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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

Case No. 2016-CP-07-2541
Appellate Case No. 2022-000231

Forum Benefits, LLC,

Appellant,

v.

Brian Bannon and Assured Partners, NL,

Respondents.

RECORD ON APPEAL

VOLUME I

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STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2016-CP-07-254

Forum Benefits, Inc.,

Plaintiff,

vs.

Brian Bannon and Assured Partners NL,

Defendants.

**ORDER GRANTING EX PARTE MOTION FOR
TEMPORARY RESTRAINING ORDER**

The Plaintiff has filed an Ex Parte Motion on December 1, 2016 seeking, *inter alia*, a temporary restraining order against the Defendants (the "Motion"). After review of the Motion and the Verified Complaint filed on December 1, 2016 by the Plaintiff,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. That the Defendants are hereby restrained from contacting any customer or client of Plaintiff set forth on Exhibit A to this Order.

2. That the Defendants are hereby restrained from utilizing the Records for any and all purposes.

3. That the Defendants immediately *or maintain* return to the Plaintiff all of the records, files, customer/client lists (collectively the "Records") and funds of the Plaintiff wherever located and wherever stored, ~~within five (5) days of the entry of this Order and provide Plaintiff with a statement sworn under the penalty of perjury that the Records returned to Plaintiff constitute all of Plaintiff's Records in the possession of the Defendants.~~

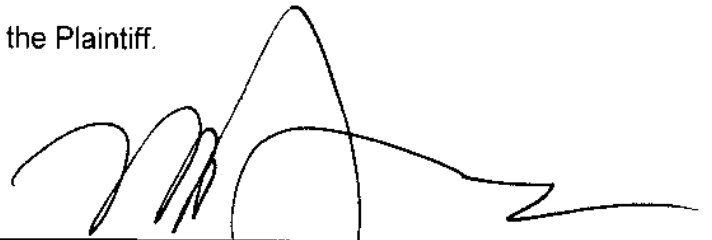
4. That a hearing on Plaintiff's temporary injunction application against the Defendants be held ~~within ten (10) days of the entry of this Order.~~

on December 8, 2016 at 2:30 pm in the Office of the Master-in-Equity for Beaufort County, Beaufort County Courthouse Beaufort, S.C.

*12/1/16
3:48 pm
4*

5. No bond shall be requested from the Plaintiff.

IT IS SO ORDERED.



The Honorable Marvin H. Dukes, III
Special Circuit Court Judge for Beaufort County

+ MIE

Beaufort, South Carolina

December 1, 2016

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12/1/16
3:48 PM

Account Name	Sales Represent	Status
4th Quadrant, Inc dba Up&Up	Brian Stritt	Client
A & E Engineering Inc.	Brian Stritt	Client
Absolute Technologies, LLC	Brian Stritt	Client
Accent USA Manufacturing	Brian Stritt	Client
Accurate Brazing	Brian Stritt	Client
Adex Machining, LLC dba Adex Machining Technolog	Brian Stritt	Client
AER Worldwide	Brian Stritt	Client
AGILE Infrastructure Services, LLC	Brian Stritt	Client
Air Compressor Services, LLC	Brian Stritt	Client
Alpha Genesis, Inc.	Brian Bannon	Client
Avalon Transportation	Brian Stritt	Client
Bannister, Wyatt, & Stalvey, LLC	Brian Stritt	Client
Barnett Plumbing & Heating, Inc.	Stewart Perry	Client
Beacon Communities, Inc.	Brian Stritt	Client
Benco Construction, Inc.	Stewart Perry	Client
Berenyi, Inc.	Brian Bannon	Client
Brookgreen Gardens	Brian Bannon	Client
Carolina Seafood	Brian Stritt	Client
Carolina Youth Development Center	Brian Bannon	Client
Charleston Glass & Mirror Company	Brian Bannon	Client
Charleston Local Development Corporation	Brian Bannon	Client
ChemStone, Inc.	Brian Stritt	Client
Christian Blind Mission	Brian Stritt	Client
Columbus Data Technologies, Inc.	Brian Stritt	Client
ConPearl North America, Inc.	Brian Stritt	Client
Crossroads Treatment Centers	Rick Wylie	Client
Current Tools, Inc.	Brian Stritt	Client
Dantherm, Inc.	Brian Stritt	Client
Data2Impact, LLC	Stewart Perry	Client
Dill Fabrication	Rick Wylie	Client
Diocese of SC	Brian Stritt	Client
DP3 Architects	Brian Stritt	Client
Drayton Hall Preservation Trust	Brian Stritt	Client
Eltex	Brian Stritt	Client
Epic Group, LLC.	Brian Stritt	Client
EverWorks Inc	Rick Wylie	Client
Excel Electric Company	Brian Stritt	Client
Fishman & Company, P.C.	Stewart Perry	Client
Forum Benefits, Inc.	Brian Stritt	Client
Freedom Church Upstate	Brian Stritt	Client
Freshwater Systems / Neologic	Brian Stritt	Client
Geiss & Sons Jewelers - Spartanburg	Brian Stritt	Client
Geiss Jewelers Greenville, Inc.	Brian Stritt	Client
Genesis Marketing Group, Inc.	Brian Stritt	Client
Gibsonburg Health, LLC	Stewart Perry	Client
GKRM, Inc.	Stewart Perry	Client
Gold Collections	Brian Stritt	Client
Greene, Finney & Horton, LLP	Brian Stritt	Client
Greenville Little Theatre	Brian Stritt	Client
Greenville Office Supply	Rick Wylie	Client
Greenwood Fabricating and Plating, LLC	Brian Stritt	Client



Greer Flooring Center Inc.	Brian Stritt	Client
Gusmo Franchise Group AKA Mobetter Management	Brian Stritt	Client
Halcyon Media LLC	Stewart Perry	Client
Hecox Goodwin	Brian Bannon	Client
Hesco Bastion Environmental	Brian Stritt	Client
High Touch High Tech, Inc.	Stewart Perry	Client
Hilton Displays, Inc	Brian Stritt	Client
Hoffman & Hoffman, CPA, P.A.	Brian Bannon	Client
Holly Tree Country Club	Brian Stritt	Client
Holman Distribution Center of Washington, Inc.	Brian Stritt	Client
Hope Center for Children	Brian Stritt	Client
ILJIN Alabama	Brian Stritt	Client
ILJIN USA	Brian Stritt	Client
Imagine Physical Therapy	Brian Stritt	Client
Industrial FabCon, Inc.	Brian Stritt	Client
Interim Healthcare	Brian Stritt	Client
J. Henry Stuhr	Brian Bannon	Client
J.L. Schwartz Co., Inc.	Brian Stritt	Client
Jack Porter, Inc	Brian Stritt	Client
JEM Restaurant Group	Stewart Perry	Client
Jennings Cook and Company	Brian Stritt	Client
Jones Dental Lab Inc	Brian Stritt	Client
Jordan Construction of Hilton Head	Brian Bannon	Client
Kari Ryan Dentistry PA	Brian Stritt	Client
Kaytech, Inc	Brian Stritt	Client
Komet USA LLC	Brian Stritt	Client
KOP & Associates, LLC	Stewart Perry	Client
KVertex Associates, LLC	Brian Stritt	Client
Landscapers Supply, Inc.	Rick Wylie	Client
Lanford Industrial Service	Brian Stritt	Client
LBS Properties	Brian Stritt	Client
Logisticus Risk Management LLC	Brian Stritt	Client
Long Heating and Air, Inc.	Brian Stritt	Client
Lucideon dba The M & P Lab	Brian Stritt	Client
Magnolia Plantation	Brian Bannon	Client
Marathon Automotive Group	Brian Stritt	Client
Mark Michaels Inc	Brian Stritt	Client
Materials Handling Solutions, LLC	Brian Stritt	Client
MSI Viking Gage, LLC	Brian Bannon	Client
Naturalawn of America	Brian Stritt	Client
New Foundations Home for Children, Inc.	Brian Stritt	Client
New Horizon Family Health Services, Inc.	Brian Stritt	Client
Nuvizz, Inc.	Stewart Perry	Client
One Augusta Group	Brian Stritt	Client
Origin Point Brands	Brian Stritt	Client
Ostrem Tool Company, Inc	Brian Stritt	Client
Palmetto Infrastructure Inc.	Brian Stritt	Client
PCC Chemax, Inc.	Brian Stritt	Client
Pendleton Area Rescue Squad	Brian Stritt	Client
Performa Limited (US), LLC	Brian Stritt	Client
Piedmont Rural Telephone Cooperative	Brian Stritt	Client
PMC Corp	Brian Stritt	Client

Polaris Investment Partners	Brian Bannon	Client
Poly-Med, Inc.	Brian Stritt	Client
Premier Logistics Solutions	Brian Bannon	Client
Premier Transport USA, Inc.	Brian Stritt	Client
Printec Industries, Inc.	Stewart Perry	Client
ProSource, LLC	Rick Wylie	Client
Ram Technologies	Brian Stritt	Client
RCS Grading, Inc.	Brian Stritt	Client
Ridgeline Construction Group, Inc.	Brian Stritt	Client
S.H. Carter Development, Inc.	Brian Stritt	Client
S.I.R. Q, LLC	Brian Stritt	Client
Sheffield Investment Management, Inc.	Stewart Perry	Client
Shertech Pharmacy Services, Inc.	Brian Stritt	Client
Smith Engineering and Construction, LLC	Brian Stritt	Client
South Carolina Legal Services	Brian Stritt	Client
Southern First Bank, Inc.	Brian Stritt	Client
Sports Spine and Industrial	Brian Stritt	Client
St. Andrews Public Service District	Brian Bannon	Client
Stanley International	Brian Stritt	Client
Star Brands II	Stewart Perry	Client
Star Brands IV	Stewart Perry	Client
Strategy Plastics, LLC	Brian Stritt	Client
Stratfield LLC	Stewart Perry	Client
Sunset Management, Inc.	Brian Stritt	Client
Table 301	Brian Stritt	Client
The Black Bean, LLC	Stewart Perry	Client
The Children's Museum of the Upstate, Inc.	Brian Stritt	Client
The Cook's Station	Brian Stritt	Client
The Graham Foundation	Brian Stritt	Client
The Greenery	Brian Stritt	Client
The Marley Lilly, LLC	Brian Stritt	Client
The Wood Mortuary	Brian Stritt	Client
Total Maintenance Solutions, Inc.	Brian Stritt	Client
Travinia Italian Kitchen	Brian Stritt	Client
Tumeq, LLC	Brian Stritt	Client
Unibloc Pump	Stewart Perry	Client
Universal Technical Services	Brian Stritt	Client
UPPI, LLC	Brian Stritt	Client
Volke Consulting, Ltd	Brian Stritt	Client
W.N. Kirkland	Brian Stritt	Client
Washburn & Co.	Brian Stritt	Client
Whitlow Electric Service Company, Inc.	Brian Stritt	Client
Wholesale Boutique	Brian Bannon	Client
Wisteria Day Spa & Salon LLC	Brian Stritt	Client

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 2016-CP-07-2541

Forum Benefits, Inc.,

Plaintiff,

v.

**Brian Bannon and Assured Partners,
NL**

Defendants.

**ORDER DENYING MOTION FOR
PRELIMINARY INJUNCTION**

On December 1, 2016, this Court issued an Order Granting the Plaintiff's Ex Parte Motion for Temporary Restraining Order. This Order set a hearing on the Plaintiff's temporary/preliminary injunction application for December 8, 2016.

The Defendants were served with the Summons, Complaint and this Temporary Restraining Order. The parties, represented by counsel, appeared before me on December 8, as scheduled. On December 7, Defendants filed the affidavit of Brian Bannon. In addition to this affidavit, and presentations by counsel, the court heard testimony by Brian Stritt, President and CEO of the Plaintiff corporation, and by Defendant Brian Bannon. Having considered this matter, and for the reasons below, including the agreement of the Defendant to return certain items, the Motion for Temporary/Preliminary Injunction is denied, and the prior Order granting a temporary restraining order is dissolved.

Defendant Bannon was previously employed by the Plaintiff¹. He recently separated from this relationship with the Plaintiff. Plaintiff filed this action seeking multiple causes of action, including injunction of Bannon contacting and soliciting

¹The undisputed testimony is that Bannon was employed for 4 years as a W-2 employee, and for the last 3 years until his separation as a 1099 independent contractor.

customers of the Plaintiff and of using information regarding customers gathered by Bannon during the course of his relationship with the Plaintiff².

While the Complaint alleges several causes of action for actual and punitive damages, a primary basis of the Plaintiff's motion for injunctive relief is the Plaintiff's verified allegation that Bannon executed the unsigned Employment Agreement attached to the Complaint, which allegedly states that the Plaintiff's customer lists and related information constitute trade secrets.³ In his affidavit, and in his sworn testimony at the hearing, Defendant Bannon denied that he ever signed an employment agreement with the Plaintiff. Despite the verified allegations of the Complaint, as of the hearing, Plaintiff had not produced an employment agreement bearing Defendant Bannon's signature⁴. Further, Bannon testified that the customer lists were obtainable through on-line public websites, and that he had relationships prior to Forum with the majority of his clients that transferred their business.

²The parties agreed that, within 7 days of the date of this Order, Bannon will return to the Plaintiff the desktop computer and printer which were provided by the Plaintiff. Further the parties have agreed that the Defendants will return or destroy, and not utilize any printed or digital material bearing the Plaintiff's logo or company signature, or any internal pricing policies or formulae of the Plaintiff which are not obtainable from other sources. Further Bannon shall not destroy or erase any files from the computer prior to return. The Court approved the agreement of the parties as to these items as the Order of this Court.

³ Paragraphs 6-9 of the Complaint focus on verbiage from the alleged Employment Agreement.

⁴ In addition to the testimony of Brian Stritt, Plaintiff attempted to show through circumstantial evidence that Bannon signed an employment agreement. I granted Defendants' objection to the introduction of this evidence as being hearsay testimony. Brian Stritt testified that he saw Bannon sign an employment agreement. However in the absence of a signed agreement, I find this testimony to be unavailing.

THE PARTY SEEKING AN INJUNCTION HAS THE BURDEN OF DEMONSTRATING FACTS AND CIRCUMSTANCES WARRANTING AN INJUNCTION. *Calcutt v. Calcutt*, 282 S.C. 565, 320 S.E.2d 551 (Ct.App.1984). The remedy of an injunction is a drastic one and ought to be applied with caution. *Forest Land Co. v. Black*, 216 S.C. 255, 57 S.E.2d 420 (1950). For a preliminary injunction to be granted, the plaintiff must establish that (1) it would suffer irreparable harm if the injunction is not granted; (2) the party seeking injunction will likely succeed in the litigation; and (3) there is an inadequate remedy at law. *Scratch Golf Co. v. Dunes West Residential Golf Props., Inc.*, 361 S.C. 117, 603 S.E.2d 905 (2004).

I find that the Plaintiff has not met the burden for a preliminary injunction. Plaintiff has not produced a signed employment agreement as alleged. It is undisputed that Defendant Bannon was an independent contractor for the last 3 years of his relationship with the Plaintiff⁵. Further, the list of the Plaintiff's customers and their contact information is a matter of public record available through on-line or other public resources. Such lists and related information are therefore not protected as trade secrets. *Atwood Agency v. Black*, 374 S.C. 68, 646 S.E. 2d 882 (2007). Finally, I find that the Plaintiff has an adequate remedy at law via the alleged causes of action for damages. *Strategic Resources Company v. BCS Life Insurance Company*, 367 S.C. 540, 627 S.E.2d 687 (2005).

For these reasons, the Plaintiff's Motion for Temporary/Preliminary Injunction is DENIED. The Temporary Restraining Order issued on December 1, 2016 is hereby

⁵While I deny this Motion for Preliminary Injunction, I am nevertheless troubled by the fact that Defendant Bannon was furthering his own interests, and those of Assured, during a time when he acknowledged that the Plaintiff would have believed him to be working to advance the Plaintiff's interests.

vacated and nullified. The agreement as set forth hereinabove in footnote 2 is adopted as the Order of this Court.

AND IT IS SO ORDERED.

Beaufort, South Carolina

Marvin H. Dukes, III
Beaufort County Master-In-Equity and
Special Circuit Court Judge

Dated: December _____, 2016



Beaufort Common Pleas

Case Caption: Forum Benefits Inc VS Brian Bannon

Case Number: 2016CP0702541

Type: Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2016-12-15 15:50:36 page 5 of 5

STATE OF SOUTH CAROLINA**BEAUFORT COUNTY****IN THE COURT OF COMMON PLEAS****CIVIL ACTION NO. 2016-CP-07-2541**

Forum Benefits, Inc.,

Plaintiff,

v.

Brian Bannon and Assured Partners, NL

Defendants.

**ORDER DENYING DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**

The present litigation involves claims between a former employer (Plaintiff Forum Benefits, Inc.), its former employee (Defendant Brian Bannon), and his current employer (Defendant Assured Partners, NL). Forum Benefits has asserted claims against both Defendants for violation of the S.C. Trade Secrets Act and interference with a contractual relationship and against Defendant Bannon for breach of contract, conversion, and breach of fiduciary duty.

Defendants have filed a motion seeking summary judgment on all asserted claims. According to Defendants, Bannon never signed an employment contract with Plaintiff, and neither Defendant downloaded and copied any files that contain proprietary trade secrets.

Plaintiff has filed a response to the motion, challenging the motion as being unsupported by any admissible evidence and identifying admissible evidence in the pleadings, discovery responses, and deposition testimony that undercuts Defendants' arguments.

The Court conducted a hearing on June 1, 2018. Based on the parties' briefs and arguments, the Court finds that Defendants have failed to establish the absence of genuine dispute of material fact for any asserted claim. Therefore, the Court denies Defendants' Motion for Summary Judgment in its entirety.

IT IS SO ORDERED.

Date: _____

Jennifer B. McCoy
Circuit Court Judge



Beaufort Common Pleas

Case Caption: Forum Benefits Inc VS Brian Bannon

Case Number: 2016CP0702541

Type: Order/Summary Judgment

So Ordered

s/Jennifer B. McCoy #2764

Electronically signed on 2018-06-20 15:53:29 page 3 of 3

STATE OF SOUTH CAROLINA
COUNTY OF Beaufort
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2016CP0702541

Forum Benefits Inc
PLAINTIFF(S)

Brian Bannon et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

This matter came before the Court on Defendant Brian Bannon and Defendant Assured Partners, NL (hereinafter "Defendants") Motion for Summary Judgment, filed April 20, 2020. Representing the Plaintiff was Steven R. LeBlanc, Esq. Representing the Defendants was Jeffrey A. Lehrer, Esq. This Motion is disposed of without the necessity of a hearing pursuant to the Chief Justice's April 3, 2020 Order, As Amended April 22, 2020, Section (c)(4). This Motion is listed on the October 13, 2020 Beaufort County Motions Roster published October 6, 2020. The Defendants filed their Motion and Memorandum in Support on April 20, 2020. The Plaintiff filed its Memorandum in Opposition on June 7, 2020. The Defendants filed their Reply on June 9, 2020.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☒ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 10/14/2020 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

"Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party is entitled to prevail as a matter of law." Evening Post Pub. Co. v. Berkeley County Sch. Dist., 392 S.C. 76, 81, 708 S.E.2d 745, 748 (2011) ; Rule 56(c), SCRCP. "Under Rule 56(c), the party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact." Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 106 S. Ct. 2548 (1986)). In considering a motion for summary judgment, "the evidence and its reasonable inferences must be viewed in the light most favorable to the nonmoving party." Id.

Moreover, in considering a motion for summary judgment, the nonmoving party receives every benefit of the doubt. See Watters v. Terminix Service, Inc., 376 S.C. 632, 635, 658 S.E.2d 110, 111 (Ct. App. 2008). "Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law... Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied." USAA Property & Cas. Ins. Co. v. Clegg, 377 S.C. 643, 653, 661 S.E.2d 791, 796 (2008). After considering the record, the Court finds that genuine issues of material fact exist. Accordingly, the Motion is heard and respectfully Denied.



Beaufort Common Pleas

Case Caption: Forum Benefits Inc VS Brian Bannon , defendant, et al

Case Number: 2016CP0702541

Type: Order/Electronic Form 4

IT IS SO ORDERED>

s/D.L. Jefferson Chief Administrative Judge 2128

Electronically signed on 2020-10-14 11:35:11 page 3 of 3

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 2016-CP-07-2541

Forum Benefits, LLC,

Plaintiff,

v.

Brian Bannon and Assured Partners, NL

Defendants.

**PROPOSED ORDER GRANTING
PLAINTIFF'S MOTION TO CHANGE
NAME OF PLAINTIFF**

Plaintiff filed a Motion for Substitution to officially change the name of the Plaintiff entity from Forum Benefits, Inc. to Forum Benefits, LLC on April 8, 2019. This motion was subsequently heard by Judge Marvin Dukes, III.

Prior to the start of the trial of this case on October 11, 2021, Plaintiff's counsel informed this Court that it recalled that Judge Dukes granted this motion at the hearing but no order was ever filed. Plaintiff also requested that this Court grant this motion. During the trial of this case, Defendants consented to the Court granting Plaintiff's motion and officially changing the name of the Plaintiff to Forum Benefits, LLC. Pursuant to this consent of all parties, the Court granted the Plaintiff's motion.

The Court hereby confirms that Plaintiff's Motion for Substitution to change the name of the Plaintiff from Forum Benefits, Inc. to Forum Benefits, LLC is GRANTED. The record shall reflect the correct name of the Plaintiff.

It is so ORDERED.

Dated: _____

_____, County

Bentley Price, Presiding Circuit Court Judge



Beaufort Common Pleas

Case Caption: Forum Benefits Inc VS Brian Bannon , defendant, et al

Case Number: 2016CP0702541

Type: Order/Substitution of Parties

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2021-11-08 15:49:21 page 2 of 2

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 2016-CP-07-2541

Forum Benefits, LLC,

Plaintiff,

v.

Brian Bannon and Assured Partners, NL

Defendants.

**ORDER GRANTING DEFENDANTS'
MOTION FOR DIRECTED VERDICT
AND AWARDING PREVAILING PARTY
ATTORNEYS' FEES AND COSTS TO
DEFENDANTS**

This case came before the Court for a jury trial beginning October 11, 2021. At the close of Plaintiff's case in chief, Defendants Brian Bannon ("Defendant Bannon") and Assured Partners, NL ("Defendant Assured Partners") made a Motion for Directed Verdict pursuant to Rule 50 of the South Carolina Rules of Civil Procedure to dismiss all of Plaintiff's claims. The Court carefully reviewed Defendants Motion for Directed Verdict and the extensive information and case citations presented to the Court. The Court also reviewed some of the previous filings in the case. On October 14, 2021, the Court granted Defendants' Motion for Directed Verdict on all of Plaintiff's claims.¹ This ruling was placed on the record and is hereby confirmed by this ORDER.²

Defendants subsequently moved for an award of attorneys' fees and costs related to Plaintiff's breach of contract claim and trade secrets claim. The Court granted Defendants' motion for attorneys' fees and costs. Plaintiff subsequently filed a Response to Defendants' Motions for Attorneys' Fees ("Plaintiff's Response"). Defendants then filed a Reply in Support of Defendants'

¹ During the parties' arguments on Defendants' Motion for Directed Verdict, Plaintiff's counsel announced that Plaintiff was voluntarily dismissing Plaintiff's tortious interference claim against Defendants. The Court notes that Plaintiff pursued its tortious interference claim in this matter for approximately five years before suddenly abandoning this claim during the parties' directed verdict arguments.

² The case law discussed and cited by Defendants' counsel during Defendants' Motion for Directed Verdict is hereby incorporated by reference.

Motion for Attorneys' Fees/Costs and the Court's Award of Fees/Costs ("Defendants' Reply"). The Court has reviewed the parties' pleadings and arguments on this issue. This ORDER hereby confirms the Court's award of Defendants' attorneys' fees and costs.

A. DIRECTED VERDICT ON PLAINTIFF'S BREACH OF CONTRACT CLAIM

Defendants' Motion for Directed Verdict on Plaintiff's breach of contract claim against Defendant Bannon is GRANTED for the reasons described by this Court on October 14, 2021. The Court adopts all of Defendants' directed verdict arguments in connection with this claim, incorporates those arguments and attendant case law into this ruling, and holds that Plaintiff's breach of contract claim fails because:

- (1) Plaintiff failed to produce or prove the existence of a signed contract and, therefore, the alleged contract does not satisfy the Statute of Frauds;
- (2) Plaintiff failed to prove that there was a meeting of the minds on the essential terms of the alleged contract;
- (3) Even assuming the alleged contract was signed as Plaintiff alleged, the restrictions relating to the disclosure of confidential information and solicitation of customers expired two years after the employment relationship. Therefore, these restrictions expired at the latest in May of 2015, which was prior to the alleged breaches in this case; and
- (4) Plaintiff failed to establish the required elements of a restrictive covenant agreement which must be strictly construed against the employer under South Carolina law.

B. DIRECTED VERDICT ON PLAINTIFF'S BREACH OF FIDUCIARY DUTY CLAIM

Defendants' Motion for Directed Verdict on Plaintiff's breach of fiduciary duty claim

against Defendant Bannon is GRANTED for the reasons described by the Court on October 14, 2021. The Court adopts all of Defendants' directed verdict arguments in connection with this claim, incorporates those arguments and attendant case law into this ruling, and holds that the Plaintiff's breach of fiduciary duty claim fails because:

- (1) The question of whether a fiduciary exists is a question of law for the Court to decide;
and
- (2) Plaintiff failed to establish any evidence that Defendant Bannon's relationship to Plaintiff as an independent contractor created any type of fiduciary duty to Plaintiff.

C. DIRECTED VERDICT ON PLAINTIFF'S TRADE SECRETS ACT CLAIM

Defendants' Motion for Directed Verdict on Plaintiff's claim under the South Carolina Trade Secrets Act ("SCTSA") against Defendants is GRANTED for the reasons described by the Court on October 14, 2021. The Court adopts all of Defendants' directed verdict arguments in connection with this claim, incorporates those arguments and attendant case law into this ruling, and holds that the Plaintiff's trade secrets claim fails because:

- (1) The facts supporting Plaintiff's trade secrets claim, even taken in a light most favorable to Plaintiff, show that Plaintiff wholly and completely failed to prove the existence of any trade secret information;
- (2) Plaintiff failed to prove that it took efforts that were reasonable under the circumstances to maintain the alleged secrecy of its alleged trade secrets;
- (3) Plaintiff failed to prove that Defendant Bannon (or Defendant Assured Partners) obtained access to Plaintiff's trade secrets by improper means;
- (4) Plaintiff failed to prove that Defendants misappropriated, wrongfully disclosed, or wrongfully used its trade secrets;

- (5) Plaintiff failed to prove any causal link between Defendants' alleged misappropriation of Plaintiff's alleged trade secrets and Plaintiff's alleged damage. Plaintiff failed to prove damages that were proximately caused by Defendants' alleged conduct;
- (6) Plaintiff's alleged damages were wholly speculative and Plaintiff offered no evidence from any clients to establish that clients moved their business from Plaintiff to Defendant Assured Partners because of Defendants' use and/or disclosure of Plaintiff's trade secrets;
- (7) Plaintiff's introduced no evidence showing that Defendant Assured Partners ever had access to or used in any fashion any information of Plaintiff's that could be considered a trade secret; and
- (8) Plaintiff's trade secrets claim was so deficient in every respect that the Court finds that Plaintiff brought its misappropriation of trade secrets claim in bad faith.

D. DIRECTED VERDICT ON PLAINTIFF'S CONVERSION CLAIM

Defendants' Motion for Directed Verdict on Plaintiff's conversion claim against Defendant Bannon is GRANTED for the reasons described by the Court on October 14, 2021. The Court adopts all of Defendants' directed verdict arguments in connection with this claim, incorporates those arguments and attendant case law into this ruling, and holds that the Plaintiff's conversion claim fails because:

- (1) Plaintiff could not prove the elements of a conversion against Defendant Bannon;
- (2) Plaintiff failed to prove that Defendant Bannon converted any property of Plaintiff to the exclusion of Plaintiff's rights as Plaintiff always retained access and rights to the information at issue;
- (3) The property Plaintiff alleged that Defendant Bannon converted was intangible

property which, under South Carolina law, is not properly the subject of a conversion claim; and

- (4) Even if Defendant Bannon converted any of Plaintiff's alleged property, Plaintiff failed to prove any causal link between Defendant Bannon's alleged conversion and Plaintiff's alleged damages.

E. PLAINTIFF'S TORTIOUS INTERFERENCE WITH CONTRACT CLAIM

As referenced in footnote 1 above, during the directed verdict arguments, Plaintiff voluntarily dismissed its tortious interference claim against Defendants. Accordingly, the Court dismissed this claim.

F. AWARD OF DEFENDANTS' ATTORNEYS' FEES AND COSTS

With regard to the issue of awarding attorneys' fees and costs related to Plaintiff's breach of contract claim, the Court has reviewed Plaintiff's Response along with Defendants' Reply on this issue. The alleged contract upon which Plaintiff sued Defendant Bannon states, "In any litigation between the parties related to this Agreement, the prevailing party shall be entitled to recover all reasonable costs and attorney's fees." (Complaint Ex. A, ¶11.).

The Court confirms its ruling and finding that Defendant Bannon is the prevailing party related to this claim. Therefore, the Court GRANTS Defendant Bannon's motion for attorneys' fees and costs. Defendant Bannon is hereby awarded all attorneys' fees and costs incurred by him or paid by Defendant Assured Partners on his behalf and for his benefit in the defense of this case. These attorneys' fees and costs are assessed against and to be paid by Plaintiff.

With regard to the issue of awarding attorneys' fees related to Plaintiff's trade secrets claim, the Court has reviewed Plaintiff's Response along with Defendants' Reply on this issue. The SCTSA states: "If (1) a claim of misappropriation is made in bad faith, (2) a motion to

terminate an injunction is made or resisted in bad faith, or (3) wilful misappropriation exists, the court may award reasonable attorney's fees to the prevailing party.” S.C. Code Ann. §39-8-80. The Court confirms its ruling and finding that the evidence at trial proved that Plaintiff made and pursued this claim against Defendants in bad faith. The Court has also determined that Defendants are the prevailing parties related to this claim. Therefore, the Court GRANTS Defendants motion for attorneys’ fees under the SCTSA. Defendants Bannon and Assured Partners are hereby awarded all of their attorneys’ fees incurred in the defense of this case. These attorneys’ fees and costs are assessed against and to be paid by Plaintiff.

The Court has reviewed the Affidavits of Jeffrey A. Lehrer and William B. Harvey, III for attorneys’ fees and costs. The Court finds these fees and costs reasonable pursuant to the six factors established by the South Carolina Supreme Court in *Taylor v. Medenica*, 331 S.C. 575, 503 S.E.2d 458 (1998). The Court finds that the Affidavit of Jeffrey A. Lehrer provides sufficient support for the reasonableness of the fees and costs sought related to each of these factors.

G. CONCLUSION

It is confirmed and ORDERED that Defendants’ Motion for Directed Verdict is GRANTED in full and all of Plaintiff’s claims have been and are hereby DISMISSED. The Court hereby awards Defendants their attorneys’ fees and costs. JUDGMENT is hereby entered against Plaintiff in the amount of \$484,312.10.

It is so ORDERED.

Dated: _____

_____, County

Judge Bentley Price
Presiding Circuit Court Judge

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2016 CP-07-2541

FORUM BENEFITS, LLC

BRIAN BANNON AND
ASSURED PARTNER, NL

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: BRIAN BANNON AND ASSURED PARTNERS,
NL

Attorney for : ☐ Plaintiff ☒ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☒ See Page 2 for additional information.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRCF; ☐ Rule 41(a), SCRCF (Vol. Nonsuit); ☐ Rule 43(k), SCRCF (Settled); ☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRCF; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
BRIAN BANNON AND ASSURED PARTNERS, NL	FORUM BENEFITS, LLC	\$484,312.10
If applicable, describe the property, including tax map information and address, referenced in the order: N/A		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial before the court. The issues have been tried or heard and a decision rendered.

The Court has GRANTED Defendants' motion for directed verdict on all of Plaintiff's remaining claims.

The Court has GRANTED Defendants' motion for attorneys' fees and costs.

Judgment is hereby entered against Plaintiff.



Beaufort Common Pleas

Case Caption: Forum Benefits Inc , plaintiff, et al VS Brian Bannon , defendant, et al

Case Number: 2016CP0702541

Type: Order/Other

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2022-02-01 10:19:54 page 9 of 9

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Forum Benefits, LLC
Plaintiff,

vs.

Brian Bannon and Assured Partners, NL,
Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 2016-CP-07-02541

**ORDER DENYING PLAINTIFF'S
MOTION TO ALTER OR AMEND A
JUDGMENT**

The Plaintiff Forum Benefits, LLC filed a motion asking this Court to alter or amend its February 1, 2022 order.

STANDARD OF REVIEW

Motions for reconsideration will not be granted absent “highly unusual circumstances.” U.S. ex rel. Becker v. Washington Savannah River Co., 305 F.3d 284, 290 (4th Cir. 2002) (stating that simple disagreements with the court’s ruling will not support Rule 59(e) relief).¹ Courts have recognized three circumstances in which a court should grant a Rule 59(e) motion: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice.” Hutchinson v. Staton, 994 F.2d 1076, 1081 (4th Cir. 1993). Importantly, a motion for reconsideration is not a vehicle to re-litigate previously raised issues or “to raise argument or present evidence that could have been presented prior to the entry of judgment.” Dash v. Mayweather, C/A No. 3:10-1036-JFA, 2010 U.S. Dist. LEXIS 95277, *2 (D.S.C. Sept. 13, 2010) (quoting Exxon Shipping Co. v. Baker, 554 U.S. 471, n.5 (2008)). In other words, “[a] party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not.” Stevens & Wilkinson

¹ Rule 59 is substantially the same as the Federal Rule. See Elam v. S.C. Dep’t of Transp., 361 S.C. 9, 21, 602 S.E. 2d 772, 779 (2004) (“Rule 59(e) in the South Carolina and federal rules of civil procedure is practically identical.”).

of S.C., Inc. v. City of Columbia, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014); Patterson v. Reid, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995). Nor does “[a] party’s mere disagreement with the court’s ruling . . . warrant a Rule 59(e) motion.” In re Pella Corp. Architect & Designer Series Windows Mktg., Sales Practices & Prods. Liab. Litig., 269 F.Supp. 3d 685, 691 (D.S.C. 2017); *see also* Lyons v. Fid. Nat’l Title Ins. Co., 415 S.C. 115, 135, 781 S.E.2d 126, 137 (Ct. App. 2015).

After consideration of the issues raised in Plaintiff’s motion, the Court hereby DENIES Plaintiff Forum Benefits, LLC’s Motion to Alter or Amend a Judgment. Attorneys’ fees and costs shall be paid within thirty (30) days of this order.

AND IT IS SO ORDERED.

ELECTRONIC SIGNATURE PAGE TO FOLLOW



Beaufort Common Pleas

Case Caption: Forum Benefits Inc , plaintiff, et al VS Brian Bannon , defendant, et al

Case Number: 2016CP0702541

Type: Order/Other

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2022-02-16 11:34:51 page 3 of 3

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT,
CIVIL ACTION NO. 2016-CP-07- 2541

Forum Benefits, Inc.,

Plaintiff,

vs.

Brian Bannon and Assured Partners NL,

Defendants.

VERIFIED COMPLAINT

The Plaintiff, complaining of the above-named Defendants, alleges as follows:

1. All named parties are either entities or individuals located, conducting business in, and/or residing in this County and State. All parties are subject to the jurisdiction of this Court.
2. The Plaintiff is an employee benefits firm responsible for benefits management for health, life and disability insurance pertaining to insurance contracts, rates, plan coverage and financial data.
3. The Defendant Brian Bannon (hereinafter "Bannon") is a resident of Jasper County, South Carolina, residing at 395 Wellington Loop, Ridgeland, South Carolina 29936 and maintains an office at 1024 Berkeley Hall Blvd., Beaufort County, South Carolina 29909.
4. Defendant Assured Partners NL ("Assured") is conducting business in South Carolina with locations at 3860 Fabor Place Drive, Suite 400, North Charleston, SC 29409 and 1024 Berkeley Hall Blvd, Bluffton, South Carolina 29909, and, on information and belief, is a Senior Vice President of Assured Partners NL.
5. Bannon was employed by Plaintiff from April 1, 2009 to April 30, 2013 as a W-2 employee and as a 1099 contractor from May 1, 2013.
6. Upon his employment by Plaintiff, Bannon executed an Employment Agreement with the same provisions as those set forth in Exhibit A hereto (the "Employment Agreement"). The Employment Agreement provides that Bannon agrees that information provided by Plaintiff

to Bannon constituted "Trade Secrets" as defined in SC Code Section 39-8-1 known as the "South Carolina Trade Secret Act".

7. Paragraph 12(f) and (g) of the Employment Agreement provides as follows:

- (f) Employee covenants and agrees that during Employee's employment and at all times thereafter, Employee shall not use any Trade Secrets of the Company, except as an employee of the Company with the consent of the Company. Employee further covenants and agrees that during Employee's employment and at all times thereafter, Employee shall not use or disclose any Trade Secrets of the Company to any firm, company, corporation, association or other entity, for any reason or purpose whatsoever, except as an employee of the Company with the consent of the Company.
- (g) Employee further covenants and agrees that during Employee's employment and for a period of two (2) years following the termination of Employee's employment relationship with the Company, either by Employee or the Company, for any reason whatsoever, Employee shall not use or disclose any Confidential Information, except as an employee of the Company with the consent of the Company.

8. Paragraph 13 of the Employment Agreement provides as follows:

- 13. **Covenant Not to Solicit Customers:** Employee recognizes and acknowledges that the identity and contact information for the Company's customers and knowledge of the specific needs of such customers are essential to the success of the Company's business and that, therefore, the Company's customer list and other customer information is an important, proprietary property of the Company, which has been developed by the Company at great effort and expense. **Employee therefore covenants and agrees that in the event Employee's employment relationship with the Company is terminated, either by Employee or the Company, for any reason whatsoever, Employee shall not, for a period of two (2) years following the termination of Employee's employment with the Company, directly or indirectly, alone or in association with or on behalf of any other person or entity, solicit or accept business from or perform any service in competition with the Company for any person or entity who was a customer of the Company at any time during Employee's tenure.**

9. At all times relevant, Bannon had access to all of Plaintiff's computer systems containing, inter alia, customer/client lists, proprietary formulas, user guides, pricing information, loss/claim history and employee booklets, and other confidential and proprietary information and trade secrets and attended internal meetings wherein proprietary information about the Plaintiff's business and customers/clients were exchanged. Upon information and belief, starting in

August of 2016, Bannon was accessing and downloading the proprietary information for uses unrelated to Plaintiff

10. Prior to October 19, 2016, upon information and belief, Bannon utilized Plaintiff's confidential and proprietary information to contact Alpha Genesis, Incorporated, a client of Plaintiff, and was successful in procuring a Change of Broker letter from Alpha Genesis to the detriment of Plaintiff. The letter is attached as Exhibit B. Both Defendants are copied on the letter. On information and belief, it is only through access of Plaintiff's Records by Bannon that the Defendants identified that Alpha Genesis was a client of Plaintiff. This lost customer alone has cost Plaintiff a loss in revenue of \$24,974.00. To date, at least six (6) other of Plaintiff's clients have, on information and belief, been contacted by Defendants and transferred their business to Assured as Broker of Record, causing a loss of \$86,684.00.

11. Bannon also has possession of a desktop computer that is property of Plaintiff which is a Dell OptiPlex 390 Desktop, Service Tag 2T5NSR1 (the "Equipment"). The Equipment contains proprietary information and trade secrets of Plaintiff. Bannon has failed or refused to return the Equipment to Plaintiff despite demand therefore.

12. Plaintiff has discovered that Bannon has accessed and downloaded over 2,100 files of Plaintiff containing trade secrets and proprietary information of Plaintiff (the "Records" or "Trade Secrets"). At this point, without an examination of the Equipment, Plaintiff cannot determine what specific files exist on the Equipment, which examination may disclose further improper access and download of Plaintiff's records.

13. Assured is a direct competitor of Plaintiff. Upon information and belief, Assured and Bannon are accessing and utilizing the confidential and proprietary information of Plaintiff contained in the Records to the competitive and economic disadvantage of Plaintiff by contacting Plaintiff's customers and using Plaintiff's proprietary information and trade secrets to solicit their business. A schedule of Plaintiff's customers/clients is attached as Exhibit C. As a result, to date, Plaintiff has lost revenues of \$111,648.00.

FOR A FIRST CAUSE OF ACTION AGAINST BANNON AND ASSURED
(Temporary Restraining Order)

14. The Plaintiff reincorporates and realleges each of the foregoing allegations as if fully repeated herein verbatim.

15. As a result of Defendants' acts described above, the Plaintiff is entitled to seek a temporary restraining order without notice to the Defendants pursuant to SCRCP 65 restraining the Defendants from accessing and/or utilizing the Records and contacting Plaintiff's customers set forth in Exhibit C. As set forth above, Plaintiff has suffered and will suffer extensive and irreparable injury from Defendants' conduct before notice can be served and a hearing can be held on its forthcoming motion for a temporary injunction. Defendant Bannon has refused to return the Records and Equipment in his possession and is utilizing same to steal Plaintiff's clients. To date, seven (7) of Plaintiff's clients (including Alpha Genesis) have been solicited by Defendants and transferred their business to Defendant Assured as Broker of Record, causing a loss of income to Plaintiff of approximately \$111,658.00.

FOR A SECOND CAUSE OF ACTION AGAINST BANNON AND ASSURED
(Preliminary Injunction)

16. The Plaintiff reincorporates and realleges each of the foregoing allegations as if fully repeated herein verbatim.

17. As a result of Defendants' acts described above, Plaintiff is entitled to a temporary injunction. Plaintiff is suffering extensive and irreparable injury due to Defendant's illegal and improper use of Plaintiff's confidential and proprietary Records, including the loss of seven (7) clients to date.

FOR A THIRD CAUSE OF ACTION AGAINST BANNON AND ASSURED
(Violation of South Carolina Trade Secrets Act)

18. The Plaintiff reincorporates and realleges each of the foregoing allegations as if fully repeated herein verbatim.

19. South Carolina Code Title 39, Chapter 8 cited as the South Carolina Trade Secrets Act (the "Act") prohibits the "misappropriation" by "improper means" of the "trade secrets" of a party.

20. The Records of Plaintiff constitute "trade secrets" as defined in the Act which the Defendants have "misappropriated" (as defined in in the Act) by "improper means" (as defined in the Act). The acts of Defendants constitute a willful, wanton or reckless disregard of Plaintiff's rights for which Plaintiff is entitled to injunctive relief, actual damages, exemplary damages, a preservation of secrecy during this proceeding and attorney fees and costs under the Act.

FOR A FOURTH CAUSE OF ACTION AGAINST BANNON
(Breach of Contract)

21. The Plaintiff reincorporates and realleges each of the foregoing allegations as if fully repeated herein verbatim.

22. The Employment Agreement between Plaintiff and Bannon was a binding written contract between the parties.

23. Bannon has breached the contract by, inter alia, using and disclosing the Trade Secrets (as defined in the Employment Agreement) and confidential information for purposes other than the business of Plaintiff and without consent of the Plaintiff. Additionally, Bannon has breached the Employment Agreement by soliciting customers of the Plaintiff.

24. As a direct and proximate cause of Bannon's breach of the Employment Agreement, Plaintiff has suffered damages of at least \$111,648.00 to date through loss of its customers.

FOR A FIFTH CAUSE OF ACTION AGAINST BANNON
(Conversion)

25. The Plaintiff reincorporates and realleges each of the foregoing allegations as if fully repeated herein verbatim.

26. Bannon has possession of the Records and Equipment of Plaintiff and is illegally using same to the exclusion of Plaintiff's right.

27. The Records and the Equipment are the personal property of the Plaintiff.

28. Bannon is utilizing the Records and Equipment for his own use.

29. Such use is without the Plaintiff's permission as Bannon has refused to return the Records and Equipment to Plaintiff despite demand thereof by Plaintiff.

FOR A SIXTH CAUSE OF ACTION AGAINST BANNON
(Breach of Fiduciary Duty)

30. The Plaintiff reincorporates and realleges each of the foregoing allegations as if fully repeated herein verbatim.

31. The disclosure and providing access of the confidential and proprietary Records to Bannon by Plaintiff placed Bannon in a fiduciary relationship with Plaintiff reposing special confidence in Bannon and requiring the due regard to the interests of Plaintiff by Bannon.

32. On information and belief, Bannon breached this fiduciary duty by improperly accessing and downloading the Records of Plaintiff to Assured and using the Records to improperly solicit the business of Plaintiff's customers/clients for the benefit of Bannon and Assured.

33. Due to such breaches, Plaintiff has suffered damages of at least \$111,648.00 which have resulted to date due to the wrongful conduct of Bannon and is entitled to an award of actual damages in an amount to be determined; and upon such award, is entitled to punitive damages to be determined by the Court due to the willful, wanton or reckless conduct of Bannon.

FOR A SEVENTH CAUSE OF ACTION AGAINST BANNON AND ASSURED
(Interference with a Contractual Relationship)

34. The Plaintiff reincorporates and realleges each of the foregoing allegations as if fully repeated herein verbatim.

35. Plaintiff currently has existing contractual relationships with a number of customers/clients wherein Plaintiff provides employee benefit services related to health, life and disability insurance.

36. By virtue of his former employment arrangement by Plaintiff and/or by virtue of his improper access and retention of Plaintiff's confidential and proprietary Records, Bannon has

knowledge of the non-public information concerning the contracts with Plaintiff's customers/clients.

37. Upon information and belief, Bannon has improperly provided access to the misappropriated information in Plaintiff's Records, including the identity and confidential and proprietary information of Plaintiff's customers/clients, to Assured.

38. Upon information and belief, Defendants Bannon and Assured have utilized the information from Plaintiff's Records to contact Plaintiff's customers/clients, to solicit their businesses and inappropriately and intentionally interfere with Plaintiff's contractual relations with its customers/clients.

39. Defendants' interference was without justification.

40. As a result of Defendants' interference with Plaintiff's contractual relationship with customers/clients, Plaintiff has incurred damages in the amount of \$111,648.00 to date in lost business.

WHEREFORE, the Plaintiff having fully set forth its Complaint, the Plaintiff prays that this Honorable Court:

1. Initially inquire into the issues set forth herein and Plaintiff's Motion for a Temporary Restraining Order filed contemporaneously herewith in addition to the interim relief in the form of a preliminary injunction sought in Paragraph 17 above and issue all such Ex Parte interim relief as it deems appropriate; and

2. Award actual damages incurred by the Plaintiff caused by the inappropriate acts of Defendants (including, but not limited to interest on the amount due) and punitive damages and attorney fees and costs and award a judgment in such amount.

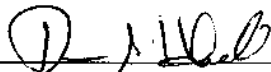
3. Maintain continued jurisdiction over all issues at hand; and

4. Allow the Plaintiff, after further proceedings and efforts, to revise and/or amend its pleadings so as to provide a full and final disposition of any and all claimed remedies that might be sought; and

5. Without limit, allow the Plaintiff any and all further remedies and/or relief to which it might be entitled; and

6. As to all causes of action, grant such other and further relief as this Honorable Court may deem just and proper.

JONES, SIMPSON & NEWTON, P.A.

By: 

Wm. Weston J. Newton
Dean S. Haskell
P. O. Box 1938
Bluffton, SC 29910
(843) 706-6111
Attorneys for the Plaintiff

Bluffton, South Carolina

December 1, 2016

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PALMETTO BENEFIT MANAGEMENT, INC.

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT is made as of this the ____ day of _____, 2009 by and between Palmetto Benefit Management, Inc., a South Carolina corporation (the "Company") and:

Name: _____

Address: _____

SSN: _____ Telephone: _____

a citizen and resident of South Carolina (the "Employee").

1. **Employment:** The Employee shall be employed as follows:

- ☐ Full Time Salaried
- ☐ Full Time Commissioned
- ☐ Part Time Salaried
- ☐ Part Time Hourly: ☐ - ____ hours per week

2. **Duties:** The Employee will perform the duties related to the following job, as set forth in Exhibit A hereto, as it may be amended from time to time, and with the instructions of the President of the Corporation and all senior executives or supervisory personnel, as the case may be and as may be given from time to time, consistent with the duties of loyalty and due care and with all applicable federal and state laws and regulations:

- ☐ Employment Benefits Sales: including but not limited to Health, Dental, Life, Disability, Accident, Supplemental and other ancillary policies
- ☐ Other: _____

3. **Location:** Employee shall be employed in Greenville, South Carolina with an unlimited Territory.

4. **Term:** This Agreement shall be effective upon successful completion of any medical check, drug screen and background check on Employee as Employer may deem prudent and appropriate, and shall continue until the Employee quits or is removed in accordance with this Agreement.

5. **Compensation:** As total compensation, the Employee shall receive:

- ☐ An initial annual nonrefundable draw of _____ United States Dollars per annum. Employee shall be credited a commission of 40% for all new business and 30% of renewal business. Once commission exceeds aforementioned draw amount, employee shall be straight commission at the levels expressed herein. Rights to receive commissions hereunder are earned through the date of employment and terminate with the termination of employment by either party. Commission structure can

Pfeiffer Gantt Gleason Wyatt, PA
935 South Main Street, Suite 203
Greenville, SC 29601
(864) 250-9780



PALMETTO BENEFIT MANAGEMENT, INC.

EMPLOYMENT AGREEMENT

be unilaterally modified by Company to adjust to market conditions. Commission changes made by Company shall take effect thirty days after notice is given to Employee.

- o An initial hourly pay rate of _____ United States Dollars per hour worked

to be paid in accordance with the general payroll policies of the Company as they exist from time to time.

6. **Benefits:** Salaried Employees shall receive the employee benefits as are in effect for all other salaried employees of the Company, if any. Such benefits are detailed in Exhibit B to this Agreement. If no Exhibit B is attached, then no such benefits are currently offered. Part Time Hourly Employees are not eligible for benefits or for paid vacation or paid sick leave, and are only paid for hours actually worked.
7. **Termination:** The Employee is an **employee at will** and the Company may terminate this Agreement and the Employee's employment for any reason or for no reason at any time. Concomitantly, the Employee may resign from employment at any time, for any reason or for no reason. Upon termination, the Company shall have no continuing financial obligation to the Employee, including the obligation to pay any subsequent commission, severance pay or accrued, unused vacation or sick leave pay. Termination by either party does not affect Employee's obligations in Paragraphs 12, 13, and 14 below. It is expressly agreed and understood that the business secured by employee upon termination, stays with the Company.
8. **Assignment Prohibited:** This Agreement is personal to each of the parties hereto, and neither party may assign nor delegate any of its rights or obligations without first obtaining the written consent of the other party.
9. **Amendment:** No modification, amendment, or addition to this Agreement, nor waiver of any of its provisions, shall be valid or enforceable unless in writing and signed by all the parties.
10. **Binding Effect:** This Agreement, together with any amendments hereto, shall be binding upon the parties hereto, their heirs, successors and assigns. This Agreement is the entire agreement between the parties relating to the subject matter hereof, and supersedes any prior agreements relating hereto.
11. **Governing Law:** The laws of the State of South Carolina shall govern this Agreement. Both parties hereto agree to submit to the exclusive jurisdiction of the state courts of South Carolina for the purpose of adjudicating any dispute arising hereunder. In any litigation between the parties related to this Agreement, the prevailing party shall be entitled to recover all reasonable costs and attorney's fees.
12. **Covenant Not to Disclose Trade Secrets and Confidential Information:**
 - (a) Employee acknowledges that the Company has information that is confidential and constitutes trade secrets which the Company uses in its business, and which is essential to its continued ability to compete and be successful in the industry.
 - (b) The term "Trade Secret(s)", as used herein, shall be defined as set forth in the South Carolina "Uniform Trade Secrets" Act (South Carolina Code Ann. Section 39-8-1 (Supp. 1997)), which defines Trade Secrets as information, including, but not limited to, a formula, pattern, compilation, program, device, method, technique, product, system or process, design, prototype, procedure or code that: (i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by the public or any other person who can obtain economic value from its disclosure or use, and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Pfeiffer Gantt Gleason Wyatt, PA
935 South Main Street, Suite 203
Greenville, SC 29601
(864) 250-9780

PALMETTO BENEFIT MANAGEMENT, INC.

EMPLOYMENT AGREEMENT

- (c) Employee expressly agrees that should the South Carolina Legislature change the definition of "trade secret" set forth in the Act described above, the Company may amend this Agreement to set forth the new statutory definition of trade secret and that such definition shall be binding upon Employee from the date of said amendment forward.
 - (d) Employee acknowledges and recognizes that the list of suppliers and customers of the Company, its price lists, customer lists, customer price-discount policies and operating procedures, sales methods, customer recruiting and retention policies and all other information or materials defined in the Act, as the same may exist from time to time, are valuable, special and unique assets of the Company's business and are Trade Secrets belonging to the Company.
 - (e) The term "Confidential Information", as such term is used herein, shall mean any information which the Company uses in its business, which is not generally known in the insurance industry and which the Company considers to be confidential or proprietary, whether or not such information rises to the level of a Trade Secret.
 - (f) Employee covenants and agrees that during Employee's employment and at all times thereafter, Employee shall not use any Trade Secrets of the Company, except as an employee of the Company with the consent of the Company. Employee further covenants and agrees that during Employee's employment and at all times thereafter, Employee shall not use or disclose any Trade Secrets of the Company to any firm, company, corporation, association or other entity, for any reason or purpose whatsoever, except as an employee of the Company with the consent of the Company.
 - (g) Employee further covenants and agrees that during Employee's employment and for a period of two (2) years following the termination of Employee's employment relationship with the Company, either by Employee or the Company, for any reason whatsoever, Employee shall not use or disclose any Confidential Information, except as an employee of the Company with the consent of the Company.
13. **Covenant Not to Solicit Customers:** Employee recognizes and acknowledges that the identity and contact information for the Company's customers and knowledge of the specific needs of such customers are essential to the success of the Company's business and that, therefore, the Company's customer list and other customer information is an important, proprietary property of the Company, which has been developed by the Company at great effort and expense. Employee therefore covenants and agrees that in the event Employee's employment relationship with the Company is terminated, either by Employee or the Company, for any reason whatsoever, Employee shall not, for a period of two (2) years following the termination of Employee's employment with the Company, directly or indirectly, alone or in association with or on behalf of any other person or entity, solicit or accept business from or perform any service in competition with the Company for any person or entity who was a customer of the Company at any time during Employee's tenure.
14. **Covenant Not to Solicit Employees:** Employee recognizes and acknowledges that the Company's Employees are essential to the success of the Company's business and that the Company's Employees have been recruited and trained by the Company at great effort and expense. Employee therefore covenants and agrees that in the event Employee's employment relationship with the Company is terminated, either by Employee or the Company, for any reason whatsoever, Employee shall not, for a period of two (2) years following the termination of Employee's employment with the Company, directly or indirectly, alone or in association with or on behalf of any other person or entity, solicit the employment of or induce to resign and person who was an Employee of the Company at the time the Employee left the Company.

Pfeiffer Gantt Gleaton Wyatt, PA
935 South Main Street, Suite 203
Greenville, SC 29601
(864) 250-9780

PALMETTO BENEFIT MANAGEMENT, INC.

EMPLOYMENT AGREEMENT

15. **Covenants are Independent:** The covenants on the part of Employee contained in Paragraphs 12, 13, and 14 hereof shall each be construed as agreements independent of each other and of any other provision in this Agreement and the unenforceability of one shall not effect the remaining covenants.
16. **Injunctive Relief:** Employee recognizes and agrees that a breach by Employee of the covenants contained in Paragraphs 12, 13, and 14 of this Agreement would cause immeasurable and irreparable harm to the Company. In the event of a breach or threatened breach of either of those covenants, the Company shall be entitled to temporary and permanent injunctive relief, restraining Employee from violating or threatening to violate such covenant. The Company and Employee agree that the relief described herein is in addition to such other and further relief as may be available to the Company at equity or by law. Nothing herein shall be construed as prohibiting the Company from pursuing any other remedies available to it for such breach or threatened breach, including the recovery of damages from Employee.
17. **Severability and Substitution of Valid Provisions:** To the extent that any provision or language of this Agreement is deemed unenforceable, by virtue of the scope of the business activity prohibited or the length of time the activity is prohibited, the Company and Employee agree that this Agreement shall be enforced to the fullest extent permissible under the laws and public policies of the State of South Carolina.
18. **Extension of Periods:** Each of the time periods described in Paragraphs 12, 13, and 14 shall be automatically extended by any length of time during which Employee is in breach of the corresponding covenant contained herein. The provisions of this Agreement shall continue in full force and effect throughout the duration of the extended periods.
19. **Reasonable Restraint.** It is agreed by the parties that the foregoing covenants by Employee in this Agreement are necessary for the legitimate business interests of the Company and impose a reasonable restraint on Employee in light of the activities and business of the Company on the date of the execution of this Agreement and the substantial compensation and authority provided Employee hereunder.
20. **Covenant of Good Faith and Fair Dealing.** The parties to this Agreement hereby covenant to deal with each other fairly and in good faith with regard to all items addressed herein above.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the day and year first above written.

EMPLOYER:

PALMETTO BENEFIT MANAGEMENT, INC.

By: _____

Name: Brain Stritt

Its: President

EMPLOYEE:

By: _____

Pfeiffer Gantt Gleaton Wyatt, PA
935 South Main Street, Suite 203
Greenville, SC 29601
(864) 250-9780

PALMETTO BENEFIT MANAGEMENT, INC.

EMPLOYMENT AGREEMENT

Name:

If under 18 years old, signature of parent or guardian is required:

PARENT OR GUARDIAN:

By: _____

Name:

Pfeiffer Gantt Gleason Wyatt, PA
935 South Main Street, Suite 203
Greenville, SC 29601
(864) 250-9780

PALMETTO BENEFIT MANAGEMENT, INC.
EMPLOYMENT AGREEMENT

EXHIBIT A

Job Duties

Pfeiffer Gantt Glendon Wyatt, PA
935 South Main Street, Suite 203
Greenville, SC 29601
(864) 250-9780

PALMETTO BENEFIT MANAGEMENT, INC.
EMPLOYMENT AGREEMENT

EXHIBIT B

Benefits

Pfeiffer Gantt Gleason Wyatt, PA
935 South Main Street, Suite 203
Greenville, SC 29601
(864) 250-9780

7 of 7

AlphaGenesis[®] INCORPORATED

October 19, 2016

Blue Cross & Blue Shield of SC
Group Membership
1-20 @ Alpine Road
Columbia SC 29202

Re: Alpha Genesis
Policy #15-30237

To Whom It May Concern:

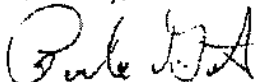
Please be advised that as of 11/01/16 we have appointed Amy Felix of Assured Partners NL Insurance Agency (fka Assured Neace Lukens Insurance Agency, Inc.) - tax ID 45-2712475 as our exclusive Broker of Record with respect to the above policy(s). This broker of record appointment rescinds all previous appointments and the authority contained herein shall remain in force until cancelled in writing.

This appointment authorizes Assured Partners NL Insurance Agency to negotiate directly with (insurer) in respects to changes in any and all existing insurance policies. Assured Partners NL Insurance Agency shall not be responsible for any deficiencies in our current insurance program to which this letter applies. Any and all commission assignments associated with these policies should be made to Assured Partners NL Insurance Agency upon formal recognition of this Broker of Record change.

This letter constitutes your authority to furnish the employees of Assured Partners NL Insurance Agency with any and all information they request pertaining to insurance contracts, rates, plan coverage summaries, and financial data.

We appreciate your cooperation and prompt attention to this matter.

