discussing before the break?
23 A. Yes, I do.
24 Q. And how would you respond to that type of
25 activity taking place vis-a-vis American

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1 Restoration?
2 A. Well, again, because they're not an
3 asbestos abatement contractor with trained workers,
4 I would object to them doing any such thing.
5 Q. And let's talk about where we are at that
6 point in the project: At that point in the project,
7 you've clearly conveyed, you believe, to your
8 client, State Farm, the outcome of your
9 investigation, correct?
10 A. That's correct.
11 Q. And did you consider that to be the
12 conclusion of your involvement in the case at that
13 point, or did you have a further function to
14 fulfill, such as being a project manager, et cetera?
15 A. I considered myself done with the project.
16 Q. So your project ended by notifying State
17 Farm that there was a major asbestos spill?
18 A. Yes.
19 Q. And notifying State Farm -- well, I'll
20 back up. Your investigation ended by both notifying
21 State Farm there was a major asbestos spill and
22 telling them not to remove any of the contents?
23 A. Well, actually, giving them the results of
24 the bulk sample was the end of my job.
25 Q. And you understood from your experience in

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1 the industry that, when you gave that report to
2 State Farm, that you were saying nothing should be
3 removed from this site of the personal-property
4 variety?
5 A. Yes.
6 Q. Because it is an asbestos-contaminated
7 good?
8 A. Yes.
9 Q. And any type of -- how about soft goods?
10 Should soft goods have been taken to a cleaners, for
11 example?
12 A. An approved cleaner for
13 asbestos-contaminated materials; that's okay.
14 Q. And are you aware in this case that that
15 did not happen?
16 A. I'm not aware of any of that.
17 Q. Did you know that American Restoration
18 moved through the house and took hundreds of soft
19 goods?
20 A. I'm not aware.
21 Q. Would you have approved of that, if
22 American Restoration employees --
23 A. Or I should say I was not aware at the
24 time. I have become aware since.
25 (Deposition [Exhibit D](#) was marked.)

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1 Q. Well, let's take a look at this [Exhibit D](#),
2 which was the American Restoration invoice for what
3 they were doing during this time period.
4 Who's got a highlighted copy?
5 A. I have a highlighting on mine.
6 Q. Yeah, you've got my copy, I guess, but --
7 all right, we'll just work off this if we could. Do
8 you see this entry on page 2 which is identified as
9 SF 275? Where it's highlighted, it says, "Rescue
10 Tech invoice dated 3-28-07"?
11 A. I do.
12 Q. And that's in the amount of \$3,941.36?
13 A. I see it.
14 Q. Were you aware that Rescue Tech workers
15 were on the premises the day after your report was
16 issued?
17 A. No.
18 Q. Were you aware that these workers were
19 removing electrical items from the premises without
20 any kind of respiratory suits or any kind of
21 abatement procedures in place?
22 A. No.
23 Q. Would you approve of that?
24 A. No.
25 Q. Why would you not approve of that?

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1 A. Well, one, they're not asbestos workers.
2 They're not licensed. Two, they did not have
3 respiratory protection, so, in other words, you're
4 potentially exposing a person to asbestos fibers,
5 which, again, is an OSHA issue as well.
6 Q. So we're endangering the lives of these
7 workers with Rescue Tech by having them act in this
8 manner we just described on February 8th, 2007?
9 A. Yes.
10 Q. And does that further, when we have people
11 under these circumstances moving about the premises
12 without negative pressure, without decontamination,
13 without those types of things in place, does that
14 have a tendency to make the asbestos contamination
15 worse because they're kicking up dust, et cetera?
16 A. It can.
17 Q. And did you know that dry cleaning was
18 removed from the premises by American Restoration
19 workers and taken to Sunshine Cleaners, as reflected
20 on page 3 of this invoice? That is SF 276.
21 A. No, I did not.
22 Q. Would you approve of that process?
23 A. No.
24 Q. Why not?
25 A. Because I don't believe Sunshine Cleaners

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1 is aware that they're getting items that could
2 potentially be contaminated with asbestos.
3 Q. Now, to the extent we were going to clean
4 anything on this premises, I think you said earlier
5 everything should have been disposed of.
6 A. Well, you can decontaminate too so not
7 everything has to be disposed of. You have a
8 choice: Throw it all away or decontaminate it.
9 Q. And I understand that Mr. Klein -- I'm
10 sorry -- that Tom Bain --
11 A. Tom Bain.
12 Q. -- believes that or has indicated that
13 there is no known way to clean asbestos from soft
14 goods. Would you agree with that?
15 A. No, I did not.
16 Q. Do you believe soft goods can be treated?
17 A. Absolutely.
18 Q. And would they need to necessarily be
19 treated at the -- isolated at the site?
20 A. You can do it two different ways. You
21 could isolate it at the site, or you could package
22 it up and transport it to another location in a
23 contained area, in other words, another controlled
24 environment, and do it there. You could do it in
25 another controlled environment.

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1 Q. So one way or the other, to the extent
2 that these goods were going to be cleaned, they
3 would have to be done in a controlled and contained
4 environment?
5 A. Yes.
6 Q. And that did not appear to happen here, to
7 your knowledge, from what you've learned?
8 A. No, it does not appear.
9 Q. And what was undertaken here in terms of
10 these activities was not sanctioned by your company?
11 A. No.
12 Q. And you don't think this was the right
13 thing to do, do you?
14 A. No.
15 Q. It was dangerous to the workers, wasn't
16 it?
17 A. Potentially, yes.
18 Q. And you're aware that these materials were
19 then returned to my clients, the Gholson family?
20 A. I was not aware.
21 Q. Well, now that you're aware today, do you
22 think those materials which were taken out by
23 American Restoration, hundreds of hard and soft good
24 materials that were taken out by American
25 Restoration, either to be attempted to be cleaned by

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1 American Restoration directly or sent to a
2 commercial laundry and returned to the Gholsons, do
3 you believe that's appropriate under the
4 circumstances of your investigation?
5 MR. SANDS: Objection to the form of the
6 question.
7 A. If they had been decontaminated correctly,
8 it's okay, but I don't know how they -- what their
9 process was and whether they did, you know, any
10 decon at all. I don't know what they did, so it's
11 not inappropriate to decontaminate things and return
12 them.
13 Q. (BY MR. LIVINGSTON) But given the fact
14 that Sunshine Cleaners is not a certified asbestos
15 remediator -- did you know that?
16 A. I'm not -- I would believe they are not.
17 Q. And did you know that State Farm returned
18 clothing, children's clothing, to these children, my
19 clients' children?
20 A. I'm not aware of that.
21 Q. Would you want to see your own children
22 have clothes returned to them under these
23 circumstances --
24 A. No.
25 Q. -- that took place here? Why not?

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1 A. Because they could potentially have
2 asbestos fibers.
3 Q. Would you like to see workers working on
4 your home come into contact with asbestos materials
5 such as what took place here --
6 A. No.
7 Q. -- if it was your home and your workers?
8 A. No.
9 Q. Why not?
10 A. Because you're potentially exposing people
11 to asbestos fibers and that's not good.
12 Q. It's dangerous, right?
13 A. Yes, it is.
14 Q. And it's against the law, isn't it?
15 A. Yes, it is.
16 Q. And it's your understanding that what
17 State Farm did in conjunction with American
18 Restoration on that day after working was against
19 the law, fair?
20 A. It was inappropriate.
21 Q. Was it against the law?
22 MR. SANDS: Objection to the form of the
23 question.
24 A. I would say it violated several
25 regulations that I know.

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1 Q. (BY MR. LIVINGSTON) And it wasn't safe,
2 was it?
3 A. Not for the workers, no.
4 Q. And in returning these materials --
5 A. No, it was not safe for the Gholsons
6 either then, their returning.
7 Q. Did you know that the materials, once they
8 were returned, the room where the Gholsons stored
9 the materials proved positive for asbestos?
10 A. I'm not aware of that.
11 Q. Did Mr. Bain share that with you as part
12 of his investigation?
13 A. Which room are you referring to?
14 Q. In the rental house where they went after
15 this fire when State Farm started returning all
16 these materials to them.
17 A. No, I was unaware that that room -- I was
18 unaware of any of this.
19 Q. Does that surprise you, under these
20 circumstances of what took place on the day after
21 this report came in from yourself, does it surprise
22 you that these materials that ultimately were
23 returned to the Gholson family and their children
24 were asbestos-contaminated, given the way this was
25 handled? Would that surprise you?

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1 A. Well, again, I don't know how they handled
2 it, but when you're not using workers that are
3 trained to do decontamination, it doesn't surprise
4 me.
5 Q. And that put the Gholsons' children at
6 risk, didn't it, health safety risks?
7 MR. SANDS: Objection to the form of the
8 question.
9 A. Potentially.
10 Q. (BY MR. LIVINGSTON) And that's not the
11 way you would want your kids treated, is it?
12 A. No.
13 Q. And did you know that -- or did you
14 discuss in your interview with Mr. Bain that Tim
15 Thomsen was directing how to put down plastic on the
16 floor of the building following the loss, or
17 following receipt of your report?
18 A. Mr. Bain mentioned to me that that is what
19 was happening, that they were putting plastic down.
20 Q. Just on the floor?
21 A. Yes.
22 Q. And did you approve of that, or was that
23 consistent with the recommendation in your report?
24 A. I mentioned that in my report.
25 Q. Right.

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1 A. At the time, the way Tom Bain described it
2 to me, I did not agree with it, you know, based on
3 what he was telling me, and my understanding when
4 Tom Bain was explaining it to me was that that was
5 how they were trying to contain the place, and I
6 said, "No. I disagree with that method."
7 Q. In other words, just to make this clear,
8 what your testimony is, Tom Bain described the
9 process that was being used the day after your
10 report came out in terms of putting plastic on the
11 carpeting, correct?
12 A. Yes.
13 Q. And you didn't think that was --
14 A. But that wasn't the day after. I was told
15 this --
16 Q. Yeah.
17 A. -- much later.
18 Q. You were told this much later?
19 A. Yeah.
20 Q. But unbeknownst to you, the day after your
21 report is given to State Farm, Mr. Thomsen and
22 Mr. -- the American Restoration worker, Terry
23 Aumiller -- are out at the site putting down plastic
24 on the floors? You heard about that later?
25 A. Well, I did hear about it, but I also had

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1 had a discussion with Mr. Tim Thomsen regarding
2 putting plastic down on the floor.
3 Q. And tell me about that discussion.
4 A. The discussion was, at the time, the
5 Gholsons had some very -- what do you want to call
6 it -- valuable possessions that they desperately
7 wanted to get their hands on -- it was a few items,
8 as it was described to me -- and that they were not
9 in, you know, directly affected by the fire, and so
10 they wanted to get these possessions, and they were
11 hard-surfaced possessions, as we discussed, and even
12 though I understand that everything's considered
13 contaminated and, you know, you're building your
14 containment, at this point in time, I understood the
15 Gholsons wanted these possessions desperately.
16 I'm assuming very personal possessions,
17 what have you, family documents that are very
18 important. I believe there was a computer that had
19 valuable information on it, and I'm assuming
20 heirloom-type things, you know, very valuable things
21 they really wanted to get their hands on, and Tim
22 asked how they could do that and if they could.
23 Given the circumstances of the Gholsons
24 and the fact that they had already a tremendous
25 loss, I felt sympathy and I said to Tim "You can

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1 take out just those particular items, those very
2 valuable things that are hard-surfaced items. You
3 lay down plastic so you create a path to those, to
4 and from where you're going to, so you're not going
5 to raise contaminant, get the items, wet-wipe them
6 with abatement workers, wet-wipe them, clean them
7 off, and get them out," and that was the extent of
8 what I had a conversation with him on.
9 Q. Did you tell Mr. Thomsen that that was to
10 be done by a certified person?
11 A. Abatement workers.
12 Q. And did you know that he was eventually,
13 whatever he did, he didn't use abatement workers?
14 A. I found that out. Yeah, I know now, but I
15 wasn't aware of it at the time.
16 Q. Was Mr. Thomsen representing that that's
17 how he intended to allow this process --
18 A. We didn't talk about whether it was
19 asbestos-certified workers or not. That was in my
20 report, that anything had to be done by asbestos-
21 certified workers, so I was not aware who was
22 actually going to do that.
23 Q. So when you had this discussion with
24 Mr. Thomsen, you assumed that would there be
25 asbestos-certified people doing whatever it was you

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1 recommended?
2 A. I did.
3 Q. And you didn't know that Mr. Thomsen was
4 doing something else?
5 A. I did not.
6 Q. Did you feel deceived at this point?
7 A. I don't know if I was deceived or not
8 because I honestly don't know whether Tim Thomsen
9 knew whether these workers were certified or not
10 either. I don't know. So if he was attempting to
11 deceive me or not, I'm unaware of what he was
12 attempting to do.
13 It seemed to me that he was trying to get
14 possessions of the Gholsons that they wanted
15 desperately and was trying to help them in that
16 regard. That's what I was understanding, and I was
17 trying to help that too.
18 Q. But you became aware that these items that
19 were taken out of the house weren't just these
20 precious heirlooms that you've described?
21 A. Later on.
22 Q. It was everything, right?
23 A. Later on.
24 Q. Yeah.
25 A. Later on I found out that there was

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1 additional items other than just these very personal
2 possessions.
3 Q. Did you understand that they took
4 basically everything out of the house except what
5 was in the kids' room? And I guess it was two rooms
6 he described.
7 A. I was not aware of that.
8 Q. And do you feel deceived at this point
9 that he was talking to you about "This is just those
10 items. I'm going to put this pathway down to go see
11 these precious heirlooms"? Then you find out later
12 that it was really the whole house?
13 A. No.
14 MR. SANDS: Objection to the form of the
15 question.
16 A. I think it went beyond the scope of what I
17 had discussed.
18 Q. (BY MR. LIVINGSTON) So do you feel
19 deceived that, when he was talking to you about
20 "This just involved precious heirlooms," that he
21 wasn't making it clear that State Farm was doing
22 this for everything in the house with the exception
23 of a couple rooms?
24 MR. SANDS: Objection to the form of the
25 question.

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1 A. I felt -- well, yeah.
2 Q. (BY MR. LIVINGSTON) And did you know
3 that -- did you think it was appropriate to take
4 off-site, I think, 120-some pounds of laundry for
5 cleaning?
6 A. No.
7 MR. LIVINGSTON: Let's take a five-minute
8 break.
9 THE VIDEOGRAPHER: Off the record at 3:12.
10 (A break was taken.)
11 (Deposition [Exhibit E](#) was marked.)
12 THE VIDEOGRAPHER: We're back on the
13 record at 3:28.
14 MR. LIVINGSTON: Did you say you needed an
15 answer, Mary?
16 THE REPORTER: Yes.
17 MR. LIVINGSTON: Yeah, I didn't catch it.
18 MR. SANDS: What was the last question?
19 (The last question was read back.)
20 MR. LIVINGSTON: Let me rephrase that.
21 Q. (BY MR. LIVINGSTON) Under the
22 circumstances that took place here where American
23 Restoration and Mr. Thomsen were present at the
24 scene and American Restoration had the materials
25 that I described -- that is, hundreds of pounds of

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1 laundry items taken from the facility under the
2 circumstances of simply placing some plastic down on
3 the floor and then taken to a commercial laundromat,
4 not certified asbestos removal, do you believe that
5 was appropriate?
6 A. No.
7 Q. Do you believe that was illegal?
8 MR. SANDS: Objection to the form.
9 Objection to the form of the question.
10 A. It violates the regulation.
11 Q. (BY MR. LIVINGSTON) And do you believe
12 that you would want your own family treated that way
13 in terms of its clothing taken from a fire scene
14 like this?
15 A. No.
16 Q. Because that would place your family in
17 danger, wouldn't it?
18 A. Potentially.
19 Q. Now, at the time that you finished sending
20 your report to State Farm, at that point, do you
21 believe a project manager needed to be brought in to
22 address how further remediation would work? I'm
23 just trying to get the protocol or the procedure
24 that would apply under Regulation 8. Walk me
25 through it.

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1 A. A good protocol in that situation would
2 be, once you've established that you have a major
3 spill, getting a licensed abatement contractor and
4 consultant, you know, project designer, involved in
5 order to establish what a clean-up protocol is going
6 to be, and that would be an appropriate step.
7 Q. So after your involvement as the tester
8 was over, there would have been a new role to be
9 assumed -- I guess two new roles -- and one would be
10 a certified asbestos contractor, right?
11 A. Abatement contractor.
12 Q. Abatement contractor, and the next would
13 be a certified project designer?
14 A. That would be a good way to do it.
15 Q. And that would be safe way to do it?
16 A. Yes.
17 Q. And you did not, in this particular case,
18 assume either one of those roles?
19 A. No.
20 Q. Do you know who, in the case of the
21 Gholsons, with regard to this initial stage of
22 removing all of these personal property items, do
23 you know who was in the role of the certified
24 asbestos contractor during this process?
25 A. I do not.

