

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

B. Alex Hyman, Circuit Court Judge

Lower Court Case No. 2020-CP-26-00808

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SC Court of Appeals

A. Tebele & Sons, a South Carolina General Partnership, Appellant-Respondent,

v.

Certain Underwriters at Lloyd's, HDI Global Specialty SE, General Security Indemnity
Company of Arizona, and Crescent Coast Insurance, LLC, Respondents,

Of which Crescent Coast Insurance, LLC is the Respondent-Appellant.

Appellate Case No. 2024-000705

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1 under construction?

2 A. It was still under construction, it was not 100 percent
3 complete.

4 MR. DESCHAMPS: Thank you, Mr. Dover. You can step
5 down.

6 THE WITNESS: Thank you, sir.

7 THE COURT: Is Mr. Dover excused?

8 MR. DESCHAMPS: Yes, Your Honor, may he be excused?

9 MR. HARPER: No objection, Your Honor.

10 MR. RISER: No objection.

11 THE COURT: Mr. Dover, thank you for being here. You
12 may be excused.

13 THE WITNESS: Thank you, Your Honor.

14 THE COURT: Why don't we take a 5-minute break before
15 we have our next witness, okay?

16 MR. DESCHAMPS: Yes.

17 THE COURT: Alright. Ladies and gentlemen, we'll
18 take a quick 5-minute break, okay?

19 **(Recess taken.)**

20 THE COURT: Anything else before the jury comes in?

21 MR. CONNELL: No, Your Honor.

22 THE COURT: Thank you. Ladies and gentlemen, I
23 appreciate you being seated. I know sometimes it feels like
24 you're playing musical chairs, but I do appreciate you all
25 taking such a short break. Ladies and gentlemen, what we have

1 next is you're going to hear testimony that's going to be
2 presented to you by way of video deposition. A deposition is a
3 document, or in this case, a video, containing a sworn
4 statement given by a witness in the presence of the lawyers.
5 You may hear some objections in this video deposition, I'm
6 going to ask you to regard those objections. Those objections
7 are not for you to be considered. This testimony is entitled
8 to the exact same consideration that you would give someone as
9 if they were testifying right here before you. It is still up
10 to you to weigh the testimony as to how much credibility you
11 give this witness, but that being said, again, I do advise you
12 that you're to give them the same consideration that you would
13 as if they were sitting right there will. Alright, Counsel,
14 you may begin playing your deposition.

15 **(Deposition of Mark Melvin was played at this time.)**

16 THE COURT: Mr. DesChamps, pause for just a second.
17 Alright, ladies and gentlemen of the jury, we're going to allow
18 you all to take a break for a minute. You have all been
19 patient. Just try to return to the jury room as quickly as
20 possible so we can resume this and finish for the night.

21 **(Jury exited the courtroom at this time.)**

22 **(Recess taken.)**

23 THE COURT: How much longer is this?

24 MR. CONNELL: Less than twenty pages, it's close.

25 THE COURT: But the problem is the delay is 20 pages,

1 to have more oral arguments on it before we -- I really want to
2 hear what he says before I can even attempt to rule what comes
3 in or not. Okay?

4 MR. DESCHAMPS: Yes, sir.

5 **(Jury entered the courtroom at 9:40 a.m.)**

6 THE COURT: Good morning, ladies and gentlemen. I
7 hope that you had a good night. I understand that the Clerk
8 got you biscuits again this morning, I hope they were good.
9 We're going to go ahead and get started this morning. Again,
10 Madam Forelady, if you all have any concerns or questions, let
11 me know. We have moved the TV a little closer and the speaker
12 so hopefully that will help. Thank you. Yes, Mr. Connell?

13 **(Deposition of Mark Melvin continued to be played at**
14 **this time.)**

15 THE COURT: Ladies and gentlemen, we have a few
16 matters of law we need to take up so I'm going to excuse you to
17 your jury room for just a short period and we'll bring you back
18 in as soon as we can. Okay. Thank you.

19 **(Jury exited the courtroom at this time.)**

20 THE COURT: In regards to the matters as to, I guess
21 it's Plaintiff's 2; is that right?

22 MR. DESCHAMPS: Yes, sir.

23 THE COURT: What else do you propose that you're
24 going to, I guess, introduce through this witness?

25 MR. DESCHAMPS: Well, we stipulated to the other two

1 **JAMES TWADDELL WAS DULY SWORN AT THIS TIME AND**
2 **TESTIFIED AS FOLLOWS:**

3 THE CLERK: You may be seated. Please state your
4 name for the Court.

5 THE WITNESS: James Twaddell.

6 **DIRECT EXAMINATION**

7 BY MR. CONNELL:

8 Q. Alright, Mr. Twaddell, if you would tell us what you do
9 for a living, please?

10 A. I am a licensed public insurance adjuster.

11 Q. Alright. And if you would tell the Jury what a licensed
12 public insurance adjuster does?

13 A. A public insurance adjuster represents policyholders who
14 have first-party insurance claims. We document the damage to
15 the property, the building, the contents, and the loss of
16 income. We present the documentations to the insurance company
17 and negotiate with the insurance company on behalf of the
18 policyholder.

19 Q. Alright. So licensed public adjuster in how many
20 states?

21 A. 20.

22 Q. Alright. Testified in court before?

23 A. Yes, sir.

24 Q. Tell the Jury about some of the cases you've testified
25 in, please, sir.

1 A. I've testified in trials in Florida, in New Orleans
2 arising out of Hurricane Katrina.

3 Q. Okay. And how many days did you testify in Hurricane
4 Katrina cases?

5 A. Probably one day for each of the two trials.

6 Q. Alright. Tell us a little bit about the trials you had
7 with the Hurricane Katrina please, sir.

8 A. There was a dispute between the insured and the London
9 insurance market over the value of the damage, the damage to
10 the building, to the personal property, and the loss of income.

11 Q. Lloyd's of London was a defendant in the case?

12 A. Yes, sir.

13 Q. Alright.

14 MR. WATSON: Objection, Your Honor. May we approach?

15 THE COURT: Yes.

16 **(Off the record discussion was held at the bench by**
17 **Court and counsel.)**

18 BY MR. CONNELL:

19 Q. Alright. A public adjuster in South Carolina?

20 A. Yes, I'm licensed in South Carolina.

21 Q. And you live in Charlotte?

22 A. That's correct.

23 Q. And how did you get to become a public adjuster?

24 A. You're required to take an examination of each of the
25 states that you're licensed in.

1 Q. Alright. And are you licensed in South Carolina?

2 A. Yes, sir.

3 Q. And how long have you been a public adjuster?

4 A. 24 years.

5 Q. And what other kind of educational background do you
6 have?

7 A. I am an attorney, although I no longer practice law.

8 Q. Alright. And where did you go to law school?

9 A. George Washington University.

10 Q. And when did you graduate?

11 A. 1990.

12 Q. And what company do you work for as a public adjuster?

13 A. Molecular Holdings Corporation.

14 Q. Alright. And is there a division of that? Can you tell
15 me about that?

16 A. Molecular Holdings Corporation owns Goodman-Gable-Gould
17 company.

18 Q. Okay. And what does that company do?

19 A. They are a licensed public adjuster.

20 Q. And what's your title?

21 MR. WATSON: I'm sorry, Your Honor. I can hardly
22 hear the witness. If we could move the mic closer or
23 something?

24 THE COURT: Thank you, sir.

25 THE WITNESS: Sure.

1 A. I'm an executive vice president and a partner.

2 Q. Alright. How long have you been an executive vice
3 president?

4 A. 15 years.

5 Q. How many claims do you think you have helped the
6 insurers such as Mr. Tebele in the past?

7 A. In excess of 1,000.

8 Q. Alright. And how many claims have you helped a person
9 such as Mr. Tebele in South Carolina in the past?

10 A. Probably 100.

11 Q. Okay. Alright. Let me -- you were actually hired by
12 Mr. Tebele; is that right?

13 A. Goodman-Gable-Gould company was hired by Mr. Tebele,
14 yes, sir.

15 Q. And you came here from Charlotte?

16 A. Yes, sir.

17 Q. And about when did you come, if you could tell us,
18 please, sir?

19 A. Today?

20 Q. No, no, for the loss. The loss was February 24th, 2019.

21 A. We were retained, I believe, about two weeks after the
22 loss.

23 Q. Okay. And did you come to the scene?

24 A. Yes, sir.

25 Q. Did you go to the property?

1 A. Yes, sir.

2 Q. And did you see the damage?

3 A. Yes, sir.

4 Q. Alright. And did you make an assessment as to the
5 damage?

6 A. Based on my visual inspection, the building was a total
7 loss.

8 Q. Alright. And when your company does claims, do you have
9 a team that works on the claim?

10 A. Yes, we do.

11 Q. Okay. And tell me about the team that works on the
12 claim.

13 A. In a typical property insurance policy, you have
14 coverage for the building, you have coverage for the contents,
15 and you have coverage for a loss of income or loss of rents.

16 Q. Alright.

17 A. So we assign a building consultant to measure the
18 damages to the building, we assign a risk personal property
19 specialist to do an inventory of the damaged personal property,
20 and we assign a forensic accountant to calculate the loss of
21 income.

22 Q. Alright. The policy in question in this case, how much
23 was it?

24 A. The building was insured for \$2.5 million dollars.

25 Q. Okay.

1 A. The contents were insured for \$250,000.00 and the loss
2 of rents was insured for \$100,000.00.

3 Q. Alright. Come down here, if you would, please, and put
4 on this piece of paper, because the Jury needs to understand,
5 and I do, too, how the coverages work.

6 MR. WATSON: May we move, Your Honor?

7 THE COURT: Yes, please.

8 BY MR. CONNELL:

9 Q. Alright, so let me stop you right there. The building,
10 \$2.5 million dollars, how did you come up with that figure?

11 A. It comes off of the schedule of the values.

12 Q. Okay. So you have to -- I'm not an insurance expert, I
13 know these people aren't, so you have to tell me what a
14 schedule of values is and how it relates to Mr. Tebele's case.

15 A. The insurance policy references the schedule of values
16 as obtaining the limits for each of the buildings that are
17 insured. There's a blanket limit of roughly \$21 million
18 dollars, but it references the schedule of values for each
19 insured location, so the schedule of values is incorporated
20 into the policy by reference.

21 Q. Alright. So Mr. Tebele had more than one piece of
22 property insured on this policy?

23 A. Yes.

24 Q. And how many was it; do you remember?

25 A. I think there were maybe 20.

1 Q. Okay. And so the property at 1901 North Kings Highway
2 was valued at \$2.5 million dollars?

3 A. Yes, sir.

4 Q. Alright. And what other coverages are on the policy?

5 A. Okay. Contents, personal property.

6 Q. We're talking about chairs and --

7 A. Chairs, small wares, furniture, and things of that
8 nature.

9 Q. Okay. And what else was on the policy?

10 A. Loss of income.

11 Q. Okay. How much was that?

12 A. 100,000.

13 Q. So was that loss of income from not getting rents from
14 the building; is that what that means?

15 A. Yes.

16 Q. Alright. Now, when I read the records, I hear something
17 called an all-risk. Now, what does that mean because I'm not
18 sure I understand, so tell me what it means.