Sincerely,



Paula Gent
Director of Accounting and Human Resources
Alpha Genesis, Inc.

cc: Brian Bannon
Assured Partners NL Insurance Agency

EXHIBIT

B

RESEARCH FOR A BETTER TOMORROW

951 E. 10th Road, P.O. Box 557, Yemassee, SC 29582 | 803.589.5300 | 803.589.5390 | www.alpha-genesis.com

Account Name	Sales Represent	Status
4th Quadrant, Inc dba Up&Up	Brian Stritt	Client
A & E Engineering Inc.	Brian Stritt	Client
Absolute Technologies, LLC	Brian Stritt	Client
Accent USA Manufacturing	Brian Stritt	Client
Accurate Brazing	Brian Stritt	Client
Adex Machining, LLC dba Adex Machining Technolog	Brian Stritt	Client
AER Worldwide	Brian Stritt	Client
AGILE Infrastructure Services, LLC	Brian Stritt	Client
Air Compressor Services, LLC	Brian Stritt	Client
Alpha Genesis, Inc.	Brian Bannon	Client
Avalon Transportation	Brian Stritt	Client
Bannister, Wyatt, & Stalvey, LLC	Brian Stritt	Client
Barnett Plumbing & Heating, Inc.	Stewart Perry	Client
Beacon Communities, Inc.	Brian Stritt	Client
Benco Construction, Inc.	Stewart Perry	Client
Berenyi, Inc.	Brian Bannon	Client
Brookgreen Gardens	Brian Bannon	Client
Carolina Seafood	Brian Stritt	Client
Carolina Youth Development Center	Brian Bannon	Client
Charleston Glass & Mirror Company	Brian Bannon	Client
Charleston Local Development Corporation	Brian Bannon	Client
ChemStone, Inc.	Brian Stritt	Client
Christian Blind Mission	Brian Stritt	Client
Columbus Data Technologies, Inc.	Brian Stritt	Client
ConPearl North America, Inc.	Brian Stritt	Client
Crossroads Treatment Centers	Rick Wylie	Client
Current Tools, Inc.	Brian Stritt	Client
Dantherm, Inc.	Brian Stritt	Client
Data2Impact, LLC	Stewart Perry	Client
Dill Fabrication	Rick Wylie	Client
Diocese of SC	Brian Stritt	Client
DP3 Architects	Brian Stritt	Client
Drayton Hall Preservation Trust	Brian Stritt	Client
Eltex	Brian Stritt	Client
Epic Group, LLC.	Brian Stritt	Client
EverWorks Inc	Rick Wylie	Client
Excel Electric Company	Brian Stritt	Client
Fishman & Company, P.C.	Stewart Perry	Client
Forum Benefits, Inc.	Brian Stritt	Client
Freedom Church Upstate	Brian Stritt	Client
Freshwater Systems / Neologic	Brian Stritt	Client
Geiss & Sons Jewelers - Spartanburg	Brian Stritt	Client
Geiss Jewelers Greenville, Inc.	Brian Stritt	Client
Genesis Marketing Group, Inc.	Brian Stritt	Client
Gibsonburg Health, LLC	Stewart Perry	Client
GKRM, Inc.	Stewart Perry	Client
Gold Collections	Brian Stritt	Client
Greene, Finney & Horton, LLP	Brian Stritt	Client
Greenville Little Theatre	Brian Stritt	Client
Greenville Office Supply	Rick Wylie	Client
Greenwood Fabricating and Plating, LLC	Brian Stritt	Client



Greer Flooring Center Inc.	Brian Stritt	Client
Gusmo Franchise Group AKA Mobetter Management	Brian Stritt	Client
Halcyon Media LLC	Stewart Perry	Client
Hecox Goodwin	Brian Bannon	Client
Hesco Bastion Environmental	Brian Stritt	Client
High Touch High Tech, Inc.	Stewart Perry	Client
Hilton Displays, Inc	Brian Stritt	Client
Hoffman & Hoffman, CPA, P.A.	Brian Bannon	Client
Holly Tree Country Club	Brian Stritt	Client
Holman Distribution Center of Washington, Inc.	Brian Stritt	Client
Hope Center for Children	Brian Stritt	Client
ILJIN Alabama	Brian Stritt	Client
ILJIN USA	Brian Stritt	Client
Imagine Physical Therapy	Brian Stritt	Client
Industrial FabCon, Inc.	Brian Stritt	Client
Interim Healthcare	Brian Stritt	Client
J. Henry Stuhr	Brian Bannon	Client
J.L. Schwartz Co., Inc.	Brian Stritt	Client
Jack Porter, Inc	Brian Stritt	Client
JEM Restaurant Group	Stewart Perry	Client
Jennings Cook and Company	Brian Stritt	Client
Jones Dental Lab Inc	Brian Stritt	Client
Jordan Construction of Hilton Head	Brian Bannon	Client
Kari Ryan Dentistry PA	Brian Stritt	Client
Kaytech, Inc	Brian Stritt	Client
Komet USA LLC	Brian Stritt	Client
KOP & Associates, LLC	Stewart Perry	Client
kVertex Associates, LLC	Brian Stritt	Client
Landscapers Supply, Inc.	Rick Wylie	Client
Lanford Industrial Service	Brian Stritt	Client
LBS Properties	Brian Stritt	Client
Logisticus Risk Management LLC	Brian Stritt	Client
Long Heating and Air, Inc.	Brian Stritt	Client
Lucideon dba The M & P Lab	Brian Stritt	Client
Magnolia Plantation	Brian Bannon	Client
Marathon Automotive Group	Brian Stritt	Client
Mark Michaels Inc	Brian Stritt	Client
Materials Handling Solutions, LLC	Brian Stritt	Client
MSI Viking Gage, LLC	Brian Bannon	Client
Naturalawn of America	Brian Stritt	Client
New Foundations Home for Children, Inc.	Brian Stritt	Client
New Horizon Family Health Services, Inc.	Brian Stritt	Client
Nuvizz, Inc.	Stewart Perry	Client
One Augusta Group	Brian Stritt	Client
Origin Point Brands	Brian Stritt	Client
Ostrem Tool Company, Inc	Brian Stritt	Client
Palmetto Infrastructure Inc.	Brian Stritt	Client
PCC Chemax, Inc.	Brian Stritt	Client
Pendleton Area Rescue Squad	Brian Stritt	Client
Performa Limited (US), LLC	Brian Stritt	Client
Piedmont Rural Telephone Cooperative	Brian Stritt	Client
PMC Corp	Brian Stritt	Client

Polaris Investment Partners	Brian Bannon	Client
Poly-Med, Inc.	Brian Stritt	Client
Premier Logistics Solutions	Brian Bannon	Client
Premier Transport USA, Inc.	Brian Stritt	Client
Printec Industries, Inc.	Stewart Perry	Client
ProSource, LLC	Rick Wylie	Client
Ram Technologies	Brian Stritt	Client
RCS Grading, Inc.	Brian Stritt	Client
Ridgeline Construction Group, Inc	Brian Stritt	Client
S.H. Carter Development, Inc	Brian Stritt	Client
S.I.R. Q, LLC	Brian Stritt	Client
Sheffield Investment Management, Inc.	Stewart Perry	Client
Shertech Pharmacy Services, Inc.	Brian Stritt	Client
Smith Engineering and Construction, LLC	Brian Stritt	Client
South Carolina Legal Services	Brian Stritt	Client
Southern First Bank, Inc.	Brian Stritt	Client
Sports Spine and Industrial	Brian Stritt	Client
St. Andrews Public Service District	Brian Bannon	Client
Stanley International	Brian Stritt	Client
Star Brands II	Stewart Perry	Client
Star Brands IV	Stewart Perry	Client
Strategy Plastics, LLC	Brian Stritt	Client
Stratfield LLC	Stewart Perry	Client
Sunset Management, Inc.	Brian Stritt	Client
Table 301	Brian Stritt	Client
The Black Bean, LLC	Stewart Perry	Client
The Children's Museum of the Upstate, Inc	Brian Stritt	Client
The Cook's Station	Brian Stritt	Client
The Graham Foundation	Brian Stritt	Client
The Greenery	Brian Stritt	Client
The Marley Lilly, LLC	Brian Stritt	Client
The Wood Mortuary	Brian Stritt	Client
Total Maintenance Solutions, Inc.	Brian Stritt	Client
Travinia Italian Kitchen	Brian Stritt	Client
Tumeq, LLC	Brian Stritt	Client
Unibloc Pump	Stewart Perry	Client
Universal Technical Services	Brian Stritt	Client
UPPI, LLC	Brian Stritt	Client
Volke Consulting, Ltd	Brian Stritt	Client
W. N. Kirkland	Brian Stritt	Client
Washburn & Co.	Brian Stritt	Client
Whitlow Electric Service Company, Inc.	Brian Stritt	Client
Wholesale Boutique	Brian Bannon	Client
Wisteria Day Spa & Salon LLC	Brian Stritt	Client

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION No. 2016-CP-07-_____

Forum Benefits, Inc.,

Plaintiff,

vs.

Brian Bannon and Assured Partners NL,

Defendants.

VERIFICATION

I, the undersigned, Brian Stritt, President of Forum Benefits, Inc., for myself, and for the Plaintiff have reviewed the foregoing Verified Complaint and find the allegations contained therein to be true and correct to the best of my knowledge, and as to those matters alleged, on information and belief, I believe them to be true and accurate.

By: _____

Brian Stritt

SWORN TO before me this 29th day
of November, 2016.



Notary Public for South Carolina

My Commission Expires: 2/23/22

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION No. 2016-CP-07-2546

Forum Benefits, Inc.,

Plaintiff,

vs.

Brian Bannon and Assured Partners NL,

Defendants.

SUMMONS

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to appear and defend by answering the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint on the subscribers hereunder at their offices, Post Office Box 1938, Bluffton, South Carolina, 29910, within thirty (30) days after the service hereof, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff will apply to the Court for the relief demanded in the Complaint.

JONES, SIMPSON & NEWTON, P.A.

By: 

Wm. Weston J. Newton
Dean S. Haskell
P. O. Box 1938
Bluffton, SC 29910
(843) 706-6111
Attorneys for the Plaintiff

Bluffton, South Carolina

December 1, 2016

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Forum Benefits, Inc.,

Plaintiff(s)

vs.

Brian Bannon and Assured Partners NL,

Defendant(s)

Submitted By: Wm. Weston J. Newton
 Address: 7 Plantation Park Drive, Suite 3
 P.O. Box 1938
 Bluffton, SC 29910

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2016-CP-07- 2541

SC Bar #: 66502
 Telephone #: 843-706-6111
 Fax #: 843-706-5667
 Other:
 E-mail: wnewton@jsplaw.net

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ General (130) ☐ Breach of Contract (140) ☐ Fraud/Bad Faith (150) ☐ Failure to Deliver/Warranty (160) ☐ Employment Discrim (170) ☐ Employment (180) ☐ Other (199) _____ Inmate Petitions ☐ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599) _____	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20 ____ -NI- ____ - ☐ Notice/ File Med Mal (230) ☐ Other (299) _____ Administrative Law/Relief ☐ Reinstate Drv. License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899) _____ Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699) _____ ☐ Sexual Predator (510) ☐ Permanent Restraining Order (680)	Torts - Personal Injury ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Assault/Battery (370) ☐ Slander/Libel (380) ☐ Other (399) _____ Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Confession of Judgment (770) ☐ Petition for Workers Compensation Settlement Approval (780) ☒ Other (799) _____	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499) _____ Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Comm. (990) ☐ Employment Security Comm (991) ☐ Other (999) _____

Submitting Party Signature: _____

Date: December 1, 2016

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
2016-CP-07-02541

COUNTY OF GREENVILLE

-----)

Forum Benefits, Inc.,)

)

Plaintiff,)

vs.)

TRIAL TRANSCRIPT

VOLUME I

Brian Bannon, et al.)

PAGES 1 - 161

)

Defendants.)

-----)

October 11, 2021

Beaufort, South Carolina

B E F O R E:

The Honorable Bentley Price, Judge Presiding

A P P E A R A N C E S:

FOR THE PLAINTIFF --

Steven R. LeBlanc, Esquire
Steve LeBlanc, LLC
416 East North Street
Greenville, South Carolina 29601
864-902-4411
Steve@LeBlancLLC.com

FOR THE DEFENDANTS --

Jeffrey Andrew Lehrer, Esquire
Edward B. Carlstedt, Esquire
Ford Harrison LLP
100 Dunbar Street, Suite 300
Spartanburg, South Carolina 29306
864-699-1100
jlehrer@fordharrison.com
ecarlstedt@fordharrison.co

Cathy L. Young, CVR-M
Official Circuit Court Reporter
Post Office Box 4604
Beaufort, South Carolina 29903

Opening Statement by Mr. Lehrer

1 leave. And when that happened Mr. Stritt got very upset,
2 because his plan to kind of build up this revenue and
3 backbone, now these clients are leaving, it doesn't look as
4 appealing to a buyer. So what he did next was very
5 improper. He decided that he was gonna disrupt the
6 clients, so that they wouldn't move, so it would seem like
7 it was just too difficult to move. The evidence will show
8 you he denied clients access to their own data. That he
9 cut them off Employee Navigator, and they one day went in
10 to use it, and they couldn't even use it, they have to use
11 it to administer their plan, without notice. You will hear
12 some egregious conduct related to the way that Forum
13 Benefits treated AssureSouth. And you may say, "Well, why
14 is that relevant?" Well, Brian Bannon was still an
15 independent contractor at the time, he was very aware of
16 this disruption. He heard Mr. Stritt make comments about
17 disrupting these clients.

18 There's another witness you'll hear from, Mack Ward,
19 he heard Mr. Stritt talk about disrupting clients. That
20 was the tactic, if they're -- if the clients were going to
21 leave, to disrupt their plan. And that's important to --
22 to show why Brian Bannon did what he did. Yes, he went to
23 -- he decided to go to AssuredPartners, but he was afraid
24 to tell Forum Benefits, because he did not want the client
25 disrupted; instead he made sure he had a copy of his client

1 isn't it? I always love when somebody says "in
2 conclusion," but -- unless they keep going for 15 minutes,
3 right? I've had that. But in conclusion, we are very
4 thankful for your time. This is a lot. I mean this is a
5 lot to take in. This -- and, you know, it is a great
6 public service for you to come and sit here. I hope that
7 you enjoy it, but understanding, yeah, I'm not here to
8 entertain you. I -- I watch a lot of TV lawyers and I -- I
9 like being entertained. I'm not here to entertain you this
10 week, I'm here to represent this man, because he's been
11 sued on a contract he never signed, and it has never been
12 presented. And I look forward to coming back to you at the
13 end of this case and telling you why you should return a
14 complete defense verdict. Thank you.

15 THE COURT: Mr. Lehrer, you are not presenting
16 anything, correct?

17 MR. LEHRER: No, no.

18 THE COURT: Okay.

19 MR. LEHRER: That's it.

20 THE COURT: All right.

21 MR. LEHRER: Thank you, Your Honor.

22 THE COURT: All right, Mr. LeBlanc, if you'll call
23 your first witness, please?

24 MR. LEBLANC: Thank you, Your Honor, if it pleases the
25 Court, we call David Wyatt.

1 **David Wyatt,**

2 Having been first duly sworn,

3 testifies as follows:

4 MADAM CLERK: Have a seat. State your name and spell
5 your last name, please.

6 MR. WYATT: David Wyatt, W-Y-A-T-T.

7 **DIRECT EXAMINATION**

8 BY MR. LEBLANC:

9 Q All right, Mr. Wyatt, tell the Jury a little bit
10 about yourself. Where'd you come from today?

11 A I am from Greenville. I'm a lawyer that
12 practices law, I've been practicing about 25 years in
13 Greenville. So, I actually came down last night, spent the
14 night at the hotel there, so --

15 Q Yeah, I'm glad you told me that, because I got a
16 text message a little while ago telling me I checked out of
17 the hotel, and -- and I didn't -- you know, it scared me,
18 and then I thought, well, that must be your room, all
19 right? So you've been practicing law in Greenville for
20 about 25 years?

21 A Yes, sir.

22 Q Where'd you go to college?

23 A I went to Clemson.

24 Q And what'd you major in?

25 A Majored in econ and law.

1 Q Excellent. My daughter's at Clemson now. I was
2 a Carolina fan for -- until she went to Clemson. It's a
3 lot easier being a Clemson fan.

4 A Well, I grew up a Carolina fan and I went to law
5 school at Carolina, and I still teach there as a professor
6 at the law school, so I kind of have to ride that fence a
7 little bit.

8 Q I cheer them all on, I like -- like them all.
9 How -- what area of law do you practice in? So I practice
10 as a patent attorney, trademark attorney, trade secret,
11 litigation. What are you practicing?

12 A I'm in litigation and business, primarily.

13 Q So what would you -- what -- what's part of
14 business practice of law? What do you do on a daily basis?

15 A So I advise small -- it's mostly small businesses
16 with their, you know, hiring employees, drafting employment
17 agreements, buying and selling businesses, setting up
18 businesses, that sort of thing, you know, if they get into
19 litigation or disputes.

20 Q All right. Well, why did you come down from
21 Greenville today to testify at this trial? Why are you
22 here?

23 A Well, because I drafted an employment agreement
24 for Brian Stritt and his company.

25 Q And do you -- do you recall when you drafted this

1 employment agreement?

2 A It was in the early part of 2009.

3 Q Do you recall why you drafted this employment
4 agreement?

5 A Because Brian was hiring an employee.

6 Q And -- and do you -- do you know which employee
7 he was hiring. Do -- did you know the employee's name at
8 the time?

9 A Yeah, it was Brian Brannon.

10 Q Okay, so Brian Stritt contacted you to prepare an
11 employment agreement for hiring Brian Bannon?

12 A Well, in -- in general, Brian Brannon,
13 specifically, but other employees, as well. He wanted to
14 start using employment agreements.

15 Q And -- and you said he contacted you in 2009?

16 A Yes.

17 Q What law firm were you affiliated with in 2009?

18 A It was Pfeiffer -- I believe it was called
19 Pfeiffer, Gantt, Gleaton and Wyatt at the time.

20 Q This employment agreement that Brian Bannon --
21 I'm sorry, Brian Stritt asked you to prepare, was it only
22 going to be used for Brian Bannon?

23 A No, sir. It was designed to try to be able to be
24 somewhat of a -- of a -- of a modifiable contract.

25 Q Okay.

1 MR. LEBLANC: May I approach, Your Honor?

2 THE COURT: Absolutely.

3 BY MR. LEBLANC: (Continuing)

4 Q I'm passing you a document that will be marked as
5 Plaintiff's Exhibit 137 for identification. If you would,
6 take a look at that?

7 A (Reviews document.) Yeah.

8 Q Do you recognize what's shown in Plaintiff's
9 Exhibit 137?

10 A Yes, this is that agreement that I was just
11 talking about.

12 Q So this is the employment agreement you prepared
13 for Brian Stritt?

14 A Yes.

15 MR. LEBLANC: At this time we'd move Exhibit --
16 Plaintiff's Exhibit 137 into evidence.

17 THE COURT: All right, any objection?

18 MR. LEHRER: No objection, Your Honor.

19 THE COURT: Without objection.

20 (Whereupon, Plaintiff's Exhibit Number 137 was marked for
21 the record and admitted without objection.)

22 BY MR. LEBLANC: (Continuing)

23 Q You testified you prepared this employment
24 agreement in 2009, and it's 2021, so 12 years ago. Have
25 you looked at this employment agreement recently?

1 A Yes.

2 Q All right, so we certainly looked at it to review
3 what's in it; is that correct?

4 A Yes, sir.

5 Q And would you have recalled what was in this
6 employment agreement, if we hadn't met and gone over this
7 employment agreement?

8 A Other than just in boilerplate -- plate terms,
9 no.

10 Q All right. So is this employment agreement just
11 like every other employment agreement you ever drafted?

12 A It -- it -- it is. I mean, you know, agreements
13 do change, but it's -- it's very close to -- to --it's --
14 it's in -- some of it is exactly like it, others is -- is
15 detailed for -- for this particular client.

16 Q And I understand, and my wife and a lot of people
17 that don't practice law --

18 MR. LEHRER: Your Honor, I'm -- I'm going to object to
19 the personal comments from opposing counsel.

20 THE COURT: All right, just ask him the question,
21 please.

22 MR. LEBLANC: I understand.

23 BY MR. LEBLANC: (Continuing)

24 Q This employment agreement does it con -- does it
25 include boilerplate language?

1 A Yes.

2 Q And does it include boilerplate language that has
3 been slightly modified to suit Brian Stritt's request?

4 A Yes.

5 Q Does this employment agreement, that's
6 Plaintiff's Exhibit 137, include everything that Brian
7 Stritt asked you to include in it?

8 A I -- I would assume that it does because Brian
9 never called me and said, "Hey, you -- you left out
10 something," so I -- I would expect that it does.

11 Q When you were done preparing this employment
12 agreement, how did you get it to Brian Stritt?

13 A Email.

14 Q And why did you email this employment agreement
15 to Brian Stritt?

16 A I just wanted him to have the ability to -- to
17 use it and modify it. We talked about him hiring Brian and
18 the importance of having --

19 MR. LEHRER: Objection, hearsay.

20 BY WITNESS: (Continuing)

21 A -- an executed --

22 THE COURT: All right, hold on.

23 MR. LEHRER: Object to hearsay.

24 MR. LEBLANC: To the party, 801(d)(2).

25 MR. LEHRER: It calls for speculation.

1 THE COURT: Yeah, he -- he's a party, he can say what
2 they discussed.

3 MR. LEHRER: All right.

4 BY MR. LEBLANC: (Continuing)

5 Q I'm sorry.

6 A I -- I talked to Brian about the importance of
7 having this executed before Brian started work, to make
8 sure in South Carolina it's enforceable, and I wanted to
9 make sure that he had the ability to modify it for, you
10 know, Brian or any other employees he might be hiring.

11 Q All right.

12 MR. LEBLANC: And if we would, put Exhibit 137 up on
13 the board.

14 BY MR. LEBLANC: (Continuing)

15 Q And Plaintiff's Exhibit 137, that's what we've
16 been talking about, right? This is the employment
17 agreement?

18 A (Reviews document.) Yes, that's what we've been
19 talking about.

20 MR. LEBLANC: Make it a little bit larger, there we
21 go. All right.

22 BY MR. LEBLANC: (Continuing)

23 Q So at -- at the top of the employment agreement I
24 see a lot of lines and white space. What are we doing
25 there?

1 A (Reviews document.) Again, just trying to give
2 it some ability to be modified as needed.

3 Q Okay. So you would expect that Brian Stritt
4 would fill in the name, address, Social Security Number,
5 telephone number for the employee that signed this
6 agreement; is that right?

7 A That's correct.

8 Q And how about this paragraph one, Employment,
9 there's a couple of bullets under there, what are those
10 for?

11 A Well, just whether it was a full-time salaried,
12 or full-time commissioned, part-time, just to try to give
13 him the opportunity to cover who he might be hiring.

14 Q Okay, so how would he fill this out if it was a
15 full-time salaried employee? What would he do?

16 A So he would check that full-time salaried box
17 there.

18 Q All right. Paragraph two, Duties, what's in that
19 -- that -- that paragraph written there? Who -- who
20 provided that?

21 A So, you know, that Duty section, we -- we put
22 this in, but it has the ability to be modified for the
23 particular employee that's being hired. So Exhibit A would
24 be filled in by Brian Stritt to be relevant to whatever
25 employee he was hiring.

1 Q Okay, so if it was an employment agreement for a
2 producer or a sales rep, Exhibit A would describe what that
3 employee's duties were?

4 A That's right.

5 Q All right. How about that bullet there that has
6 a little circle, that says, "Employment benefit sales," who
7 -- who provided that information?

8 A Well, that -- that was -- I'm presuming that was
9 provided by Brian Stritt, because it's specific to the, you
10 know, health insurance policies information.

11 Q All right, and then paragraph three, Location.
12 Why does that say Greenville, South Carolina?

13 A Well, you know, Brian was in Greenville at the
14 time, and, you know, he could change that.

15 Q And when you say "Brian," you mean Brian Stritt
16 or Brian Bannon?

17 A Brian Stritt, that's right.

18 Q Okay, so where was Brian Stritt's company located
19 when this agreement was prepared?

20 A It was in Greenville.

21 Q And where was Brian Bannon gonna be employed?

22 A I believe in Charleston.

23 Q Okay. So, what would Brian Stritt do with
24 paragraph three for Brian Bannon's employment contract?

25 MR. LEHRER: Objection, Your Honor.

1 BY WITNESS: (Continuing)

2 MR. LEHRER: Speculation.

3 THE COURT: All right, I'll sustain the objection.

4 BY MR. LEBLANC: (Continuing)

5 Q All right, let's take a look at paragraph four,
6 what's the purpose of that paragraph?

7 A (Reviews document.) The term is just so you can
8 -- can talk about some things that need to be completed
9 prior to the employee, and then, you know, what happens
10 after that, so it's a --

11 Q So is that some of the boilerplate you might have
12 taken from another employment agreement?

13 A It's -- it could be boilerplate from another
14 agreement, yes.

15 Q Paragraph five, Compensation, what's the purpose
16 of that?

17 A (Reviews document.) Just to try and give Brian
18 an opportunity to specify what the terms of the
19 compensation for the employee would be --

20 MR. LEBLANC: Could you make that a little bit bigger,
21 please?

22 BY MR. LEBLANC: (Continuing)

23 Q Sorry I interrupted you. So what would he do
24 with -- how would paragraph five be completed? How did you
25 intend it to be completed?

1 A So if he's working on, you know, a situation
2 where he'd be getting a draw versus a commission, then he
3 would get the draw, put in whatever that draw would be
4 scheduled in the blank, and then, you know, this -- this
5 particular contract had a 40/30 commission, 40 percent for
6 new business, and 30 percent for renewal, which, you know,
7 could be changed as -- as needed, depending on what the
8 final negotiation results would be.

9 Q All right. Could we take a look at the next
10 page? This is page two of Plaintiff's Exhibit 137.
11 Paragraph 6 there, Benefits, what's the purpose of that
12 paragraph for?

13 A (Reviews document.) Well, what -- whatever
14 benefits might be being provided would be included, sort of
15 like what we did in Exhibit A, in job duties, there's an
16 Exhibit B for him to list what, if any, benefits are
17 applicable to the job.

18 Q Okay.

19 MR. LEBLANC: If we could scroll down to paragraph 12?

20 BY MR. LEBLANC: (Continuing)

21 Q Paragraph 12 starts at the bottom of this page,
22 right?

23 A Yes.

24 MR. LEBLANC: Okay, thanks.

25 BY MR. LEBLANC: (Continuing)

1 Q What's the purpose of paragraph 12?

2 A (Reviews document.) This is the section dealing
3 with trade secrets and confidential information and duty
4 not to disclose the same.

5 Q And how many subparagraphs are there under
6 paragraph 12?

7 A There's seven subparagraphs, A through G.

8 Q All right, would you take a look at the next
9 page, subparagraph F?

10 A Yes, sir.

11 Q And what does that clause provide to the employer
12 versus the employee?

13 A (Reviews document.) This is a covenant from the
14 employee agreeing that -- that, basically, for all times
15 thereafter the employee shall not use any trade secrets of
16 the Company, except with consent of the Company, and at all
17 times thereafter not to use any trade secrets of the firm
18 without consent of the Company to protect the Company's
19 confidential information and trade secrets.

20 Q Okay, so the entire paragraph 12 is to protect
21 the confidentiality of trade secrets of the employer?

22 A That's right.

23 Q And subparagraph F says that that obligation to
24 protect the confidentiality lasts forever?

25 A Forever, yes, sir.

1 Q All right, let's look at paragraph 13 and 14,
2 those two paragraphs again together. Let's talk about
3 those.

4 A (Reviews document.) Yeah, so 13 and 14 are the
5 covenants not to solicit customers and employees.

6 Q Okay, so in -- in this employment agreement the
7 employee signing this would say, I'm not gonna take your --
8 your -- your customers or your other employees, if I go to
9 somewhere else?

10 A That's right.

11 Q How long is -- are these clauses enforceable?

12 A Two years.

13 Q Well --

14 A For two years. There's a two-year, basically,
15 period of enforcement after the employee leaves for both of
16 these.

17 Q And -- and why is there a time limitation for
18 non-solicitation of customers or employees, but there's no
19 time limitation for protecting trade secrets?

20 A Well, you know, the Legislature and the -- and
21 the Courts won't allow you to --

22 MR. LEHRER: Your Honor, I'm going to object, this
23 witness has not been identified as an expert to testify on
24 legal issues.

25 THE COURT: What was the question asked?

1 MR. LEBLANC: Why is there a time limitation for the
2 non-solicitation of employees and customers, and there's no
3 time limitation for the protection of trade secrets?

4 THE COURT: I'll -- I'll sustain the objection. I'll
5 allow him to testify as to why he put that information in
6 there.

7 BY MR. LEBLANC: (Continuing)

8 Q Are you familiar with the South Carolina Trade
9 Secret Act?

10 A Yes, sir.

11 Q What does the South Carolina Trade Secret Act say
12 about time limitations for the protection of trade secrets?

13 A There's -- there's no limitation for that. There
14 -- it -- it can be enforceable --

15 MR. LEHRER: Your Honor, again, I'm -- he -- he's
16 giving an opinion -- a legal opinion in the case.

17 MR. LEBLANC: It's factual testimony.

18 THE COURT: Well, I think you need probably more
19 information from him as to how he would have had this
20 information or know this information.

21 MR. LEBLANC: I will.

22 BY MR. LEBLANC: (Continuing)

23 Q Are you familiar with the South Carolina Trade
24 Secret Act?

25 A I -- I am familiar with the Act.

1 Q And what does the South Carolina Trade Secret Act
2 say about the enforceability duration of protecting trade
3 secrets?

4 MR. LEHRER: Again, Your Honor --

5 THE COURT: Well, you asked the same question. I'm
6 saying you need to proffer more information about how he
7 knows about the Act, like does he teach about it? Does he
8 read about it? Has he learned it in law school? Like,
9 where is his information that he is gonna give? Where did
10 it come from?

11 BY MR. LEBLANC: (Continuing)

12 Q Where did your information about the South
13 Carolina Trade Act come from?

14 A Well, you know, when I'm drafting a contract like
15 this, I -- I pull up the Trade Secrets Act, and review it,
16 just in -- in my course of representing clients, I review
17 the -- the Act. And, again, I try to be familiar with the
18 laws and the enforceability of non-competes, non-solicit
19 and trade secrets.

20 Q Well, and -- and let me ask this question then,
21 for paragraphs 13 and 14, why did you put a limitation of
22 two years there?

23 A It's -- it's, you know, it's my understanding
24 that the law in South Carolina limits the ability of -- of
25 you to -- I mean if there's a --

1 MR. LEHRER: Your Honor --

2 BY WITNESS: (Continuing)

3 A -- reasonable timeframe --

4 THE COURT: One moment, just I asked as to why -- why
5 he put that in his paragraph, and this is the document that
6 he is stating he created, but I certainly will allow you to
7 cross-examine him about that information.

8 BY MR. LEBLANC: (Continuing)

9 Q Okay, my question is, why in paragraphs 13 and 14
10 did you put a time limitation of two years?

11 A My understanding is that -- that the South
12 Carolina law requires that any, you know, South Carolina is
13 a right-to-work State and -- and they want people to be
14 able to work and use their trades to make a living, and so
15 any limitation on those right-to-work are -- would -- would
16 be narrowly construed in time, and so, again, and,
17 typically, anything more than three years would be
18 unreasonable; and so I chose two to try to be safe within
19 that framework.

20 MR. LEBLANC: All right, thank you. I don't have any
21 further questions. Please answer Mr. Lehrer's questions.

22 **CROSS-EXAMINATION**

23 BY MR. LEHRER:

24 Q Good afternoon, Mr. Wyatt, Jeff Lehrer, I don't
25 think we've had the pleasure of meeting each other. I work

1 with Ford and Harrison in -- in Spartanburg. And so do you
2 do a lot of employment law?

3 A I do a fair amount, yes.

4 Q Do you know the difference between an independent
5 contractor and an employee?

6 A Well, yes.

7 Q Okay, and you -- you understand it's a legal
8 distinction, right?

9 A Yes, sir.

10 Q And if you're an independent contractor, you're
11 not an employee, correct?

12 A That's right.

13 Q All right. And if you're -- if -- if the -- an
14 employment relationship ends and an independent contractor
15 relationship starts, the employment relationship
16 terminates, correct?

17 A That's correct.

18 Q And have you ever drafted an independent
19 contractor agreement?

20 A Yes.

21 Q Okay. And those are different, right?

22 A They are.

23 Q They are. Did you ever draft an independent
24 contractor agreement for Mr. Stritt?

25 A No.

1 Q No. Did you know he uses independent
2 contractors?

3 A No, I -- I haven't talked to Mr. Stritt since I
4 did this contract, it was the last legal work I did for
5 Brian.

6 Q And that -- that was -- that was in 2009?

7 A 2009, right.

8 Q And you remember conversations about Mr.
9 Bannon --

10 A I --

11 Q Brann -- I think you said Brannon, so you don't
12 quite remember him, but Mr. Bannon from -- from 2009?

13 A Yeah, I do remember.

14 Q Okay.

15 A I, you know, I remember -- I'll tell you the --
16 the -- I remember trying to tell him the importance of
17 having this contract executed before he hired him.

18 Q Yes, and -- and that is important, isn't it, to
19 have an executed signed agreement, right?

20 A Yes.

21 Q Yeah. And the one you've been shown today is not
22 executed or signed, correct?

23 A No, sir.

24 Q And, in fact, it's not even completed?

25 A It's not complete, no.

1 Q -- for any employee?

2 A That's right.

3 Q And it's got -- it says in -- on here, it says --
4 the one you drafted says, -- you know, you left a lot of
5 blanks, right?

6 A Yeah, for --

7 Q And the blanks were for Mr. Stritt to fill in,
8 correct?

9 A That's right.

10 Q But one blank you didn't -- you didn't leave was
11 the location where the employee was going to be, didn't
12 you? You didn't leave --

13 A I didn't --

14 Q -- a blank there, did you?

15 A No, sir.

16 Q And that says -- do you have the agreement in
17 front of you?

18 A Yes, sir.

19 Q It says, "Location," do you see paragraph three?

20 A Yes, sir.

21 Q And it says, "Employee shall be employed in
22 Greenville, South Carolina," that's what it says, doesn't
23 it?

24 A It does.

1 Q And you knew that -- that Mr. Bannon was not
2 employed in Greenville, correct?

3 A Yes. Yes.

4 Q And so you didn't draft this agreement for Mr.
5 Bannon?

6 A Well, that should have been -- that should have
7 either had a blank, or it should -- I mean I, you know --

8 Q Are you aware of a -- someone by the name of
9 Chris Whatley?

10 A I don't know Chris.

11 MR. LEHRER: May I approach, Your Honor?

12 THE COURT: Absolutely.

13 BY MR. LEHRER: (Continuing)

14 Q Are you familiar with that agreement?

15 A (Reviews document.) This looks like the same
16 agreement, but has been modified from this --

17 Q This -- this -- this agreement has actually been
18 completed, correct?

19 A Yes.

20 Q And you don't recall completing it?

21 A No, sir.

22 Q Okay. But this is your form -- form contract,
23 correct?

24 A Yes, it's the same -- well, it appears to be the
25 same form, but modified.

1 Q Okay.

2 MR. LEHRER: And any objection to moving this into the
3 record?

4 MR. LEBLANC: He doesn't know what it is.

5 MR. LEHRER: I'm just asking if you have any
6 objection.

7 MR. LEBLANC: Yes, I do.

8 BY MR. LEHRER: (Continuing)

9 Q This one, if you look at it, it's -- it says
10 Chris Whatley -- it's got Chris Whatley's name on it,
11 correct --

12 A (Reviews document.) Yes.

13 Q -- at the top?

14 A Christopher R. Whatley.

15 Q Christopher Whatley, it's got his name entered in
16 at the top, correct?

17 A Yes, sir.

18 Q And so those blanks that you had in your
19 agreement where somebody typed in in this Whatley
20 agreement, correct?

21 A Yes.

22 Q And it says Mr. Whatley's address is in
23 Greenville, doesn't it?

24 A It does.

25 Q Yeah. And all the blanks that -- that you had in

1 your form agreement are filled out for Mr. Whatley, aren't
2 they?

3 A Yes, it appears to be.

4 Q And -- and Mr. Whatley signed that agreement,
5 didn't he?

6 A There's his signature there.

7 Q And -- and, in fact, there's not only a signature
8 there, there's a Notary seal; do you see that?

9 A (Reviews document.) Yeah, --

10 Q And so for -- for Mr. Whatley this -- this
11 process was very formal, wasn't it?

12 A Yes.

13 Q We have a signed agreement and we have a Notary,
14 correct?

15 A Yes.

16 Q And that's important to -- in case somebody says
17 they didn't sign it, the Notary is extra proof of
18 signature, isn't it?

19 A A -- a Notary serves a lot of functions, and
20 that's one of them.

21 Q That is one of them, correct. And then you turn
22 to Exhibit A, the job duties for Chris Whatley, there --
23 there are four paragraphs with subparagraphs, correct?

24 A Yes.

25 Q And then on the benefits, they're all the

1 benefits that he's entitled to, correct?

2 A That's correct.

3 Q And on your agreement all that is blank?

4 A That's right, the one that I've got here, yes.

5 Q And you said you -- you said you emailed this
6 blank agreement, this form agreement, that says for a
7 Greenville employee -- you emailed it to Brian Stritt,
8 correct?

9 A Yes.

10 Q In -- in like a Word format, WordPerfect?

11 A That's what I -- that's what I believe, yes.

12 Q And -- and -- I mean when -- when you get a blank
13 agreement in a Word document, and you modify it and add all
14 the information in it, don't you usually save that
15 document?

16 A (No response.)

17 Q I mean you would save it, wouldn't you? If you
18 -- if you created a document for a con -- a contract for
19 someone and you filled in all the blanks, wouldn't you save
20 it to some part of your system?

21 A Yeah, as a lawyer, yeah, I would --

22 Q Yeah.

23 A -- I would save it as a new file.

24 Q Yeah. And have you seen any -- have you ever --
25 are you aware of any document where you -- you've seen a

1 completed -- regardless of whether it's signed, but just a
2 Word version of a completed document for Mr. Bannon?

3 A No. No, sir.

4 Q Don't you think that would exist if somebody
5 actually filled this in? Isn't it likely that would exist?

6 A I -- I'm -- I'm surprised he doesn't have it.

7 Q You're surprised he doesn't have it. Did you
8 ever give him any legal advice about best practices for
9 getting contracts signed?

10 A I -- I don't recall that.

11 Q How about did you ever give him any legal advice
12 about the statute of frauds?

13 A Just making sure you have things in writing.

14 Q Got to have -- and signed by -- signed by the
15 opposing -- the party who gets -- to whom enforcement is
16 sought; isn't that correct?

17 A You know, I -- I do want to put on the record
18 that he's waived the attorney-client privilege --

19 Q Absolutely.

20 A -- to this conversation just to protect myself,
21 but -- but --

22 Q As soon as you took that stand.

23 A Yeah, but I don't recall that conversation, no,
24 sir. You know, again, the -- the important thing was, he
25 was concerned about hiring somebody --

1 MR. LEHRER: Your Honor, I -- I haven't asked a
2 question.

3 BY WITNESS: (Continuing)

4 A -- without a non-compete, and I wanted to make
5 sure that if he was going to --

6 THE COURT: All right.

7 BY WITNESS: (Continuing)

8 A -- hire him --

9 THE COURT: Hold on, just one second. Just give you
10 the opportunity, if it's cross-examination, just say yes or
11 no, and then I'll give you the opportunity to expound, but
12 right now he hasn't asked a follow-up question.

13 BY MR. LEHRER: (Continuing)

14 Q And you testified on -- on direct that you
15 understood that South Carolina is a right-to-work State?

16 A That's right.

17 Q And -- and the -- our Supreme Courts are very
18 strict on enforcing these types of agreements, aren't they?

19 A Yes, sir.

20 Q And you'd better have every I dotted and every T
21 crossed, shouldn't you?

22 A It's important.

23 Q And the signature's the most important thing,
24 isn't it?

25 A Well, it's important.

1 Q It's the most important thing. I mean if -- if
2 you're gonna sue somebody on a contract, you need to have a
3 signature, don't you?

4 A Well, I mean you -- you need to have a contract.

5 Q You need to have a signed contract, don't you?

6 A It would be important to have.

7 Q It would be important to have. Did Mr. Stritt
8 call you and get -- ask you for any legal advice about
9 filing this lawsuit?

10 A No, sir.

11 Q The person who drafted -- allegedly drafted the
12 contract was not consulted; is that right?

13 A Yes, that's exactly right.

14 Q Now, you got -- you put some provisions in here
15 that said -- and you can look at it, but his non-
16 solicitation of customers applies for two years following
17 the termination of employment, correct?

18 A That's right.

19 Q So if Mr. Bannon's employment relationship ended
20 and he became an independent contractor, that two-year
21 period started, didn't it?

22 A That's right.

23 Q And also in terms of confidential information,
24 look at paragraph G, it's the same thing. He's only -- the
25 -- the person under this agreement would only be restricted

1 from using confidential information for two years after
2 employment ended, correct?

3 A (Reviews document.)

4 Q Paragraph G on page three. I'll read it to you.
5 "Employee further covenants and agrees that during
6 employee's employment and for a period of two years
7 following the termination of employee's employment
8 relationship with the company, either by employee or the
9 company, for any reason whatsoever, employee shall not use
10 or disclose any confidential information, except as an
11 employee of the company with the consent of -- of the
12 company," correct?

13 A That's right.

14 Q Did I read that correct? So once the employee
15 relationship ends, this kicks in and two years is the only
16 restriction on this provision for confidential information,
17 correct?

18 A Say that, again, if you don't mind?

19 Q I mean I just read it, it says -- G, it says --

20 A But I didn't understand --

21 Q -- confidential --

22 A -- your question -- I didn't understand your
23 question. I was reading this and you were asking me a
24 question --

25 Q Okay.

1 A -- and I didn't hear what the question was.

2 Q Would you agree that paragraph G, as it relates
3 to restrictions on confidential information, only apply for
4 two years after the employment relationship ends?

5 A Well, I -- I would say that -- yes, yes.

6 Q Turn to -- turn to paragraph 11 of the agreement.
7 It says, "Governing Law."

8 A (Reviews document.) Right.

9 Q And you drafted this paragraph, correct?

10 A Yes.

11 Q The last sentence, do you see that? It says, "In
12 any litigation."

13 A Right.

14 Q It says, "In any litigation between the parties
15 related to this agreement, the prevailing party shall be
16 entitled to recover all reasonable costs and attorney's
17 fees;" do you see that?

18 A Yes.

19 Q And that's -- that's what we lawyers call a
20 prevailing party attorney's fees provision, correct?

21 A Sure.

22 Q So the winner on this contract should get their
23 attorney's fees, shouldn't they?

24 A Yes. Subject, obviously, to His Honor's
25 approval.

1 Q Isn't it? Everything's with his approval. Okay.
2 And -- and -- and I believe you about this email that you
3 sent Brian Stritt, but have you ever produced that in this
4 case, that you --

5 A No, sir.

6 Q -- know of?

7 A No.

8 Q It's never been produced?

9 A No.

10 Q So we don't know the date that any of that was
11 sent, do we?

12 A No, sir.

13 Q Look back at the Chris Whatley agreement. Do you
14 have that?

15 A Yes, sir.

16 Q And he -- this agreement is -- was to be made
17 effective May 18th of 2009, correct?

18 A (Reviews document.) Yes.

19 Q And that's around the time you drafted this,
20 isn't it?

21 A No, I mean like I said, I -- I think I -- it was
22 closer to March.

23 Q Okay, so it's -- it's -- but it's 2009. You
24 drafted this in 2009?

25 A In 2009, yes.

1 Q So within a -- a month or two after you drafted
2 this, we don't know when you sent it, you drafted it
3 sometime March or April of 2009, correct?

4 A I -- I had moved into a new office in the first
5 of 2009, and it was -- it was around that time, so
6 February, I --

7 Q Okay.

8 A -- may have drafted it.

9 Q But we don't know -- you don't know exactly when
10 you sent this email that -- that is -- would be evidence,
11 if we had it --

12 A Right.

13 Q -- of when you sent it to Mr. Stritt?

14 A No, sir.

15 Q And that -- that email may as -- may just as well
16 be in May of 2009, might it?

17 A I mean it's -- I don't think so, no, sir.

18 Q Okay, but you don't know, I mean you're
19 speculating.

20 A Like I said, I -- if I -- it says --

21 Q You're speculating aren't you?

22 A -- February --

23 Q Well, that's when you --

24 A -- February/March.

25 Q -- you -- that's when you drafted it, but I mean

1 listen I -- I --

2 A I don't know when he would have asked -- I don't
3 know when the meeting was with Brian, but -- but I, you
4 know, I believe it was before May, so it would have had to
5 get there before he had that meeting.

6 Q Okay. You never signed -- you've never seen a
7 signed contract by Mr. Bannon?

8 A No, sir.

9 Q You've never seen a completed contract by Mr.
10 Bannon?

11 A No, sir.

12 Q No completed contract was ever forwarded to you
13 from Mr. Stritt to your office to say, "Keep this for your
14 records?"

15 A That's right.

16 Q Never any call back to you after some supposed
17 meeting saying, "Hey, this is what the results of the
18 meeting were. We've got to modify this thing?"

19 A No, we didn't have any conversations. I mean I
20 think I saw him at a restaurant bar that we used to
21 frequent, and he said he got it signed and everything went
22 fine.

23 MR. LEHRER: Your Honor, I -- I -- I would move to
24 strike that.

25 THE COURT: I'm not gonna strike it, but, obviously, I

1 can give the Jury the instruction on it.

2 BY MR. LEHRER: (Continuing)

3 Q You -- you understand the -- the, you know, South
4 Carolina law statute of frauds, that -- that if there's any
5 agreement that cannot be enforced within one year, fully
6 enforced -- or fully performed within one year, has to be
7 in writing signed by the parties; do you understand that?

8 A That is my understanding --

9 Q Okay.

10 A -- of the law, yes, sir.

11 Q And you -- you would agree that the employment
12 agreement you drafted could not be performed within one
13 year?

14 A No, it was a -- it was an employee at-will, but
15 it did have some restrictions on it, so I would say that's
16 an accurate statement.

17 Q So -- so you're -- you're -- you're in agreement
18 with me that this -- this agreement could not be performed
19 within one year?

20 A I don't think it could.

21 Q Because it has a two-year -- it has two-year
22 restrictions.

23 A Well, it has the restrictions that --

24 Q Yeah, so --

25 A -- would last.

1 Q -- it would last beyond, so it is subject to the
2 statute of frauds?

3 A I --

4 Q Correct?

5 A I would think so.

6 Q And under our law, if you're gonna sue on a
7 contract, the statute of frauds says you'd better have a
8 signed document, doesn't it?

9 A Well, it -- it -- I don't know what it --

10 Q That's what it says, doesn't it? I mean that's
11 what the statute of frauds is for is to prevent a fraud.

12 A Well, it is to prevent a fraud, but the way I'm
13 just -- the -- the way you characterize you'd better have a
14 signed contract, I don't know what you mean by that. I --
15 I --

16 Q Okay.

17 A -- haven't seen that necessarily --

18 Q Well, the --

19 A -- that phraseology, so I don't --

20 Q Well, the --

21 A -- know what you mean.

22 Q Well, the --

23 A If you want to elaborate.

24 Q -- the statute of frauds uses the word signed by
25 the party, doesn't it?

1 A Well, again, when you say you'd better have a
2 signed contract --

3 MR. LEHRER: That's not my question right now.

4 BY WITNESS: (Continuing)

5 | A -- better have -- I'm not sure --

6 Q But my question now is the statute of frauds said
7 that it has to be signed.

8 A Yes, you need to have something signed by the
9 party to be charged.

10 Q We don't have that in this case, do we?

11 A I -- I have no idea what is -- here, I'm assuming
12 you don't, based on the line of questioning.

13 MR. LEHRER: Nothing further, Your Honor.

14 THE COURT: All right is there any follow-up?

15 MR. LEBLANC: Briefly, Your Honor.

16	REDIRECT EXAMINATION

17 BY MR. LEBLANC:

18 Q Mr. Wyatt, how many employment con -- contracts
19 have you drafted in your 25 years of practice?

20 A I can't give you an exact count.

21 Q What percentage of the employment contracts you
22 drafted have you received returned, signed employment
23 contracts?

24 A What percentage of contracts? It's a very low
25 percentage really --

1 Q Right, so I appreciate that you don't know how
2 many employment contracts you've received -- you've
3 drafted, but percentage-wise, when you draft an employment
4 contract, how often does your client never talk to you
5 again about it?

6 A 'Cause it's -- that's often time the case, and I
7 very rarely get them, you know, returned, unless, you know,
8 like he said, if I'm asked to give specific advice on best
9 practices and set that up, then I get those back, but
10 otherwise it's very common that I don't.

11 Q And when you say very common, can you give a
12 percentage, or, you know, elaborate on it?

13 A I'd say greater than 50 percent I don't get them
14 back. I get less than 50 percent back.

15 Q Thank you.

16 MR. LEBLANC: I don't have any further questions.

17 THE COURT: All right, Ladies and gentlemen, you may
18 excused, --

19 I'm sorry, have a great rest of your day and travel
20 safe.

21 THE WITNESS: Thank you, Your Honor.

22 THE COURT: All right. Ladies and gentlemen, we've
23 been going for about an hour and a half, we'll go ahead and
24 take our mid-afternoon break, so we'll take a break for
25 about ten minutes, all right?

1 BAILIFF: If you will follow me.

2 (Whereupon, the Court takes a brief recess.)

3 BAILIFF: Okay, the Jury's entering the courtroom,
4 Your Honor.

5 THE COURT: All right, call your next witness.

6 MR. LEBLANC: The Plaintiff calls Brian Bannon.

7 **Brian Bannon,**

8 Having been duly sworn,

9 testifies as follows:

10 MADAM CLERK: You may be seated. Please state your
11 name and spell your last name for the record.

12 MR. BANNON: My name is Brian Bannon, my last name is
13 spelled B-A-N-N-O-N.

14 **DIRECT EXAMINATION**

15 BY MR. LEBLANC:

16 Q Mr. Bannon, where do you work right now?

17 A I work with a company called Fairway Mortgage.

18 Q And what do you do?

19 A I'm a mortgage broker.

20 Q How long have you been doing that?

21 A I just got my license a couple weeks ago.

22 Q What did you do before that?

23 A Nothing. I -- I -- I've been out of work for a
24 little while. I -- I was in real estate for a few months.

25 Can you hear me?

1 THE COURT: I can.

2 BY WITNESS: (Continuing)

3 A Okay, so that -- that's been it, since I -- since
4 I resigned from AssuredPartners, that's it.

5 Q And when did you resign from AssuredPartners?

6 A October of -- I believe it was October 2018.

7 Q I didn't hear that.

8 A October 2018.

9 Q Okay, so you started at AssuredPartners October
10 15th of 2016; is that right?

11 A That -- that's accurate.

12 Q So right up to two years is when you stopped
13 working for AssuredPartners?

14 A Yes, sir.

15 Q And you were unemployed for a period of time
16 after that?

17 A Yes, that's correct.

18 Q And now you're doing what you just got licensed
19 for? You have a new job?

20 A I -- I just got back on my feet.

21 Q All right, let's go back to your earlier
22 employment. Where'd you go to college?

23 A Clemson.

24 Q And when did you finish there?

25 A In 1996.

1 Q And what was your degree in?

2 A Political Science.

3 Q Yeah, I'm having a little hard time hearing you.

4 A Political Science.

5 Q Can you pull that -- maybe pull that forward.

6 A Yeah, I'm just gonna -- I'll just --

7 Q Appreciate it.

8 A Is that better?

9 THE COURT: I don't think his is working, Karen, mine
10 is.

11 MADAM CLERK: It says it's on.

12 MR. LEBLANC: Maybe he just needs to be a little
13 closer to his mouth.

14 WITNESS: Can you hear me now?

15 MR. LEBLANC: It's a little better.

16 WITNESS: Okay.

17 BY MR. LEBLANC: (Continuing)

18 Q I think the last question you was, what -- what
19 was your degree in from Clemson?

20 A I was a Political Science major.

21 Q And where did you first work after you graduated
22 from Clemson?

23 A Blue Cross/Blue Shield of South Carolina.

24 Q And how long did you work there?

25 A Pro -- about two and a half years.

1 Q And what did you do at Blue Cross/Blue Shield of
2 South Carolina?

3 A My first job I was a Benefit File Analyst, just
4 like low level data entry, and the second job I was a
5 Companion Healthcare Marketing Rep.

6 Q Okay. So that's my understanding is that you
7 worked for Blue Cross/Blue Shield for a year or two, and
8 then you went into marketing with a subsidiary of Blue
9 Cross, right?

10 A That's correct.

11 Q And neither of those jobs had anything to do with
12 sales or being a producer; is that right?

13 A The marketing job had a little bit of sales to
14 it.

15 Q And who did you sell to then?

16 A The -- my clients. They asked us to sell
17 ancillary products through Companion Life.

18 Q And what did you do after working for Companion
19 Healthcare?

20 A I was recruited to -- I went and worked for a guy
21 -- by the name of Brandon Guest, Horne/Guest Insurance
22 Agency, he had just bought his agency out from Dick Horne.

23 Q Okay. So I think you said you were recruited?
24 What do you mean by that?

25 A I -- I mean Brandon was looking for young

1 producers, and -- and, you know, so he asked me if I would
2 consider coming and interview with him. He'd heard my
3 name. He liked to, you know, potentially, interview me for
4 a job.

5 Q Okay, and that company's name was Horne/Guest; is
6 that correct?

7 A It was Horne/Guest, and they later been bought
8 out.

9 Q Right, and you were hired at Horne/Guest in about
10 what year then?

11 A Probably December of '99.

12 Q So about two years -- four years after -- three
13 -- sorry, about three years after you finished Clemson?

14 A That's correct.

15 Q And -- and you -- you testified that you were a
16 producer at Horne/Guest; is that right?

17 A That's correct.

18 Q And let -- let's go back to what I put up there
19 in my opening statement, and let me ask you to take a look
20 at this. Were you able to follow my discussion during the
21 opening statement?

22 A I got the gist of it.

23 Q Okay, did -- did I accurately describe the role
24 of an insurance broker?

25 A For the most part, for a layperson, yes.

1 Q Okay, and that's -- that's what we're talking
2 about here, is there anything you would have changed in how
3 I described it?

4 A No, that's fine.

5 Q Okay, so let's look at this drawing, which I
6 think is -- I was trying to make a point. You -- you agree
7 then that -- that the whole job of an insurance broker is
8 to be a broker of information between the client company
9 and the insurance company?

10 A That's accurate.

11 Q And the insurance broker, to do that brokering of
12 information, has to collect all this employee census
13 information from the client company?

14 A In order to?

15 Q Well, in order to transfer it up to the insurance
16 company, the broker has to get the information.

17 A Well, yes, typically, you get it from a client.

18 Q Okay, so the insurance broker talks to the client
19 company and says, "Hey, give me your employee census
20 information;" is that actually the request that's made?

21 A Sometimes, it's not in the initial conversation.

22 Q So --

23 A Later down the line.

24 Q Right, I'm saying when there is a relationship,
25 the -- the client company has already signed up with the

1 insurance broker.

2 A Yes. So if you want to get a quote, you have to
3 get the employee information.

4 Q You have to get the employee census information?

5 A That's correct.

6 Q And did I describe that correctly, because that
7 -- this employee census information is a term in your
8 business, right?

9 A Correct.

10 Q I mean it's -- I've not heard that term before
11 this lawsuit. It's -- when you guys say employee census
12 information, you mean all the financial, personal, medical,
13 Social Security, identifying information about a company's
14 employees?

15 A Well, census information refers to, specifically,
16 date of birth, gender, spousal, level of coverage, that's
17 typically the census information. The other stuff is
18 extra.

19 Q Okay, the other stuff if -- if I recall what I
20 said, included medical information, right?

21 A It can.

22 Q Okay, and where -- where would the insurance
23 broker get that medical information from?

24 A From -- from the client.

25 Q Okay, so the -- the insurance broker has to go

1 collect all this information from the client?

2 A That's correct.

3 Q And this is my understanding, you correct me if
4 I'm wrong, sometimes it's not too bad of a problem, there's
5 only ten employees, so it's a little easier to do; is that
6 right?

7 A You just -- you're collecting less information.
8 It's not necessarily easier.

9 Q Okay, thank you. But, certainly, it's more
10 difficult with a hundred employees; would you agree?

11 A It might be.

12 Q And sometimes a company with a hundred employees
13 they can say, "Well, hey, we have a payroll system, we can
14 just get our payroll system to -- to generate a report to
15 you, and you'll have a lot of this census information; is
16 that right?

17 A I mean that -- that conversa -- I've never had
18 that conversation with a -- with an employer.

19 Q And why is that?

20 A Because they typically would fill out the census
21 and give it to us -- and give it back to us.

22 Q Yeah, I think you just need to get a little
23 closer to that microphone.

24 A It's in my mouth. It's -- it's like -- it's this
25 far away.

1 COURT REPORTER: Yeah, when you drop it down it's
2 harder to hear you.

3 WITNESS: Okay.

4 BY MR. LEBLANC: (Continuing)

5 Q And you're a soft-spoken gentleman.

6 A Okay. How's that -- is that --

7 Q I think that's pretty good.

8 A Okay.

9 Q Okay. I -- I forgot what I just asked you. You
10 said you don't generally get involved in that, or what --
11 what did --

12 A You asked me about the census information, how
13 normally we would get it as brokers.

14 Q Right.

15 A Typically, we get it directly from the employer.

16 Q Okay, and then do you agree with this graph that
17 it says the insurance broker then communicates that
18 employee census information to the carrier?

19 A That's correct.

20 Q And the insurance company then uses that employee
21 census information to do a couple of things, one, say,
22 "Here's all the plans that we have;" is that right?

23 A Well, we know what the plans are before we're
24 given the census information.

25 Q Okay, how do you know what the plans are?

1 A Because the carrier has a list of plans that are
2 available for certain types of companies.

3 Q Right, so you've got -- the insurance broker has
4 collected that plan information before previously?

5 A That's correct.

6 Q Right, I -- I didn't mean to suggest that you
7 only get the plan information when you send the employee
8 census information. I just meant to suggest that the plan
9 information comes from the insurance company and goes to
10 the insurance broker?

11 A That's correct.

12 Q And so a good insurance broker is going to be
13 more knowledgeable about the menu of insurance plans that
14 an insurance company can provide, is that --

15 A That's correct.

16 Q And -- and would you agree with me not all
17 insurance brokers are -- are equally competent; would you
18 agree?

19 A That's probably an accurate statement.

20 Q I didn't understand what you said.

21 A That is probably an accurate statement.

22 (Whereupon, a brief interruption in the proceedings to
23 change microphones.)

24 BY MR. LEBLANC: (Continuing)

25 Q All right, so we were talking about the insurance

1 company provides the plan information to the insurance
2 broker, and not all insurance bro -- brokers are equally
3 competent?

4 A That's a -- that's an accurate statement.

5 Q So the better insurance brokers are really
6 familiar with all the insurance plans that are out there,
7 and they -- they collect that information, they -- they
8 keep a database of that information; would you agree with
9 that?

10 A Sure.

11 Q Okay. And let's go to the arrow in the upper,
12 you know, the right -- the upper right quadrant there, so
13 the insurance bro -- broker has collected and organized and
14 compiled the employee census information, and the insurance
15 broker transmits that, com -- communicates that to the
16 insurance company; is that right?

17 A That's accurate.

18 Q And the insurance company needs that information
19 so that the insurance company can say, "Well, for each of
20 these plans these are the premiums that we're gonna charge
21 you?"

22 A That's accurate.

23 Q And they refer to that as, "We're gonna quote the
24 policy," and the quote is the premium for the policy?

25 A That's correct.

1 Q And then the insurance broker collects that
2 information and -- and it's my understanding, correct me if
3 I'm wrong, sometimes that's -- that's -- that's all the
4 insurance broker does, collects that quote information and
5 conveys it to the client company, and it's -- that's --
6 that's it; is that right?

7 A It -- it's possible.

8 Q It's my understanding that's what AssuredPartners
9 does. Did you work there long enough to learn that, or
10 not?

11 A Excuse me?

12 Q It's my understanding that that's what
13 AssuredPartners does when -- when the insurance company
14 conveys the quote to the insurance broker, the insurance
15 broker then just conveys that quote right on to the client
16 company?

17 A That is possible, yes.

18 Q Okay. You worked at Forum Benefits for how many
19 years?

20 A I was an employee from 2009 to 2013, and then I
21 was an independent contractor, I worked with them until
22 2016.

23 Q Okay, so during your experience with employ --
24 with Forum Benefits, was it your understanding that Forum
25 Benefits did more than what I just described that

1 AssuredPartners does?

2 A No.

3 Q So you're not familiar with Forum Benefits ever
4 going back to the insurance company and saying, "Hey, we
5 got your quotes, but we think we need to look at them a
6 little closer?

7 A All brokers do that.

8 Q Okay, I thought -- I thought I just asked you if
9 AssuredPartners does that, and you said they don't.

10 A I didn't understand your question fully. I could
11 not --

12 Q I appreciate that. I'll -- I'll ask it clearer.

13 A Okay.

14 Q Are there -- are there insurance brokers that
15 when they get a quote from the insurance company, they just
16 communicate that quote to the insur -- to the client
17 company?

18 A It's possible.

19 Q And is that your experience that -- that that is
20 what AssuredPartners does?

21 A No.

22 Q Okay, what does AssuredPartners do?

23 A Assured -- AssuredPartners, when I worked with
24 them, they negotiated rates on behalf of their employer
25 groups.

1 Q And how -- what did they use to negotiate the
2 rates?

3 A The information they were given. They have an
4 underwriting department, they would re-engineer, re-
5 underwrite cases. Brokers have the ability to -- to
6 renegotiate cases. I mean this -- it's -- it's something
7 in the industry that any good broker worth their salt will
8 do. It's -- it's not unique to AssuredPartners or -- or
9 any other firm that I'm aware of.

10 Q Right. My question is -- I -- I get your
11 testimony that -- that AssuredPartners does go back to the
12 in -- insurance company to negotiate better rates; that's
13 your testimony, right?

14 A That's correct.

15 Q And my question was, what does AssuredPartners
16 use to negotiate with the insurance company?

17 A I couldn't tell you that.

18 Q You have -- you don't know what -- what leverage
19 they use?

20 A I'm aware of the people that they used to do that
21 with, but I -- I'm not a -- I'm not an underwriter.

22 Q Okay, fair enough. I mean -- let me make sure
23 I've asked the question and you understand it. It's
24 something more than AssuredPartners doesn't just go back to
25 the insurance company and said, "Gosh, you said that the

1 premiums were gonna be \$100 a month, we really would like
2 it if they were \$90 a month," it's not just that kind of a
3 negotiation, is it?

4 A It doesn't work out that way, no.

5 Q Yeah, so your testimony is that there is some
6 argument that AssuredPartners has for a prefer -- for a
7 better, preferable quote?

8 A Not necessarily. Renew -- renewals, yes, not
9 necessarily quotes.

10 Q Okay. And you're distinguishing quotes from
11 renewals?

12 A They can be the same, they can be different.

13 Q Okay, tell -- tell me what -- what -- how they're
14 different. How is a quote different than a renewal?

15 A Well, a quote is different is because you don't
16 have any information from the client. You don't have any
17 past medical history.