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1 Q. Do you know who from either State Farm or
2 American Restoration or anyone was acting in the
3 role of the project designer during this phase when
4 they were removing all of this personal property the
5 day after your report was --
6 A. I do not.
7 Q. And you believe that those functions
8 needed to be filled by someone?
9 A. They should be.
10 Q. According to the regulation, correct?
11 A. Yes.
12 Q. And that's what you conveyed to Tom Bain,
13 correct?
14 A. Yes.
15 Q. And did you tell Tom Bain that this had
16 been mishandled? That is, how these personal
17 property items were removed.
18 A. Once he explained to me what happened, I
19 agreed with him that, yes, that was incorrect.
20 Q. Did he describe the role that Mr. Tim
21 Thomsen had in this process?
22 A. He indicated that Tim was directing the
23 operation.
24 Q. Tim was directing -- Tim Thomsen of State
25 Farm was directing the operation?

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1 A. That was what he was gathering. That's
2 basically what he was interpreting, was that Tim was
3 directing it.
4 Q. Tim was directing the abatement?
5 A. The abatement, the project in general,
6 yes.
7 Q. So according to the way this was conveyed
8 to you from Tom Bain, Mr. Tim Thomsen of State Farm
9 was acting as the certified abatement manager or
10 contractor?
11 (Mr. McLoughlin is now present in the
12 deposition.)
13 MR. SANDS: Objection.
14 Q. (BY MR. LIVINGSTON) He was acting in that
15 role?
16 MR. SANDS: Objection to the form of the
17 question.
18 Q. (BY MR. LIVINGSTON) Go ahead and put it
19 the way that you would put it.
20 A. He was basically project-managing it.
21 Q. And do you believe that, from your
22 understanding, Mr. Tim Thomsen of State Farm is
23 qualified to be project-managing this type of
24 situation?
25 A. I don't believe that -- I don't know what

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1 all State certifications he has, so I don't know if
2 he's capable of doing it or not.
3 Q. Would you want your insurance company,
4 after a fire at your home, to have one of the
5 insurance company's own employees being the project
6 manager for this loss that they're going to have to
7 pay money on? Would you like that, if it was you,
8 or would you think that's maybe a little bit of a
9 conflict of interest?
10 MR. SANDS: Objection to the form.
11 A. I don't know.
12 Q. (BY MR. LIVINGSTON) Well, tell me. I
13 mean, imagine your house burns down. Would you want
14 your insurance company's guy, like Tim Thomsen, to
15 be your project manager in terms of asbestos
16 abatement?
17 A. I don't know, you know. I mean, I don't
18 know.
19 Q. Do you think that would have a potential
20 conflict of interest? The person who is going to
21 pay or the representative of the person who is going
22 to pay is the person who is going to decide what you
23 need?
24 MR. SANDS: Objection to the form of the
25 question.

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1 A. Not necessarily. I mean, I don't think
2 that's necessarily true.
3 Q. (BY MR. LIVINGSTON) Do you think that
4 Mr. Tim Thomsen of State Farm should be acting as
5 the project manager for the Gholsons' clean-up?
6 A. He can -- if he was properly trained and
7 certified, he can.
8 Q. Does he have to disclose that to the
9 Gholsons --
10 A. No.
11 Q. -- under these --
12 A. I don't know that he has to disclose it to
13 the Gholsons. No, I don't.
14 Q. Did you ever disclose any of what you
15 found to the Gholsons so that they could protect
16 themselves?
17 A. No, I did not.
18 Q. Why not?
19 A. Because my client was State Farm.
20 Q. Why didn't you tell -- isn't the landowner
21 ultimately responsible for the situation involving
22 asbestos in his home?
23 A. My client was State Farm. I didn't,
24 besides having met Mr. Gholson at the actual site, I
25 didn't even know his name.

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1 Q. Wasn't the landowner ultimately
2 responsible for how asbestos was handled in his
3 home?
4 A. I would probably say that, no, I disagree
5 with that way you put it because you're assuming,
6 then, that -- you're making the assumption that
7 every homeowner is knowledgeable about asbestos and,
8 therefore, they should know the regulations, and I
9 disagree with that, so how would he know that he had
10 to do anything in particular? I mean, I don't know.
11 My experience is most homeowners don't know a thing
12 about it.
13 Q. So you believed in this case that you were
14 transmitting the information to State Farm and then
15 it would take the role in making sure that this was
16 all complied with, as opposed to this homeowner
17 that's ignorant of the circumstances?
18 A. That's correct. State Farm was going to
19 manage it.
20 Q. And do you think that they managed it well
21 given what you know at this point?
22 MR. SANDS: Objection to the form of the
23 question.
24 A. I think that -- well, it could have been
25 handled better.

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1 Q. (BY MR. LIVINGSTON) Do you think that
2 they broke the law in terms of how they handled
3 this?
4 A. There were violations.
5 MR. SANDS: Objection to the form of the
6 question.
7 Q. (BY MR. LIVINGSTON) And with regard to
8 these items that were shipped from the house -- I
9 gave you [Exhibit D](#) a minute ago -- did you know
10 that, first of all, they have a list of discarded
11 inventory?
12 A. No.
13 Q. Now, would that discarded inventory need
14 to be placed in any kind of special container under
15 the law?
16 A. Is that a -- this is D, you said?
17 Q. I'm sorry. This should be E, is what I
18 gave you before.
19 A. Oh, E?
20 MR. SANDS: I'm sorry, Sam. Which one is
21 it?
22 MR. ECKERT: Right here.
23 MR. SANDS: This says "C" at the top.
24 MR. LIVINGSTON: It says "C" at the top.
25 I'm marking it as E.

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1 MR. SANDS: Okay.
2 Q. (BY MR. LIVINGSTON) The second page
3 starts with "Discarded inventory." Can you just --
4 I mean, in an asbestos site like this where there's
5 a major spill, can you just throw things in a
6 dumpster?
7 A. No, because, well, you're assuming that
8 they're asbestos-contaminated so, until you
9 decontaminate them, you can't just throw it in a
10 regular, nonsealed dumpster, no.
11 Q. Did Tom Bain convey to you that that
12 occurred here, that this discarded inventory was
13 thrown into a dumpster, a normal dumpster, by these
14 American Restoration people at the direction of
15 Mr. Tim Thomsen, none of whom were certified? Was
16 that your understanding?
17 A. I didn't realize it was going to a regular
18 dumpster, no.
19 Q. Well, you've got the inventory?
20 A. Yeah.
21 Q. Or the -- excuse me -- the American
22 Restoration. Take a look at their bid. Can you
23 find any kind of special dumpster that would have
24 been purchased that would, you know -- you're
25 familiar with looking at bids and invoices and that

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1 type of thing.
2 Can you see anything in there that would
3 show that they undertook these procedures that would
4 go along with an asbestos abatement, such as
5 respirators, specialized dumpsters, decontamination
6 stations? You'll agree with me that stuff's just
7 not on there?
8 A. No, I don't see anything like that on
9 here.
10 Q. So given what you're seeing in American
11 Restoration's invoice, which is [Exhibit D](#), we can
12 draw the conclusion, it appears, that this discarded
13 inventory was simply thrown into a dumpster,
14 correct?
15 MR. SANDS: Objection to the form of the
16 question, calls for speculation.
17 A. I don't know. I don't know what they do
18 with it.
19 Q. (BY MR. LIVINGSTON) Well, there's no
20 invoice. I mean, you understood that from talking
21 to Mr. Bain? It was basically done by somebody that
22 didn't have any background or training or
23 certification.
24 A. That's what I learned.
25 Q. And in this particular case, would you

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1 agree that it was appropriate or inappropriate to
2 throw discarded items into a normal dumpster?
3 A. It's inappropriate.
4 Q. And is that a safety factor? Is that a
5 health factor?
6 A. It potentially is.
7 Q. And is that a risk to the workers that are
8 doing it?
9 A. Yes, it is.
10 Q. And you wouldn't recommend that, would
11 you?
12 A. I would not recommend that.
13 Q. And you would not sanction State Farm or
14 Mr., I guess, Tim Thomsen in this case directing
15 clean-up where people are just throwing things into
16 a regular dumpster?
17 A. No.
18 Q. You would not approve of that?
19 A. Not without decontaminating them, I would
20 not.
21 Q. And if that's true, you would say that
22 Mr. Thomsen was taking people's lives at risk,
23 wouldn't you?
24 MR. SANDS: Objection to the form.
25 Q. (BY MR. LIVINGSTON) Or putting people's

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1 lives at risk, right?
2 A. I'd say they're all putting their life at
3 risk.
4 Q. And this sheet goes on and on with the
5 discarded inventory, and then we eventually get to
6 packed-out items. Do you see those?
7 A. Yes, I do.
8 Q. And look how it goes on into boxes and
9 boxes, blenders, cleaning supplies, dishes, glasses,
10 silverware, wall hangings, books, miscellaneous, a
11 bunch of things in the attic, and then we have a
12 breakdown. Do you see where they have Box No. 1,
13 "Personal Files," Box No. 2, and they itemize them
14 out through 36 boxes?
15 A. Yeah.
16 Q. Is it your understanding, when you wrote
17 your report, which was transmitted to State Farm,
18 that these items were going to be removed and boxed
19 out as reflected in this document?
20 A. No, that was not my understanding.
21 Q. And that wouldn't have been the right
22 thing to have done given the results of your
23 testing, correct?
24 A. That's correct. I wouldn't have
25 recommended it.

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1 Q. And why not?
2 A. Well, because they're potentially
3 contaminated. You have to first decontaminate it if
4 you want to salvage it. You have to decontaminate
5 it, so, you know, unless they're decontaminated, you
6 just can't take them out.
7 Q. So when these boxes with all these items
8 were removed, that put the health of the people who
9 were actually inventorying it and putting it in
10 boxes at risk, correct?
11 A. Potentially.
12 Q. And it put the people who had ultimately
13 cleaned it later at a nonasbestos-certified facility
14 at risk, correct, the cleaners, the people that were
15 cleaning?
16 A. Potentially, yes.
17 Q. And then it put the homeowners at risk
18 when they attempted to return these items, correct?
19 A. Or retrieve them, yes.
20 Q. And you would not have recommended this
21 because --
22 A. No.
23 Q. -- it was against the rules?
24 A. I would not have recommended it.
25 Q. And do you think that when this project,

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1 as you put it earlier, at least as you understood
2 it, was being directed by Mr. Tim Thomsen of State
3 Farm, do you think that this was an appropriate
4 process to be going through, to have these 36 boxes
5 taken out of the premises and taken to a different
6 facility and then returned to the insureds? Do you
7 agree with how Mr. Thomsen handled this?
8 MR. SANDS: Objection to the form of the
9 question.
10 A. My understanding is that they were not
11 taken to a different facility for decontamination,
12 but they were just taken to -- what would they do?
13 I mean --
14 Q. (BY MR. LIVINGSTON) They just took it to
15 American Restoration, which isn't certified in any
16 of this, and they took it to a dry-goods cleaners,
17 which isn't certified in any of this, and attempted
18 to deliver these items back to the insured, after
19 which they proved hot. Do you approve of that?
20 A. No.
21 Q. That's not the right thing to do to
22 people, is it?
23 A. No, it's not.
24 Q. It's against the law, right?
25 A. It's a violation.

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1 Q. And it's immoral and unethical, isn't it,
2 from your point of view?
3 MR. SANDS: Objection to the form of the
4 question.
5 MR. ECKERT: Object as well. You can
6 answer.
7 THE DEPONENT: I can answer? It's not
8 appropriate to do to anybody.
9 Q. (BY MR. LIVINGSTON) It's not appropriate
10 to do to your family, is it?
11 A. No.
12 Q. Can an insurance company do something like
13 this to save money, in your view?
14 MR. SANDS: Objection.
15 Q. (BY MR. LIVINGSTON) "Rather than just
16 replacing all this stuff, we're going to have a
17 report saying this is all damaged goods that are
18 contaminated and we're just going to slip them out
19 of here without certified people running them
20 through cleaners that aren't qualified to do that
21 and try and give it back to people." How do you
22 feel about that, as somebody in this industry?
23 MR. SANDS: Objection to the form of the
24 question.
25 A. That was a big question.

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1 Q. (BY MR. LIVINGSTON) It was a big question
2 because it's a big issue. Do you think that the
3 insurance company in this case, in your mind, given
4 your knowledge of these procedures and processes,
5 should be able to do what they did here in terms of
6 knowing that there's asbestos contamination and then
7 quickly getting the goods out and taking them to
8 places to be cleaned by people that aren't
9 qualified? Do you think that's right?
10 A. No.
11 Q. Do you think it's immoral?
12 MR. SANDS: Objection to the form of the
13 question.
14 MR. ECKERT: Join.
15 A. It's just flat out -- it's not right to
16 do.
17 Q. (BY MR. LIVINGSTON) Did you know Mr. Tim
18 Thomsen then started as, I guess, with regard to
19 clean-up of the physical premises, as opposed to
20 removal of personal goods, did you have discussions
21 with Mr. Bain about that aspect of the project, as
22 opposed to what we've been talking about so far,
23 which is the things that took place the day or two
24 after your report? Did you discuss that with Tom?
25 A. The clean-up of the property itself?

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1 Q. Yeah, the property; keep in mind we've
2 been talking about all these things.
3 A. Personal possessions?
4 Q. What was inventoried; yeah, that was done
5 the day after your report.
6 A. Okay.
7 Q. Or two days after your report; at least,
8 that's consistent with your understanding, right?
9 A. Right.
10 Q. Now let's talk about the second phase of
11 this clean-up that involved the actual building
12 itself.
13 A. Um-hum, okay.
14 Q. Did you talk about that with Tom, Tom
15 Bain?
16 A. You know, I don't recall what our
17 conversation was. We talked about, you know,
18 several different things. I just don't recall what
19 we discussed on that.
20 Q. At that point, do you believe that someone
21 from, you know -- after they received your report,
22 did you need to have a project designer sit down and
23 decide "Here's what ought to be done in what
24 particular room of the house to do remediation"? Is
25 that the role of the project manager or designer

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1 after they received your report?
2 A. That would be their role, yeah.
3 Q. And did you learn from Mr. Bain that
4 apparently Mr. Thomsen was, quote, "Accepting bids,"
5 where he would designate certain areas of the house
6 were going to receive certain treatment and certain
7 areas of the house weren't going to receive any
8 treatment? Did you hear about that?
9 A. I don't recall that particular
10 instruction.
11 Q. Would that be something that would be
12 along the roles of the project manager, to be
13 saying, "I'm the insurance company. I'm going to
14 pay for this area to be cleaned. I'm not going to
15 pay for that room to be cleaned. I'm going to pay
16 for that to be cleaned, but I'm not going to pay for
17 that"? Would that be basically what somebody who is
18 designing the plan ought to be doing?
19 A. Well, I'm not sure what the overall
20 scope -- or the coverage of what the State Farm has.
21 I'm not an insurance expert, so I don't know what
22 they cover and don't cover. All I know is I gave
23 them the report identifying asbestos, so, I mean, if
24 you're going to clean that property and State Farm
25 has jurisdiction over a certain portion and they're

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1 not covering something, then they would say to the
2 Gholsons "You've got to hire your own abatement
3 contractor," something like that. So I don't know
4 what their jurisdiction is on a particular project
5 like that.
6 Q. But when someone says, "We're going to get
7 this house abated," can they say, "I'm abating it
8 only within the coverage I have," or do they have to
9 say, "I'm a certified contractor" or "I'm a
10 certified designer" and "I abated this, period"?
11 Isn't that what the law requires, that
12 you've got to go with the latter, that being "This
13 is certified to be abated, period"? You can't say,
14 "I'm just the guy who abates the insurance stuff,"
15 like Tim Thomsen is doing? That's not quite the way
16 it works, is it?
17 A. It doesn't work the other way either. You
18 can clean a particular portion and leave something
19 else for somebody else that's their mess.
20 Q. And so you think that the role of the
21 abatement manager -- or excuse me -- the abatement
22 designer -- can be split among multiple people, or
23 should there be one?
24 A. Well, you can have, you know -- obviously
25 there has to be meetings and discussions as to who

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1 is covering what and a determination as to either
2 State Farm is responsible for cleaning the entire
3 house or they're not, you know, or they're
4 responsible for certain portions.
5 Typically, you would expect them to, you
6 know, clean the whole thing, but it's not uncommon
7 or it's not unheard of for a property owner to clean
8 a certain area and somebody else to be responsible
9 for something else. It mean, it could be split. It
10 could happen.
11 Q. In this case, are you aware that Tim
12 Thomsen didn't try and split --
13 A. I have no idea.
14 Q. Here's some diagrams that were drawn by
15 Tim Thomsen when he took bids where he was laying
16 out where the decontamination area ought to be and
17 the bag-out area.
18 Do you guys want to -- I've got them
19 somewhere. I'm going to mark those as F.
20 (Deposition [Exhibit F](#) was marked.)
21 MR. SANDS: Are there no control numbers
22 on those pages, Sam?
23 MR. LIVINGSTON: There are somewhere.
24 There's a different version that has a number from
25 your office, but this is the diagram -- for example,

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1 it was sent with SF 244.
2 MR. SANDS: Okay.
3 MR. LIVINGSTON: SF 244 used this as an
4 enclosure and says, "Enclosed please find scope of
5 repair." Well, we'll mark them both together, and
6 this would have been an enclosure, and this is F.
7 MR. SANDS: You're saying that the diagram
8 is the enclosure with 244?
9 MR. LIVINGSTON: Right, that's basically
10 what I'm getting at.
11 Q. (BY MR. LIVINGSTON) But [Exhibit F](#) says,
12 "Thank you for" -- this is to Diamond Hill Services,
13 correct?
14 A. Yes.
15 Q. And to your knowledge, they're
16 abatement --
17 A. Yes.
18 Q. Asbestos abatement?
19 A. Yes, they are.
20 Q. "Thank you for meeting me at the insured
21 location. As we discussed, we're listing
22 competitive bids for asbestos abatement of the
23 affected building materials and personal property.
24 Please find the enclosed scope of repair for the
25 abatement as well as hygienist's report from

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1 Foothills Environmental." Do you see that?
2 A. Um-hum, I do.
3 Q. And then we have this diagram by
4 Mr. Thomsen?
5 A. Okay.
6 Q. And do you see where Mr. Thomsen is
7 putting on where the decontamination is? Is that
8 what you would assume that means, "Decon"?
9 A. Yes.
10 MR. SANDS: Objection to form.
11 Q. (BY MR. LIVINGSTON) And what is decon?
12 MR. SANDS: Objection to the form of the
13 question.
14 A. The decontamination chamber is basically a
15 series of three chambers, which would be a clean
16 room, a shower, and a dirty room, and it's the
17 method of going in and out of a contaminated area.
18 Q. (BY MR. LIVINGSTON) And this would have
19 been what should have been in place the day after
20 your report came in when they were getting rid of
21 all the personal-property items that we discussed
22 earlier, right? This type of a lay-out -- this
23 should have been in place?
24 A. This should have been the set-up they
25 started.