19 A. An all-risk policy means that the property is insured
20 for all risks, unless it's specifically excluded or limited
21 within the policy.

22 Q. Alright. And does the policy also have something for
23 debris; is that right?

24 A. Typically, the policy has coverage with debris removal.

25 Q. Alright. So meaning, if the building is burned down

1 you've got to move it, there's a cost for that?

2 A. Yes.

3 Q. Alright. Is that -- was that in this policy?

4 A. It was as a sub-limit of the 2.5 million.

5 Q. Alright. So what's the total of the coverage that Mr.
6 Tebele would have been entitled to had the Lloyd's companies
7 decided to pay?

8 MR. WATSON: Objection, Your Honor.

9 MR. CONNELL: Had the Defendants. How about that?

10 THE COURT: The Insurers. It's fine. Thank you.

11 MR. CONNELL: Okay. Thank you. Alright. Ms. Court
12 Reporter, can I have a sticker, please? Let's just -- since
13 there's so many different numbers, let me just make it 99.

14 THE REPORTER: Okay. Here you go.

15 MR. CONNELL: Okay. Alright. Your Honor, we offer
16 Exhibit 99 in evidence.

17 MR. WATSON: No objection.

18 THE COURT: Okay. Mr. Adams?

19 MR. ADAMS: None.

20 THE COURT: Plaintiff's Exhibit 99 is admitted into
21 evidence.

22 **(Plaintiff's Exhibit 99 was admitted into evidence.)**

23 MR. CONNELL: And Mr. Twaddell, you can go back to
24 your seat, sir.

25 BY MR. CONNELL:

1 Q. Alright, Mr. Twaddell. Now, as the public adjuster,
2 what do you do for the client?

3 A. We review the insurance policy to determine what the
4 coverages are, and then we put the claim together for the
5 building and the contents and the loss of income, and we
6 present that to the insurer.

7 Q. Okay. And in this case, who was representing the
8 Defendants in this case, what adjusting company?

9 A. They're with an adjusting company out of Charleston. I
10 don't recall the name of the company, but there was a lady
11 named Lauraleigh Weaver who was the field adjuster.

12 Q. Okay.

13 A. And then there was the Peninsula Insurance Bureau out of
14 Florida who was the third-party administrator. Duncan Speak
15 was the representative from Peninsula.

16 Q. Alright. Now, did you pan a series of letters and
17 emails to the Defendants' adjusters about this case?

18 A. Yes, sir.

19 Q. And did you receive and discuss the claim with
20 Defendants' adjusters and as to why the claim should be paid?

21 A. Yes, sir.

22 Q. And during the course of a period of time, did you have
23 telephone conversations with those certain people?

24 A. Yes, sir.

25 Q. Alright. Let me let you get these in the order that

1 you'd like to talk to them about, and then we'll go from there.
2 Which one do you want to talk about first?

3 A. I put them in chronological order.

4 Q. Okay. And so what exhibit number do you have on?

5 A. 33.

6 Q. Alright. So I'm going to put it up on the screen for
7 these folks to see it.

8 MR. WATSON: Your Honor, I'd object to exhibits being
9 published to the Jury on the screen before they're admitted
10 into evidence.

11 MR. CONNELL: Alright. I'll --

12 THE COURT: Just let him finish first.

13 MR. WATSON: Okay.

14 BY MR. CONNELL:

15 Q. So have you looked at all these Exhibits 33, 34, 49, 52,
16 53, and 50? And are those part of your files and records and
17 are those part of the business records of your business
18 handling this claim?

19 A. Yes, sir.

20 Q. And are those part of the business records that you
21 relied on in making your decisions about how to handle the
22 claim?

23 A. Yes, sir.

24 Q. Are those part of the documents that you used in talking
25 with the Defendants about this claim?

1 A. Yes, sir.

2 MR. CONNELL: We'd offer all of them.

3 MR. WATSON: May I inspect these exhibits, Your
4 Honor?

5 THE COURT: Yes, sir.

6 MR. WATSON: Your Honor, there's no objection to
7 Plaintiff's 33, 52, 53, and 50. We'd like to be heard on 34
8 and 49, Judge.

9 THE COURT: Alright. Ladies and gentlemen, if you
10 will excuse us for just a few minutes, we'll try to make this
11 as quick as possible.

12 **(Jury exited the courtroom at this time.)**

13 THE COURT: 34 and 49, what's your objection?

14 MR. WATSON: 34 and 49 are related, 34 is the email,
15 it's an email from Mr. Twaddell discussing the 21 Services
16 Inspection report which is the subject of our second motion in
17 limine. Exhibit 49 is the same email as Exhibit 34 with the
18 actual report from 21st Services attached behind it. We renew
19 our objections raised in the second motion in limine that I
20 believe Your Honor's ruling at the time was if we could lay a
21 proper foundation about that report, you know, he could have a
22 chance to do that. He has not done that at this point, he
23 simply identified it, that it was attached to a letter that Mr.
24 Twaddell sent to the insurers and I think he stated it was part
25 of his business record, but I don't think he's met the standard

1 required to simply admit a hearsay document, particularly one
2 that we've already raised in our relevancy objection. This was
3 the October 2018 Sprinkler Inspection performed three months
4 before the policy was bound, and we would ask that it be
5 precluded from evidence, both exhibits. The email discusses
6 the report, so if the email comes in, it's as if, you know, the
7 report comes in, at least in part, so that's why I objected to
8 both.

9 THE COURT: Did he testify that he's used these
10 reports in coming up with his findings?

11 MR. CONNELL: Yes, sir. And Your Honor, a couple of
12 things. They don't like that report because it shows exactly
13 what Mr. Twaddell is going to say, which is that there was a
14 mistake made before about whether or not the sprinkler -- the
15 building sprinkler. On top of that, if Your Honor looks at the
16 report, you're going to see that later on today, Ms.
17 Gurtzweiler is going to -- no Ms. Northcutt is going to testify
18 that came from her records, and Ms. Gurtzweiler is an Amway --
19 or AmWins Access, which also appears on the premium finance as
20 the agent for Lloyd's, and so all of that is going to tie in
21 together, and the reason why they don't want that in there is
22 because they want to argue that that wasn't the case, and the
23 fact is Mr. Twaddell raised that with them on multiple
24 occasions.

25 THE COURT: 34, I'm going to allow, 49 I'm going to

1 potentially allow, but I want you to lay a little more
2 foundation before you introduce it as to what that is, if it's
3 an attachment, if it's, you know, because looking at the email,
4 it doesn't look the same, it's just attached by a paperclip. I
5 think there does need to be more of a foundation on that.

6 MR. CONNELL: I see. Could I also connect it up this
7 afternoon when Ms. Northcutt comes and let her testify, because
8 if you look at the document at the top --

9 MR. WATSON: At the motions in limine hearing, Mr.
10 Connell's statement was that he was going to get that report in
11 through Ms. Northcutt, and you said you would give him a chance
12 to do that. Mr. Twaddell did not author the report, he did not
13 request the report be authored, there's no basis for it to come
14 in through him at all, it's pure hearsay with no exception.

15 THE COURT: Why don't we do this? Why don't we allow
16 the emails to come in, the report can come in through Ms.
17 Northcutt if you can lay the proper foundation. Alright?

18 MR. CONNELL: And how about his email, 49?

19 THE COURT: The emails --

20 MR. CONNELL: Alright. 34 and 49 are in, except the
21 report?

22 THE COURT: That's correct.

23 MR. CONNELL: Okay.

24 MR. ADAMS: Your Honor, just for the record, we join
25 in with their objections.

1 MR. WATSON: Thank you, Judge.

2 MR. CONNELL: Thank you.

3 THE COURT: Alright. Anything else before we bring
4 them back in?

5 MR. DESCHAMPS: No, Your Honor.

6 THE COURT: Well, before we bring them back in, Mr.
7 Connell, do you have any other exhibits you plan on introducing
8 through this witness?

9 MR. CONNELL: No, sir.

10 THE COURT: I just say that specifically so --

11 MR. CONNELL: So we don't have to go back and forth.

12 THE COURT: I note your objection. Let's bring them
13 back in. Thank you.

14 **(Jury entered the courtroom at this time.)**

15 THE COURT: Alright, ladies and gentlemen, thank you
16 again for your patience. We're going to help you get those
17 steps in today. Alright, Mr. Connell, you may continue.

18 BY MR. CONNELL:

19 Q. Alright. So let's go back to where we were. I think
20 you said Exhibit 33 was your first involvement?

21 A. Yes, sir.

22 Q. Am I right?

23 A. That's correct. It's the earliest of the exhibits
24 there.

25 Q. Alright. So I'm going to put it up on the screen and

1 then you tell me what this is.

2 MR. CONNELL: And y'all can have this back here, by
3 the way.

4 A. This is a letter dated March 19th, 2019, that I received
5 from Duncan Speak at Peninsula Insurance Bureau. This is what
6 we call a Reservation of Rights Letter --

7 Q. Okay.

8 A. -- where he's putting the insured on notice that there
9 may be coverage issues related to the claim.

10 Q. So correct me if I'm wrong, but Peninsula who works for
11 the Defendants had written Mr. Tebele a letter back on March
12 19th, 2019, saying that they were looking into the claim of
13 reserving their rights to pay; is that right?

14 A. That's correct.

15 Q. Alright. And who wrote the letter, if you would,
16 please, sir?

17 A. It's signed by Duncan Speak.

18 Q. Alright. And do you know Mr. Speak?

19 A. I've never met him, but I've spoken to him several
20 times.

21 Q. On this claim?

22 A. Correct.

23 Q. Alright. And when you got -- when Mr. Tebele gave you
24 Exhibit 33, what did you do?

25 A. I responded to it via a letter on March 27th, 2019,

1 which is Exhibit 52.

2 MR. CONNELL: Alright. Your Honor, I think Exhibit
3 33 is in evidence. Do you want to object to that?

4 MR. WATSON: We don't have any objection.

5 MR. CONNELL: Okay.

6 THE COURT: Plaintiff's 33 is admitted into evidence.

7 **(Plaintiff's Exhibit No. 33 was admitted into evidence.)**

8 BY MR. CONNELL:

9 Q. Alright. So then you've gotten a letter from Mr. Tebele
10 and you've contacted Mr. Speak, and you wrote a letter, Exhibit
11 52; is that right?

12 A. Yes, it is.

13 Q. Alright. And tell me what you said in that letter.

14 A. Well, the Exhibit 33, the letter from Mr. Speak, makes
15 the contention that the policy has a protective safeguard
16 endorsement requiring that there be an automatic sprinkler
17 system in the building, and he references that there was no
18 automatic sprinkler system in the building.