18 Q Right, so -- and -- and I'm just trying to follow
19 along your terminology. When you use the word "quote," do
20 you mean that that's an initial policy with that -- between
21 that carrier and that company?

22 A Right. The -- the -- the company can either
23 accept it, or they can deny it.

24 Q Okay, so --

25 A It's just a quote, they're just numbers.

1 Q Okay, so I -- and I did not appreciate that the
2 term quote had that narrower meaning. When you -- when you
3 use the word "quote" of a insurance premium from the
4 insurance company, you use that in the context of that's
5 the initial policy that the insurance company would write
6 for the client company?

7 A I should state that the initial quote is just the
8 initial premium attached to a policy, that's all it is.

9 Q All right. Well, when the -- when the policy
10 renews next year, doesn't the insurance company provide
11 another quote?

12 A It's called a renewal.

13 Q Okay, it's called a renewal. All right, I -- I
14 just want to make sure I use the same terminology you're
15 used to, so quote is the initial policy, renewal is when it
16 gets renewed. You don't -- when it gets renewed, you don't
17 call it a quote anymore; is that right?

18 A That's correct.

19 Q And I asked you what leverage -- what does
20 AssuredPartners do to negotiate with the insurance company,
21 and you said that's just not your job, you're not familiar
22 with what it is?

23 A Yeah, it's -- I mean it's been five years since I
24 worked for AssuredPartners, I'm a little fuzzy.

25 Q Do you -- do you --

1 A I -- I think -- I mean, honestly, I'd have to
2 speculate about what they're doing right now, I'm not sure.

3 Q You'd have to speculate about what they're doing
4 right now?

5 A Yeah. I mean a lot has changed in five years,
6 the industry is changing. I would -- I would be
7 speculating if I told you I knew what they were doing to
8 renegotiate or negotiate rates on behalf of their clients.

9 Q Yeah, I don't want you to speculate.

10 A Okay.

11 Q I -- I'm only asking you to testify to what you
12 saw in the two years you were at AssuredPartners.

13 A Uh-huh.

14 Q And in the two years you were at AssuredPartners
15 your testimony is, they do do something, they do push back
16 on the insurance company on rates; is that --

17 A (Nods.)

18 Q -- you have to answer orally.

19 A That's correct.

20 Q But you're not sure how they push back?

21 A Yeah, I would have to speculate.

22 Q Because it wasn't your job?

23 A It wasn't my department, correct.

24 Q All right, and that leads me into this topic of a
25 producer's job, all right? So is -- is the terminology for

1 a producer also a sales representative?

2 A It can be.

3 Q Okay, and so the -- the job of a producer is
4 what?

5 A To go out and find new clients, to forge
6 relationships, share information with them. Hopefully, you
7 bring new clients onboard, and then continue to consult for
8 the client, and give them all the insurance consulting they
9 need, and continue to work that relationship, and help
10 renew the business, and oversee any escalated service
11 issues.

12 Q All right, and -- and let me break that down. So
13 the producer is the salesperson for the insurance broker,
14 you go out and get new clients for the insurance broker?

15 A That's correct.

16 Q And -- and once you get new clients, once they're
17 signed up and the policy's in place, service that client?

18 A Escalated service issues, sure. I mean you have
19 a service team who works with you.

20 Q Thank -- thank you for clarifying that. When you
21 say escalated issues, let me see if I can say it the way I
22 understand it. So the producer first gets the client to
23 sign up with the insurance broker, right? And then once
24 the client signs up with the insurance broker, the
25 insurance brokers assign an account manager or an account

1 executive to facilitate the plan administration during the
2 year?

3 A That's correct.

4 Q And -- and the producer doesn't -- doesn't really
5 get involved in that unless there's an escalated issue?

6 A That's correct.

7 Q Okay, so two things so far, sign up new clients,
8 and help your account manager with any issues that need
9 senior help?

10 A That's mostly correct, yeah.

11 Q And I think the third thing you said a producer
12 does is what?

13 A Renew the client.

14 Q Renew the client.

15 A Keep -- keep the clients happy, keep them on the
16 books.

17 Q And -- and when we say renew the client, what's
18 involved in that?

19 A Usually, there is a renewal premium that's
20 generated from the various insurance companies they have
21 coverage with. Typically, brokers will put renewal
22 proposals together, they'll put all that information in
23 there, disseminate it, make it easier for them to read and
24 understand, and then talk about what their options are
25 before the renewal comes up.

1 Q Okay, so let's say the renewal happens in
2 January, and -- and renewals can happen any time for the
3 company?

4 A Any month.

5 Q But the -- they're -- the renewals are usually on
6 an annual basis; is that right?

7 A That's correct.

8 Q It's just some companies, for whatever reason,
9 they renew in March or July, or whatever month they pick?

10 A That's correct.

11 Q But the larger majority of them tend to renew in
12 the fourth quarter, you know, either the fourth quarter
13 sometime, or, specifically, January?

14 A That's correct.

15 Q So the fourth quarter of every calendar year is
16 when the insurance broker is the busiest?

17 A That's correct.

18 Q That -- that's across the board?

19 A That's correct.

20 Q And when the renewal happens, I -- I think this
21 is what you said, there is a renewal quote, or I think you
22 had another term, I don't -- I didn't catch.

23 A Yeah, it's a renewal.

24 Q An -- a renewal quote. And so now the insurance
25 company is saying, "Hey, we have -- we've had a year of

1 data, and we either made what we should have made last
2 year, or we didn't make as much money," or whatever, that's
3 what impacts the renewal quote?

4 A The -- well, that and the client's medical
5 history.

6 Q Ye- -- yes, that's -- that -- and -- and you just
7 said back to me what I thought I was just --

8 A Right.

9 Q -- saying to you. The insurance company now has
10 a year of information, they know they got their monthly
11 premiums, because that's --

12 A Uh-huh.

13 Q -- that's not gonna change, but what they didn't
14 know is what kind of medical payments they were gonna pay
15 out, what type, how -- how big were the claims, how many
16 claims they were going to pay during the year. And so now
17 the insurance company says, "Well, we've got a year of
18 data, so we're gonna adjust your premiums up or down based
19 on that year of data;" is that -- is that fair? Is that
20 how it goes?

21 A Typically, they don't go down.

22 Q Right, typically, they don't go down, but they do
23 sometimes, don't they?

24 A It's very rare.

25 Q That medical history, you know, the events -- the

1 claims that were made during that year, where is that in
2 this diagram?

3 A (Reviews document.) That would be in the -- you
4 know, Steve, it's not very -- it's -- it's pretty -- that's
5 pretty basic.

6 Q Right.

7 A But you could say that it's in the insurance plan
8 part of this diagram.

9 Q So the medical history is in the insurance plans?

10 A Uh-huh, it's attached to the insurance plan.

11 Q Is it also included in the database of employee
12 census information?

13 A Not the census information, no.

14 Q Okay. Is -- is that your -- is that your
15 experience at AssuredPartners?

16 A That's my experience in the industry.

17 Q Okay. At Forum Benefits then -- are you
18 testifying that at Forum Benefits they did not include
19 medical history information in the Employee Navigator
20 accounts?

21 A Are you asking me about Navigator or census? You
22 asked me about the census.

23 Q All right. Yes, I did.

24 A Because the -- the census it's pretty narrow.
25 The census is pretty narrow. You've got name, date of

1 birth, coverage level, and the -- and a date of birth of
2 any dependents.

3 Q Yes, sir.

4 A And -- and, you know, rarely does that include
5 Social Security. It could for, you know, maybe a life
6 insurance policy or something, but, typically, not.

7 Q Yeah, I -- I think I just jumped topics, and I --
8 I need to --

9 A Okay.

10 Q -- ask it better. That employee census
11 information is there a piece of software, an application
12 that is used to store and organize and compile that
13 information?

14 A No, not specifically.

15 Q Okay, what does -- what is Employee Navigator
16 used for?

17 A Employee Navigator is used to onboard new
18 employees at employer groups, to bring an employee on.
19 Instead of filling out a paper application with CIGNA,
20 United Healthcare, Blue Cross, you just key it in. The
21 employer or the broker can key that information in, and
22 then the employee is uploaded, and -- and they're on the
23 system, and they've got -- the employer group has access to
24 it. They've got the entire record of the employee census
25 data, what coverage they selected, etcetera.

1 Q All right, so Employee Navigator is a database
2 that includes -- that houses this employee census
3 information; do you agree with that?

4 A Yes.

5 Q And the question I now have to you, and I think
6 it got confused is, does the Employee Navigator database
7 also include claims information for employees? And you
8 don't have to --

9 A That's a good --

10 Q -- speculate, if you don't know.

11 A That's a good question, I don't know.

12 Q Okay. You --

13 A I mean it's been five years, I don't know what it
14 can do now.

15 Q Okay, in the seven years you were working at
16 Forum Benefits, did you ever have access to the Employee
17 Navigator account?

18 A No.

19 Q Okay. And so I don't want to ask you questions
20 outside of your field, and I apologize for that, but I do
21 want to establish that you don't know what's in Employee
22 Navigator?

23 A That would be inaccurate to say that I don't know
24 what's in it.

25 Q Okay.

1 A I know -- I -- I know what -- I know what I
2 looked at and what was in it when we were -- we -- we were
3 using it, and what my -- I know what my clients -- I know
4 what information they had in there. I know that they could
5 put plan information in there, but I don't know, you know,
6 I don't know what it looks like right now. I don't know
7 what it can do.

8 Q Right, and I'm not asking you what it looks like
9 right now --

10 A Okay.

11 Q -- obviously. I don't know what it looks like
12 right now. It's been five years since you've been in it,
13 I've never been in the business. My question is, in your
14 time at Forum Benefits did Employee Navigator -- did that
15 database of information include something more than just
16 name, how many dependents, age, did it include --

17 A Yes.

18 Q -- something more --

19 A It included -- it included the client's plan
20 information?

21 Q Yes.

22 A So any -- if they had health insurance, if they
23 had dental, the plan information was out there, meaning
24 policy information --

25 Q Okay.

1 A -- and a description of their policy.

2 Q And -- then -- then maybe we're saying the same
3 thing, I think you said the insurance plan information
4 might include some claims history.

5 A Well, no, I -- I said that's on the plan side.
6 The -- the claims history file is the plan, okay?

7 Q Okay, but I thought you just said Employee
8 Navigator also houses the insurance plan information?

9 A It does.

10 Q And if it houses the insurance plan information,
11 then wouldn't it also house that medical information?

12 A I -- I -- I can't confirm that.

13 Q All right, and that's where you just don't know,
14 you haven't looked at it?

15 A I -- I just don't know.

16 Q And -- and to be clear, you don't know -- not
17 just 'cause it's been five years, you just never had access
18 to Employee Navigator?

19 A That's correct.

20 Q All right, I don't have producer written on here,
21 but if you were a producer on this graph, where would you
22 write it?

23 A Right where the -- right where the word
24 "insurance broker" is.

25 Q That's what I would think, so you'd write --

1 write it underneath there? The -- the producer works for
2 the insurance broker.

3 A That's correct.

4 Q And -- and I -- in my opening statement I said
5 that the insurance broker gets paid from commissions that
6 the client company pays the insurance company; is that
7 right?

8 A That's correct.

9 Q And then, usually, in this business the insurance
10 -- or the -- the producer, or the sales rep shares some
11 percentage of those commissions that go to the insurance
12 broker?

13 A It's -- yes, that -- that can be, that's cor --
14 yeah, that's accurate.

15 Q Yes, and --

16 A There's a sharing of commissions. It comes into
17 the broker, if the broker has independent contractors,
18 they've got employees that they consider producers, then
19 there's a split.

20 Q In your business are you aware of any producers
21 that are on just a straight salary, not a convention base
22 compensation?

23 A It's rare, but I -- yeah, I've been aware of it.

24 Q Have you ever been on a straight salary?

25 A I was.

1 Q And when was that?

2 A It was right after I started working with
3 Palmetto Benefit Management, that's what Forum was, the
4 name of the company before they changed the name from two
5 -- April 2009 to 2013 --

6 Q Okay, so --

7 A -- or 2016 -- or 2013, so I was a W-2 from April
8 2009 to approximately 2013.

9 Q Right, but -- and you tell me, I wasn't there,
10 when you started with Palmetto Benefit Management, you were
11 paid a salary; is that correct?

12 A That's correct.

13 Q And how much was that?

14 A I can't remember, maybe 55, 60,000, I can't
15 remember, 55, 60,000 --

16 Q Okay, and -- but did you --

17 A -- annually.

18 Q -- also receive a share in the commissions that
19 Palmetto Benefit Management might receive?

20 A No, not at that time.

21 Q And why -- there was no percentage that you
22 shared?

23 A No.

24 Q You were just straight salary?

25 A I was in the beginning.

1 Q All right, let's go back to your employment
2 history before Palmetto Benefit Management, and that's the
3 first time we've used that term. It's your understanding
4 that -- that Forum Benefits, the -- the Plaintiff in this
5 case, was previously called Palmetto Benefit Management?

6 A That's correct.

7 Q Okay. And the last time -- the last employer we
8 talked about was -- I forget, what was their name? What
9 was the last employer I asked you about?

10 A I believe it was Palmetto Benefit Management,
11 Forum.

12 Q No, it was two names with a hyphen, I forget -- I
13 forgot -- I just forget what name it was, Horne/Guest,
14 sorry.

15 A Okay.

16 Q Let's pick up from there. So you were working
17 with Horne-Guest when?

18 A December -- or December '99, January 2000.

19 Q And your job with Horne-Guest was a producer?

20 A That's correct.

21 Q And the -- the -- and I don't mean to diminish
22 this, but the three primary functions of a producer are get
23 new clients, service elevated issues with the clients, and
24 renew the clients?

25 A That's correct.

1 Q All right, where did you work after Horne-Guest?

2 A I went to a company called Commonwealth.

3 Q And I think that's the company that Mr. Lehrer
4 said you had an employment agreement with?

5 A That's correct.

6 Q All right, so when you went to Commonwealth, you
7 went there as a producer?

8 A I did.

9 Q And how much were you paid as a producer for
10 Commonwealth?

11 A Oh, I don't remember all the details, that was
12 2001, but it was a really small base salary they put us on,
13 and then we had our commissions split. The base salary was
14 like \$20,000, and then we had a commission split. I can't
15 remember what it was when I got there, if it was 50/50, or
16 55/45, but it -- it was -- it was somewhere along that
17 line.

18 Q Okay, and -- and let me see if I can talk back to
19 you what you just described because sometimes that can get
20 a little complicated. So you got a base salary, a -- a
21 monthly paycheck every month; is that correct?

22 A That's correct, for -- for like the first year,
23 yeah.

24 Q And then if you generated a lot of commissions,
25 your -- your share of those commissions would give you an

1 additional paycheck?

2 A That's correct.

3 Q And so -- and I appreciate that you don't recall
4 what it was, I -- I don't have any concern about that, but
5 we'll just use an example, and these are purely fictional
6 numbers.

7 A Okay.

8 Q So you might have been paid \$10,000 a year, as a
9 base salary and 50 percent of commissions?

10 A Sure.

11 Q And if -- if you generated commissions to your
12 insurance broker of, say, \$100,000, how much would you get
13 paid at the end of the year?

14 A I'd get paid \$50,000 plus if I was receiving a
15 salary, and --

16 Q Right.

17 A -- anything left over.

18 Q And thank you, so it'd be \$10,000 your base
19 salary plus 50 -- your \$50,000 in commissions you earned?

20 A Right.

21 Q And is that fairly a typical arrangement in the
22 business?

23 A No.

24 Q What -- how is that not typical?

25 A I mean it -- it depends, most producers, once

1 they've been around for a while and you've got a booked
2 business, you're straight commission. Typically, when a
3 firm is trying to bring somebody on, somebody new, maybe
4 somebody who hasn't had a booked a business, somebody
5 young, they'll go ahead and pay a base salary for a period
6 of time.

7 Q Okay, and would you say that that is what
8 Palmetto Benefit Management did with you when you started
9 there in 2009, they paid you a base salary?

10 A They did.

11 Q And -- and we'll get to it in a minute. When you
12 became a fireman at Bluffton -- in Bluffton, and you
13 converted to an independent contractor, right?

14 A That's correct.

15 Q Then how did your compensation structure change
16 then with Palmetto Benefit Management?

17 A I -- I think I was getting paid 50 percent
18 commission at that point. I was no longer on a base
19 salary, so I think what I proposed, and this is a long time
20 ago, is that we drop my commission from 50 percent to 40
21 percent. I'll be an independent contractor, you pay less
22 taxes on me, you know, you're not required to offer me
23 health insurance, or, you know, I -- I knew that that was
24 -- that was going to be a cost savings for him, so we
25 lowered my -- we -- and we lowered my commission.

1 Q So you felt like you were doing Mr. Stritt a
2 favor to convert to an independent contractor?

3 A Well, I felt like that it -- it was a little of
4 both. It -- it was, you know, it was an agreement that we
5 made.

6 Q And -- and you said a couple of things in there
7 I'm not familiar with. So 2013 is the timeframe when you
8 became an independent contractor?

9 A That's correct.

10 Q And you said that -- at that time what was your
11 compensation structure with Palmetto Benefit Management?

12 A I -- I can't remember, it was probably -- I think
13 it was 50 percent commission at that point. It might have
14 been 50 percent straight commission.

15 Q And no guaranteed salary?

16 A No.

17 Q Okay. And then when you became an inde --
18 independent contractor, you reduced your commission to 40
19 percent?

20 A Forty percent.

21 Q Were you happy with that agreement -- with that
22 arrangement?

23 A It -- it was okay. I mean I wasn't -- sure, I
24 would have liked to have made more money. I would have
25 liked for it to stay at 50 percent, I mean -- but I felt

1 like 40 percent was -- it was worth it.

2 Q All right. All right, you're at the Commonwealth
3 Agency of Charleston as a producer, right?

4 A That's correct.

5 Q And how long were you there?

6 A About seven and a half years.

7 Q And you said you had an employment agreement with
8 them?

9 A I did.

10 Q And that employment agreement said, "If you leave
11 Commonwealth Agency of Charleston, you can't take any of
12 our clients."

13 A That is accurate.

14 Q And -- and I -- yeah, I don't mean to be quoting
15 an employment agreement I've never seen, I'm -- I'm -- you
16 had a non-solicitation clause in there?

17 A That's correct.

18 Q And that's what you really felt strapped with; is
19 that correct?

20 A Yeah, it was -- it was the entire agreement. The
21 agreement was given to us a couple -- it was given to me a
22 couple years after I got there, and it basically said,
23 "That you -- you know, if you leave here, you cannot take
24 any of your clients with you, and you can't solicit their
25 business for a period of up to two years."

1 Q And you went along and signed that agreement?

2 A I did.

3 Q And you regretted it?

4 A I did. I regretted it years later.

5 Q And you were never gonna do that again? You were
6 never gonna do that again?

7 A That -- that's what I told Brian Stritt.

8 Q I'll get there. All right, where did you go
9 after Commonwealth Agency of Charleston?

10 A I attempted to open up a Nationwide agency.

11 Q And when you say Nationwide, you mean the company
12 Nationwide Insurance or --

13 A That's correct.

14 Q Okay, you tried to open up a Nationwide agency,
15 and how did that work out?

16 A It didn't work out well.

17 Q Well, how well did it work out?

18 A Well -- it -- it was right around the time the
19 economy tanked in 2007, 2008, and it was really difficult
20 to write new small contractor policies. A lot of those
21 guys were out of work, and I just -- I couldn't financially
22 make it work, so we ended up pulling the plug on it after
23 about five or six months.

24 Q Okay, tell me what you mean by we ended pulling
25 the plug. Who's we?

1 A Myself and my wife. I was financing -- I was
2 financing a good portion of the deal.

3 Q Okay, how did that work out? I mean how -- what
4 do you mean when you say you were financing the deal?

5 A I was paying my own salary.

6 Q I -- I --

7 A I was paying a portion of my own salary the
8 entire time.

9 Q How do you do that? I mean if --

10 A I --

11 Q That's a trick. How do you pay your own salary?

12 A I had money in the bank.

13 Q Okay, so you were not getting -- you were not
14 earning money from your Nationwide office, so you just took
15 some money from your savings?

16 A That's correct.

17 Q Okay, I -- I didn't understand that's what you
18 were saying, I thought there was some financial deal you
19 had here that I'd be interested in.

20 A Well, they -- they were paying for some things
21 but my salary was not -- if -- if they were paying a
22 salary, it was really, really small at the time. They were
23 paying a lot of office expenses and other things, and they
24 were paying business expenses, but my salary was not a
25 priority.

1 Q All right, when you say they, you mean
2 Nationwide?

3 A That's correct.

4 Q All right, now I'm not an employment lawyer, but
5 did you have a salary with Nationwide?

6 A I -- I can't remember. I- -- if I did, it was
7 very small.

8 Q Because if you had a salary with Nationwide, my
9 understanding it's not optional whether they pay it or not.

10 A Okay.

11 Q Okay, so if you weren't getting paid, to me, it
12 tells me you weren't on a salary, and I'm not trying to
13 trip you up, but I don't think you can say you were on a
14 salary and they weren't paying you.

15 A I honestly can't remember the salary arrangement
16 or the pay structure. I mean it was a pretty short period
17 of time, it was a long time ago, I -- I don't remember. I
18 mean I was only -- we -- that was probably a five or six-
19 month period -- portion -- a period of time.

20 Q All right, I don't want to beat a dead -- dead
21 horse, but that didn't work out? Financially, disaster?

22 A It didn't work out for me.

23 Q It was a financial disaster?

24 A You could -- you could say that.

25 Q I think you said that.

1 A Okay.

2 Q Okay? So what happened then?

3 A I started -- I fired up my resume, started
4 sending it out, started looking for jobs, started looking
5 for gainful employment.

6 Q And is that when you and Brian Stritt connected
7 with Palmetto Benefit Management?

8 A That's correct.

9 Q And is -- is that the first time you had met
10 Brian Stritt?

11 A No. We -- we had met a few years earlier.

12 Q You met a fews -- a few years earlier on a
13 insurance trip?

14 A That's correct.

15 Q Okay, through a mutual friend?

16 A That's correct.

17 Q All right, and when Brian Stritt met with you,
18 what was the proposal? What was the deal that was worked
19 out?

20 A Well, we had talked a few times over the years
21 about, you know, he had mentioned, you know, going to work
22 with him, "And would you be interested?" And I wasn't, the
23 timing wasn't right, I couldn't make it work, and I was
24 happy where I was. So when we finally got around to
25 talking, I was in the midst of interviewing with companies,

1 and he said, "You know, you don't want to do that." I
2 said, "I don't?" He said, "No, you ought to come work with
3 me." So we -- we chattered for a while and we finally came
4 to an agreement that we thought would work for both of us,
5 and -- and then we went forward.

6 Q All right, this -- in his opening statement Mr.
7 Lehrer made reference to you brought your clients to
8 Palmetto Benefit Management; did you -- do you recall that?

9 A I -- I don't recall exactly what his words were.

10 Q All right, I want to clarify it then. When Brian
11 Stritt hired you at Palmetto Benefit Management, did you
12 have any clients?

13 A I don't think I had any health insurance clients
14 at that moment.

15 Q I don't think you did either. That -- that's
16 what I'm trying to clarify.

17 A Okay.

18 Q So when Brian Stritt hired you as a producer for
19 Palmetto Benefit Management in Charleston, you had zero
20 book of business?

21 A That's correct.

22 Q And let's -- let's talk about that term because
23 not everybody might know what we're talking about, book of
24 business. Tell me what book of business means.

25 A It generally refers to the revenue that your

1 clients are generating as a monthly or annual commission.

2 Q Okay, that's very good. That's where, you know,
3 five questions from now, that's where I thought we would
4 go; but I want to clarify something in there. So the book
5 of business is based on the clients that the producer has
6 brought to the company?

7 A That's correct.

8 Q And you would agree with me that clients have the
9 freewill to change insurance brokers whenever they want?

10 A That's correct.

11 Q And so whenever I refer to the producer's
12 clients, I really don't want to -- to take that literally.
13 I'm just saying those are the clients that the producer
14 brought to that insurance broker; do you understand that?

15 A No, I don't.

16 Q All right, well, when I say they were your
17 clients, they weren't really your clients, they're clients
18 that you've brought to the broker?

19 A No, they were my clients.

20 Q Okay, so those clients don't have the freedom to
21 go to another broker?

22 A They do.

23 Q Not if you stay there. If they're -- if they're
24 your clients --

25 A Your -- your clients -- these are -- the clients

1 are free to fire the broker any time they want for any
2 reason, they don't need to give cause. They can --

3 Q Right.

4 A -- change, if, for example, one of my clients
5 were to hire their brother as the CFO, they could fire me
6 tomorrow.

7 Q Right, I understand that. The point I'm trying
8 to make is, I don't want to get loose with terminology
9 here, and I'm sure I might occasionally refer to your
10 clients, but the reality is every client can change
11 whenever they want.

12 A That's correct.

13 Q And -- and I you stay at Forum Benefits, your
14 clients might not?

15 A That's correct.

16 Q And so when we talk about a book of business
17 we're talking about the clients that are under your
18 commission column; is that right?

19 A That's correct.

20 Q And then I -- and I apologize for taking too
21 long, we get to where you said, well, it's really the book
22 of business is the clients, but it's really the commissions
23 that come from those clients, the book is a number; is that
24 right?

25 A Yeah, the commissions come from the book.

1 Q And so when -- the book of business is a dollar
2 amount.

3 A Correct.

4 Q And that dollar amount are -- are the commissions
5 that those clients generate to the broker in a year?

6 A That's correct.

7 Q All right, maybe I'm just --

8 A But --

9 Q -- slow, and that -- that was a tough concept for
10 me to get.

11 A Yeah, it's -- it's whoever the -- whoever has --
12 whoever the agent is -- whoever the agent is on a case,
13 typically, the commissions are paid through that agent, so,
14 yeah.

15 Q When Brian Stritt hired you to work for Palmetto
16 Benefit Management, did Palmetto Benefit Management have a
17 Charleston office?

18 A No.

19 Q And so he opened up a Charleston office for you;
20 is that right?

21 A No.

22 Q Why -- how is that not right?

23 A I worked out of my house.

24 Q Oh, so Brian Stritt, Palmetto Benefit Management
25 did not set up an office space for you when he hired you?

1 A No.

2 Q And -- and did they eventually set up an office
3 space?

4 A They eventually did set up an office space, but
5 not for me.

6 Q Okay, how long after you were employed by
7 Palmetto Benefit Management did they set up an office space
8 -- start leasing office space?

9 A Probably three or four years.

10 Q Okay, so you were hired in 2009, and you became
11 an independent contractor in 2013; is that right?

12 A That's correct.

13 Q That's four years, right?

14 A That's correct.

15 Q And I thought you testified earlier that when you
16 became an independent contractor you were going to save
17 Palmetto Benefit Management the overhead of having to
18 provide an office for you.

19 A No, I didn't say that.

20 Q Oh, you didn't say that?

21 A No.

22 Q Sorry, misheard. So it's your testimony that
23 when Palmetto Benefit Management hired you in 2009, they
24 did not set up an office for you in Charleston?

25 A That's correct.

1 Q When Palmetto Benefit Management hired you in
2 2009, did they give you access to their server in
3 Greenville?

4 A They did.

5 Q And why -- why did they do that?

6 A Because that's where all the client files are,
7 all the information, all the stuff we do. I mean it's, you
8 know, it's not a -- even though insurance guys and
9 companies have tried to get away from paper, it's, you
10 know, the -- the -- the easiest way to communicate is
11 electronically, and -- and, you know, we don't have --
12 we're not using paper files even back in 2009.

13 Q So it was essential, because you're located in
14 Charleston and their computer server stuff is in
15 Greenville, so you had to be able to login remotely to have
16 access to the server?

17 A That's correct.

18 Q And you had login credentials?

19 A I believe so.

20 Q And when I say login credentials, I just mean you
21 have to have an account number and a password.

22 A Yeah, I had a way of ge -- I had a way of getting
23 to the server, that's correct, getting into the server and
24 looking at my client files, that's correct.

25 Q Yeah, but -- and I don't want to beat another

1 dead horse, when you say get into the server, you could
2 only get into the server if you had your credentials?

3 A I -- I assume that's correct.

4 Q Okay, it's not --

5 A Yeah.

6 Q -- something that you figured out how to --

7 A Yeah, I just --

8 Q -- go into Google and --

9 A I -- I agree, yeah, I had -- I had some sort of
10 password to get in there.

11 Q And -- and as we've said before, Brian Stritt was
12 paying you some salary when you started at Palmetto Benefit
13 Management, right?

14 A That is correct.

15 Q And you had zero book of business?

16 A That's correct.

17 Q So if you did not generate business during the
18 next year, Palmetto Benefit Management would lose money on
19 you?

20 A Correct.

21 Q And do you recall when you were first paid as an
22 employee of Palmetto Benefit Management?

23 A I think I was paid -- my first paystub was in the
24 month of May -- end of May.

25 Q And why do you say that? I mean -- let -- let me

1 ask this question -- let me ask this question differently.
2 2009 was 11 or 12 years ago, so I -- trust me, I'm not
3 trying to impeach you because you don't know when you got
4 your paycheck 11 or 12 years ago, but there is some
5 significance to when you got your first paycheck, and do
6 you have a recollection that you got it in May of 2009?

7 A Yes.

8 Q You have a specific recollection that you got
9 paid in May of 2009?

10 A I'm -- I'm pretty sure. I mean I'm pretty sure.
11 Again, I'm, you know, I can remember I started in April,
12 Brian and I had a conversation about, "Hey, look, I'm not
13 gonna be able to pay you for half the month, you know, it's
14 gonna be difficult for my payroll people to do this. It's
15 gonna be a few more weeks, are you going to be okay with
16 this?" So I re -- I just remember getting paid in May.

17 Q Okay, so you -- when did you start working for
18 Palmetto Benefit Management?

19 A I believe it was April of 2009.

20 Q So your testimony is you started working in April
21 of 2009 and you went a couple of weeks without getting
22 paid?

23 A I think so, yes.

24 Q Even though you're on a salary basis?

25 A Yes.

1 Q Is that normal in your business?

2 A I couldn't say.

3 Q Well, you -- you didn't -- you didn't object to
4 it in 2009, did you, if that happened?

5 A Like I said we had -- we had an understanding, we
6 had an agreement, so I mean that -- that was the agreement.
7 He said, "Hey, can you -- can you work with me on this, I
8 may not be able to pay for a couple more weeks?" I was
9 like, "Yeah, okay, that's fine."

10 Q Okay, because, you know, maybe it's the lawyer in
11 me, but when I hear somebody say, "We had an understanding
12 and agreement," and the other guy doesn't do their end, I
13 tend to want to make them do their end. So you had an
14 agreement that he was gonna pay you a salary, but he didn't
15 actually pay you a salary when it was due?

16 A No, he -- he paid me. He ended up paying me in
17 May.

18 Q He paid you in May?

19 A He paid me in May.

20 Q Do you recall how you got your paycheck? I mean
21 physically.

22 A In the mail, I think. I can't remember. You --
23 they were typically mailed to me.

24 MR. LEBLANC: May I approach?

25 THE COURT: Sure.

1 BY MR. LEBLANC:

2 Q I'm going to pass you a document that will be
3 marked as Plaintiff's Exhibit 93. Do you recognize what's
4 shown in Plaintiff's Exhibit 93?

5 A (Reviews document.) Yes.

6 Q What is it?

7 A It is a -- it's a check.

8 Q Well, let me see if I can do a little better.
9 It's a paystub --

10 A Well, it's a paystub.

11 Q -- isn't it?

12 A It looks like a paystub.

13 Q Okay.

14 MR. LEBLANC: At this time we'd move Plaintiff's
15 Exhibit 93 into evidence.

16 MR. LEHRER: No objection, Your Honor.

17 THE COURT: Without objection.

18 (Whereupon, Plaintiff's Exhibit Number 93 is marked for the
19 record and admitted into evidence without objection.)

20 MR. LEBLANC: Put it on the board, please.

21 BY MR. LEBLANC: (Continuing

22 Q All right, is this your first paystub?

23 A (Reviews document.) I'm not sure.

24 Q All right, well, let's look at it. The top
25 right-hand corner, not necessarily corner, what's the date

1 on this paystub?

2 A It says 6/1/09.

3 Q So that would be June 1st, 2009; is that right?

4 A That's correct.

5 Q All right, and what was the pay amount?

6 A Five thousand dollars.

7 Q So you got paid \$5,000, and if you got paid
8 \$5,000 each months, what would that give you for an annual
9 salary?

10 A What's that? Sixty-thousand dollars.

11 Q Sixty-thousand dollars.

12 Q See that thing in the bottom left, what's that
13 say?

14 A (Reviews document.) Year-to-date history.

15 Q Year-to-date history. So if you follow over to
16 the right, and now if we can go over to the right, what
17 does that say?

18 A Federal, Social Security --

19 Q Right, but it looks like --

20 A Far right?

21 Q Sorry.

22 A Far right? 425.63, or are you talking about the
23 \$5,000?

24 Q Yes, no, I'm saying on that year-to-date history
25 doesn't that indicate that your year-to-date pay is \$5,000?

1 A Yes.

2 Q So wouldn't that tell you conclusively, without
3 any recollection, that your first paycheck was June 1,
4 2009?

5 A That's what it would appear.

6 Q Okay, so your earlier testimony that you were
7 absolutely sure you got paid in May 2009 is just not
8 accurate?

9 A I didn't say I was absolutely sure.

10 Q I thought you did.

11 A I said I thought.

12 Q Oh, that's fine.

13 A Probably.

14 Q Okay.

15 A I --

16 Q Def --

17 A But if I'm getting paid on June 1st, so I'm
18 getting paid for the month of May.

19 Q Okay.

20 A So I got paid for May.

21 Q Okay. I -- I --

22 A Okay.

23 Q -- just asked when you got paid.

24 A Okay.

25 Q Do you -- you don't recall Brian Stritt driving

1 down on June 1st and handing you your paycheck?

2 A No, I don't.

3 Q So it was direct deposited you said, or it was
4 mailed to you?

5 A I said, typically, my paystubs were mailed to me,
6 my paychecks were mailed to me.

7 Q And you don't recall Brian Stritt driving down
8 with your first paycheck to hand it to you and shake your
9 hand and stuff like that?

10 A No.

11 Q And then you, obviously, would not -- you would
12 not recall Brian Stritt having an employment agreement to
13 present to you to sign?

14 A He never presented me with an employment
15 agreement.

16 Q Did you ever discuss an employment agreement?

17 A No.

18 Q I want to make sure you're answering it
19 correctly. I think you -- I think you discussed an
20 employment agreement, and you said, "I'm not signing an
21 employment agreement?"

22 A I -- I -- I discussed a quote, "Noncom --
23 noncompete, non-solicitation." I said, "I will never sign
24 one of those."

25 Q That -- that's what I mean, that's what I'm

1 trying to get at.

2 A That's what I told him I would never sign.

3 Q I -- I'm absolutely convinced that your testimony
4 is that you did not sign an employment agreement, I'm fine
5 with that; but my question is, did you all discuss your
6 signing an employment agreement?

7 A No, we did not.

8 Q We're going in circles here, because I thought
9 you -- you discussed it and you told him, "I'm never gonna
10 sign one," that was the discussion.

11 A Okay, well, I -- I guess I'm -- I'm not -- I'm
12 not an attorney, I'm not a legal expert on what you
13 consider an employment agreement, or a noncompete or a non-
14 solicitation, I just told him, "I would not sign it."

15 Q When you say it, what's it?

16 A Non-solicitation, noncompete.

17 Q Okay. I believe you testified -- I was just
18 trying to shortcut this, you didn't want to sign an
19 employment agreement because they usually contain non-
20 solicitation clauses?

21 A Okay.

22 Q All right, so that -- that was your problem with
23 an employment agreement was if it has a non-solicitation
24 clause, I'm not signing it again?

25 A That's partially accurate.

1 Q What else -- what's inaccurate about it?

2 A The noncompetition.

3 Q Okay, if it -- yes, I -- I put that all in one
4 basket. If it had -- if you have present -- let me back
5 up. In your experience, most employment agreements had
6 noncompetition and non-solicitation clauses, right?

7 A In my industry, yes.

8 Q And that's what you absolutely hated?

9 A Well, I wasn't gonna -- I didn't want to sign one
10 again.

11 Q And you -- so you weren't gonna sign an
12 employment agreement because they usually have those things
13 in them?

14 A You're -- you're asking me to speculate what my
15 frame of mind was in 2009? I -- I can't remember. We
16 didn't -- we never discussed an employment agreement. He
17 never said, "Brian, I've got an employment agreement, I
18 would like you to sign it." We never discussed that. I
19 told him upfront we were going to be partners.

20 Q Okay.

21 A I would work with him, I wouldn't work for him.
22 And so -- and he -- he said, "That's okay, I understand,
23 that's a bad way to start a relationship. I would never
24 ask you to sign a non-solicitation and noncompete.

25 Q All right, my paralegal's grabbing your

1 deposition, and while she's doing that, I'm just gonna ask
2 you, again, just to make sure that I have not misunderstood
3 you. You do not believe that you ever told Brian Stritt
4 that in no shape -- way, shape or form did you intend on
5 signing another employment agreement?

6 A I -- I -- I can't say whether I used the word
7 "employment agreement" or not. Like I've tried to be clear
8 a couple times here, and that was a long time ago, I didn't
9 say -- I -- I can't remember saying the word "employment
10 agreement."

11 Q Well, there's a court reporter when you get
12 deposed. I -- I'm just trying to avoid having to pull this
13 out and show it to you.

14 A Okay.

15 Q Is it possible you testified in your deposition
16 that in no way, shape or form --

17 MR. LEHRER: Your Honor, improper impeachment. If
18 he's going to ask him, he needs to show him the -- show him
19 his testimony.

20 THE COURT: Ask him first and if he doesn't recall,
21 you can utilize it and refresh your -- refresh your
22 recollection about it.

23 BY MR. LEBLANC: (Continuing)

24 Q Do you -- let's start over then. Do you recall
25 if you and Brian Stritt ever discussed you signing an

1 employment agreement with Palmetto Benefit Management?

2 A We did not.

3 Q You did not discuss it?

4 A No.

5 Q Do you recall having your deposition taken on --

6 MR. LEBLANC: And -- and may I open this?

7 THE COURT: Sure.

8 BY MR. LEBLANC: (Continuing)

9 Q Here it is. Do you recall having your deposition
10 taken on October 6th, 2017?

11 A I do.

12 Q And I'm gonna pass you your transcript.

13 MR. LEBLANC: May I approach?

14 THE COURT: Sure.

15 BY MR. LEBLANC: (Continuing)

16 Q And just so that everybody understands what a
17 deposition is, when you have your deposition taken, a court
18 reporter puts you under oath; is that right?

19 A That's correct.

20 Q Just like you're testifying under oath today.

21 A That's correct.

22 Q And the attorney for Forum Benefits asked you
23 questions, right?

24 A That's correct.

25 Q And you provided answers?

1 A That's correct.

2 Q Would you take a look page 31 of your transcript?

3 A (Reviews document.)

4 Q Have you read on page 31 yet?

5 A I'm on page 31.

6 Q Does that refresh your memory about your te --
7 earlier testimony?

8 A No, it does not.

9 Q Okay. All right, let's start on page 30, so we
10 have context, and I'll just read the transcript, and you
11 tell me if I'm reading this accurately. So I'm starting at
12 page 30, line 21. Are you there?

13 A I'm there.

14 Q Question, "And what kind of provisions are
15 enforceable that -- that would trouble you?" Answer,
16 "Typically, there is something called a noncompete and non-
17 solicitation from my previous employer, and if they give
18 you a certain amount of -- it is my understanding --

19 MR. LEHRER: Your Honor --

20 BY MR. LEBLANC: (Continuing)

21 Q -- if they --

22 THE COURT: Hold on, hold on, he has an objection.

23 MR. LEHRER: May we approach?

24 THE COURT: Sure.

25 MR. LEHRER: I don't want to interfere.

1 THE COURT: Let's take a five-minute break, all right?
2 Let everybody stretch your legs real quick, because we're
3 gonna continue on until five o'clock, all right? So let's
4 go ahead and take a quick break, all right? Mr. Bannon,
5 you can be excused, but you can't discuss your testimony
6 with anybody, okay?

7 MR. BANNON: Yes, sir.

8 THE COURT: You can use the restroom. You can take
9 them out and let them use the restroom and everything, all
10 right.

11 (Whereupon, the Jurors leave the courtroom.)

12 (Whereupon, the Court takes a brief recess.)

13 THE COURT: All right, we're ready.

14 BAILIFF: The Jury's entering the courtroom, Your
15 Honor.

16 THE COURT: All right, you may be seated. All right.

17 MR. LEHRER: Your Honor, if I can kind of renew my
18 objection.

19 THE COURT: Please.

20 MR. LEHRER: This objection is improper impeachment.
21 He's asking the witness questions about a 2009 conversation
22 with intent to impeach him on testimony about 2015
23 conversations.

24 THE COURT: All right, I'll overrule the objection for
25 right now. All right.

1 BY MR. LEBLANC: (Continuing)

2 Q All right, Mr. Bannon, I'm gonna read from your
3 deposition transcript again, and try and go as fast as I
4 can hear, not reading, but I'm gonna focus in on page 31,
5 line seven.

6 A Uh-huh.

7 Q Do you see that?

8 A (Reviews document.) I see it.

9 Q And I'm gonna read what you testified at your
10 deposition, so I'm quoting you. Quote, "So I in no way,
11 shape or form intended on signing another employment
12 agreement," close quote. Did I read that correctly?

13 A You did.

14 Q Did you testify at your deposition that you were
15 not gonna sign another employment agreement?

16 A Yes.

17 Q And when did -- what employment agreement were
18 you dis -- were you referring to in this testimony?

19 A I was referring to the one that Brian Stritt said
20 he was getting ready to deliver me and the other
21 independent contractors, he was gonna change our
22 compensation. He said, "You know, I'll -- I'll send you a
23 copy." And I said, "You know, I'll take a look at it, I'll
24 consider it and have my attorney -- we're gonna make some
25 revisions to it, and we'll send it back. I appreciate

1 that." So that -- that was -- that's what we were talking
2 about.

3 Q Okay, so this discussion involves in the end of
4 2015 when Forum Benefits was proposing a different
5 salary structure to you?

6 A That's correct.

7 Q And that's when you told them I will never sign
8 another employment agreement, and I don't mean to be
9 quoting you.

10 A No -- no, I told him that in 2009, and I said, "I
11 would never in any way, shape or form sign another
12 employment agreement.

13 Q And you were referring to what timeframe?

14 MR. LEHRER: Objection, Your Honor, asked and
15 answered.

16 THE COURT: All right. You can -- I'll overrule that
17 one, you can answer that one.

18 BY WITNESS: (Continuing)

19 A Yeah, so, yes -- yes, I said it in 2009 and in
20 2015.

21 Q In both of those timeframes --

22 A Yews.

23 Q -- you said, "I'm not signing another employment
24 agreement?"

25 A Yes.

1 Q All right, I want to talk about when you
2 transitioned in 2013 from an employee of Palmetto Benefit
3 Management to an independent contractor, okay?

4 A Okay.

5 Q I'm changing gears, and I don't want, you know,
6 to get -- I want you to have some context. How did that
7 start? What -- what kicked off that you needed to change
8 from an employee to an independent contractor?

9 A I have a friend that is a -- is a -- well, he was
10 a -- well, he was a Fire Chief in Bluffton, and he said
11 they were going to be hiring some firemen, and we kinda --
12 we kicked the idea around, and I said, "You know, I never
13 got a chance to serve my country. Never got a chance to
14 serve -- serve in the military. This would be a good way
15 for me to give back, so I decided, you know, I said, "You
16 know, why don't I go ahead and talk with my partner about
17 this, and, you know, have a discussion." And just --
18 basically, I told him, I said, "I would like to work part-
19 time insurance, and the days that I'm not doing insurance,
20 I'm gonna be a full-time employee at the Fire Department."

21 Q And when you say you told him, you mean you told
22 Brian Stritt?

23 A Yeah, that's correct.

24 Q So you told Brian Stritt you'd like to go part-
25 time?

1 A That's correct.

2 Q And how did he -- how did he receive that
3 information?

4 A I mean he -- he didn't seem really overjoyed with
5 the information.

6 Q Why is that?

7 A I can't say.

8 Q Was there some training involved in being a
9 Bluffton Fire Department person?

10 A There -- there was. I was going to be gone for
11 several weeks.

12 Q And when you say several, do you mean 15?

13 A It could possibly be up to 15.

14 Q Okay, because I want to make sure we understand
15 what several means.

16 A Yeah.

17 Q Fifteen weeks?

18 A Correct.

19 Q Okay.

20 MR. LEBLANC: May I approach?

21 THE COURT: Absolutely.

22 BY MR. LEBLANC: (Continuing)

23 Q I'll pass you a document that's been marked as
24 Plaintiff's Exhibit 1. Do you recognize what's shown in
25 Plaintiff's Exhibit 1?

1 A (Reviews document.) It looks like an email.

2 Q Right, I need to make sure you know what it is so
3 I can put it into evidence and show the Jury; so do you
4 recognize what it is?

5 A Yeah, it looks like an email.

6 Q And it's an email from who to who?

7 A From me to Brian Stritt.

8 Q And what date?

9 A July 7th, 2013.

10 Q So is what I handed you as Plaintiff's Exhibit 1
11 a true and accurate copy of that email communication?

12 A I can't say.

13 Q Why can't you say?

14 A I mean what if -- I -- I don't know where this
15 came from. I mean I understand it's an email, the date's
16 on it, I -- I think they're true -- they're true, unless
17 somebody doctored the -- the dates on it.

18 MR. LEHRER: Your Honor, we'll -- we'll consent to the
19 admission of the document.

20 WITNESS: Okay.

21 THE COURT: All right.

22 MR. LEBLANC: We'll move Plaintiff's Exhibit 1 into
23 evidence.

24 (Whereupon, Plaintiff's Exhibit Number 1 is marked for the
25 record and admitted into evidence without objection.)

1 MR. LEBLANC: All right, can you put it up on the
2 board, please?

3 MR. LEHRER: Your Honor, are we -- are we giving these
4 new numbers? You say moved into evidence, but I don't
5 think you're saying --

6 MR. LEBLANC: Plaintiff's Exhibit 1.

7 MR. LEHRER: And we've already entered two exhibits.

8 MS. PARKER: They're the same number as we listed them
9 on sheet.

10 MR. LEHRER: Okay.

11 MS. PARKER: She's using the same numbers.

12 MR. LEHRER: Okay.

13 BY MR. LEBLANC: (Continuing)

14 Q So I'm asking you questions about that middle
15 part where you say bribe.

16 A Uh-huh.

17 Q What are you telling Mr. Stritt in this email?

18 A (Reviews document.) It looks like I'm telling
19 him that I had a little bit more training to go through.

20 Q Okay, and but the -- that first line there, you
21 apologize for throwing him a curve ball?

22 A Yeah.

23 Q And what was the curve ball?

24 A It could have -- it may have been the additional
25 training. I found out kind of halfway through that I was

1 gonna have to do some additional training, I think.

2 Q Okay, and the -- the second paragraph under
3 bribe. In this paragraph you're talking about your change
4 in compensation structure; is that right?

5 A That's correct.

6 Q And so whatever you had before, you're now going
7 to a 60/40 commission?

8 A That's correct.

9 Q So you would get 60 percent of any commissions
10 that Palmetto Benefit Management would get --

11 A The opposite.

12 Q -- for new business.

13 A The opposite. I get 40, they get 60.

14 Q Okay, sorry, you get 40 percent of any
15 commissions that Palmetto Benefit Management rec --
16 received for clients that you were responsible for?

17 A That -- yeah, clients that were in my name,
18 that's correct, my clients.

19 Q And I'm gonna refer you to the last two sentences
20 there. Are you -- are you really telling Brian that he's
21 -- Brian Stritt that he's doing you, Brian Bannon, a favor
22 by doing this?

23 A Well, yeah, I think I was just thanking him for
24 being flexible.

25 Q Okay, because he -- he was being flexible, and

1 that now he's gonna be paying you, but you're not really
2 gonna be working for him, you're going to be working for a
3 Fire Department.

4 A No, I was still working. I mean my clients were
5 still bringing in revenue whether I was working four days a
6 week, or -- or five days a week, or three days a week, my
7 clients were still bringing in revenue.

8 Q But in this -- at this time you had a very
9 healthy, good relationship with Brian Stritt; is that true?

10 A It was okay, it wasn't great.

11 Q All right, and I understand from some earlier
12 statements by somebody, that in December of 2015 things
13 weren't so good; is that right?

14 A That's correct.

15 Q Brian Stritt discussed with you and the other
16 producers a change in the compensation structure?

17 A He discussed it with me in November of 2015.

18 Q In November 2015. And as a result of those
19 discussions, you decided to seek opp -- employment
20 somewhere else?

21 A No, that's not accurate.

22 Q Okay, when -- I'm sorry, when did you -- when did
23 you start looking for employment somewhere else?

24 A I think I first spoke with AssuredPartners in
25 person in July of 2016, but I had -- I had -- for a while I

1 was trying to figure out what was going on with the agency,
2 what he was doing. Once he told me what he planned on
3 doing with producer commissions, I had a pretty good idea
4 of what he was doing; but, again, I was speculating, I
5 didn't know. I thought there was a good chance he was
6 gonna sell the agency, and my clients might be included as
7 part of his sale, because he wasn't communicating with me,
8 so I didn't know what was going on. So, no, what I did
9 immediately is I -- I sat put -- I stayed put, I didn't do
10 anything, I waited to see how things were gonna play out,
11 because I didn't want to make a change.

12 Q So from November '15 -- 2015 until -- I think you
13 said July 2016, you sat tight?

14 A That's correct.

15 Q And July 2016, is when you first talked to
16 somebody at AssuredPartners?

17 A That's correct.

18 Q And who was that?

19 A John Taylor.

20 Q And you went to dinner with John Taylor, you and
21 your wives?

22 A No, I think I had breakfast with John Taylor.

23 Q And during your discussions with John Taylor did
24 you tell him what your book of business was?

25 A I would have given an estimate.

1 Q And what would you have told him?

2 A I -- I would have told him it was somewhere
3 around 240, \$250,000, minus any other commissions that I
4 was -- or any other overrides I wasn't aware of -- aware
5 of.

6 Q All right, so about the end of July you meet with
7 John Taylor for the first time; is that right?

8 A That's correct.

9 Q And during that meeting you discuss with him what
10 your book of business was?

11 A That's correct.

12 Q And your book of business was approximately
13 \$240,000?

14 A That's correct.

15 MR. LEBLANC: May I approach?

16 THE COURT: Absolutely.

17 BY MR. LEBLANC: (Continuing)

18 Q I'll ask you to -- could you take a look at
19 what's been marked as Plaintiff's Exhibit 2? Do you
20 recognize what's shown in Plaintiff's Exhibit 2?

21 A (Reviews document.) Yes. It's a very short
22 email from John Taylor to me.

23 Q Yes.

24 MR. LEBLANC: We'd move Plaintiff's Exhibit 2 into
25 evidence.

1 MR. LEHRER: No objection.

2 THE COURT: All right, without objection.

3 (Whereupon, Plaintiff's Exhibit Number 2 is marked for the
4 record and admitted into evidence without objection.)

5 BY MR. LEBLANC: (Continuing)

6 Q Does this say August 29, 2016, email from John
7 Taylor to you?

8 A It does.

9 Q So you met with John Taylor at the end of July,
10 and at the end of August he sends you an email, correct?

11 A That's correct.

12 Q And attached to this email is AssuredPartners NL,
13 LLC employment agreement; do you see that?

14 A (Reviews document.) I see it.

15 Q Was there an employment agreement attached to
16 this email?

17 A There was.

18 Q And did you read the employment agreement?

19 A I did.

20 Q Did you have any problem with it?

21 A No.

22 Q Did the employment agreement include a non-
23 solicitation and noncompete clause?

24 A It sure did.

25 Q And did you have any problem with the employment

1 agreement including those clauses?

2 A No, I didn't.

3 Q Do you recall receiving an email -- and you may
4 not recall, so feel free to say. Do you recall receiving
5 an email on September 6, 2016, from a gentleman named Walt
6 Kinetsa (phonetic) at AssuredPartners?

7 A It sounds -- sounds familiar.

8 Q And the date's not terribly significant, I'm not
9 trying to catch you up.

10 A Yeah.

11 Q And that email included a formal offer of
12 employment with AssuredPartners?

13 A That sounds correct.

14 Q And that formal offer of employment there was
15 something wrong with the commission that they quoted; is
16 that right? There was something wrong with it.

17 A I can't remember, possibly.

18 Q Thank you, and I don't know what was wrong with
19 it, but Walt Kinetsa then sent you another email on
20 September 15, 2016?

21 A Okay.

22 Q With a revised employment offer?

23 A Yeah, that's correct.

24 Q And that revised employment offer you eventually
25 accepted; is that right?

1 A That's correct.

2 MR. LEBLANC: May I approach?

3 THE COURT: Sure.

4 BY MR. LEBLANC: (Continuing)

5 Q I pass you a document that's been marked as
6 Plaintiff's Exhibit 5, and I would move that into evidence.

7 THE COURT: Any objection?

8 MR. LEHRER: No objection.

9 THE COURT: Without objection.

10 (Whereupon, Plaintiff's Exhibit Number 5 is marked for the
11 record and admitted into evidence without objection.)

12 BY MR. LEBLANC: (Continuing)

13 Q So this -- this exhibit here shows an email from
14 -- at the top, I'm sorry. Go to page two of this email.
15 So I want to call your attention to the email, it looks
16 like it's September 23rd, 2016, that's an email from John
17 Taylor to you, right?

18 A (Reviews document.) That's correct, that's --

19 Q And he's --

20 A -- correct.

21 Q Sorry.

22 A Yeah, that's correct.

23 Q And he's confirming the salary structure, the
24 commissions that you're gonna be receiving?

25 A That's correct.

1 Q And do you recall what that salary structure was?

2 A They were -- for the first two years they were
3 going to pay me 50 percent commission on any business that
4 I brought over, and then after that it was going to go to
5 the standard producer compensation.

6 Q Okay. So the first two years that you worked at
7 AssuredPartners, you were gonna get a 50 percent share of
8 any commissions that you brought over to them?

9 A That's correct.

10 Q And you left AssuredPartners after two years,
11 right?

12 A That's correct.

13 Q Okay. After two years your commission structure
14 was going to drop, wasn't it?

15 A That's correct.

16 Q Okay. And in this paragraph -- the -- the
17 biggest paragraph there, also -- he's also letting you know
18 that he's going to pay you money every month, a draw,
19 right?

20 A That's correct.

21 Q And -- and -- and just so everybody understands,
22 so he realizes and you realize on the day one you start
23 there you have no new business there, so you're not gonna
24 get any commissions, so he's gonna pay you a draw?

25 A That's correct.

1 Q And do you recall what that draw was?

2 A It was -- I think it was \$7,500.

3 Q Seventy-five hundred dollars, and that comes out
4 annually to what?

5 A I think it's about 90,000.

6 Q It is \$90,000. And so they were going to pay you
7 \$90,000 as an advance against any commissions you would
8 earn?

9 A That's correct.

10 Q All right, so -- and -- and -- and this all is
11 happening in October/November of 2000 -- or this is,
12 actually, September of 2016.

13 A That's correct.

14 Q Do you recall how much business you brought to
15 AssuredPartners in 2017?

16 A It was -- I -- I don't know the exact revenue,
17 and I don't -- I don't even know the revenue amount. It
18 was maybe half of my book business total.

19 Q Okay, so you previously said your book of
20 business was \$240,000?

21 A That was an estimate. I mean I was boo -- I was
22 -- it was my best guesstimate.

23 Q Sure, I understand, and it's not precise.

24 A Right.

25 Q Your best estimate was you had a little over

1 \$240,000, and you believe you brought over about half of
2 that?

3 A Yeah, probably a little more than half, I think.
4 I think it -- I think they -- they ran the numbers and it
5 came out closer to 200,000.

6 Q You think --

7 A It might have been more, but okay.

8 Q I -- I don't know what it was.

9 A Yeah, it's --

10 Q You can say whatever you want.

11 A Yeah, okay. So I'm agreeing, I only brought
12 about half of my book of business with me.

13 Q Okay, so half of your book of business, ballpark,
14 you know --

15 A Uh-huh.

16 Q -- just a hundred -- 240,000 divided by two is
17 one -- \$120,000, right?

18 A That's correct.

19 Q And your commission, a 50 percent commission on
20 \$120,000 is how much?

21 A A hundred twenty -- wait, wait, 50 percent
22 commission?

23 Q Fifty percent of \$120,000 is?

24 A That would be \$60,000.

25 Q Sixty-thousand dollars.

1 A Right.

2 Q So at the end of 2017, did you have to pay
3 AssuredPartners money back?

4 A I would have had to if I would have stayed.
5 Yeah, I was -- I was already starting to pay the draw back.

6 Q Yeah, well -- well you -- you did stay through
7 2017.

8 A Yeah, yeah, I was already starting to pay the
9 draw back.

10 Q So when did you -- when did you start paying the
11 draw back?

12 A I believe it was sometime after the first of the
13 year.

14 Q Sometime after 2017, your first full year there?

15 A Yeah, it -- it -- we -- we dragged it out. My
16 commissions got held up for a while, so, yeah, it took a
17 while for -- for revenue to start coming in.

18 Q All right, and when you say you had to pay the
19 draw back, did you literally have to pay money back to
20 AssuredPartners, or did you just start getting less of a
21 draw?

22 A That's correct, right, yeah, they -- I just
23 started getting less of the draw.

24 MR. LEBLANC: May I approach?

25 THE COURT: Yes, sir.

1 BY MR. LEBLANC: (Continuing)

2 Q I'll pass you a document that has been labeled
3 Plaintiff's Exhibit 6. Do you recognize what's shown in
4 Plaintiff's Exhibit 6?

5 A (Reviews document.) Yes.

6 Q Are those all the documents that you signed and
7 return to AssuredPartners when you accepted their offer?

8 A That's probably accurate.

9 Q And -- and -- and I don't mean to say that it's
10 all of them, but --

11 A Right.

12 Q -- it's a package of them?

13 A Sure.

14 MR. LEBLANC: Put 6 up, please. Oh, I'm sorry, move
15 it into evidence. We'd move 6 into evidence.

16 THE COURT: Without objection?

17 MR. LEHRER: No objection, Your Honor.

18 THE COURT: All right without objection.

19 (Whereupon, Plaintiff's Exhibit Number 6 is marked without
20 objection and admitted into evidence without objection.)

21 BY MR. LEBLANC: (Continuing)

22 Q All right, do you see the -- what it says there,
23 date of hire, October 15, 2016?

24 A (Reviews document.) I see it.

25 Q Is that your understanding of when you were hired

1 at AssuredPartners?

2 A Yes.

3 Q And you were hired there as a full-time employee,
4 right?

5 A A W-2 full-time employee.

6 Q And your job description, again, was gonna be a
7 producer, a sales representative?

8 A That's correct.

9 Q And your title was what?

10 A Senior Vice-President.

11 Q Senior Vice-President.

12 MR. LEBLANC: Go to page three, please.

13 BY MR. LEBLANC: (Continuing)

14 Q And, if you would, turn to the third page of this
15 exhibit. So this show -- indicates that you signed the
16 offer letter on October 4, 2016?

17 A (Reviews document.) That's correct.

18 Q All right, if you would take a -- go to page
19 five. Do you recognize what's shown on page five?

20 A (Reviews document.) Yeah, it looks like the
21 employment agreement.

22 Q Okay, that's the employment agreement that
23 AssuredPartners provided you, right?

24 A That's correct.

25 Q And would -- would you take a look at paragraph

1 number four.

2 A Okay.

3 Q And I know you're not a lawyer, but do you -- you
4 understand paragraph four is a non-solicitation and non-
5 interference clause?

6 A (Reviews document.) Yes, I do.

7 Q That's the clause you didn't want to sign anymore
8 or agree to?

9 A Yes, that's -- that's correct.

10 Q Go to paragraph eight, please.

11 A Sure.

12 Q What does paragraph eight say?

13 A "Employee's representations."

14 Q All right, so these are your representations to
15 AssuredPartners?

16 A It looks that way.

17 Q And in subparagraph 8.4, it says, "Employee,"
18 that's you, "will not use your employment with the Company
19 to dis -- or disclose," I'm sorry, "Employee," that's you,
20 "will not use in your employment with the Company, or
21 disclose to the Company any confidential information or
22 trade secrets of a third party (including any former)," if
23 you go to the next page, "(employer of employee)." Do you
24 see where it says that?

25 A (Reviews document.) Yes.

1 Q So your agreement with AssuredPartners says
2 you're not gonna share with AssuredPartners any
3 confidential or trade secrets of your former employer?

4 A Correct.

5 Q And -- and we all agree that Palmetto Benefits
6 was one of your former employers?

7 A They were a former employer, yes.

8 Q Yes, and Forum -- and they became Forum Benefits?

9 A That's correct.

10 Q All right, I'll pass you the document that will
11 be marked as Plaintiff's Exhibit 10.

12 MR. LEBLANC: I'll move Plaintiff's 10 into evidence.

13 MR. LEHRER: With no objection, Your Honor.

14 THE COURT: Without objection.

15 (Whereupon, Plaintiff's Exhibit Number 10 is marked for the
16 record and admitted into evidence without objection.)