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1 Q. So do you know why the day after they got
2 your report they got all of those personal property
3 items out of there so fast --
4 A. I don't know.
5 Q. -- that they didn't do this until like a
6 month later? That wouldn't be right in your mind,
7 would it, in terms of how to handle this?
8 A. No.
9 Q. And do you see where he's saying in this
10 room here -- what does that say? "Sun room," I
11 think.
12 MR. GHOLSON: Yes.
13 A. I think it says, "Sun room." It's kind of
14 blotchy.
15 Q. Then it says, "Contents only"?
16 A. Yes.
17 Q. Now, were you aware that contents from the
18 main room that is clearly asbestos contamination,
19 according to what you saw -- that's true, isn't it?
20 A. Yes.
21 Q. This main room had the ceiling caved in?
22 A. Yes.
23 Q. And some of those items were moved into
24 the sun room, correct, such as couches, et cetera?
25 A. I didn't know that.

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1 Q. Do you think it's appropriate for Mr. Tim
2 Thomsen of State Farm to be sending a diagram like
3 this saying, you know, "We're not going to have,"
4 you know -- "Don't give us a bid to have this room
5 remediated"? Is that something he should be doing,
6 or shouldn't that be the project designer?
7 MR. SANDS: Objection to the form of the
8 question.
9 A. If he's a project designer, he can do it.
10 Q. (BY MR. LIVINGSTON) Do you think he's a
11 project designer?
12 A. I honestly don't know. I don't know.
13 Q. Well, let's say he's not. I assume he's
14 not.
15 Mr. Sands, is he?
16 MR. SANDS: It's not my deposition,
17 Mr. Livingston.
18 MR. LIVINGSTON: Okay.
19 Q. (BY MR. LIVINGSTON) Well, apparently he's
20 not a project designer because I would hate to think
21 that the insurance companies are out there acting as
22 project designers, and we'll find out later if he
23 is, but assuming for the time being that he's not,
24 do you think that these types of analysis ought to
25 be undertaken by nonproject designers?

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1 MR. SANDS: I don't have the document in
2 front of me so I object to the form of the question.
3 I don't know what you're talking about when you're
4 referring to these types of --
5 MR. LIVINGSTON: The analysis where he's
6 saying, you know, where he's saying, "Don't do that
7 whole area" -- he's just saying, "In that area, just
8 do the contents, contents only."
9 MR. SANDS: I object to the form of the
10 question because I have, as I sit here right now,
11 I'm not sure that what you've attached to the letter
12 of February 26th, 2007, which bears Control Number
13 SF 244 and you've marked as [Exhibit F](#), if the pages
14 you've stapled to it --
15 MR. LIVINGSTON: Okay, I'll rephrase the
16 question.
17 MR. SANDS: Let me -- can I finish,
18 please?
19 MR. LIVINGSTON: I'll rephrase.
20 MR. SANDS: I do not know whether these
21 pages, which do not have control numbers on them,
22 are the attachments that are referred to in this
23 letter of February 26th, 2007, so I object to the
24 form of the question because of your
25 characterization of what is being said.

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1 MR. LIVINGSTON: Okay.
2 Q. (BY MR. LIVINGSTON) You said earlier
3 that, from your discussions with regard to an
4 investigation being carried out with the government,
5 or by the government, that they were concluding that
6 Mr. -- their investigation had revealed that Tim
7 Thomsen was controlling the clean-up.
8 MR. SANDS: Objection to the form of the
9 question.
10 Q. (BY MR. LIVINGSTON) That's what you said
11 earlier.
12 A. Yes.
13 MR. SANDS: That is not what he said and I
14 object to the form of the question.
15 Q. (BY MR. LIVINGSTON) Is that what you
16 said?
17 A. That Tim was basically acting as like a
18 project manager.
19 Q. And do you think that an insurance -- is
20 it your experience that the insurance company ought
21 to be controlling the scope of the project by
22 saying, "We're only going to pay for this room but
23 not that room and, therefore, that room doesn't get
24 decontaminated"? Do you see that in this field, or
25 do you think that can lead to problems?

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1 A. This was like I stated very early in this
2 deposition. This was about the sixth project or so
3 that we had done with State Farm so I really didn't
4 have much experience with how they intended to -- or
5 how the industry, I should say, works.
6 Q. Well, tell me now what you think based on
7 your knowledge of this Section 8, this regulation
8 that talks about asbestos. Do you think someone
9 other than a project manager ought to be controlling
10 how a project works by saying, "Bid on that room for
11 clean-up but don't bid on this room for clean-up,
12 and I'm not qualified to decide. I'm not certified
13 in anything."
14 How do you like them apples in terms of
15 how it ought to work in terms of your business? Do
16 you think it ought to work that way?
17 A. Well, if a person is not qualified to be
18 making those decisions, they shouldn't be making
19 those decisions.
20 Q. So if Mr. Tim Thomsen is taking bids on
21 the second part of the project to actually clean out
22 the building and selectively getting certain areas
23 cleaned and other areas cleaned and he's not
24 certified as a certified abatement contractor or a
25 certified project designer, that would be wrong

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1 under the rules, wouldn't it?
2 A. That would be.
3 Q. Now, do you remember having a verbal
4 report to State Farm?
5 A. I don't know. Have you got any more
6 information than that?
7 Q. Do you remember talking to them on the
8 phone before your report was sent?
9 A. Oh, I did have a conversation with them
10 about the time I sent the report. I gave them a
11 call.
12 MR. LIVINGSTON: Gentlemen, here is a
13 copy. It's SF 048.
14 MR. SANDS: Do you want to mark it?
15 MR. LIVINGSTON: Yeah, [Exhibit G](#).
16 (Deposition [Exhibit G](#) was marked.)
17 Q. (BY MR. LIVINGSTON) Here's [Exhibit G](#).
18 Why don't you take a quick look at that, and I'm
19 going to ask you: Does that appear, based on your
20 review of your report, which I assumed you looked at
21 before you came here today, and what's in there, and
22 tell me if you agree that they're consistent or if
23 State Farm got it wrong in terms of what you told
24 them.
25 (A pause occurred in the proceedings.)

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1 A. Okay.
2 Q. Having reviewed that, does it appear to
3 you that State Farm accurately conveyed the
4 information that you conveyed about what could be
5 removed from the premises?
6 A. The way I'm reading this is there was a --
7 he just misunderstood what we were talking about.
8 Q. He didn't write it down properly, in other
9 words?
10 A. That's what I would say. Well, it's
11 not -- he could have been talking about one thing
12 and I'm talking another thing, so it could have been
13 a misunderstanding as well.
14 Q. Or he's recording what he wants to hear?
15 You don't know?
16 A. I don't know.
17 Q. Well, why don't you underline the parts
18 that you think he got wrong that are inconsistent
19 with what you were really trying to convey.
20 (A pause occurred in the proceedings.)
21 MR. SANDS: Sam, could you hand me the
22 file he brought today with him on the Gholson
23 project.
24 MR. LIVINGSTON: The actual file?
25 MR. SANDS: Yeah, the one he brought with

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1 him today.
2 MR. LIVINGSTON: I think everything's in
3 here, is my understanding.
4 Is that right?
5 MR. ECKERT: Andre --
6 THE DEPONENT: That's mine or yours, but
7 those are mine.
8 MR. LIVINGSTON: Why don't we --
9 MR. ECKERT: That's [Exhibit B](#).
10 MR. SANDS: The Gholson file is all I
11 wanted to see.
12 Q. (BY MR. LIVINGSTON) The Gholson file copy
13 is all this, right?
14 A. Right.
15 Q. This is [Exhibit B](#). This is what he wants.
16 MR. SANDS: Yeah.
17 A. There's a couple things missing in there.
18 Q. (BY MR. LIVINGSTON) If there are, we
19 ought to stick them in there because I thought I
20 clipped them together so we wouldn't have this
21 problem.
22 A. You did clip it together. Okay, I was
23 looking for these pieces.
24 (A pause occurred in the proceedings.)
25 A. Okay.

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1 Q. Thank you.
2 A. I think that's about right.
3 Q. So you believe this third sentence where
4 it says, "The only area that the acoustic ceiling is
5 disturbed is in the lower level where the fire
6 department opened the ceiling to check for fire
7 penetration," "The only area," you think that's not
8 correct?
9 A. It's not correct.
10 Q. And they were there themselves and saw
11 that, didn't they, what areas had been opened in the
12 ceiling? That wasn't something that you, as the
13 testing guy, would have exclusive knowledge of?
14 A. I would guess so.
15 Q. So you disagree that -- so basically you
16 think that the level of contamination was more
17 extensive than is reflected in this third sentence
18 where they say, "The only areas affected," and
19 started limiting the areas, correct?
20 A. I would agree.
21 Q. You think it was more extensive than what
22 he's portraying in his file?
23 A. Yeah.
24 Q. Then it says, "The contents on the upper
25 level except for the children's bedroom and the

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1 bathrooms can all be removed and cleaned by
2 restoration contractor." You underlined
3 "Restoration contractor"?
4 A. I did.
5 Q. In what respect?
6 A. The restoration contractor can't do
7 anything associated with asbestos if they're not
8 trained workers, and so everything that I had
9 referred to required asbestos-trained workers.
10 Q. Not just a restoration contractor?
11 A. No.
12 Q. So he got that wrong?
13 A. I would say so.
14 Q. So where he says, "The contents except for
15 the children's bedroom and bathroom can be cleaned
16 by regular restoration guys," he got that wrong too?
17 A. Say that again.
18 Q. To the extent that he said that stuff
19 needs to be cleaned in areas other than the
20 children's bedroom and the contents in the bathroom,
21 that that could be done by anybody in the
22 restoration business, he got that wrong; is that
23 right?
24 MR. SANDS: Objection to the form. That's
25 not what it says.

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1 MR. LIVINGSTON: I'll rephrase it.
2 Q. (BY MR. LIVINGSTON) To the extent that
3 this report indicates or this note indicates "The
4 contents on the upper level except for children's
5 bedroom and the bathroom can be removed and cleaned
6 by a restoration contractor," he got that wrong
7 because you believe that whatever cleaning should
8 take place should only have been with a certified
9 asbestos contractor?
10 A. Yes.
11 Q. The next sentence says, "The contents of
12 the office in the lower level can also be cleaned by
13 the restoration contractor," and you underlined "By
14 the restoration contractor"?
15 A. Yeah.
16 Q. And why? Again, explain.
17 A. Because, again, if it's asbestos
18 contaminated, you use an abatement contractor, you
19 know. If the restoration contractor has trained
20 asbestos workers and they're, you know, a certified
21 abatement contractor in Colorado, they can do it.
22 Q. But that would make them an abatement
23 contractor?
24 A. That would make them an abatement
25 contractor as well.

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1 Q. And then he says -- and then the final
2 sentence -- you have an underlined word in the last
3 sentence, which says, "The restoration contractor
4 will need to cover all carpet with poly before
5 removing the contents he is able to remove." Do you
6 see that?
7 A. Yes.
8 Q. You underlined "Restoration contractor."
9 Explain why you underlined that word.
10 A. Well, again, I was referring to an
11 abatement contractor doing that. That's abatement
12 work.
13 Q. And you think that was clarified -- and
14 you believed, when you talked to him, you made it
15 clear this is a major asbestos spill, and he would
16 know all that as somebody in this business?
17 A. Yes.
18 Q. That was your understanding?
19 A. Yes, it was.
20 Q. And people who are in this business who
21 know the term "major spill" know that that means
22 that pretty much everything from that point has to
23 be handled by certified asbestos guys, right?
24 A. Yes.
25 Q. And do you remember using that word during

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1 that discussion one way or the other?
2 A. Which word?
3 Q. "Major spill."
4 A. Again, I don't recall specifically saying,
5 "Major spill" in our conversation.
6 Q. But you knew that somebody who was trained
7 in the industry such as Mr. Thomsen, who is
8 apparently later trying to do his own abatement
9 project, he knew over 1 percent meant major spill?
10 MR. SANDS: Objection to the form of the
11 question.
12 A. Over 1 percent does not mean major spill.
13 It's the quantity, total quantity of material
14 disturbed.
15 Q. (BY MR. LIVINGSTON) And it was pretty
16 clear in this case that the material that was
17 asbestos contaminated was the ceiling material,
18 right?
19 A. Yes.
20 Q. And anybody who has training in this area
21 saw that that was laying all over the floor, wasn't
22 it?
23 A. Yes.
24 Q. Pretty much throughout the house?
25 A. In areas, yes.

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1 Q. So that means that, when you, coming in
2 there as the asbestos tester, comes back and says,
3 "You know what? That stuff that's on the ceiling is
4 asbestos containing," that somebody who is looking
5 at this site, walking around in it, knows that this
6 thing is contaminated pretty much everywhere because
7 of the material that was from the ceiling being on
8 the floors?
9 A. You make that assumption.
10 Q. Here's another document which is State
11 Farm 047 which we'll mark as [Exhibit H](#).
12 (Deposition [Exhibit H](#) was marked.)
13 Q. Do you see where it talks about -- I'm
14 just going to ask him about this thing here where it
15 says, "Tim, I agree with your analysis on the
16 asbestos remediation proposal."
17 MR. SANDS: Can I see it, please.
18 MR. LIVINGSTON: Sure.
19 (A pause occurred in the proceedings.)
20 Q. (BY MR. LIVINGSTON) Do you see where, on
21 [Exhibit H](#), where it's highlighted here "Tim," comma,
22 "I agree with your analysis on asbestos remediation
23 protocol." Do you see that?
24 A. I do.
25 Q. Did you prepare a protocol for State Farm

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1 to use?
2 A. I did not.
3 Q. Do you know who of the licensed asbestos
4 contractor variety ever put together a remediation
5 protocol for this project?
6 A. I don't know.
7 Q. Do you know who of the licensed project
8 designer variety ever sanctioned a remediation
9 protocol in this case?
10 A. I don't know.
11 Q. Is this what Tom was talking about where
12 Tim Thomsen of State Farm is running around acting
13 as the remediation contractor?
14 MR. SANDS: Objection to the form of the
15 question.
16 A. I don't know what he was referring to,
17 but -- I don't know what Tom was referring to.
18 Q. (BY MR. LIVINGSTON) When you said from
19 your earlier discussions with Tom Bain that you came
20 across with the idea that he was -- that the problem
21 here was that he said, "Hey, Tim Thomsen's running
22 around acting as the abatement contractor after this
23 loss" -- that's basically what was conveyed to you?
24 A. As the project manager, yes.
25 Q. Project manager?

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1 A. Right.
2 Q. And does this, what's referred to here,
3 does that appear consistent with what Tom Bain was
4 referring to when he had that discussion with you?
5 Does that appear consistent with these types of
6 remarks about Tim's remediation protocol?
7 MR. SANDS: Object to the form of the
8 question.
9 A. Yes.
10 Q. (BY MR. LIVINGSTON) And did Tom seem
11 disturbed that Tim Thomsen was running around acting
12 as abatement project manager?
13 MR. SANDS: Objection to the form of the
14 question.
15 A. I don't know. I don't know how Tom
16 particularly felt. I knew that he felt it was --
17 that -- well, in this particular case, again, at
18 that time, I didn't know what Tim's certifications
19 were, but it seemed to me that Tom thought that it
20 was wrong.
21 Q. (BY MR. LIVINGSTON) Tom Bain?
22 A. Tom Bain.
23 Q. The government? The government thought
24 that State Farm's approach to this scenario, once
25 they learned that this was an asbestos-contaminated

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1 site, was wrong?
2 MR. SANDS: Objection to the form of the
3 question.
4 Q. (BY MR. LIVINGSTON) That's what you
5 learned from talking to the investigator?
6 MR. SANDS: Object to the form.
7 Q. (BY MR. LIVINGSTON) Isn't that what your
8 impression was?
9 MR. SANDS: Objection to the form of the
10 question.
11 A. It was my impression.
12 Q. (BY MR. LIVINGSTON) And you would agree
13 with the government?
14 A. I would.
15 Q. You would not agree with insurance
16 companies exposing people, both workers and
17 insurers, to this level of risk so that they can try
18 to clean things that they know ought to be disposed
19 of, right? You would not agree with that, would
20 you?
21 A. Say that again.
22 MR. LIVINGSTON: Would you please read it
23 back.
24 (The last question was read back.)
25 A. No, I would not agree.