19 Q. Alright.

20 A. I responded on March 27th.

21 Q. Okay. Wait a minute, which exhibit is that?

22 A. I'm sorry. I responded on March 22, which is Exhibit
23 50.

24 Q. Exhibit 50? Alright. What did you tell them in Exhibit
25 50 about the sprinkler system?

1 A. I pointed out to him that his letter states that the
2 building at 1901 North Kings Highway does not have an automatic
3 sprinkler system, so that statement is incorrect. In fact, the
4 building does have an automatic sprinkler system, although had
5 not been activated as of the date of the fire.

6 Q. Alright. And so you also put in your letter something
7 about these schedules, "AS," "AA." Tell the Jury what that
8 means.

9 A. So the policy says that if there's a symbol "AS" or "AA"
10 as indicated on the schedule of values on file with the
11 company, that there would be a requirement that an automatic
12 sprinkler system be maintained in the building.

13 Q. Alright. And did you look at the schedule of values?

14 A. Mr. Speak had forwarded to me a copy of the schedule of
15 values, and yes, I did look at it.

16 Q. Alright. And was there an "AS" by the property?

17 A. No.

18 Q. Alright. And so what does that mean to you?

19 A. It means that there was no automatic sprinkler system
20 required because there was no symbol indicated on the schedule
21 of values for this property.

22 Q. So, and correct me if I'm wrong, but the policy provided
23 that the "AS" symbol had to be on the schedule of values in
24 order for an automatic sprinkler system to be a part of them?

25 MR. WATSON: Objection, Your Honor. May we approach?

1 THE COURT: Yes, sir.

2 (Discussion was held off the record at the bench by
3 Court and counsel.)

4 BY MR. CONNELL:

5 Q. Alright. So just so we're all clear, the "AS" symbol is
6 not on the schedule of values?

7 A. That's correct.

8 Q. Alright. And did you fix together the schedule of
9 values to the hearing?

10 A. Yes, the schedule of values printed on normal-sized
11 paper is almost impossible to read, so we've blew it up and
12 created a document that's readable.

13 Q. Alright. Come down here just a minute, if you would,
14 and show me.

15 MR. CONNELL: And we're going to mark this as Exhibit
16 100, if you can, please, ma'am.

17 (Plaintiff's Exhibit 100 was marked for identification.)

18 BY MR. CONNELL:

19 Q. Okay. Show the jury where the "AS" symbol should have
20 been on the schedule.

21 MR. WATSON: Your Honor, may we approach again?

22 THE COURT: Yes, sir.

23

24 (Discussion was held off the record at the bench by
25 Court and counsel.)

1 Q. Exhibit Number 100. Now, you had to blow this up; did
2 you not?

3 A. Yes.

4 Q. And this is the same record that's in your files; is it
5 not?

6 A. That's correct.

7 Q. Alright. And so even though it's taped altogether, it's
8 just done so the Jury can see that; would that be correct?

9 A. Yes.

10 Q. Alright. So where would the "AS" symbol be on the
11 schedule of values if it was pursuant to the policy? I'm going
12 to let you turn this.

13 A. Sure. This is Building 1901, which is the building at
14 issue, so somewhere along here there would have been a column
15 or a symbol for a protective safeguard, and there's no column,
16 and there is no "AS" or "AA" or any other protective safeguard
17 requirement.

18 Q. Alright. So tell me, also, in Mr. Tebele's property
19 portfolio, were there a number of policies, a number of
20 buildings that had no sprinkler systems?

21 A. Yes, sir.

22 Q. Okay. Now we will offer this as Exhibit Number 100.

23 MR. WATSON: No objection.

24 MR. CONNELL: Alright. Exhibit 100 is admitted into
25 evidence.

1 **(Plaintiff's Exhibit No. 100 was admitted into**
2 **evidence.)**

3 MR. CONNELL: I think we've already talked about
4 Exhibit 50. We're going to offer that. That was your last
5 one; is that right, Mr. Twaddell?

6 THE WITNESS: Yes.

7 MR. CONNELL: Put that over here.

8 THE COURT: Mr. Connell, what number was that, I'm
9 sorry?

10 MR. CONNELL: Fifty, Your Honor.

11 BY MR. CONNELL:

12 Q. Alright. What's the next exhibit you looked at?

13 A. It's Exhibit 52, which is the letter I wrote dated March
14 27, 2019.

15 Q. You wrote a letter, Exhibit 52, what is that about?

16 A. We received a letter from Mr. Speak at Peninsula
17 Insurance Bureau on March 15th in which he made a demand that
18 the insured file a sworn statement of proof of loss, and in
19 this letter that I wrote back to him I pointed out to him that
20 his letter did not enclose proof of loss form as required by
21 South Carolina law, and that more than 20 days had passed since
22 the loss occurred, and therefore, they had waived their right
23 to require a proof of loss.

24 Q. Alright. So let's talk about the proof of loss and what
25 that means. When you have a fire or a hurricane or any type of

1 problem with your home or your business, what is a proof of
2 loss, and what do you have to do with that?

3 A. It's typically a one-page form, and it has you detail
4 out different aspects of the claim, property address, what the
5 cause of the loss was, the amount that's being claimed, whether
6 there's a mortgage on the property, things of that nature, and
7 then it is sworn under oath, so it's essentially an affidavit.

8 Q. Alright. And so the Defendant's adjuster was
9 complaining that no proof of loss had been filed; was that
10 right?

11 MR. ADAMS: Your Honor, I'm just going to object real
12 quick. He keeps saying Defendant's adjuster and Defendants,
13 he's -- I'm assuming he's referring to the insurance
14 Defendants, not --

15 MR. CONNELL: So here's the thing, Your Honor. Do
16 you want me to call them Defendant Lloyd's? You want me to
17 call Defendant Crescent, or do you want me to call them
18 Defendants? They're going to object every time so I want to
19 know what you want to call it.

20 MR. ADAMS: It just needs to be clear that it's not
21 our adjuster. He can say insurer defendants, or however he
22 wants to say it, but it's not Crescent Coast.

23 THE COURT: Let's relate it to insured versus --
24 BY MR. CONNELL:

25 Q. Okay. So 52, you pointed to the Defendant insurers,

1 I'll call that, you indicated that the proof of loss had been
2 waived by them; would that be correct?

3 A. Correct.

4 Q. And why is that?

5 A. They failed to enclose the proof of loss form as
6 required by South Carolina law --

7 Q. Okay.

8 A. -- and if they were going to require a proof of loss,
9 they need to do so within 20 days of the loss and more than 20
10 days had passed.

11 Q. Alright. And when you told Mr. Speak that, that was
12 more than 20 days after the loss; is that right?

13 A. Yes.

14 Q. And what did he say when he told him that?

15 A. We never actually had a conversation about it, but
16 rather than arguing the point with him, we executed the proof
17 loss and sent it back to him.

18 Q. But you didn't have to?

19 A. No.

20 Q. Were you trying to provide the Defendant insurers
21 everything they wanted to try to get the claim paid?

22 A. That's correct.

23 Q. And you didn't have to do that, but you did that; would
24 that be correct?

25 A. Yes.

1 Q. Did you get Mr. Tebele to do that?

2 A. Yes.

3 MR. CONNELL: Okay. Your Honor, that's Exhibit 52.

4 I think that's already in evidence.

5 THE COURT: Okay.

6 BY MR. CONNELL:

7 Q. Alright. So take us to the next one, please, sir.

8 A. Exhibit 53 is an email that I wrote to Mr. Speak on
9 March 29th, 2019.

10 Q. Okay. Let me put that up. So tell me what that -- now,
11 Mr. Speak is, of course, the Defendants insurers' adjuster;
12 would that be right?

13 A. Yes.

14 Q. Alright. And so would you read the email to the Jury
15 and then tell us what you're talking about then?

16 A. Sure: Duncan, please see the attached premium
17 comparison for 1901 North Kings Highway and 100 South Kings
18 Highway, two restaurant locations insured under the policy
19 issued to A. Tebele & Sons. The schedule of values shows 1901
20 North Kings Highway as having a sprinkler system. The schedule
21 of values indicates that 100 South Kings Highway does not have
22 a sprinkler system.

23 Q. Okay. Let me stop you there. So 1901 is owned by Mr.
24 Tebele's family; would that be correct?

25 A. Yes.

1 Q. And it's on the big map we just showed you; would that
2 be right?

3 A. Yes.

4 Q. And 100 South Kings Highway is also owned by Mr. Tebele
5 and his family; is that right?

6 A. Yes.

7 Q. Alright. And so read the rest of it to the Jury, if you
8 would.

9 A. The premium charged for \$1,000.00 of insurance was \$5.02
10 for both 1901 Kings Highway and 100 South Kings Highway. Thus,
11 Amwins and the insurers did not discount the premium for 1901
12 Kings Highway based on the erroneous report by 21st Services
13 that the building had an operating sprinkler system.

14 Q. Alright. You said an awful lot there, but you got to
15 tell me what that means in plain English.

16 A. So on the schedule of values there is a value for each
17 property --

18 Q. Okay.

19 A. -- and then there is a premium that's being charged for
20 \$1,000.00 of insurance.

21 Q. Okay.

22 A. So the premium for 1901 North Kings Highway was \$5.02.
23 The same premium, \$5.02 was charged for 100 South Kings
24 Highway. One had a sprinkler system and one didn't.

25 Q. So they were charging the same premium whether you had a

1 sprinkler system or not?

2 A. That's correct.

3 Q. Why would you have a sprinkler system if you didn't get
4 a deduction for that?

5 MR. WATSON: Objection to form. Argumentative.

6 MR. CONNELL: Your Honor, he's gonna answer it in
7 just a minute. He's allowed to answer.

8 THE COURT: I'm going to allow him to answer it.

9 A. There would be no -- if there's no discount for having a
10 sprinkler system, then it would seem to be no reason to have
11 one other than to protect the property.

12 BY MR. CONNELL:

13 Q. Alright. So look at the last paragraph in your email.

14 A. Since there was no premium discount offered for 1901
15 North Kings Highway, and conversely, no premium upcharge for
16 100 South Kings Highway, is the existence of or lack of an
17 operating sprinkler system was clearly not an important
18 underwriting criteria for the A. Tebele & Sons Insurance
19 program.

20 Q. And when you say not a clearly important underwriting
21 criteria, what do you mean by that?

22 A. Well, since there was no discount given for the
23 sprinkler system that was supposedly in 1901, obviously, it
24 would seem to me that they didn't consider the presence of a
25 sprinkler system to be an important factor in the program. I

1 mean, typically, on an insurance policy, if there is, for
2 instance, on a homeowner policy, if there is a fire alarm
3 system reporting to a central station, you may get a 10 percent
4 discount on the premium because it lowers the risk. Here,
5 there was no discount or upcharge for the existence or lack of
6 existence of the sprinkler system.

7 Q. Alright. So you would get -- on your homeowner's policy
8 if you had a burglar alarm, you get a discount; would that be
9 right, usually?

10 A. Usually, yes.

11 Q. Alright. What other discounts would you get, as an
12 example, on your homeowner's policy for having certain types of
13 things?