17 BY MR. LEBLANC: (Continuing)

18 Q Do you recognize what's shown in Plaintiff's
19 Exhibit 10?

20 A (Reviews document.) I do, it looks like an
21 email.

22 Q All right, so this email is October 31, 2016,
23 from you, Brian Bannon, to a guy named Jim Brady.

24 A Uh-huh.

25 Q And you copied John Taylor -- John Taylor's the

1 head of the Charleston office, right --

2 A That's correct.

3 Q -- for AssuredPartners? All right, so you -- you
4 signed your employment agreement on October 4th and you
5 started working for AssuredPartners on October 15th; is
6 that right?

7 A That sounds accurate.

8 Q And -- and at -- and at any time during this
9 period did you ever tell Forum Benefits you were doing
10 this?

11 A No.

12 Q Okay, so you're not disputing that you kept it a
13 secret from Forum Benefits that you were employed by
14 AssuredPartners?

15 A That's correct.

16 Q A complete secret?

17 A I didn't tell them.

18 Q You didn't tell anybody, and you -- that's --
19 that's good. Sorry. And so what are you doing on October
20 31st, 2016, in this email?

21 A It looks like I'm communicating and letting them
22 know that they weren't able -- it looks like we had some
23 trouble getting the client logins to work.

24 Q Yeah, so I apologize, that wasn't a good
25 question, let me -- let me do a -- do a better job here.

1 Can you go down to the bottom of the first page?

2 A Okay.

3 Q So this email, this is the one that I wanted to
4 ask you about.

5 A Okay.

6 Q So this is dated October 27th, 2016, and what are
7 you doing in this email?

8 A I'm communicating with Jim and Kelly, letting
9 them know to go ahead and start making copies of the
10 information, the clients' information that's in Employee
11 Navigator using the passwords the clients had provided us.

12 Q Okay, so you send Jim Brady an email, providing
13 him the information that's in the rest of this email, so
14 for Car -- is that right? And I just want --

15 A Oh, okay, sure. Yes.

16 Q And -- and the information in this email you have
17 a heading there, Carolina Youth Development Center. So
18 you're telling Jim Brady, this is their insurance company,
19 this is who they're signed up with, right?

20 A Correct.

21 Q And is that publicly available information?

22 A Yes.

23 Q It is. Look at the top of the next page, renewal
24 date, is it publicly available information when --

25 A It depends, it can be. I mean it -- it -- it

1 depends, I'm not --

2 Q How would somebody find this information if it's
3 publicly available?

4 A I mean you can go on the Internet for certain
5 size companies, if they're over a hundred, you can look
6 some of this -- this info up and figure it out.

7 Q Okay. A couple lines down there you're talking
8 about employees actively using an EN. You understand EN
9 refers to Employee Navigator?

10 A Yes.

11 Q And then you provide the employer user ID and the
12 password; is that right?

13 A That's correct.

14 Q So you were providing Jim Brady, who works for
15 AssuredPartners, the login credentials for Carolina Youth
16 Development Center?

17 A That's correct.

18 Q And you did that so that he would copy the
19 database of information that's in the Employee Navigator's
20 account for Carolina Youth Development Center?

21 A Well, I want to be specific about what he was
22 copying. The way it was explained to me is he was copying
23 the employer's information, their policy information, their
24 census data, their own data.

25 Q Okay, why do you say it's the employer's

1 information?

2 A Because it's always their information. The
3 census data isn't my information, it's not AssuredPartners'
4 information, it's not Forum's information. The insurance
5 policy is the client's insurance policy. I mean it's
6 always the client's information. We don't own that.

7 Q All right, well, when Forum Benefits collected
8 that information --

9 A Uh-huh.

10 Q -- and designed an Employee Navigator account to
11 hold that information, and entered, and organized, and
12 compiled that information, wasn't this database a Forum
13 Benefits' database?

14 A No, it's Employer -- Employee Navigator. It's a
15 leased website that brokers all over the country can use to
16 upload benefit enrollment information, they can onboard
17 employees, it's just -- it's a -- it's a convenience for
18 the employer.

19 Q Right, but isn't that sort of like saying my bank
20 account is a national kind of bank account, but I'm the
21 only one who can get into it?

22 A Yeah.

23 Q Okay, so -- and the Employee Navigator account's
24 set up for Carolina Youth Development Center, that's not
25 publicly available?

1 A No, the website itself is not publicly available,
2 you have to have a password to get into it.

3 Q Right, and -- and the -- the company, the entity
4 that created the Employee Navigator account for Carolina
5 Youth Development Center, that -- that entity is Forum
6 Benefits; is that right?

7 A Well, yeah, they --- they helped them upload the
8 information into the website, that's correct.

9 Q And Forum Benefits is the company that collected
10 the insurance plan information to include in the Employee
11 Navigator account for Carolina Youth Development Company?

12 A That's correct.

13 Q And do you remember this flow -- this chart, the
14 insurance broker in the center, that's what insurance
15 brokers do, isn't it? They collect information, compile
16 it, organize it?

17 A Disseminate it, yeah, sure.

18 Q All right. The next company there is Premier
19 Logistics Solutions, you did the same thing for them? And
20 let me ask that question better. You provided Jim Brady
21 the same information about Premier Logistics Solutions,
22 didn't you?

23 A It was the same for all three companies.

24 Q Yeah, I'm just asking Premier.

25 A Yes.

1 Q Okay. So Premier Logistics Solutions used
2 Employee Navigator?

3 A Yes.

4 Q They had an Employee Navigator account that was
5 set up by Forum Benefits, designed by Forum Benefits, and
6 populated by Forum Benefits?

7 A Forum Benefits does not design websites.

8 Q Right, let's -- let's talk about that briefly.

9 A Okay.

10 Q Do -- are you familiar with the term "buildout"?

11 A Yes.

12 Q Okay. So when -- and when -- when a company
13 wants to have an Employee Navigator account, is the term
14 "buildout" -- does that reflect creating the account?

15 A I -- I've heard the term used before.

16 Q That's what I've heard.

17 A Yeah.

18 Q So it -- it -- it's referred to as we built out
19 Employee Navigator for Premier Logistics Solutions.

20 A Okay.

21 Q And do you understand the -- what's involved with
22 building out Employee Navigator for a client?

23 A Yeah, I get -- I get the idea, yes.

24 Q Okay, they -- they have to take Employee
25 Navigator and add the ability for it to receive a bunch of

1 insurance plans.

2 A That's correct.

3 Q And then they have to decide what aspects of
4 Employee Navigator they're gonna activate and use.

5 A Correct.

6 Q And -- and that decision's made by Forum
7 Benefits.

8 A It could be, but -- yes.

9 Q So Forum --

10 A It's -- it's made by the broker. Whatever the
11 broker wants the website to --

12 Q Right.

13 A -- look like, right.

14 Q Right, in this -- in this case. So Forum
15 Benefits decides what the Employee Navigator account is
16 going to have for each client, and they build it out.

17 A Correct.

18 Q There's -- there's no disputing who does the
19 build-out of Employee Navigator?

20 A No.

21 Q All right, so so far you've provided the login
22 credentials for Carolina Youth Development Center and
23 Premier Logi -- Logistics Solutions. How about Alpha
24 Genesis? What did you do there?

25 A I gave them the same information.

1 Q Well, sort of. Alpha Genesis doesn't have an
2 Employee Navigator account, right?

3 A I don't think they -- they may never have used
4 it.

5 Q Yes, you see there where it says, "Employee User
6 ID none?"

7 A Okay.

8 Q Okay, so Alpha Genesis did not have access to an
9 Employee Navigator account for Alpha Genesis, right?

10 A It looks that way.

11 Q Do you know if Forum Benefits nonetheless had an
12 Employee Navigator account set up for Alpha Genesis?

13 A If they did, I would have asked them for their
14 password and -- and gotten the information from them. If
15 they didn't, then I wouldn't have. It says right here that
16 they were using -- "Alpha Genesis has signed up for 1094,
17 1095 filing services only. Currently using ADP for
18 payroll." I'm not sure that you need an Employee Navigator
19 website set up for 1094, 1095 filing services.

20 Q Okay. Let me ask this question, is it your
21 understanding at Forum Benefits in this timeframe 2016,
22 that they would set up an Employee Navigator account for
23 clients, even if the client didn't want to use it?

24 A I -- I can't remember. I think Alpha Genesis was
25 considering the -- it was -- it was being discussed. I

1 don't think they ever used Employee Navigator.

2 Q All right, if you would go to the top of that
3 exhibit, please, first page. What email account are you
4 using here?

5 A (Reviews document.) It looks like I'm using a
6 Gmail account.

7 Q Is that your personal Gmail account?

8 A Yes.

9 Q So this email is the documentation where you
10 provided AssuredPartners with the login credentials to
11 Employee Navigator accounts for at least two companies,
12 Carolina Youth Development Center and Premier Logistics?

13 A Yes, it looks that way.

14 Q And at the time you did this you were a Senior
15 Vice-President of -- at AssuredPartners?

16 A Yes.

17 MR. LEHRER: Objection, Your Honor, asked and
18 answered.

19 THE COURT: All right, this is probably a good time
20 for us to stop. All right, Ladies and Gentlemen, we're
21 gonna go ahead and stop for the day, it's almost five
22 o'clock, try to get you out at least before -- before some
23 of the traffic, but if you don't mind, if you can be back
24 tomorrow morning at 9:30, we will be ready to go. I hope
25 you all have -- again, don't discuss the case or Google, or

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
2016-CP-07-02541

COUNTY OF GREENVILLE

-----)

Forum Benefits, Inc.,)

)

Plaintiff,)

vs.)

TRIAL TRANSCRIPT

VOLUME II

Brian Bannon, et al.)

PAGES 162 - 444

)

Defendants.)

-----)

October 12, 2021

Beaufort, South Carolina

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The Honorable Bentley Price, Judge Presiding

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P R O C E E D I N G S

*** * ***

THE COURT: Can we get started?

MR. LEHRER: Yes, Your Honor.

THE COURT: All right, bring them out.

BAILIFF: Yes, Your Honor.

THE COURT: Thank you, sir.

BAILIFF: The Jury's entering the courtroom, Your Honor.

(Whereupon, the Jury enters the courtroom.)

THE COURT: All right, well, good morning, I hope you had a good evening, and as I indicated, we'll try to stay on schedule, so I appreciate y'all being here right at 9:30. Mr. LeBlanc?

MR. LEBLANC: May it please the Court?

CONTINUATION OF DIRECT EXAMINATION OF BRIAN BANNON:

BY MR. LEBLANC: (Continuing)

Q Mr. Bannon, I'm gonna pass up to you what the exhibit that's been already admitted as Plaintiff's Exhibit 10. And this was the exhibit we were discussing yesterday, when we stopped, right?

A (Reviews document.) Yes.

Q And just to bring you back into context where we were, --

MR. LEBLANC: Could you scroll down, please, Kim?

1 BY MR. LEBLANC: (Continuing)

2 Q -- this was the email that you sent on October
3 27th to various people at AssuredPartners providing the
4 login credentials for Carolina Youth Development Center and
5 Premier Logistics; is that right?

6 A That's correct.

7 Q Do you recall that discussion from yesterday?

8 A That's correct.

9 Q Okay. And -- and my last question yesterday, --

10 MR. LEBLANC: If you can scroll up, Kim, to the
11 October 27th right there, back down.

12 BY MR. LEBLANC: (Continuing)

13 Q Right there, that email was sent from your home
14 Gmail account?

15 A (Reviews document.) That's correct.

16 Q And is that an encrypted account?

17 A No, it's not.

18 Q Okay, so that -- that -- you're sending that
19 email to -- over the Internet with these login credentials
20 to AssuredPartners; is that right?

21 A That's correct.

22 Q Is there anything wrong with that? Does anything
23 prohibit that?

24 A No, I'm not aware of anything that prohibits
25 that.

1 Q Okay. Could we go up to the top, please?

2 October 31st email, again, this came from your Gmail
3 account?

4 A (Reviews document.) That's correct.

5 Q And I understand that there was a problem with
6 the login credentials that you provided to Mr. Brady?

7 A That's correct.

8 Q And they didn't work, and so he let you know they
9 didn't work?

10 A That's correct.

11 Q And you subsequently then sent him another email
12 with login credentials that did work for Carolina Youth
13 Development Center and Premier Logistics?

14 A That sounds right.

15 Q I mean it's pretty much just capital letters, one
16 capital letters; if I recall?

17 A Possibly.

18 Q And I don't think I asked you questions about
19 this yesterday. Who is Mr. Brady that you sent this
20 information to?

21 A He's the Director at BeneSolv.

22 Q And is BeneSolv is a wholly owned subsidiary of
23 AssuredPartners?

24 A Yeah, I believe they are.

25 Q So Mr. Brady is the top guy at BeneSolv?

1 A As far as -- yes, as far as I know.

2 Q I mean he's not -- he's not an assistant or a IT
3 guy, he is the guy at BeneSolv?

4 A I believe he is in charge of their operations.

5 Q You believe he's in charge of their operations?

6 A Yes.

7 Q I'm going to hand you a document that's been
8 marked as Plaintiff's Exhibit 12 and ask you to take a look
9 at it.

10 MR. LEBLANC: May I approach?

11 THE COURT: Yes, sir.

12 BY MR. LEBLANC: (Continuing)

13 Q Do you recognize what's shown in Plaintiff's
14 Exhibit 12?

15 A (Reviews document.) I do.

16 MR. LEBLANC: All right, I move Plaintiff's Exhibit 12
17 into evidence.

18 THE COURT: Any objection?

19 MR. LEHRER: No objection.

20 THE COURT: Without objection.

21 (Whereupon, Plaintiff's Exhibit Number 12 is marked for the
22 record and admitted into evidence without objection.)

23 MR. LEBLANC: Could you put 12 up on the board,
24 please? And scroll down to --

25 BY MR. LEBLANC: (Continuing)

1 Q So you see this email at the bottom of the first
2 page of page 12 -- or Exhibit 12?

3 A (Reviews document.) Yes.

4 Q And that -- that email was sent from what address
5 from you?

6 A It was sent from my AssuredPartners' email.

7 Q Okay, so on November 8th, 2016, you sent an email
8 to people at AssuredPartners, and that email went from your
9 AssuredPartners' email address?

10 A That's correct.

11 Q And this email you sent on -- sorry.

12 MR. LEBLANC: Could you scroll down to the bottom of
13 page two?

14 BY MR. LEBLANC: (Continuing)

15 Q You sent an email on November 7th here, 2016, to
16 the AssuredPartners people?

17 A (Reviews document.) That's correct.

18 Q And you're asking them to verify that the new
19 login credentials that you provided work?

20 A That's correct.

21 Q And they did work?

22 A It looks like they did.

23 MR. LEBLANC: If you would scroll up a little bit to
24 the November 8th?

25 BY MR. LEBLANC: (Continuing)

1 Q All right, so this is the email we talked about
2 that you sent on November 8th, 2016, from your
3 AssuredPartners account?

4 A Yes.

5 MR. LEBLANC: Can you scroll down now past the
6 credentials there? Right there.

7 BY MR. LEBLANC:

8 Q So what are you telling Mr. Brady about the --
9 making the three copies as quickly as possible? Why is
10 that important?

11 A (Reviews document.) Just so we don't have any
12 disruption with the clients with regards to client
13 information.

14 Q So you wanted Mr. Brad to make the copies from
15 the Employee Navigator system as soon as possible so there
16 wouldn't be any client disruption?

17 A That's correct.

18 Q Well, what was gonna cause any client disruption?

19 A If they couldn't access their data.

20 Q If the client could not access their data, that
21 would -- that might cau -- cause client disruption, right?

22 A Right.

23 Q And -- and what -- what event was getting ready
24 to happen to cause that client disruption?

25 A I'm not -- I'm not clear.

1 Q All right, let me read what it says. You say,
2 "As I'm agent-of-record lettering them," all right? What
3 does that mean?

4 A Oh, okay, so I was -- basically, I was getting
5 ready to submit the agent-of-record letters to the various
6 insurance carriers.

7 Q Okay, and -- and I'm not -- I don't recall if we
8 talked about agent-of-record letters yesterday. Do you --
9 can you describe what an agent-of-record letter is?

10 A Sure, it's a letter that gives you authority to
11 act on the client's behalf as their -- their agent, their
12 broker to discuss insurance rates and plans with the
13 insurance carriers.

14 Q So -- right, so you were getting -- those --
15 those agent-of-record letters are signed by the client; is
16 that right?

17 A That's right.

18 Q And they would identify you or AssuredPartners as
19 their new insurance broker agent; is that correct?

20 A That's correct.

21 Q And those agent-of-record letters would then be
22 transmitted -- delivered to the insurance companies?

23 A That's correct.

24 Q And when the insurance companies get those agent-
25 of-record letters, then the insurance companies know, hey,

1 Forum Benefits is no longer the agent-of-record for
2 Carolina Youth Development Center, the agent-of-record is
3 now AssuredPartners?

4 A In part. Any time an independent broker changes
5 agencies, if they want to bring their clients with them, if
6 you're changing agencies, you've got to get a broker agent-
7 of record letter signed.

8 Q Well, so is the agent-of-record letter for the
9 benefit of the agent or for the benefit of the company?

10 A It's -- it's for documentation for the insurance
11 company. It's for the benefit of the client.

12 Q And -- all right, in this, you know, this
13 sentence is phrased, I want to make sure the Jury
14 understands this terminology, that when you say you're
15 agent-of-record lettering, that's sort of like a big word,
16 that means you're gonna -- you're gonna deliver the agent-
17 of-record letters; is that what you mean by that?

18 A Yes.

19 MR. LEBLANC: May I approach?

20 THE COURT: Absolutely.

21 BY MR. LEBLANC: (Continuing)

22 Q That's your document that's been marked as
23 Plaintiff's Exhibit 45. Do you recognize what's shown in
24 Plaintiff's Exhibit 45?

25 A (Reviews document.) I do.

1 MR. LEBLANC: I'd move Plaintiff's Exhibit 45 into
2 evidence.

3 THE COURT: Any objection?

4 MR. LEHRER: Hold on just a second. No objection.

5 THE COURT: All right, without objection.

6 (Whereupon, Plaintiff's Exhibit Number 45 is marked for the
7 record and admitted into evidence without objection.)

8 MR. LEBLANC: Thank you. Put 45 up, please? Okay,
9 and scroll to the bottom.

10 BY MR. LEBLANC: (Continuing)

11 Q In Plaintiff's Exhibit 45, there's some of the
12 emails we've already admitted into evidence and talked
13 about, right?

14 A That looks correct, yes.

15 Q So I'm not gonna talk about them anymore --
16 again. Let's look at the email that's dated November 11,
17 2016, at the bottom -- or, I'm sorry, in the middle of --
18 halfway down the first page.

19 A (Reviews document.) Okay, I've got it.

20 MR. LEBLANC: If you can make that a little bit
21 bigger.

22 BY MR. LEBLANC: (Continuing)

23 Q All right, so this is a email that Jim Brady sent
24 you on November 11, 2016?

25 A (Reviews document.) That's correct.

1 Q And do you know what day of the week November 11,
2 2016, was?

3 A It was a Friday.

4 Q Okay. It was, that's my understanding. What's
5 -- what's Mr. Brady telling you there?

6 A It looks like he's saying that he collected all
7 of the employer information off the Employee Navigator.

8 Q Where does he say it's employer information?

9 A Well, he doesn't, but you're asking me to
10 explain --

11 Q Okay.

12 A -- what he was trying to communicate to me.

13 Q Mr. Brady's telling you that he's collected all
14 the data from Employee Navigator, right?

15 A Yes.

16 Q And he has not taken all the screenshots yet
17 though, right?

18 A That's correct.

19 Q And when -- do you understand what a screenshot
20 is?

21 A Yes.

22 Q A screenshot is when somebody takes a picture of
23 what's on the screen, right?

24 A Right.

25 Q And why would Mr. Brady need to take a screenshot

1 of the Employee Navigator database?

2 A I can't -- I can't answer that, I'm not sure
3 exactly why.

4 Q Fair enough.

5 A I mean obviously to make a picture, I'm not sure.

6 Q But Mr. Brady is the head of BeneSolv, right?

7 A As far as I know.

8 Q And if he thought he needed to take a screenshot,
9 then he probably needed to take a screenshot?

10 A You would have to ask him that.

11 Q He also says he's copied over all the information
12 in this email to you?

13 A Yes, that's correct.

14 Q And he says he will get screenshots, but he built
15 it side-by-side; is that what he says?

16 A Yes, that's what he says.

17 Q And do you know what -- what did -- what was he
18 referring to when he said, "We built it side-by-side"?

19 A I think he's referring that he made -- he made a
20 copy of the information.

21 Q Well, we use the word term yesterday, I think we
22 did, "build out" -- "build out" for Employee Navigator?

23 A Uh-huh.

24 Q Would he have been referring to, "I've built out
25 the Employee Navigator for AssuredPartners side-by --

1 A Possibly, yes.

2 Q Let me add -- let me finish that question. Would
3 he be referring to, "I built out Employee Navigator for
4 AssuredPartners side-by-side looking at the Employee
5 Navigators that had been built out by Forum Benefits?"

6 A That's possible.

7 MR. LEBLANC: All right, take that down, please.

8 BY MR. LEBLANC: (Continuing)

9 Q All right, I'm going to switch gears a little bit
10 from talking about Employee Navigator, and let's talk about
11 SharePoint files. Do you understand what I'm referring to
12 for -- when I say SharePoint?

13 A I do.

14 Q That's the server of Forum Benefits that's
15 located in Greenville?

16 A I think it's a Cloud drive.

17 Q A Cloud drive? You're probably correct. Is it
18 accurate to -- is -- is it -- am I correct in understanding
19 that you always had login credentials to Forum Benefits
20 server?

21 A That's correct.

22 Q And why was that? Do you know why?

23 A So I could access any of my client information
24 any time I needed to.

25 Q And because you initially started as a Forum

1 Benefits employee -- or Palmetto Benefit Management
2 employee in Charleston, and the server was in Greenville?

3 A Yeah, they -- they originally had a physical
4 server for a few years. They switched from physical server
5 to the Cloud drive.

6 Q Right, that's -- thanks for explaining that. So
7 when you initially started at Palmetto Benefit Management,
8 they literally had something in a closet that was their
9 server?

10 A Yes, I believe so.

11 Q And that was in Greenville?

12 A Yes.

13 Q And sometime after that they went to the
14 SharePoint server, which, as you've described, is in the
15 Cloud?

16 A Correct.

17 Q In -- in the time period of October/November of
18 2016, did you download files from Forum Benefits'
19 SharePoint server?

20 A Yes, I did.

21 Q And about how many files do you think you
22 downloaded?

23 A I can't remember.

24 Q Could it be as many as 2,000?

25 A It could be. It could have been a little more,

1 it could have been less.

2 Q Sure. And -- and so that downloading would have
3 happened in 2016?

4 A That's correct.

5 Q So, obviously, you're not gonna know precisely
6 how many files?

7 A No.

8 Q But magnitude-wise, it could be 2,000 files?

9 A Yes, it could be.

10 Q And it's your testimony that all those files you
11 downloaded were downloaded to either your laptop computer,
12 your personal laptop computer, or the desktop computer that
13 was the property of Forum Benefits?

14 A That's correct.

15 Q And it's your testimony that, although you
16 downloaded what may be as much as 2,000 files, you never
17 transferred any of those files anywhere else?

18 A That's correct.

19 Q You didn't transfer any of those files to any
20 external drives?

21 A No.

22 Q All right, so I asked the question with a
23 negative, and you answered with a negative, and that can be
24 ambiguous in the future. So did you transfer any of the
25 files that you downloaded to your laptop or your desktop to

1 any external storage place?

2 A I -- I mean that was a long time ago, I -- I
3 don't believe I did.

4 Q Would you have had -- would you have had any
5 reason to transfer any files that you downloaded to your
6 laptop or desktop to an external drive?

7 A Yeah, there were client files, renewal files in
8 there, so, typically, the way we got the renewal
9 information from our account managers is we -- towards the
10 last few years I was working for them, at the beginning,
11 they would email us the renewal information, policy
12 information for clients, relevant files, anything we're
13 working on. Once we started storing it on the shared
14 drive, we would -- if -- if we had a renewal appointment
15 coming up, or a quarterly meeting, or if we're meeting with
16 a client and we just need to access their information, we
17 would go in and, you know, somebody like me, an independent
18 contract, we'd go into the shared drive, and we would copy
19 what we needed, download it to our computer, and a lot of
20 times there would be marketing pieces, renewal
21 presentations, and I would download that. You know, I'd
22 download it to a -- a -- a flash drive, and I might give it
23 to the client, and I might just stick it in my laptop and
24 show it to them, so, yeah, it's possible.

25 Q So it's possible you might have transferred some

1 of these files that you downloaded to a flash drive?

2 A Not the files that I downloaded when I was
3 leaving. When I was leaving, I was downloading my
4 client files. I was trying to get updated client files for
5 a backup, and I was downloading those files, specifically,
6 to the desktop and/or my laptop.

7 Q And maybe I assumed something that you haven't
8 testified to. Why were you downloading all these files
9 again?

10 A Because I needed to have accurate client records
11 for my clients.

12 Q And what, generally, were the files that you were
13 downloading?

14 A It was client information, policy information,
15 quotes, etcetera.

16 Q So it was insurance plan information?

17 A That's right.

18 Q And that's not the client's data, is it?

19 A Yes.

20 Q I thought that came from the insurance company?

21 A It does, but it's based off the client's data, so
22 it's -- it's -- I'm their broker, I have to have copies. I
23 have to -- my client calls me up and says, "Hey, what's our
24 deductible?" I can't say, "Well, I don't know, let me --
25 let me call somebody in Greenville." I mean I've got to

1 have access to that info. I -- I'm the guy in charge of
2 their account, so I need to know that info, I have to have
3 files.

4 Q And did clients call you fairly often asking you
5 questions like that?

6 A Sometimes. Typically, they would ask me if I if
7 I was sitting in front of them. I'd have something to
8 reference.

9 Q Well, here's what I'm at a loss for. If Jim
10 Brady had already copied everything out of Employee
11 Navigator, then why did you need another copy out of
12 SharePoint?

13 A I needed -- well, for two reasons. Number one,
14 they were my clients, so I had to have copies of the files,
15 in case I needed a backup, in case something went wrong,
16 okay? So in -- in the event there was a service issue, I
17 had to have access to their information, so I could talk to
18 the insurance company. The second reason is, under the
19 South Carolina DOI federal regulation, if you're a broker
20 and agent, you have to keep the records and transactions of
21 all your clients. So I've got to -- I've got to keep
22 copies of their insurance policies, census information, any
23 emails that went back and forth. We've got to keep as much
24 information as we can.

25 Q Okay, you said DOI in that.

1 A Department of Insurance.

2 Q Right, I just want to make sure everybody
3 understands that. So your -- it's your understanding that
4 the Department of Insurance says, you, as the appointed
5 broker, have to have copies of all that stuff?

6 A Correct.

7 Q And are you actually the appointed broker for any
8 of those clients?

9 A Yes.

10 Q Isn't Brian Stritt the appointed broker for all
11 those clients?

12 A No.

13 Q All right, we talked about, just now, the -- you
14 needed to copy your clients' files to back them up, I
15 understand that. Were there other files you copied that
16 were not your clients' files?

17 A Not intentionally, no. When I was downloading
18 the information, the files were set up so that you could --
19 I mean they were made, so if I had a client, Magnolia
20 Plantation, I would click on Magnolia Plantation, take a
21 quick look, see what other files were in there, renewal
22 files, census data, policy information, I'd back out, and I
23 would hit download. So I would download everything that
24 was in that file. There were some things that were
25 misfiled. Some of them my clients' information weren't my

1 client folders, some of -- they were probably -- I -- I
2 think I noticed some things in my client files I couldn't
3 -- I didn't recognize. I'd just back out, hit delete -- or
4 hit download, so any file that had my clients' name on it
5 or information on it, I downloaded it.

6 Q Okay, let me -- let me go through that a little
7 bit. So when you would login to SharePoint, you'd get into
8 the SharePoint server, right? And then you'd select a
9 particular client to go to that client's files, right? And
10 then when you got into that client's files, like, say, St.
11 Andrews Public Service District, it's -- you -- you would
12 have expected to only have St. Andrews' records in there,
13 right?

14 A That's correct.

15 Q And when you went in there, you went in there to
16 get their census data, or their plan information, stuff
17 that you said you wanted to have a backup for, right?

18 A That's correct.

19 Q And you're saying, when you accessed all that --
20 that -- all that stuff, when you would get into St. -- when
21 you got into the St. Andrews' folder, you just downloaded
22 everything in there?

23 A That's correct.

24 Q So is -- is it your testimony that the files that
25 you were accessing in this October/November 2016 timeframe,

1 if you accessed them, and they were in your client folder,
2 you downloaded them?

3 A That's correct.

4 Q All right, and -- and it's your testimony that,
5 if you down -- if you down -- if you also downloaded files
6 that were not your clients, it's because they were misfiled
7 on the server?

8 A That -- that'd be accurate, right.

9 Q Okay. How about files that were not client
10 files, and by that, I mean files that were just Forum
11 Benefit files, internal files?

12 A I -- I don't know. Can you -- can you elaborate?

13 Q I can. So when you come into the SharePoint
14 server, instead of going into the St. Andrews' file, you'd
15 go into a file called Internal. Did you go into that file
16 -- that --

17 A I -- I --

18 Q -- folder?

19 A I looked through every file to see if I could
20 find any information about my clients, so I would -- I -- I
21 went through every file.

22 Q Okay. So you did go into the Internal folder
23 that had files in it that were not particular to any
24 client?

25 A I -- I can't remember the names of all the

1 folders I went into.

2 Q I'll show it to you in a little bit.

3 A Okay.

4 Q All right, so -- but there was an Internal
5 folder; do you recall going to that?

6 A I don't.

7 Q You do not? All right. I think you testified
8 earlier about your familiarity with Employee Navigator,
9 right?

10 A Yes.

11 Q And it's -- you're not very familiar with it, and
12 I don't mean to be disparaging, I -- I understand it just
13 wasn't part of your job?

14 A It was my job to be a generalist on Employee
15 Navigator --

16 Q Right.

17 A I was not an expert.

18 Q Right, I'm -- and I'm not criticizing that at
19 all, but there is a file or -- or a booklet called, The
20 Employee Navigator User Guide; do you recall seeing that?

21 A Oh, no.

22 Q You never saw it?

23 A No.

24 Q You're not familiar with it?

25 A I'm not familiar with it.

1 Q Did you download it?

2 A If I did, it was by accident. I didn't -- I -- I
3 still haven't seen it.

4 Q Okay.

5 A Never put -- never put my eyes on it.

6 Q Okay, so if it was in the Internal folder, under
7 a file name Employee Navigator User Guide, you accidentally
8 downloaded it?

9 A It's possible.

10 Q I'm gonna list a couple of clients, and I'd just
11 like you to confirm if they are -- if they were or were not
12 in your book.

13 A Okay.

14 Q The client called Poly-Med?

15 A No.

16 Q They were not in your book? Smith Engineering?

17 A No.

18 Q New Foundations?

19 A No.

20 Q Performa?

21 A No.

22 Q Marathon Auto?

23 A No.

24 Q Strategy Plastics?

25 A No.

1 Q Interim Healthcare?

2 A No.

3 Q So if you downloaded files for all those clients,
4 they weren't in your book?

5 A I didn't download -- I didn't intentionally
6 download any of the files.

7 Q I understand. If -- if they -- if you did
8 download client files for those clients, --

9 A Uh-huh.

10 Q -- they were not in your book?

11 A If I downloaded those files, they were probably
12 misplaced.

13 Q Are you a new -- are you familiar with the files
14 that Forum Benefits referred to as their renewal
15 spreadsheets?

16 A I am.

17 Q That's a fairly populate document at Forum
18 Benefits that's used during the renewal process?

19 A Yes.

20 Q So if -- if I were to talk to any employee or
21 producer at Forum Benefits, and I said, "Hey, I need the
22 renewal spreadsheet for St. Andrews," they'd know what I'm
23 -- they'd know what I'm talking about?

24 A Yes.

25 Q Do you know what's in the renewal spreadsheets?

1 A Typically, rates, employer contributions,
2 employee contributions, things like that.

3 Q Okay, so it's a lot of the insurance plan
4 information that is obtained from the insurance company?

5 A No, not the plans, just the rates.

6 Q Just the monthly --

7 A The -- the --

8 Q -- premiums?

9 A -- premiums, the premiums.

10 Q Okay, it doesn't have the policy information in
11 there, like deductible and stuff like that?

12 A In the renewal spreadsheet it can. It has like a
13 group that would be -- that show deductibles, out-of-
14 pockets, copays, things like that. It's very brief, it's,
15 you know, it's a box about this big, there's --

16 Q Okay.

17 A -- not a lot of information in there.

18 Q Does it also have the employee census information
19 in it?

20 A In the renewal spreadsheet? No.

21 Q It does not?

22 A No, not the -- not the renewal spreadsheet.

23 Q Right, and I want to be clear, are -- are you
24 familiar with what's in the renewal spreadsheet or not?

25 A I am.

1 Q You're -- you are familiar with what's in the
2 renewal spreadsheet?

3 A Mm-hm.

4 Q You have to answer orally for her.

5 A I am.

6 Q And so it -- it's your -- your understanding,
7 your recollection that the Forum Benefits renewal
8 spreadsheets for each clients do not include the employee
9 census information?

10 A We don't show the employer typically the census
11 information, we just show how many -- we would -- when --
12 at AssuredPartners, at Forum, if you're a broker, you show
13 how many employees are taking employee-own coverage,
14 employee/child, employee/spouse or a family, that's what we
15 show a client. Typically, we don't show them the census
16 data.

17 Q Right, I -- and that -- I appreciate that, but
18 that's not what I asked. I'm not asking what you showed
19 the client, I'm asking what the renewal spreadsheets
20 include, the data in the renewal spreadsheets, does it
21 include the employee census data?

22 A It can on a separate page, but that -- that's not
23 what we would refer to as the renewal spreadsheet, that
24 would be a census.

25 Q All right. Maybe we're not talking about the

1 same thing, let me -- let me ask it this way. Are the
2 renewal spreadsheets for each client used to generate a
3 presentation for the client for renewal?

4 A Yeah, they're included in the presentation.

5 Q Okay, and I think you're talking about the actual
6 output from the spreadsheets, the product that the
7 spreadsheets generate that you use with the clients that
8 doesn't have the employee census information?

9 A That's correct.

10 Q Okay, so the renewal spreadsheets are literally
11 an Excel spreadsheet, they are --

12 A That's all it is.

13 Q Right, they're -- I mean they're a file name, St.
14 AndrewsRenewal2016.xls?

15 A Yeah, that's correct.

16 Q And so they are used to generate a PowerPoint
17 presentation or a PDF presentation that the producer and
18 the account manager then present to the client for renewal?

19 A That's correct.

20 Q Right, so my questions aren't really what you
21 present to the client, my questions are, the information in
22 those spreadsheets includes the data used to generate those
23 reports?

24 A That'd be accurate.

25 Q All right, so the -- the -- the renewal

1 spreadsheets for each client includes that client's census
2 data?

3 A It -- the renewals spreadsheets are generated off
4 the insurance premiums, the plan design, and the census
5 data.

6 Q Have you ever clicked on and opened up a renewal
7 spreadsheet for any client?

8 A Sure.

9 Q How many tabs does it have?

10 MR. LEHRER: Your Honor, I'm going to object as to
11 the relevance. There seems to be a lot of the same
12 questions that are asked and answered.

13 THE COURT: All right. Do you have any information
14 that you want to show him and provide him and y'all just go
15 over it, that would probably be a little more beneficial
16 than just asking him just a sequence of the same questions?
17 If there's something you want him to review, show it to
18 him.

19 MR. LEBLANC: I just want to know his familiarity
20 with the spreadsheet. I'm almost done.

21 THE COURT: All right.

22 BY MR. LEBLANC: (Continuing)

23 Q Do you have opened up a renewal spreadsheet?

24 A Yes.

25 Q And, approximately, how many tabs are in this

1 Excel spreadsheet?

2 A (Reviews document.) They have multiple tabs, as
3 few as one or two, or we can include more information; as a
4 broker, we can -- you can include, you know, four, five
5 six, as many tabs as you want to.

6 Q Well, I know you can, but when you look at it,
7 they have one, two, three, four, something like that? Less
8 than ten?

9 A Yes, typically.

10 Q If it had more than ten, would that shock you?

11 A Yeah, it would probably be a lot of information.
12 A lot of the tabs -- typically, there are tabs in there
13 that the clients are not using.

14 Q Do you recall any of the names of any of these
15 tabs?

16 A Plan design, renewal, you know, the past years'
17 renewal information by design.

18 Q Okay, thank you.

19 MR. LEBLANC: May I approach?

20 THE COURT: Absolutely.

21 BY MR. LEBLANC: (Continuing)

22 Q I'll pass you a document that's been marked --
23 been marked as Plaintiff's Exhibit 9.

24 MR. LEBLANC: I move Plaintiff's Exhibit 9 into
25 evidence.

1 MR. LEHRER: Your Honor, I object, it's a pleading.

2 THE COURT: Yeah, improper. Let me see it.

3 MR. LEBLANC: It's this.

4 THE COURT: You can ask him about the note. I'm --
5 I'm not going to allow it in. He's correct, it's a
6 pleading. Here you go, Madam Clerk.

7 BY MR. LEBLANC: (Continuing)

8 Q Have you ever seen what's shown in Plaintiff's
9 Exhibit 9 before?

10 A (Reviews document.) I have.

11 Q And is this a request for you to admit or deny
12 various statements?

13 A It appears to be.

14 Q Okay, so during the discovery process of a
15 lawsuit each side can ask each other questions; are you
16 familiar with that process?

17 A Yes.

18 Q And so these are questions that my client asked
19 directly of you; is that correct?

20 A That's correct.

21 Q Okay. Let's look at question --

22 MR. LEHRER: Your Honor, I'm going to object. I mean
23 if he's going to give the witness an opportunity to answer
24 the question, --

25 THE COURT: Right, you're allowed to ask him to

1 refresh his collection technique, just ask him the
2 question, and if he doesn't know the answer, allow him to
3 review the document.

4 MR. LEBLANC: Absolutely.

5 BY MR. LEBLANC: (Continuing)

6 Q Do you recall us asking you during the period of
7 July -- January 1, 2016 to November 15, 2016, you accessed,
8 copied or downloaded files from Plaintiff's computer
9 systems that included any of the following data: Employee
10 Navigator Guides? Do you recall us asking you that
11 question?

12 A I do.

13 Q And you denied it, right?

14 A That's correct.

15 Q So you denied ever downloading any Employee
16 Navigator Guides?

17 A That's correct.

18 Q And you denied accessing any Employee Navigator
19 Guides?

20 A That's correct.

21 Q C) User Guides, you denied accessing, copying or
22 downloading any user guides?

23 A That's right.

24 Q Forum Benefits' pricing policies and formulas,
25 you denied downloading, accessing or copying any of Forum

1 Benefits' pricing policies or formulas?

2 A That's correct.

3 Q Do you -- is it your understanding that the Excel
4 spreadsheets we were just talking about include formulas in
5 there?

6 A Excel spreadsheets, yes, they --

7 Q Yes.

8 A -- include formulas.

9 Q Those renewals -- those renewal spreadsheets we
10 were talking about, they include formulas in there, don't
11 they?

12 A Typically, yes.

13 Q And those are formulas that are proprietary to
14 Forum Benefits, right?

15 A No, they're not.

16 Q Okay, where do they -- where do they come from
17 then?

18 A Anybody who knows how to manipulate an Excel
19 spreadsheet can plug in numbers and create -- and -- and
20 the formulas are in the spreadsheets, and they come from
21 Excel that way, they've got formulas in them.

22 Q Oh, it's your understanding that when -- when you
23 open up an Excel spreadsheet it already has formulas in
24 them?

25 A Well, yeah, that -- you have to take and develop,

1 you know, the formula.

2 Q Okay, that -- that's what I'm talking about, the
3 -- the formula that's plugged into the Excel spreadsheet,
4 that formula came from Forum Benefits, right?

5 A Well, somebody has to put it in there.

6 Q Right, but the -- the -- the -- not just -- I'm
7 not just talking about physically keying the formula in,
8 some -- somebody decided what formula to put in the block,
9 right?

10 A That's right.

11 Q And the person who decided the formulas to put in
12 the block in the Excel spreadsheet was Forum Benefits,
13 right?

14 A I assume so.

15 Q All right, I'm referring to the second one, just
16 so you can follow along. You admitted that you accessed,
17 copied and downloaded information from -- from Forum
18 Benefits with HIPAA information from May 1st to October --

19 MR. LEHRER: Again, Your Honor, it's improper, if he's
20 -- he's reading the document, he needs to give the witness
21 the opportunity to answer the question. If the answers are
22 inconsistent, then he can refer to the document.

23 THE COURT: All right, I'll sustain the objection as
24 to leading. Just -- just ask him a question, and if you
25 need to refresh his recollection, you can refer to the

1 document.

2 MR. LEBLANC: Thank you.

3 THE COURT: All right.

4 BY MR. LEBLANC: (Continuing)

5 Q You admitted that you downloaded documentation
6 that's protected from this -- from public disclosure by
7 HIPAA in the time period May 1 -- May 1, 2016, to October
8 13, 2016?

9 A That's correct.

10 Q What documents would those have been, generally?
11 I'm not asking for files names, but, generally, can you
12 describe what those were?

13 A Policies, renewal information, rates.

14 Q So all that stuff we've been talking about for a
15 day and a half?

16 A That's correct.

17 Q And why -- why the -- the period? Why May 1st to
18 October 13th? What happened on October 13th?

19 A Why did I stop downloading?

20 Q No, you -- you admitted that you downloaded
21 documentation protected by HIPAA in a -- in a time period,
22 and I'm just asking why is there a time period? What did
23 you do differently on October 14th?

24 A I -- I don't know. I don't remember.

25 Q You don't recall why you put this date range?

1 A No.

2 MR. LEHRER: Objection, Your Honor, he's --

3 THE COURT: All right, put the document. Asked -- I'm
4 just gonna state the objection as to asked and answered.
5 He has -- he's answered the question, move on.

6 BY MR. LEBLANC: (Continuing)

7 Q Okay, do you deny that the Employee Navigator
8 User Guides have any value to you?

9 A Yes.

10 Q And you deny that the Employee Navigator User
11 Guides have any value to AssuredPartners?

12 A It's -- your -- I haven't -- I haven't seen the
13 Employee Navigator User Guide. I -- I don't know what's in
14 there. I don't know if they're valuable or not valuable.
15 They wouldn't have been valuable to me.

16 Q Right, that -- that's what I'm asking you, you --
17 you do continue --

18 A I'm -- I'm not familiar with them.

19 Q And they have no value to you?

20 A I'm not familiar with them.

21 Q You deny that you were soliciting business for
22 AssuredPartners while you were representing Forum Benefits?

23 A Well, I was an independent contractor, I was
24 having my accounts serviced through Forum Benefits, and I
25 -- I had been hired by AssuredPartners.

1 Q Right.

2 A So I don't deny that.

3 Q You don't deny -- that -- you answered a little
4 different question. I -- I'm asking, when you were an
5 independent contractor, were you still representing Forum
6 Benefits?

7 A When I was -- yes, I was representing Forum
8 Benefits when I was an independent contractor.

9 Q Right, and do you deny soliciting clients for
10 AssuredPartners while you were still representing Forum
11 Benefits?

12 A That's kind of a trick question, isn't it?

13 Q I don't -- I don't -- I'm not sure what the trick
14 is. What -- what's the trick?

15 A Well, the client -- I was an independent
16 contractor. My clients were being serviced through Forum
17 Benefits. I was representing the client, and I had been
18 hired by -- well, I -- I had been hired by AssuredPartners,
19 so I still represented the client.

20 Q Next question, I'm not re-asking. Do you deny
21 that AssuredPartners knew that you were soliciting clients
22 for them while you were representing Forum Benefits?

23 A I -- I'm not even sure how to answer that. They
24 -- they knew, I mean -- they knew that when -- when
25 AssuredPartners hired me, they knew that I was going to

1 bring -- try and bring my clients with me.

2 Q So when AssuredPartners hired you on October 15,
3 2016, right, that's when they hired you?

4 A That's correct.

5 Q They knew that you were going to be soliciting
6 clients for them?

7 A That's -- that's correct.

8 Q What's your understanding of when you ceased to
9 represent Forum Benefits any longer?

10 A That I was -- it -- it would have been right
11 around the time I was hired by AssuredPartners.

12 Q So right around October 15, 2016?

13 A Yeah, I mean I was kind of pulling double duty.
14 I was still -- I had an obligation to my clients to
15 represent them and make sure that, you know, they had
16 renewals coming up or pre-renewal meetings. I still had to
17 meet with them and take care of business, and make sure
18 that they had a smooth transition from running the business
19 through Forum, transitioning it to the AssuredPartners.

20 Q Right, so you -- you had to take care of your
21 clients, so you continued to attend renewal meetings with
22 your clients while representing Forum Benefits?

23 A Yeah, I was -- I was representing the client. I
24 was an independent contractor just running my business
25 through Forum.

1 Q So --

2 A I wasn't even reporting to Forum.

3 Q Right, but the client thought you were making a
4 renewal presentation for Forum, didn't they?

5 MR. LEHRER: Objection, Your Honor, it's speculation
6 about what the client thought.

7 THE COURT: I'll sustain the objection.

8 BY MR. LEBLANC: (Continuing)

9 Q When you attended a renewal meeting with a
10 client, did you take a Forum Benefits employee with you?

11 A Sometimes. I didn't take them with me,
12 typically, we would meet out there.

13 Q Right, I didn't mean you necessarily --

14 A Right.

15 Q -- drove together. So Sarah Hildreth, she was
16 your account manager out of Charleston while you worked for
17 Forum Benefits?

18 A For some of my clients, yes.

19 Q And so if you attended a renewal presentation
20 with a client in this time period between October 15 and
21 November 15, did you take Sarah Hildreth to the renewal
22 meeting?

23 A Possibly.

24 Q Well, specifically, did you have a meeting with
25 Magnolia Plantation and Gardens on November 10, 2016, that

1 was attended by you and Sarah Hildreth?

2 A I think so, possibly.

3 Q And -- and so you're meeting with Magnolia
4 Plantation and Gardens with a Forum Benefits' employee,
5 right?

6 A That is correct.

7 MR. LEBLANC: May I approach?

8 THE COURT: Absolutely.

9 BY MR. LEBLANC: (Continuing)

10 Q I'll pass you a document that is marked as
11 Plaintiff's Exhibit 94. Do you recognize what's shown in
12 Plaintiff's Exhibit 94?

13 A (Reviews document.) I do.

14 Q What is it?

15 A It looks like an agent-of-record letter.

16 Q I'm sorry?

17 A It looks like an agent-of-record letter.

18 Q Right, it's actually a bunch of them, isn't it?

19 A Yes.

20 Q Okay.

21 MR. LEBLANC: I would move Plaintiff's Exhibit 94 into
22 evidence.

23 THE COURT: Any objection?

24 MR. LEHRER: Your Honor, I'm trying to get through
25 these. I mean there's a compilation, and there's --

1 there's some that he's copied on, I don't object to those,
2 but there's some he's not, it's -- there's no foundation to
3 just throw a group of documents into evidence.

4 THE COURT: How many documents are in that -- in that
5 exhibit?

6 MR. LEHRER: I mean --

7 MR. LEBLANC: Ninety -- 94 to 115 -- so 22.

8 MR. LEHRER: You know, I just -- my brief look through
9 here is he is copied on a lot of them, and I'd have no
10 objection to those. And then there's some letters in here
11 that I don't see his name on. He would just have to say
12 whether he knows anything about those before we can --
13 before I can admit -- read and admit it.

14 THE COURT: All right. Well, you're gonna have to lay
15 a proper foundation, or I'm just gonna allow for
16 demonstrative purposes at this point, so what do you want
17 to try to do?

18 MR. LEBLANC: Well, I believe to have it admitted he
19 just has to testify it is what it purports to be, and
20 that's what I've asked him.

21 THE COURT: Well, for the ones that his name are on
22 it, he's gonna have to -- to say he recognizes or he knows
23 or acknowledges what's actually in those documents; that
24 he's seen them before and he can testify as to what they
25 are.

1 BY MR. LEBLANC: (Continuing)

2 Q All right, we -- take your time, look through
3 pages 94 to -- I'm sorry, Plaintiff's Exhibit 94, and let
4 me know if you would be able to answer the question of, do
5 you know what's in those documents?

6 A (Reviews documents.)

7 MR. LEHRER: Your Honor, I just -- I think may the
8 witness is confused. We -- we consent to every page that
9 has Mr. Bannon's name on it being admitted. We just -- I
10 just -- before it's submitted, I wanted to give him the
11 opportunity to review something that doesn't have your name
12 on it, and just confirm that that is something you're
13 familiar with, or that's your client, or something before
14 it's put in the record, Your Honor.

15 THE COURT: Are you familiar with all the documents
16 contained in that packet?

17 BY WITNESS: (Continuing)

18 A Yes, Your Honor.

19 THE COURT: Okay. He said, "Yes."

20 MR. LEHRER: He has reviewed them all? Okay. I mean
21 he can answer, I -- I mean -- but my issue is, I just want
22 to confirm that those are all related to his clients, and
23 it wasn't --

24 MR. LEBLANC: I'd be happy to do that.

25 THE COURT: All right, why don't you explain to us

1 what's contained in those documents, including the ones
2 that don't have your -- anything from you, or any type of
3 information.

4 BY WITNESS: (Continuing)

5 A So these are -- these are agent-of-record letters
6 that the clients have signed giving me the authority to --
7 or AssuredPartners the authority to represent them as the
8 broker.

9 Q Okay, and every letter is dated sometime between
10 October and November of 2016; is that correct?

11 A No, some of them are in December.

12 Q Oh, they are? I apologize. Let me ask this this
13 way, every letter is from one of the clients that are in
14 your book of business?

15 A That's correct.

16 Q You obtained the clients' signature -- signature
17 on every one of these letters?

18 A That's correct.

19 Q So even though you might not have been copied on
20 one of these letters, you're the guy who got the letter
21 signed, aren't you?

22 A Yes.

23 Q Okay.

24 A Correct.

25 MR. LEBLANC: I'd like to move Plaintiff's Exhibit 94

1 into evidence.

2 THE COURT: All right.

3 MR. LEHRER: No objection, Your -- Your Honor.

4 THE COURT: Without objection.

5 (Whereupon, Plaintiff's Exhibit Number 94 is marked for the
6 record and admitted into evidence without objection.)

7 BY MR. LEBLANC: (Continuing)

8 Q Can you take a look at --

9 MR. LEBLANC: Can you put it up, please? A little
10 bigger.

11 MR. LEBLANC: (Continuing)

12 Q Okay, so as -- as you just pointed out, and I
13 appreciate that, this letter is dated December 29, 2016, so
14 they're all not dated in October and November of 2016?

15 A That's correct.

16 Q Appreciate that. This is a typical agent-of-
17 record letter that we've been talking about?

18 A (Reviews document.) That's correct.

19 Q And it's a letter that identifies policy number,
20 and it says, "Hey, Blue Cross, we're now designating this
21 person, Amy Michelle Fralix and -- and AssuredPartners as
22 their agent."

23 A Yes.

24 Q And all of these letters might use slightly
25 different language, but they all same the same thing, don't

1 they?

2 A Yes.

3 Q So there's 22 letters that say something just
4 like that? We're -- this company is appointing this person
5 of this agency as our agent?

6 A Yes.

7 Q And -- and you obtained the clients' signatures
8 on each of these letters?

9 A That's correct.

10 MR. LEBLANC: So if we go to the -- could you scroll
11 to the Magnolia Plantation and Gardens agent-of-record
12 letter?

13 BY MR. LEBLANC: (Continuing)

14 Q Okay, is this the agent-of-record letter you had
15 for Marlene Gray sign for you?

16 A Yes.

17 Q So Marlene Gray is the Chief Financial Officer
18 for Magnolia Plantation and Gardens?

19 A I believe so.

20 Q And you were the producer affiliated with this
21 client?

22 A That's correct.

23 Q And so she signed an agent-of-record letter
24 designating you of AssuredPartners, right?

25 A That's correct.

1 Q So she -- she didn't designate Amy Michelle
2 Fralix or Coffield, did she?

3 A No.

4 Q And -- and she did this on what day?

5 A October 19th.

6 Q Okay, so this would have been four days after you
7 signed -- you -- you became an AssuredPartners' employee?

8 A That's correct.

9 Q You had -- four days after you became an
10 AssuredPartners' employee, you approached Marlene Gray and
11 you said, "Hey, appoint me of AssuredPartners as your
12 agent?

13 A Well, I'm -- I'm not sure of the exact time I
14 approached her, but that's the date on the letter.

15 Q Okay, is it possible you approached her after
16 this date?

17 A No.

18 Q So on or before October 19th you approached
19 Marlene Gray to appoint you, of AssuredPartners, as their
20 agent-of-record?

21 A Well, yes, to transition the business, so, yes, I
22 would have done that.

23 Q And what's the usual process for an agent-of-
24 record letter once the client signs it? What happens to
25 it?

1 A Well, typically, the broker that gets the
2 signature will submit it to the insurance company.

3 Q Okay, so the broker that gets the signature, that
4 would be AssuredPartners, would submit it to Blue -- to
5 whoever it's addressed there?

6 A That's correct.

7 Q Companion Life or, I'm sorry, Blue -- Blue Choice
8 Health Plan, right?

9 A That's correct.

10 Q Do you know when this agent-of-record letter got
11 delivered to Blue Choice Health Plan?

12 A I don't.

13 Q Collectively, the -- the agent-of-record letters
14 in Exhibit 94, were any of them delivered to the addressee,
15 the -- the company that it's addressed to, before November
16 15, 2016?

17 A I cannot remember. I don't know -- I don't
18 remember the exact date we submitted them.

19 Q Okay. Do you know, approximately, when you --
20 well, let me back -- sorry. Did you submit them all on the
21 same day?

22 A I believe so.

23 Q And you're just not sure of the exact date that
24 you submitted them?

25 A Correct. I mean we -- we may have had a couple

1 stragglers. The plan was for -- I was going to get all my
2 clients to sign agent-of-record letters, and I would submit
3 them all at the same time.

4 Q Right, and the earlier email we talked about,
5 "Hurry up and copy this stuff, 'cause I'm agent-of-record
6 lettering them," that's what this is here, right?

7 A That's correct.

8 Q And so, "Hurry up and copy the records -- records
9 because I'm getting ready to send these letters out?"

10 A I -- I may or may not have had all the letters at
11 that point.

12 Q All right, this particular one for Magnolia
13 Plantation and Gardens, I asked you a minute ago did you
14 attend a renewal meeting with Sarah Hildreth --

15 A That's correct.

16 Q -- on November 10, 2016? And you did?

17 A I -- I believe so. I think so. It's a long time
18 ago, I can't remember the exact date.

19 Q Sure.

20 A I think she may have met me out there, so I'm
21 pretty -- I'm pretty hazy on whether she came out there
22 with me, whether we met, whether she was there at all.
23 It's possible she was there.

24 Q Okay.

25 A I don't believe she was in the meeting.

1 Q Okay. And so that meeting would have taken place
2 after Magnolia Plantation and Gardens appointed
3 AssuredPartners as their agent-of-record?

4 A That's correct.

5 Q But, yet, you still had Sarah Hildreth, a full-
6 time employee Forum Benefits attend that meeting?

7 A I'm -- I'm not sure if she attended that. I
8 think I may have met her there.

9 Q All right, I'll cover that. You -- you had Sarah
10 Hildreth of Forum Benefits meet you out there for the
11 meeting?

12 A That is correct.

13 Q Did Sarah Hildreth know anything about your
14 activities with AssuredPartners at this time?

15 A No.

16 Q And the meeting, do you know about what time the
17 meeting was scheduled for?

18 A I don't remember.

19 Q And is it your understanding that the meeting was
20 delayed a little bit?

21 A Yeah, as I understand.

22 Q And did Sarah Hildreth have an appointment she
23 had to go to?

24 A Possibly.

25 Q Are you familiar with where Magnolia Plantation

1 Gardens is in relation to Drayton Hall in Charleston?

2 A I am.

3 Q And is that the meeting she had to go to?

4 A I can't remember. I -- I don't know.

5 Q I'm gonna pass you a document that -- that has
6 been marked as Plaintiff's Exhibit 8.

7 MR. LEBLANC: I'm sorry, may I approach? I apologize,
8 may I approach?

9 BY MR. LEBLANC: (Continuing)

10 Q I'll take that back, I'm not gonna use that.

11 MR. LEBLANC: May I approach?

12 THE COURT: Absolutely.

13 BY MR. LEBLANC: (Continuing)

14 Q I'll pass you a document that has been marked as
15 Plaintiff's Exhibit 57.

16 MR. LEBLANC: I'd move Plaintiff's Exhibit 57 into
17 evidence.

18 MR. LEHRER: No, objection, Your Honor.

19 THE COURT: All right, without objection.

20 (Whereupon, Plaintiff's Exhibit Number 57 was marked for
21 the record and admitted into evidence without objection.)

22 BY MR. LEBLANC: (Continuing)

23 Q Do you see at the bottom of page five this
24 November 15, 2016, email from you to Michelle Fralix?

25 A (Reviews document.) I do.

1 Q And Michelle Fralix also goes by different names,
2 right?

3 A She was Michelle Fralix and she got married and
4 her name changed to Michelle Coffield.

5 Q And she also goes by Amy Fra -- has gone by Amy
6 Fralix?

7 A In the office it was Michelle.

8 Q Okay, but have you ever heard her referred to as
9 Amy Fralix?

10 A No.

11 Q All right. So this is an email you sent to
12 Michelle Fralix on November 15th. That's the day you were
13 no longer affiliated with Forum Benefits; is that right?

14 A It was November 15th, the significance of that?

15 Q That -- that's when you dropped all those AOR
16 letters; is that right?

17 A Is it? I can't remember.

18 Q Okay, sometime in that frame -- in -- in that
19 timeframe?

20 A Uh-huh.

21 Q I -- I appreciate it might have been a day or two
22 either side of it.

23 A Okay.

24 Q All right, and in -- in this email you're telling
25 her in the second paragraph there. You say, "I met with

1 them last Thursday afternoon," right?

2 A (Reviews document.) Okay.

3 Q Who are you talking about meeting with last
4 Thursday afternoon?

5 A Magnolia Plantation.

6 Q Okay, and that's how I got the November 10th
7 date, so --

8 A Right.

9 Q -- November 15th, and you back it out, you get to
10 November 10th.

11 A Okay.

12 MR. LEBLANC: Sorry, did I move -- Plaintiff would
13 move Exhibit -- Plaintiff's Exhibit 57 into evidence.

14 MR. LEHRER: Oh, I thought it was already admitted, no
15 objection.

16 THE COURT: All right, without objection.

17 MR. LEBLANC: I just lost my place, sorry.

18 BY MR. LEBLANC: (Continuing)

19 Q I'll pass --

20 MR. LEBLANC: May I approach?

21 THE COURT: Yes, sir.

22 BY MR. LEBLANC: (Continuing)

23 Q I'll pass you a document that's been marked as
24 Plaintiff's Exhibit Number 64.

25 MR. LEBLANC: And I'd move Plaintiff's Exhibit 64 into

1 evidence.

2 MR. LEHRER: No objection, Your Honor.

3 THE COURT: All right, without objection.

4 (Whereupon, Plaintiff's Exhibit Number 64 is marked for the
5 record and admitted into evidence without objection.)

6 BY MR. LEBLANC:

7 Q All right, do you deny that you shared Forum
8 Benefits' information with AssuredPartners?

9 MR. LEHRER: Your Honor, this has been asked and
10 answered.

11 THE COURT: I agree, move on.

12 BY MR. LEBLANC: (Continuing)

13 Q If you would take a look at this email on
14 November 18, 2016?

15 A Okay.

16 Q What are you telling Michelle Fralix in this
17 email?

18 A (Reviews document.) I'm telling her that the
19 client files that I've downloaded to my laptop, I wasn't
20 able to pull some information off them, so I'm sending you
21 by -- by memory, essentially, what I think the clients'
22 benefits are.

23 Q Okay, so she asked you if you had some
24 information about a client that was previously at Forum
25 Benefits, and you said, "I've scoured the information I

1 have, and I didn't, I wasn't able to get it."

2 A My client information, yes, that's correct.

3 MR. LEBLANC: May I approach?

4 THE COURT: Yes, sir.

5 BY MR. LEBLANC: (Continuing)

6 Q I'll pass you a document that's been marked as
7 Plaintiff's Exhibit Number 13.

8 A All right. Thank you.

9 Q Thank you.

10 MR. LEBLANC: I'd move Plaintiff's Exhibit 13 into
11 evidence.

12 MR. LEHRER: No objection, Your Honor.

13 THE COURT: Without objection.

14 (Whereupon, Plaintiff's Exhibit Number 13 is marked for the
15 record and admitted into evidence without objection.)

16 MR. LEHRER: Put 13 up on the screen, please?

17 BY MR. LEBLANC: (Continuing)

18 Q So this is a November 30th, 2016, email that you
19 sent to Michelle Fralix?

20 A (Reviews document.) That's right.

21 Q And you're reporting to her that your hard drive
22 broke, and you no longer have renewal information for these
23 guys?

24 A That's correct.

25 Q And who are the "these guys" that you're talking

1 about?

2 A It looks like Alpha Genesis.

3 Q All right. And when you say your hard drive,
4 your hard drive on the laptop or the desktop?

5 A No, the laptop.

6 Q And so the hard drive on your laptop broke, and
7 you no longer have information -- renewal information for
8 Alpha Genesis?