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1 Q. Would you want State Farm as your
2 insurance company, given what you've seen here about
3 how they handle these claims with asbestos? Would
4 you be running out to your agent to get more State
5 Farm insurance?
6 MR. ECKERT: Objection.
7 MR. SANDS: Objection, that's not
8 reasonably calculated to lead to the discovery of
9 admissible evidence.
10 Q. (BY MR. LIVINGSTON) I mean, how do you
11 feel about State Farm?
12 MR. SANDS: I'm not done yet. And it's
13 argumentative with the witness.
14 Q. (BY MR. LIVINGSTON) How do you feel about
15 State Farm, after you see what they did to these
16 people?
17 MR. SANDS: Object to the form.
18 Q. (BY MR. LIVINGSTON) They're not a good
19 insurance company, are they?
20 MR. ECKERT: Objection.
21 MR. SANDS: Objection to the form of the
22 question.
23 MR. ECKERT: You don't have to answer
24 that.
25 Q. (BY MR. LIVINGSTON) How do you feel after

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1 seeing -- I mean, does it appear to you that this
2 insurance company has blatantly disregarded the
3 rules in terms of how they dealt with these people
4 in terms of this asbestos issue following this loss?
5 A. This is my experience: I had just started
6 working with State Farm. In the industry, there has
7 been a problem in this insurance industry for quite
8 some time that nothing was being complied with at
9 all. It was my experience that State Farm, from
10 what I could see, was one of the first insurance
11 companies that was proactively attempting to even do
12 it right. Most don't do any of this.
13 Q. What do you think about them going in
14 there and then trying to --
15 MR. SANDS: I'm not sure he was done with
16 his answer.
17 Q. (BY MR. LIVINGSTON) Were you done?
18 A. I wasn't quite done, no. So from my
19 standpoint, I felt State Farm was trying to put a
20 first effort, a first foot forward in the industry
21 that has been neglecting this for decades that I've
22 been involved.
23 Q. (BY MR. LIVINGSTON) So how did they do a
24 good job in putting their first foot forward when
25 they knew it was a contaminated site and they had

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1 all the materials removed by unqualified people and
2 tried to return them back to the insured?
3 MR. SANDS: Objection to the form of the
4 question.
5 A. The good foot forward was even testing.
6 Q. (BY MR. LIVINGSTON) Well, I mean, they
7 had -- this is the law, right? This had to be done?
8 A. Yes, and it hasn't -- usually not been
9 done in the past. It's kind of a problem that the
10 health officials in the state are well aware of and
11 have been actively, for a long time, trying to get
12 their arms around, so in most cases, nothing even
13 got tested. Nothing even happened.
14 Q. Well, how do you know if you've only been
15 involved in six of these things?
16 A. Because you can talk to the state health
17 officials and they'll concur.
18 Q. Well, in terms of this particular case,
19 once State Farm realized that there was a major
20 asbestos fill, did they handle this right or not?
21 A. They made some errors.
22 Q. And they put people at risk, didn't they?
23 A. Ultimately, people were put in positions
24 that they probably shouldn't have been put in.
25 Q. As far as whether or not State Farm

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1 handled this from -- and do you think that the
2 economics of the situation influenced how it was
3 handled? In other words, the insurance company was
4 trying to simply get things cleaned at risk to
5 people, as opposed to replacing them? Do you think
6 that influenced the situation?
7 MR. SANDS: Objection to the form of the
8 question, lack of foundation.
9 A. I can't guess on their motive.
10 Q. (BY MR. LIVINGSTON) And while all this is
11 happening, you're not sending this report to these
12 people, right? They're having to rely exclusively
13 upon this insurance company that you yourself say
14 typically doesn't do anything?
15 MR. SANDS: Objection to the form of the
16 question.
17 Q. (BY MR. LIVINGSTON) So what position are
18 you in when you're sending reports to insurance
19 companies that say typically don't do anything?
20 A. What do you mean what position am I in?
21 I'm not sure I understand your question.
22 Q. My question is, if you believe that
23 insurance companies typically don't do anything, why
24 do you feel like you can just do these reports, send
25 them to the insurance company, and walk away without

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1 warning people about what's going on?
2 A. I had, on occasion, inquired as to what
3 happens after I give them the report because, after
4 I give them the report, I don't hear back from them.
5 The explanation was that they have abatement
6 contractors that they are -- that they work with and
7 that they get the abatement contractor involved and,
8 of course, those are professionals as well, and they
9 rely upon the abatement contractors to help them.
10 Q. Well, how about in a scenario like this,
11 when the insurance company is itself, as Tom Bain is
12 putting it, stepping in that role as the abatement
13 contractor?
14 A. Well, they're not acting as the abatement
15 contractor. They're project-managing it, but
16 they're not doing the abatement.
17 Q. Okay, they're project-managing it. Well,
18 if somebody steps up and says, "I'm going to
19 project-manage it," shouldn't they do it right, or
20 shouldn't they be in the position to say, "We're
21 going to do this right or we're going to refer you
22 to somebody else, but we're not going to sit here
23 and kind of do it halfway in between to save money"?
24 Is that how you feel about that?
25 A. With regard to the abatement contractor?

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1 Q. With regard to the abatement design and
2 management of the project. I mean, that's the
3 problem here. You're saying, "Well, you know, the
4 insurance company may or may not do something," and
5 I say, "How do you do those in other cases?" You
6 say, "Well, I hear that they give it their own
7 contractor."
8 Doesn't it seem to you that, if the
9 insurance company's going to throw its hat in the
10 ring and try to manage these things, they ought to
11 do it according to the law?
12 A. Yes, they should.
13 Q. And they didn't do that here, did they?
14 MR. SANDS: Object to the form of the
15 question.
16 A. They didn't do everything right.
17 Q. (BY MR. LIVINGSTON) Right, and as opposed
18 to having this scenario where you're getting all the
19 information sent directly to you, they should have
20 either given it to this guy, Andy Gholson, and said,
21 "Go get your abatement contractor and your abatement
22 project manager and deal with this," or they should
23 have dealt with it themselves, but they can't kind
24 of have it both ways where they're taking the
25 information and not dealing with the property?

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1 Would you agree with me on that?
2 A. They should have -- I mean, they clearly
3 should have, with the help of the abatement
4 contractor -- and the abatement contractors have a
5 great deal of expertise as well -- they should have
6 been able to put together an abatement plan to clean
7 it up properly.
8 Q. But, you know, with you sending all the
9 information to the insurance company and assuming
10 that you don't have the obligation to send it to
11 these people, don't you think whoever gets the
12 information, i.e., your report, has an obligation to
13 deal with it properly?
14 A. They do.
15 Q. And in this case, that didn't occur, did
16 it?
17 MR. SANDS: Objection to the form of the
18 question.
19 A. There were errors that were made.
20 Q. (BY MR. LIVINGSTON) And you know the
21 results of this. Would you agree with me that
22 hundreds and hundreds of personal-property items
23 were returned that were still contaminated? Did you
24 know that?
25 A. I've become aware.

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1 Q. And they then contaminated the rental
2 house they were living in. Did you become aware of
3 that? Did Tom tell you that?
4 A. No.
5 Q. Given the way this was handled, does that
6 surprise you?
7 MR. SANDS: Object to the form of the
8 question.
9 A. If you take contaminated items from one
10 place to another, you can expect contamination in
11 the other place as well.
12 Q. (BY MR. LIVINGSTON) And then these people
13 had to go about doing a further remediation process
14 in their rental home. Did you know that?
15 A. No, I did not know that.
16 Q. These processes are pretty time-consuming
17 for the consumers, aren't they?
18 A. Yes.
19 Q. And that's nothing that you would want to
20 go through, is it?
21 A. No.
22 Q. Have things delivered back that are still
23 contaminated, then contaminating your new place, and
24 then having to decontaminate that? That's pretty
25 stressful, isn't it?

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1 A. Yes.
2 Q. In going through this whole process of
3 having these goods taken away and being returned
4 with still having asbestos, that would be stressful
5 for you and your family, wouldn't it?
6 A. Yes.
7 Q. And this whole process, I imagine, from
8 your perspective, was stressful for the Gholsons,
9 wasn't it, having to go through all this with their
10 insurance company?
11 A. I would think that any catastrophe would
12 be stressful.
13 Q. I'm talking about the entire asbestos
14 issue.
15 A. Yes, including the asbestos, everything
16 would be stressful.
17 Q. And the fact that this contaminated
18 material was removed improperly and then returned
19 back contaminated, that was adding to an already-bad
20 situation, at least from your perspective, isn't it?
21 A. Yeah.
22 Q. It wasn't the way to treat these people,
23 was it?
24 A. No.
25 Q. Let's take a look at a document here

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1 called "State Farm Asbestos Concerns."
2 Excuse me. I just need to staple this
3 together.
4 (A pause occurred in the proceedings.)
5 (Deposition [Exhibit](#) I was marked.)
6 Q. Can you take a look at this document,
7 [Exhibit](#) I. I just want to walk through some of the
8 areas that I have highlighted to get your
9 understanding as to whether you would agree or
10 disagree if a certain observation's made in this
11 package.
12 THE VIDEOGRAPHER: Your mike.
13 MR. LIVINGSTON: I'm sorry.
14 Q. (BY MR. LIVINGSTON) The first thing I
15 wanted to direct you to is -- do you see page 2
16 here?
17 A. Okay.
18 Q. Do you see this last sentence at the
19 bottom where it says, "Mr." -- it says, "Andre
20 Gonzalez, licensed asbestos tester and owner of
21 Foothills Environmental, Inc. Mr. Thomsen should
22 have informed the Gholsons, as the property owner,
23 they needed to obtain a qualified asbestos
24 evaluation and professional advice from a
25 State-licensed inspector of their choice." Do you

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1 see that? It goes on to the next page.
2 A. Let's see. It says, starting with a --
3 okay, that's the beginning of that sentence. Okay,
4 "Mr. Thomsen" --
5 (A pause occurred in the proceedings.)
6 A. Okay.
7 Q. Do you agree with that statement, that
8 after your report was given to the insurance
9 company, that they should have given it to the
10 Gholsons so they could figure out what's going on
11 here?
12 A. Oh, they should -- I would assume that
13 they would inform the Gholsons. I thought that they
14 were informed.
15 Q. Did you know that they didn't send the
16 report until February 12th, which was, what, four or
17 five days after everything had been removed?
18 A. I was unaware of when things were relayed
19 to the Gholsons. I was kind of out of the picture
20 at that time.
21 Q. Does that seem appropriate, given what
22 we've discussed today, that they would take all the
23 materials and items out of the building on
24 February 8th, 2007, and then give these people the
25 report on February 12th, send it in the mail? And I

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1 believe it was received on February 14th. Do you
2 believe that's appropriate in terms of how to handle
3 a situation like this?
4 A. If that was the only communication -- and
5 I don't know if that's -- if they had verbal
6 communication or if that was just a written
7 communication. I don't know what they did, but,
8 regardless, I believe they should inform the
9 Gholsons.
10 Q. And this report, on page 3, at the
11 bottom -- see where it says, "Colorado Regulation
12 8-B clearly classifies a major spill 32 square
13 foot"? Blah, blah, blah. You agree with all that?
14 This is the criteria, and this is, in fact, a major
15 spill, correct?
16 A. It was a major spill, yes.
17 Q. And then the next page talks about your
18 report and says, "Mr. Gonzalez calls for discarding
19 soft goods and handling asbestos operations with
20 asbestos-trained workers following OSHA and Colorado
21 Regulation 8 criteria." Do you see that?
22 A. I do.
23 Q. Do you agree that that's a fair statement
24 of what your report called for?
25 A. I did say that, I believe, yeah.

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1 Q. So that's a fair -- when someone else
2 reads this report, they come to the same conclusion
3 that you've testified about today, that you're
4 telling State Farm don't, you know -- "You've got to
5 discard this stuff or clean it with
6 asbestos-certified guys"?
7 A. Right.
8 Q. And not this process that they actually
9 used, correct?
10 A. Yes.
11 THE VIDEOGRAPHER: Ten minutes before tape
12 change.
13 Q. (BY MR. LIVINGSTON) What's friable
14 asbestos?
15 A. Friable.
16 Q. Friable?
17 A. Friable is basically two categories. It's
18 nonfriable or friable. Friable is defined as you
19 can pulverize or crumble by hand pressure.
20 Q. And was there a friable asbestos at this
21 premises?
22 A. Yes.
23 Q. And would foot traffic in the premises
24 churn up friable asbestos particles?
25 A. The asbestos that had been on the ground,

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1 yeah. If you're walking on it, it could turn it up
2 more.
3 Q. Do you see in this report where it talks
4 about the foot traffic? It says, "The foot traffic
5 alone was sufficient to track and disseminate
6 asbestos fibers throughout the house." Do you see
7 that statement?
8 A. I do.
9 Q. Do you agree with that statement?
10 A. It can.
11 Q. Do you have any reason to disagree with
12 that statement?
13 A. No, I don't.
14 Q. Page 5, please. Look at the very bottom
15 of this, where it says, "Later in the day." See
16 that paragraph, "On February 7th, 2007, Mr. Aumiller
17 contacted Mr. Gholson to discuss asbestos"? Do you
18 see that?
19 A. I do.
20 Q. Do you see where it says, "Mr. Aumiller
21 reportedly indicated the house was asbestos
22 contaminated but suggested the asbestos was no big
23 deal"?
24 A. Yes.
25 Q. "And that we can take care of it," do you

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1 see that?
2 A. I do.
3 Q. Do you think that's an appropriate thing
4 to say in this setting?
5 A. No.
6 Q. Did you become aware that that had taken
7 place through any other means other than me reading
8 this to you today? In other words, was that
9 something Tom had discussed with you?
10 A. No.
11 Q. Do you think that the restoration
12 contractor that State Farm recommended on the day of
13 the fire, that being American Restoration, do you
14 think they ought to be making statements like that?
15 A. They're not an abatement contractor. I
16 don't think so.
17 Q. Then it goes -- it says, "Mr. Aumiller
18 went on to explain that only a couple of rooms in
19 the house were contaminated." Do you see that?
20 A. I do.
21 Q. Assuming that Mr. Aumiller actually said
22 that, would that be a true statement?
23 A. No.
24 Q. So, in fact, if Mr. Aumiller did say that
25 only a couple rooms were contaminated, that would

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1 have been a lie, wouldn't it?
2 A. It would have been inaccurate.
3 Q. And then it says, "Mr. Aumiller stated
4 that asbestos was only on the floors and did not get
5 into the closets." Do you see that?
6 A. I do.
7 Q. Is that accurate, assuming Mr. Aumiller
8 actually said that?
9 A. That would be inaccurate. You can't state
10 that based on my report.
11 Q. And then it says, "Mr. Aumiller then
12 indicated that Mr. Thomsen told him that he could
13 lay plastic sheeting on the floor and cover the
14 damaged sheetrock to safely remove the contents of
15 the noncontaminated rooms." Do you see that?
16 A. I see that.
17 Q. Assuming that Mr. Thomsen said that, do
18 you believe -- and by the way, that is similar to
19 what you heard from Tom Bain about what was going on
20 with Mr. Thomsen at the scene? He was saying, "Just
21 roll out this plastic in this area"?
22 A. Yes.
23 Q. And this would not be a safe practice,
24 correct, at least as described in this report?
25 A. That wouldn't be appropriate, no.

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1 Q. And you didn't understand that Mr. Thomsen
2 was having that done with regard to all of these
3 items that we looked at in that inventory?
4 A. I did not know it was all of those items.
5 Again, I thought it was for personal -- very
6 personal possessions, and a few.
7 Q. And a few, and if you would have known
8 that Mr. Tim Thomsen was really talking about just
9 getting all their stuff out of there, with the
10 exception of two rooms --
11 A. Yeah.
12 Q. -- you never would have approved that --
13 A. No.
14 Q. -- would you?
15 A. I would not have.
16 Q. And he misled you when he suggested that
17 what he was doing was just those collectibles or --
18 what was the word?
19 A. I'm not going to say "misled" because
20 maybe he misunderstood.
21 Q. Well, let's put it this way: What he told
22 you was that they were going to go look at
23 collectible items and that's what the purpose of
24 rolling out this plastic was, right?
25 A. Yes.