14 A. Those would be the main ones.

15 Q. Okay. And in this case, the 23 properties that Mr.
16 Tebele had on his schedule of value because it was on the
17 schedule of values, there were a number of them that did not
18 have sprinkler -- did not -- were not sprinklered; would that
19 be right?

20 A. Yes, sir.

21 Q. Alright. Let's go to Exhibit 53, page 2. Alright.
22 What is that, please, sir?

23 A. That was where I did the calculation to show the rate
24 that was charged per \$1,000.00 of insurance.

25 Q. Alright, sir. The yellow highlighted one, is that the

1 property that had the fire? You probably can't -- you've got a
2 black-and-white copy. I'm sorry.

3 A. That's fine.

4 Q. Come down here a minute, if you will. Alright. So take
5 me through this. These are all the properties on Mr. Tebele's
6 schedule of values?

7 A. That's correct.

8 Q. Alright. And so what is this premium for 1,000? What
9 does that mean?

10 A. That's the rate that was charged for \$1,000.00 in
11 insurance coverage.

12 Q. Alright. And how did you come up with that?

13 A. From the schedule of values.

14 Q. Alright. You did some math to figure that out?

15 A. Yes.

16 Q. Alright. This isn't actually on the schedule of values.
17 This is your number; is that right?

18 A. Yes.

19 Q. Alright. And so on the Tebele property, the premium was
20 \$14,319.54?

21 A. Yes.

22 Q. Alright. And of course, there were other coverage, the
23 personal property and business income, and then on this
24 property at 100 South Kings Highway, which was also owned by
25 the Tebele family, how much was the premium on that?

1 A. \$7,838.05.

2 Q. Alright. So how did you come to them both being \$5.02
3 based on the fact that there was no sprinkler system?

4 A. It was the simple math.

5 Q. Alright. Take us through quick.

6 A. Let's see.

7 Q. You did some division. Is that how you did it?

8 A. Yes.

9 Q. Alright.

10 A. It's been a while.

11 Q. Alright. And I'm not giving you a test of math, but are
12 these the numbers you came up with?

13 A. Yes.

14 MR. CONNELL: Alright. You can go back up there.
15 Your Honor, we'd offer 53 into evidence.

16 THE COURT: That's been stipulated to. Plaintiff's
17 53 is admitted into evidence.

18 **(Plaintiff's Exhibit No. 53 was admitted into evidence.)**

19 BY MR. CONNELL:

20 Q. Alright. So Mr. Twaddell, when you gave Exhibit 53 to
21 the Defendant insurers' adjusters, what did they say about
22 that?

23 A. They didn't respond.

24 Q. You got no answer for this?

25 A. No.

1 Q. And let me show you Exhibit 51. You don't have it in
2 your list, let me give it to you. Would that be the proof of
3 loss you're talking about?

4 A. Yes, sir.

5 MR. CONNELL: Alright. Your Honor, we'd offer 51.

6 MR. WATSON: Stipulated.

7 THE COURT: Plaintiff's 51 is admitted into evidence.

8 **(Plaintiff's Exhibit No. 51 was admitted into evidence.)**

9 BY MR. CONNELL:

10 Q. Alright. What's the next one in order, Mr. Twaddell?

11 A. I think that's all of them except for 49 and 34.

12 Q. Okay. So which one would you like to talk about? They
13 both have the same date; do they not?

14 A. Yes, 34 is a copy of an email that I wrote to Mr. Speak.

15 Q. Okay.

16 A. And 49 is the same email, but it attaches a report from
17 21st Services LLC.

18 Q. Alright. Let me take you to that one. March 29th,
19 2019?

20 A. Yes.

21 Q. About a month after the fire; would that be right?

22 A. A little more than a month.

23 Q. Okay. And so read the email, if you would, to the Jury,
24 please.

25 A. Duncan, please see the attached commercial package

1 inspection report for 1901 North Kings Highway prepared by 21st
2 Services LLC for the underwriter, Amwins. The date of the
3 inspection was October 3, 2018. The report was reviewed by
4 Amwins on November 26th, 2018. Please note that the 21st
5 Services report indicates that 1901 North Kings Highway
6 contained an operating sprinkler system as of October 3, 2018.
7 It would seem that this report that was prepared for Amwins is
8 the source of the confusion about the existence of an operating
9 sprinkler system. Somehow, the information in the 21st
10 Services report about the existence of an operating sprinkler
11 system made its way onto the schedule of values for the policy
12 issued to A. Tebele & Sons. It is important to note that the
13 insured did not receive a copy of the policy or the schedule of
14 values until after the loss occurred. Thus, the insured had no
15 way of knowing the schedule of values indicated a sprinkler
16 system for 1901 Kings Highway.

17 Q. Alright. Let me stop you there. So are you telling the
18 Jury that Mr. Tebele had never seen the schedule of values and
19 somehow the sprinkler information got on the schedule of
20 values?

21 A. That's correct.

22 Q. Alright. And the 21st Century report that -- how did
23 you get that report?

24 A. Mr. Tebele gave it to me.

25 Q. Alright. And the 21st Century report has the name

1 "Amwins" on it, does it not?

2 A. Yes, the report was ordered by Amwins, correct.

3 Q. So take the Jury through, if you can. In this
4 particular case, Crescent Coast went to Amwins to get a policy;
5 would that be correct?

6 MR. WATSON: Objection, Your Honor, clarification
7 needed in which Amwins entity prior --

8 MR. CONNELL: I'll take care of it, Your Honor.

9 BY MR. CONNELL:

10 Q. How many -- there are a number of Amwins entities; are
11 there not?

12 A. Yes.

13 Q. And how many, do you know?

14 A. I don't.

15 Q. Amwins is a big company?

16 A. Very big.

17 Q. And you've had experience with them before?

18 A. Yes.

19 Q. And they do a lot of sale of insurance; would that be
20 correct?

21 A. Yes.

22 Q. Now, in this case, does the 21st Century report have the
23 name of the Amwins entity on it?

24 A. It doesn't have the name of an Amwins company, but it
25 does say on the face of the report that it was ordered by

1 Anthony dot Baker at Amwins dot com.

2 Q. Alright. And for what entity was the report ordered
3 for?

4 A. For the tenant, Melissa Garcia, doing business as La
5 Casona Latin Cuisine.

6 Q. Alright. So would it be fair to say that the tenant was
7 getting a policy from the Defendants, and the tenant --
8 somebody from Amwins ordered a report so they could look and
9 see what the situation was with the property?

10 MR. WATSON: Objection. Defendants collective again,
11 the same objection.

12 MR. CONNELL: The defendant insurers.

13 A. My understanding is that the tenant went to Crescent
14 Coast Insurance as their retail agent, local agent for
15 insurance, and that Crescent Coast Insurance went to Amwins to
16 place the policy.

17 Q. Alright. So Crescent Coast went to Amwins for both Mr.
18 Tebele's policy and for the Mexican restaurant; is that right?

19 A. Yes.

20 Q. And the report was a report that was done for the
21 tenant; would that be correct?

22 A. Yes.

23 Q. And the tenant's report from 21st Century showed, what,
24 about the sprinkler system?

25 MR. WATSON: Objection, Your Honor. It was the

1 subject of our sidebar conference with you.

2 THE COURT: Are you asking as because he reviewed it,
3 what it says?

4 MR. CONNELL: Yes, sir.

5 THE COURT: And he has testified that he's reviewed
6 it. I'm going to allow him to testify to what he reviewed.

7 MR. CONNELL: Alright.

8 BY MR. CONNELL:

9 Q. What does the 21st Century report show about whether or
10 not in 2018 the property had been sprinklered?

11 A. It indicates that the property was sprinklered.

12 Q. And that was before Mr. Tebele even got his policy?

13 A. That's correct.

14 Q. Okay. And does that lead you to believe what you said
15 in your email, Plaintiff's Exhibit Number 49, about it was
16 erroneously put on the property?

17 A. I believe this is how the existence of a sprinkler
18 system made its way onto the statement of values.

19 MR. CONNELL: Alright. Your Honor, we offered 49. I
20 think you've already ruled on that.

21 THE COURT: 34 and 49 by the Plaintiff over
22 objection.

23 MR. WATSON: I'm sorry, Your Honor. I couldn't hear
24 you.

25 THE COURT: 34 and 49 are admitted over objection.

1 MR. WATSON: With the attachment, Your Honor?

2 THE COURT: Not with the attachment.

3 MR. WATSON: Understood. Okay.

4 MR. CONNELL: And I want to be able to connect that
5 up later.

6 THE COURT: Yes, sir.

7 **(Plaintiff's Exhibits Nos. 34 & 49 were admitted into**
8 **evidence.)**

9 BY MR. CONNELL:

10 Q. Alright. In Exhibit Number 34, I'm going to let you
11 look at that, that's the same thing, is it not?

12 A. It's the same email, yes, sir.

13 Q. Okay. And did you ever get any response from the
14 Defendant insurers' adjusters about your discovery in this
15 case?

16 A. No.

17 Q. Alright. Did you ever get -- you noted in 49 something
18 about the Defendant, or that Mr. Tebele never received a copy
19 of the policy?

20 A. Not until after the fire.

21 Q. Okay. Is that unusual?

22 A. It happens from time to time.

23 Q. Alright. And so Mr. Tebele wouldn't have done what was
24 in the policy; would he, if he --

25 MR. WATSON: Objection, Your Honor, calls for

1 speculation.

2 THE COURT: It does call for speculation. I'll
3 sustain the objection.

4 BY MR. CONNELL:

5 Q. Alright. Now, the schedule of values, of course, you
6 mentioned that, also; would that be correct?

7 A. Yes.

8 MR. CONNELL: Alright, 34 is in, Your Honor.

9 BY MR. CONNELL:

10 Q. Alright. So you were going to get paid if you were able
11 to help Mr. Tebele get the claim; is that correct?

12 A. Yes.

13 Q. And is that what a public adjuster usually gets as a
14 payment, a commission of some sort, or a fee?

15 A. We typically work on a contingency basis, a percentage
16 of the insurance recovery.

17 Q. Okay. And how much were you going to get?

18 A. Five percent.

19 Q. Alright. And were you ever able to get the Defendant
20 insurers to pay anything on this claim?

21 A. No.

22 Q. Did the Defendant insurers ever offer to pay back the
23 premium that they had collected?

24 A. No.

25 Q. Alright. Did the Defendant insurers ever write you or

1 tell you through their adjuster that they were not going to pay
2 the claim?

3 A. Yes. There was a denial letter written by Duncan Speak.

4 Q. Okay. Did the Defendant adjusters ever write anything
5 back about all the exhibits we've shown you saying, you're
6 wrong about this, Mr. Twaddell, you don't know what you're
7 talking about, did they ever do that?

8 A. The only response was the denial letter.

9 Q. And was that a form denial letter you got?

10 A. Yes, sir.

11 Q. Now, can you tell me what the term "ISO" means in regard
12 to insurance policies on property?

13 A. It means insurance services office.

14 Q. Okay. And what does -- does the insurance services
15 office collect data on every property in the United States?

16 A. I don't know.

17 Q. Do you know anything about a Lloyd's portal for
18 properties they've insured in the past?

19 A. No.

20 Q. Alright. Did you have any other involvement in the
21 claim after the exhibits we've shown you in regard to the
22 denial?