9 A That's correct.

10 Q If you had it, you were going to give it to her?

11 A I -- I mean my -- my intention was to use the
12 files for backup, in case there was a service issue,
13 something like that. I mean I was planning on -- as soon
14 as I submitted the agent-of-record letters, we were going
15 to start building the client files, so these were backups;
16 so I lost my backup files, I had no files. So we had to
17 contact the insurance carriers and start building a file,
18 and said, "Hey, what are the policies? What are their
19 rates? What was last year's renewal information,
20 etcetera."

21 Q And that was a lot of work, wasn't it?

22 A No, uh-uh.

23 Q Before your laptop crashed, had you downloaded
24 any files from your laptop to an external drive?

25 MR. LEHRER: Your Honor, objection, I think we've

1 already covered the flash drive issue.

2 THE COURT: I agree.

3 MR. LEBLANC: I'm sorry, I didn't understand what he
4 said?

5 THE COURT: He said we've already addressed that
6 issue, and I said, "I agree."

7 MR. LEBLANC: I'm just trying to set up context for
8 the next question.

9 THE COURT: Okay.

10 BY MR. LEBLANC: (Continuing)

11 Q We've asked you to produce any flash drives you
12 have, haven't we?

13 A That's correct.

14 Q And you don't have any, do you?

15 A No.

16 Q Do you know where they went?

17 A I don't.

18 MR. LEHRER: Your Honor, again, objection. The
19 witness has already testified about this whole flash drive
20 issue yesterday.

21 THE COURT: All right.

22 BY MR. LEBLANC: (Continuing)

23 Q Do you know when Forum Benefits would have
24 learned that you were leaving them?

25 A Oh, probably as soon as I sent the agent-of-

1 record letters in, whatever date that was. They would have
2 found out within 24 hours.

3 Q Right, so that event, AOR lettering, agent-of-
4 record lettering, that term, when -- whenever that
5 happened, the cat was gonna be out of the bag, right?

6 A Sure.

7 Q And when did you stop representing Forum Benefits
8 to any clients?

9 MR. LEHRER: Your Honor, objection --

10 BY WITNESS: (Continuing)

11 A I would have --

12 MR. LEHRER: -- that's been asked and answered.

13 THE COURT: I agree, let's move on.

14 BY MR. LEBLANC: (Continuing)

15 Q You also had a desktop computer that you
16 downloaded files to?

17 A That's correct.

18 Q And did you return that to Forum Benefits before
19 you left?

20 A I can't remember when I returned it.

21 Q Well, do you remember the hearing on December
22 8th, 2016?

23 A Yeah.

24 Q And did you still have the desktop then?

25 A I can't remember. I think I returned it when

1 they requested it.

2 Q You returned -- you returned the desktop computer
3 to Forum Benefits when Forum Benefits requested it?

4 A I think. I can't remember. I just remembered I
5 had a desktop. I wasn't using it much, I was using my
6 laptop at that point.

7 Q Do you recall testifying at the hearing on
8 December 8, 2016, that you started working for
9 AssuredPartners on November 14, 2016?

10 A That sounds possible.

11 Q So when -- just so we have context here, you AOR
12 lettered the clients on -- around November 15, 2016?

13 A I can't remember the exact date.

14 Q The exact date, right, that's why I said around.

15 A It was sometime in November.

16 Q And -- right, and this lawsuit got filed and
17 there was a hearing on December 8th, 2016, right? And --

18 A I believe so.

19 Q And at this time, Forum Benefits is still in the
20 dark on what you were doing, when you left, stuff like
21 that, right?

22 MR. LEHRER: Objection, he's calling this witness to
23 speculate about what Forum Benefits knew when.

24 THE COURT: Okay.

25 MR. LEHRER: We've had a lot of speculation asked

1 about these issues.

2 MR. LEBLANC: I'll rephrase.

3 THE COURT: Just ask him when he informed Forum
4 Benefits that he was moving on.

5 MR. LEBLANC: All right.

6 BY MR. LEBLANC: (Continuing)

7 Q The first time Forum Benefits learned that you
8 were moving onto AssuredPartners was in that timeframe
9 November 15th?

10 A I'm not sure of the exact date. It would have
11 been shortly after I submitted the agent-of-record letters.

12 Q And you testified that the day you started
13 working for AssuredPartners was November 14th?

14 MR. LEHRER: Your Honor, he's mischaracterizing the
15 evidence. The witness testified it was October 15th.

16 THE COURT: All right, I'll sustain the objection.

17 MR. LEBLANC: May I approach? I'd like to refresh his
18 memory.

19 THE COURT: Sure.

20 BY MR. LEBLANC: (Continuing)

21 Q I'm going to pass you a document that will be
22 labeled as Plaintiff's Exhibit 510. I'm sorry, swap papers
23 -- swap -- no, go ahead, I'll direct your attention to line
24 16.

25 A Okay.

1 Q And I just want you to read it and refresh your
2 memory so I can ask you a question.

3 A Okay. (Reviews document.) Okay.

4 Q Now that you've read that document, do you recall
5 testifying at the December 8th, 2016, hearing that you
6 started working for AssuredPartners on November 14th, 2016?

7 A I believe so, yes.

8 MR. LEBLANC: I don't have any further questions. And
9 I'm not putting that into evidence.

10 THE COURT: All right, any objection?

11 MR. LEHRER: Any objection to what?

12 MR. LEBLANC: I'm -- I'm not putting it in.

13 THE COURT: Oh, I thought you said I want to put it
14 in. Okay. I'm sorry. You're gonna be a while.

15 MR. LEHRER: I am, but I'll -- I'll tell you, Your
16 Honor, my plan was to kind of go over just some of the
17 exhibits that -- that he just went over. If I could do
18 that maybe for 15, 20 minutes, and then maybe take a break?

19 THE COURT: All right.

20 MR. LEHRER: But --

21 THE COURT: Are y'all okay with that? Does anybody
22 need a break? If so, just let me know.

23 MR. LEHRER: Yeah.

24 THE COURT: Okay, we'll control it.

25 MR. LEHRER: And, Your Honor, you keep me in line, if

1 I lose track of time.

2 THE COURT: Okay, that's fine. That's my only job up
3 here, I'm a timekeeper.

4 MR. LEHRER: All right.

5 THE COURT: Yeah, if y'all just need a break at any
6 time, just raise your hand and we'll take a break, okay?
7 If I need to take a break, I'll blame it on somebody else,
8 so don't worry about it.

9 MR. LEHRER: I'm gonna -- I'm gonna kind of try to
10 clean some stuff up, just we'll work backwards.

11 **CROSS-EXAMINATION**

12 BY MR. LEHRER:

13 Q Do -- do you still have the -- well, I'm just
14 gonna show you, this is what Mr. --

15 MR. LEHRER: May I approach, Your Honor?

16 THE COURT: Absolutely.

17 MR. LEHRER: Do you want me to --

18 THE COURT: Mr. Lehrer, you don't need to ask anymore.

19 MR. LEHRER: Okay.

20 THE COURT: You can come forward, it's not a problem.

21 BY MR. LEHRER:

22 Q This is the testimony that they was trying to
23 bring up November 15th. Read what I've highlighted. Read
24 what your answer was.

25 A "I think it was November 14th, I think.

1 Q So if -- and yesterday we went through all the
2 documents, and wasn't it your testimony we confirmed from
3 looking at an actual document, there's no document shown to
4 you here, that you started working October 15th for
5 AssuredPartners, correct?

6 A That's correct.

7 Q And, I'm sorry, this is not a memory test, I know
8 this was five years ago, but you're not lying in Court
9 about the date, --

10 A No.

11 Q -- you're saying what you think at the time?

12 A That's correct.

13 Q All right, and this might -- it's gonna go
14 quicker if I just kind of stand up here, Your Honor, if
15 it's okay?

16 THE COURT: Sure.

17 BY MR. LEHRER: (Continuing)

18 Q So this was Exhibit 13 that they showed you. And
19 this is the November 30th email that you sent to Michelle,
20 who was Fralix at the time, Michelle Coffield, she's seated
21 in the back there, she'll -- she'll be testifying, where
22 you told her your hard drive broke, correct?

23 A That's correct.

24 Q And this is November 30th, this lawsuit had not
25 been filed, correct?

1 A That's right.

2 Q You had not received any cease and desist letter,
3 or any -- any letter from opposing counsel, had you?

4 A No.

5 Q You had no -- no way to know that anybody was
6 ever going to sue you personally over all this?

7 A No.

8 Q You're an independent contractor?

9 A That's correct.

10 Q And you confirmed to the person that you were --
11 I'm assuming she was working with you, she was kind of the
12 administrative assistant at the time?

13 A Yeah, she was account manager in Charleston.

14 Q And so she would have been the one servicing the
15 -- the customers that were transitioning?

16 A That's correct.

17 Q She would have been the one, if you were gonna
18 give any information that you had about your client files,
19 that's who you would have given it to?

20 A Yes, she was my point person.

21 Q And you told her on November 30th your hard drive
22 broke?

23 A That's correct.

24 Q Did you ever transfer any data that you took from
25 the SharePoint -- that you downloaded or accessed from the

1 SharePoint system, did you ever transfer any of that to
2 anyone at AssuredPartners?

3 A No, I did not.

4 Q And, in fact, this -- the -- this Exhibit 64 they
5 showed you where you're sending some renewal information,
6 you refer to the fact that you can't even get that
7 information, and so you're going off of memory?

8 A That's correct.

9 Q And what date -- what was the date on that?

10 A November 18th.

11 Q So, again, before this lawsuit had been filed?

12 A That's correct.

13 Q All right, I'm going to show you what -- what
14 Mr. LeBlanc entered as Exhibit 57. And this is -- he went
15 over this email that -- that talked about this meeting with
16 Magnolia that you had, and -- and we think put the dates
17 together, it was probably around November 10th. Because
18 here you say -- you referred to the meeting five days ago;
19 do you remember that?

20 A Yes.

21 Q Read to the Jury what you said, the entirety of
22 that -- that last page. Now, this is -- for continuity
23 this is an email to Ms. Coffield -- Ms. Fralix, you know,
24 about Magnolia.

25 A All right.

1 Q Tell the Jury what you said to her.

2 A It says, "I need your help with these guys. I
3 need to get back out there with options sometime this week
4 if possible. Forum didn't give them any alternates/options
5 to their current Blue Choice renewal. I met with them last
6 Thursday afternoon. Only their approximate 20 percent
7 renewal has been presented so far. I've attached their
8 Census, Renewal, and other Blue Choice alternates. We need
9 UHC quotes, etc. Blue Choice alternates are attached
10 (quoted post renewal meeting). Other competitive carriers
11 are welcome if they're competitive (Assurant, Starmark,
12 etc.). They want to keep the costs as close to current as
13 possible. Let me know how quickly you think you can get a
14 few alternates ready. Thanks, Brian."

15 Q So -- so, in essence, you're telling Ms. Coffield
16 that you don't have any information from Forum, that she's
17 gonna have to go out and help you get these quotes; is that
18 correct?

19 A That's correct.

20 Q And is that true? Did you take any information
21 from Forum Benefits about any renewal options for Magnolia
22 Plantation?

23 A No.

24 Q And were some options presented to Magnolia after
25 this date?

1 A What date is it?

2 Q Well, after -- after you tell Ms. Coffield to --
3 to kind of put this together for --

4 A Oh, sure, yeah, we would have.

5 Q And then, ultimately, if you look at the first --
6 first part of this Exhibit 57, do you see where it says
7 that they were still -- after that you had presented all
8 the options, they were gonna renew as is?

9 A Yeah, that's correct.

10 Q And so does that mean that AssuredPartners put
11 together their own renewal options for the client after
12 this has all been transitioned, and out of those options,
13 the client just decided to renew their -- their -- their
14 coverage as is?

15 A That's correct, according to the November 30th
16 email.

17 Q Now, Mr. LeBlanc showed you a letter that
18 Magnolia Plantation signed in October where they designated
19 you as their agent through AssuredPartners; is that right?

20 A Right.

21 Q But prior to that date you were their agent,
22 correct?

23 A Oh, yes.

24 Q And you were an agent as an independent
25 contractor?

1 A Yes.

2 Q Okay. And so did you -- was there any point in
3 time where you were not Magnolia Plantation's agent in
4 2016?

5 A No.

6 Q And I mean, apparently, they're in the middle of
7 a renewal, right?

8 A Well, we were.

9 Q And which -- were -- were you -- what -- why were
10 you doing what you were doing, in terms of going to these
11 meetings during the transition with Magnolia Plantation?

12 A Well, I was -- I was giving them an opportunity
13 to transition with me to AssuredPartners. I told them what
14 was up, I said, "Hey, look, I'm gonna be leaving Forum,
15 they're not going to be servicing my clients anymore, I'm
16 moving onto AssuredPartners. I've been hired, you know,
17 and I'm going to be an employee. We'd love to have you
18 stay with me, but, you know, the option is yours, you can
19 stay where you are, or you can move with me.

20 Q Okay, and what was the response?

21 A I mean, sure, we'll move with you. I mean you're
22 our guy, you know, we've known you for years.

23 Q Did you use any Forum Benefits information to
24 solicit that client?

25 A No.

1 Q And tell the Jury about, you know, you -- you've
2 got this kind of AOR letter, you've got a date November 1st
3 that the client, you know, says, effective that date, come
4 to the carrier, --

5 A Uh-huh.

6 Q -- transition over to AssuredPartners. Does
7 there take some time with the carrier for that to actually
8 take place?

9 A Oh, sure, I mean there's a 30-day grace period,
10 once you submit it, when the carrier allows the incumbent
11 to try and convince the client to stay with them. And if
12 that doesn't occur, then the agent-of-record letter's
13 processed and -- and the new agent is appointed.

14 Q So during that -- that kind of -- that window of
15 transition, is -- is it -- is the -- the client's
16 designated AssuredPartners November 1st, but there's a 30-
17 day that Forum is still the agent, as well?

18 A Well, you're, like, co-agents. I mean --

19 Q So there's -- there's co-agents?

20 A That's right.

21 Q And do both of those agents have duties to the
22 client?

23 A Yes.

24 Q And so if there's a renewal meeting and their co-
25 agency's at play, should -- should both of those be

1 ensuring that there's no plan disruption?

2 A Absolutely, I mean both have a duty to the
3 client.

4 Q Now, I -- I, you know, the timing -- there's a
5 lot of -- of different dates in -- in this -- this -- this
6 set of exhibits. Was there anything going on in this area
7 during that time that kind of threw a kink into the -- your
8 transition?

9 A Yeah, it was Hurricane Matthew. Well,
10 originally, I -- I'd hoped to do this sooner, I mean by
11 maybe as early as October 1st, if I could meet with
12 everybody, but Hurricane Matt -- Matthew came along, and so
13 people started, you know, they -- they started trying to
14 get ready for -- for the hurricane hitting. I had a few
15 meetings set up, those people cancelled the meetings, and
16 said, "Hey, let's -- let's get through the hurricane and
17 we'll get with you later -- we'll meet with you later."
18 And it took several weeks to, you know, get us going and
19 stuff again.

20 Q Do you still have one of my documents?

21 A Yeah.

22 Q I thought so.

23 A I think so.

24 Q I'm sorry, that's mine.

25 A This one right here?

1 Q Yeah. All right.

2 MR. LEHRER: Your Honor, that -- that might be a good
3 spot for a break, or I can keep going. You --

4 THE COURT: No, if that's a good spot for you, then we
5 can stop.

6 All right, Ladies and Gentlemen, we'll take our mid-
7 morning break, use the restroom, stretch your legs, and
8 we'll get you right back in.

9 (Whereupon, the Jury leaves the courtroom.)

10 (Whereupon, the Court takes a brief recess.)

11 THE COURT: All right, bring them out, sir.

12 (Whereupon, the Jury enters the courtroom.)

13 BAILIFF: The Jury's in the courtroom, Your Honor.

14 THE COURT: All right, Mr. Lehrer?

15 MR. LEHRER: All right.

16 BY MR. LEHRER: (Continuing)

17 Q Mr. Bannon, I'm gonna refer back to Plaintiff's
18 Exhibit Number 1, I'm gonna hand this to you. We'll be on
19 the second page. The -- we talked -- there's been a lot of
20 testimony about this change in your status from an employee
21 to an independent contractor; do you recall that?

22 A I do.

23 Q I want to refer to one of the communications that
24 was put in the record by Mr. LeBlanc relating to that
25 change, I'm gonna refer you to that. Let me see if I can

1 find it, it's the highlighted section. So you see this --
2 this email?

3 A (Reviews document.) I do.

4 Q And this was -- was this Mr. Stritt's reaction to
5 your change in status?

6 A Yes.

7 Q Okay, and he starts out by saying, "Got your
8 message, not thrilled about the five weeks," meaning that
9 was -- that was your -- would be your training?

10 A Yes.

11 Q Your firefighter training?

12 A That's correct.

13 Q Then he goes on to talk about, you know, some
14 things in Charleston. Then he says, "Need to pick up some
15 of the equipment, we'll let you know when." Do you -- do
16 you recall that?

17 A I do.

18 Q And so when you transitioned to an independent
19 contractor, did he take back some equipment?

20 A He did. He took back -- I believe I had a pretty
21 nice monitor, a printer. I'm not sure if he took back the
22 computer or not at that point. I can't remember.

23 Q But do you remember any comment that he made
24 about a -- an old laptop?

25 A I -- I honestly can't remember. He -- I -- I

1 mean I have an old -- he gave me an old laptop, yeah,
2 sometime after I had started, he said, "You can use it if
3 you want to."

4 Q Did -- did you ever ask him -- do you recall ever
5 asking anything about, "Do you want me to return that?"

6 A Yeah, he -- he didn't -- he didn't want that. He
7 said, "It's old," he's like, "I don't need it."

8 Q And after -- after this change and after you
9 returned the equipment, did you -- did you have access to
10 health insurance through Forum Benefits after you became an
11 independent contractor?

12 A Sure.

13 Q Access to -- to -- health insurance through Forum
14 Benefits?

15 A Oh, no, no, I did not have that.

16 Q You -- you had access -- you had access to the
17 insurance, but it was -- you didn't -- you didn't go
18 through --

19 A Yeah, just my client information, yeah. No, I
20 didn't -- I wasn't -- I mean I didn't get insured through
21 Forum, there was no --

22 Q Yeah.

23 A -- retirement plan, etc.

24 Q Okay, and that was a bad question, you thought I
25 was talking about the client health --

1 A I was.

2 Q I'm talking about your health insurance.

3 A No, I don't.

4 Q You and your family.

5 A No, no, I was -- I was dropped off.

6 Q And did -- did you have a retirement plan when
7 you were an employee of Forum Benefits?

8 A I did.

9 Q Did you drop off of that?

10 A I did.

11 Q And Forum Benefits stopped paying your employment
12 taxes?

13 A That's correct.

14 Q Your commission went down?

15 A That's correct.

16 Q Did you purchase any of your own equipment?

17 A I did, I did.

18 Q Okay, did Forum Benefits reimburse you for any of
19 that?

20 A No.

21 Q Did they -- did Forum Benefits reimburse you for
22 any business expenses?

23 A No, they did not.

24 Q Did you go out and get your own liability
25 insurance?

1 A I did.

2 Q Did Forum Benefits ever reimburse you for any
3 type of marketing efforts?

4 A No.

5 Q Gas, mileage, anything like that?

6 A No.

7 Q Office space, did you get any reimbursements for
8 any office space?

9 A No, I work out of my house.

10 Q And -- and I'm assuming Internet access. I mean
11 everything you had to operate as an independent contractor,
12 you paid for?

13 A I paid for everything.

14 Q I should have said this first, but that included
15 your cell phone?

16 A That is correct.

17 Q And -- and the reason I say that is, your --
18 would your cell phone have had contact information for your
19 clients?

20 A Sure.

21 Q And is that how you would have gone about
22 contacting them?

23 A I would have just pulled their name up and hit
24 dial.

25 Q Do you have -- did Forum Benefits, when you were

1 an independent contractor, require you to keep any set
2 hours?

3 A No.

4 Q You didn't have to notify if you were taking a
5 day off?

6 A No.

7 Q Do you remember the last independent contractor
8 check you received from Forum Benefits?

9 A I think it was dated October 31st or November 7th
10 of 2016.

11 Q And tell the Jury how -- how that works. Like
12 what are -- in a -- if your end of October check for an
13 independent contractor with Forum, what is that paying you
14 for?

15 A So, typically, we're -- we're a couple months in
16 arrears by the time I get paid, so the -- if the client
17 pays the premium, the health insurance company, basically,
18 deducts the commission from the premium, and then they send
19 it to the agent. So I was typically -- I was typically
20 about two months behind, so anything they paid me in
21 October, that was probably based off of client premiums in
22 August.

23 Q Did -- did you get a check from Forum Benefits in
24 December?

25 A No.

1 Q And so were you ever paid by Forum Benefits for
2 any work you were doing in October?

3 A No.

4 Q And then did you ever get any payment from Forum
5 Benefits for any work you were doing in November?

6 A No.

7 Q And so it's not like you -- you were doubling up,
8 you weren't getting compensation from AssuredPartners and
9 Forum Benefits at the same time?

10 A No.

11 Q All right. The -- we've gone over it, you -- you
12 said this -- this blank agreement that they say is the
13 employment agreement, you've never signed that?

14 A No.

15 Q Never seen it?

16 A No.

17 Q What about when -- when you converted to an
18 independent contractor, was there ever any new document
19 presented to you that says this is gonna govern the
20 independent contract relationship?

21 A No.

22 Q Did you have any -- any communications that
23 required you to give notice to Forum Benefits that you were
24 going to leave or move your clients to another servicing
25 agent?

1 A No.

2 Q Was the -- was there ever a discussion that you
3 had to be exclusive to Forum Benefits while you were an
4 independent contractor?

5 A No.

6 Q Was there actually any discussions that you
7 didn't have to be exclusive?

8 A Yeah.

9 Q Tell the Jury about that.

10 A So back in, I think, 2014 or 2015, Mack Ward,
11 myself and Steve Epps drove up to Tennessee to meet with
12 Captive TPA. And they have a pretty neat health insurance
13 plan premium program, and we were impressed enough to -- to
14 bring it back to Forum to discuss it with Brian Stritt.
15 And he said, "You know, this is something we might want to
16 start offering our clients. At least, you know, let them
17 take a look at it, get them a quote and explain how it
18 works." Thought it would, potentially, save them some
19 money. And Brian Stritt, you know, he said, "Well, you
20 know, guys, that -- that's all well and fine, but, you
21 know, if you're gonna do that, we're not gonna service it
22 for you. You're -- you're gonna have to service it on your
23 own, and you're gonna have to find somebody else to service
24 it for you."

25 Q Going back to this -- this agreement that they

1 claim you signed, the -- had you ever seen this prior to
2 the lawsuit being filed?

3 A No.

4 Q Did someone -- when you started interviewing with
5 AssuredPartners, did anyone ask you whether you had any
6 type of contract with Forum Benefits?

7 A That was my first question. The first question I
8 got.

9 Q From -- from who?

10 A John Taylor.

11 Q And that was who was interviewing you?

12 A Correct, yeah, we had met for breakfast in the
13 morning.

14 Q Tell the Jury what you told John Taylor at that
15 time.

16 A That we -- his first question was, "Okay, I've
17 got a question before we get started. Do you have a signed
18 contract with Forum?" "No." He said, "How are you paid?"
19 I said, "I'm an independent contractor for them." So that
20 -- that was it.

21 Q Did anyone from AssuredPartners, during this time
22 period when you were transitioning as being an employee,
23 did anyone ask you to go get Forum Benefits information?

24 A No, never.

25 Q Did anyone at AssuredPartners give you any advice

1 on how you should terminate your independent contractor
2 relationship with Forum?

3 A No.

4 Q These were -- these were all decisions you were
5 making independent of AssuredPartners?

6 A I had my own plan.

7 Q There was -- I -- I believe there might have been
8 some confusion yesterday about -- there -- there were a lot
9 of questions that were asked to you about you making
10 comments that when you transition first to become an
11 employee of Forum in 2009, and you told Brian Stritt from
12 the outset that you weren't going to sign a non-solicit.
13 And then there -- there was a reference to your deposition
14 that referred to a conversation in 2015. Are we talking
15 about two different events here --

16 A Yes.

17 Q -- obviously?

18 A Completely separate.

19 Q Okay. Tell the Jury about the -- this -- the
20 next comment, after you told Brian Stritt you wouldn't sign
21 one, this 2015 conversation where he brought that up.

22 A Okay. He -- he said that he was going to send me
23 an agreement. It was going to detail the -- the outlines
24 of the commission changes, etc. He -- he might -- he might
25 have referenced an employment agreement, and he said he

1 would send it to me, and -- and I told him I would review
2 it and have my attorney review it.

3 Q Okay. And did he ever send you anything?

4 A No, he didn't.

5 Q I mean have you checked your emails to see if
6 Brian Stritt ever sent you any employment agreement?

7 A At the time, sure, yes.

8 Q Have you ever seen -- have you been able to find
9 any email?

10 A No.

11 Q And then so tell the Jury why you decided, when
12 you were moving to AssuredPartners, that you would sign an
13 employment agreement, non-solicit type agreement.

14 A A lot of things had changed from the time I
15 started working with AssuredPartners as an employee in
16 2009. The market -- there's a lot of market consolidation,
17 a lot of smaller agencies were being bought out by larger
18 agencies or -- or larger insurance brokerages. And
19 insurance partner -- ins -- you know, AssuredPartners is a
20 large national brokerage. I think the top ten or top 11.
21 You don't go to work for a firm like that unless they have
22 -- they're going to make you sign an employment contract,
23 and I -- I knew that I -- if I was going to move to
24 AssuredPartners, I'd have to sign the contract. You know,
25 I didn't have a ton of options at that point, so, you know,

1 in fact, it was -- there was no question I was going to
2 have to sign a contract, whether it was them, Brown &
3 Brown, Gallagher, whatever firm I went to, I was going to
4 have to sign an employment contract.

5 Q Now, there was some testimony yesterday about
6 your title. I think, you know, I think there was some
7 reference to senior vice-president. Tell the Jury kind of
8 how these title works in the insurance agency.

9 A It's a lot like a bank. The way it was described
10 to me by my boss, he said, "Look, we do it based on your
11 experience, how -- how long you've been doing this,
12 competency, you know, just your -- your overall -- all --
13 overall experience level."

14 Q I mean are -- are a lot producers in the
15 insurance industry referred to as senior vice-presidents?

16 A Yes, they're referred to as a lot of different
17 titles.

18 Q Is -- is that kind of more of a marketing type
19 campaign?

20 A Yes.

21 Q And -- but with -- with AssuredPartners you
22 didn't have any officer type status; is that right?

23 A Uh-huh.

24 Q What about -- did you have a -- were you a
25 director --

1 A No.

2 Q -- of AssuredPartners?

3 A No.

4 Q Were you any -- do you have any kind of
5 management duty over AssuredPartners' operations?

6 A No.

7 Q Did you have any management duties over any
8 AssuredPartners' employees?

9 A Not specifically, no.

10 Q Did you have any right to hire, fire, discipline
11 employees?

12 A No.

13 Q And what about when you were an independent
14 contractor with Forum, did you -- did you have any
15 managerial type duties with Forum Benefits?

16 A No.

17 Q Did you have any ability to hire or fire any of
18 their employees?

19 A No.

20 Q Did you have the right to -- to vote on any
21 matters that the company was considering?

22 A No.

23 Q In this case, do you understand that Forum
24 Benefits is alleging you had a fiduciary duty to Forum
25 Benefits?

1 A Yes.

2 Q Did you believe you had any kind of fiduciary
3 duty to Forum Benefits?

4 A No, I felt that my fiduciary duty was to my -- to
5 my clients.

6 Q Along those lines, you -- you had some testimony
7 that you -- you thought under certain South Carolina type
8 rules you were required to have -- to keep a copy of your
9 files for a period of time?

10 A Yes.

11 Q What is your understanding of what your
12 requirements are as a -- as a licensed insurance agent?

13 A We --

14 MR. LEBLANC: I'm going to object to that question.
15 He's not qualified to testify what the South Carolina reg
16 -- regulations require.

17 MR. LEHRER: Your Honor, the -- their -- his -- his
18 motive and intent's been put in question here. What he
19 thought his -- his obligations go directly to his motive.

20 THE COURT: All right, I'll overrule. I'll let him
21 answer the questions.

22 BY WITNESS: (Continuing)

23 A And so it was my understanding that I -- I needed
24 to keep a copy of any transactions that I had, any
25 insurance transactions that I had as the broker, agent-of-

1 record letter, or agent-of-record with my clients.

2 MR. LEHRER: Your Honor, I -- I'd like to take
3 judicial notice of South Carolina Code 38-43-250 and show
4 it to the witness.

5 THE COURT: All right.

6 MR. LEBLANC: I'm going to --

7 THE COURT: Any objection?

8 MR. LEBLANC: -- object to that. I don't think
9 there's any foundation that he is the listed broker-of-
10 record for any client before 2016. There's no evidence.

11 MR. LEHRER: Your Honor, I'm just going to refer to
12 the statute, and -- and question the witness on the
13 statute.

14 THE COURT: Let me see that, please.

15 (Reviews document.)

16 THE COURT: All right, Mr. Bannon, are you familiar
17 with this statute?

18 THE WITNESS: Yes, sir.

19 THE COURT: All right, how are you familiar with this
20 statute?

21 THE WITNESS: Probably in my initial insurance
22 licensing.

23 THE COURT: All right.

24 THE WITNESS: From my initial insurance licensing
25 twenty-something years ago.

1 THE COURT: All right. And what did you -- what do
2 you purport that it -- that it directs a producer to do?

3 THE WITNESS: That you have to keep transactional
4 records of any insurance transaction you have with clients.

5 THE COURT: All right, I'll let him utilize it to
6 refresh his recollection about the actual document itself
7 -- I mean the actual statute itself.

8 MR. LEHRER: Can -- can I have --

9 THE COURT: You can ask him anything about it, if not,
10 then I would allow you to use it just for that.

11 MR. LEHRER: Can I ask him to read it, Your Honor?

12 THE COURT: Well, why don't you ask him about it first
13 and --

14 MR. LEHRER: Okay.

15 THE COURT: -- then if he doesn't recall it --

16 MR. LEHRER: Okay.

17 THE COURT: -- his training, then you can --

18 MR. LEHRER: All right.

19 THE COURT: -- you can allow him to utilize it.

20 BY MR. LEHRER:

21 Q If you would, read to yourself this 38-43-250,
22 and tell me if that's where you believe you had some of
23 this understanding about --

24 THE COURT: Well, hold on, don't read it just yet.
25 Hand it back to him.

1 WITNESS: Okay.

2 THE COURT: Ask him what you want to ask him. If
3 he --

4 MR. LEHRER: Okay.

5 THE COURT: -- doesn't recall the specific --
6 specifics of the actual statute, then we can utilize it to
7 refresh --

8 MR. LEHRER: Okay.

9 THE COURT: -- to refresh his recollection.

10 BY MR. LEHRER: (Continuing)

11 Q Do you believe that -- that -- that your
12 understanding of what the statute was, that it requires
13 producers to keep full and current records of --

14 THE COURT: Just ask him what he thinks it -- it
15 purports first --

16 MR. LEHRER: Okay.

17 THE COURT: -- and then see.

18 BY MR. LEHRER: (Continuing)

19 Q What do you --

20 MR. LEBLANC: My objection is he's leading him.

21 THE COURT: I -- that's what I'm trying to do, make
22 sure that he doesn't.

23 MR. LEBLANC: Okay.

24 BY MR. LEHRER: (Continuing)

25 Q What is it your understanding of what the --

1 MR. LEHRER: And I think he's already testified, Your
2 Honor, as to what he thought he understood.

3 BY MR. LEHRER: (Continuing)

4 Q What's your understanding of what the law is?

5 A I'm supposed to keep cop -- keep copies --

6 Q Okay.

7 A -- of transactions --

8 Q Okay.

9 A -- between me and my clients.

10 Q Okay.

11 THE COURT: All right, if you -- if you want to ask
12 him about the specific language, you could ask him to
13 review the document to see if it's -- if it refreshes his
14 recollection, as to the manner in which he is to keep it.

15 BY MR. LEHRER: (Continuing)

16 Q All right, look at -- look at the statute and
17 tell me if that refreshes your recollection on any more
18 detail of what you understand the requirements to be.

19 A (Reviews document.) Yeah, I do.

20 MR. LEHRER: Your Honor, and I'll hand you a copy too.

21 THE COURT: I'm okay. I -- I've read it.

22 BY WITNESS: (Continuing)

23 A Yes, that's it. Thank you.

24 THE COURT: Okay.

25 BY WITNESS: (Continuing)

1 A That's my recollection.

2 MR. LEHRER: Your Honor, I'd -- I'd like to take
3 judicial notice of the statute and read it to the Jury.

4 THE COURT: I don't have a problem with that. I mean
5 I can take judicial notice of the statute and the law, I
6 don't have a problem doing that.

7 MR. LEHRER: I'd like to read it to the Jury, Your
8 Honor.

9 THE COURT: Okay.

10 MR. LEHRER: Will you allow me to do that?

11 THE COURT: Yeah.

12 MR. LEHRER: Okay.

13 THE COURT: -- you can publish it.

14 MR. LEHRER: All right.

15 BY MR. LEHRER: (Continuing)

16 Q And so just as a -- as a question, what you just
17 looked at, Mr. Bannon, the statute in South Carolina, it
18 says, "All producers shall make and keep a full and correct
19 record of the business done by them, showing the number,
20 date, term, amount insured premiums, and the persons to
21 whom issued every policy or certificate of renewal;" is
22 that what you read?

23 A Yes.

24 Q And then it goes onto say, "The information from
25 these records must be furnished to the director or his

1 designee on demand in the original books of records are
2 open to inspection of the director or his designee on
3 demand. The -- these records must be kept for a minimum of
4 five years;" is that your understanding?

5 A Yes.

6 Q Okay. And it's -- it refers to producers. Did
7 you consider yourself a producer of insurance?

8 A I did.

9 Q I -- I want to go back -- I believe I said -- I
10 do believe I said it in my opening that some clients from
11 Commonwealth after your noncompete ended, transitioned with
12 you over to Forum. Was I correct in that statement?

13 A Yeah, for the -- for the most part.

14 Q So did -- after your two-year non-solicit with
15 Commonwealth was over, did you go back and solicit some of
16 the -- the clients that you had with Commonwealth?

17 A Yeah, I did with a few of them.

18 Q Okay. And were you able to attain some of those
19 clients?

20 A Twice, yeah. They're the clients I had very good
21 relationships with.

22 Q And -- and Forum was happy to accept those
23 clients?

24 A Sure. I mean that was part of our -- our -- you
25 know, we had an understanding that, when I got hired by

1 Forum as a W-2, that I had some ex-clients hanging out
2 there, and they weren't necessarily happy with their
3 current broker, and they would be more than happy to assign
4 me as agent-of-record -- agent-of-record when I came back
5 and started working as a broker.

6 Q Did you have any type of prospect customer list
7 you'd been working on prior to Forum?

8 A Yes.

9 Q And were some of those prospect lists you were
10 working on with Commonwealth?

11 A Yes.

12 Q And did -- did you tell Mr. Stritt about these
13 prospect lists?

14 A I did.

15 Q And what was -- what do you recall that
16 conversation to be?

17 A That's great, you know, if you can, we want to
18 share -- share it with me, we'll, you know, we -- we'd like
19 to throw in a database where we can all work out of the
20 same database, etc. The same type of thing. You know,
21 just to make sure we some synergy between what I was doing
22 and what he was doing, just sharing information.

23 Q Did -- did the clients -- the underlying clients,
24 did they have any contract that prevents them from changing
25 agents?

1 A No.

2 Q Are you aware of any contracts that your clients
3 have with Forum benefits that they had any duties that they
4 had to Forum?

5 A No.

6 Q Is there information about clients in this
7 insurance industry that's publicly available?

8 A Yes.

9 Q And I think you testified, it's something like a
10 50 -- a Form 5500?

11 A That's correct.

12 Q That's something that -- that -- that a client of
13 a certain size has to file as a government type record?

14 A That's correct.

15 Q And that you believe is publicly available?

16 A It is.

17 Q Other than meeting with your clients during this
18 2016 timeframe and your transition to your clients to
19 AssuredPartners, did you ever solicit one other Forum cus-
20 -- client?

21 A No.

22 Q Did you ever encourage anyone at AssuredPartners
23 to solicit any of Forum's clients?

24 A No.

25 Q And Mr. LeBlanc asked you, as he went through

1 some names of some -- some companies, and you said they
2 weren't your clients. To the extent you accessed any file
3 that had those names in it, what -- what was your intent?

4 A Well, my intent was just to get every single
5 document that had my clients' information on it.

6 Q Okay. Were you doing that pretty quickly?

7 A I was doing it very quickly.

8 Q Could you have made some mistakes?

9 A Absolutely. I'm sure that there were some client
10 files that I missed, they -- they were misfiled, other
11 files, Magnolia Plantation and Gardens and St. Andrews
12 Public Service District, etc.

13 Q Now, Forum Benefits is alleging in this case that
14 you -- you took their trade secrets; do you understand
15 that?

16 A I do.

17 Q Did Forum Benefits ever identify any type of
18 information to you as the trade secret?

19 A No.

20 Q Did they ever identify any information to you as
21 their confidential information?

22 A No.

23 Q When you would log onto this SharePoint system,
24 did you ever get any type of warnings or pop-ups where you
25 had to click to say you won't -- you won't use this

1 information, or there's restrictions?

2 A No.

3 Q Were there any policies at Forum Benefits that
4 you had to sign that said you won't access the information
5 for any other reason, anything like that?

6 A No.

7 Q Did you get any direct -- any written direction
8 from Forum Benefits about how you could access your client
9 files into SharePoint?

10 A No.

11 Q Or how you could access any other information in
12 SharePoint?

13 A No.

14 Q And were there any restrictions that kept you
15 from looking at -- at other clients within SharePoint?

16 A No.

17 Q So they just left -- left it open to whoever had
18 access could just click on whatever they want?

19 A As far as I know.

20 Q Did anyone from Forum tell you not to click on
21 anything that was available within the system?

22 A No.

23 Q Did anyone in -- at Forum Benefits ever explain
24 to you what the difference between what they consider
25 confidential information might be versus what a trade

1 secret might be?

2 A No.

3 Q And do you have any training at all on trade
4 secrets?

5 A No, zero.

6 Q Did you need any Forum Benefits' information to
7 solicit your clients?

8 A No.

9 Q Now, there -- Mr. LeBlanc showed you some
10 documents and some references to, you know, some urgency in
11 getting this Employee Navigator information; do you
12 remember that?

13 A I do.

14 Q What was the reason for the urgency?

15 A Well, I mean we -- we were trying to get them --
16 their clients transitioned as smooth as possible, and --
17 and, you know, they -- they were using Employee Navigator,
18 we used to -- we were used to having the information keyed
19 in.

20 Q Did you have any reason to believe that once
21 Forum Benefits found out that the clients were leaving,
22 that there could be some disruption?

23 A I -- I was certain of it.

24 Q Why is that?

25 A A few months prior to me making the decision to

1 move to AssuredPartners, Mack Ward was working with Ben
2 Taylor at their agency called Assured South. They were
3 also running their Memphis business through Forum, and when
4 they announced to Forum, Brian Stritt, "Hey, look, we're --
5 we're not gonna sign any type of -- the producer
6 compensation's off, we're not interested, we're not selling
7 our book of business to you. We're gonna move our health
8 insurance clients, we're going to find somebody else to
9 service them." It's -- it was explained to me that Brian
10 Stritt said, "No, you're not, those are my clients, I'm
11 gonna keep them." And --

12 MR. LEBLANC: Excuse me, I need to object to this.
13 He's not testifying to what Brian Stritt said, he's
14 testifying to what somebody else told him Brian Stritt
15 said. That's hearsay.

16 MR. LEHRER: Your Honor, it goes to -- in this case
17 we've got allegations of -- for punitive damages, willful
18 misconduct, tortious interference, which one of the
19 elements is whether it's justified, his knowledge and --
20 and why he took some of the steps he took goes directly to
21 show those elements of our defense.

22 THE COURT: All right, I'll overrule at the time.

23 BY WITNESS: (Continuing)

24 A Okay, so when I found that out, and then there
25 was a period of time after that conversation, where I guess

1 they agreed mutually. Mack was going to try to start
2 moving his clients from Forum into AssuredPartners.

3 MR. LEBLANC: Objection, now he's testifying to
4 what --

5 THE COURT: He's going to testify as to knowledge that
6 he has based on the information, or the company as to what
7 Mr. Ward did with his -- with his clients, okay? It's not
8 hearsay. He's not saying what he said, he's just saying,
9 based on the information he has, that's what he knows
10 happened.

11 BY WITNESS: (Continuing)

12 A So at the time I know that there -- there was a
13 period of time where Mack was going to be pulling his
14 clients out, and I'm going to be pulling the clients out,
15 and Brian Stritt -- and -- and the Forum strategy is, we
16 would have these like Monday morning meetings, we'd talk
17 about the business, and I can remember he said a couple
18 times, "We're going to disrupt our plans to disrupt Mack
19 Ward's clients, as much as possible, so they will
20 reconsider and they won't leave us."

21 Q You heard Mr. Stritt make that comment?

22 A Yes.

23 Q And did he use --

24 A Those were his words.

25 Q Do you recall using the word, he was going to

1 disrupt the client?

2 A Yes, that is his word, disrupt, cause disruption.

3 Q Did -- after -- after you started looking into
4 leaving and -- and going to AssuredPartners, did you ever
5 have any communications with Mack Ward about what happened?

6 A Oh, yeah, after, yeah. Yeah, I think as soon as
7 he started AssuredPartners, he called me up.

8 Q Did -- did -- did these conversations take place
9 before you started transitioning to AssuredPartners?

10 A They did.

11 Q Did he give -- did he tell you about the disrupt
12 -- any disruption of his clients?

13 A He told me about a lot of the disruption of his
14 clients.

15 Q Did that make you concerned in any way about what
16 would happen to your clients?

17 A Yes, considering I was an independent contractor.

18 Q And -- and when an employee benefit plan is
19 disrupted and information is not transitioned properly, who
20 does that impact?

21 A The employees.

22 Q The underlying employees on the plan?

23 A Sure.

24 Q And what kind of things can happen to
25 participants in a plan when their information is disrupted?

1 A Yeah, so let's say an employee becomes eligible
2 for coverage after 30 days, they sign up for medical
3 insurance, and on Friday afternoon, they need a
4 prescription refilled, and they show up at the pharmacy and
5 they said, "You don't have any coverage," and things like
6 that. Can't get a doctor's appointment, they can't get a
7 prescription refilled, can't get a prescription written,
8 can't get a surgery to be authorized, etcetera.

9 Q And the -- the transition of the Employee
10 Navigator and things like that, was it for the purpose of
11 preventing that type of disruption?

12 A Absolutely.

13 Q Now, I -- I think I've covered this, but -- I
14 mean I know you said that you did not give any information
15 to AssuredPartners that you took from Forum Benefits or
16 that you downloaded about your clients.

17 A That's right.

18 Q Did -- did you ever use any of Forum Benefits'
19 information as an AssuredPartners' employee?

20 A No.

21 Q And the information that -- that you downloaded
22 from SharePoint, did you delete any of it off of
23 SharePoint?

24 A No.

25 Q Did you in any way alter the information that's

1 within SharePoint?

2 A No.

3 Q So after that happened you had a -- you had a
4 complete copy of your client files, and -- but Forum still
5 had the complete copies, correct?

6 A Oh, absolutely.

7 Q The -- the Monday morning meetings that -- with
8 Forum Benefits, did -- why -- why did you attend those?

9 A Just to keep in the loop. I needed to know what
10 was going on with my clients and make sure that this
11 transition was smooth. I needed to know what was going on
12 in the markets, what was happening with the carriers,
13 etcetera.

14 Q And so that during that transition, if -- if --
15 if -- if a client called you, you wanted to know to their
16 questions -- to be able to answer their questions?

17 A Sure, absolutely. For example, if it's taking
18 Blue Cross/Blue Shield ten days or 14 days to mail out ID
19 cards after people are added or covered, that's something
20 that all the client needs to know.

21 Q And -- and some of these -- these meetings -- had
22 the client already designated you as their agent? And I
23 guess I mean you were -- were you designated as the agent
24 before --

25 A Yes.

1 Q -- AssuredPartners?

2 A I was.

3 Q And then they designate you as the agent again
4 through AssuredPartners?

5 A Yes.

6 Q All right.

7 A That's right.

8 Q So at all times you're their agent, right?

9 A Yes.

10 Q So it -- it -- when you attended these meetings,
11 you -- were you the agent of the client?

12 A I was the broker.

13 Q Did you tell anybody at AssuredPartners that you
14 were going to attend these meetings?

15 A No.

16 Q Did anybody at AssuredPartners ask you to go and
17 attend Forum Benefits' meetings?

18 A No.

19 Q Any discussions at the time about you attending
20 those meetings with anyone at AssuredPartners?

21 A No.

22 Q There were some emails where you provided some
23 information about the login and password of -- I believe it
24 was three clients; is that right?

25 A That's correct.

1 Q And you only had three clients that were using
2 this Employee Navigator?

3 A At the time.

4 Q And --

5 A And a fourth was considering it.

6 Q Tell -- tell the Jury exactly how you obtained
7 the login and password from those clients.

8 A Okay, so I meet -- meet with the client, and
9 after they agree that they want to move with me to
10 AssuredPartners, I'd say, "Okay, so here's what we're gonna
11 do. Basically, you're gonna make a copy of your
12 information, your census data, all of your -- your policy
13 information, and we're gonna move it over to the Employee
14 Navigator with AssuredPartners, or -- that's the easy
15 option. The other option is, if you would like, you can
16 download all this stuff yourself in the Employee Navigator,
17 I think it's dumped into spreadsheets, but you will have to
18 do this yourself, you have to do it manually." And the
19 clients -- I said, "You know, it's up -- what would you
20 like to do?" "We would like to have y'all do it." "Oh,
21 okay, that's great, so here's what I'm gonna need. I'm
22 gonna need your password and your user ID, so that, you
23 know, our guys in Cincinnati can go in and login, as you,
24 and download your information, and then move it over." And
25 they all say, "Okay, great." "So do you understand what's

1 going on?" "Yes." They were very -- I was very clear with
2 it, and I'm -- always been very transparent with people
3 about how I operate.

4 Q Did you have consent from the client to pull
5 their information off Employee Navigator?

6 A Yes.

7 Q Did you tell AssuredPartners that you obtained
8 that consent from the client?

9 A Yes.

10 Q Did you have access in any way to the client's
11 Employee Navigator login and password through Forum
12 Benefits?

13 A No.

14 Q I'm gonna to show you -- I want you to look, this
15 is the employment -- the blank employment agreement,
16 Plaintiff's Exhibit 137. I'm going to direct you to page
17 three, paragraph G.

18 MR. LEHRER: I'll show the Jury, Your Honor. Hold on,
19 I'm trying to zoom.

20 BY MR. LEHRER:

21 Q All right, so we're -- we're gonna look at G.
22 I'm gonna -- I'm gonna read it to you. It says, "Employee
23 -- per the covenants agrees during employment and for a
24 period of two years," sorry, this is the only way I can
25 read it on the screen. "Following termination of

1 employment -- employee's employment relationship with the
2 Company, either by employee or the Company for any reason
3 whatsoever, employee shall not use or disclose any
4 confidential information, except as an employee of the
5 Company or the consent of the Company." Did I read that
6 correctly?

7 A Yes.

8 Q Okay, so let's -- let's look at this. So just --
9 even assuming this document was -- was applicable, when --
10 when did you -- when did your employment with Forum
11 Benefits end?

12 A In 2013.

13 Q Do you remember -- I think -- I think you
14 testified in May?

15 A April or May, yeah.

16 Q Okay. So we'll say May, okay, was the
17 termination, right? Okay, and so according to this
18 provision, what would be two years after that?

19 A May 2015.

20 Q Okay. So even if Forum Benefits somehow proved
21 you signed this agreement, when did -- when would this
22 agreement say, "Your restriction on any use of confidential
23 information ended?"

24 A May '15.

25 Q May of 2015?

1 A That's correct. Yeah, May 2015.

2 Q Prior to May of 2015, had you ever had any
3 discussion with AssuredPartners about, potentially, going
4 to work there?

5 A I didn't even -- I didn't even know who they
6 were.

7 MR. LEHLER: Your Honor, I -- I think I might be
8 almost very close to being done. I just need a minute to
9 review my -- my notes.

10 THE COURT: Take your time.

11 BY MR. LEHLER: (Continuing)

12 Q Mr. Bannon, did you ever -- have you ever had
13 responsibility for going to carriers to try to renegotiate
14 rates --

15 A Yes.

16 Q -- direct with carrier?

17 A Yeah, absolutely.

18 Q What -- and -- and so you did that prior to
19 working with Forum?

20 A Sure, I mean a lot.

21 Q And then even -- and after you became an
22 independent contractor?

23 A Yeah, sometimes.

24 Q And then after that did you -- were you involved
25 in that at all?

1 A Yes.

2 Q Okay. The -- there's been some comments from the
3 questions, and I think from some of Mr. LeBlanc's opening
4 that there's some super-secret way that Forum Benefits is
5 going about go -- manipulating this information with the
6 carrier; --

7 A Yeah.

8 Q -- do you remember that?

9 A I -- I do.

10 Q You -- are you aware of any secret -- secret
11 sauce that Forum Benefits was using?

12 A No, I'm not.

13 Q And -- and if there was, did you ever -- did you
14 ever use any of the -- the -- whatever they claim is that
15 secret?

16 A I was not aware of it, so if I used it, I was
17 unaware that I used it.

18 Q And without -- and -- and, obviously, you never
19 transferred any -- any such secret information to
20 AssuredPartners, did you?

21 A No.

22 Q Is -- is the Employee Navigator tool -- who is it
23 -- who was that benefit designed for?

24 A The employee group.

25 Q The -- the client?

1 A The client.

2 Q Okay. And do the -- does the client actually go
3 in and enter information into the system?

4 A They can, I mean that's an option.

5 Q And so that -- part of that -- the -- the draw of
6 that system is that maybe the servicing agent doesn't get
7 calls every day, "I need to change this," the client can
8 actually go in --

9 A Sure.

10 Q -- and make changes?

11 A I -- I believe that's typically the way it works.

12 Q Okay.

13 MR. LEHRER: Your Honor, I -- I believe we're done.

14 Could I have the lunch break to just make -- I mean it
15 won't take the next ten minutes, I'm just trying to -- to
16 get the timing just to get my thoughts together, before I
17 -- I think -- I don't plan to recall him, I'm planning on
18 being done, so -- but I -- I'll do whatever -- whatever you
19 want.

20 THE COURT: All right, Mr. LeBlanc, how much follow-up
21 do you have?

22 MR. LEBLANC: Five minutes.

23 THE COURT: Well, why don't I let him -- and I'll all-
24 -- I'll allow you to have a -- a brief -- a recross.

25 MR. LEHRER: As long as -- as we consent I won't be

1 limited to what -- what his questions are on his, you know,
2 what would normally --

3 MR. LEBLANC: I don't have a problem, he can ask
4 whatever he wants.

5 THE COURT: All right, fair enough, Mr. LeBlanc?

6 MR. LEBLANC: Oh, let me get that.

7 **REDIRECT-EXAMINATION**

8 BY MR. LEBLANC:

9 Q If I understand the testimony that you just gave
10 on cross-examination, your clients gave you permission to
11 access Forum Benefits' records to download information from
12 the Employee Navigator accounts?

13 A No, that's not correct.

14 Q Well, what's incorrect about that?

15 A My clients gave me access to their information,
16 to download consensus information, insurance policy
17 information, etc., the employees' information.

18 Q Okay, and -- and I -- and I do want to parse
19 this, because it's important. Your clients gave you access
20 -- you -- your clients gave you permission to access their
21 information in Forum -- Forum Benefits Employee Navigator
22 accounts?

23 A Well, Forum Benefits lease Employee Navigator,
24 it's a website they lease for the clients, so it's -- the
25 client's password is their information that was in it.

1 Q Right, I'm --

2 A It wasn't Forum's.

3 MR. LEBLANC: Your Honor, I -- I need him to answer my
4 questions.

5 BY WITNESS: (Continuing)

6 A That's just -- that's not accurate, it's not
7 their website.

8 THE COURT: That's the answer he's given you.

9 BY MR. LEBLANC: (Continuing)

10 Q Your clients gave you permission to access their
11 data that is in the Employee Navigator account for that
12 client?

13 A Correct.

14 Q Why didn't your client just give you their data?

15 A Because they -- they would not have been able to
16 download it. It would have taken time.

17 Q Because it would have been more trouble for them?

18 A Yes.

19 Q Okay. Mr. Lehrer asked you some questions about
20 that testimony at that hearing on December 8th, 2016; do
21 you recall that?

22 A Yes.

23 Q Okay. And he also asked you, "Did
24 AssuredPartners tell you to do all this stuff in October
25 and November"; do you recall that?

1 A Yeah.

2 Q And you said, "No, it was my plan. I -- it was
3 my plan."

4 A That's right.

5 Q Okay. So let me make sure I understand your plan
6 before December 8th, 2016, when you testified. Your plan
7 was sign up with AssuredPartners on October 15th, 2016?

8 A (Nods.)

9 Q You have to answer orally.

10 A Sure, yes.

11 Q But don't let Forum Benefits know about it?

12 A That's correct.

13 Q You got paid by AssuredPartners on October 15th,
14 2015, \$7,500?

15 A I received a check.

16 Q So get paid by AssuredPartners. AOR your
17 clients, drop the AOR letters for your clients, right?

18 A That's right.

19 Q And that was around November 15th?

20 A Sometime in November.

21 Q And then this lawsuit happened and you go to a
22 hearing on December 8th, 2016, right?

23 A Correct.

24 Q How could you have -- be -- how could you not
25 know when you started working for AssuredPartners six weeks

1 after you got a \$7,500 check from them?

2 A Like I said, initially I had planned on doing
3 this earlier. Hurricane Matthew rolled through. It messed
4 up my schedule. I received a check -- I don't think I
5 cashed it until several weeks later. So, yeah, my
6 recollection is a little bit fuzzy.

7 Q So the hurricane caused you to not recall that
8 you had been working for AssuredPartners for a month?

9 MR. LEHRER: Objection, Your Honor, that --

10 THE COURT: All right, it's asked and answered, move
11 on.

12 BY MR. LEBLANC: (Continuing)

13 Q Was it also part of your plan to continue
14 attending the Monday morning telephone conferences at Forum
15 Benefits?

16 A It wasn't a plan, I just went and -- yeah, I
17 probably attended about one month.

18 Q I'm gonna pass you a document that has been
19 marked as Plaintiff's Exhibit 166. Do you recognize what's
20 shown in Plaintiff's Exhibit 166?

21 A It looks like an attendee report.

22 MR. LEBLANC: I'd move Plaintiff's Exhibit 166 into
23 evidence.

24 MR. LEHRER: No foundation for who created this
25 report, or if he's ever seen it before.

1 THE COURT: Have you ever seen that document before,
2 Mr. Bannon?

3 THE WITNESS: No.

4 THE COURT: How do you know what it purports to be?

5 A It says attendee report.

6 MR. LEHRER: Your Honor, I mean this is just --
7 there's no foundation for this document.

8 THE COURT: I agree. If we don't know anything about
9 it, you're just saying it's a piece of paper, an overreach.

10 MR. LEBLANC: May I approach?

11 THE COURT: Sure.

12 MR. LEBLANC: Or -- or perhaps we should take a break
13 for lunch.

14 THE COURT: All right, Ladies and gentlemen of the
15 Jury, we're going to go ahead and take our lunch break. It
16 is 11:55, let's get back here about 1:10, it'll give you
17 about an hour and 15 minutes, okay?

18 (Whereupon, the Jury leaves the courtroom.)

19 BAILIFF: The Jury's clear, Your Honor.

20 THE COURT: All right, thank you very much.

21 All right, what's your objection, Mr. Lehrer?

22 MR. LEHRER: Oh, on this document there's been no
23 foundation to say -- I mean this witness did not say he
24 compiled this information. Again, it has this -- I mean
25 there's no foundation to have this submitted.

1 THE COURT: All right.

2 MR. LEBLANC: Your Honor, respectfully, I believe a
3 witness that put a document into evidence just has to
4 testify that the document is what it purports to be. The
5 witness does not have to create the document, he doesn't
6 have to be the author of the document, he just has to be
7 able to say, "Yes, this is a photograph of my car. I
8 didn't take the photograph, don't know who took it, but
9 this is a photograph of my car; that's authenticating an --
10 an exhibit.

11 THE COURT: That's correct, so it'd be his car. He
12 has no idea what this is. I mean you could have simply
13 typed up a document that said that he was in attendance, he
14 was paid \$14,000 and just because he reads it and says,
15 "Yes, I was paid \$14,000," does not authenticate it.

16 MR. LEBLANC: Right, I thought I asked him, "Do you
17 recognize what's shown in Plaintiff's Exhibit 166?" And he
18 said --

19 THE COURT: And then I asked him what was it and how
20 did he know, and he said, "Because I read it off the top."
21 That's not authenticating it. You have to get somebody
22 else to authenticate that.

23 MR. LEBLANC: I will.

24 THE COURT: All right, we'll be back at 1:10.

25 (Whereupon, the Court takes a lunch recess.)

1 BAILIFF: All rise. Court is back in session.

2 THE COURT: All right. Thank you very much. Please
3 be seated.

4 All right. Anything further before we get started?

5 MR. LEBLANC: Nothing from the Plaintiff.

6 MR. LEHRER: Nothing from the Defense.

7 THE COURT: All right. Bring them out.

8 (Whereupon, the Jury enters the courtroom.)

9 THE COURT: All right. Thank y'all so very much for
10 being back on time. It's come to our attention that
11 they're working on the AC, so if you get too hot or
12 uncomfortable, just let us know. But I've also asked them
13 if they want to see what the inside of a detention center
14 looked like if they didn't hurry, so we should get it done
15 pretty quickly. All right?

16 All right, so who -- it is now still Mr. LeBlanc,
17 correct?

18 MR. LEHRER: Yes, sir.

19 THE COURT: All right.

20 BY MR. LEBLANC: (Continuing)

21 Q Mr. Bannon, I was asking you -- do you still have
22 that document I passed you before?

23 A Right.

24 Q I'll just ask you, do you recall attending any of
25 the monthly telephone conferences after October 15th?

1 A Yeah, I do.

2 Q You do? So did you attend every monthly
3 telephone conference after --

4 A Usually not, no.

5 Q So how many of them after -- between October 15th
6 and November 15th did you attend?

7 A I'm not sure, one, two, I'm not sure.

8 Q Thank you. I'll pass you what's been marked as
9 Plaintiff's Exhibit 520, and ask if you recognize this?

10 A (Reviews document.)

11 MR. LEHRER: Your Honor, --

12 Is this on the exhibit list?

13 MR. LEBLANC: No, it's not.

14 MR. LEHRER: Was this produced?

15 MR. LEBLANC: Nope, it's for impeachment.

16 THE COURT: All right, give it back. Give it back to
17 him.

18 All right, Ladies and gentlemen of the Jury, there's
19 something we've got to take -- take up as a matter of law
20 outside of your presence. Will you give us a couple
21 moments? We'll bring you right back in, all right?

22 (Whereupon, the Jury leaves the courtroom.)

23 THE COURT: All right, what is it, and what -- what
24 are you attempting to impeach him with?

25 MR. LEBLANC: These are the agent-of-record letters

1 that were signed when Mr. Brannon -- Mr. Bannon brought his
2 clients to Palmetto Benefit Management, and he testified
3 that he was listed as the agent-of-record, and he's not.

4 MR. LEHRER: Your Honor, we have never seen this
5 document before. We've been in discovery for five years.
6 And they -- they know the agent-of-record letter's an
7 issue, they can't drop this at trial without -- we can't
8 have no ability to check into this, see where this came
9 from, to ask the client about it. I mean it's just -- it's
10 completely improper at this late stage.

11 THE COURT: Yeah, I'm not gonna allow something that
12 -- I mean if you knew that was an issue in the case, that
13 should have been produced long ago. I mean that's --
14 obviously, if that's an issue that whether he was the
15 agent-of-record, you've got a document indicating that he
16 may or may not be, so I'm not gonna let it in now. You can
17 ask him if he knows it may exist, and if he says no or yes,
18 then you're stuck with the answer that you get; but, no,
19 I'm not gonna allow it to come in, so -- all right, bring
20 them back out.

21 BAILIFF: Yes, your Honor.

22 MR. LEHRER: I think you said he's not going to be
23 able to read from it, and -- is that a question?

24 THE COURT: No. I mean he's not --

25 MR. LEHRER: He's not going to be presented with a

1 document --

2 THE COURT: No.

3 MR. LEHRER: -- at all?

4 THE COURT: No. No, he's not gonna touch the
5 document.

6 MR. LEBLANC: You know, we would proffer this into
7 evidence. Is it --

8 MR. LEHRER: Again, we object, Your Honor.

9 THE COURT: Yeah.

10 MR. LEBLANC: Right. I -- I mean proffer for the
11 record. I know it doesn't go into evidence, but it will be
12 part of the record as an exhibit.

13 THE COURT: Oh, gotcha.

14 MR. LEBLANC: That's all --

15 THE COURT: For the record, sure.

16 MR. LEBLANC: That's all I'm saying.

17 THE COURT: Not a problem.

18 (Whereupon, the Jury enters the courtroom.)