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1 Q. And then it turns out later that it was
2 far more than that, right?
3 A. Yes.
4 Q. So you didn't get an accurate picture when
5 you had this discussion with Mr. Tim Thomsen of
6 State Farm, did you?
7 A. I didn't understand that -- well, it
8 wasn't my understanding that they were going to take
9 out more than a few very personal possessions.
10 Q. You would never have recommended that
11 under the circumstances if you knew what they were
12 doing with just boxes and boxes and boxes?
13 A. No, I would not have recommended that.
14 Q. Because that was against the law?
15 THE VIDEOGRAPHER: Five minutes before
16 tape change.
17 A. It's inappropriate.
18 Q. (BY MR. LIVINGSTON) Then see the next
19 sentence that says, going from page 5 to page 6,
20 "Mr. Aumiller said he would send one of his workers
21 the next morning to set up a plastic sheeting,"
22 paren, "Thursday, February 8th," "so that they could
23 move the contents out for cleaning on Friday.
24 Mr. Aumiller stressed the contents removal operation
25 had to happen quickly to save the property." Do you

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1 see that?
2 A. I do.
3 Q. Do you think that something like this
4 should be rushed, or do you believe they should do
5 something like get a permit?
6 A. Well, it doesn't -- yeah, you get a permit
7 by an abatement contractor, but rushing it doesn't
8 save anything. The contamination has already
9 occurred.
10 Q. So does this make sense to you, for
11 someone in this industry, to hear that the
12 contractor that State Farm has recommended and
13 brought to the scene is saying, "We've got to do
14 this quickly. Let's get this taken care of," or
15 does this seem to you to be maybe a little suspect,
16 that they're trying to get things out of here before
17 somebody figures out what they're doing?
18 MR. SANDS: Object to the form of the
19 question.
20 A. I don't know motive. I don't know motive.
21 I read it as somebody who doesn't understand
22 asbestos regulation.
23 Q. (BY MR. LIVINGSTON) But at this point, to
24 take anything out or to start doing any type of
25 abatement, they should have had a permit, shouldn't

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1 they?
2 A. They needed to make notification to the
3 State and get an emergency permit.
4 Q. And they didn't do any of that here, did
5 they?
6 A. No. Well, I don't believe they did. I
7 mean, I don't know.
8 Q. How would you feel if your insurance
9 company decided "Let's take care of this quickly and
10 not report it to the State and not get a permit and
11 just get rid of the stuff today and tomorrow"? How
12 would you feel if they did that to you after a fire?
13 A. I wouldn't be happy.
14 Q. Would you be stressed?
15 A. Well, I'd be -- yeah.
16 Q. Would you be angry?
17 A. I'd be angry.
18 Q. You wouldn't let them do that to you,
19 would you?
20 A. No.
21 Q. Because you know better?
22 A. Yes.
23 Q. Do you see the next paragraph here where
24 it starts "On Thursday, February 8, workers from
25 American Restoration applied plastic sheeting to

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1 cover damaged ceiling in the area that tested
2 positive for 3 percent asbestos concentration"? You
3 disagree with that method? They should have done
4 something more than just apply plastic sheeting to
5 cover the ceiling?
6 A. Yes.
7 Q. They did not -- see where it goes on and
8 says, "They didn't wear any PPEs or have proper OSHA
9 training"? Do you see that?
10 A. I do.
11 Q. You would not have condoned any of that if
12 you would have known what was going on?
13 A. No.
14 Q. And do you see these photographs that kind
15 of show what they did in the margins?
16 A. Yes.
17 Q. Does that look like a properly contained
18 asbestos area to you that was set up by Mr. Thomsen
19 and Mr. Aumiller?
20 A. I mean, the pictures are difficult to see,
21 but it doesn't look like they've covered -- no, it
22 doesn't look proper. I can't really -- I'm sure you
23 have better photos.
24 Q. Do you see where it says -- let's see.
25 This sentence goes on, or I guess it's

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1 "February 9th, 2007, American Restoration managers
2 showed up at the Gholson property with four workers
3 and a 20-foot box truck. American Restoration crew
4 entered the asbestos-contaminated home without
5 proper PPE. Crew inventoried items in various areas
6 of the home, excluding the second-floor children's
7 room and the first-floor family room. Members of
8 the crew staged the furniture and boxed content
9 items on plastic-covered family-room floor before
10 loading. As workers loaded the box truck, they had
11 to walk through the asbestos-laden and mud-room
12 debris and tracked the material into the plastic
13 floor covering in the mud room." Would you agree
14 with that type of approach to remediation?
15 A. No.
16 THE VIDEOGRAPHER: Would this be a good
17 time to change the tape?
18 MR. LIVINGSTON: Yeah.
19 THE VIDEOGRAPHER: Off the record at 4:26
20 for end of tape change. This is the end of Tape 1.
21 (A break was taken.)
22 THE VIDEOGRAPHER: We're back on the
23 record at 4:32. This is Tape 2 of the videotaped
24 testimony of Andre Gonzalez.
25 Q. (BY MR. LIVINGSTON) Let's talk about the

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1 other project. Was it South Dale Court?
2 A. Yeah, I think that's right, South Dale
3 Court.
4 Q. And did you do testing at that location?
5 A. I did.
6 Q. Did you act in any capacity other than a
7 tester, such as a certified asbestos project manager
8 or designer or any capacity like that?
9 A. Not initially, no, but down the road we
10 did, later on in the project.
11 Q. And at the beginning of the project, did
12 you show test results that there was no asbestos
13 contamination?
14 A. I did.
15 Q. And then you haven't actually found that
16 those test results were incorrect?
17 A. I did not.
18 Q. Did you ever -- well, you said later you
19 became a certified asbestos designer for the
20 project?
21 A. Yeah, but my test results were still
22 accurate. Nothing was wrong with my test results.
23 Q. Was there asbestos on that premises or
24 not?
25 A. Yes, there was.

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1 Q. Did you detect it?
2 A. Not in the tests that we did, no.
3 Q. Why not?
4 A. Because the materials we sampled -- the
5 lab did not detect any asbestos in them.
6 Q. Why did you sample areas that didn't
7 detect the problem?
8 A. We were in -- I went the first day to
9 respond and I was asked to sample the drywall in the
10 basement of one of the units. It's a four-unit
11 building and I was asked to sample the drywall in
12 the basement of the unit where the fire occurred.
13 Q. Were you asked to sample anything else?
14 A. No.
15 Q. So you were directed where you would test?
16 A. I was asked to sample the drywall in the
17 basement and that's what I did.
18 Q. And who told you to do that?
19 A. I believe Tim Thomsen.
20 Q. And did Tim Thomsen tell you to undertake
21 a thorough testing of the entire damaged area to
22 determine whether there was asbestos throughout the
23 project?
24 A. He asked me to sample the drywall in the
25 basement.

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1 Q. Did he ask you to sample the entire
2 project to determine if it was contaminated?
3 A. That day, no.
4 Q. Did he want from you in any way testing to
5 determine whether that was a dangerous site or not?
6 A. He wanted me to test the drywall and
7 that's what I tested.
8 Q. Is it your role as a Colorado State-
9 certified tester to test where you think things
10 should be tested or where you're directed to test?
11 A. The clients always ask us to sample
12 particular materials. It's not uncommon, and so, in
13 this particular case, he was asking me to sample the
14 drywall, so I did.
15 Q. Did you want to sample anything more?
16 A. Honestly, I sampled the drywall and left.
17 I didn't wander through the place, no.
18 Q. Did you know that State Farm then
19 projected to those insureds that there was no
20 asbestos contamination at the site?
21 A. At the time, I did not, but I had written
22 in my report that the material did not contain
23 asbestos.
24 Q. What did you learn later besides "At the
25 time, I did not"?

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1 A. That other materials did contain asbestos.
2 Q. And did you learn that the insurance
3 company was trying to use your report to bolster the
4 notion that there was no need for asbestos
5 abatement?
6 MR. SANDS: Objection to the form of the
7 question.
8 A. What they were using my report for I'm not
9 too sure.
10 Q. (BY MR. LIVINGSTON) Have you learned
11 through your discussions with Mr. Bain that the
12 insurance company was trying to use your test
13 results to get out of doing an asbestos abatement on
14 that project?
15 A. I don't recall having any conversation
16 with Mr. Bain on that property.
17 Q. Have you become aware through any means
18 that the insurance company was trying to use your
19 test results that were taken of that wall in the
20 basement to assert that that project needed no
21 further abatement?
22 A. Related to that wall, maybe.
23 Q. I'm talking about the project.
24 A. No, I did not know what they were using it
25 for beyond that material I sampled.

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1 Q. Did you later learn that the building was
2 hot for asbestos?
3 A. Yes.
4 Q. And how did you learn that?
5 A. Basically it had come up then that Bill
6 McLoughlin, the Public Adjuster, had been hired
7 by -- I'm not too sure if it was by the building
8 owner who hired him, but that additional testing had
9 been done by an additional consulting firm and they
10 had found asbestos.
11 Q. Do you believe there was asbestos there?
12 A. Yes.
13 Q. Do you believe it would have been
14 appropriate to have your report used as a basis to
15 say that building did not need abatement?
16 A. Well, to use my report to conclude that
17 all materials, all other materials in the property,
18 did not contain asbestos would have been incorrect
19 because my report specifically applied to the
20 drywall in the basement of that unit.
21 Q. How many samples did you take?
22 A. I took three.
23 Q. And where was the asbestos located that
24 was determined to be in existence and a hazard?
25 A. They did find asbestos in the drywall on

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1 the main floor, I believe, and on the second floor
2 of some of the units, or all of the units.
3 Q. Could you see that those areas were
4 damaged when you went into the building?
5 A. When I went in, it was dark and I was
6 accompanying -- the fire department was going in at
7 the same time, and they were going straight into the
8 basement. I followed them straight in. I didn't
9 really look around, to tell you the truth. I just
10 went and sampled what was asked of me and I sampled
11 the basement drywall.
12 Q. If you were asked to take those three
13 single samples which proved negative and then you
14 learned that your report was being used by State
15 Farm to foster the notion that that site did not
16 need abatement and it was clean, would you be upset
17 with State Farm?
18 MR. SANDS: Objection to the form of the
19 question.
20 A. I wouldn't be upset, but I would be
21 telling them that you can't use my report to
22 represent all of the other drywall because it's not
23 representative of everything else. It was
24 representative of the basement drywall.
25 Q. (BY MR. LIVINGSTON) Do you think that

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1 Mr. McLoughlin was right in requesting further
2 samples to determine that this was an abatement
3 issue that needed to be addressed seriously?
4 A. He was correct to sample the other
5 materials.
6 Q. And he did that, ultimately, and it proved
7 that that was a safety issue that was well addressed
8 by him, correct? This really was a real live hazard
9 that you had not determined; fair?
10 A. I had not determined it to be -- yeah, I
11 had not sampled anything that contained asbestos, so
12 additional testing was revealing, um-hum.
13 Q. Do you think that it's proper for someone
14 in your role to be taking directions from the
15 insurance company about which areas to test so that
16 then a report can be generated saying, "There was no
17 discernible asbestos here"?
18 A. I don't think it's inappropriate because,
19 again, I am not in the insurance business so I don't
20 know what is covered and what is not covered and
21 whether they are then going to direct the homeowner
22 "Hey, you're responsible for everything else. We're
23 responsible for this." I don't know that stuff, so
24 it isn't inappropriate.
25 Q. But, given the fact that State Farm --

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1 were you aware that your abatement -- that you took
2 over a certain -- well, you took over the
3 management, I guess you said?
4 A. We got further involved in the project to
5 do a more detailed assessment.
6 Q. And who paid for that?
7 A. I'd probably have to look at the invoice.
8 I don't recall.
9 Q. State Farm?
10 A. I think so.
11 Q. Yeah, so how do you feel about that
12 scenario? You go in there and you do these three
13 samples in an area directed to you by State Farm and
14 generate a report that says, "There's no asbestos
15 hazard." Then Mr. McLoughlin comes in and hires
16 people to test the whole building and all of a
17 sudden you end up with an abatement project being
18 sponsored by State Farm. Does that seem right to
19 you, that things worked out that way?
20 A. Well, it was appropriate that the other
21 materials were tested because they were damaged and
22 they should have been tested.
23 Q. They should have been?
24 A. And so it was good that they were tested
25 and identified.

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1 Q. They should have been tested, so why
2 didn't State Farm tell you to test them?
3 A. Again, I don't understand the insurance
4 business and what is covered and what is not
5 covered. They're asking me to go downstairs and
6 sample the drywall, which was directly involved in
7 the fire and burned, so I sampled it.
8 Q. Well, let's talk about your role, though,
9 and how you feel about this overall. Do you feel
10 that you were used by going in there and saying,
11 "Just test this one area"? Then come back and say,
12 "No abatement issues," and then it turns out the
13 building was hot and you wind up abating it? Don't
14 you feel that's an ethical issue?
15 A. I don't feel used. I don't feel used. I
16 feel that, if they were trying to convey that all
17 drywall in the property was, therefore, not
18 asbestos-containing, that's a misrepresentation of
19 what my report clearly stated, that it was a
20 basement drywall that I sampled and that was it.
21 Q. Do you think that it would have been fair
22 after you got done with doing your samples for State
23 Farm to say, "We've got Andre Gonzalez' report here
24 and there's no need to abate this building"? Do you
25 think that would be fair for State Farm to say under

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1 the circumstances?
2 A. It wouldn't have been accurate.
3 Q. Well, do you know that they did that?
4 They took your data that they told you to collect
5 and then used it to say, "There's no problem here.
6 Let's just move ahead with getting everything out,"
7 just like they did to the Gholsons, until the Public
8 Adjuster showed up? Did you know that?
9 A. I became aware since.
10 Q. Does that seem a little sneaky to you?
11 MR. SANDS: Objection to the form of the
12 question.
13 Q. (BY MR. LIVINGSTON) Sneaky?
14 A. Well, I guess it's sneaky if they knew the
15 basement drywall was going to be negative. Then
16 it's sneaky, but how would they have known that?
17 So, I mean, was that lucky?
18 Q. (BY MR. LIVINGSTON) How about the part
19 that you're not instructed to testify to anything
20 but that and then they're walking around with a
21 clean report based only on selective sampling?
22 Doesn't that seem sneaky to you?
23 MR. SANDS: Objection to the form of the
24 question.
25 A. Well, again, it's misrepresentation of my

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1 report because I sampled the basement drywall.
2 Q. (BY MR. LIVINGSTON) Do you think they
3 should have commissioned you to test more things?
4 A. I think other things should have been
5 tested, yeah.
6 Q. So you think State Farm is wrong in
7 limiting your testing only to that area?
8 MR. SANDS: Objection to the form of the
9 question.
10 A. Again, whether they're requiring the
11 homeowner to do that other testing or they're only
12 responsible for what burned, I don't know, and so,
13 if they're turning around and telling the homeowner
14 that they need to do that test, that's appropriate,
15 but if they're using my report to say that the whole
16 place is nonasbestos-containing, that's a
17 misrepresentation of my report.
18 Q. (BY MR. LIVINGSTON) And with regard to
19 this issue that took place on that South Dale
20 address, did you have a confrontation with
21 Mr. Whitworth of State Farm about the issue of
22 people being exposed?
23 A. A confrontation?
24 Q. Yeah, in other words, did he say to you
25 "You're going to be responsible" when this issue

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1 came up about people being exposed to asbestos? He
2 accused you and said, "You're responsible for this,"
3 and then you responded by saying, "No, I tested
4 exactly where you told me to test"? Do you remember
5 that dialogue ensuing?
6 A. I remember the dialogue. I didn't
7 remember it was a confrontation, but I don't
8 recall --
9 Q. You don't think that's --
10 A. I don't recall that it was a
11 confrontation. I recall that it was a conversation
12 amongst many people.
13 Q. And what did Mr. Whitworth say to you
14 during that conversation? Did he say that "You're
15 going to be responsible for" --
16 A. He didn't say -- I don't recall him saying
17 I was going to be responsible, no.
18 Q. What did he say?
19 A. He had said something to the effect of --
20 well, I can't put words in his mouth, but I do
21 recall saying at that time that "I was asked to
22 sample the drywall in the basement and that's what I
23 sampled, and that was my scope, as directed by the
24 State Farm representative, so that's what I did."
25 Q. And did he say you would have some kind of

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1 liability associated with people being contaminated?
2 A. You know, I don't recall specifically what
3 he said.
4 Q. Give me your general recollection.
5 A. I thought he said something that this
6 is -- and there was a State health official there at
7 the time, that I recall, and Bill was there as well,
8 and some other folks, but I recall him speaking in
9 general, I thought, something to the effect of "We
10 hired," you know, "Foothills Environmental to test
11 for us," and I don't think that I recall it as
12 anything more than that.
13 Q. When he said, "We hired them to test for
14 us," was he trying to convey the impression that "We
15 gave you card blanche to figure out if this is a
16 contaminated site or not and you should have been
17 more thorough"? Did you gather that from the
18 comment he made?
19 A. Possibly, which is the reason why I said,
20 "I specifically sampled the drywall, which I was
21 directed to sample."
22 Q. So when you were standing there among
23 these public health officials and others,
24 Mr. Whitworth is portraying that you're the one who
25 is supposed to go in there and, at your discretion,

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1 test this entire site, and then you're saying, "I'm
2 just following your directions to test in certain
3 limited areas"? Fair?
4 A. That's fair.
5 Q. And do you feel that's deceptive, for the
6 insurance company to be saying, "Hey, here's our guy
7 right here. He's figuring out -- he's got card
8 blanche. He's figuring out if this is a
9 contaminated site," and then you're sitting there
10 going "No, I just did exactly what you said"? Do
11 you think that can bring about unfortunate results
12 when that type of approach is taken?
13 MR. SANDS: Objection to the form of the
14 question, if you're done. I think, you know --
15 well, objection to the form.
16 A. Yeah, can you rephrase or --
17 Q. (BY MR. LIVINGSTON) Yeah, the question
18 is, given what you heard that day when you're
19 sitting in front of these public health officials
20 and others when Mr. Whitworth is saying, "Hey, Andre
21 Gonzalez has got card blanche to tell us if this
22 project needs to be abated," and then you're sitting
23 there saying, "No, I'm just abating exactly what
24 areas you tell me to abate," do you think that that
25 approach can lead to problems?