23 A. I continued to be involved with Mr. Tebele when the
24 insurers requested an examination under oath.

25 Q. Okay.

1 A. I assisted with the production of documents that were
2 requested as part of that examination.

3 Q. Okay. Tell the Jury, if you would, what an examination
4 under oath is.

5 A. The insurance policy requires that the insured submit to
6 an examination under oath, which is similar to a deposition.
7 It's usually conducted in front of a court reporter, the
8 testimony is sworn testimony, and the insurance company can
9 request that the policyholder produce their books and records
10 for inspection and examination at the examination.

11 Q. Alright. Were you at the examination under oath?

12 A. No.

13 Q. And did Mr. Tebele participate in the examination under
14 oath?

15 A. Yes.

16 Q. Give them every document they wanted in this case?

17 A. Yes.

18 MR. CONNELL: Thank you, sir.

19 **CROSS-EXAMINATION**

20 BY MR. WATSON:

21 Q. Hi, Mr. Twaddell.

22 A. Hi.

23 Q. We've never met. We finally meet in person.

24 A. I think we've met once before.

25 Q. Did we?

1 A. Yes, sir.

2 Q. It wasn't at the EUO, though, was it?

3 A. No.

4 Q. They fired you before the EUO, right?

5 A. No.

6 Q. They canceled your contract?

7 A. No.

8 Q. No? They didn't hire Joe Zevuloni in your place as the
9 public adjuster?

10 A. They hired him in addition to myself.

11 Q. Oh, okay, they didn't cancel your contract?

12 A. No.

13 Q. Let's talk about your contract. I'm handing you what's
14 been marked for identification as Defendant's Exhibit 37. Is
15 that a copy of the contract that you had with the insured?

16 **(Defendant's Exhibit No. 37 was marked for**
17 **identification.)**

18 A. Yes, sir.

19 Q. And is this a true and accurate copy of the contract?

20 A. It appears to be.

21 MR. WATSON: I would ask that Defendant's Exhibit 37
22 be moved into evidence.

23 MR. CONNELL: No objection.

24 THE COURT: Defendant's 37 is admitted into evidence.

25 **(Defendant's Exhibit No. 37 was admitted into evidence.)**

1 BY MR. WATSON:

2 Q. And so the company you work for, Mr. Twaddell, is
3 Goodman Gable Gould/Adjusters International for purposes of
4 this claim?

5 A. No. I work for Molecular Holdings Corporation, which
6 owns Goodman Gable Gould/Adjustments International.

7 Q. Alright. Well, your contract is on the letterhead for
8 Goodman Gable Gould, right?

9 A. Yes.

10 Q. And this is where it lays out that your -- the insurer
11 has agreed to pay 5 percent of the gross amount adjusted or
12 recovered as part of your -- as your fee for your services?

13 A. Yes, sir.

14 Q. So the more the insured recovers, the more your fees?

15 A. That's correct.

16 Q. So if the insured recovers -- well, I think we made that
17 point. The insured is listed with three different names. It
18 says: A. Tebele & Sons/Kings Realty/Tebele Investment Group
19 LLC. Why is that? You're welcome to come down and look at it,
20 if you need to.

21 A. We probably listed all of the named insured on the
22 policy as the insured.

23 Q. And the insured just below the date line authorizes you
24 as the public adjuster to prepare estimates on its behalf,
25 correct?

1 A. Yes.

2 Q. And then they agree to pay, and there's two bullet
3 points talking about payment and the terms for your payment,
4 correct?

5 A. Yes.

6 Q. And then even down further, there's an assignment, it
7 says: The insured assigns to Goodman Gable Gould all monies
8 due to become from said insurance companies to the extent of
9 the fee, your 5 percent, right?

10 A. Yes, sir.

11 MR. CONNELL: What ones are those?

12 MR. WATSON: 53 and 54.

13 BY MR. WATSON:

14 Q. Mr. Twaddell, I'm approaching and handing you what's
15 been marked for identification as Defendant's Exhibits 53 and
16 54. Are you familiar with those letters?

17 A. Yes, sir.

18 Q. Is that a back-and-forth communication between yourself
19 and Mr. Connell?

20 A. Yes, sir.

21 Q. And is it concerning your efforts to maintain your
22 financial interest in this claim?

23 A. My letter was written in response to the July 17th
24 letter from Mr. Connell, which I disputed his contention that
25 our contract was canceled.

1 Q. And are those true and correct copies of the
2 correspondence back and forth between yourself and the
3 policyholder's attorney?

4 A. Yes.

5 MR. WATSON: I would ask that those be moved into
6 evidence, Your Honor, Defendant's Exhibits 53 and 54.

7 MR. CONNELL: No objection.

8 THE COURT: Defendant's 53 and 54 are admitted into
9 evidence.

10 **(Defendant's Exhibit Nos. 53 & 54 were admitted into**
11 **evidence.)**

12 BY MR. WATSON:

13 Q. So on Exhibit Defendant's 53 that's now in evidence,
14 July of this year, Mr. Connell, who just was finished asking
15 you questions, wrote to you and advised you that the contract
16 is canceled; didn't he?

17 A. Yes, sir.

18 Q. And he said: You never collected any fees in the case
19 and the matter has been in litigation for years. Accordingly,
20 please consider this matter canceled. Right?

21 A. Yes.

22 Q. And then you wrote him back in Exhibit Defendant's 54 a
23 week later saying: We have a valid contract, you can't just
24 cancel it, and in essence, attempting to say the contract was
25 not canceled and if this lawsuit results in recovery for A.

1 Tebele & Sons, you have an interest in it, right?

2 A. That's correct.

3 Q. And if he doesn't win, you don't get anything?

4 A. That's correct.

5 Q. Did you make a new deal after you wrote this letter in
6 July of 2023, since we're now five months later? Has there
7 been any kind of new arrangement for your payment made?

8 A. There's been no -- no, no, there's been no new
9 arrangement.

10 Q. Did you receive any money for coming here to testify
11 today from the plaintiff?

12 A. No.

13 Q. So you're banking on the outcome of this case to get
14 paid for your time?

15 A. Yes.

16 Q. Now, although you said in your direct that you were a
17 licensed attorney, you did not practice as an attorney for
18 purposes of this claim; is that true?

19 A. That's true.

20 Q. Have you ever been an underwriter of an insurance
21 policy?

22 A. No.

23 Q. Do you know how to analyze risk to come up with the
24 appropriate premium to calculate what an insurer should charge
25 for a given risk?

1 A. No.

2 Q. So when you did all of your math about \$5.00 per square
3 foot for what the premium was, you just simply took the number
4 of square feet and the amount of the premium charge, correct?

5 A. Yes.

6 Q. You don't know what the actual underwriter did in terms
7 of valuing what the premium is going to be for any of those 24
8 locations; do you?

9 A. No.

10 Q. And you didn't talk to anyone at Amwins Special Risk
11 Underwriters about how they did that; did you?

12 A. No.

13 Q. And you didn't talk to Mr. Speak about how they did
14 that, other than in that letter you wrote?

15 A. That's correct.

16 Q. And no matter what the amount of the premium that's
17 charged, the policy governs whether something's covered or not,
18 correct?

19 A. Yes, sir.

20 Q. So even if the insured got a deal and paid a lower
21 premium, the policy language doesn't change because of that,
22 right?

23 A. No.

24 Q. And similarly, if he paid too much, he made a bad deal,
25 he overpaid for a policy, the language doesn't change; does it?

1 A. No, but what I did in that comparison was I looked at
2 two properties that were closely -- were close together, both
3 were restaurants on the same highway, so it would seem to me
4 that the risk for both of those properties was the same.

5 Q. So the insurers possibly missed out on some money, or
6 possibly Tebele & Sons missed out on a discount, I think is
7 what you said? He missed out on a discount that he should have
8 gotten because the property was sprinklered?

9 A. No. What I said was it seemed that the existence or
10 lack of existence of a sprinkler system was not an important
11 underwriting criteria because they charged the same rate for
12 the two different buildings.

13 Q. But what the underwriting criteria is plays no role in
14 what the policy says, does it?

15 A. Mr. Speak wrote letters in which he quoted --

16 MR. WATSON: I'm sorry, Your Honor --

17 MR. CONNELL: Objection.

18 MR. WATSON: -- I would ask that the witness would
19 answer my question and then if he wants to explain it he can.

20 THE COURT: I think he's trying to answer your
21 question, I'm going to allow him to answer it.

22 A. Mr. Speak wrote letters, Reservation of Rights Letters,
23 in which he raised the issue of the lack of the sprinkler
24 system as being important to the claim. I was pointing out to
25 him that apparently it wasn't that important because he charged

1 the same rate, whether there was a sprinkler or there was no
2 sprinkler.

3 Q. But whether it was important or not and whether what the
4 premium was didn't change the language of the policy; did it?

5 A. No.

6 Q. And as part of your review as a public adjuster on this
7 claim, you reviewed this subject policy, correct?

8 A. Yes.

9 Q. Okay. And Exhibit 50, which is already in evidence,
10 your letter, March 22 of 2019, in the third sentence, you say:
11 In fact, the building does have an automatic sprinkler system,
12 although it had not been activated as of the date of the fire.
13 That's what you wrote?

14 A. Yes, sir.

15 Q. And when you say, "not been activated," that means there
16 was no water in it, right?

17 A. It had not been connected to the main water system, yes.

18 Q. And so there was no ability for it to put out a fire?

19 A. No.

20 Q. And then when this fire happened, it put no water on it?

21 A. That's correct.

22 Q. And in your letter, you quoted from a schedule in the
23 policy that's part of that protective safeguard endorsement,
24 correct?

25 A. Yes, sir.

1 Q. And you point out the different symbols that you have
2 that you testified with Mr. Connell about "AS" and "AA," et
3 cetera?

4 A. Yes, sir.

5 Q. And you got that from the endorsement that was part of
6 this policy?

7 A. Yes, sir.

8 Q. Exhibit Plaintiff's 53, which is already in evidence, is
9 the March 29th, 2019 letter. Do you have your version there --
10 email, excuse me. It looks like this. The one that has your
11 math on the back of the second page?

12 A. Yes, sir.

13 Q. Now, you got out big Exhibit 100 and the whole Scotch
14 tape project of blowing up that schedule of values to show us
15 that the letters "AS" didn't show on the schedule of values,
16 correct?

17 A. Yes, sir.

18 Q. Okay. You wrote this email, this Exhibit 53 on March
19 29th, 2019?

20 A. Yes.

21 Q. And in the second sentence, you wrote: The schedule of
22 values shows 1901 North Kings Highway as having a sprinkler
23 system. Those are your words, right?

24 A. Yes.

25 Q. But your testimony today is now it doesn't, right,

1 through this big exhibit, you said it's not there?