19 BAILIFF: The Jury's entering the courtroom, Your
20 Honor.

21 THE COURT: I was just getting -- I just wanted y'all
22 to get your steps in today. All right.

23 MR. LEHRER: Do we need to sustain the objection for
24 the record?

25 THE COURT: Note the objection is sustained.

1 BY MR. LEBLANC: (Continuing)

2 Q Mr. Bannon, I believe you testified when Mr.
3 Lehrer was asking you questions that when you brought your
4 clients to Palmetto Benefit Management, you were identified
5 on the agent-of-record letters; is that correct?

6 A I said I was the agent-of-record, correct.

7 Q Well, were you identified on the agent-of-record
8 letters anywhere?

9 A I should have been.

10 Q You should have been? Do you have a single
11 agent-of-record letter for any client you have ever brought
12 to Palmetto Benefit Management or Forum Benefits that
13 identifies you as the agent-of-record?

14 A I didn't -- I mean he never got me every agent
15 letter, no.

16 Q I'm -- I'm not asking you for all of them, I'm --
17 I'm asking you for just one. Do you have any?

18 A Do I have any?

19 Q Yes, sir.

20 A I -- no, I don't have any of them on me.

21 Q No, I -- I know you didn't bring it to Court
22 today. Do you have any that you can find and locate?

23 MR. LEHRER: Your Honor, it's asked and answered.

24 THE COURT: Just answer -- answer that last question
25 and then that'll be it.

1 BY WITNESS: (Continuing)

2 A I'm not sure.

3 Q Thank you.

4 MR. LEBLANC: I don't have any further questions.

5 THE COURT: All right, Mr. Lehrer?

6 MR. LEHRER: No questions, Your Honor.

7 THE COURT: All right, Mr. Bannon, you may step down.

8 All right, call your next witness.

9 MR. LEBLANC: We call Michelle Coffield.

10 THE COURT: Come on up, ma'am.

11 **Amy Michelle Coffield,**

12 having been duly sworn,

13 testifies as follows:

14 MADAM CLERK: Thank you, you may have a seat. Please
15 state your -- your name and spell your last name, please?

16 THE WITNESS: My name is Amy Michelle Cofield.

17 THE COURT: Does that chair go up a little higher for
18 you, ma'am? Let's see on the other side it might.

19 MS. COFFIED: All right.

20 THE COURT: There you go. Just helping out Cathy.

21 COURT REPORTER: Thank you.

22 THE COURT: Oh, you're welcome.

23 MS. COFFIED: It's Amy Michelle Coffield, and it's
24 spelled C-O-F-F-I-E-L-D.

25 **DIRECT EXAMINATION**

1 BY MR. LEBLANC:

2 Q Ms. Coffield, have you also previously gone under
3 the name of Amy Fralix?

4 A Yes.

5 Q And that's F-R-A-L-I-X?

6 A Correct.

7 Q And you've also -- have you ever been called
8 Michelle Fralix?

9 A Yes.

10 Q Okay, so any combination of Amy or Michelle and
11 Fralix or Coffield, right?

12 A Correct.

13 Q Okay. You were hi -- my understanding is you
14 were hired as an -- as a account executive in March of
15 2016?

16 A Yes.

17 Q And as an account executive, is that the same
18 thing as an account manager?

19 A It really depends by the agency, if that account
20 executive is a higher level account manager, but --

21 Q Okay.

22 A -- yes, same duties, just elevated.

23 Q Okay, and I know you weren't here previously, so
24 I'm gonna tell you my understanding of an account manager

1 that we've discussed. It's somebody that's assigned to a
2 producer to assist the producer with the services provided
3 to the clients?

4 A Correct.

5 Q Okay. And that -- and that's what you did --
6 that's what you were doing at AssuredPartners in March of
7 2016?

8 A Yes.

9 Q And your producer -- the producer that you were
10 assigned to assist was Mack Ward?

11 A Yes.

12 Q And in -- when -- when were you introduced to
13 Brian Bannon?

14 A I believe it was November 2016.

15 Q November of 2016?

16 A Uh-huh.

17 Q Was that the first time you met Mr. Bannon?

18 A It was.

19 Q Had you heard of Mr. Bannon before November of
20 2016?

21 A It's been a while, I don't recall.

22 Q And -- and just to be clear, you don't work for
23 AssuredPartners now, right?

24 A I do not.

1 Q You stopped working for them in January of this
2 year?

3 A January of this year.

4 Q And you work for another insurance broker?

5 A Correct.

6 Q In a similar capacity?

7 A Senior account executive, so, yes.

8 BY MR. LEBLANC: (Continuing)

9 Q I'm gonna pass you what's been previously marked
10 as Plaintiff's Exhibit 94 and ask you to take a look at
11 that.

12 A (Reviews document.)

13 Q Do you recognize what's show in 94?

14 A It's an agent-of-record letter.

15 Q Okay, it's a -- it's a collection of agent-of-
16 record letters, --

17 A Uh-huh.

18 Q -- right?

19 A Yes.

20 Q And I'm gonna try and help you along, because --
21 well, you were here this morning, so you saw -- you heard
22 that testimony, I'm sorry. All right, so these are agent-
23 of-record letters, and we're gonna go to the agent-of-
24 record letter for Magnolia Plantation and Gardens; do you
25 see that? It's on page 15 of that exhibit?.

1 A Okay.

2 Q All right, so you see the agent-of-record letter
3 dated October 19, 2016, directed to Blue Choice Health
4 Plan?

5 A (Reviews document.) Correct.

6 Q And it identifies Brian Bannon of AssuredPartners
7 as the agent-of-record?

8 A Yes.

9 Q And you can see at the bottom it's signed by
10 Marlene Gray?

11 A (Reviews document.) Correct.

12 Q All right, I'm gonna pass you another document,
13 so hold that document, I want to pass you another one. I'm
14 gonna hand you a document that has been marked as
15 Plaintiff's Exhibit 7. Do you recognize what's in
16 Plaintiff's Exhibit 7?

17 A (Reviews document.) I do.

18 Q And that's an email from you to Paige Speir at
19 Blue Choice?

20 A Correct.

21 Q And that email's dated November 15, 2016?

22 A Correct.

23 MR. LEBLANC: I'd move Plaintiff's Exhibit 7 into
24 evidence.

25 THE COURT: Any objection?

1 MR. LEHRER: No objection.

2 THE COURT: Without objection.

3 (Whereupon, Plaintiff's Exhibit Number 7 is marked for the
4 record and admitted into evidence without objection.)

5 MR. LEBLANC: Thank you, and the second page of that,
6 can we put 7 up, please?

7 BY MR. LEBLANC: (Continuing)

8 Q And were you forwarding to Paige Speir at Blue
9 Choice the broker-of-record letter for Magnolia Plantation
10 and Gardens?

11 A (Reviews document.) It appears so, yes.

12 Q And if we could -- you could go to the second
13 page of that exhibit, is this the agent-of-record letter
14 that -- the broker-of-record Letter that you were sending
15 to Paige Speir?

16 A I believe so.

17 Q All right. Do you see where Brian Bannon's name
18 has been removed?

19 A (Reviews document.) Correct.

20 Q And it looks like it's been whited-out?

21 A Yes.

22 Q And your name's been written in?

23 A Yes.

24 Q Who told you to do that?

25 A I don't recall.

1 Q Was it -- would it have been somebody at
2 AssuredPartners?

3 A I don't remember. I don't remember, but I do
4 know that the purpose of -- we were putting all groups
5 under my name for the sake -- sake of service.

6 Q And why would you --

7 A And that was regardless of who the broker was.

8 Q And why would you do that?

9 A It's just easier for me to call into Blue Cross
10 or Blue Choice or United Health Care and give them my agent
11 number, and they can talk to me directly.

12 Q Does it also increase the amount of commissions
13 that Blue Cross or Blue Choice or Blue --

14 A I don't get paid commissions, so I would not know
15 the answer to that question.

16 Q Right. I'm -- you wouldn't know if it affects
17 the commissions that they pay to AssuredPartners?

18 A I don't get involved with that.

19 Q Thank you. All right, so you don't know who --
20 well, did -- did somebody tell you -- I'm sorry, let me ask
21 that first.

22 A I don't recall.

23 Q So you may have just done this on your own?

24 A I could have, I don't recall.

1 Q Is there any chance that Marlene Gray told you to
2 change Brian Bannon's name to your name?

3 MR. LEHRER: Objection, Your Honor, the witness has
4 said she doesn't recall.

5 THE COURT: All right. I'll --

6 MR. LEHRER: It's asked and answered.

7 THE COURT: I'll let you ask that. Answer that last
8 one, ma'am.

9 BY WITNESS: (Continuing)

10 A I don't recall.

11 MR. LEBLANC: Thank you.

12 THE COURT: All right, asked and answered.

13 MR. LEBLANC: Thank you. Thank you, I don't have any
14 further questions.

15 THE COURT: All righty.

16 **CROSS-EXAMINATION**

17 BY MR. LEHRER:

18 Q Good afternoon, Ms. Coffield, how are you?

19 A Doing great.

20 Q Of course, you know I'm -- my name is Jeff
21 Lehrer, I represent AssuredPartners and Brian Bannon.
22 We've spoken before, correct?

23 A Correct.

24 Q Tell the Jury a little bit of -- just kind of an
25 overall background that you have in the insurance industry.

1 A I have about 15 years, probably more, experience
2 and account executive -- in an account executive role. I
3 began work for a general agency in Atlanta, Georgia called
4 BenefitMall, and then I decided to move back home in 2011,
5 and worked for another agency called Hubbard National. I
6 moved on from there to AssuredPartners in 2016, and then I
7 moved to a company called NFP Corporate Services in January
8 of this year, so --

9 Q Would -- would NFP be considered a competitor of
10 Ti -- of AssuredPartners?

11 A Correct.

12 Q Okay. After Mr. Bannon started working with
13 AssuredPartners, were you -- you were assigned as his kind
14 of account executive?

15 A I was.

16 Q Did that -- and so were you providing the day-to-
17 day service directly for the client?

18 A Yes.

19 Q Tell the Jury, like what -- what does that
20 entail? What is the -- the -- kind of the day-to-day
21 service for a healthcare plan, or just what the -- what
22 Mr. Bannon's clients were needing.

23 A So I'm sure y'all can relate to being employees
24 and being on a group health plan, so you would go to your
25 HR director, your HR director would call me, if there was a

1 complaint about premium, or a claim issue, or getting you
2 enrolled, I worked directly with the insurance carriers,
3 and then relay that information back to your HR director or
4 your management team. I would also -- at renewal time,
5 open enrollment is where you all would probably know what
6 renewal equates to. I help along with open enrollment
7 meetings and negotiating rates with carriers and making
8 sure Then I'd help along with open enrollment meetings and
9 negotiating rates with carriers, and making sure, you know,
10 the benefit guides and enrollment systems are correct and
11 in place, and making sure that whole transition is smooth
12 for you guys.

13 Q When Mr. Bannon started working for Assured
14 Partner, did he ever give you any of his client files?

15 A No.

16 Q And so in terms of when he left Forum and he --
17 he moved over to help you with servicing his clients, there
18 were no files that were provided to you?

19 A No.

20 Q How did you service these clients then?

21 A There was a -- a -- a little bit of a disruption
22 period, because I was not able -- we were not -- there was
23 a delay in the BORs, and so whatever data I got was from
24 the client, whether it be sent to me, either policy
25 documents, or their census, or, you know, their last

1 carrier bill, and just try to figure out who's enrolled or
2 not, I would use that data, but once we got the BOR letters
3 processed, you know, the carrier send me clean data, and
4 that's when -- that's what I would use.

5 Q And did you, eventually, get all the information
6 you need to ser -- needed to service these clients?

7 A I did.

8 Q And to your knowledge, did any of the information
9 you needed to service the clients come from Forum Benefits?

10 A Not to my knowledge.

11 Q Do you recall receiving an email from Mr. Bannon,
12 telling you that his hard drive broke?

13 A I do.

14 Q All right, I'm gonna show you what's been marked
15 as Exhibit 13 in the case. Is this the email that he sent
16 you?

17 A (Reviews document.) Yes, sir.

18 Q And what's the date on that email?

19 A November 30th, 2016.

20 Q All right, do you recall receiving this email?

21 A I do.

22 Q To your knowledge, did any information from Mr.
23 Bannon's hard drive, that he's referring there, ever
24 transfer to AssuredPartners?

25 A No.

1 Q Do you recall a client by -- of Mr. Bannon's by
2 the name of Magnolia Plantation?

3 A Vaguely, yes.

4 Q Do you recall whether there wa -- when there was
5 -- when Mr. Bannon was transitioning them over, that there
6 was kind of a rush to get some renewal options for them?

7 A During that time it's fourth quarter, so, yes,
8 everything's a rush, but around that time period we were
9 trying to get renewals in place, yes.

10 Q Okay. I'm gonna show you what's been marked as
11 Exhibit 57, and I ask that you turn to the last page of
12 that document. Do you see the email from November 15th
13 from Mr. Bannon to you? This -- it should be -- well, it
14 starts on the second to the last page and kind of goes
15 back.

16 A (Reviews document.) Uh-huh.

17 Q Do you see that?

18 A Yes.

19 Q And then he -- he says, "Hi, Michelle," right?

20 A Uh-huh.

21 Q Then he goes on to say that he needs your help
22 with these guys, referring to Magnolia Plantation; is that
23 right? If you look kind of back in the other emails, I
24 think they're -- it -- it's in the subject line.

1 A (Reviews document.) It's in the subject line,
2 yes, sir.

3 Q Yeah. Do you believe that he's talking about --

4 A Yes.

5 Q -- Magnolia. He says he needs to get back out
6 there with options sometimes this week if it's possible.

7 Do you remember -- do you see that?

8 A I do.

9 Q Does that -- does that str -- strike a little
10 memory with you? I know it's been five years.

11 A A little bit.

12 Q Okay.

13 A Yeah.

14 Q And then he goes onto say Forum didn't give them
15 any alternates/options to their current Blue Choice
16 renewal; do you see that?

17 A I do.

18 Q Does that -- does that make you somewhat remember
19 that?

20 A A little bit, yes.

21 Q And then he -- he kind of goes onto ask you to
22 start trying to pull together information for them; is that
23 true? Is that what it seemed to say?

24 A That's what it says in the email --

25 Q Okay.

1 A -- yes.

2 Q And do you vaguely remember that being the case?

3 A Slightly, yes.

4 Q Okay. And if you look through it, and, you know,
5 when you go back through the rest of these emails, there's
6 some communication, it looks like an Angela Montgomery gets
7 involved at some point; do you see that?

8 A Uh-huh.

9 Q Who is she?

10 A She was my coworker. She worked out of the
11 Greenville -- the Greenville office, but we collaborated a
12 good bit later on.

13 Q Okay, and it looks like from these emails that
14 she starts, you know, trying to pull together some
15 information; does that seem accurate?

16 A I believe so.

17 Q And then, ultimately, if you look at the -- the
18 first page of the fi -- of Exhibit 57, it -- it does --
19 there's a reference in there -- in your email; do you see
20 that second sentence where you say, "That this is all that
21 is needed to renew the group as is;" do you see that?

22 A (Reviews document.) Correct.

23 Q And did the -- do you have any memory of whether
24 that group actually just renewed the same policy that they
25 had before?

1 A I believe they did, but it's been a while.

2 Q And tell -- tell the Jury a little -- I mean when
3 a -- when a company renews as is, what does that mean?

4 A So when a group renews as is, it means that none
5 of the plans -- your medical plans will not change. A lot
6 of times they'll have dental, vision or whatever, your
7 plans will not change, your carriers are going to stay the
8 same, as well.

9 Q Okay. Does that make the process a little bit
10 easier on the agent?

11 A Oh, absolutely.

12 Q I'm gonna -- you just keep those up there until
13 the end just in case. I'm gonna show you what's been
14 marked as 64, and if you'll look down at the bottom of that
15 first page, it looks like you sent Mr. Bannon an email to
16 Premier Logistics; do you see that?

17 A (Reviews document.) Correct.

18 Q And you say -- it looks like you're sending him a
19 service -- a written service timeline; is that true?

20 A Correct.

21 Q Is that something you would have prepared?

22 A Yes.

23 Q And -- and you say, "We provide this for all of
24 our groups," you say, "I have been able to confirm that

1 they have a 4-1 renewal with Blue Cross/Blue Shield and
2 with Guardian;" do you see that?

3 A (Reviews document.) Correct.

4 Q And then you say, "I've already obtained the
5 Guardian plan documents from the carrier;" do you see that?

6 A Yes.

7 Q Was that your normal practice with Mr. Bannon's
8 clients, to get some of this information directly from the
9 carrier?

10 A I have a personal practice and I know a lot of my
11 co -- colleagues do, as well, we like to get cleaned data,
12 even after the year renewals, I just like to have a brand
13 new plan documents straight from the carriers.

14 Q And you -- did you do that for Mr. Bannon's
15 clients?

16 A Yes.

17 Q Did -- did -- have you ever -- well, strike that.
18 With any of Mr. Bannon's clients that you needed
19 information from, did any of them deny your request?

20 A No.

21 Q Were they all very cooperative?

22 A Very.

23 Q Okay. Do you -- do you recall any clients giving
24 you permission to access some online databases with the --
25 using their logins?

1 A I don't recall needing to.

2 Q Okay. Maybe I'm missing --

3 THE COURT: Okay.

4 MR. LEHRER: I guess -- I think this is my first
5 exhibit, Your Honor, would you prefer me to do like a
6 Defendant's Exhibit 1, or --

7 THE COURT: Just call it Number 1.

8 MR. LEHRER: This is -- this -- here's my marker, all
9 right?

10 THE COURT: She -- she does -- Ms. Cathy has all the
11 stickers.

12 MR. LEHRER: All right. Ms. Cathy, thank you.

13 BY MR. LEHRER: (Continuing)

14 Q All right, I'm gonna show you what's been marked
15 as Defendant's Exhibit Number 1, and ask if you identify --
16 can identify that document?

17 MR. LEBLANC: Objection, Your Honor.

18 THE COURT: All right, what's the document?

19 MR. LEHRER: It's an email that Ms. Fralix is copied
20 on.

21 THE COURT: Okay. What's your objection?

22 MR. LEBLANC: The document has not been produced in
23 discovery, and it's not identified as an exhibit.

24 THE COURT: All right, Ladies and gentlemen, we're
25 going to --

1 MR. LEHRER: Your Honor, just real quick, it's --

2 MR. LEBLANC: I'm sorry, I apologize.

3 MR. LEHRER: It's an exhibit to her --

4 MR. LEBLANC: It's not been identified --

5 MR. LEHRER: -- deposition.

6 MR. LEBLANC: I'm sorry, I apologize.

7 THE COURT: Okay.

8 MR. LEHRER: It's --

9 THE COURT: I'll allow it.

10 MR. LEHRER: And it's been produced.

11 MR. LEBLANC: I'll withdraw.

12 THE COURT: All right, I promised you I was going to
13 let y'all get some more steps. That was it?

14 MR. LEBLANC: Sorry.

15 THE COURT: Not a problem, not a problem.

16 BY MR. LEHRER: (Continuing)

17 Q Ms. Coffield, is --

18 MR. LEHRER: Did I admit -- does this admitted -- I'll
19 move to admit it, Your Honor, if I haven't already.

20 THE COURT: Over his objection, but he just --

21 MR. LEHRER: Yeah.

22 THE COURT: -- he withdrew it, because, obviously --

23 MR. LEHRER: Okay.

24 THE COURT: -- he just didn't see it --

25 MR. LEHRER: Okay.

1 THE COURT: -- so no problem.

2 MR. LEHRER: All right, I just want to make sure I got
3 it --

4 THE COURT: So it's -- it's in, so you can produce it
5 to her.

6 (Whereupon, Defendant's Exhibit Number 1 is marked for the
7 record and admitted into evidence without objection.)

8 MR. LEHRER: Okay.

9 BY MR. LEHRER: (Continuing)

10 Q All right, so you -- you identify your -- that
11 you're copied on this email from Brian Bannon; do you see
12 that?

13 A (Reviews document.) I do.

14 Q And it's to Paula Gant. Who is Paula Gant?

15 A Paula Gant, she's CFO, I -- I believe, CFO and HR
16 role at Alpha Genesis.

17 Q Okay, and in -- in this email Brian Bannon says,
18 "Paula, would you mind sending me a separate email or
19 letter authorizing my Account Manager, Michelle Fralix,
20 online enrollment access to each of the following;" do you
21 see that?

22 A (Reviews document.) I do.

23 Q And then it lists the different carriers that you
24 were going to be given online access.

25 A Correct.

1 Q Does that refresh your recollection on whether
2 you got access --

3 A It does, I misunderstood your first statement --

4 Q Okay, that's fine.

5 A -- I thought we were talking about Forum
6 documents.

7 Q So the client -- some -- some of the clients gave
8 you access to their online data bases that they -- that
9 they could go to?

10 A Carrier access.

11 Q Carrier?

12 A Yes.

13 Q Okay. And did you use that access?

14 A Yes, that's used by all account managers.

15 MR. LEHRER: No further questions.

16 THE COURT: All right, anything as a follow-up?

17 MR. LEBLANC: I don't have any further questions,
18 thank you.

19 THE COURT: Thank you very much. All right, Ms.
20 Coffield, you may be excused. All right, do you want --
21 because a lot of these people I know are traveling, do you
22 want to release them from the subpoena?

23 MR. LEBLANC: Absolutely.

24 THE COURT: All right, ma'am, you're free to go, I
25 hope you have a safe trip.

1 All right, call your next witness.

2 MR. LEBLANC: The Plaintiff calls Nolan
3 Zielinski.

4 BAILIFF: Come on up here.

5 **Nolan Zielinski,**
6 having been duly sworn,
7 testifies as follows:

8 MADAM CLERK: Okay, you can have a seat. Please state
9 your name and spell your last name.

10 THE WITNESS: It's Nolan Zielinski, Z-I-E-L-I-N-S-K-I.

11 **DIRECT EXAMINATION**

12 BY MR. LEBLANC:

13 Q Mr. Ziel -- Zielinski, what do you do for a
14 living?

15 A I work as a IT Engineer.

16 Q And who do you work for now?

17 A I work for American Credit Acceptance, previously
18 I worked for Palmetto Technology Group.

19 Q Okay, and what did you do for Palmetto Technology
20 Group?

21 A I worked as a Tier II Health Test Engineer, for
22 clients of Palmetto Technology Group.

23 Q And what does a Tier II Health Test Engineer do?

1 A Supersede support tickets and emails and work to,
2 basically, resolve any of the issues that the customers
3 might have.

4 Q And how long did you work for Palmetto Technology
5 Group as an IT Engineer?

6 A Two -- sorry, five and a half years.

7 Q And your current employer, when did you start
8 there?

9 A Yesterday, actually.

10 Q And what do you do for them?

11 A I'm a Senior Tier III Collection Engineer for
12 them, so it's more of a senior level position at a
13 different company.

14 Q Okay, and -- and so what do you do in the course
15 and scope of your work?

16 A At -- at the new job or the previous?

17 Q Well, let's start with the previous job. Thank
18 you.

19 A So, at the previous job, like I said, any --
20 customers would submit support tickets, and they'd get
21 their work through our Tier I team, and then those would
22 get escalated if they weren't able to resolve those to our
23 Tier II Team, which is where I worked. I was on the senior
24 side of the Tier II Team, and we worked to resolve any kind
25 of IT-related issues for the customer base.

1 Q And now at your new job what do you do?

2 A So the new job I'm working as the senior level
3 escalation, so anything that the Tier II Team can't
4 resolve, they'll escalate up for resolution.

5 Q And were you asked to do anything in this case?

6 A Yes, I was asked to perform a forensic analysis
7 for Forum Benefits on their SharePoint server.

8 Q Do you know when you were asked to do that?

9 A I believe it was November 2016, I can't remember
10 a specific exact date.

11 Q And do you know who asked you to do a forensic
12 analysis?

13 A I believe Laurie submitted a support ticket that
14 went through our triage system, and got all the way up to
15 me to perform the -- the online searching.

16 Q And when you say Laurie, you mean Laurie Winston?

17 A Correct.

18 Q Okay, so Laurie Winston of Forum Benefits asked
19 Palmetto Technology Group to do some forensic work for
20 them?

21 A That's correct.

22 Q And a ticket was created and it eventually landed
23 on your desk?

24 A That's correct.

1 Q And so do you know what you did? Do you know
2 what you were reque -- requested to do?

3 A I was asked to perform a content audit log search
4 in the Security and Compliance Center to pull information
5 on what files were accessed by the user
6 bbannon@forumbeneits.com during this specific date here I
7 think it was August 1st, I believe, through November 2016.

8 Q And did you conduct that work?

9 A Yes.

10 Q Can you tell me what -- what that work involved?
11 What did you do?

12 A Sure. So in the Office 365 Administrative Center
13 there is an option for security compliance, and when you go
14 in and you enter a email address, and it'll perform a
15 content search on all areas of Office 365 through
16 SharePoint, and that would pull information regarding any
17 file that a user might have accessed or touched in -- in
18 SharePoint.

19 Q And SharePoint is the name of the server at Forum
20 Benefits?

21 A So SharePoint is a part of 365. It's a -- it's a
22 web server online where files might be hosted. In this
23 particular case, that's where a lot of their customer basic
24 files were stored at.

1 Q Right, so thanks for correcting that. So it's
2 not a -- they don't have a file room with a server,
3 SharePoint's some software application in the Cloud?

4 A That's correct.

5 Q Okay. I'd like to pass you a document that has
6 been marked as Plaintiff's Exhibit 16. Do you recognize
7 what's shown in Plaintiff's Exhibit 16?

8 A (Reviews document.) Yes.

9 Q What is it?

10 A This is the Autolog that shows the 2,107 items
11 that were accessed by user bbannon@forumbenefits.com. It
12 shows this specific item that was accessed, which point
13 site it was on, and the date and IP address, as well.

14 MR. LEBLANC: At this time, we'd move Plaintiff's
15 Exhibit 16 into evidence.

16 MR. LEHRER: No objection, Your Honor.

17 THE COURT: Without objection.

18 (Whereupon, Plaintiff's Exhibit Number 16 was marked for
19 the record and admitted into evidence without objection.)

20 BY MR. LEBLANC: (Continuing)

21 Q So you just said a mouthful. Tell me what's in
22 Plaintiff's Exhibit 16, again?

23 A So -- so this is the log search, this is what is
24 generated when you run a content search in 365. It shows
25 us a date, the time, the IP address from that -- from that

1 location, the user that accessed it, their email address,
2 the item that they accessed, and which group was the issue
3 and what site that was on there.

4 Q Okay. So this is the result of your forensic
5 examination of the SharePoint server?

6 A That's correct.

7 Q And so what do you know about each of these files
8 that's in this log file? What can you tell me?

9 A So I can tell you that, you know, what -- what,
10 obviously, the name of the file, and which group it is
11 again and the -- the site it was under. So, for example,
12 anything that was filed under -- during construction of the
13 file -- the files that are showing under that are specific
14 made filed related to that -- that organization.

15 Q And you can also tell me which user login was
16 used to access those files?

17 A That's correct. So all these show the same user
18 for bbannon@forumbenefits.com

19 Q And -- and how many entries are in this log file?

20 A There's 2,107 total.

21 Q You don't know anything about these files though,
22 right?

23 A Not off the top of my head, no, I do not.

24 Q Can you tell if any of those files were actually
25 downloaded when they were accessed?

1 A No, you can't. It will not tell you on this list
2 which -- if the files were specifically downloaded to each
3 machine.

4 Q Right, did you do a further investigation that
5 would identify that information?

6 A I did, yes.

7 Q I'm gonna pass you what's been marked as
8 Plaintiff's Exhibit 91. Do you recognize what's shown in
9 Plaintiff's Exhibit 91?

10 A (Reviews document.) Yes.

11 Q And what is that?

12 A This -- this shows a confirmation of what
13 specific files would have been downloaded from that
14 SharePoint site.

15 MR. LEBLANC: And we'd move Plaintiff -- Plaintiff's
16 Exhibit 91 into evidence.

17 THE COURT: All right, any objection?

18 MR. LEHRER: No objection.

19 THE COURT: Without objection.

20 (Whereupon, Plaintiff's Exhibit Number 91 is marked for the
21 record and admitted into evidence without objection.)

22 BY LEBLANC: (Continuing)

23 Q So this -- this is another report that came out
24 of your forensic examination?

25 A That's correct.

1 Q And what does it tell you?

2 A So this tells you, basically, what files were a
3 hundred percent confirmed as being downloaded to the user's
4 machine. The dates, the user that downloads them, the
5 item, and which -- what the SharePoint path is for where
6 those files are actually stored at online.

7 Q And thi -- and this report comes out in
8 something, and I -- I apologize if I'm not using the right
9 term, something like an Excel spreadsheet or a --

10 A Right.

11 Q -- CXP?

12 A It's -- it's an actual -- it's a CXP or an Excel
13 spreadsheet, correct.

14 Q Okay. Are those the same thing?

15 A In this situation, yes.

16 Q Okay, so it -- it doesn't look real pretty on the
17 screen, I'm gonna go through it.

18 A Right.

19 Q Right, so you -- you can tell that how many
20 documents were actually downloaded?

21 A From what I can tell here it was like four.

22 Q All right, so there's four runs, so four
23 documents were downloaded, and what date were they
24 downloaded on?

25 A This looks like the 27th of October of 2016.

1 Q And the user that downloaded them is
2 bbannon@forumbenefits.com?

3 A That's correct.

4 Q And then the next page, item is the file name?

5 A That's correct.

6 Q And I think the rest is just computer gibberish;
7 is that right?

8 A So the other ones actually show you the input,
9 that is like the address bar online, it'll actually take
10 you directly to where those files are located at.

11 Q All right, so go to the next page, let's look at
12 that. This is what I call the computer gibberish, and you
13 say it means something to you?

14 A Right, yeah.

15 Q Okay.

16 A So if you -- if -- yeah, if you -- if you input
17 on the -- if you continue on to like the next couple of
18 pages, it'll actually show like the HTTP address, and if
19 you take and copy that, it'll actually take you directly to
20 where that file's located, if it's still currently on the
21 -- on the server.

22 Q Okay, so the -- your forensic analysis identified
23 four documents that were definitely downloaded?

24 A That's correct.

25 Q Could there have been more?

1 A Yeah, it's -- it's totally possible.
2 SharePoint's constantly changing. The Security Compliance
3 Center is constantly changing it, and in order to have this
4 information be available, the setting -- there's certain
5 settings that have to be turned on prior for that to be
6 accessible during that time period. So like if it wasn't
7 turned on before this was made, and they've been showing
8 it's the 27th, it's definitely possible that it would not
9 show files that were downloaded to the user's machine.

10 Q And you can't tell one way or another if
11 additional files were downloaded?

12 A No, I have no idea.

13 MR. LEBLANC: Thank you. I -- I don't have any
14 questions. Please answer any questions they might have.

15 **CROSS-EXAMINATION**

16 BY MR. CARLSTEDT:

17 Q Hello, Mr. Zielinski, how are you?

18 A Good, how are you doing?

19 Q Good. My name is Ed Carlstedt, I represent the
20 Defendants in this matter, Mr. Bannon and AssuredPartners.
21 And I just have a few follow-up questions for you. Do you
22 still have Plaintiff's Exhibit Number 16 in front of you?

23 A Yes, I do.

1 Q Now, you said that based on the timeframe that
2 you looked at, that you could tell that Mr. Bannon accessed
3 2,108 files; is that correct?

4 A 2,107.

5 Q 2,107?

6 A Correct.

7 Q Could you turn to the final page of that?

8 A Uh-huh.

9 Q I notice that the date that you started analyzing
10 that was August 1st of 2016; is that correct?

11 A (Reviews document.) That's correct.

12 Q Okay. And you would agree with me that just on
13 August 1st, which is months -- do -- do you know when Mr.
14 Bannon became an employee of AssuredPartners?

15 A I have no idea.

16 Q Okay. Just on August 1st you would agree with me
17 there are dozens of entries of files that he accessed,
18 correct?

19 A That's correct.

20 Q And you have no feel for whether or not that was
21 months before he was even speaking with AssuredPartners?

22 A That's correct.

23 Q Is there -- is there anything -- no one asked you
24 to take a look at how often Mr. Bannon was accessing files
25 before this time period?

1 A Before August 1st?

2 Q Yes, sir.

3 A No.

4 Q Okay. And based on your analysis, you could only
5 identify four files that were actually downloaded?

6 A That's correct.

7 Q Now, that -- that was, if I understand correctly,
8 one of the reasons that your services were retained was to
9 try to determine how many files had been downloaded; is
10 that accurate?

11 A I believe so, yes.

12 Q And that would be within your wheelhouse; so to
13 speak?

14 A Correct.

15 Q All four of the files that were downloaded, they
16 were all downloaded on the same date; is that correct?

17 A Yes, from what I can tell.

18 Q And do -- do all of those pertain to one
19 particular client, St. Andrew's Public Service District?

20 A (Reviews document.) Yes, that's correct.

21 Q If you were able to have located any additional
22 downloads, those would be reflected in your report?

23 A If they were -- if the -- again, like I said, the
24 setting showed one was turned on during that time period,
25 then, yes, that would have shown up.

1 Q Okay. And in the time that -- I -- I believe
2 that -- that you were deposed in this case and you had
3 completed your work, you spent about six hours analyzing
4 this; is that correct?

5 A I believe that's accurate, yes.

6 Q You have not been asked to try to make any
7 determination as to who owns the information in the
8 SharePoint system, correct?

9 A That's correct.

10 Q Okay, and you don't know where that information
11 comes from, correct?

12 A Right.

13 Q And you don't know who inputs that information to
14 SharePoint?

15 A I could tell if I had sought access to it, but,
16 no, just based off of this, I have no idea.

17 Q Okay, you're -- you're not prepared to testify to
18 that today, correct?

19 A No.

20 Q Okay. You can't tell the jury any use Mr. Bannon
21 may have made with the information, correct?

22 A No, no.

23 Q In fact, you don't know whether or not he used it
24 at all, correct?

1 A That's correct. Well, I know that he -- as far
2 as the files are concerned, he did open these --

3 Q Okay.

4 A -- and access them.

5 Q Okay.

6 A And these he -- he did download them, but past
7 that I have no idea, no.

8 Q You can't tell if he transferred any information
9 to any other party, can you?

10 A That's correct, I cannot.

11 Q Okay. And you have no information that would
12 lead you to believe that AssuredPartners, who is a
13 Defendant in this case, has used the information in any
14 way?

15 A That's correct.

16 Q Okay, and you don't know if AssuredPartners had
17 -- ever had any access to any of this information?

18 A That's correct, I have no idea.

19 Q The information in the SharePoint system, do you
20 know if that is information that either Mr. Bannon or
21 AssuredPartners could access from some other source outside
22 of Forum?

23 A Outside of his Forum email address, it would be
24 pretty -- pretty -- pretty difficult to access without
25 using login --

1 Q Okay, no --

2 A -- credentials.

3 Q And maybe I asked a bad question, but the
4 specific information there, do you know if there's another
5 way to get that information from another source?

6 A I do not, no.

7 MR. CARLSTEDT: I'll just take one second, Your Honor.

8 THE COURT: Yes, sir.

9 MR. CARLSTEDT: Nothing further, Your Honor.

10 THE COURT: All right.

11 **REDIRECT EXAMINATION**

12 BY MR. LEBLANC:

13 Q Mr. Zielinski, what else would you need to look
14 at to determine if Mr. Bannon downloaded any other files?

15 A We'd probably need to access his computer.

16 Q And you don't know what kind of computers he had?

17 A No, I have no idea.

18 MR. LEBLANC: That's all the questions I have. Thank
19 you.

20 THE COURT: All right, you may be excused, have a
21 wonderful rest of your day.

22 THE WITNESS: Thank you.

23 THE COURT: Call your next witness.

24 MR. LEBLANC: Mr. Robert Labin.

25 **Robert Labin,**

1 having been duly sworn,
2 testifies as follows:

3 MADAM CLERK: All right, you may have a seat. All
4 right, please state your name and spell your last name.

5 MR. LABIN: My name is Robert Labin, L-A-B, as in boy,
6 -I-N.

7 **DIRECT EXAMINATION**

8 BY MR. LEBLANC:

9 Q Mr. Labin, who do you work for?

10 A I work for Blue Cross/Blue Shield of South
11 Carolina.

12 Q And how long have you worked for them?

13 A I have worked for them just under nine years.

14 Q And what'd you do before that?

15 A Prior to that I was in the Army. I retired from
16 the Army.

17 Q What'd you do in the Army?

18 A Spent a little bit of time as a Recruiting
19 Retention.

20 Q All right, thank you for your service.

21 A Yeah.

22 Q And what do you do at Blue Cross/Blue Shield in
23 your job?

24 A Yeah, my -- my primary description, I was
25 Director of Sales, Compliance and Training.

1 Q And can you amplify that?

2 A I can.

3 Q That's pretty broad.

4 A Well, the general oversight of agents and
5 agencies, individuals who sell the products across --
6 across the country really.

7 Q Okay, when you say general oversight of ag --
8 agents and agencies, would that include insurance broker
9 like Forum Benefits and AssuredPartners?

10 A It does.

11 Q Okay, I just want -- I used some of the same
12 terminology we've been using.

13 A Yeah.

14 Q And -- and what -- what does your job involve as
15 oversight and training; what do you?

16 A Okay, generally speaking, individuals who are
17 onboard as agents and brokers will come through my office,
18 we'd review all documentation submitted to the South
19 Carolina Department of Insurance. Once they've done that,
20 they have the ability to sell the products. My team also
21 maintains responsibility and training of these agents and
22 brokers to ensure that they understand the standards
23 established by Blue Cross on federal -- state and federal
24 laws. Part of my job is also to ensure that individuals
25 who are processing agent-of-record letters are processed in

1 -- in accordance with prescribed docu -- or current
2 described policies, so --

3 Q How often do you train the agents or agencies?

4 A Okay, as agents are onboarded, every agent is
5 required to complete several series, depending upon the
6 products in which they're trying to sell, required to
7 complete training associated with the products that they're
8 spelling, specific compliance related to that related
9 training, as well. In addition, annually, we do agent
10 training seminars. We also release the OMS at agents and
11 brokers annually to review, as well.

12 Q Are you familiar with the -- the HIPAA
13 requirements?

14 A I am.

15 Q And why -- why are you familiar with HIPAA
16 requirements?

17 A Because that's part of my oversight, is -- is the
18 HIPAA requirements, correct.

19 Q And -- and tell me what you mean by that, because
20 we all use HIPAA, tell me what it means to you.

21 A What it means is -- is as a -- as a -- as I
22 covered in the Blue Cross/Blue Shield of South Carolina,
23 we're responsible for the overall maintenance of -- of
24 clients' records. And in addition, our -- my oversight is
25 to ensure, and I use the term "business associate," which

1 is what we refer to from this -- from this aspect, agents,
2 brokers, such as Forum, as your partners.

3 Q Okay. And -- and so you train the agents and
4 brokers, your business associates, on the HIPAA
5 requirements?

6 A We do.

7 Q And how often do you specifically conduct HIPAA
8 training?

9 A It's -- annually, it's in -- it's in the annual
10 LMS requirements, LMS training, as well as we reference in
11 -- in our agent seminars annually; but the overall synopsis
12 from a point of the HIPAA -- HIPAA course is during their
13 initial onboarding, that's where they get the full-length
14 course. In addition, we do several -- we do trainings at
15 agency level on request to ensure that they're fully
16 understanding the requirements.

17 Q And I think you've been in the courtroom today,
18 right, this afternoon --

19 A I have.

20 Q -- or mid-morning? Have you heard the discussion
21 about agent-of-record letters or broker-of-record letters?

22 A I have.

23 Q Can you describe in -- in your terms, on behalf
24 of Blue Cross, what those letters are used for?

25 A All right, well, what agent-of-record --

1 agent/broker-of-record letters are used for is in
2 determining from our perspective who has the ability to
3 make -- to -- to receive information from -- directly from
4 the carrier. So, for example, if -- if Agent A is known by
5 his -- listed as the agent-of-record, and Agent A calls
6 Blue Cross/Blue Shield of South Carolina, we could release
7 any information we have related to that client to that
8 agent. What we could not do is release that information
9 directly to Agent B, who is not on -- on that -- on that
10 letter.

11 Q Okay, so I'm getting confused, I'm a little
12 tired.

13 A Yeah.

14 Q You know, the second day of trial.

15 A I get it.

16 Q And it'd be hard for me to talk in the abstract.

17 A Yes.

18 Q So if -- if Brian Stritt was an agent on an
19 agent-of-record letter from a company, --

20 A Uh-huh.

21 Q -- you could send documents to Brian Stritt or
22 his company, Forum Benefits?

23 A That is correct.

1 Q And conversely, if Brian Bannon was an agent-of-
2 record on a -- on a letter for AssuredPartners, you could
3 send records to Brian Bannon or AssuredPartners?

4 A That is correct.

5 Q Is there ever a situation, where you have the
6 ability to send the same company's information to two
7 different agents?

8 A Client information of two separate agents, we
9 would pre -- we would preface our client ba -- our client
10 documentation based on the individuals identified as the
11 agent-of-record at the time of the request.

12 Q Right, so there's no dual agency? There's not a
13 situation where you can have two agents-of-record at the
14 same time?

15 A From our perspective in releasing that
16 information, we -- we would release it to the current
17 agent-of-record.

18 Q Right. There -- there is another way to say it.
19 There's only one agent-of-record at any time?

20 A That is correct.

21 Q And that's whoever you recognize or whoever the
22 client's desi -- designated and you recognize?

23 A One hundred percent, the clients are the ones who
24 determine who -- who the agent-of-record also is, yes.

25 Q What would Blue Cross do -- and I -- and I

1 apologize, if I refer to Blue Cross, so are you okay with
2 me using that term, because it has 50 different names. I
3 mean we all --

4 A That's fine.

5 Q We all get confused.

6 A That's fine.

7 Q I'm just gonna refer to it as Blue Cross.

8 A That's fine.

9 Q What would Blue Cross do if they learned that an
10 -- an agent-of-record was sharing HIPAA protected documents
11 with another agency?

12 A I -- I -- I think really -- understand, I'd have
13 to understand the full synopsis or the full story to -- to
14 give you a definitive answer. This is speaking honestly,
15 the agent-of-record is who's the primary -- who's primarily
16 who we would -- who we would release information about. It
17 doesn't take away from other access points, i.e., the group
18 maintaining, or getting -- providing that same information
19 to another agent. What we would provide would be to the
20 agent-of-record.

21 Q Okay, so, again, to not talk in the abstract,
22 Forum Benefits, let's say they're an agent-of-record for a
23 client company, and what would happen if one of the brokers
24 associated with one of the agents that -- that -- that
25 represents Forum Benefits shared HIPAA protected documents

1 with another agency?

2 A HIPAA protected documents, i.e., client
3 information?

4 Q Yes, sir.

5 A So it really -- I don't know the answer to that
6 one, to be honest with you. I --

7 Q Is that something Blue Cross would be interested
8 in investigating?

9 A You -- you know, it would -- it would be really
10 what we would -- we would do is, and we have to understand
11 the full aspect of the situation. We have to re -- rely on
12 that, and what way we'd have to look at the information
13 and, again, understanding of whether the information came
14 from a Blue Cross perspective, or came from the Agency, or
15 came from the client to determine a lot -- a lot more of
16 the HIPAA situation.

17 Q Okay, so you'd have to know dates and who talked
18 to who and who authorized what?

19 A That is correct.

20 Q All right. What if a agent rep -- associated
21 with Forum Benefits obtains the client login credentials
22 for a represented client, and passes those client login
23 credentials to another agency that it does not have an
24 agency -- an agent-of-record letter with Blue Cross; is
25 that something you would be interested in?

1 MR. CARLSTEDT: Objection, improper hypothetical, he's
2 also not an expert witness, Your Honor, it sounds like
3 expert testimony.

4 THE COURT: He's asking someone for his opinion, so
5 unless he's qualified as an expert, I'll -- I'll sustain
6 the objection.

7 BY MR. LEBLANC: (Continuing)

8 Q That hypothetical I just gave you, would Blue
9 Cross investigate something like that? Would your group
10 investigate that?

11 A Could you repeat the question again?

12 Q I'm not sure. So let's say an agent associate
13 representing Forum Benefits gives the login credentials for
14 a client that they have the agent-of-record for with Blue
15 Cross, and they transmit that login information to another
16 agency that it does not have an agency -- agent-of-record
17 letter with Blue -- Brue Cro -- Blue Cross?

18 MR. CARLSTEDT: Same objection, Your Honor.

19 BY MR. LEBLANC: (Continuing)

20 Q And my question is, would you investigate that?

21 A We would review any situation once we believe
22 that --

23 MR. LEBLANC: I'm sorry, he --

24 THE COURT: I'm sorry, I'm still thinking, it's fine.
25 All right, I'll overrule the objection. He can answer.

1 BY MR. LEBLANC: (Continuing)

2 Q And your answer is?

3 A We would review the information.

4 Q That's something you'd be interested in looking
5 into?

6 A Correct.

7 Q Because you'd need to know the facts.

8 A Right.

9 Q Okay. I'm gonna pass you a document that's been
10 previously marked Plaintiff's Exhibit 94, and I -- I have
11 it turned to a particular page 15, so -- and I'm also
12 passing you a document that's been previously admitted as
13 Plaintiff's Exhibit 7. And I believe you were in the
14 courtroom when Ms. Coffield testified; is that right?

15 A (Reviews document.) Yes.

16 Q She was a pre -- two previous witnesses.

17 A Yes.

18 Q And did you hear her testimony about this agent-
19 of-record letter?

20 A Yes.

21 Q All right, so if I understand, I'm just trying to
22 go faster, she -- there is an agent-of-record letter with
23 Brian Bannon's name on it, and then there's an agent-of-
24 record letter with Ms. Amy Fralix's name handwritten over
25 it --

1 A Yeah.

2 Q -- over something. Did you hear that testimony?

3 A Yes.

4 Q And would Blue Cross --

5 MR. CARLSTEDT: Objection, Your Honor, he's cross-

6 examining a lay witness for someone else's testimony. And

7 there's been no basis that he has any personal knowledge of

8 the document on the screen, as well.

9 THE COURT: All right, don't pit the witnesses.

10 MR. LEBLANC: All right. I'm trying to lay a

11 foundation for the question now.

12 THE COURT: All right.

13 MR. LEBLANC: All right.

14 BY MR. LEBLANC: (Continuing)

15 Q Have you had a chance to look at both documents

16 that I handed to you?

17 A Yes.

18 Q And -- and would you be -- would Blue Cross be

19 concerned about an agent-of-record letter that -- that

20 Ms. Fralix changed and then put her name on over Brian

21 Bannon's name?

22 A Yes. What we would do in that instance is we'd

23 contact the -- the client to be sure.

24 Q So you -- you'd contact Magnolia Plantation and

25 Gardens to say, "Hey, which of these is the correct agent"?

1 A Correct.

2 Q Would -- and I apologize for going back to the
3 other question about login credentials, is there any
4 problem with an agent-of-record, or anybody doing business,
5 communicating through the Internet that's not secured or
6 encrypted, communicating HIPAA identifying information; is
7 that a problem?

8 MR. CARLSTEDT: Objection, proffer expert testimony.

9 THE COURT: Ask the question again.

10 BY MR. LEBLANC: (Continuing)

11 Q Would Blue Cross/Blue Shield have a problem if an
12 agent or insurance broker communicated over the Internet
13 unsecured information that -- that constitutes HIPAA
14 protected information?

15 THE COURT: Just answer it in the context of what you
16 would do if that was brought to your attention.

17 BY WITNESS: (Continuing)

18 A So our expectation is all of the information
19 that's sent, it would classi -- be classified as PHI. As
20 far as HIPAA, would be secured in this transmission.

21 Q Okay, and what is PHI mean, the standard --

22 A Pro -- Protected Health Information.

23 Q So your -- your expectation is that all would be
24 -- be protected. What -- how did you say?

25 A Encrypted, secured.

1 Q Thank you.

2 MR. LEBLANC: That's all the questions I have. Thank
3 you.

4 THE COURT: All right.

5 **CROSS-EXAMINATION**

6 BY MR. CARLSTEDT:

7 Q Hi, Mr. Labin, my name is Ed Carlstedt, and I
8 represent the Defendants Brian Bannon and AssuredPartners.

9 A Yes, sir.

10 Q And I've a -- a few follow-up questions for you.

11 A Of course.

12 Q Are you familiar with term "business associate
13 agreement"?

14 A I am.

15 Q Okay, and you use those frequently in your
16 business; do you not?

17 A We do. Every -- every agency and every agent
18 broker signs their own business associate agreement with
19 us, correct.

20 Q Can you explain to the Jury what a business
21 associate agreement is?

22 A Well, generally speaking, it -- it outlines what
23 it is that we require them to do when dealing with client
24 -- clients' information. All of it's predicated on the
25 HIPAA -- HIPAA guidelines, the HIPAA laws, so it's

1 generally speaking this -- this is how you handle protected
2 information.

3 Q Just to make sure that you and the agency or the
4 agent were on the same page about how to handle that
5 protected health information, correct?

6 A That is correct.

7 Q Okay. And Blue Cross/Blue Shield has those
8 agencies, in this case like Forum Benefits, execute a
9 business associate agreement, correct?

10 A That is correct.

11 Q Okay, and also, as the agent, Mr. Bannon,
12 executed a business associate agreement, correct?

13 A That is correct.

14 Q Okay, and then also, as the agent, Mr. Bannon,
15 execute a business associate agreement, correct?

16 A That is correct.

17 Q Now, if I understand correctly, in the business
18 associate agreement, there is a provision that if an agent
19 or an agency believes that there has been a breach, that is
20 the protected health information has been disclosed, that
21 has to be reported to Blue Cross/Blue shield, doesn't it?

22 A That is correct.

23 Q To your knowledge, did anyone from Forum Benefits
24 ever -- ever indicate that Mr. Bannon had somehow breached
25 HIPAA?

1 A HIPAA specific, I do not recall.

2 Q Did anyone ever notify you that there was a
3 breach under the agreement; to your knowledge?

4 A I do not -- I do not recall.

5 Q Okay. Would -- would that have been the type of
6 thing that had someone notified Blue Cross/Blue Shield,
7 that would have gotten your attention?

8 A It would have required -- yes.

9 Q It -- it -- it likely would have led to an
10 investigation had you received that report, correct?

11 A A review at least, yes.

12 Q The agent-of-record letters that we discussed,
13 those -- those are executed by the client, correct?

14 A They are.

15 Q And then those letters are sent on to Blue
16 Cross/Blue Shield, correct?

17 A They are.

18 Q Okay. And sometimes you -- many times you get
19 those before the agent-of-record takes effect, correct?

20 A That is correct.

21 Q But sometimes you can even get those after the
22 time that the agent has started representing the client; is
23 that correct?

24 A The letters sometimes come in later, yes.

25 Q Okay, but not your preference, obviously, right?

1 A Yes, uh-huh.

2 Q Okay, but it does happen from time-to-time?

3 A (Nods.)

4 Q That's a yes, sir?

5 A Yes, yes.

6 Q Okay.

7 A Yes.

8 Q Now, when -- when Blue Cross/Blue Shield receives
9 an agent-of-record letter, Blue Cross/Blue Shield then
10 sends out a corresponding notification to the prior agent
11 that the client wants to change the agent, correct?

12 A That is correct.

13 Q Okay. And then the prior agent has 30 days to
14 try to keep the client onboard; is that correct?

15 A That is correct.

16 Q So it's, essentially, a -- a 30-day window for
17 that agency or agent to try to keep the client?

18 A That is correct.

19 Q And would you assume that when several clients
20 from Forum -- that -- that Forum was servicing, when they
21 changed their agent over to Mr. Bannon and AssuredPartners,
22 that Blue Cross/Blue Shield sent out that 30-day notice to
23 Forum?

24 A I -- I would assume that.

25 Q If I understand correctly, you actually have seen

1 situations where a single insurance agent is affiliated
2 with multiple insurance agencies; is that correct?

3 A That is correct.

4 Q Okay, and that can be the case, for instance,
5 when someone is an independent contractor, correct?

6 A That is correct.

7 Q So it's not unusual?

8 A It is not unusual.

9 Q In a situation where Mr. Bannon is identified as
10 the agent-of-record for a client, he would properly have
11 access to that client's information, correct?

12 A Once he's recognized as agent-of-record, he
13 would, yes.

14 Q And -- and so -- so the client's insurance policy
15 and the information from the client that's used to obtain
16 that policy, you would consider all of that information to
17 be information of the client, correct?

18 A Can you repeat that? I'm sorry.

19 Q Yes, sir.

20 A I apologize.

21 Q The insurance policy itself and all of the
22 client's information that was used to obtain that policy,
23 all that census information, --

24 A Uh-huh.

25 Q -- would you agree that that is the client's

1 information?

2 A Client owns -- ultimately owns their information,
3 yes, sir.

4 Q Okay, and the client is free to do with that
5 information as it wishes, right?

6 A Correct.

7 Q Okay. They can disclose that information to
8 whomever they would like, correct?

9 A The client? Yes.

10 Q The -- the client. So that -- that -- that
11 information, whether the policy information, the census
12 information, that doesn't belong to the agency or the
13 agent, it belongs to the client in your view, correct?

14 A The information belongs to the client.

15 Q To your knowledge, has any client ever con --
16 complained to Blue Cross/Blue Shield that Mr. Bannon
17 misused their information?

18 A No, not to my knowledge.

19 Q To your knowledge, has any client ever contend
20 that he wrongfully took their information?

21 A Not to my knowledge.

22 Q As you sit here today, are you aware of any HIPAA
23 violation admitted by Mr. Bannon?

24 A As I sit here today I -- I am not.

25 Q And -- and just -- just to be clear, you don't

1 have a dog in this whole fight, do you?

2 A I do not, no.

3 Q Yeah. And you -- Blue Cross/Blue Shield has
4 relationships with Forum, and it's got relationships with
5 AssuredPartners, right?

6 A We do.

7 Q And you don't -- you don't care at all about the
8 outcome of this case, that's not your business, right?

9 A Correct.

10 MR. CARLSTEDT: Nothing further, Your Honor.

11 **REDIRECT EXAMINATION**

12 BY MR. LEBLANC:

13 Q Mr. Labin, how long have you known about this
14 dispute going on between AssuredPartners and Forum
15 Benefits?

16 A It would have been in November of 2016, would
17 have been the first inkling that there was a dispute
18 between the two entities.

19 Q Right, and ju -- just like their Counsel just
20 said, Blue Cross is sort of sitting on the sidelines seeing
21 what happens, seeing how this turns out?

22 A Yeah, we -- we -- re -- can you repeat that one
23 more time?

24 Q Just like Plaintiff's -- or Defendant's Counsel
25 said, Blue Cross doesn't have a horse in the race, they

1 don't want to pick sides, they're gonna sit on the
2 sidelines and see how this ha -- ha -- happened -- turns
3 out?

4 A We are -- yeah, we -- correct.

5 Q And I believe you said -- you testified that the
6 client owns the client information; is that right?

7 A That is correct.

8 Q Okay, how about if somebody takes the client
9 information and collects it, and organizes it, and compiles
10 it into a database, who owns that database?

11 MR. CARLSTEDT: Objection, Your Honor, it calls for
12 speculation.

13 THE COURT: Is that something you would be familiar
14 with?

15 BY WITNESS: (Continuing)

16 A The client information is all I'd be familiar
17 with.

18 THE COURT: All right, I'll sustain the objection.

19 BY MR. LEBLANC: (Continuing)

20 Q So when you say the client owns the client
21 information, you just mean the client's information, the
22 payroll, the stuff that comes from the client, they own
23 that stuff?

24 A Anything from the client, correct.

25 Q Anything from the client they own?

1 A Correct.

2 MR. LEBLANC: That's all the questions I have.

3 Thanks.

4 THE COURT: Thank you so very much for being here, and
5 y'all please drive safe heading home, okay?

6 MR. LABIN: All right.

7 THE COURT: Who's -- who's the next witness?

8 MR. LEBLANC: Laurie Winston.

9 THE COURT: How long do you think Ms. Winston will be?

10 MR. LEBLANC: An hour maybe.

11 THE COURT: All right, do y'all want to go ahead and
12 take a ten-minute break, or do y'all want to just go about
13 halfway?

14 JUROR: A break.

15 THE COURT: All right, we'll take a -- we'll take a
16 quick ten-minute break, and then we'll come right back.

17 (Whereupon, the Jury leaves the courtroom.)

18 (Whereupon, the Court takes a brief recess.)

19 BAILIFF: All rise, the Court is back in session.

20 THE COURT: All right, thank you very much, please be
21 seated. All right, who's the next witness?

22 MR. LEBLANC: Laurie Winston.

23 THE COURT: I was just making sure you were here
24 before I told him to bring the Jury back in. Can you bring
25 -- bring them back?

1 (Whereupon, the Jury enters the courtroom.)

2 BAILIFF: The Jury's back in the courtroom, Your
3 Honor.

4 THE COURT: All right, call your next witness.

5 MR. LEBLANC: The Plaintiff calls Laurie Winston.

6 **Laurie Winston,**
7 having been duly sworn,
8 testifies as follows:

9 MADAM CLERK: All right, and have a seat. All right,
10 state your name and spell your last name.

11 MS. WINSTON: Laurie Winston, W-I-N-S-T-O-N.

12 **DIRECT EXAMINATION**

13 BY MR. LEBLANC:

14 Q Ms. Winston, who do you work for?

15 A Forum Benefits.

16 Q How long have you been working there?

17 A Nine years, since 2012.

18 Q And what do you do?

19 A I am a director of account management.

20 Q And what does that mean?

21 A So I kind of oversee all of our account managers,
22 but I'm also an account manager/account executive for
23 myself, so I do manage a block of business.

24 Q And what block -- what block of business or which
25 producer do you work for -- do you manage?

1 A Mainly, Brian Stritt, but we do have some other
2 agents within our agency, as well.

3 Q I want to talk about Employee Navigator. Are you
4 knowledgeable in Employee Navigator?

5 A Yes, uh-huh.

6 Q And don't be shy, you're very knowledgeable,
7 aren't you?

8 A Yes.

9 Q All right. And -- and -- and have you written a
10 manual, a user guide for Employee Man -- Employee
11 Navigator?

12 A I have.

13 Q And has the Company, Employee Navigator,
14 contacted you for a copy of that guide?

15 A Yes.

16 Q And did you provide that?

17 A No.

18 Q Why not?

19 A Because it's proprietary to our agency. It was
20 handwritten by us. It has examples of -- for instance, my
21 daughter's name is, you know, in it as an example employee,
22 and by providing that to Employee Navigator would be,
23 essentially, giving that to our competitors.

24 Q Okay. You've been in the courtroom all --
25 yesterday and today, correct?

1 A Correct.

2 Q Yesterday afternoon to today?

3 A Uh-huh.

4 Q You've heard our discussion of Employee Navigator
5 buildouts?

6 A Correct.

7 Q And did we describe that correctly?

8 A Yes.

9 Q What would be the process at Forum Benefits, if
10 Forum Benefits signed up a new client?

11 A Sure. So we -- we gather some general
12 information about the client, name, address, SIC Code Tax
13 ID; and then once we have that information, we actually
14 have an internal spreadsheet that we use to gather detailed
15 information about their plans, who they want to have access
16 to. So it's typically an -- an hour conversation that we
17 have with them, and then we do I guess what you would call
18 data mining within the contracts to buildout the plan with
19 the rates, the contributions. The census data comes from
20 the client, typically, from their payroll company, but if
21 you're already agent-of-record on the different policies,
22 you can get that information from the carrier, as well.

23 Q Okay. That was a mouthful, but I want to ask a
24 question before we get into that. Does -- if you -- if
25 Forum Benefits, at the time you worked there, when they

1 sign up a new client, do they ever say, "Hey, let's import
2 your old Employee Navigator information?" Has -- has Forum
3 Benefits ever done that?

4 A No.

5 Q Why not?

6 A We want the data to be clean. We want it to be
7 our words. We want to make sure that it's accurate, so
8 we're gonna get that information directly from the policies
9 and key that in, so we can make sure it's right.

10 Q All right. So tell me what -- what are the steps
11 when -- when Forum Benefits gets a new client and they want
12 to do a -- an Employee Navigator buildout for that client,
13 what do -- what do you do?

14 A So we start with -- I guess you could call it
15 kind of an intake sheet that has a list of questions that
16 we establish, that we would need from that client. So
17 we're gathering information about their payroll, how often
18 the employees would pay, what are the deductions that they
19 charge? Just some general information about the benefits.
20 How they want the system to look, the colors, their logo,
21 that's all we really get from the client upfront. Then
22 we'll get the contracts, carrier policies to start the
23 buildout of the plans, their bills for their rates, all --
24 all that information kind of comes from the carrier about
25 the plans. The only time we go back to the client in the

1 setup process is for census data, and, again, typically,
2 the easiest place for a client to pull that is from
3 payroll, or if, like I said, we're already agent-of-record
4 and -- and we need that information from the carrier, they
5 know, you know, the census of -- of those who are on the
6 plans with that particular carrier.

7 Q And how long does it take to do a buildout in
8 Employee Navigator for any particular client?

9 A Sure. So it -- it depends on the complexity of
10 the group. So, like I said, that initial conversation with
11 the client, probably an hour, then we'll probably spend the
12 next, you know, two to three days gathering information
13 from the carriers. There are some things that are not in
14 the carrier contracts that we might need for the benefit
15 side of things, like rounding rules, and whether to round
16 up, down, to the nearest, closest, you know, whether the
17 benefit rounds on salary versus benefit. There's a lot of
18 different things that might not be in the contract, so we
19 have to kind of go back and forth to the carrier a little
20 bit. If it's just one plan, we would probably do that
21 within a day. If it's multiple plans, it really doesn't
22 matter really the employee count, mainly, the complexity of
23 the benefits, so it could be anywhere from a day to five
24 days, but it also depends on us getting that information
25 from the carriers.