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1 MR. SANDS: Objection to the form of the
2 question.
3 A. The way you're saying it, yeah, that could
4 lead to problems.
5 Q. (BY MR. LIVINGSTON) How about in that
6 particular case? Do you agree that what Whitworth
7 said was -- apparently what's he's saying to the
8 public and the state health officials is
9 inconsistent with your understanding of what you
10 were supposed to be doing there, right?
11 MR. SANDS: Objection to the form of the
12 question.
13 A. What was specifically said by him or
14 alluded to by him, I can't speak for it, but I felt
15 at that time -- I stated that "No, no, no, I was
16 directed to sample the drywall in the basement and
17 that's what I did."
18 Q. (BY MR. LIVINGSTON) Now, this is what I'm
19 getting at, though: He's sitting there telling
20 these public officials, who are now conducting an
21 investigation about what happened -- he's saying,
22 "This guy, Andre Gonzalez, he's responsible for
23 figuring out what to test or not." That's what he
24 was telling them, which you knew not to be true?
25 MR. SANDS: Objection to the form of the

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1 question.
2 A. But Mr. Whitworth never gave me any
3 directions in the first place. Tim Thomsen gave me
4 directions and Mr. Whitworth shouldn't have had any
5 idea what the direction was given to me in the first
6 place.
7 Q. (BY MR. LIVINGSTON) Well, is it fair to
8 say that State Farm management was projecting to
9 these health officials in the context of a
10 government investigation that you were supposed to
11 decide the scope of what was tested, whereas you
12 yourself didn't believe that to be the case?
13 A. No, if that's what he was referring -- if
14 that's what he was -- the point that he was trying
15 to make, that's why I said, "No, no, no. I sampled
16 the drywall in the basement as directed."
17 Q. So is it fair to say that Mr. Whitworth
18 was misrepresenting the scope of your role when he
19 was responding to this government investigation?
20 MR. SANDS: Objection to the form.
21 Q. (BY MR. LIVINGSTON) And you corrected him
22 immediately?
23 MR. SANDS: Objection to the form of the
24 question.
25 A. Maybe he thought that's actually what

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1 Foothills' role should be, but that wasn't what
2 ultimately was directed to me, so maybe that's what
3 he expected to happen, but that wasn't what was
4 directed to me.
5 Q. (BY MR. LIVINGSTON) So he at least, as
6 far as you knew, the statement he made to the
7 government during this investigation about how all
8 this asbestos stuff was being handled, Whitworth is
9 misrepresenting what you at least believed to be the
10 truth?
11 A. Well --
12 MR. SANDS: Objection to the form of the
13 question.
14 A. What he said was not accurate.
15 Q. (BY MR. LIVINGSTON) What has ever
16 happened with regard to the investigation that took
17 place by the government regarding the Gholsons'
18 property? Have you heard anything?
19 A. I have not.
20 Q. How about the investigation that the
21 government was involved in regarding what occurred
22 at this South Lane property? Or excuse me. Is it
23 South Dale?
24 A. Colonial Manor Apartments or something
25 like that.

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1 Q. Colonial Manor?
2 A. I have heard nothing.
3 Q. So you don't know what the outcome has
4 been of either of those government investigations?
5 A. I do not.
6 Q. And your files that you brought with you
7 today --
8 A. Yes.
9 Q. -- for those other items --
10 A. Um-hum.
11 Q. -- why are they in two separate -- one is
12 for your testing? One is the for the abatement
13 activities?
14 A. Right.
15 Q. And which one is the testing?
16 A. Well, they're both testing. This one is
17 an air test at the conclusion of the clean-up of the
18 project and this one was an investigation, the more
19 detailed -- everything else that went into it.
20 Q. So let's mark -- we'll mark this first
21 folder that you have -- you said this is about air
22 testing?
23 A. Put them in sequence. This is the
24 inspection and characterization of the property.
25 (Deposition [Exhibit J](#) was marked.)

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1 Q. And that's [Exhibit J](#), is what you just
2 described?
3 A. Yes.
4 MR. LIVINGSTON: And, Mary, I'll put a
5 clip on there to try and keep this together for you
6 because we're not going to go through it. I just
7 want to get these marked, so J, and then --
8 (Deposition [Exhibit K](#) was marked.)
9 Q. -- K is?
10 A. K is a final air clearance testing.
11 Q. And did you do any air testing at all at
12 the Gholsons' property?
13 A. No.
14 Q. Should air testing have been done at some
15 time prior to having those personal property items
16 removed?
17 A. Not necessarily prior; we knew that there
18 was already a spill. It wasn't necessary to do it
19 prior, but ultimately you have to do a clearance.
20 Q. And do you know the government never
21 allowed a clearance in this particular case, given
22 the outcome after this material was returned by
23 American Restoration?
24 A. Why would the government not allow a
25 clearance?

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1 Q. Because it kept testing positive.
2 A. Inside the residence?
3 Q. Inside the rental residence.
4 A. Oh, the rental residence?
5 Q. Yeah.
6 A. I was unaware.
7 Q. Is it known in the insurance industry --
8 or excuse me -- is it known in your industry that,
9 when you do try and clean something and return it,
10 it's got to be tested before it's returned? Is that
11 known, why they understood?
12 A. Not tested; that's not true. The cleaning
13 decontamination method is basically you Wet-Wipe or
14 Heap-A-Vacuum and get all gross debris off, and it
15 should be dust free and clean, but it's a visual
16 assessment as well, so you don't test every item.
17 Q. And is there testing in any form other
18 than, you know, visual inspection of the materials
19 that are going to be returned?
20 A. You can do other types of tests as well,
21 yes.
22 Q. Should that be done?
23 A. In certain cases, it's a good idea.
24 Q. And do you know in this case that at least
25 prior to returning -- or at the time State Farm

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1 returned all the stuff to the Gholsons, they didn't
2 do any testing?
3 A. I was not aware.
4 Q. Would that be a good practice?
5 A. To test nothing? Again, depending on the
6 items, some items you really don't need to test, but
7 if it was like a soft item that you wanted to
8 salvage, absolutely, you would have to test.
9 Q. Do you feel good about an insurance
10 company giving back lots of kids' clothes and
11 maternity clothes to the Gholsons under these
12 circumstances that were never tested for asbestos
13 and were still contaminated when they were returned?
14 Do you feel good about that?
15 MR. SANDS: Objection to the form of the
16 question, foundation.
17 A. Well, no.
18 Q. (BY MR. LIVINGSTON) That's the wrong
19 thing to do, isn't it?
20 A. Yeah.
21 Q. It violates just about every rule you know
22 of under this Section 8, doesn't it, what occurred
23 here of taking this stuff out and not following the
24 rules of how it was taken out, not getting it
25 cleaned by certified people, getting it back without

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1 testing, and still having it contaminated? That
2 violates just about every rule there is?
3 A. There is definitely violations.
4 Q. Are you still doing business with State
5 Farm?
6 A. Yeah, we have.
7 Q. When was the last time you did business
8 with them?
9 A. Actually, I think we just got something
10 within -- within this week I think we just did
11 something.
12 Q. Are you a preferred service provider for
13 State Farm?
14 A. I don't know if we're a preferred or just
15 one of the consultants they use. I really don't
16 know how to characterize our relationship.
17 Q. Do you own the company?
18 A. I do.
19 Q. Do you have any contracts with them about
20 pricing?
21 A. No.
22 Q. Or any predetermined agreements?
23 A. No.
24 Q. So you've never signed a contract, a
25 preferred service provider contract?

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1 A. No, I have not.
2 Q. And there's no agreed-upon billing rates
3 or anything along those lines?
4 A. No.
5 MR. LIVINGSTON: Okay, that's all I have.
6 EXAMINATION
7 BY MR. SANDS:
8 Q. Mr. Gonzalez, good afternoon, sir. My
9 name is Jon Sands. We met for the first time today
10 in the hallway before we began.
11 A. Right.
12 Q. I represent State Farm, and I'm going to
13 try to be as brief and as organized as I can here.
14 I may bounce around a little bit just because I'm
15 following up on Mr. Livingston's questions.
16 A. Sure.
17 Q. Do you need a break at this point?
18 A. No, I'm okay.
19 Q. Or do you want to move forward? Okay,
20 thank you, sir. First of all, I want to talk about
21 the extent of your -- Mr. Livingston, during his
22 questioning, sir, in fact, one of the last questions
23 he asked you was about, quote, State Farm returning
24 or an insurance company returning children's
25 clothing to the Gholsons.

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1 You have no personal knowledge whether
2 State Farm or anybody from State Farm did or didn't
3 do anything like that, do you, sir? You don't know
4 whether --
5 A. I don't have any knowledge of it, no.
6 Q. And you don't know from your own personal
7 knowledge what Mr. Thomsen did or did not do except
8 when you were there with him, right?
9 A. I was never there with him at that
10 property. I don't think we were ever there at the
11 same time.
12 Q. So you have no personal knowledge of what
13 Mr. Thomsen himself did with respect to the Gholson
14 claim, do you, sir, except to the extent you had
15 communications with him?
16 A. Communications with him and then
17 ultimately with the State.
18 Q. Well, what you heard from the State --
19 A. Yeah.
20 Q. -- is what they told you, not the result
21 of your personal knowledge; isn't that right? Let
22 me make the question a little more clear for you.
23 A. Yeah.
24 Q. When I use the term "personal knowledge,"
25 I'm referring to what you know yourself from your

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1 own experience, like what you saw, heard, did
2 yourself. What you heard from someone else I'm not
3 considering to be personal knowledge for purposes of
4 my question, okay?
5 A. Okay.
6 Q. Do you understand now my question?
7 A. (Deponent nodded.)
8 Q. So what you heard from -- and we'll get
9 back to that -- what you heard from the State, for
10 purposes of my question, would not be your personal
11 knowledge. What I want to know is what you know,
12 sir, from your own eyewitness, personal
13 observations, what Mr. Thomsen did or did not do on
14 the Gholson claim. What do you know yourself?
15 A. Well, let me -- what I know is that he
16 called me up and asked me to come up and do an
17 inspection at the Gholsons' residence. After we got
18 the results, we had a conversation where I indicated
19 that, you know, there was asbestos-containing
20 material, and then subsequently we had a
21 conversation, you know, in which he had asked about
22 the very personal possessions that the Gholsons
23 really would have liked to have gotten and "How can
24 we get those out? Because they want those
25 particular items," and that was the conversation

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1 that we had had, so that's what I understood that he
2 was working on, trying to help the process move
3 forward.
4 Q. So you did not meet with Mr. Thomsen?
5 Well, did you ever meet personally, face to face,
6 with Mr. Thomsen regarding the Gholson claim?
7 A. Well, no, we never met at the Gholsons'
8 property, no.
9 Q. So you didn't meet Mr. Thomsen or you
10 didn't observe him do anything at the Gholson
11 property yourself, right?
12 A. I didn't observe him do -- we never saw
13 each other at the Gholsons' property at all.
14 Q. Did you ever see each other somewhere else
15 relating to the Gholson claim where you talked about
16 the Gholson claim?
17 A. Yeah, we had talked about it because other
18 times we had run into each other at different
19 claims.
20 Q. Can you tell me: Did you ever observe
21 personally what -- well, when you say "Other
22 claims," identify those. What other claims do you
23 recall?
24 A. Well, I can't specifically tell you, you
25 know, which claim it was, but there was, you know,

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1 times when we had seen each other and he, by this
2 process -- or by this time, you know, this -- Bill
3 McLoughlin had gotten involved and I think it was
4 about the time of the Colonial Manor project that we
5 had had a discussion about the Gholsons as well.
6 Q. All I'm really getting at, Mr. Gonzalez,
7 sir, is that you don't know yourself what
8 Mr. Thomsen or didn't do except when you either
9 spoke to him or --
10 A. That is correct.
11 Q. That's it, right? That's all you really
12 know on the Gholson claim?
13 A. That's right.
14 Q. About what Mr. Thomsen did when you talked
15 to him, of your own knowledge?
16 A. That's correct.
17 Q. Now, I want to talk to you a little bit
18 about your conversations with the gentleman from the
19 Colorado Department of Health, if you'll remind me
20 of his name.
21 A. Tom Bain.
22 Q. Tom Bain. Thank you. How many times did
23 you talk to Mr. Bain about the Gholson fire?
24 A. Two times, I think.
25 Q. Did you keep any notes of those

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1 conversations?
2 A. I did not.
3 Q. Do you remember when you spoke with
4 Mr. Bain about the Gholson fire the first time?
5 A. You know what? I honestly don't really
6 know the dates. It was quite a while after the
7 project had taken place. I'd say six months.
8 Q. And when you say, "The project" --
9 A. After I had done the inspection.
10 Q. After you had done your inspection?
11 A. Right.
12 Q. Did he call you or did you call him?
13 A. He called me.
14 Q. And the first time you spoke to him do you
15 remember what the purpose of the call was?
16 A. Yes, he had called because he was asking
17 me questions about the inspection report and about
18 the activities that had taken place there for
19 cleaning up the spill.
20 Q. Did he tell you what it was that prompted
21 him to get involved and to be calling you?
22 A. He indicated that he had had conversations
23 with Bill McLoughlin.
24 Q. And did he tell you what Mr. McLoughlin
25 had told him?

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1 A. Well, he didn't get into a whole lot of
2 detail. He was really asking me questions. He
3 didn't tell me anything about what he had in
4 particular, so he was really just asking questions.
5 Q. To the best of your recollection, can you
6 tell us today -- and we'll certainly speak to
7 Mr. Bain -- but can you tell me what specific words
8 he used in describing what he -- how he was
9 characterizing what he believed to be Mr. Thomsen's
10 activities at the site?
11 A. Regarding Mr. Thomsen, he made the --
12 basically he was indicating that it was his belief
13 that Mr. Thomsen was acting in the capacity of a
14 project designer on the project.
15 Q. And did he tell you why that was his
16 belief?
17 A. He didn't tell me why.
18 Q. Did he infer that Mr. McLoughlin had made
19 that suggestion to him?
20 A. No.
21 Q. Do you know whether he had spoken with
22 Mr. Thomsen? Did he tell you one way or another
23 whether he had?
24 A. I do not know at that point in time
25 whether he had or had not talked to Mr. Thomsen.

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1 Q. And during that first telephone
2 conversation, did he tell you what it was
3 Mr. Thomsen was doing that led him to the belief
4 that Mr. Thomsen was acting as the project designer?
5 A. In that conversation, he indicated that
6 the direction was for doing the clean-up and taking
7 care of the contamination and the spill, was what he
8 understood Mr. Thomsen was doing.
9 Q. And did that include the abatement of the
10 premises and any work on the personal property?
11 A. Yes.
12 Q. Now, you said you spoke with him another
13 time. Can you tell us, please, sir, about the
14 second conversation you had with Mr. Bain.
15 A. When I had talked with Mr. Bain initially,
16 he had told me about the laying of the poly on the
17 ground and on the floors and that that was the
18 extent of what they had done for setting up a
19 containment, and I said -- and he said, "Did you
20 authorize this?" And I said, "No, of course, I
21 didn't authorize that," and so then, in my second
22 conversation -- well, what had happened was I'd had
23 another conversation with Tim Thomsen in which Tim
24 had reminded me that I had told them "Go ahead and
25 put poly down on the floors," so that they could go

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1 in and get these very personal possessions, and so
2 then I realized that what Tom Bain was referring to
3 was this plastic that I had told him to go ahead and
4 put down, but I was either misunderstanding or Tom
5 was misunderstanding what the purpose of that was.
6 Q. Tom Bain?
7 A. Tom Bain was misunderstanding that plastic
8 was for the intent of getting those very personal
9 possessions out. It was not considered a
10 containment or part of any type of containment
11 whatsoever. It was really designed to control
12 walking over asbestos debris and, in other words,
13 they could make a direct path to where they needed
14 to go to and without tracking asbestos debris, and
15 so I called back Tom to say, "Tom, indeed, now I
16 understand what you're talking about. It's just a
17 layer of poly on the floor."
18 I had given him permission to put poly on
19 the floor and that is so -- that is correct, that I
20 had told Tim that that was what they should do in
21 order to get the personal possessions out.
22 Q. Now, that leads me to your first visit to
23 the property on February 5 of 2007. I think you
24 testified, if I remember correctly, sir, that you
25 met on the property with Mr. Gholson?