2 A. No, what I said in the letter was that the schedule of
3 values shows the property as having a sprinkler system.

4 Q. And if the schedule of values shows that the property
5 has a sprinkler system, then the protective safeguard
6 endorsement referencing the schedule of values would apply to
7 that location, wouldn't it?

8 A. The protective safeguard endorsement says that a
9 sprinkler system would be required when the symbol "AS" is on
10 the schedule of values and that symbol does not appear in the
11 schedule of values.

12 Q. And that's how you read it?

13 A. That's how anybody would read it if you look at it.

14 Q. That's not how the insurers read it; is it? You read
15 the denial letter.

16 A. Do you want to show me where it says "AS" on the
17 schedule of values, and then I'll correct my testimony.

18 Q. But I just read your email that said, again: The
19 schedule of values shows 1901 North Kings Highway as having a
20 sprinkler system. You were being truthful there, correct?

21 A. Yes, it does say that.

22 Q. And the way it says that is there's a column for
23 sprinkler: Yes, no, and it says: Yes. Correct?

24 A. I believe it says: 100 percent.

25 Q. And that was my next question. There's also a column

1 that says, percent sprinkler, that says, for this location,
2 100, right?

3 A. Yes, sir.

4 Q. I mean, I don't need to get out this exhibit to show you
5 that, you remember that?

6 A. I do.

7 Q. And when the -- when my clients, when the insurers
8 declined coverage for this claim, they didn't mention anything
9 about the premium that was charged and what the amounts were;
10 did they?

11 A. I don't recall what the denial letter said, I haven't
12 seen it in several years.

13 Q. Do you know when Mr. Zevuloni, the second public
14 adjuster, was retained by the Plaintiff?

15 A. I learned of it shortly before the examination under
16 oath.

17 Q. And you'd agree that the declaration of the claim
18 occurred roughly a month or so after the examination under oath
19 in August of 2019?

20 A. As I said, I haven't seen the dec. letter -- the denial
21 letter in some time, so I don't know what the date is.

22 MR. WATSON: If I may approach the witness, Your
23 Honor?

24 THE COURT: Yes, you may.

25 BY MR. WATSON:

1 Q. You testified with Mr. Connell about Plaintiff's 34 and
2 49, I think, which were the same email, different copies of it.
3 Do you have one of those in front of you?

4 A. I have both.

5 Q. And you testified that this was requested by someone
6 named Anthony Davis, right, according to your review of the
7 document?

8 A. Anthony Baker.

9 Q. Excuse me. Thank you. Do you ever talk to Mr. Baker?

10 A. No.

11 Q. You know what he did?

12 A. No.

13 Q. Do you know what he was looking for?

14 A. No.

15 Q. You know why he completed that report the way he did
16 beyond what you can see on the page?

17 A. He didn't complete the report, he was the Amwins
18 representative who requested that first Services -- 21st
19 Services complete the report.

20 Q. Which Amwins entity did he work for?

21 A. His email address is just Amwins dot com.

22 Q. Do you know which entity he worked for?

23 A. No.

24 Q. Do you know whether he worked for Amwins Access or
25 Amwins SRU, or any other entity?

1 A. No.

2 Q. Do you know the difference between those entities I just
3 listed to you with respect to this policy, the Tebele policy?

4 A. I believe Amwins SRU is the underwriting department.

5 Q. And you know that Amwins Access was the underwriter of
6 the tenant, Ms. Garcia's policy, right?

7 A. No, I don't know that.

8 Q. But you know that the report that you alerted Mr. Speak
9 to in this exhibit was prepared in relationship to Ms. Garcia's
10 policy, right?

11 A. Yes.

12 Q. And in fact, Mr. Tebele's property policy that we're
13 here about didn't even become effective until January of 2019,
14 about three months after that report was generated, right?

15 A. The report was generated on October 3, and then it
16 looked -- it has a stamp on it that says: Reviewed by H.
17 Helmsman (phonetic) on November 26th, 2018.

18 Q. Do you know who that is?

19 A. I don't.

20 Q. Do you know where they work?

21 A. Presumably, Amwins.

22 Q. How do you -- are just guessing?

23 A. I'm just guessing.

24 Q. You never investigated to find that person or talk to
25 that person; did you?

1 A. No.

2 Q. You testified on direct, correct me if I am wrong, Mr.
3 Tebele and his company had no way of knowing they were required
4 to have a sprinkler system at 1901 North Kings Highway because
5 they hadn't been given the policy. That's your testimony?

6 A. I believe that's correct, yes.

7 Q. And you're aware that Mr. Tebele on January 14th, the
8 day before this policy was bound, signed a document telling the
9 insurers that it did have an operating sprinkler system, right?

10 A. I don't know the date, but I believe that on the
11 application for insurance there was a box checked indicating
12 that this property had a sprinkler system.

13 Q. And that he signed that application that contained that
14 notation, right?

15 A. It was a DocuSign document, so I don't know who signed
16 it.

17 Q. Well, it had his electronic DocuSign signature, correct?

18 A. Yes.

19 Q. You were involved in the initial investigation of this
20 fire shortly after you were retained, correct?

21 A. I assisted in responding to a request for information
22 from Lauraleigh Weaver. I wasn't involved in the
23 investigation. I provided her with documentation that she
24 asked for.

25 Q. Did you go to the site?

1 A. I'm sorry?

2 Q. Did you go to the site of the fire?

3 A. Yes.

4 Q. Okay. You looked at the property shortly after the
5 fire?

6 A. Yes, sir.

7 Q. Alright. Mr. Twaddell, I'm going to show you what's
8 been marked for identification as Defendant's Exhibit 35.

9 **(Defendant's Exhibit No. 35 was marked for**
10 **identification.)**

11 Q. And you can take your time and flip through those. I'm
12 not going to ask you a lot about it, but when you're done, let
13 me know when you're ready.

14 A. Okay.

15 Q. Do you recognize this exhibit to be photos taken shortly
16 after the fire at 1901 North Kings Highway?

17 A. I've never seen this document, but it does contain
18 photos of the building after the fire.

19 Q. And is what's depicted in those photos similar to the
20 condition of the property when you inspected it after the fire
21 and after you were retained?

22 A. Yes, sir.

23 MR. WATSON: Alright. I would ask to move
24 Defendant's Exhibit 35 into evidence.

25 MR. DESCHAMPS: No objection.

1 THE COURT: Defendant's 35 is admitted into evidence.

2 **(Defendant's Exhibit No. 35 was admitted into evidence.)**

3 BY MR. WATSON:

4 Q. And if you want to come see, you're welcome to come
5 down. This is what's entitled the photo sheet authored by
6 Lauraleigh Weaver, who you explained earlier that was the field
7 adjuster hired by the insurers to do the first inspection,
8 correct?

9 A. Yes, it is.

10 Q. And this first picture, and the second picture on the
11 first page, that's what the building looks like --

12 A. Yes.

13 Q. -- at the time of her photos indicated as February 25th,
14 so about 24 hours after this fire, correct?

15 A. The date of the photo says, February 25. I believe the
16 date of the fire was February 15th.

17 Q. Alright. If I suggested to you it was February 24th
18 based on four years of litigation, are you willing to go with
19 me on that?

20 A. I don't see that it matters one way or the other.

21 Q. Okay. Now, this property was in the City of Myrtle
22 Beach, correct?

23 A. Yes, sir.

24 Q. And the City of Myrtle Beach Fire Department responded
25 to the fire, correct?

1 A. Yes.

2 Q. And in Ms. Weaver's photographs, she notes a fire
3 marshal's notice about the property requiring a fire inspection
4 on January 9th -- 29th of '19, so almost a month before the
5 fire, right?

6 A. That's what it says.

7 Q. Do you have a recollection in your own mind of where the
8 sprinkler connection remained unconnected at the time of the
9 fire? In other words, where the tap had to be made and the
10 final steps had to be made to connect it?

11 A. It was on the south side of the building.

12 Q. And I'm on page 11 of this same exhibit, Defendant's 35,
13 this top photograph and this bottom photograph, do you
14 recognize this as that area?

15 A. Yes, sir.

16 Q. And so, and even Ms. Weaver's notes: Trench for
17 sprinkler system connection, meaning, this area under the
18 ground, right?

19 A. Yes.

20 Q. And then this area under the ground would connect to a
21 water main for the city's water line, right?

22 A. Yes, sir.

23 Q. And then it would come up out of the ground, and if it
24 was actually connected it would go into the building somewhere?

25 A. Yes, sir.

1 Q. And here you have a pipe coming up out of the ground,
2 but it doesn't go into the building; does it?

3 A. Yes, sir.

4 Q. And then as an example, Ms. Weaver took some pictures
5 noting inside the building that there were a series of pipes
6 throughout the interior, correct?

7 A. Yes, sir.

8 Q. You saw the interior?

9 A. Yes, sir.

10 Q. But those didn't do anything to put out the fire because
11 this final piece wasn't connected?

12 A. No, that's correct.

13 Q. As the retained public adjuster for the policyholder,
14 you retained a consultant called Atlantic Estimating to do an
15 estimate of the damage to the building, correct?

16 A. Yes, sir.

17 Q. And that was an individual named Don Labonte, correct?

18 A. Yes, sir.

19 Q. And he prepared a lengthy 90-page estimate of the
20 damage, right?

21 A. Yes, sir.

22 Q. And he came to the conclusion -- or actually, it was
23 prepared shortly after you were retained sometime in March or
24 April of 2019; would you agree?

25 A. It was prepared after we were retained, yes.

1 Q. I'm going to show you a copy of what's been marked for
2 identification as Defendant's Exhibit 43 and ask you if this is
3 a copy of that.

4 A. Yes, sir.

5 Q. And what was the total of the value of this estimate
6 that Mr. Labonte prepared for you for the policyholder as far
7 as the damage?

8 A. The cost to replace the building, according to Mr.
9 Labonte, was \$4,579,884.99.

10 Q. And that was done in approximately -- if you look at the
11 date stamps on the bottom of each page on about April 30th of
12 2019, you came up with that figure, does that appear right to
13 you?

14 A. On the bottom of the 2nd page, it does have the date of
15 April 30th, 2019.

16 Q. And this was prepared with the Xactimate Software?

17 A. Yes.

18 Q. And that's a software you're familiar with as a public
19 adjuster?

20 A. Yes.

21 Q. And that's a software that takes prices at a given time
22 for a given geographic area to allow someone to prepare an
23 estimate of the cost to repair something?

24 A. Yeah. The price list is derived from the Xactimate
25 Software, and it's updated on a monthly basis based on specific

1 geographic locations.

2 Q. And what month's prices were used?

3 A. March of '19.

4 Q. March in 2019?

5 A. Yes.

6 MR. WATSON: Alright. I'd ask to move into evidence
7 this exhibit, Defendant's 43.

8 MR. CONNELL: No objection.

9 THE COURT: Defendant's 43 is admitted into evidence.

10 **(Defendant's Exhibit No. 43 was admitted into evidence.)**

11 BY MR. WATSON:

12 Q. And so Mr. Twaddell, this was the basis for you to
13 advise Tebele & Sons to make their claim for the 2.5 building
14 limits, correct?