1 Q All right, so you said you -- you're collecting
2 this information and -- and both from the insurance company
3 and then also from the employ -- your client company,
4 right?

5 A Correct.

6 Q And the amount of time it will take to buildout
7 Employee Navigator depends on how complex each of those
8 are?

9 A Correct.

10 Q So if there are a lot of insurance plans that are
11 part of the employee benefit package, that's, obviously,
12 gonna get -- going to take longer than a company that just
13 has one plan?

14 A Correct.

15 Q A hundred-person company is going to take longer
16 than a five-person company?

17 A Correct.

18 MR. LEBLANC: All right, can -- at this point I'd like
19 to do an Employee Navigator demonstration. We're gonna
20 plug it in live as a demonstrative aid --

21 THE COURT: All right.

22 MR. LEBLANC: -- so she can talk through it.

23 MR. LEHRER: I've never been given access to any of
24 this information in discovery. It -- I mean they -- they
25 haven't given us access, they've never shown us what

1 they're get -- getting ready to show.

2 MR. LEBLANC: We're going to show Employee Navigator.
3 We're going to login to the site.

4 THE COURT: Ladies and gentlemen, let me talk to the
5 lawyers for just a minute, so if you'll just please excuse
6 us, I'll -- I'll get you right back in, okay?

7 (Whereupon, the Jury leaves the courtroom.)

8 BAILIFF: The Jury's clear, Your Honor.

9 THE COURT: Thank you. All right.

10 MR. LEHRER: Your Honor, just to kind of clarify, this
11 is not something we've been provided access to in
12 discovery. There's been no screenshots, there's been no
13 disclosure that this witness is going to go through this
14 information. We had no ability to review any of this in
15 advance of trial. Not that it's not been identified as an
16 exhibit, and now they're getting ready to show it to the
17 Jury. It totally prejudices my client from us to even be
18 able to review this until we see it in Court for the first
19 time, and so we'd move to -- that it would not be
20 admissible.

21 THE COURT: Mr. LeBlanc, I mean with all due respect,
22 I mean this is a five-year-old case, I mean -- I mean if
23 this is going to be that paramount to your case, I would
24 have thought that you would at least have discussed it with
25 him, or showed it to him, or sent it to him, or told us

1 beforehand, or tell us before, you know, we already got
2 this nice young lady up here, or giving me the heads-up, or
3 y'all could have talked, I could just keep going, if you
4 want me to.

5 MR. LEBLANC: No, sir.

6 THE COURT: Why has that not been done before now?

7 MR. LEBLANC: Respectfully, we're gonna show a login,
8 just what we've been talking about for the last two days.
9 This is how you login, this is what the Employee Navigator
10 looks like. It's in the Cloud, there is nothing to
11 produce. The -- we can't produce this thing, it's -- it's
12 electronic. We're just gonna have her demonstrate what it
13 is. We've been talking about it, and we're just gonna have
14 him -- have -- this is a demonstrative presentation to the
15 Jury.

16 THE COURT: I know, sir, why -- if -- if it's no big
17 deal, why weren't they told about it?

18 MR. LEBLANC: I -- I don't know how to tell them,
19 other than to tell them I'm going to examine a witness on
20 what she's testifying about.

21 THE COURT: And I'm gonna show a demonstrative aid,
22 and here's what's it's going to be, and here's what I'm
23 going to go through with her.

24 MR. LEBLANC: I'm not aware of there's any time -- a
25 requirement to disclose that. This isn't sandbagging, this

1 is discussing the testimony.

2 MR. LEHRER: Your Honor --

3 MR. LEBLANC: This is to present it to a Jury.

4 MR. LEHRER: Your Honor, I've never been given access
5 to Employee Navigator. I've never been in Employee
6 Navigator. I had no way to prepare for a cross-examination
7 without notice what this is going to look like. There has
8 to be some prior disclosure to the Defense that you're
9 going to throw this in on a five-year case at the last
10 minute.

11 THE COURT: Ma'am, what's your last name again?

12 MS. WINSTON: Winston.

13 THE COURT: Ms. Winston, what's it gonna show?

14 MS. WINSTON: It's gonna show once they log in. It
15 will not show the -- the client detail, a -- a demo company
16 that shows where benefits are built and how benefits were
17 built in the system, so like if we cover showing you how to
18 use it essentially. You know, click at a plan and what
19 information is in that system.

20 THE COURT: All right, and, obviously, this is just a
21 dummy plan.

22 MS. WINSTON: Yes.

23 THE COURT: It'll say like Scooby-Doo or something?

24 MS. WINSTON: Yes.

25 THE COURT: All right.

1 MS. WINSTON: Not even, I think it will say, like,
2 XXXXXX is the name of the company.

3 THE COURT: Right. And then how many -- how many step
4 process is this?

5 MS. WINSTON: Clicks to get in maybe five or six.

6 THE COURT: All right, and what do you intend to -- I
7 mean what -- how is this moving your case forward? What
8 are you trying to elicit from -- from her being able to
9 show this? And what is it -- what is the purpose behind
10 it?

11 MR. LEBLANC: To show that the -- this is a trade
12 secret case, and they've taken the position just in the
13 last witness, that this is all the employer's data, and
14 we're gonna show that it's not. It's the employer's data
15 that's been put into a complicated database. Their
16 position -- their -- the analogy of their position is, just
17 because you have all the ingredients to Coke doesn't mean
18 you own the recipe to Coke. How Forum Benefits builds out
19 Employee Navigator is our trade secret, it's a trade
20 secret. Now, Mr. Lehrer says he hasn't had access to it.
21 His client has access to Employee Navigator, they -- they
22 know how to use Employee Navigator as well as I do.

23 MR. LEHRER: It is not a trade secret, Your Honor. I
24 mean the -- the issue here is, if we have all the access
25 and we can see just the way it is, it's obviously not a

1 trade secret. They're getting ready to put up something
2 that they put together that has all these fields, that
3 we've never seen before. We don't know if they've
4 manipulated it. We have no way to -- to analyze this data
5 that's getting ready to be shown to the Jury without notice
6 the second day in the trial of a five-year-old case, and
7 it's just overly --

8 THE COURT: How - how long --

9 MR. LEHRER: -- prejudicial.

10 THE COURT: -- is the demonstration?

11 MR. LEBLANC: Twenty minutes. It's just to -- it's to
12 take this whole discussion of --

13 THE COURT: Right.

14 MR. LEBLANC: -- a database up in the Cloud from an
15 abstract idea to show the Jury what we've been talking
16 about.

17 MR. LEHRER: Your Honor, the other thing is, it might
18 be different absent -- taken out of the issue of
19 disclosure, like we're dealing with three clients, the
20 testimony is, of Mr. Bannon's that had Navigator. We -- we
21 would need to see their Navigator, that's the only thing
22 that's relevant. We don't know if any of this is the same
23 as what they were shown. We don't have any ability to look
24 at this and compare it. They haven't produced the prior
25 client Navigator buildout, it's just -- they're just

1 throwing this together to try to convince the Jury that
2 this is complicated, but we have no ability to see it prior
3 to their -- their presentation.

4 MR. CARLSTEDT: Judge, can I add one thing to that
5 argument?

6 THE COURT: Sure.

7 MR. CARLSTEDT: Given that we are five to six years
8 later, you have to expect that there have probably been
9 significant upgrades to Employee Navigator, and they're
10 probably about to put on the presentation that's
11 substantially different than the Employee Navigator that --

12 THE COURT: Has it been updated in the past nine
13 years.

14 MR. CARLSTEDT: -- existed at the time.

15 MS. WINSTON: Yeah, they have -- they have tweaks
16 pretty much monthly maybe, upgrades to different things in
17 the system.

18 THE COURT: All right.

19 MS. WINSTON: If I may, we can pull off one of those
20 clients, but I would not click on things -- there's a lot
21 of stuff in there that obviously would be considered
22 HIPAA --

23 THE COURT: Sure.

24 MR. LEHRER: And, again, Your Honor, we haven't been
25 provided access to any client Navigator files to even

1 review any of this information.

2 THE COURT: You don't live here, do you?

3 MS. WINSTON: I do not. I am here for the week.

4 THE COURT: Off the record.

5 (Whereupon, the Court goes off the record.)

6 THE COURT: All right.

7 MR. LEBLANC: And I'm not -- every Court's different,
8 Your Honor. I certainly respect all your rulings, but I
9 have never disclosed a demonstrative demonstration at trial
10 before trial, and I've done it --

11 MR. LEHRER: Your Honor, --

12 MR. LEBLANC: -- I've had cases.

13 THE COURT: I -- I've never been in a trial where they
14 didn't.

15 MR. LEBLANC: Your Honor, that --

16 MR. LEHRER: Your Honor, we've asked -- we asked for
17 identification of witnesses. There was no disclosure that
18 Laurie Winston would be provided to do some kind of guide
19 expert analysis of Navigator.

20 THE COURT: I mean the thing about it, I'm trying not
21 to impose my opinion of anything that I may -- obviously
22 the Jury is not in here, but I don't -- I see like it's a
23 waste of 20 minutes. I mean what -- how's it gonna move
24 the case forward? I mean I don't think that this Jury's
25 all of a sudden just gonna go, "Oh, I got it, it's in the

1 cloud." Everybody knows what the Cloud is, everybody knows
2 how you get into the cloud, everybody knows what's an
3 administrative way of getting information. I just don't
4 see how this moves anything forward, and I think it's just
5 a waste of 20 minutes. I mean what -- what -- what does it
6 do for your case, and why is this -- I mean and I'm
7 obviously extremely not happy that you haven't told him
8 about it, but, again I have been a judge for 19 years, and
9 this is the first time I've ever been in a trial where they
10 didn't say, "Hey, here's my little demonstrative units.
11 I'm going to show these, are you okay with it?" prior to
12 who's testifying, and this has been a consistent theme
13 through this trial; but apart from that, what is it going -
14 - what -- why is it so important to your case, I guess is
15 the question.

16 MR. LEBLANC: Well, a -- a significant aspect of this
17 case that keeps coming up is, they're saying that the --
18 that the -- the -- the Employee Navigator accounts that
19 they access, copied, downloaded and took pictures of is not
20 a trade secret, because it's just the employer's
21 information, and it's far more than that. It -- it is --
22 it -- like the analogy I used is, it's -- it's not just
23 corn syrup and sugar mixed together and you get Coke,
24 you've got to figure out how to do that.

25 THE COURT: But everybody agrees that Mr. Bannon knows

1 how to do it, I mean that's his job.

2 MR. LEBLANC: No, Mr. Bannon testified he doesn't know
3 how to do anything in Employee Navigator.

4 THE COURT: Oh, who goes into it? The --

5 MR. LEBLANC: Mr. Brady, who's next.

6 THE COURT: Right.

7 MR. LEHRER: Your Honor, I -- and I could pull out
8 discovery requests from years ago, this is a trade secret
9 case. We've asked for all evidence that shows the
10 existence of a trade secret, and they're saying that this
11 is their primary evidence today, that they're -- the one
12 thing they're going to show the Jury is a trade secret, and
13 they've never disclosed it.

14 THE COURT: I agree, I'm not allowing it. Bring them
15 out.

16 MR. LEBLANC: I -- I don't mean to reargue, but I'm
17 not sure what I would produce. I mean --

18 THE COURT: The information that you were gonna -- and
19 -- and the presentation that you were going --

20 MR. LEBLANC: It --

21 THE COURT: -- to show, and the witness that was going
22 to show it.

23 MR. LEBLANC: Would it be --

24 THE COURT: You can put anything you want on the
25 record, but I've made my ruling.

1 MR. LEBLANC: That's right. Can -- would -- would you
2 -- can we proffer this testimony?

3 THE COURT: That's what I don't want to do, and that's
4 why she was staying here, because I didn't want to have to
5 sit here for 20 minutes just to go over how to get into the
6 system; so, yes, if you want to proffer the testimony from
7 the witness in front of the Jury, I have no problem with
8 that whatsoever.

9 MR. LEBLANC: But I mean I --

10 MR. LEHRER: Not -- you mean not in front of the Jury?

11 MR. LEBLANC: Not in front of the Jury.

12 THE COURT: I thought you meant by proffering, you
13 were just gonna elicit the information that you were going
14 to show on the actual demonstration?

15 MR. LEBLANC: No, I meant proffer 20 minutes of
16 testimony without the Jury, so that maybe you'll see what
17 I'm talking about. You -- you can't just print -- there's
18 nothing to print out, it's -- it's a database.

19 MR. LEHRER: Your Honor, --

20 MR. LEBLANC: You can't print a database.

21 MR. LEHRER: I mean you can -- you can provide a
22 video, like this -- they obviously have this database.
23 They could have given us access to a shell database to look
24 at, and so that we could do the things that they're getting
25 ready to show the Jury. I mean there's just so many things

1 that are improper about this.

2 THE COURT: All right, go through it with her for my
3 purposes and my sake, and I'll let you know whenever --

4 MR. LEBLANC: That's fine. All right, it's -- I think
5 the Jury is --

6 THE COURT: Send them back, please. Tell -- tell them
7 I want just them to get their steps in.

8 BAILIFF: Okay.

9 BY MR. LEBLANC: (Continuing)

10 Q So if you --

11 MR. LEBLANC: If it's all right with Your Honor, I'll
12 just show -- put up on the screen and then have her walk
13 through it.

14 THE COURT: Sure, go ahead, ma'am.

15 MR. LEHRER: Your Honor -- Your Honor, could I have a
16 witness come closer to do --

17 THE COURT: Sure.

18 MR. LEHRER: -- this?

19 THE COURT: Sure.

20 MR. LEHRER: Mr. Brady.

21 THE COURT: If you wanted to sit --

22 BAILIFF: I'll set him up.

23 THE COURT: Okay, yeah, he'll set you up, so --

24 BAILIFF: Come on over here, sir. You might not can
25 see it well from over there.

1 MR. LEHRER: Follow him.

2 THE COURT: All right, yes, sir.

3 BY MR. LEBLANC: (Continuing)

4 Q All right, so would you walk us through logging
5 into Employee Navigator?

6 A Sure, you need to put in the username and
7 password. It's gonna -- the first time logging in it will
8 prompt like an end user agreement, but we've been in -- you
9 know, this is a normal login. And once you log in, it
10 comes to the main broker page. So this is just, you know,
11 our -- Forum's main login page, and it has a list of all of
12 our clients.

13 Q Okay, so a su -- a -- a subscriber logs in and
14 they get here?

15 A Right, a user at our agency, so we establish who
16 has a username and password. That is typically our account
17 managers and client service advocates can login into this
18 system.

19 Q Right. When I said subscriber, I mean Forum
20 Benefits is a su -- is a subscriber to this software,
21 AssuredPartners is also.

22 A Correct, we purchased a license for Employee
23 Navigator, that -- that we can then build out our groups in
24 the system.

25 Q Right, so at this stage right now if

1 AssuredPartners log in, they see the same stuff, other than
2 you've got payable payrolls and all that, that's --

3 A Right.

4 Q -- that's data.

5 A Right.

6 Q So --

7 A They --

8 Q -- this is just the entry port. AssuredPartners
9 would see the same thing?

10 A Correct.

11 Q All right.

12 A Every client that's in the dropdown list,
13 obviously, but, yes.

14 Q All right, so you want -- the -- the base shell,
15 this is -- this is how it comes to Forum Benefits before
16 you've done anything to it, but added a client --

17 A Right.

18 Q -- or added a new client.

19 A You click on add company. Typically, from
20 scratch you can add one from a template if you have that
21 built, but this first time logged in, we would then type in
22 the name of -- of the account, and then down the way it
23 asks for like SIC code and a company identifier that we're
24 going to give it, say, and then hit create. Once we've
25 created the group and, like I said, I created one called

1 just called XXX; and all I did from that step, just hit
2 yes. This is the shell system.

3 Q Okay, and show me some parts of the shell that
4 look completely different from your buildout --

5 A Right, so --

6 Q -- or the space.

7 A -- if you -- if you click on, like, three line
8 hamburger icon, it's three next to documents, it'll go to
9 settings. And so this is just, again, a company profile,
10 it's going to be blank, other than the XXX that we put in
11 as the name SSE code. So all of this is blank. If you
12 scroll back to the top, you can see, you know, class
13 structure, contact, there's nothing there. It's the
14 defaults that are in the system. So then we have done
15 nothing other than said XXX. If you click on benefits,
16 that's where you would begin to build out the plans of a
17 group. And, you know, this one was in the template
18 company, but if you click in that, it's not gonna have any
19 -- any data in there. You would have to click on Add a
20 Plan over at the left to add, you know, plans in the
21 system.

22 Q And so this is where your buildout -- it's a lot
23 easier for one plan versus ten plans?

24 A Right, right.

25 Q Right.

1 A So if you click on create a plan you have to give
2 it a name, who's the carrier, and you know, if -- it's a
3 medical plan, who's the carrier, what's -- what's the name,
4 and you're just typing in all that information. Once it's
5 in there, then you're able to go in and add the benefits
6 specifically, and that's what we need from the carrier
7 contracts. If you click on that Medical 2021 plan and go
8 to benefits, this is where you fill out the summary and key
9 in, you know, deductibles, co-insurance, copays, all of
10 that jazz. It goes into a plan, as well as, you know, it's
11 on like right now, so this is just a -- it's -- all this
12 has to be mainly typed in.

13 Q All right. Are you -- can you -- are you ready
14 to go show one that you have built out, you know, --

15 A Sure.

16 Q -- demonstratively.

17 A That's just SSS, yeah, there you go. So this is
18 just generic, but, you know, here's one where, you know,
19 I've just added in, you know, Plan A, what's -- what's the
20 carrier, effective dates, and then once you click on -- if
21 you click on that first medical plan and go to the benefits
22 summary, you can see this is where, you know, whoever's
23 building out, typically our benefit technology team or
24 account managers with contracts plugging in all this data.
25 There's a lot of customizations that go on behind the scene

1 that we don't, you know, need to -- to walk through with
2 color schemes or logos and the language that we build
3 out --

4 Q Right.

5 A -- you know, explaining all that. But if you
6 scroll up over to the left side of under costs, that's
7 where, you know, we're able to get the rates from the
8 insurance company, but the contributions and things like
9 that, that will come, you know, from the client themselves,
10 how, you know, what are they charging the employees as far
11 as deductions.

12 Q All right, so when you build out the Employee
13 Navigator for a client, which -- what we're looking at
14 there is sort of Forum Benefits' template of the buildout,
15 the extra bells and whistles you put into it?

16 A Right. We didn't go into all the communications
17 and -- and, you know, things that we would normally add,
18 our words, things like that, that's not in this template,
19 but, no, we didn't go through that, all of the extra
20 customizations that we do for our clients.

21 Q Right, and from the earlier testimony, the screen
22 shooting, is that what you understand was being done? They
23 were screen -- taking screenshots of how you would build it
24 out?

25 A Correct, you know, taking screenshots of, you

1 know, that benefits screen, so it just makes it easier to
2 copy over.

3 Q That's the nutshell of it.

4 THE COURT: All right.

5 MR. LEHRER: Your -- Your Honor, the witness has
6 already testified -- that -- look it, it says 2021, like
7 the advances and -- we -- we can't even determine how this
8 compares to what it looked like in 2016, it's totally
9 prejudicial. Whether any of these fields are in there,
10 like we would have to have the ability to take discovery to
11 -- from Employee Navigator to determine if this is any
12 different than what was going on in 2016, when -- when Ms.
13 Winston had -- had only been there a few years. Now she's
14 been there a long time, I understand she understands a lot,
15 and she's -- her title has increased.

16 THE COURT: I understand. You'd have to determine
17 whether, in fact, anything could have -- or would have been
18 taken?

19 MR. LEHRER: Exactly, Your Honor, I mean it's just --
20 to -- to throw a 2021 website, like, let's talk about
21 advances in technology just since 2016, we have no way to
22 know any of this.

23 THE COURT: All right.

24 MR. LEHRER: Since 20 -- yeah, really, 2013.

25 THE COURT: But my question is I asked you earlier,

1 how much -- how much more advanced is it? Is it -- you
2 said almost monthly that there's advancements to it --

3 THE WITNESS: To the look, to the look of it.

4 THE COURT: And what would be here and what you can
5 add and what you --

6 THE WITNESS: On the medical string, not much has
7 changed as far as the data that's in it.

8 THE COURT: Right.

9 THE WITNESS: The look and view, I mean, you know,
10 it's cleaner, it's fresher.

11 THE COURT: Got it, all right.

12 MR. LEHRER: Your Honor, the other thing, and you can
13 cut me off if you want to, but the -- they never produced
14 the -- the three client file -- the three Navigator files,
15 they've never produced it. They could have produced an
16 electronic copy of that, so that we have -- had something
17 to compare to what is this -- this thing that -- that's now
18 being thrown up. I mean it's just completely improper, it
19 prevents us from putting on a full defense when it's last
20 minute like this.

21 THE COURT: All right, I'll -- I'll let you go through
22 it with her, but not -- I'm not gonna allow you to utilize
23 the demonstrative agent, so they'll just go through your
24 testimony just basically how you would go about doing it.
25 All right, bring them back.

1 MR. LEHRER: And just to clarify, the witness can't
2 look at this -- any of that during the testimony.

3 THE COURT: She's going to testify how she does it,
4 and how it was back then, and how it is now.

5 MR. LEBLANC: Okay, thank you.

6 (Whereupon, the Jury enters the courtroom.)

7 BAILIFF: The Jury's entering the courtroom, Your
8 Honor. The Jury's seated, Your Honor.

9 THE COURT: All right. Yes, sir, Mr. LeBlanc.

10 BY MR. LEBLANC: (Continuing)

11 Q Ms. Winston, can you describe Employee Navigator
12 when -- when you -- when you subscribe to the service --
13 Forum Benefits subscribes to the service, enrolls in it,
14 what does it look like when -- when it -- when you first go
15 into it to look -- to open up for a new company?

16 A So it's a home screen that has our -- our logo,
17 and we built out on there, but there's a -- a button to
18 click to add a client, and so that's how we would input all
19 of our client information in the system. And so we would
20 add a company, we'd put in there, you know, basic
21 information, address, SSE code, tax ID, and then we, again,
22 from that intake, would build the system out to, you know,
23 they're liking, so we've got different customizations that
24 we can do, as far as logos and colors and wording and what
25 they the system to do for them, so there's a lot of things

1 that you can turn on and off in the system, maybe don't
2 need that or, yes, we do need this. So once we, you know,
3 add that in, get it built out using that same term with all
4 of their benefits, we import their census information. We
5 run a couple tests, you know, demos through. Once we've
6 done all of that, then at that point we give the HR user,
7 whoever at that client needs access to that data, we'll
8 give them a username and then they'll set up a -- a
9 password.

10 Q All right. That was a mouthful, but I know a lot
11 of that -- what you said was you're -- you're entering the
12 employee data, employer data, and you're entering the plan
13 information.

14 A Correct.

15 Q We've been talking about that.

16 A Right.

17 Q But isn't there a lot of personalization that
18 Forum Benefit does to the buildout that's beyond just data
19 entry?

20 MR. LEHRER: Your Honor, I object to leading.

21 THE COURT: Just ask her what --

22 BY MR. LEBLANC:

23 Q What -- what -- what other personalization does
24 Forum Benefits put into the buildout of Employee Navigator,
25 besides just data entry?

1 A Sure, so we used a lot of the wording that we
2 also use in our customized Employee Guide. So we're just
3 adding a little bit more verbiage to the system than just
4 the standard, here's your deductible, here's, you know, the
5 standard benefits. So our customizations would have to be,
6 you know, the login, log out, the way that the client goes
7 into the system, all of the wording that we put under the
8 benefits, and as well as just making that system for that
9 employer. So what they need, what they don't need, we're
10 able to hide fields and -- and add things that's customized
11 specifically for what they're using that system for.

12 Q All right. Do you have any examples of
13 customization, the verbiage that you would put in there?

14 A Yeah, so we -- we bid out a -- a template
15 company, that when we get a new client, we can just kind of
16 copy that information over. So I would just say, you know,
17 if they have more than one medical plan, we have some
18 standard language that we use to explain to the employee
19 the difference between two, using it more as a decision-
20 making tool to really explain the ins and outs of their
21 benefits.

22 Q And why is that helpful to an employee?

23 A To make an educated decision on their benefits,
24 so it's not just here's this one and that one, we're --
25 we're giving them more information about that to make a

1 more educated decision.

2 Q So is that a part of the service that you provide
3 to the client is, "Hey, we don't just throw Employee
4 Navigator to your employees and they figure it out, we --
5 there's verbiage in there that guides them through?

6 MR. LEHRER: Objection, Your Honor, leading again.

7 THE COURT: Just ask what's in it.

8 BY MR. LEBLANC: (Continuing)

9 Q All right, you just described a insurance plan
10 verbiage. Is there any other verbiage that is unique or
11 part of Forum's buildout of the Employee Navigator account?

12 A Like I said, the -- the custom login screens that
13 our clients have, it's got direct contact information to
14 their dedicated advocates, so they'll see some popups right
15 when they logged in -- logged in to the system --

16 Q Okay, sorry, who --

17 A -- these are the requirements.

18 Q -- who's their dedicated advocate?

19 A So we have a team of client service advocates or
20 customer service specialists, another way to -- to see
21 that, so all of our clients have access to that one person
22 in our office. So, you know, earlier someone testified
23 that, you know, if you have a -- a question with claims, I
24 need a new ID card, or that, you know, just a question
25 about our benefits, you can call that person, our -- our --

1 at our agency rather than the insurance company directly.
2 So it gives them that contact information and provides them
3 with their -- with their contact information as they log
4 into the system.

5 Q So the -- when Employee Navigator comes to you,
6 when you first open a new company, it -- it doesn't have a
7 field in there to say, "Hey, here's your Customer Service
8 Advocate?"

9 A Right.

10 MR. LEHRER: Your Honor, again, it's -- he's just
11 leading this witness and telling her what to say.

12 THE COURT: All right, this is your witness, Mr.
13 LeBlanc, so you're gonna have to ask open-ended questions.

14 MR. LEBLANC: I understand.

15 BY MR. LEBLANC: (Continuing)

16 Q The -- the data that goes into Employee
17 Navigator, the employer/employee census information, is
18 there a way to import that in?

19 A The census information, yes, that can be imported
20 via an Excel spreadsheet.

21 Q So that was -- that was my question, how -- how
22 would you import it?

23 A There -- there's a tool in that system that,
24 essentially, you just kind of have to line up what they
25 use, determine if they use Social Security Number versus

1 SSN, you just kind of have to lineup the headings of those,
2 but it's in Excel spreadsheet, you put the data in, and
3 then, you know, import employees in enrollment, and then it
4 pops it, you know, into the system. It goes to kind of
5 like a wizard.

6 Q And that employer information a lot of times you
7 get from payroll; is that right?

8 A Correct, yeah.

9 Q So how -- how do you physically import it? You
10 -- is there something you do in your buildout that allows
11 you to import it?

12 A So the import tool is there, so the client gives
13 us the data. We do the cleanup, you know, the census, to
14 make sure it has the right headings and things like that,
15 but the import tool is built within Navigator, so we're
16 able to get the information, you know, tell the client what
17 information we need in Excel format, they send it back to
18 us, we clean it up and then import it into the system, and
19 it goes to the fields that are already, you know,
20 prepopulated and filled, that -- that we said, "These are
21 required."

22 Q And for the insurance plan information, how do
23 you import that?

24 A That does not get imported. He imports benefits.
25 There's some plans where you can import rates, if they're

1 age rated, but benefit detail is not importable, so that's
2 something that has to be, you know, found in the contracts
3 and manually keyed in.

4 Q Okay, so when you say found in the contract, what
5 do you have to do?

6 A We have to get each contract, medical, dental,
7 vision, life, disability, you know, whatever that benefit
8 is, we get that from the carrier. We go to the summary of
9 benefits within that contract, and read, you know, that
10 information, get knowledgeable, and then manually key it in
11 to the system.

12 Q Okay, so what benefit would it be for somebody to
13 take a screenshot of your buildout in -- in Employee
14 Navigator? What benefit would there be?

15 A The benefit would be so they can copy it over
16 very, very quickly. If the information's already there,
17 rather than doing the data mining and -- and getting, you
18 know, grabbing it from the contracts, it's just right
19 there, just copy -- copy or copy/paste.

20 Q Okay. You would agree that the information
21 included in Employee Navigator is confidential, a lot of
22 the information is?

23 A Yes.

24 MR. LEHRER: Objection, Your Honor, there's no basis
25 for her to give her opinion about what's confidential.

1 MR. LEBLANC: I'll rephrase it.

2 THE COURT: Okay.

3 BY MR. LEBLANC: (Continuing)

4 Q The employer information that's imported into
5 Employee Navigator, is that confidential, personal
6 information?

7 MR. LEHRER: Again, Your Honor, there's been no
8 foundation for this witness to give an opinion on
9 confidentiality.

10 THE COURT: Well, I think she can testify as to the
11 information that's in there, and whether -- well --

12 MR. LEBLANC: I'll -- I'll try it again.

13 THE COURT: All right.

14 BY MR. LEBLANC: (Continuing)

15 Q What information is imported into Employee
16 Navigator that's provided from the com -- the employer?
17 What -- tell -- tell me some of that information again.

18 A Typically, what we get from the employer is their
19 census data.

20 Q Okay.

21 A That's pretty much all that we ask from -- and --
22 and their deductions.

23 Q Okay.

24 A You know, what they're charging.

25 Q And the census data, does that include people's

1 names?

2 A Names, date of birth, social, data or hire,
3 Social Security Number, date of hire, address.

4 Q And do you also get their salary or payroll
5 information?

6 A Most of the time, yes, if there's any benefits
7 that are pertaining to that, like disability or if we are
8 going to be doing their ACA, which is Affordable Care Act,
9 294, 295 processing, then we require that data.

10 Q And would you consider that data that we just
11 discussed to be confidential?

12 MR. LEHRER: Objection, Your Honor, again, her opinion
13 on what's confidential is irrelevant.

14 THE COURT: I sustain, she can't give her opinion,
15 she's not a -- she's not a expert.

16 BY MR. LEBLANC: (Continuing)

17 Q How does Forum Benefits protect the
18 confidentiality of information imported into Employee
19 Navigator?

20 MR. LEHRER: Objection, Your Honor.

21 THE COURT: She's not going to have that information.
22 She's not going to be allowed to testify to that
23 information.

24 MR. LEBLANC: No, I mean even if it's not
25 confidential, you can protect the confidentiality of it.

1 THE COURT: All right.

2 MR. LEHRER: Your Honor, this witness has not been
3 established as -- as an expert to testify as to Forum
4 Benefits' confidentiality practices.

5 THE COURT: I'll let her testify, go ahead.

6 BY MR. LEBLANC: (Continuing)

7 Q So -- so how does Forum Benefits -- whether the
8 information in there is confidential or not, how does Forum
9 Benefits protect the confidentiality of that information?

10 MR. LEHRER: Your Honor, again, he said whether it's
11 confidential or not, then he said the confidential
12 information. I mean the question --

13 THE COURT: How does it protect the information that
14 it keeps on its website?

15 THE WITNESS: So we have a list of users, you know,
16 from our clients. We ask them who -- who can have access
17 to this system, and then once we know that, we give them
18 certain ac -- as -- sorry, certain access to whatever. So
19 if they don't need to see salaries, they can't see
20 salaries. And then we're protecting that just with a
21 login, username and password, so we don't give them a
22 password. We set up a username, they create a password.

23 BY MR. LEBLANC: (Continuing)

24 Q Okay, so if -- if a client wants -- if a company
25 wants their employers to be able to access Employee

1 Navigator, how do you provide them access or limit their
2 access to it? That's my question.

3 A Yeah, so whoever's the main point of contact at
4 that client would come to us and say, "Hey, we want to give
5 Joe, whoever, you know access to the system." And then we
6 would say, "What type of access would they need? Can they
7 see everything? Can they only see certain classes?" And
8 then our team, you know, either the account manager or our
9 Benefits Depart -- Technology Department would set up that
10 access by allowing them into the system to have what we
11 would call a HR user access.

12 Q Okay, and so if you set up this system for an HR
13 user, what kind of access would an HR user have to the data
14 it contained in the Employee Navigator account?

15 A So those folks that have access, typically, have
16 access to all the -- the view of the benefits screen. They
17 can't edit or change the benefits, but they can see, you
18 know, all the benefit -- all that -- deductible
19 coinsurance, like I talked about previously, they can see
20 that data; but they also have access to export census data,
21 so they can see all of their employee information, you
22 know, what plans that those -- those employees are enrolled
23 in in the system, what their payroll deductions are, and
24 then we all -- they can also download any documents that --
25 that are imported in there --

1 Q Okay.

2 A -- reflected in there.

3 Q That's what we just talked about for the
4 employer. How about internally for Forum Benefits, how
5 does Forum Benefits protect the confidentiality of
6 information in the Employee Navigator account?

7 MR. LEHRER: Objection, Your Honor, again, there's no
8 foundation for this witness to give this testimony.

9 THE COURT: All right, I'll -- all right, I'll
10 overrule the objection, just answer the one singular
11 question.

12 BY WITNESS: (Continuing)

13 A All of our employees have a username and
14 password, and we also have a two-factor authentication
15 behind the scenes as well, so if you try to login, you will
16 have to type in a code, you know, that it sends to your
17 cell phone or email, however that person has it set up.

18 Q What access do producers, sales representatives
19 for Forum Benefits have to Employee Navigator accounts?

20 A We do not set producers or -- or agents up with
21 access to the system.

22 Q And why is that?

23 A They don't know it. They don't understand it.
24 That's just not in their -- their job description, what --
25 of what they do.

1 Q A few minutes ago we talked about the Employee
2 Navigator User Guide, what is that used for?

3 A It's a guide that was created to train the HR
4 users of our clients. So when we first, we meaning Forum,
5 purchased the license for Navigator, we were putting on a
6 lot of clients in the system, and rather than training them
7 one-by-one, we hosted a day of training for all of our HR
8 users to come to -- and I -- I created the guide to assist
9 us in that training and give to them. Also, throughout the
10 years they have new people coming on the system to help --
11 help train them.

12 Q All right, switch gears from Employee Navigator
13 to the SharePoint server. Can you identify some of the
14 information that Forum Benefits collects to use during the
15 renewal process to negotiate better renewal quotes?

16 A Yeah, through the renewal process we are
17 gathering the census information from our clients. We
18 already have that in -- in-house. We are putting that
19 information into a spreadsheet that we've created
20 internally, called a real spreadsheet, and then we're also
21 getting the renewal from the carrier, so what they want the
22 rates to be at renewal. So we get the census data, we put
23 it in the spreadsheet, and there's a lot of stuff within
24 that spreadsheet. I don't know how detailed you want me to
25 get on that, but --

1 Q Well, tell -- tell me what kind of stuff is in
2 that spreadsheet that would use the census data.

3 A So there -- there are some formulas that have
4 been built over many years, that once we put the census --
5 import the census data into that spreadsheet, the formulas
6 pop out things, like, you know, average age, median age,
7 mode, but it also does things like demographic factors.
8 And those are Milliman formulas that, you know, we use to
9 determine, you know, kind of the male/female ratio versus
10 average age to -- to determine that demographic factor for
11 the employees and the spouses on the medical plan.

12 Q Right. You used the term "Milliman" factors, can
13 you spell that?

14 A Oh, gosh, I think it's M-I-L-I-M-A-N.

15 Q Tell -- tell me what Milliman factors are.

16 A So Milliman is an actuarial tool, benchmarking
17 tool that's used, same as kind of the Kaiser Family
18 Foundation, or KFF. It's -- it's formulas that these
19 agencies have done, and you can, you know, use those to do
20 averages or a benchmark against national averages for data.

21 Q And so what use do you make of that benchmark,
22 and what do -- do you do with it?

23 A So these are some of the same factors that an
24 underwriter's going to use to underwrite a case, to
25 determine the rate that's appropriate for that client. So

1 they're looking at things like male-to-female ratio,
2 average age, demographic factor to come up with a -- along
3 with experience to come up with a rate for that client. So
4 we're using those factors to bounce it against what let's
5 say a Blue Cross, you know, would use to determine that
6 renewal factor, and make sure that it jives with -- with
7 the information that they're giving us.

8 Q And what does Forum Benefits do if it doesn't
9 match up with what the insurance company has provided?

10 A We're using that data to then, I guess you would
11 say, argue back with the -- the carrier on behalf of our
12 client to get a better rate.

13 Q All right. And -- and what you just described
14 was an example of how Forum Benefits uses census data to
15 negotiate?

16 A Correct.

17 Q Are there any other pieces of information that
18 Forum Benefits collects to negotiate?

19 A Yes. I mean we -- we then -- we -- we've got
20 some different systems that we use, some in, you know,
21 internal systems. We got a Stata graph that we created
22 that uses similar, you know, benchmarking data, so we're
23 able to take the demographic factors from that renewal
24 spreadsheet. We're taking the actuarial value of the
25 plans, and that's CMS actuarial value calculator for each

1 year. We're taking all of those factors, and we built a
2 spreadsheet that contains all of that information for all
3 of our clients, and it aggregates that data to benchmark,
4 to show a client where they are in relation to life-size
5 employer groups. And, again, we're just using that data to
6 see, you know, the difference between a manual rate,
7 something that if a carrier doesn't know anything about
8 you, kind of where your rate would be, versus their
9 experience rate.

10 Q All right, you used the term "Stata graph," can
11 you explain what that is?

12 A Yeah, so all of those things that I just
13 mentioned, it's -- it's in -- it's Expre -- sorry, Excel
14 spreadsheet that we've created that houses all of that data
15 on each of our clients, so each of the Forum clients. And
16 then a Stata graph is, essentially, a graph that has a
17 bunch of dots, plot points, on it for specific pieces of
18 information, and it neutralizes that data, averages it out.

19 Q And that's data for a single client or multiple
20 clients?

21 A Multiple. All of our clients that are age-rated,
22 or sorry, not age-rated. That composite rate, and so
23 they'd have like a single like employee only rate.

24 Q How about claims history? Does Forum Benefits
25 use -- or how does Forum Benefits use claims history in

1 negotiating rates?

2 A So certain carriers are going to give you
3 information on the client's claims data. I think back --
4 back in the day -- back at this -- this time, we were
5 getting that information on groups that had 50 or more
6 employees. So a carrier will provide you with premium
7 versus clients. The premium that the employer group pays
8 out versus what the carrier pays out in claims. So what's
9 their loss ratio in that scenario? And then we have an
10 internal spreadsheet that we use that has, again, all of
11 our clients' premiums versus claims in one spreadsheet,
12 that our account managers access and use at renewal. Also
13 throughout the year we are getting data from the client,
14 and we're adding some notes, by using account managers or
15 adding in notes about particular high-cost claimants. So
16 if our -- a member reaches out to one of their -- the --
17 the client service advocate and, you know, gives them
18 specific information about a high cost drug they're on, or
19 a particular medical situation that they're going through,
20 we'll take note of that, so that at the time of the renewal
21 and we're having that conversation with underwriting, we
22 can then go back to -- back to the underwriter with that
23 information with our knowledge of what's going on.

24 Q So what would be an example of some medication
25 information that Forum's customer service advocates would

1 might collect over the year. Give me -- provide -- what --
2 what would be an example?

3 A So if they're -- if they're calling and asking
4 about a medication, they say, "Hey, you know, I'm, you
5 know, asking about, you know," what -- whatever the name
6 of, you know, of a medication is, we're able to then go and
7 see, well, how much does that cost? And so then we're
8 plotting, you know, or putting that information in -- in
9 the spreadsheet of, okay, this individual's taking the
10 medication that costs \$12,000 a month, so, obviously,
11 that's going to be, you know, hit the claims for that
12 group, and cause their rates to go up; or if we know that
13 someone has cancer, breast cancer, or going through a bone
14 marrow transplant, you know, obviously, that's gonna be a
15 very large claimant for the group, and it's just, again, a
16 way for us to know and understand the renewal that's about
17 to come out, and a way for us to negotiate with that
18 information.

19 Q And where does Forum Benefits' record or store
20 that information?

21 A It's in a -- a -- it would be premiums versus
22 claims spreadsheet, so we just have a note section in there
23 next to the high-cost claimants.

24 Q So there's -- there's a Excel spreadsheet that
25 says premiums versus claims?

1 A Correct.

2 Q How about loss ratio? What does Forum Benefits
3 -- what use does Forum Benefits make of the loss ratio?

4 A To a carrier, a good loss ratio would be 80
5 percent or under, so 20 percent they're using for admin at
6 -- at their company. If your loss ratio's over 80 percent,
7 you're -- the clients -- the employer group is likely gonna
8 get an increase in -- in their rates.

9 Q And by loss ratio can you describe --

10 A Yeah, so --

11 Q -- briefly what that is?

12 A Yeah, premium that they pay, you know, every
13 month to the carrier, versus the claims that the carrier
14 pays out.

15 Q Okay, so how -- who -- first, who calculates the
16 loss ratio?

17 A The carrier does. The only time that we get that
18 information, at the time, was 50 employees are -- or over
19 on the plan now, it's 100 or over.

20 Q Okay, and so the carrier calculates the loss
21 ratio and what the -- what -- what -- how does Forum
22 Benefits then use that information?

23 A If we know that it's a favorable loss ratio, then
24 it's -- then we're able to negotiate with the underwriter a
25 favorable renewal.

1 Q What -- what access limitations does Forum
2 Benefits provide for its SharePoint server?

3 A Only employees of the Company that have a Forum
4 email address have access to it. So you have to login with
5 your email address and password to get into SharePoint.

6 Q So who would have a login credential to login to
7 Forum Benefits' SharePoint server?

8 A Any account manager, client service advocate,
9 benefits tech person or -- or a bro -- agents or brokers
10 that have a Forum email address.

11 Q And so those are all employees of Forum Benefits?

12 A Correct.

13 Q Well, then what access do producers or sales
14 representatives have to the SharePoint server?

15 A They have full access.

16 Q The -- the -- the sales representatives and
17 producers have full access to the server?

18 A Correct.

19 Q Is that why Mr. Bannon had access, because, at
20 one point, he was an employee?

21 A Correct.

22 Q Why would Mr. Bannon ever need to access a
23 renewal spreadsheet for any client?

24 MR. LEHRER: Objection, calls for speculation.

25 THE COURT: I agree, I'll sustain the objection.

1 BY MR. LEBLANC: (Continuing)

2 Q The SharePoint server is -- it's not a piece of
3 equipment in a closet, is it?

4 A No.

5 MR. LEHRER: Object to the leading, Your Honor, and --
6 and it's irrelevant.

7 MR. LEBLANC: I'm just trying to establish that it's
8 in the Cloud.

9 THE COURT: All right, ask her if it's in the Cloud.

10 BY MR. LEBLANC: (Continuing)

11 Q Where is the information that Forum Benefits
12 saves to the SharePoint server?

13 A It's in the Cloud.

14 Q Right, and that's -- that's a concept. I mean
15 that -- that's a concept that some people don't understand,
16 and a lot of times I don't understand. So how -- when
17 somebody logs into the SharePoint server, what do they see?
18 What screen do they see?

19 A There -- there's two screens that it comes up to.
20 There's client files and then there's our intranet --
21 internal files, which is named file server.

22 Q Okay. So let's talk about the client files
23 first. So somebody logs in, what would they do if they
24 wanted to go see St. Andrews Public Services Dif- --
25 District records?

1 A So they'd click on client files, they would put
2 in the -- the office. We have several different offices.
3 So, particularly, with St. Andrews, they would click on the
4 Charleston office. Once all of those clients come up, they
5 would click on the name of -- of the group or employer,
6 which would be St. Andrews in this case. Once you get into
7 that, it has a -- a folder for every year, and that
8 pertains to their benefit renewal year, so --

9 MR. LEHRER: Your Honor, I'd like to object. If we're
10 gonna talk about that everything is clicked throughout the
11 system, I mean it -- it's just gotten to be a little
12 irrelevant.

13 THE COURT: Well --

14 MR. LEBLANC: I think I'll show the relevance in the
15 next question.

16 THE COURT: All right, ask the next question, please.

17 BY MR. LEBLANC: (Continuing)

18 Q So under St. Andrews, this is the example you
19 gave, what folders are underneath St. Andrews?

20 A Census, benefits, employee transactions, group
21 paperwork and renewal.

22 Q So what folder would somebody go to if they
23 wanted the census information for a client?

24 A They would click on the census folder.

25 Q Okay. I'm going to pass you what's been marked

1 as Plaintiff's Exhibit 16, and ask you to take a look at
2 it.

3 A (Reviews document.)

4 MR. LEBLANC: Can you put it up on the screen, please?

5 BY MR. LEBLANC: (Continuing)

6 Q Do you recognize what's shown in here?

7 A I do.

8 Q And what -- what do you call this document?

9 A This was the PTG, Palmetto Technology Group,
10 report of the files that were accessed by Brian Bannon.

11 Q And -- and who contacted PTG to have them conduct
12 this forensic investigation?

13 A I believe I may have submitted the ticket, I
14 cannot remember, to be honest, and --

15 Q And -- and this was the product that they
16 generated back to Forum Benefits?

17 A Correct.

18 Q All right, let's take a look on this. You're
19 familiar with the information contained on this?

20 A Yes.

21 Q All right, so there's a date column, IP address,
22 username and then the file. So I'm going to ask Kim to
23 scroll down to line 434, row -- row 434, and if you would
24 do the same?

25 A Okay. Okay.

1 Q All right, do you see -- are you at 434?

2 A I am.

3 Q So what is -- what file is on that row?

4 A Renewal spreadsheet 2016 for Alpha Genesis.

5 Q So that's the renewal spreadsheet for Alpha
6 Genesis, so would that file have come out of the census
7 folder in SharePoint server?

8 A No.

9 Q What folder would that file have come out of?

10 A Renewal.

11 Q Oh, there's a renewal folder? Let's take a look
12 at --

13 MR. LEHRER: Your Honor, if we're going to go through
14 ever file folder --

15 THE COURT: Yeah, we don't need to do that.

16 MR. LEHRER: -- we're going to be here all day.

17 THE COURT: Yeah, we don't need to do that. We need
18 to move along.

19 MR. LEBLANC: I don't plan on doing that, I just plan
20 on giving some --

21 THE COURT: Well, you don't ask a question what have
22 you found in the server folder if you knew it was going to
23 be found in the renewal folder, because you -- you told her
24 the answer when you asked her the question, just get to the
25 question.

1 BY MR. LEBLANC: (Continuing)

2 Q If you will take a look at line 465?

3 A (Reviews document.)

4 Q What do you -- what can you tell me about line
5 465?

6 A It's another renewal spreadsheet for Marathon
7 Auto.

8 Q All right, so that group there on the right, does
9 that tell you what folder it came out of?

10 A No, it does not.

11 Q All right.

12 A No.

13 Q What's the group mean? What does it mean when it
14 says Marathon Auto?

15 A It's that client folder.

16 Q It's out of that client folder?

17 A Right.

18 Q So is it po -- would it be possible for that --
19 and I didn't ask a good question. Would it be possible for
20 that to indicate Marathon Auto, if that came out of a St.
21 Andrews' folder?

22 MR. LEHRER: Objection, speculation, Your Honor.

23 THE COURT: Do you know the answer to the question, or
24 would you be speculating?

25 THE WITNESS: I --

1 THE COURT: You'd be guessing?

2 THE WITNESS: I'd be guessing.

3 THE COURT: Sustained.

4 BY MR. LEBLANC: (Continuing)

5 Q Whose client was Marathon Auto?

6 A I -- that was a client before I joined Forum, but
7 I believe it belonged to Brian Stritt, I'm not 100 percent
8 on that.

9 MR. LEHRER: Your Honor, just object to the
10 speculation.

11 THE COURT: All right, Ladies and gentlemen, I'm not
12 gonna lie to you, I need a break, so we're just gonna take
13 about a 15-minute break, and we'll get you right back out
14 here, okay?

15 (Whereupon, the Jury leaves the courtroom.)

16 (Whereupon, the Court takes a brief recess.)

17 BAILIFF: All rise, the Court's back in session.

18 THE COURT: All right, thank you very much. Bring
19 them in.

20 MR. LEBLANC: One thing from the Plaintiff.

21 THE COURT: Yes, sir.

22 MR. LEBLANC: -- I forgot one witness will be -- have
23 a deposition record in, it's Sarah Hildreth.

24 THE COURT: Not a problem. So whoever you -- who --
25 whoever you're not planning on calling today, you need to

1 go ahead and release them from their subpoenas.

2 MR. LEBLANC: Absolutely. I -- I told him today at
3 lunchtime.

4 THE COURT: Okay, so they're all released at --

5 MR. LEBLANC: Yes, sir.

6 THE COURT: Okay, all right, that sounds great, thank
7 you very much, I appreciate it. All right, so bring them
8 out.

9 (Whereupon, the Jury enters the courtroom.)

10 BAILIFF: The Jury's seated, Your Honor.

11 THE COURT: All right, thank you very much, I forgot
12 to blame it on Karen that I had to take a break. I
13 actually just had to take the robe off for a second, so I
14 -- I just figured I'd blame it on somebody else. All
15 right, thank you very much. All right.

16 MR. LEBLANC: Oh, am I -- are we ready to proceed?

17 THE COURT: Absolutely, yes, sir, happy to hear from
18 you.

19 BY MR. LEBLANC: (Continuing)

20 Q We're looking at Plaintiff's Exhibit 16, and I'll
21 call your attention to row 651. Can you tell me what's in
22 that row?

23 A (Reviews document.) 651 would be the HR User
24 Guide.

25 Q All right, and -- and what group is the HR User

1 Guide affiliated with?

2 A The internal file server.

3 Q And so what does internal des -- designate? What
4 do you mean by internal?

5 A Internal is that group of folders that you would
6 click on file server and go in, and it -- it pertains
7 nonclient information.

8 Q That's all I have with that. I'll pass you
9 what's been previously -- I'm done with that exhibit, I'll
10 pass you what's been previously marked as Plaintiff's
11 Exhibit 166. Can you tell me what's shown in Plaintiff's
12 Exhibit 166?

13 THE COURT: Hold on, let's see if they have it.

14 MR. LEHRER: We're saying that -- I'm getting an
15 indication that might not have been --

16 MR. CARLSTEDT: No, thi -- this one has not been put
17 into evidence.

18 MR. LEBLANC: No, it was pre -- previously marked.

19 MR. CARLSTEDT: Yes, that's correct.

20 MR. LEBLANC: Okay.

21 THE COURT: Okay. Continue.

22 BY MR. LEBLANC: (Continuing)

23 Q So go ahead.

24 A It is a -- an attendee report.

25 Q All right.

1 MR. LEBLANC: I'd move Plaintiff's Exhibit 166 into
2 evidence.

3 THE COURT: All right, any objections?

4 MR. LEHRER: Yes, Your Honor, the witness hasn't laid
5 any foundation for the document.

6 THE COURT: All right. Lay a little bit of foundation
7 as to whether her -- what the knowledge is of the document
8 by the witness.

9 THE WITNESS: So this is a report from GoToMeeting.
10 We use that for all of our staff meetings or client
11 meetings, and it's a report that shows who attended a
12 particular meeting on what day, and it's got the meeting
13 ID, who attended it, and who set it up.

14 THE COURT: Who generates that?

15 THE WITNESS: Currently, me, at our agency. At the
16 time it was Kathryn (phonetic) Ingles.

17 THE COURT: All right, I'll allow it.

18 MR. LEHRER: Your -- Your Honor, I mean -- I'm sorry,
19 to clarify, she did not generate this report; is that what
20 she said?

21 THE WITNESS: I -- I did pull this report several
22 years ago. We -- Kathryn and I both had access to this.

23 MR. LEHRER: Okay.

24 THE COURT: All right, thank you, ma'am.

25 MR. LEBLANC: It's in evidence?

1 THE COURT: Yes.

2 (Whereupon, Plaintiff's Exhibit Number 166 is marked for
3 the record and admitted into evidence.)

4 BY MR. LEBLANC: (Continuing)

5 Q And what is this --

6 MR. LEBLANC: Put 166 up on the board, please. Make
7 it a little bit bigger.

8 BY MR. LEBLANC: (Continuing)

9 Q What does this report that's shown in Plaintiff's
10 Exhibit 166 tell you about whether Brian Bannon attended
11 phone call meetings on Monday mornings.

12 A (Reviews document.) So this is a report that's
13 downloadable, again, from GoToMeeting, and we have a -- a
14 Monday meeting, a recurring company meeting, so it shows
15 dates, September 26, 2016, through November 7th, 2016, of
16 attendance.

17 MR. LEBLANC: That's all the questions I have.

18 THE COURT: All right, thank you, ma'am.

19 **CROSS-EXAMINATION**

20 BY MR. LEHRER:

21 Q Ms. Winston, hi, I'm Jeff Lehrer, we've met
22 before.

23 A Yes.

24 Q You understand I represent the Defendants in this
25 case?

1 A Correct.

2 Q The -- you -- you've been sitting in the
3 courtroom pretty much the whole time now, I believe,
4 haven't you?

5 A Almost. I wasn't here for the opening.

6 Q And you've heard the testimony so far that as far
7 as Mr. Bannon is concerned, there's only -- there was only
8 three of his clients that were using the Employee
9 Navigator; is that right?

10 A No. That -- that were on Employee Navigator?

11 Q Yes, they were actually -- where there was -- I
12 mean we can look at the documents, where the -- the login
13 was given to -- the client gave the login to Mr. Bannon,
14 and he gave the login to AssuredPartners. We're only
15 talking about three clients from these documents.

16 A So just so I'm clear, three clients that gave
17 their login information, correct.

18 Q Right. Are you aware of other Brian Bannon
19 clients that were using Employee Navigator?

20 A That were on -- built on this system? Yes.

21 Q No, that were using Employee Navigator. The
22 client was using Employee Navigator.

23 A The client logging in?

24 Q Right.

25 A I'm not aware of -- I would have to look, to be

1 honest, at -- at those, to see the -- I would have to
2 download a report, just like this one, to see the log
3 notes.

4 Q And, obviously, if the client doesn't have a
5 login, they can't give that to Mr. Bannon, right?

6 A Correct.

7 Q Okay. And the only -- the evidence we have in
8 this case so far is that there were three clients who
9 consented to Mr. Bannon using their login and password to
10 access Navigator, correct?

11 A I'm assuming so, yes.

12 Q And all the Navigator you talked about on direct,
13 that was just in general, correct?

14 A So the -- the --

15 Q That was in general. You -- you're talking in
16 general terms about the Employee Navigator with Forum
17 Benefits. None of that was specifically -- you didn't talk
18 about any one of those three clients specific, did you?

19 A No, we did not in particular about clients.

20 Q And the -- the SharePoint system you said, that
21 only employees have logins, but then -- but it's your
22 understanding that Mr. Bannon converted to an independent
23 contractor; do you understand that?

24 A As of this trial, yes.

25 Q Okay. And he was not pulled back his access, was

1 he?

2 A No.

3 Q Okay. So he was an independent contractor who
4 had access, correct?

5 A I -- I'm not -- in employment I -- I can't say
6 whether --

7 Q Okay.

8 A -- or not he was --

9 Q Well, you don't -- you don't know him to have
10 been an employee of Forum Benefits in 2016, do you?

11 A Yes. I -- all of our -- our sales --

12 Q Okay.

13 A Our salespeople I would consider an employee of
14 our company, yes.

15 Q So you thought he was an employee?

16 A Yes.

17 Q Okay. But you've heard the testimony that he was
18 an independent contractor, correct?

19 A Yes, I've heard that used.

20 Q Okay, so you were mistaken, correct?

21 A No, I wouldn't say that.

22 Q You -- have you ever seen a W-2, that Mr. Bannon
23 was paid on W-2 in 2016?

24 A No, I don't have access to our payroll records,
25 other than my self's.

1 Q So your -- your opinion that he was an employee
2 is just based on some understanding that most of -- that
3 you thought the salespeople were employees?

4 A Yes.

5 Q But isn't it, in fact, true that -- that most of
6 -- if not all the sales individuals in 2016 were
7 independent contractors?

8 A No, like I said, I don't have --

9 Q Okay.

10 A I'm not privy to that information.

11 Q You don't -- you don't know, do you?

12 A I'm not privy to that information.

13 Q And you thought, like, for example, Mack Ward,
14 did you think he was an employee?

15 A I would consider -- I'm not gonna define, you
16 know, someone as -- if you signed a W-2, or if you signed a
17 1099, I don't know that.

18 Q You don't know whether somebody was an employee
19 or not? That -- that was not your department. You weren't
20 HR, you didn't know --

21 A Correct.

22 Q -- who was an employee or not?

23 A Correct.

24 Q But you're not aware of any -- when Mr. Bannon
25 testified he was changed to an independent contractor,

1 you're not aware of any change in his access to the
2 SharePoint system?

3 A Nope, I did not manage that access.

4 Q And Mr. Bannon testified that when he logged in,
5 there was no like thing that came up that said he had to
6 click on this is confidential, if you want access, there's
7 nothing like that that pops up in SharePoint, is there?

8 A No, there's no popups.

9 Q There's nothing you have to click on that says
10 you understand this is confidential information of any
11 type?

12 A No.

13 Q Okay.

14 A Other than your login, username and password.

15 Q And the -- the people who are given access to the
16 SharePoint, they're given complete access. I mean they can
17 see anything, at least from Mr. Bannon's side, he can see
18 any of the files, right?

19 A There -- there are certain files that only folks
20 in our HR Department can see.

21 Q Okay. So SharePoint -- the SharePoint system has
22 the ability to narrow down access?

23 A I would assume.

24 Q Yeah.

25 A Yes.

1 Q And so if there's any secret sauce -- super
2 secret sauce, that should be in that more narrow access,
3 correct?

4 A I would assume.

5 Q And so all of this access we -- that you've just
6 gone over, you're gone through all this list of hundreds of
7 -- of things that Mr. Bannon's alleged to have accessed,
8 this was not put in the super secret sauce category, was
9 it?

10 A We don't have a folder with that, but, yeah --
11 but --

12 Q It wasn't put in there, was it?

13 A There's no restrictions on that.

14 Q Right. I mean it could -- if there was something
15 in here that is a trade secret, that is the secret formula
16 that Forum Benefit's using, and nobody else is using, it
17 could have been put in the super secret category on
18 SharePoint, and Mr. Bannon would have never had access,
19 correct?

20 A I'm assuming so.

21 Q Okay.

22 A I -- I -- I do not buildout SharePoint.

23 Q Okay. But you identified as to what's -- what
24 all's in it and where -- where things are and how you click
25 on it, right?

1 A Right, 'cause I have access to those --

2 Q Okay.

3 A -- files.

4 Q And, in fact, isn't it true that prior to the
5 filing of this lawsuit, the end of 2016, you didn't have --
6 you hadn't signed any -- any restrictive covenants with
7 Forum Benefits, had you?

8 A I did.

9 Q Before the sale of to Alera in 2016?

10 A Yes.

11 Q Okay.

12 A With Palmetto Benefit Management at the time.

13 Q A restrictive covenant, a noncompete, non-piracy,
14 that type of thing?

15 A I'm sure pretty sure --

16 Q Okay.

17 A -- as part of my employee agreement.

18 MR. LEHRER: Your Honor, I'm going to open the -- the
19 deposition for the record.

20 THE COURT: Yes, sir.

21 BY MR. LEHRER: (Continuing)

22 Q Ms. Winston, do you recall me taking your dip --
23 deposition back in June of 2019?

24 A Yes.

25 Q Okay, and you were put under oath and gave your

1 -- your best testimony at the time, correct?

2 A Correct.

3 Q All right. I'm gonna -- I'm gonna start you on
4 19.

5 A Do you want me to hold it?

6 Q Yeah, you take it, I'm gonna go get my own copy.

7 A Okay.

8 Q Okay, let's start at the bottom of page 19, line
9 22; do you see that?

10 A (Reviews document.) Yes.

11 Q It says, "Okay, when you started working with
12 Palmetto Benefits, did you sign any type of employment
13 agreement," and you said, "I believe so;" do you see that?

14 A Yes.

15 Q I say, "Okay, do you have any type of, like,
16 noncompete in that agreement that you know of?" "Yes, I do
17 now," is your answer, correct?

18 A Yes.

19 Q And then I say, "You do now, did that have -- has
20 that been since 2012 that you signed that?" You said,
21 "Yes."

22 A Yes.

23 Q Right?

24 A Uh-huh.

25 Q And then I said, "Do you remember when it was

1 signed," and you said, "Three years ago, two -- no, two
2 years ago," correct?

3 A Correct.

4 Q "And was that part of the sale?" You said,
5 "Yes."

6 A Yes.

7 Q And then I said, "Okay, so after Forum Benefits
8 -- I think it was Forum Benefits they had sold, the new
9 company asked you to sign a restrictive covenant type
10 agreement," and you said, "Right."

11 A Correct.

12 Q And the sale of Forum Benefits, Inc., to this
13 Alera Company was in December -- or December 31st of 2016,
14 correct?

15 A Yes.

16 Q All right.

17 A I believe so.

18 Q And my -- the deposition I took that we talked
19 about was in '19, and so about two years earlier would have
20 been 2017 after the sale, correct?

21 A Correct.

22 Q Now, the, you know, you -- you talked about all
23 the customization and -- and things that -- that are done
24 with all these systems, the -- I want to show you Exhibit
25 91, and did -- did you hear the forens -- Mr. Zielinski

1 testify about his analysis?