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1 A. He was on the property when I was there.
2 I introduced myself.
3 Q. So he was -- well, was there anyone else
4 present besides Mr. Gholson when you arrived?
5 A. I don't recall anybody else being there.
6 Q. And what was he doing on the property?
7 A. He was in what would have been their
8 garage area. Basically, I think he was kind of
9 trying to pick through to see if there was anything
10 salvageable.
11 Q. Now, did you then walk through other parts
12 of the residence with Mr. Gholson?
13 A. I don't recall Mr. Gholson walking through
14 the residence with me. I think I just went into the
15 residence and did my job.
16 Q. Do you recall seeing Mr. Gholson walk
17 through the property?
18 A. No.
19 Q. Now, sir, Mr. Livingston had asked you if
20 you would, in your profession, have made the
21 presumption that the Gholson residence was at least
22 potentially a major spill area just based upon the
23 age of the residence. Do you remember that
24 testimony?
25 A. Yeah.

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1 Q. And when you went to the home, did you
2 assume that it could be a major spill area?
3 A. I made no assumption until I had sample
4 results, and I knew that, if some of this material
5 was going to come back positive, then we had a
6 situation, but I didn't make any type of assumption
7 at that time.
8 Q. Did you know the age of the home when
9 you --
10 A. I did not.
11 Q. When did you learn about the age of the
12 home?
13 A. I still don't know if I know the age of
14 the home.
15 Q. Did you have any discussions with
16 Mr. Gholson about what you were there to do?
17 A. Just the one when I showed up; he was
18 expecting an asbestos -- he said, "Oh, you're the
19 asbestos inspector?" And I introduced myself as
20 such.
21 Q. Did he tell you how he knew that an
22 asbestos inspector would be coming to the home?
23 A. From -- well, he didn't tell me how he
24 knew.
25 Q. But he was expecting you?

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1 A. Yes.
2 Q. Some asbestos inspector?
3 A. Yes, he wasn't surprised to see me there.
4 Q. Did you tell him at all what you were
5 going to do, what your work would encompass, or what
6 the purpose of your work was?
7 A. I don't really think I specifically told
8 him anything more. He knew that I was there to test
9 for asbestos, but I didn't really discuss anything
10 more than that.
11 Q. Now, when you walked -- well, did you walk
12 through the home?
13 A. I did.
14 Q. And you took samples, of course?
15 A. I did.
16 Q. Did you wear any protective clothing
17 yourself?
18 A. No, I did not.
19 Q. Is it your practice to wear protective
20 clothing when you go to fire scenes?
21 A. Sometimes we do. Sometimes we don't. It
22 depends on the circumstance.
23 Q. How do you decide whether to wear
24 protective clothing or to not wear protective
25 clothing when you go to take samples at a fire

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1 scene?
2 A. Depending on how bad the damage is and
3 what I perceived to be a personal health risk, I
4 will make a decision to put a respirator and a suit
5 on.
6 Q. Did you have one in your car that day or
7 your truck when you went there?
8 A. I always have one in my kit.
9 Q. At any time during your inspection of the
10 Gholson residence, did you decide to put it on?
11 A. I did not.
12 Q. And tell us why not, please.
13 A. The floor was saturated with water still
14 from the firefighting when I got there, so that the
15 materials were all pretty wet, and that's a good
16 dust suppressant by itself, so I carefully walked in
17 there, and I knew I wasn't going to be there very
18 long. I went to the locations where I could grab
19 some samples and I took some samples of the
20 materials and then I left, so . . .
21 Q. Would you look at [Exhibit](#) -- it's this one
22 right here. Is that I?
23 A. I.
24 Q. And I'd like for you, please, sir, to
25 direct your attention to page 3 of [Exhibit](#) I.

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1 A. Yes.
2 Q. And there's a big, gray paragraph in the
3 middle, and then I want to refer to the very next
4 paragraph, and this is -- by the way, do you know
5 who wrote this, [Exhibit](#) I? Do you know who --
6 A. Bill McLoughlin.
7 Q. At least it says it's prepared by Public
8 Adjusters of Colorado, correct?
9 A. Okay, yeah.
10 Q. Now, that paragraph on page 3 I wanted to
11 look at. It begins, quote, Mr. Gonzalez arrived at
12 the loss during the afternoon of February 5, 2007,
13 and Mr. Gholson greeted Mr. Gonzalez outside the
14 damaged home." So far, accurate, correct?
15 A. Yes.
16 Q. The next sentence reads: "Mr. Gonzalez
17 neither informed Mr. Gholson of the presumed major
18 asbestos spill hazard nor properly advised of
19 potential health risks." First of all, was this, at
20 the time you got there, on February 5, 2007, a
21 presumed major asbestos spill hazard? Did you think
22 of it in those terms?
23 A. Until you have sample results, you don't
24 know if you have asbestos, so, I mean, it's a
25 possible spill, but until you have results, you

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1 don't know.
2 Q. Did you, before you went to this scene,
3 did you advise Mr. Thomsen that it was a potential
4 presumed major asbestos spill hazard?
5 A. Prior to arriving there?
6 Q. Yes, sir.
7 A. No, I -- I hadn't seen the place.
8 Q. And when you got there and saw it, you
9 still didn't presume that it was a major asbestos
10 spill hazard, correct, when you first got there and
11 saw it?
12 A. Not when I first -- well, no, because I
13 didn't have any test results yet.
14 Q. And so it's safe to say that, given your
15 answers here, until you got your test results, you
16 did not -- well, you never presumed that it was a
17 major asbestos spill hazard? Is that a fair
18 statement, making a presumption --
19 A. Yeah.
20 Q. Let me withdraw that.
21 A. I did not jump to a conclusion before I
22 had sample results.
23 Q. Now, the author of [Exhibit](#) I goes on to
24 state that you, again -- I think he read this
25 earlier -- "did not properly advise Mr. Gholson of

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1 potential health risks." Now, let me ask you a
2 foundation question here: When you got to this
3 site, did you believe that there were potential
4 health risks at the site?
5 A. If I had felt that it was a health risk, a
6 significant health risk to myself, I would have put
7 a respirator and suit on, so I made an assessment of
8 the place at the time and felt that I was -- I was
9 comfortable going in and doing my work, which was
10 very limited and very brief, without any respiratory
11 protection on, or PPE.
12 Q. If you had believed when you got there
13 that there was a potential health risk, would you
14 have told Mr. Gholson about that?
15 A. Well, if I recognized that there was a
16 for-sure health risk, I would have told everybody to
17 stay out.
18 Q. Including Mr. Thomsen?
19 A. Yes.
20 Q. Mr. Gholson?
21 A. (Deponent nodded.)
22 Q. Correct?
23 A. Yeah.
24 Q. Well, the author of this [Exhibit](#) I goes on
25 to state that "Mr. Gonzalez did not use appropriate

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1 PPE," and you understand what "PPE" means?
2 A. I do.
3 Q. What does that mean?
4 A. Personal protective equipment.
5 Q. "Or utilize sensible entry procedures."
6 Do you know what he's referring to there, "Sensible
7 entry procedures"?
8 A. Well, I don't know what "Sensible entry
9 procedures" are.
10 Q. Do you feel that your procedures were
11 sensible while you were there?
12 A. It's a personal judgment. I was very
13 comfortable myself doing what I did. I've been
14 doing this a long time. I did not believe I was
15 going to be adversely exposing myself doing the job
16 that I needed to do, and so that was my personal
17 decision.
18 Q. The next sentence here in this [Exhibit](#) I
19 in that paragraph reads, quote, Once again," comma,
20 "an experienced professional gave Mr. Gholson the
21 false sense that the asbestos issue was not of a
22 serious concern." Do you believe that, by your
23 conduct, when you were there that day, February 5,
24 2007, that you gave Mr. Gholson a false sense that
25 the asbestos issue was not of a serious concern?

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1 A. I wouldn't jump to that conclusion. I
2 don't think I did that.
3 Q. You don't think you gave him the false
4 sense -- a false sense? Is that what you're saying?
5 A. I had no conversation besides an
6 introduction with Mr. Gholson and a few, you know,
7 casual tidbits to say, but -- so I don't believe
8 that I gave him any indication that there was no
9 concern here. I would never have said that.
10 Q. Well, I didn't write this either, but it
11 seems to be that what the author of this document is
12 saying is that, because you didn't use appropriate
13 personal protective equipment or, in the author's
14 words, "utilize sensible entry procedures," because
15 of your conduct, as opposed to your words, you gave
16 Mr. Gholson the, quote, false sense that the
17 asbestos issue was not of a serious concern, close
18 quote. Now, sir, do you believe that, by your
19 conduct, you gave Mr. Gholson a false sense that the
20 asbestos issue was not of a serious concern?
21 A. No, I don't think I did that.
22 Q. And as an experienced -- and you're
23 referred to in here as an "experienced
24 professional" -- you would agree that, as of
25 February 5, 2007, you were an experienced

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1 professional?
2 A. Yes.
3 Q. And that your profession is to do asbestos
4 inspection?
5 A. That's one of the things we do.
6 Q. One of the things that you do, certainly?
7 A. (Deponent nodded.)
8 Q. And, again, if you had believed that there
9 was a -- that the asbestos issue was of a serious
10 health concern that day when you were there, as you
11 indicated earlier, you would have informed
12 Mr. Gholson and you would have informed Mr. Thomsen
13 and everyone to stay away? Is that what you were
14 saying?
15 A. Well, it was my understanding everybody
16 was staying away until we got the results.
17 Q. And what was the basis for that
18 understanding?
19 A. You can't do anything until we have the
20 results. How can you proceed? You don't know how
21 to proceed until we have the results. That was the
22 intent of the testing and why they wanted it done so
23 quickly.
24 Q. Now, sir, you just said that it was your
25 understanding that everyone was staying away until

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1 you got the results, but Mr. Gholson was there that
2 day, right?
3 A. Yes, he was.
4 Q. He was at the premises?
5 A. He was in the garage area. There wasn't
6 with a garage anymore.
7 Q. The next sentence here in this document is
8 that, quote, We," presumably meaning Public
9 Adjusters of Colorado, LLC, "believe Mr. Gonzalez
10 was working solely on behalf of State Farm's
11 beneficial interests." Do you agree with that
12 statement?
13 A. No, I don't agree with that statement.
14 Q. Did you do your report -- did you do your
15 work as an independent professional?
16 A. Well, I was trying to make an assessment
17 of if asbestos was present or not, so I was just
18 collecting samples to determine whether materials
19 that had been damaged as a result of the fire
20 contained asbestos, so to say that I was just doing
21 it on behalf of State Farm, I don't think that's
22 necessarily true.
23 Q. Well, let's clarify that. You say, "Not
24 necessarily true." Are you saying that -- are you
25 suggesting that maybe you were working solely on

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1 behalf of State Farm's beneficial interests? I'm
2 not sure what that phrase means.
3 A. I'm not either.
4 Q. Well, let me ask you this: Did the
5 results of your inspection which are contained in
6 your report, [Exhibit B](#), were those dictated by State
7 Farm?
8 A. Results?
9 Q. Yes.
10 A. Well, no.
11 Q. You're a scientist, effectively, aren't
12 you?
13 A. Yes.
14 Q. And you reached your own scientific
15 conclusions independent of any input of anyone else,
16 other than the lab; isn't that right?
17 A. Yes.
18 Q. And you simply took the samples, created a
19 chain of custody, submitted the samples to the lab,
20 and then reported the results, correct?
21 A. That's correct.
22 Q. And no one told you what the results
23 should be or shouldn't be, correct?
24 A. No.
25 Q. Is that a correct statement?

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1 A. That's a correct statement.
2 Q. And you were asked questions by
3 Mr. Livingston regarding comments made by
4 Mr. Aumiller, at least that are reported to have
5 been made, by whoever wrote this, [Exhibit I](#). You
6 have no knowledge one way or another what
7 Mr. Aumiller said to Mr. Gholson, do you?
8 A. I have no knowledge.
9 Q. Would you look at page -- again, of
10 [Exhibit I](#) -- back on page 5, please, sir. I'm
11 sorry. The second paragraph that begins with the
12 word "After," do you see that the author of this
13 report refers to your report as a, quote,
14 Deceptively worded asbestos testing report"?
15 A. I see that.
16 Q. And have you seen this before today?
17 A. I don't know.
18 Q. When might you have seen it, if you would
19 have?
20 MR. LIVINGSTON: Objection, calls for
21 speculation.
22 A. I think, well, I saw something fairly
23 similar in the original --
24 Q. (BY MR. SANDS) In the lawsuit that you
25 got served with?

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1 A. In the lawsuit, there was an awful lot of
2 stuff similar to this that said that.
3 Q. I understand what you're saying now.
4 Well, in all events, do you believe that your report
5 was deceptively worded?
6 A. Not at all.
7 Q. Now, if you look over on page 6, which is
8 the next page of [Exhibit I](#), there is a statement in
9 here that -- it's the last sentence in that first
10 paragraph of that page, quote, We believe
11 Mr. Gonzalez watered down the asbestos testing
12 report so Mr. Thomsen and Mr. Aumiller could
13 orchestrate this deception." My question for you,
14 sir, with that introduction, is: Did you water down
15 your asbestos testing report?
16 A. No.
17 Q. If you would look on page 7, sir, there is
18 a statement in the second paragraph on that page, if
19 you look -- it begins with the word "Under."
20 A. Um-hum, "Under."
21 Q. "Under the best circumstances"?
22 A. Yes.
23 Q. "Utilizing proper handling techniques,
24 only the hard goods could have been cleaned and
25 deemed asbestos free." I recall you testifying

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1 earlier in this deposition, sir, that soft goods
2 could be cleaned.
3 A. That is correct. You can. It's
4 cumbersome, but if you have something that is of
5 significant value and -- it could be salvaged, but
6 it is a cumbersome, difficult process.
7 Q. And I think what you said earlier is that
8 it needs to be performed by someone who is qualified
9 to do so?
10 A. Correct.
11 Q. Now, there's a sentence that begins with
12 the -- well, it states, sir, in that same paragraph,
13 quote, The 'soft goods'" -- and "soft goods" is in
14 quotes -- "could not be cleaned by any real method
15 as there is no known certified process to clean
16 fabric items." Is that a true statement?
17 A. Well, there is no certified process, but
18 there's not a certified process to clean hard items
19 either.
20 Q. In other words --
21 A. You don't certify -- there's nothing in
22 the regulation for certifying something clean.
23 Q. And that was going to be my next question:
24 There's no certified process under Reg 8 for
25 cleaning hard goods either, is there?

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1 A. Not a certified process, no.
2 Q. So you don't know what he's referring to
3 by the term "Certified process" in here?
4 A. I do not know.
5 Q. And do you know whether a certified
6 process exists under any regulation or statute that
7 applies to asbestos? Well, let me rephrase the
8 question. Does the regulation use the term
9 "Certified process" as it relates to cleaning either
10 hard or soft goods?
11 A. Not that I'm aware of.
12 Q. Mr. -- well, I should say the author of
13 [Exhibit I](#) then goes on to state that "The soft goods
14 should have been discarded by licensed asbestos
15 workers, using sound techniques, as reported
16 correctly in Mr. Gonzalez's asbestos testing
17 report," and then he goes on to state, quote, This
18 is one of the few points Mr. Gonzalez correctly
19 states." Do you think that -- do you agree that
20 that was one of the few points you correctly stated
21 in your report?
22 MR. LIVINGSTON: Objection, vague.
23 A. I think my report was completely accurate,
24 so I would concur.
25 Q. (BY MR. SANDS) You would concur that --

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1 A. That soft items, disposing of soft items,
2 is appropriate to do.
3 Q. Do you think that other items were
4 correctly stated in your report? I think you just
5 said everything in your report you believe was
6 correctly stated.
7 A. I believe my report was accurate, yeah.
8 Q. Would you go to page 8, please, in this
9 [Exhibit I](#), the big paragraph that begins "On
10 Saturday." I'd like to direct your attention, sir,
11 to the paragraph that begins "The mailing envelope."
12 It's about halfway down on the right.
13 A. Okay, I got it.
14 Q. I'm going to read this: "The mailing
15 envelope for this report was postmarked February 14,
16 2007, which raises several possible concerns." Now,
17 what I'll tell you, for foundation purposes, is that
18 earlier in that same paragraph the author of this
19 report is talking about the date that your report
20 was mailed to the Gholsons, okay?
21 A. Okay.
22 Q. That's the context of this, so we don't
23 have to go through the whole thing. The concerns
24 that are stated here -- do you see that there are
25 paragraphs numbered? One was "The mailing of this

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1 report held up for management review
2 considerations." You don't have any knowledge one
3 way or another about that, correct?
4 A. Are you referring to State Farm
5 management?
6 Q. Well, I don't know what it's referring to.
7 A. I don't know either. No, I have no idea
8 if it was held up or not.
9 Q. Now, here, these are the two more
10 pertinent questions. Paragraph No. 2: "Did
11 Mr. Gonzalez actually issue a full asbestos testing
12 report on February 7, 2007?" Now, my question for
13 you, sir, is, I guess, that question: Did you issue
14 a full asbestos testing report on February 7, 2007?
15 A. Well, the report that I submitted was the
16 only report I submitted.
17 Q. Now, paragraph No. 3: "Was Mr. Gonzalez'
18 report redacted, revised, and/or reissued to cover
19 up a major spill declaration?" Do you see that
20 question being raised there?
21 A. I do.
22 Q. And the question is: Was your report
23 redacted, revised, and/or reissued to cover up a
24 major spill declaration?
25 A. No.