15 A. That was part of the rationale for making that claim.

16 Q. Did you have another estimate?

17 A. No. Under South Carolina law, if the building is a
18 total loss due to fire, the value policy statute requires that
19 the insurer pay the policy limit without deduction. It was
20 agreed that this building was a total loss, so by South
21 Carolina statute, the insurers were required to tender the
22 policy limit.

23 Q. And that's the most they could get under that statute?

24 A. The most that they could collect would be the policy
25 limit.

1 Q. Right, the 2.5 million?

2 A. Yes, sir.

3 Q. So if this estimate were to be performed, Tebele & Sons
4 would have to come out of pocket 1.7 million, whatever the math
5 is, subtracting the amount of this estimate from the value of
6 the limit, right?

7 A. If they built the same structure back, yeah, that's
8 correct.

9 Q. Who is David Gundling?

10 A. David Gundling was an attorney who represented Mr.
11 Tebele during the examination under oath.

12 Q. And he was with the Bellamy Law Firm at that time,
13 right?

14 A. At that time, yes, sir.

15 Q. And then there's another attorney at that firm George
16 Redman, who also assisted at that time?

17 A. Yes.

18 Q. And you communicated with them during your time on the
19 claim?

20 A. Yes, I did.

21 MR. CONNELL: Your Honor, can we talk to you a
22 moment?

23 THE COURT: Yes, sir. Do you want to approach?

24 **(Discussion was held off the record by Court and**
25 **counsel at this time.)**

1 THE COURT: Alright, ladies and gentlemen, I think
2 now is as good as any time to take a break. We're going to
3 break for lunch. It's 12:20. If we can be back from lunch by
4 1:40, 1:45, we're going to try to start back promptly at 1:45.
5 Again, do not discuss anything that you've heard either
6 testimony or any other evidence with your fellow jurors or
7 anyone else. Thank you. We'll be at ease until around 1:45.

8 **(Recess taken.)**

9 THE COURT: Anything we need to take up before we
10 bring the jury back in?

11 MR. CONNELL: No, Your Honor.

12 MR. WATSON: No, Your Honor.

13 MR. ADAMS: None.

14 THE COURT: Alright. Mr. Connell, you can go ahead
15 and call your witness back up here then. Thank you. Mr.
16 DesChamps, I don't know if this is what you marked or just a
17 copy you made for me.

18 MR. DESCHAMPS: I have the one that we marked. Do
19 you want me to take that back, that's just a copy.

20 **(Jury entered the courtroom at this time.)**

21 THE COURT: Thank you, ladies and gentlemen. I hope
22 that you all had a good lunch. Alright, Mr. Watson, you may
23 begin -- or excuse me, resume your cross-examination.

24 MR. WATSON: Thank you, Your Honor.

25

1 **CROSS-EXAMINATION (continued)**

2 BY MR. WATSON:

3 Q. Alright, Mr. Twaddell, remember Exhibit 100 that has
4 spread the schedule values taped together?

5 A. Yes, sir.

6 Q. I'm focusing in specifically, and you can come down if
7 you want to see, and a couple columns in are all the different
8 street addresses for this Tebele & Sons insurance policy that
9 were scheduled locations, correct?

10 A. Yes, sir.

11 Q. Towards the middle of the page, these orange columns,
12 the first orange column is titled: Percent Sprinkler, correct?

13 A. Yes, sir.

14 Q. And next to it is the column marked, Sprinkler yes/no,
15 correct?

16 A. Yes, sir.

17 Q. How many, and if you would count, how many of the
18 locations on this policy are listed as 100 percent sprinklered
19 in that column?

20 A. Five.

21 Q. And one of them was the North Kings Highway, 1901 North
22 Kings Highway?

23 A. Yes, sir.

24 Q. Same question, but on the next column, the Sprinklered
25 yes/no column, how many have yes notated there?

1 A. Five.

2 Q. It's the same five, correct?

3 A. Yes, sir.

4 Q. Alright. Did you do any of your own investigation about
5 the other four properties that were identified on Exhibit 100
6 as 100-percent sprinklered with a yes?

7 A. No.

8 Q. Next, I'm going to show you an email that's been marked
9 Defendant 55-F for identification. Do you recognize that to be
10 an email that you wrote?

11 A. I'm sorry, what was the question?

12 Q. Did you write that email?

13 A. No.

14 Q. Under the "To" line where it says "To," that's your
15 name?

16 A. Yes, sir.

17 Q. And so who wrote it?

18 A. Mr. Tebele.

19 Q. And so this is an email that Mr. Tebele wrote to you,
20 and what's the date of this email he wrote to you?

21 A. March 8th, 2019.

22 Q. So that's shortly after you were retained, right?

23 A. I don't recall the date that we were retained.

24 Q. Well, we could find the date of your retention on that
25 contract, right?

1 A. Yes.

2 Q. So the fire, if you'll assume it was February 24th,
3 we're about two weeks from after the fire, right?

4 A. If it was the 24th, yes.

5 Q. Correct. I'm asking you to assume that it for the
6 purpose of my question. What did Mr. -- could you read what
7 Mr. Tebele wrote to you?

8 A. This is the most recent written request proffered of
9 when work was to be done. It's just a theory, but it's
10 possible that the storm which hit the area in the fall can
11 cause untold flooding and difficulties, and crews entering the
12 area delayed their ability to begin and complete the work.
13 There was no way to have foreseen that it would not be
14 connected by the time the policy was binded.

15 Q. And that's the entire email, correct?

16 A. Yes, sir.

17 MR. WATSON: I'd ask to move Exhibit 55-F into
18 evidence.

19 MR. CONNELL: No objection.

20 THE COURT: And that was 55?

21 MR. WATSON: F.

22 THE COURT: Okay.

23 **(Defendant's Exhibit No. 55-F was admitted into evidence.)**

24 MALE SPEAKER: We have a number of them that are 55
25 with the letter because they came from the same.

1 BY MR. WATSON:

2 Q. So in this email Mr. Tebele is writing to you on March
3 8th about a theory about a storm that hit the area in the fall
4 that would have delayed their ability to begin and complete the
5 work. Do you understand that to be referring to the work to
6 finalize the tap for the sprinkler system?

7 A. Yes, sir.

8 Q. And in the next sentence where it says: There is no way
9 to have foreseen that it would not be connected by the time
10 this policy was binded, you read that to be applicable to the
11 tap, as well, right?

12 A. Yes, sir.

13 Q. Next, I'm showing you an exhibit that's been marked,
14 Defense Exhibit 55-D which is pages. Do you recognize these
15 emails as an exchange between yourself and Mr. Tebele?

16 A. Yes, sir.

17 Q. And there are some emails that you wrote, and some email
18 you wrote to him, and some emails that he wrote to you?

19 A. Yes, sir.

20 Q. And what was the time frame of these emails?

21 A. The first email was from Mr. Tebele to myself on April
22 11th, 2019, and the last one was April 14th, 2019.

23 MR. WATSON: I'd ask to move these emails into
24 evidence.

25 MR. CONNELL: No objection.

1 THE COURT: And again, what was the number again?

2 MR. WATSON: 55-D, as in dog.

3 THE COURT: 55-D is moved into evidence.

4 **(Defendant's Exhibit 55-D was admitted into evidence.)**

5 BY MR. WATSON:

6 Q. If you want to see it, you're welcome to come down and
7 look, Mr. Twaddell. So the first email in the chain is from
8 Mr. Tebele to you on April 11th, right?

9 A. Yes, sir.

10 Q. And he mentions to you something as to Duncan. Do you
11 understand that to be Duncan Speak?

12 A. Yes, sir.

13 Q. And Mr. Tebele is telling you: It looks like he has
14 underestimated our resolve and your seemingly incontrovertible
15 evidence to illustrate coverage. Right?

16 A. Yes, sir.

17 Q. And this was at a point in time when the claim was still
18 under investigation and you had gotten the request for the
19 sworn proof of loss. Does that match your recollection of the
20 timeline?

21 A. It was after the request for the sworn proof of loss.

22 Q. And then he writes you -- and you wrote him back April
23 11th, 2019, and told him: Abe, let's see what Duncan reports
24 that you were making calls into him. Right?

25 A. Yes, sir.

1 Q. And then he responds to you, and he says: I don't blame
2 Lloyd for counseling for an opinion. Was that your
3 understanding that they were -- had retained counsel to assist
4 them with this claim?

5 A. That was relayed to me verbally by Mr. Speaks.

6 Q. Do you know what this reference is in the next sentence
7 to: I have \$250,000 in taxes owed by Partners that is due
8 tomorrow? Do you know what that's about?

9 A. No.

10 Q. And then he tells you: Legitimately, there is ample
11 room and grounds for them to pursue Crawford, Carolina Tap, or
12 the City to figure out why this install was not completed and
13 subrogate the claim instead of trying to bankrupt us. That was
14 what he told you, right?

15 A. That's what he wrote, yes.

16 Q. And then he finishes this email to you and says: Thanks
17 for the hard work and continued effort. We go for the jugular
18 on Tuesday. What did that mean in your mind?

19 A. I don't know.

20 Q. Alright. And certainly, as of the date of that email I
21 just showed you, April 14th, 2019, there hadn't been a claim
22 decision made, correct, it was simply being investigated,
23 right?

24 A. Yes, sir.

25 Q. Mr. Twaddell, I'm showing you another exhibit marked for

1 identification as Defendant's Exhibit 55-E. Are you able to
2 identify these as emails back and forth between you and Mr.
3 Tebele?

4 A. Yes, sir.

5 Q. And the dates of these email exchanges were April 4th,
6 2019 and April 5th, 2019?

7 A. Yes, sir.

8 Q. And the topic of these emails included discussion about
9 investigating why the install of the sprinklers had not been
10 done by the time of the loss, right?

11 A. That was the subject of the last email on the 5th.

12 Q. That's fair enough.

13 MR. WATSON: I would ask to move the Exhibit 55-E
14 into evidence.

15 THE COURT: Any objection?

16 MR. CONNELL: I don't have any objection, Your Honor.

17 THE COURT: Okay. Exhibit 55-E is admitted into
18 evidence.

19 **(Defendant's Exhibit No. 55-E was admitted into evidence.)**

20 MR. WATSON: You can hold onto that one, I have
21 another. It's the same one.

22 Q. Now, there's only one of us blocking the Jury since you
23 have your own copy. The first email in this chain on April the
24 4th, you wrote -- you were writing to Mr. Tebele here, correct?

25 A. Yes, sir.

1 Q. And you said: He just returned my call from yesterday.
2 That's Mr. Speak again, right?

3 A. Yes, sir.

4 Q. And you were pushing him for a time frame for the
5 decision, and he said: Maybe soon, maybe today or tomorrow,
6 right?

7 A. Yes, sir.

8 Q. When he went on, Mr. Tebele responded the next morning
9 on April the 5th at 7:30 in the morning, he started with: He's
10 curious that Duncan won't discuss the claim, right?