2 A Oh.

3 Q Yeah.

4 A I didn't know if you were finished with the
5 question.

6 Q Yes.

7 A I took a short bathroom break during his, but,
8 yes, I was here for most of it.

9 Q Okay, so this -- this -- this Exhibit 91 is a
10 list of -- I believe it's just four files that he -- that
11 he said were the ones that he could show -- that he could
12 tell were downloaded by Mr. Bannon.

13 A Okay.

14 Q All right, and so all that stuff you were talking
15 about earlier, this -- these are just files related to St.
16 Andrews Public Service District, correct?

17 A Yes.

18 Q And there are no -- no files outside of St.
19 Andrews Public Service District that was shown as a
20 download in this, correct?

21 A Not on this, correct.

22 Q Okay. Isn't it true that the clients have the
23 right to choose who they want to be their insurance agent?

24 A Yes.

25 Q And there's -- there's no restriction, they can

1 -- they can change agents at any time?

2 A Correct.

3 Q And they -- if they're on a plan, they're mid-
4 year, they're on a plan, and they change agents, that plan
5 still continues, correct?

6 A Correct.

7 Q They're still with the same -- all of the
8 information that is going to -- should be the same, because
9 it's under the same carrier plan for the year.

10 A Correct.

11 Q And isn't it important if, during that plan year,
12 the client changes agent, that they have continuity in the
13 plan administration information that goes from one broker
14 to the next?

15 A Can you ask the question again?

16 Q Isn't it true that if a -- if a client changes
17 agent during, you know, mid -- mid-year, now they're not in
18 renewal, isn't it true that it's important for them to have
19 continuity of their plan administration data as they're
20 transferring from one agent to the other?

21 A Correct.

22 Q And when -- when Forum Benefits give -- give
23 those clients access to Employee Navigator, there's no
24 restrictions put on that client in how they case use it, is
25 there?

1 A How they can use Employee Navigator?

2 Q Right.

3 A Yes, there are -- we have certain restrictions in
4 the system, as to what they can do, 'cause --

5 Q Right, but there's -- there's no like contract
6 they signed and said they won't do certain things with the
7 in- -- with the information?

8 A There's no contract between us and the client.
9 The contract is between their end-user agreement with
10 Navigator. So when they log in, they are prompted with the
11 terms of use that they have to electronically sign, and we
12 do, as well, as users -- as broker users.

13 Q But there's no restriction that Forum Benefits
14 makes a client promise that they will not give their login
15 or password to somebody else? There's nothing that Forum
16 Benefits makes them sign?

17 A That Forum Benefits makes them sign?

18 Q Right.

19 A No.

20 Q Okay. And -- and the -- I mean the -- the -- if
21 you've got multiple people in an HR Department at a client,
22 they may share that with -- the password with each other,
23 correct?

24 A Typically, no, our clients do not do that. We
25 set up each and every one, so they have their own

1 individual, because of the two-factor identification that
2 it has to go through.

3 Q But they could, couldn't they? I mean there's --
4 there's no way for you to know what they're doing, if -- if
5 all they've got to do is, if -- if John Doe comes in one
6 day and says, "Hey, I need you to help me with Navigator,"
7 you know, he gets the password that's from somebody else.
8 You all don't know that that's -- whether that's going on
9 or not?

10 A I would be speculating, but --

11 Q Okay.

12 A -- yes, I would not know.

13 Q Wouldn't you agree that if there's some note that
14 is made from a -- from an agent about a problem with --
15 that an employee may have with their benefits, that that
16 note should stay with the plan administration file?
17 Meaning, if it transfers brokers, the new broker should be
18 able to see what the potential problems were for that
19 particular employee?

20 A I'm gonna need you -- I -- I don't understand the
21 question.

22 Q So if -- if -- Forum Benefits has got a client
23 and the -- the employee comes in -- calls in, they have a
24 problem, they're denied some prescription, or there's some
25 complaint about their plan, if Forum Benefits puts that in

1 a note in some file about that call, wouldn't you agree
2 that the new agent -- if it transfers to the new agent,
3 they should have access to see the prior history of any
4 problems that employees had with their plan?

5 A I mean I would say if it's something that's
6 ongoing, but if it's something that's happened in the past,
7 but not -- it's done.

8 Q Well, shouldn't the new agent be able to make
9 that determination on what's relevant to the -- the -- the
10 then current plan administration?

11 A Are you asking if there were notes? I mean I --

12 Q If there's -- like my -- my example, if there's
13 some notes of a problem, shouldn't the new plan
14 administrator -- the -- the new agent, who's acting on
15 behalf of the client, be able to look back to issues that
16 incurred in the same plan year and see what those issues
17 were?

18 A I don't -- I don't think so.

19 Q You don't think so?

20 A That --

21 Q So --

22 A My opinion, I -- I think that the problem's been
23 solved, then no.

24 Q So what about the -- if the employee calls back
25 in and says, "Hey, I've been complaining about this for

1 months," there's no way for the new agent to know if there
2 was a complaint if they don't have that data.

3 A I would say that if we picked up a group, you
4 know, be it a AOR letter in the middle of the year, we're
5 not going to their other broker and asking them to give us
6 a log of every problem that that client's had, so, no.

7 Q So you're saying that that is just tough, you --
8 you'd have to tell the employee, "Tough, we don't -- we
9 can't --

10 A No.

11 Q -- get this information from the prior broker,
12 you -- we can't -- we can't justify whether you ever
13 complained before?

14 A No, we wouldn't be able to if it's a prior
15 broker. If it's a call that's been reported to the
16 carrier, then the carrier would know about it, and we'd be
17 able to access that information with the carrier, but not
18 from their prior broker. We're not gonna go to a
19 competitor and ask them for loss.

20 Q Right, and that's why the plan administration
21 data should be transferred to the new broker, correct? So
22 that there's no disruption to the employee.

23 A Are we talking about plan documents?

24 Q I'm talking about if there's a note, if there's
25 an issue with a complaint, shouldn't that go to the new

1 plan -- the new agent who's administering the plan?

2 A No. I mean typically no.

3 Q Okay. Wouldn't you agree that all of the
4 information in -- in Navigator can be pulled from some
5 source outside of Forum Benefits?

6 A It can be pulled from the client, or anybody that
7 has a login to that particular client.

8 Q All of the information in Navigator can be pulled
9 from a source outside of Forum Benefits?

10 A And pulled, if you're saying exported, only
11 certain things exported, but seen by, yes, if they have a
12 login.

13 Q So meaning if -- if somebody was gonna rebuild
14 the exact same thing, they could go to the carrier and the
15 client and the payroll company and take all the same
16 information to -- to build the Navigator database?

17 A Correct.

18 Q And -- and the difference between somebody going
19 in and -- and downloading a -- a report out of Navigator
20 and transferring that to a new agent versus the agent going
21 and having to -- to rebuild all that, it's just the time it
22 takes to rebuild it, correct?

23 A The time and effort, yes.

24 Q Okay, the time and effort. So what -- what
25 Forum's really mad about here is that -- that

1 AssuredPartners didn't have to take as much time as they
2 should have to get the client data transferred, correct?

3 A Are you asking me why a lawsuit was filed?

4 Q No, I'm asking you -- the -- the real complaint
5 here about this -- the transfer of data is just the time
6 and that AssuredPartners didn't have to go through the
7 effort to get the same data from other places?

8 A I -- I don't know what the, you know, the
9 complaint is, particularly, but if you're asking about, you
10 know, how we norm -- how Forum normally does business
11 versus how it was done, I can answer that.

12 Q I'm not asking that, thank you though. Forum was
13 paid by -- ultimately, by the client to build the Navigator
14 system for -- system for them, correct?

15 A Incorrect.

16 Q The -- the client pays their carrier, right? I
17 mean they pay for the plan, then the carrier what -- based
18 on what the -- the client pays gives Forum a percentage of
19 that, right?

20 A Correct.

21 Q So the money flows to the carrier, but it comes
22 from the client, right?

23 A Yes.

24 Q And the clients use this system -- some of them
25 do on a daily bas- -- basis to administer their own plan,

1 don't they?

2 A Excuse me. Some use it -- they -- they're using
3 it to key-in employee data, so that the employees can make
4 their benefit elections.

5 Q Right. And so they're using it on a -- some --
6 some of them are using it on a regular basis to administer
7 their plan, correct?

8 A Correct.

9 Q Wouldn't you agree that if a client were to just
10 lose access to the -- that data or access to a portion of
11 the new -- of Employee Navigator without notice, that that
12 could cause disruption to the client?

13 A Yes.

14 Q Isn't it true that when -- well, let me back up.
15 Mack Ward was working with Forum Benefits at some point?

16 A Yes.

17 Q Yeah. And are you aware that he left and went to
18 AssuredPartners?

19 A Yes.

20 Q Isn't it true that some of his clients were cut
21 -- the -- the reporting function of Navigator was cut off
22 to them without notice?

23 A Yes.

24 Q Okay. And when that happened -- when Forum cut
25 that access to the client's reporting functions, Forum was

1 still the client's agent at that time, correct?

2 A I believe so. If you have a date, I -- I don't
3 -- I -- but I believe so.

4 Q Your -- your best memory's fine.

5 A Yes.

6 Q So for -- for some of these clients with Forum,
7 one day they've got ac -- full access to Employee Navigator
8 and the next day they don't?

9 A That -- the reporting, yes.

10 Q The reporting. And some of the -- some of these
11 clients called and -- and complained about not having
12 access, didn't they?

13 A They called or emailed asking for a particular
14 report.

15 Q And some of them complained, didn't they?

16 A I do not recall any complaining to me. I -- I do
17 have, you know, emails where I remember them asking for
18 things, "Hey, why, you know, why can't I access this
19 document?"

20 Q Look at page 170 of your deposition.

21 A What was the page number?

22 Q 170.

23 A Okay.

24 Q All right, then let's look at line -- starting at
25 line ten.

1 A Okay. (Reviews document.)

2 Q It says, "Okay, then if you turn to the next
3 page, it's a conversation that included you where it looks
4 like Mr. Stritt is asking which groups have complained
5 about their data being turned off." And you -- you say --
6 and I say, "Is that right?" And you said, "Yes," correct?

7 A Correct.

8 Q And then it -- then it says, "And then you list
9 in here the ones you've talked to, it's kind of in the
10 middle down, it looks like you've got Ballou's (phonetic),
11 BLE, Alupress, and you said these complained?" And your
12 answer was, "Correct;" is --

13 A Correct.

14 Q -- that correct? Isn't it true that some of
15 these clients that complained that they could not have
16 access, they were told that the access was -- was cut off
17 due to unauthorized access?

18 A Yes, I do recall that.

19 Q And, in fact, they were told -- some of these
20 clients were told by you that you could not access any
21 reports for them due to unauthorized access.

22 A I -- I do not recall that --

23 Q Okay.

24 A -- saying that.

25 Q Turn to 174, line seven. Okay, are you there?

1 A Yes.

2 Q All right. It says, "All right," and so then you
3 respond to that saying that you apologized, "But we have
4 been -- we were informed by our President, due to unau- --
5 unauthorized access of our system, we cannot access any
6 reports at this moment," and you said, "That's correct;" is
7 that correct?

8 A That's what it says.

9 Q And you did have access to the reports at that
10 time, didn't you?

11 A Yes. At -- at this time I probably meant to say
12 you cannot access, but, yes, that is what it says.

13 Q You told the client in response to complaints
14 that you did not have access to the system to get them what
15 they wanted, correct?

16 A I'm -- I'm actually going to say incorrect,
17 because I would have to look in an email to confirm. Is
18 this what I've said --

19 Q Okay.

20 A -- that day in the deposition when you asked me,
21 yes.

22 Q Well, it says here -- I mean I've -- I've read
23 this from your deposition, right?

24 A Right, that's what I'm saying.

25 Q I read it correctly.

1 A I said it in -- in the deposition --

2 Q Okay.

3 A -- but if you're asking me is -- if specifically
4 those are word-for-word what was emailed to the client, I
5 cannot say that, that's --

6 Q Okay.

7 A -- just what I recall.

8 Q All right, well, we'll look at the --

9 (Off Record)

10 BY MR. LEHRER: (CONTINUING):

11 Q All right, I'm going to show you -- well, I
12 highlighted it, I was going to give you the highlighted
13 one. I'm going to direct you -- I'm gonna help you. We're
14 down here.

15 A Okay.

16 Q That's where we're going, okay?

17 A Okay.

18 Q Because there's a lot of email in there.

19 A Okay.

20 MR. LEBLANC: Excuse me.

21 BY MR. LEHRER: (Continuing)

22 Q All right, let's -- let's start at --

23 THE COURT: Hold on, do you have an objection to this
24 document?

25 MR. LEBLANC: Yes, sir, it's one of the pretrial

1 matters we discussed related to the other suit.

2 THE COURT: I don't recall. All right --

3 MR. LEHRER: Your Honor, the witness has just asked to
4 see the -- the email. Let me -- this may just lay a
5 foundation if she knows it exists.

6 THE COURT: All right.

7 MR. LEHRER: -- this is.

8 THE COURT: All right, go ahead.

9 BY MR. LEHRER: (Continuing)

10 Q I'm showing you what's been marked as Defendant's
11 Exhibit Number 2; do you see this?

12 A (Reviews document.) Yes.

13 Q And these -- are these emails in which you are on
14 the email as a sender or recipient?

15 A Yes.

16 Q Okay. Do these appear to be accurate emails, as
17 far as you know?

18 A As far as I can tell.

19 MR. LEHRER: Move to admit.

20 THE COURT: All right. What's your objection to her
21 emails?

22 MR. LEBLANC: The order in the other case.

23 THE COURT: I don't know what you're talking about.

24 MR. LEHRER: Your Honor, both cases -- I --

25 THE COURT: You'll have to show me.

1 MR. LEBLANC: -- may have to get out of the --

2 THE COURT: Come on up here and tell me.

3 (Whereupon, the Court and the attorneys hold a sidebar.)

4 THE COURT: All right, for the record, Ms. Winston, --
5 are those your emails?

6 THE WITNESS: Yes.

7 THE COURT: All right.

8 MR. LEHRER: All right, move to admit Defendant's
9 Exhibit Number 2, Your Honor.

10 THE COURT: All right, over the objection.

11 (Whereupon, Defendant's Exhibit Number 2 is marked for the
12 record and admitted into evidence over the objection.)

13 BY MR. LEHRER: (Continuing)

14 Q All right, so look -- look down where I had you.

15 A (Reviews document.) Yep.

16 Q Do you see the sentence that says -- and this is
17 you sending an email to -- to a -- a client, right?

18 A Correct.

19 Q This was a then current client of -- of Forum
20 Benefits?

21 A Correct.

22 Q And you say, "I apologize, but we were informed
23 by our President that due to unauthorized access of our
24 system, we cannot access any reports at the moment."
25 That's what you said, right?

1 A That's what it says.

2 Q Okay. And that was not a true statement to the
3 client, was it?

4 A That I couldn't access the reports?

5 Q That's right.

6 A Correct.

7 Q Okay. And -- and that -- that was one of Mack
8 Ward's clients, correct?

9 A Correct.

10 Q Do you recall a -- a client by the name of BLE
11 being very upset that they could not pull data that they
12 needed from Employee Navigator?

13 A Correct, yes.

14 Q And that was another Mack Ward client?

15 A Yes.

16 Q And that was during the time period that Forum
17 Benefits was still their agent, correct?

18 A I believe so, yes.

19 Q And isn't it true that some of Mack Ward's
20 clients would ask for their plan data in an Excel
21 spreadsheet?

22 A Can you explain plan -- plan data --

23 Q Well, just --

24 A -- I mean that's just --

25 Q Anything related to their plan. Any plan-related

1 or administrative-related information. Did they request
2 any information --

3 A Census data.

4 Q -- from Forum?

5 A Yes.

6 Q Census data from Forum Benefits --

7 A Yes.

8 Q -- in an Excel -- in an Excel format?

9 A Yes.

10 Q And isn't it true that Forum Benefits denied
11 those requests, but only -- and only would give them a PDF?

12 A Yeah, from looking at this email, yes, it looks
13 like I responded with a PDF.

14 Q Okay, but it -- weren't you told by Mr. Stritt
15 that with Mack Ward's clients to only give them PDFs?

16 A Yes.

17 Q Okay. And the difference is a PDF is a -- is a
18 picture of the data, right? It can't be -- it can't be
19 uploaded, downloaded or changed in any way, correct?

20 A It -- it can be, if it's exported out into an
21 Excel, yes.

22 Q Okay, but the -- the -- the -- the information
23 that you were sending these clients was not exported when
24 you sent it to them, was it?

25 A How I got it or how --

1 Q How you sent it to the client --

2 A Yes, in --

3 Q -- was a PDF.

4 A Was in a PDF, yes.

5 Q Right. Versus, if you would have sent it in an
6 Excel spreadsheet, I mean that is -- that is something that
7 you can go in and make modifications to that spreadsheet,
8 correct?

9 A Correct.

10 Q And you can then -- and, actually, with
11 Navigator, it uses Excel spreadsheets and you can upload
12 information into Navigator, correct?

13 A The census, correct.

14 Q Right. But you can't upload a PDF into Navigator
15 with -- and, actually, Navigator takes the information and
16 does anything with it, correct?

17 A Not a PDF.

18 Q So you're willing to give the client the data,
19 just not in the format they wanted it, correct?

20 A If they asked for an Excel, we gave it in PDF,
21 correct.

22 Q Do you recall that, at one point, Forum Benefits
23 cut off complete access to Employee Navigator for some of
24 the clients of Mack Ward?

25 A At -- I cannot recall the dates that that was

1 done. Yes, that was done at some point, but the dates I'm
2 -- I -- I couldn't be able to recall that --

3 Q Okay.

4 A -- far back.

5 Q All right. Isn't it true that Forum did not
6 provide some of Mack Ward's clients with any advanced
7 notice that it was going to completely cut off their
8 Employee Navigator access?

9 A I do not recall.

10 Q Okay.

11 A I couldn't say what date that was.

12 Q All right, turn -- well, I didn't ask you the
13 date, I said, "Isn't it true that Forum did not provide
14 Mack Ward's clients with advanced notice that they were
15 going to completely lose access to its Employee Navigator?"
16 Did you -- did -- isn't that true that that happened?

17 A I wouldn't say not advanced notice. If they gave
18 an AOR, and that period of our time ended, that would be
19 our notice, you know, to cut it off. I need more
20 specifics --

21 Q Okay.

22 A -- to answer that.

23 Q Well, let's look at your deposition, page 180.

24 A 180?

25 Q Yes. And let's look down at -- at paragraph 22.

1 A Okay.

2 Q It says, "Okay, was there any notice provided to
3 Alupress prior to March 31st that this would be the date
4 they would lose access to their system?" And you -- your
5 answer was, "I don't believe so," correct?

6 A (Reviews document.) That is what it says,
7 correct.

8 Q Then go onto page 181. I say, "Okay, and don't
9 you agree that could be disruptive to a client, to be cut
10 off a system that they have been using without any
11 notification," and you said, "Yes," correct?

12 A (Reviews document.) Correct.

13 Q And Alupress was a Mack Ward client, wasn't it?

14 A Yes.

15 Q Isn't it true that one of the benefits of a
16 system like Employee Navigator for the client is to have
17 quick access and easy access to plan information?

18 A What -- you said one of the -- yes.

19 Q Isn't it true that after Forum Benefits cut off
20 access to some of Mack Ward's clients of Employee
21 Navigator, that there was delays in getting them the
22 information they needed from Forum Benefits?

23 A Can you repeat that? I'm sorry.

24 Q Isn't it -- isn't it true that after you cut off
25 the Mack Ward clients' Employee Navigator, there were

1 delays in getting the information that they needed?

2 A I don't -- I can't answer that just because I
3 don't know of -- of -- of a request that came in after the
4 access was cut off.

5 Q Okay, let's turn to your deposition, page 214,
6 and let's go to line 15.

7 A Hang on, you said 243?

8 Q 214, I'm sorry.

9 A Oh, sorry. Okay, I'm there.

10 Q On line 50 -- 15, it says, "And then after it was
11 cut off and they had to request the information from you,
12 as we saw in some of the emails, there was -- there were
13 several week gaps in between the time they requested the
14 information and it was actually provided," and you said,
15 "Correct;" is that right?

16 A (Reviews document.) Correct, I'm sorry, I
17 misunderstood your question earlier. You're talking about
18 reporting access, I thought you were talking about shutting
19 down the system completely, I apologize.

20 Q I understand and -- and you don't need to
21 apologize. It -- it is not easy to sit up there, I promise
22 you, and so we -- we all understand that. Do you -- do you
23 specifically remember that Alupress requested their plan
24 data in Excel format?

25 A The census data, yes, I -- I believe so.

1 Q Yeah, and that was -- that was not given to them,
2 correct, in a -- in Excel format, correct?

3 A In Excel format, correct.

4 Q Isn't it true that you terminated Alupress
5 Teledoc's benefits?

6 A I believe so.

7 Q Okay.

8 A I -- I would have to go back and -- and see what
9 date that was done.

10 Q Okay.

11 A I can't remember.

12 Q You don't recall giving Alupress any advanced
13 notice that their Teledoc would be cancelled, do you?

14 A I don't recall.

15 Q That would be a problem, wouldn't it, to -- to
16 terminate a coverage of a client without giving them
17 notice, wouldn't it?

18 A Yes.

19 Q And you did terminate the coverage of Alupress'
20 Teledoc, didn't' you?

21 A I believe so at a certain point, I don't know
22 when.

23 Q Okay.

24 A I cannot recall that -- the date.

25 Q And -- and would you agree that not telling a

1 client of the cancellation of some -- some types -- these
2 types of benefits could result in -- in people --
3 underlying plan participants going to use the benefits and
4 not having coverage?

5 A If that's -- I mean if I'm speculating on that.

6 Q That's the question, I mean if it's --

7 A Okay.

8 Q -- if it's cancelled without notice --

9 A Yes.

10 Q -- that could disrupt a plan participant from
11 receiving their benefits?

12 A Correct.

13 Q Isn't it true that Forum, we talk about, had
14 these Monday morning staff meetings?

15 A Yes.

16 Q And isn't it true that after Forum was aware that
17 Mack Ward was going to AssuredPartners, that he was not
18 excluded from those meetings, was he?

19 A You said isn't it true -- I'm sorry, can you
20 repeat the question?

21 Q That after -- after Forum Benefits was aware that
22 Mack Ward was going to AssuredPartners, he was not excluded
23 from the Monday morning meetings, was he?

24 A I -- I cannot recall who -- who was given access
25 to that, to be honest.

1 Q Let's look at page 150 of your deposition.

2 A Okay.

3 Q And let's go to line nine.

4 A Okay, I'm there.

5 Q And in there it says, "Prior to February 26th,
6 was Mack usually involved in those meetings?" And you can
7 look back up, but that's referring to the -- to the Monday
8 morning meetings --

9 A (Reviews document.) Correct.

10 Q -- okay? And you say, "Yes."

11 A Yes.

12 Q And do you recall that in possibly February of
13 2016 that's when Mack Ward told everybody he was going to
14 AssuredPartners?

15 A He told Brian, and Brian in- -- informed us.

16 Q Okay.

17 A Yes.

18 Q So by then -- by February 2016, Forum knew that
19 he was going to AssuredPartners, correct?

20 A I believe so.

21 Q Yeah. And there was kind of a note -- after that
22 February 2016, we're not gonna get into details, but there
23 was kind of a -- a notice period where Forum was still
24 servicing the -- the client, right?

25 A Correct.

1 Q Okay. So it says, "During the notice period, was
2 he ever excluded from those meetings?" And your answer is,
3 "I don't believe so," correct?

4 A (Reviews document.) Correct.

5 Q And then on down on line 19, you said, "If he
6 showed up, but I don't believe he would have been
7 excluded," correct?

8 A (Reviews document.) Correct.

9 Q At whose direction was Mack Ward's clients access
10 to Employee Navigator cut off?

11 A Brian Stritt.

12 Q And at the time he was the -- the sole owner of
13 Forum Benefits?

14 A Correct.

15 MR. LEHRER: That's all, Your Honor.

16 THE COURT: All right, Mr. LeBlanc?

17 **REDIRECT EXAMINATION**

18 BY MR. LEBLANC:

19 Q You were asked a question about what clients had
20 access to Employee Navigator; do you recall that question?

21 A Yes.

22 Q And what -- what clients of Forum Benefits would
23 Forum Benefits do an Employee Navigator buildout for?

24 A Ma -- mainly all of them. We -- we built-out all
25 of our clients.

1 Q And when would Forum Benefits not do a buildout
2 for a client?

3 A Maybe if they were like under ten lines, had one
4 -- one line of coverage, but I would say, you know, 95
5 percent of our clients are on the system.

6 Q Okay, I'm -- I'm gonna give you a client name,
7 and I -- my question is, who was the producer or sales
8 representative for that client.

9 A Okay.

10 Q MSI Viking?

11 A Brian Bannon.

12 Q And what access did their HR person have to
13 Employee Navigator account that Forum Bene -- Forum
14 Benefits built out?

15 A They had full access.

16 Q Stuhr Funeral, who was the producer for that --
17 that client?

18 A Brian Bannon.

19 Q And what access did their HR person have to the
20 Employee Navigator account that Forum Benefits built out?

21 A No, they used the system on the HR level, full
22 access.

23 Q Marathon Auto, who's the producer?

24 A That's the one I can't recall. I can't -- I
25 cannot recall that producer.

1 Q They're --

2 A I think it was Brian Stritt, but I cannot recall.

3 Q What access did their HR person have to the
4 Employee Navigator account for Marathon Auto; if you know?

5 A I -- I cannot remember that one; to be honest.

6 Q Wholesale Boutique, who was the producer?

7 A I believe that Brian Stritt.

8 Q And what access did their HR person have to the
9 Employee Navigator account that Forum Benefits built out?

10 A They had full access.

11 Q Brookgreen Gardens, who was the producer?

12 A That's -- that's Brian Stritt, and they had full
13 access.

14 Q So their HR person had full access to the
15 Employee Navigator account that Forum Benefits built out?

16 A Right.

17 MR. LEBLANC: Thank you, that's all the questions I
18 have.

19 THE COURT: All right, thank you so very much. You
20 are free to go. All right, call your next witness.

21 MR. LEBLANC: Jim Brady, or James Brady, sorry.

22 **James Brady,**

23 having been duly sworn,

24 testifies as follows:

25 MADAM CLERK: All right, you may have a seat when he's

1 -- okay. Please state your name and spell your last name.

2 MR. BRADY: James Brady, last name is spelled

3 B-R-A-D-Y.

4 **DIRECT EXAMINATION**

5 BY MR. LEBLANC:

6 Q Mr. Brady, I don't know if you were here long
7 enough and when the testimony was, you're the head of
8 BeneSolv; is that right?

9 A I was previously.

10 Q Oh you're not anymore?

11 A No.

12 Q Okay, then in the timeframe we're talking about
13 here, 2016, you were the BeneSolv?

14 A I was, yes.

15 Q And BeneSolv was a wholly-owned subsidiary of
16 AssuredPartners?

17 A That's correct.

18 Q And BeneSolv handled AssuredPartners accounts
19 that used Employee Navigator?

20 A Correct.

21 Q I'm going to pass you a document that was -- that
22 previously admitted as Plaintiff's Exhibit 45. And so this
23 is an -- an exhibit that's already in evidence, and have
24 you had a chance to look at this November 11, 2016, email
25 you sent?

1 A (Reviews document.) Yes.

2 Q And you sent this email to Brian Bannon?

3 A I did.

4 Q And you tell him, "All the data's been
5 collected," right?

6 A That's correct.

7 Q And you have not taken all the screenshots?

8 A That's correct.

9 Q Why did you need to take screenshots?

10 A So we take screenshots sometimes of client
11 information in case there's any discrepancies or there's
12 any information that gets mistransferred; so it's just like
13 having a -- a copy of the information that we build things
14 from.

15 Q To -- to refer back later?

16 A Correct.

17 Q And -- and I think as you've heard the testimony,
18 because the plan information can't be imported and
19 exported?

20 A Correct.

21 Q Can't have --

22 A The set-up information cannot.

23 Q Right, it has to be manually culled and then
24 manually entered?

25 A Yes.

1 Q And you refer in this email that you said you
2 will get screenshots, but you built them side-by-side?

3 A Correct.

4 Q All right, tell me what you mean by you built
5 them side-by-side.

6 A Yeah, so when we build something side-by-side, we
7 would pull up whatever our -- our initial system is on one
8 screen, and we would pull up our system on the other
9 screen, and we would build out the information. So the
10 same thing we would do, if we were pulling up an Excel
11 document or a PDF document on one screen, it's just that we
12 pull up the system of reference or -- or the piece of
13 reference on one screen and put, you know, we build out on
14 the other screen.

15 Q Right, so it's almost like these two screens
16 here, except --

17 A Yeah.

18 Q -- they'd both be facing?

19 A Correct, yes.

20 Q And one of the screens has the employee benefit
21 account that -- I'm sorry, one of the screens has the
22 Employee Navigator account that Forum Benefits built out?

23 A Yes, this -- in this case, yes.

24 Q And the other screen has the Employee Navigator
25 account that you're building out?

1 A That's correct.

2 Q And you're trying to make them the same?

3 A Uh-huh.

4 Q Did you need these login credentials to do what
5 you -- you just -- what you just described doing? Could
6 you have built them out without the login credentials?

7 A Yes, I could have built them out without the
8 login credentials.

9 Q What would you have had to do to build out an
10 Employee Navigator account for a client without have the
11 client's login credentials?

12 A Yeah, so we would have emailed the client for
13 some details, and we would have emailed the carrier for
14 details similar to what previous -- what's said from
15 Ms. Winston.

16 Q Right, so you agree that you would have contacted
17 clients, said, "Hey, give me your employee data?"

18 A Yep.

19 Q And you would have contacted the carrier and
20 said, "Give me your insurance plans?"

21 A Yep.

22 Q And then you would have read those insurance
23 plans and pulled out whatever pieces of information you
24 want to include in the buildout?

25 A That's correct.

1 Q I'm going to pass you what's been marked as
2 Plaintiff's Exhibit 11. Do you recognize this email
3 communication in Plaintiff's Exhibit 11?

4 A (Reviews document.) Yeah. Yes, I'm just
5 reviewing it real quickly, --

6 Q Sure.

7 A -- but, yes.

8 Q Okay, absolutely.

9 A I recognize it as --

10 Q Take -- take your time.

11 A -- emails between myself and Brian Bannon.

12 MR. LEBLANC: And we'd move Plaintiff's Exhibit 11
13 into evidence.

14 MR. LEHRER: No objection, Your Honor.

15 THE COURT: Without objection.

16 (Whereupon, Plaintiff's Exhibit Number 11 is marked for the
17 record and admitted into evidence without objection.)

18 BY MR. LEBLANC: (Continuing)

19 Q All right, and I'm asking you questions about the
20 last two sentences there that start with, "To confirm;" do
21 you see that?

22 A (Reviews document.) Yep.

23 Q So you say, "To confirm, we're only building out
24 two sites, Premier and Carolina Youth," right?

25 A That's correct.

1 Q And at this time, those were the only two sites
2 that you had login credentials for?

3 A That's correct.

4 Q And the other site, do you -- do you recall what
5 other site you're referring to?

6 A St. Andrews, I believe.

7 Q I think it was Alpha Genesis.

8 A Okay, Alpha Genesis. Yeah, there were four
9 clients that we talked about during this time.

10 Q All right.

11 A We ended up only actually building out three
12 clients.

13 Q Right. So Mr. Bannon later provided you login
14 credentials for St. Andrews, and you --

15 A Correct.

16 Q -- built-out Employee Navigator for St. Andrews,
17 right?

18 A That's correct.

19 Q But you did not -- you never built-out anything
20 for Alpha Genesis, right?

21 A We did not.

22 Q Because he never gave you any login credentials
23 for Alpha Genesis?

24 A That's correct.

25 Q Because that's what you say here, the other site,

1 you mean Alpha Genesis?

2 A Yes.

3 Q "We don't have any details for A -- the AM --
4 that AM should be And, A-N-D?

5 A (Reviews document.) Yes, and we'll not be able
6 to build out, yes. And so he didn't provide us any plan
7 details or login details, anything to build anything from,
8 so that's why we wouldn't have built it out.

9 Q Right, because with the login credentials, you
10 just took it out of the account, the Employee Navigator
11 account. Without the login credentials --

12 A They would have to provide --

13 Q -- you'd have to go get --

14 A -- us the information, yeah.

15 Q Sorry, I didn't mean to talk over you.

16 A No, that's fine.

17 MR. LEBLANC: That's all the questions I have, thank
18 you.

19 THE COURT: Thank you.

20 **CROSS-EXAMINATION**

21 BY MR. LEHRER:

22 Q Mr. Brady, how long have you worked at
23 AssuredPartners?

24 A So I started with -- previously before it was
25 AssuredPartners, it was Neace Lukens, but I started there

1 in 2010, it was May of 2010.

2 Q What -- what kind of background did you have
3 before AssuredPartners?

4 A So I've worked in employee benefits insurance
5 since 1999, so at that time it was about 11 years of
6 experience, and now it's been over 20 years' experience in
7 employee benefits and benefit administration systems.

8 Q And are there other benefit administration
9 systems other than Employee Navigator?

10 A Yeah, there's over a hundred different ones. We
11 use several different ones internally on our teams,
12 Employee Navigator is one of those.

13 Q And is this something that -- that a lot of
14 insurance agencies use these types of third-party sites to
15 house information?

16 A I would say almost every insurance agency, at
17 this point, has some sort of a benefit administration
18 system, or they're working with somebody who's providing a
19 benefits administration system.

20 Q And is -- is -- is that a benefit that is
21 provided to help the client?

22 A It is, yeah.

23 Q And -- and is it kind of the -- the thing that,
24 as -- as insurance grows and -- and people get better, it's
25 to make things easier on the client?

1 A Absolutely. With -- with the onset of the -- the
2 changes in health rules and reporting rules from ACA in
3 2014 and '15, everybody has a system at this point, because
4 you almost need one in order to report everything you have
5 to report to the government.

6 Q And -- and because of that it's important that
7 the in -- the information you're going to be reporting is
8 accurate?

9 A Yes, very -- very important, because there's
10 heavy fines from the ACA if you report incorrect
11 information.

12 Q And -- and does AssuredPartners use Employee
13 Navigator for its clients -- some of its clients?

14 A Yes.

15 Q And are you very familiar with Employee
16 Navigator?

17 A I'm pretty familiar with it, yes.

18 Q Did you hear the testimony of Laurie Winston
19 earlier?

20 A I did.

21 Q Is -- was there anything that she said that you
22 -- you didn't -- you didn't already know about how Employee
23 Navigator works?

24 A No, everything she said would have actually been
25 taught to anybody who implements Employee Navigator. So

1 Employee Navigator's a system that hundreds of brokers
2 across the country -- pro -- maybe even thousands use, and
3 they have a University that when you onboard a new
4 employee, you go through their University, and they teach
5 you how to build plans, how to set up rates, how to import
6 data. They teach everybody how to do those things to use
7 the system.

8 Q When you went into the -- these three clients,
9 there were three clients of Mr. Bannon that you -- you've
10 had their login, and you went in and accessed their
11 account, correct?

12 A Yes.

13 Q When you got into that Navigator, did you see
14 anything that looked different than anything you'd ever
15 seen?

16 A No.

17 Q Is there any information that -- that looked like
18 Forum was doing something new and unique?

19 A No.

20 Q No. And how -- how many Employee Navigator
21 accounts have you been in in your career?

22 A So I've been a part of or built well over 200
23 over the past -- we started using Employee Navigator in,
24 roughly, 2014, so we've been kind of using it ever since.

25 Q Okay, and nothing -- nothing you saw of these

1 three accounts was in any way unique?

2 A No.

3 Q And was there any -- she talked about like
4 wording and -- and how they had this special wording. Did
5 -- was there any special wording that you saw in the
6 Navigator?

7 A No. So on every plan built, there's a section
8 called Communications where you can enter in who should you
9 contact with questions? So we enter in our -- we have a
10 Customer Service Center so knowing what she referred to
11 that people take calls from employees, if they have
12 questions about claims, or questions about their benefits
13 or their enrollment, everybody attaches plan summaries,
14 everybody builds-out a summary page of the benefits, that's
15 all information that comes from the carrier. Those are all
16 -- those are all available to everyone who uses the
17 platform.

18 Q When -- when -- when you go into Navigator and
19 you're gonna -- you're gonna get a report for a client,
20 let's say they give you access to their Navigator to --

21 A Uh-huh.

22 Q -- pull a report, do you -- do you download that
23 in like an Excel format?

24 A Yes. So by default, Employee Navigator gives you
25 all of their reports in Excel. There's only maybe two or

1 three that don't, but they have hundreds of reports that's
2 standard and built-out in their system, prebuilt, and they
3 all download it to Excel, so that you can actually use the
4 data.

5 Q Okay. And if -- if -- if somebody from
6 AssuredPartners or Brian Bannon had told the client, "Hey,
7 pull this report for me off the Navigator," could the
8 client have done that?

9 A Yes, from --

10 Q Okay.

11 A Yes.

12 Q And why then does AssuredPartners actually do it
13 for the client?

14 A Why do we --

15 Q What -- how does that work? Like do -- do you
16 give them the option to -- they can pull it or --

17 A Yes.

18 Q Is --

19 A So we give all of our clients the option to pull
20 the data themselves, or they can reach out to a dedicated
21 resource on our team that can pull that data for them, but
22 it's their data, so we give them access to it.

23 Q Okay. Is that just to make it easier on the
24 client, if they don't want to go through the -- the --

25 A Yes.

1 Q -- process?

2 A A lot of times they want it run before, because
3 they want to do audits, or they want to do -- like for
4 reporting purposes for their general ledger, like they
5 break up their costs by different divisions, so they run
6 those reports on their own all the time, so that they can
7 do those things.

8 Q And then once -- once you get the -- let's say
9 you pull the report down in Excel spreadsheet, what do you
10 do next to get it up to where it's usable for
11 AssuredPartners?

12 A So, typically, the information comes down in
13 Excel, so depending on what it's being used for, we may
14 just pass it off to them, or we may manipulate it if they
15 need it for something specific. So if they've contracted
16 with us to do something specific, where we have to
17 manipulate the data, we will manipulate it for them and
18 send that data to carriers, send it any number of places,
19 but the -- the data comes out the same way, whether -- all
20 of Employee Navigator's clients get the same data out of
21 the system in the same format.

22 Q So -- so for a new -- new client that -- that is
23 moving over to AssuredPartners, --

24 A Uh-huh.

25 Q -- designating them as their agent, would there

1 be circumstances that you would not want to pull the
2 information off of whatever benefit administration system?

3 A So a lot of -- no, typically, we would pull the
4 information from their benefit administration system that's
5 available, if we think it's reliable. So if they feel like
6 they've been keeping it up-to-date and it's a reliable
7 source of data, then we would pull it from there. We also
8 pull information from the carrier to validate that
9 information and do an audit after-the-fact. So that's not
10 the only source of information, we also pull information
11 from the carrier to validate, or we pull it from their
12 payroll system. There's -- there's different times that we
13 validate it.

14 Q There was some references into some of the
15 document that -- that suggested that you were trying to --
16 to pull some of this information quickly; do you recall
17 that?

18 A I do.

19 Q What was the reason that it was trying to be done
20 quickly?

21 A So the -- the reason why we were told to do it
22 pretty quickly was because we were informed that in the
23 past the -- the Forum team that was administrating this had
24 turned off other clients' access to data without them
25 knowing it, and we would have to start from scratch, which

1 would impede the client -- make it more difficult for the
2 client.

3 Q And was -- was that -- the notification that you
4 received related to cutting off, was that specific to Mack
5 Ward's clients?

6 A It was.

7 Q What's the impact, if this plan information is
8 not properly transferred from the client and -- and the
9 plan administration information to the new agent?

10 A Yeah, there's a couple of impacts. So one would
11 be that similar to -- to somebody who appears to testi- --
12 testify, that a person might not be able to fill a
13 prescription drug, if -- if the coverage doesn't make it to
14 the carrier, so that they can fill a prescription drug. It
15 could be also that payroll deductions aren't taken timely,
16 which could impact the employee, because they would then
17 have to pay double employee deductions at a later date,
18 which, you know, obviously, can impact their paycheck. It
19 could also impact our ability to answer questions or
20 service the HR team, who has questions about the plans or
21 about what their deductibles are, different things around
22 that.

23 Q Are you aware of AssuredPartners ever receiving
24 any Forum Benefits information during the transition of
25 Mr. Bannon's clients?

1 A I never received anything other than the login,
2 so I'm not aware of anything else.

3 Q And what was your understanding about who
4 provided those -- that login information to
5 AssuredPartners?

6 A Mr. Bannon had expressed that the clients gave
7 him that information to give to us to pull their
8 information, so it came from the client.

9 Q When -- before you did any of that, what was your
10 understanding about whether the client had consented to
11 AssuredPartners obtaining that information?

12 A I -- I would have assumed they consented because
13 they voluntarily gave it to Brian Bannon.

14 Q Right, it's their password -- their login --

15 A Yeah, it's their username and password to their
16 data.

17 Q And, again, we're just talking about three
18 clients, correct?

19 A Yes.

20 Q What is the process that AssuredPartners uses, if
21 -- if, for example, a client said, "I'm moving to Forum
22 Benefits," that's on Employee Navigator, what will be the
23 process that AssuredPartners would use in that
24 circumstance?

25 A Yeah, so we would agree upon -- well, typically,

1 with the producer is the person who's getting us the
2 information, and they would say, "This client's no longer
3 gonna be a client as of this date." Typically, at that
4 point, we give the client 30 days from that point forward
5 to pull any data that they want from the system. So we
6 know that they're gonna need that data to either build out
7 a new system, or just to have it for historical purposes,
8 like I mentioned the ACA filing with the IRS. You need
9 that information to be able to file your IRS filing at the
10 end of the year, so we would expect them to pull that and
11 take that with them so they have it.

12 Q So you had no problem, during those 30 days, the
13 client getting all the information that they want off
14 Navigator?

15 A No, it's their -- it's their data, so it's their
16 employee data, it's their dependence data, it's their
17 coverage levels, it's their information, so we don't own
18 that information.

19 Q Does AssuredPartners cut off client access to
20 Navigator without notice?

21 A No, we have not.

22 Q Do you -- do you believe that would be problematic
23 for the client?

24 A Yes.

25 MR. LEHRER: Nothing further, Your Honor.

1 THE COURT: All right, anything else as follow-up?

2 MR. LEBLANC: Briefly.

3 **REDIRECT EXAMINATION**

4 BY MR. LEBLANC:

5 Q I'm gonna read some client names and you may not
6 have ever heard of them, but tell me if you've been logging
7 credentials for any of these clients.

8 A Yeah.

9 Q MSI Viking?

10 A Never heard of it.

11 Q Stuhr.

12 A Never heard of it.

13 Q Marathon Auto?

14 A Never heard of it.

15 Q Wholesale Boutique?

16 A Never heard of it.

17 Q Brookgreen Gardens?

18 A Never heard of it.

19 MR. LEBLANC: Thank you, that's all I have.

20 THE COURT: All right, thank you so very much. You
21 can step down.

22 It's my understanding, Mr. LeBlanc, that your expert
23 will be here in the morning?

24 MR. LEBLANC: Yes, sir.

25 THE COURT: All right, y'all want to try to beat the

1 traffic and get to happy hour early? All right, we'll see
2 you all tomorrow morning at 9:30. Y'all have a wonderful
3 evening, okay?

4 (At 5:00 p.m. the trial was continued to be resumed
5 the following day without interruption.)

6 END OF VOLUME II

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STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
2016-CP-07-02541

COUNTY OF GREENVILLE

-----)

Forum Benefits, Inc.,)

)

Plaintiff,)

vs.)

TRIAL TRANSCRIPT

VOLUME III

Brian Bannon, et al.)

PAGES 445 - 674

)

Defendants.)

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October 13, 2021

Beaufort, South Carolina

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The Honorable Bentley Price, Judge Presiding

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P R O C E E D I N G S

* * *

THE COURT: All right, thank you very much, please be seated. All right, are all jurors here?

BAILIFF: Yes.

THE COURT: All right. Anything before we get started?

MR. LEBLANC: Yes, sir, the Plaintiff has a motion.

THE COURT: All right, I'll be happy to hear from you.

MR. LEBLANC: Okay, first off, before that motion, there were two exhibits that were not admitted yesterday, but they were marked for identification.

THE COURT: Okay.

MR. LEBLANC: Plaintiff's Exhibit 520 and Plaintiff's Exhibit 9, I'd like to proffer them for the record.

THE COURT: All right.

MR. CARLSTEDT: Nine was the response to the request for admissions?

MR. LEBLANC: Yes?

MR. CARLSTEDT: Yeah, the Judge -- the Judge denied that being admitted, he said that was a pleading.

MR. LEBLANC: That's -- well --

THE COURT: That's correct.

MR. LEBLANC: That's why we're proffering it for the record. It's not in evidence, --

1 MR. CARLSTEDT: Oh, I'm sorry.

2 MR. LEBLANC: -- it's part of the record.

3 MR. CARLSTEDT: And what was the other one, I'm sorry?

4 MR. LEBLANC: 520.

5 MR. CARLSTEDT: 520?

6 MR. LEBLANC: Yes.

7 MR. CARLSTEDT: Oh, you're proffering that one, as
8 well?

9 MR. LEBLANC: Yes.

10 MR. CARLSTEDT: Oh, okay, that's -- that's the one
11 that was not disclosed before trial?

12 MR. LEBLANC: Yes.

13 MR. CARLSTEDT: Okay, so we'll maintain our objections
14 to those.

15 (Whereupon, Plaintiff's Exhibit Numbers 9 and 520 are
16 marked for identification.)

17 THE COURT: Yes, sir, I understand.

18 MR. LEBLANC: Understand.

19 THE COURT: All right, anything further?

20 MR. LEBLANC: Yes, respectfully, Your Honor, you know,
21 lawyers go through a career, they never want to make the
22 motion I'm getting ready to make, and Judges --

23 THE COURT: Okay.

24 MR. LEBLANC: -- Judges never want to get one of these
25 motions.

1 THE COURT: It's okay.

2 MR. LEBLANC: Yesterday, Your Honor identified for the
3 first time a college relationship with one of the witnesses
4 in this case, which yesterday's testimony, if nothing else,
5 indicated is a key witness in this case, and that was Mack
6 Ward. Last week during the pretrial conference, Your Honor
7 indicated, I completely believe him, conservatively, that
8 if any jurors had any kind of relationship with a witness
9 or a company, you, generally, excuse them from jury
10 service. We believe that --

11 THE COURT: What does that have to do with this?

12 MR. LEBLANC: Well --

13 THE COURT: I was just saying that if a juror doesn't
14 want to be on the jury, I'd take them off, because that
15 benefits y'all.

16 MR. LEBLANC: Oh, I -- I thought you -- I took -- I
17 understood it to mean, if a juror knew any of the
18 witnesses, you, generally, conservatively, excuse them from
19 service.

20 MR. LEHRER: That is not what I recall, Your Honor.

21 THE COURT: No, I --

22 MR. LEHRER: I mean --

23 THE COURT: -- I didn't say that. That I said -- I
24 believe I said, "If you believe that you'd be fair and
25 impartial based on your relationship with him," and if they

1 say, "Yes, I can be fair and impartial," I let them on.
2 What I had said was that I am very conservative in jury
3 selection, and I -- and I think Karen was here, and I said
4 I'm very fast, "If someone continues to rise and say that
5 they've got a reason not to be on the jury, I just go ahead
6 and excuse them, because, if they don't want to be on your
7 jury, I don't want them on your jury," that's my exact
8 quote.

9 MR. LEBLANC: Okay, thank you, and --

10 THE COURT: So it had nothing to do with anybody
11 knowing anybody, in these small towns everybody knows
12 everybody.

13 MR. LEBLANC: Yes, I understand that, Your Honor. In
14 these small towns, if -- if a perspective juror had stood
15 up and said, "I know Mack Ward from college back in the day
16 at Wofford," and if there were cell phones back there,
17 neither of us would be where we are today," or whatever.

18 THE COURT: Right.

19 MR. LEBLANC: If a juror had said that, I believe Your
20 Honor would have excused that juror without requiring a
21 strike; but if Your Honor didn't, and that would be fine,
22 we would have used a peremptory strike.

23 THE COURT: Okay.

24 MR. LEBLANC: If a juror with that kind of
25 relationship to a key --

1 THE COURT: You keep referring to a juror, you're
2 talking about me. I don't make the decisions in this case
3 unless it's for a directed verdict of -- of sorts, but the
4 fact that a witness and myself -- I assume you're gonna ask
5 me to recuse myself is the end of this motion?

6 MR. LEBLANC: Yes.

7 THE COURT: Okay.

8 MR. LEBLANC: My point would be, if a jur -- if we
9 would not seat a juror on -- in this case, then we
10 certainly would expect that a judge, having that same
11 relationship, would -- would understand our -- our -- our
12 request for the judge to recuse himself.

13 THE COURT: Do you understand that a recusal by the
14 rules requires some type of in -- inability to be impartial
15 or something that's done by the judge, meaning that it is
16 done against the rules of the rules of the canons, neither
17 of those exist here. If I don't think I can be fair and
18 impartial, I certainly wouldn't move forward. Did you
19 understand, those are the bases for the recusal? Again, I
20 think that, as we discussed, in some of these smaller towns
21 jurors know the -- the lawyers, they know the judges, the
22 judge knows the -- the witnesses, they know the clients.
23 In some of these small towns everybody knows everybody,
24 it's just a dispute that has to be aired out and has to be
25 taken to Court. What happened in this situation, just so

1 the record's clear, Mr. Ward came to Court, I think it was
2 yesterday, I can't recall, and I -- again, I went to
3 Wofford with Mr. Ward. We just agreed we haven't seen each
4 other in 17 years. I came to y'all and I said, "Is it okay
5 if I say hello to Mr. Ward, he's a -- I understand he's a
6 witness in this case?" And y'all said, "Yes." I said,
7 "Hello," to Mr. Ward, "how've you been?" And we went back
8 and talked and discussed -- and I -- I'll put on the record
9 what we talked about. He said, "How are your kids?" I
10 said, "They're doing great." I said, "How are the twins?"
11 He said, "They're doing great." And I said, "How's your
12 wife, I haven't seen her in forever," she went to Wofford
13 with us, as well. He said, "Everyone's doing great." He
14 said, "The guys will be excited to hear about you becoming
15 a judge." To be honest with you, I don't think Mack had
16 any clue before I walked out yesterday that I was a circuit
17 court judge. We haven't spoken in 17 years. I don't do
18 Facebook. There's no indication that -- any reason why he
19 and I would communicate with each other. I mean there's
20 nothing on Facebook that says I'm a judge. To be honest
21 with you, I had no idea what Mack Ward does. I had no idea
22 why he would be here. For all I knew, he was in
23 construction. He was a construction worker for all I knew.
24 We haven't spoken in 17 years. That is not a basis for a
25 recusal whatsoever. The fact that I know a witness, or I

1 know this lawyer, or I know you, or I know anybody else
2 does not mean that you're not gonna get a fair and
3 impartial trial, as you already have. But I'll be happy to
4 hear from you, but that needs to be put on the record as to
5 what transpired.

6 MR. LEBLANC: And -- and I certainly am not suggesting
7 that Your Honor did anything improper.

8 THE COURT: I'm not alleging that you did. I'm just
9 put -- putting on the record what transpired, because,
10 obviously, me coming to y'all saying, "Hey, can I speak to
11 Mr. Ward," would have been a -- it would an issue, had I
12 allowed him to testify, and then I would have gone down and
13 said, "Hello," and talked to him and those type things.
14 And, obviously, you would have known that I knew him, and
15 that was the proper thing to -- for me to do was to let
16 y'all know that I knew him before I introduced and said
17 hello to him. Because, obviously, if I did that after he
18 testified, y'all would be like, "Well, hold on, I mean how
19 do you know him?" So that's why I did it before he
20 testified.

21 MR. LEBLANC: Yes, sir. I was previously trying to
22 analogize the treatment of a juror to the Court, and Your
23 Honor responded with an analogy of former clients or people
24 that you know in the area. I -- I -- Plaintiff, I do,
25 believe there is a substantial difference between a former

1 client, or somebody you know in Beaufort, or somebody you
2 know in Charleston, there is a substantial difference
3 between that relationship, and somebody you went to college
4 with 17 years ago, and as -- as far as we could tell, had a
5 close, personal relationship with that person.

6 THE COURT: He was a college -- he didn't -- we
7 weren't in the same fraternity. He's somebody I knew from
8 college. Wofford has a thousand people, you know all
9 thousand people, I wouldn't say that we had a close
10 relationship, seeing how we haven't spoken in 17 years,
11 that's not -- certainly not a close relationship.

12 MR. LEBLANC: Your Honor, we've all been to college,
13 and when we see somebody that we haven't seen in 17 years,
14 that does not mean you did not have a close, personal
15 relationship.

16 THE COURT: I'm telling you, for the record, I did not
17 have a close, personal relationship with Mack Ward.

18 MR. LEBLANC: The comment of, "If there were cell
19 phones --

20 THE COURT: That was -- that was my comment.

21 MR. LEBLANC: Yes, if your comment, "That if there
22 were cell phones back there, you would not be in the
23 position you are in."

24 THE COURT: That's correct.

25 MR. LEBLANC: I think that --

1 THE COURT: That was a funny off-cuff comment that I
2 made just to be lighthearted about the situation.

3 MR. LEBLANC: Right.

4 THE COURT: And I've made 15 of those through --
5 throughout the trial.

6 MR. LEBLANC: Right. This was the first comment that
7 I've been made aware of that indicates a close, personal
8 relationship with a critical witness.

9 THE COURT: How does that indicate there's a close,
10 personal relationship? That's an off-cuff comment that I
11 made to be silly about myself. It was -- it was a -- it
12 was intended to be a self-deprecating joke about myself,
13 that's all it's intended to be.

14 MR. LEBLANC: I appreciate that, but my client heard
15 the comment and is --

16 THE COURT: I said it out loud, of course he heard it.
17 I didn't secretively go to anyone and say that. I said it
18 in open Court, again, as a lighthearted, self-deprecating
19 joke against myself.

20 MR. LEBLANC: Well, hopefully, you appreciate --

21 THE COURT: I don't appreciate it. I mean I -- I see
22 this as nothing more than a tactic to find another way to
23 continue this on and on and on. There is no basis
24 whatsoever for me knowing somebody that's going to testify
25 and not going testify by the way of this trial, because

1 y'all just keep -- y'all have actually released him of his
2 subpoena, and they're not here, so I certainly don't see
3 any prejudice, because he's not even gonna testify. So,
4 basically, he was just a witness that I went up to and said
5 hello to.

6 MR. LEBLANC: Hopefully, you appreciate with some of
7 the publicity going on in the State about the judiciary and
8 issues in the Lowcountry. My client is particularly
9 concerned about the fairness of a jury trial where the
10 judge knows a key witness from college in -- in the
11 relationship that you off-the-cuff descri -- described.

12 THE COURT: Okay.

13 MR. LEBLANC: And that's our position. Now --

14 THE COURT: What is his concern about the judiciary in
15 the Lowcountry?

16 MR. LEBLANC: Well, the Murdaugh and all the -- the
17 judicial issues going on there.

18 THE COURT: You're going to liken the fact that I knew
19 a witness that wasn't called in a trial, that I went to
20 college with, that I haven't spoken to in 17 years, that I
21 said hello to, liken to the judiciary concerns and issues
22 in the Murdaugh trial in the Lowcountry? That's what
23 you're juxtaposing?

24 MR. LEBLANC: I am simply presenting the Court with my
25 client's concerns, and I understand that that is a real

1 concern from somebody coming down from Greenville, South
2 Carolina, for a trial where one of the critical witnesses
3 is --

4 THE COURT: -- knows the judge from 17 years ago, of a
5 judge that's not even a Beaufort resident judge, that I'm a
6 visiting judge, I am not from the Lowcountry, and I live in
7 Charleston, and this is not even my circuit, I'm in the
8 Ninth Circuit, I'm visiting here, just like y'all. I'm
9 staying in a hotel, just like y'all.

10 MR. LEBLANC: Respectfully, my -- my client is
11 concerned that he cannot get a fair -- fair trial under the
12 circumstances here; and, Your Honor has twice at least now
13 noticed that Mack Ward has not been called as a witness.

14 THE COURT: You told me yesterday that you weren't
15 going to call him.

16 MR. LEBLANC: I called --

17 THE COURT: I didn't notice --

18 MR. LEBLANC: I told --

19 THE COURT: You -- I said, "Who are your next
20 witnesses," --

21 MR. LEBLANC: Your Honor --

22 THE COURT: -- we went in the back, and I said, "Who
23 are your next witnesses?" You told me the next five, and
24 then I came out here and I said, "Well, you have other
25 witnesses." And you said, "Yes, but I'm not calling them."

1 I said, "Well, whoever you're not going to call, they're
2 from Greenville, just release them from their subpoena."
3 And you said right there in Court, "I -- I've already done
4 that," and I said, "Okay."

5 MR. LEBLANC: Right, I did that partly in concern for
6 timing in this case, because some of the testimony of those
7 witnesses I could cover if Mr. Lehrer called them in his
8 case, which he indicated he would. I also dismissed the --
9 Mack Ward, specifically, not interested in having him
10 testify after I saw your relationship with him. That is a
11 decision I make at trial, to say, "You know what, I'm not
12 calling that witness at trial."

13 THE COURT: Well, that was an extremely poor decision
14 on your part, because, again, I've got no concern about the
15 -- my -- my partiality and my fairness; and, again, I think
16 it's nothing more than just a -- another tactic on behalf
17 of the Plaintiff, he has concern that a -- someone, again,
18 who I haven't seen in 17 years, because I said hello to
19 him.

20 MR. LEBLANC: If I may, Your Honor --

21 THE COURT: I mean if we had gone out to eat dinner,
22 if we had gone for drinks and he had seen us out, that's
23 completely improper, and I agree. To say hello to somebody
24 and to put y'all on notice before he testified, because
25 that's the appropriate, proper thing to do, which is why I

1 pulled both of you together and said, "I want to let y'all
2 know I know one of the witnesses, and I'm going to say
3 hello." I went to Wofford with him, which was in 1999, so
4 however many years that's been; and, again, I -- I
5 indicated the last time I saw him was at a friend's
6 wedding, as -- which is how we know each other mutually
7 apart from Wofford, outside of Wofford at their wedding,
8 which I said was in 2004, because that's when I left the
9 Solicitor's Office, which was 17 years ago.

10 MR. LEBLANC: Your Honor, respectively, you just
11 referred to another tactic of the Plaintiff. I'm not sure
12 what you're referring to there, but I think that
13 demonstrates the problem here. I don't know what tactics
14 of the Plaintiff you're referring to, but, apparently, you
15 view this as a tactic that the Plaintiff is making, and
16 it's not the first tactic.

17 THE COURT: No --

18 MR. LEBLANC: I find that --

19 THE COURT: -- I'm not saying --

20 MR. LEBLANC: -- improper.

21 THE COURT: -- it's a tactic at all, I'm just saying
22 the fact that you would think that you cannot get a fair
23 and impartial trial because I knew a witness.

24 MR. LEBLANC: Well, you're --

25 THE COURT: And then you --

1 MR. LEBLANC: I --

2 THE COURT: -- just now -- you just now likened me in
3 akin to the Murdaugh situation down here. I mean what is
4 going on here?

5 MR. LEBLANC: Your Honor, I -- I tried to -- I'm
6 trying to raise this in a manner that is not accusatory,
7 but you have responded by accusing my client of another
8 tactic.

9 THE COURT: I'm not accusing him of anything. I'm
10 just saying that this seems -- it would be like, if you --
11 my point of -- of indicating it's a delay is, if you came
12 in here and you said, "Your Honor, I -- I'm going to need a
13 half day because I've got something else to do." Well,
14 obviously, that would be some type of delay tactic, that's
15 all I was indicating. I'm not accusing him of anything.
16 I'm just saying that this is definitely about as far
17 grasping at a straw that you could find. All right, let's
18 move on.

19 MR. LEBLANC: Thank you.

20 MR. LEHRER: Do you want to hear from me at all, your
21 Honor, for the record?

22 THE COURT: Sure, I'll be happy to hear from you.

23 MR. LEHRER: Your Honor, I'm just -- I just -- I mean
24 I support everything he said. I'm not gonna -- I'm not
25 gonna go through all that, but the -- the record will show

1 that -- that you disclosed it first thing in the morning.
2 We had a whole day of testimony. There was no objection at
3 all until after the -- all of the evidence had come out,
4 and their witnesses were impeached, and they were denied
5 the ability to enter evidence that they had never produced
6 in the case, and I'd just like to put that on the record.

7 THE COURT: All right, thank you very much.

8 MR. LEBLANC: Excuse me, I'd like to respond to that.
9 No, it happened yesterday afternoon. It did not happen
10 yesterday morning, it happened yesterday afternoon during
11 one of the breaks.

12 THE COURT: Yeah, it happened in the morning break.

13 MR. LEBLANC: You --

14 THE COURT: Because that's when I noticed him -- that
15 he was here. I -- I walked out, took the bench, saw him,
16 looked at the witness list, and I was like, "Holy cow, I
17 was right, there is no -- there are no two Mack Wards,
18 there's only one." So as soon as we took the morning
19 break, I approached both of y'all and said, "I know him,
20 I'm going to say hello." It wasn't until lunch -- no, it
21 actually wasn't the lunch break, it wasn't until the mid-
22 afternoon break that I brought y'all back, that y'all
23 indicated then that y'all were going to release them, and
24 after I asked you who your next five witnesses were. So
25 that's what happened for the record. All right, bring them