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1 Q. Now, if you would, I'm going to put in
2 front of you Exhibit -- what's been marked as --
3 that's not it -- as Exhibit B -- is your file with
4 your February 7 report in it. Do you have another
5 copy of your February 7 report that you can look on?
6 (A pause occurred in the proceedings.)
7 Q. I want to work off the one that was marked
8 today, so what I want to do is look at -- do you
9 have Exhibit B in front of you, which is, again,
10 your February 7 report?
11 A. I do.
12 Q. The sample description and location table,
13 do you see that on the first page?
14 A. I do.
15 Q. What does "ND" stand for?
16 A. Nondetected.
17 Q. So there are two areas where you took
18 samples where there were 3 percent asbestos
19 analytical results, correct?
20 A. Correct.
21 Q. The A-1 sample was a "Decorative ceiling
22 texture," parens, "popcorn, main floor living room,"
23 correct?
24 A. Correct.
25 Q. And then the "Decorative ceiling texture,

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1 second floor, popcorn, kids' room," correct?
2 A. Correct.
3 Q. In all other areas there was no asbestos
4 detected, right?
5 A. Well, other materials; yeah, those were
6 all different materials except for A-2. That's the
7 same material.
8 Q. And I misspoke, misstated that. Thank you
9 for correcting me. Other materials from those
10 areas --
11 A. Correct.
12 Q. -- that are in the --
13 A. Nothing else that I tested was positive.
14 Q. Now, you were asked questions about
15 Exhibit G, which is -- and you were asked by
16 Mr. Livingston to indicate in what manner the
17 notation there represented an inaccurate recounting
18 of your conversation with Mr. Thomsen. Do you
19 remember that testimony?
20 A. Yes.
21 Q. Now, in what respects -- can you take a
22 look at that -- we'll call it a log note -- and your
23 report. In what respects is that log note
24 inconsistent with what came out in your report?
25 A. Well, it says, "The only area the acoustic

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1 ceiling is disturbed is the lower level where the
2 fire department opened the ceiling, checked for the
3 fire penetration." It was damaged up in the
4 children's bedroom too and it was also damaged, if I
5 recall correctly, in the laundry room. Those three
6 areas come to mind. Do you want me to go on?
7 Q. Are there others? I mean, you've already
8 testified about you think that the -- well, let me
9 ask you this question.
10 MR. LIVINGSTON: Let him finish his
11 answer, Jon.
12 Q. (BY MR. SANDS) I'm sorry. Go ahead, if
13 there were others. I didn't mean to cut you off. I
14 thought you were done.
15 A. Yeah, well, those were additional areas
16 that contained asbestos that had been damaged, and
17 then I had underlined the restoration contractor,
18 which he had referred to several times, to do --
19 what they were going to be doing was considered
20 asbestos work, and I don't recall ever saying
21 anything to the effect of a restoration contractor
22 because they're not licensed to do it, so I don't
23 recall ever saying anything to do with a licensed --
24 or with a restoration contractor.
25 Q. And I remember your testimony in that

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1 regard. You don't know what was in Mr. Thomsen's
2 mind when he was using the term "Restoration
3 contractor" at the time he wrote this, assuming he
4 wrote it, right?
5 MR. LIVINGSTON: Object to form, calls for
6 speculation.
7 Q. (BY MR. SANDS) Well, Mr. Livingston had
8 you speculate about what was meant by "Restoration"?
9 Owe you didn't write this log, did you?
10 A. No, I did not write the log.
11 MR. LIVINGSTON: Object to form.
12 MR. SANDS: There's a form problem with
13 asking him if he wrote this or not?
14 MR. LIVINGSTON: No, I think you just had
15 three questions combined and you jumped to
16 finally -- first you started saying something. Then
17 you started saying something else, and then you
18 finally said, "You didn't write this, did you?"
19 MR. SANDS: Okay, well, thank you.
20 MR. LIVINGSTON: I think you're kind of
21 skipping around, trying to make this point that
22 somehow the document doesn't mean what it says.
23 MR. SANDS: Okay.
24 MR. LIVINGSTON: Can we take a break at
25 this point? Are you almost done?

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1 MR. SANDS: I'm getting close.
2 MR. LIVINGSTON: Okay.
3 MR. SANDS: I don't mind.
4 MR. LIVINGSTON: Do you think it would be
5 best if we just continue? Because I was going to
6 say, if you've got another 15, 20 more minutes, I'd
7 just as soon take a break. If not, finish up.
8 MR. SANDS: I would personally like to
9 finish up, but I don't want to impose on everyone
10 else.
11 MR. LIVINGSTON: Go ahead. Go ahead.
12 MR. ECKERT: What do you want to do,
13 Andre?
14 THE DEPONENT: I'm fine.
15 MR. SANDS: The witness and the court
16 reporter --
17 THE DEPONENT: I'm fine.
18 MR. SANDS: -- I think we should defer to
19 them. I would hope to be done -- my goal is to be
20 done by --
21 (A pause occurred in the proceedings.)
22 MR. ECKERT: I think, for the sake of
23 Mr. Gonzalez, since we started 45 minutes late,
24 could we press on so he could get home to his
25 family? That would probably be best, if everyone's

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1 okay with that.
2 MR. SANDS: I'm fine. Again, I don't want
3 to impose on everyone else.
4 MR. LIVINGSTON: Go ahead.
5 MR. SANDS: Okay.
6 Q. (BY MR. SANDS) Let me back up and defer
7 to Mr. Livingston here. I'll start over. Did you
8 write this [Exhibit G](#) note?
9 A. No.
10 Q. Do you know what was in, assuming
11 Mr. Thomsen wrote it, what was in his head when he
12 used the term "Restoration contractor"?
13 A. No.
14 Q. Other than that first meeting with
15 Mr. Gholson on the property on February 5, 2007, did
16 you have communications directly with Mr. Gholson?
17 A. No, I don't believe I did.
18 Q. Anyone else from the Gholson family?
19 A. No.
20 Q. Have you ever had any direct
21 communications with Mr. McLoughlin about the Gholson
22 fire?
23 A. Yes.
24 Q. When?
25 A. At the Colonial Manor project.

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1 Q. And what did you discuss with
2 Mr. McLoughlin at that time about the Gholson loss?
3 A. Well, he had -- well, he was making the
4 allegation that there was some kind of collusion or
5 that I was -- that we were somehow trying to
6 minimize the reporting and that there was some kind
7 of collusion between State Farm and Foothills
8 Environmental in doing our testing.
9 Q. At the Gholson residence?
10 A. The Gholson residence and the Colonial
11 Manor.
12 Q. And how did you respond to that?
13 A. Well, I told him "It's just not true."
14 Q. And was there anything else that you know
15 about the conversation that you can tell us today?
16 A. I can't think of anything else.
17 Q. Go ahead. I'm sorry.
18 A. No, I can't think of anything else.
19 Q. You testified that there are three things
20 to be done under Regulation 8 if there is a major
21 spill. One is to notify the State, correct?
22 A. Correct.
23 Q. Do you typically do that?
24 A. No.
25 MR. LIVINGSTON: Let me object to the

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1 form. I think he said that he didn't say it was
2 three things. I think it was four, to the extent
3 your question assumes that.
4 Q. (BY MR. SANDS) Do you remember how many?
5 A. Well, there's more than four things.
6 There's a list of things that you're supposed to go
7 through in the regulation, yeah, you know, so
8 there's many things that you have to do, but
9 notifying the State is one.
10 Q. My question was, really, do you typically
11 do that after you do the report?
12 A. No.
13 Q. Mr. Livingston asked you numerous
14 questions, suggesting that Mr. Thomsen removed items
15 from the home. Are you aware that Mr. Thomsen
16 personally removed items from the Gholson home?
17 A. No, I am not.
18 Q. Did you ever see him do that?
19 A. No.
20 Q. Now, are you aware of the role -- well,
21 withdraw that question. Are you aware that at any
22 time licensed abatement contractors provided bids to
23 do work at the home?
24 A. I am not.
25 Q. Have you ever heard of the company

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1 Certified Insulators?
2 A. I have.
3 Q. Do you know Mr. Gies?
4 A. I don't.
5 Q. Do you know -- well, had you heard that a
6 neighbor of the Gholsons owns Certified Insulators
7 and met with Mr. Gholson at the property?
8 A. No, I am not aware of that.
9 Q. Have you ever seen any bids from abatement
10 companies for abatement work at the project?
11 A. No.
12 MR. LIVINGSTON: I'm going to object to
13 the form of the question. You're trying to suggest
14 that all of this took place regarding personal
15 property, which you know isn't true.
16 MR. SANDS: That's not what I'm asking,
17 Mr. Livingston.
18 MR. LIVINGSTON: This is later on, and I
19 think we talked about that.
20 MR. SANDS: Are you testifying or are you
21 making an objection to the form?
22 MR. LIVINGSTON: No, you're making
23 questions that are trying to suggest an inaccurate
24 pattern of facts. You're trying to get him to
25 answer questions where he's misled about what the

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1 facts are, and I don't think that you should do
2 that. That's all I'm pointing out. Let's be clear
3 about what is being asked.
4 MR. SANDS: I think my questions are
5 pretty clear and I don't think there was any
6 inference or suggestion behind the question other
7 than was he aware of these entities and what they
8 did, and that's all I asked. I don't ask
9 argumentative questions, Mr. Livingston, frankly,
10 like you do, so --
11 MR. LIVINGSTON: Well, if you thought I
12 was asking argumentative questions, why didn't you
13 object at the time and say, "Argumentative"?
14 MR. SANDS: I did.
15 MR. LIVINGSTON: I don't think you did. I
16 think I heard you say, "Object to form."
17 MR. SANDS: Well, yes, I did.
18 MR. LIVINGSTON: So you forgot a few
19 objections.
20 MR. SANDS: No, I think "Objection to the
21 form" subsumes, of course, within it that the
22 questions are argumentative, and I'm sure that, if I
23 had made the sort of speaking objection like you've
24 just made and which is argumentative, you would have
25 chastised me, so by doing that, I'm simply asking --

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1 well, are you done with your objection, presumably,
2 to the form of my question?
3 MR. LIVINGSTON: I was hoping to be done
4 with this whole thing by now, actually, so whatever
5 it is, let's move along.
6 MR. SANDS: I will do that. Thank you.
7 Q. (BY MR. SANDS) Have you ever heard of
8 Diamond Hills?
9 A. I have.
10 Q. Do you know whether they played any role
11 at all in the process?
12 A. Subsequently, in some of the paperwork,
13 the lawsuit paperwork, I saw their name.
14 Q. Do you know whether any abatement
15 contractor submitted a bid for dealing with personal
16 property?
17 A. I do not know.
18 Q. Do you know, sir -- have you ever been
19 informed -- when any abatement work was done by any
20 abatement contractor at the Gholson property in any
21 manner?
22 A. I do not know.
23 Q. So you were only at the Gholson property,
24 then, one time; is that correct?
25 A. That's correct.

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1 Q. And you were asked questions by
2 Mr. Livingston about a letter -- and I don't know
3 what the exhibit number is. I don't think we had a
4 copy of that.
5 MR. LIVINGSTON: Are you talking about the
6 letter that was stapled to that thing that you
7 objected to because you said you didn't know if it
8 was complete?
9 Q. (BY MR. SANDS) [Exhibit F](#), Mr. Gonzalez,
10 you were asked questions by Mr. Livingston about
11 this document?
12 A. Yes.
13 Q. Mr. Livingston inferred in his question
14 that Mr. Thomsen was suggesting to Mr. Cospers of
15 Diamond Hills Services that his work, his abatement
16 work, should be less than complete. Do you remember
17 that inference made by Mr. Livingston?
18 MR. LIVINGSTON: I'm going to object to
19 the form.
20 Go ahead.
21 A. Yes, I remember.
22 Q. (BY MR. SANDS) Did Mr. Livingston's
23 question infer to you that he was suggesting that
24 Mr. Thomsen was suggesting to Diamond Hills that
25 their abatement work should be less than complete?

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1 MR. LIVINGSTON: Object to vague in terms
2 of "complete."
3 A. I'm not sure.
4 Q. (BY MR. SANDS) Well, let me just -- you
5 don't -- again, you weren't involved in that
6 process, correct, the process of --
7 A. That's correct. I was not involved.
8 Q. And you don't know what Mr. Thomsen --
9 well, you don't know if the two pages that are
10 stapled to [Exhibit F](#) were included with that letter?
11 They might have been, might not have been, as far as
12 you know, correct?
13 A. Correct. I don't know.
14 Q. You said a couple of times, Mr. Gonzalez,
15 that State Farm made errors. Do you remember that?
16 A. Yes.
17 Q. You don't know -- isn't it more accurate
18 to say, sir, that you believe that errors were made
19 based upon what Mr. Livingston has told you,
20 correct? In other words, you don't know what
21 happened or what did not happen after you were done
22 with your report? Isn't that accurate, sir?
23 MR. LIVINGSTON: Objection, vague and
24 ambiguous.
25 A. Yeah, I do not know exactly what the

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1 process was afterwards, who did what. I'm just
2 getting information from others, so who did what I
3 don't know.
4 Q. (BY MR. SANDS) And, sir, in fairness,
5 you're not really in a position to say that errors
6 were made by State Farm or anyone else because you
7 don't know who did what, do you, sir?
8 A. Well, given the situation, that if I'm
9 told that somebody did something, I can answer that
10 question only as it's given to me, but I don't know,
11 I mean -- I'm assuming that the information that's
12 being given to me in the questions is factual.
13 MR. LIVINGSTON: I'm going to object to
14 this, Jon. You're just kind of assuming that I'm
15 sitting here making all this up and then you get to
16 ask these questions where you just call me a liar
17 and say that I made it all up and "Therefore, you
18 don't know anything."
19 You know everything I said was true in
20 terms of who did what with American Restoration and
21 that none of this stuff was complied with. You know
22 that.
23 MR. SANDS: Mr. Livingston, I'm going to
24 ask you not to make statements like that. This is a
25 discovery deposition and, if you have an objection,

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1 make an objection. Do not assume or tell me what I
2 know or what I don't know.
3 MR. LIVINGSTON: Well, you should have
4 objected when I asked him questions today saying,
5 "That's a misleading hypothetical" or I misstated
6 that or I misstated that. You seemed to be freely
7 willing to object when there was a basis for it, and
8 now, at the end, you just say, "Well, he could have
9 told you anything and you don't really know
10 anything," and, you know, that just seems like it's
11 just not appropriate, to just kind of take this
12 approach at the end that I could have made up
13 everything, especially when you -- it's based on
14 documents we have here.
15 MR. SANDS: Is that an objection?
16 MR. LIVINGSTON: Yeah, it's an objection
17 that you're assuming or asking him to assume that
18 everything I said was a lie, or at least that was
19 the general content of that question. I don't think
20 that's appropriate. I mean, we base what we are
21 saying on documents, like, "Here's the estimate.
22 Where's all the stuff in there for remediation?" Et
23 cetera.
24 Q. (BY MR. SANDS) Mr. Gonzalez, I think
25 there was an objection in there somewhere. I think

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1 we got an answer.
2 Could you read back my last question and
3 answer.
4 (The question and answer beginning on
5 page 206, line 5, was read back.)
6 MR. SANDS: That's all I have. Thank you,
7 sir.
8 MR. LIVINGSTON: Nothing further. Thank
9 you.
10 THE VIDEOGRAPHER: Off the record at 5:44,
11 this is the end of Tape 2 of 2.
12 WHEREUPON, the within proceedings were
13 concluded at the approximate hour of 5:44 p.m. on
14 January 6, 2009.
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25

1 I do hereby certify that I have read the
2 foregoing deposition and that the same is a true and
3 accurate transcript of my testimony, except for
4 attached amendments, if any.

5

6 _____
7 ANDRE GONZALEZ
8 () No changes () Amendments attached

9

10 SUBSCRIBED AND SWORN TO before me this
11 _____ day of _____, 20____.

12

13

14 _____
15 NOTARY PUBLIC
16 Address _____
17 My Commission Expires _____

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1
2 C E R T I F I C A T I O N

3

4 I, Mary S. Parker, Registered Professional
5 Reporter, Registered Merit Reporter, and Certified
6 Realtime Reporter, certify that the above
7 proceedings were had; then reduced to typewritten
8 form, by means of computer-aided transcription.

9 I further certify that I am not related to
10 any party herein or their counsel and have no
11 interest in the result of this matter.

12 IN WITNESS WHEREOF, I have hereunto set my
13 hand and seal.

14

15 _____
16 Mary S. Parker
17 Registered Professional Reporter
18 Registered Merit Reporter
19 Certified Realtime Reporter

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