11 A. Yes, sir.

12 Q. In his email -- you responded a few hours later in the
13 middle email in this page, it says: I don't find it unusual
14 Duncan won't discuss the claim, he's probably been instructed
15 not to say anything. Right?

16 A. Yes, sir.

17 Q. And you were trying to find out where the investigation
18 was going, right?

19 A. Yes, sir.

20 Q. And then you wrote -- Mr. Tebele wrote you back later
21 that afternoon, right?

22 A. Yes, sir.

23 Q. And he told you in the third sentence: In the meantime,
24 I have a technical guy reviewing the sprinkler docs, and Rob
25 Shelton is supposed to speak to Chris Lee from the City of

1 Myrtle Beach to see what he can share about why the install was
2 not yet done at the time of loss. Did I read that correctly?

3 A. Yes, sir.

4 Q. And who -- do you know who this technical guy turned out
5 to be?

6 A. No.

7 Q. Do you know who Rob Shelton is?

8 A. No.

9 Q. Do you know what Chris Lee from the City of Myrtle
10 Beach's job was?

11 A. I believe he was a building inspector.

12 Q. And then Mr. Tebele says in the next sentence: There
13 may have been unforeseen circumstances that led to delays that
14 were beyond anyone's control. You interpret that to be
15 discussing the delays relating to finishing the sprinkler
16 system, right?

17 A. Yes, sir.

18 Q. And he tells you: Don't forget, at the time the broker
19 filled out the application and obtained final quotes, the full
20 expectation was that the connection work would take a week to
21 two weeks, which would have been well in advance of the loss
22 and made all of this a moot issue. Correct?

23 A. Yes, sir.

24 Q. And is that the type of expression relating to the
25 finishing of the sprinkler system that Mr. Tebele told you when

1 he retained you as the public adjuster? In other words, is how
2 he explained the status of the sprinkler system similar to the
3 way he explained it to you in this email?

4 A. We didn't discuss the status of the sprinkler system
5 when he retained my firm.

6 Q. How long into the claim was it before you learned that
7 the sprinkler system had not been connected to water?

8 A. I don't recall.

9 Q. Oh, and then Mr. Tebele finished his email saying: I
10 believe it can't hurt to know what led to the delays. Again,
11 he's referring to the delays in finishing the sprinkler tap,
12 right?

13 A. I believe so, yes.

14 MR. CONNELL: No objection to 55-C.

15 MR. WATSON: Your Honor, I believe the next exhibit,
16 Defendant's 55-C is agreed to be admitted by stipulation.

17 THE COURT: Okay. 55-C admitted.

18 **(Defendant's Exhibit No. 55-C was admitted into evidence.)**

19 BY MR. WATSON:

20 Q. Mr. Twaddell, I'm handing you what's now been admitted
21 into evidence as Exhibit 55-C. This is an email that you wrote
22 to the field adjuster, Ms. Weaver.

23 A. It was addressed to Duncan Speak and to Lauraleigh
24 Weaver.

25 Q. And you were providing the invoice for the Carolina Tap

1 & Bore for them to finish the sprinkler system, right?

2 A. Yes, sir.

3 Q. And the invoice that was attached to this exhibit from
4 Carolina Tap & Bore, what was the date of that invoice?

5 A. March 14th, 2019.

6 Q. So that's after the loss?

7 A. Yes, sir.

8 Q. And what was the amount of the invoice?

9 A. \$37,423.23.

10 MR. CONNELL: No objection, Your Honor.

11 BY MR. WATSON:

12 Q. Alright. You can put that one aside, Mr. Twaddell.

13 MR. WATSON: The next exhibit I'm marking and moving
14 into evidence by stipulation with the Counsel is Defendant's
15 Exhibit 55-B.

16 THE COURT: Exhibit 55-B is admitted.

17 **(Defendant's Exhibit No. 55-B was admitted into evidence.)**

18 Q. Mr. Twaddell, the top email on this page, this is from
19 Mr. Tebele to you, correct?

20 A. Yes, sir.

21 Q. And he was writing to you about the progress of the
22 claim, right?

23 A. Yes, sir.

24 Q. So on May 20th of 2019, now we're three months
25 approximately after the loss, Mr. Tebele writes to you and

1 says: I would ask you to look through the policy and look to
2 maximize our payout, even up to and including replacement
3 costs. Correct, that's what he told you?

4 A. Yes.

5 Q. And then he said: I heard in some cases it's possible
6 to collect beyond policy limits. Right?

7 A. Yes, sir.

8 Q. And in order to perform the work that Atlantic estimated
9 -- said was needed to replace this building, \$4 million
10 dollars, his -- he would need more than his 2.5 million policy
11 limits to do that, right?

12 A. Yes.

13 Q. Even though, as you stated earlier, the law in South
14 Carolina limits his recovery to the 2.5 million under the
15 policy?

16 A. I did not say that. I said that the law in South
17 Carolina requires the insurer to pay the policy limit.

18 Q. Which was the 2.5 million, right, sir?

19 A. Yes, sir.

20 MR. WATSON: (indicating.)

21 MR. CONNELL: No objection, Your Honor.

22 MR. WATSON: The next exhibit I'm moving into
23 evidence then would be Defendant's Exhibit 55-H by stipulation
24 of Counsel.

25 THE COURT: 55-H is admitted into evidence.

1 **(Defendant's Exhibit No. 55-H was admitted into evidence.)**

2 BY MR. WATSON:

3 Q. The substantive email on this page was written by you in
4 August of 2019, correct?

5 A. Yes, sir.

6 Q. So this was after the claim denial had been received,
7 right?

8 A. I believe it was after.

9 Q. We'll talk about that in a moment. Now you're writing
10 David Gundling, and that was the attorney of Tebele & Sons at
11 that time, right?

12 A. Yes, sir.

13 Q. And you wrote him, and you say in the second sentence:
14 If the building is a total loss, even if the insured is
15 underinsured, they collect the policy limit. Right?

16 A. Yes, sir.

17 Q. You still agree with that?

18 A. I do.

19 Q. And Mr. Tebele was underinsured here, he had less
20 insurance than it cost based on your estimators to replace it?

21 A. Yes, sir.

22 Q. And you say at the bottom of this email: There's no
23 doubt that the \$2,500,000.00 limit shown on the statement of
24 loss is the maximum recovery of the building coverage. Right?
25 That's what you said?

1 A. Yes. I think I may have misstated. I think it should
2 have been the statement of values, not the statement of loss.

3 Q. In the sentence that I just read where it says,
4 Statement of loss, you meant the schedule of values, Exhibit
5 100, the big sheet?

6 A. Correct.

7 Q. Alright. Mr. Twaddell, I'm handing you what's marked
8 for identification as Defendant's Exhibit 46. Do you recognize
9 that letter from August 6th of 2019? Do you recognize that
10 document, Mr. Twaddell?

11 A. Yes, sir.

12 Q. That's the declaration letter from the insurers that I
13 represent, right?

14 A. Yes, sir.

15 Q. And this was their decision in a written form, right?

16 A. Yes, sir.

17 MR. WATSON: And I'd like to move into evidence
18 Defendant's Exhibit 46.

19 MR. CONNELL: No objection.

20 THE COURT: Defendant's 46 is admitted into evidence.

21 **(Defendant's Exhibit No. 46 was admitted into evidence.)**

22 BY MR. WATSON:

23 Q. You can hang on to that. And this was a letter dated
24 August 6th of 2019 containing the claim decision, correct?

25 A. Yes, sir.

1 Q. And it was addressed to their attorneys at the time,
2 right?

3 A. Yes, sir.

4 Q. And it was written and signed by Mr. Speak on behalf of
5 the insurers, correct?

6 A. Yes, sir.

7 Q. And the letter stated to the policyholder who the
8 insurers were in the first paragraph, identified all three of
9 the parties that are here in this case, correct?

10 A. Yes, sir.

11 Q. And explained that you, meaning the insured, had
12 presented sworn proof of loss claiming the \$2.85 million,
13 dollars correct?

14 A. Yes, sir.

15 Q. And said: The claim, unfortunately, is declined in its
16 entirety pursuant to exclusionary language in the protective
17 safeguards fire endorsement. Right?

18 A. Yes, sir.

19 Q. And that's the same provision that you had a little bit
20 of back and forth in the emails with Mr. Speak about?

21 A. Yes, sir.

22 Q. And they state that the fire endorsement required you to
23 maintain an automatic sprinkler system in order to protect the
24 premises against fire, correct?

25 A. Yes, sir.

1 Q. And on the date of loss no such system was in complete
2 working order to protect the premises. You would agree that's
3 true?

4 A. Yes, sir.

5 Q. Then on the next page, there's a quotation from that
6 protective safeguard endorsement, right?

7 A. Yes, sir.

8 Q. And essentially, it's a paste -- copy and paste of the
9 language on that one-page endorsement, correct?

10 A. Yes, sir.

11 Q. And it says: Under protective safeguards in subsection
12 A: As a condition of this insurance, you are required to
13 maintain the protective devices or services listed in the
14 schedule above. Did I read it accurately?

15 A. Yes, sir.

16 Q. And the schedule, the word "Schedule" is capitalized
17 with capital "S," right?

18 A. Yes, sir.

19 Q. And above, there's a reference under "locations
20 applicable" that says, also has the word "Schedule" in it,
21 correct, with a capital "S"?

22 A. Where are you referring?

23 Q. Sure. On the top of the page where it says "locations
24 applicable," it says, next to "AS," it says: As indicated on
25 the schedule of values on file with the company.

1 A. Yes, sir.

2 Q. And so we've already talked about Exhibit 100, the big
3 sheet is the schedule of values on file with the company,
4 right?

5 A. Yes, sir.

6 Q. And the symbol where it says "AS" is defined below under
7 number 1 where it says: AS automatic sprinkler system. Right?

8 A. Yes, sir.

9 Q. And the definition of an automatic sprinkler system per
10 this provision means any automatic fire protective or
11 extinguishing system, including connected, and then there's
12 one, two, three, four, all the different parts of a fire
13 protection system, right?

14 A. Yes, sir.

15 Q. And this property had a lot of these parts, one, two,
16 three, and four, they just weren't fully connected, right?

17 A. Yes, sir.

18 Q. On the next page of the same exhibit, the letter from my
19 clients, there's a reference to section B of this endorsement.
20 It says: The following is added to the exclusion section of
21 the policy referenced above. An exclusion is something that if
22 it's in effect, it takes away coverage or precludes coverage,
23 right?

24 A. Yes, sir.

25 Q. And this exclusion says: We will not pay for loss or

1 damage caused by or resulting from fire. And we had a fire
2 here, right?

3 A. Yes, sir.

4 Q. And it says: Prior to the fire, you failed to maintain
5 any protective safeguard listed in the schedule above. And we
6 know schedule above means the big sheet, Exhibit 100, right?

7 A. No.

8 Q. The schedule of values.

9 A. Schedule of values, yes, not the schedule above.

10 Q. Right. Well, above on the page, if we go back to the
11 couple pages before, the word "schedule" is attached to the
12 phrase "schedule of values on file with the company," which you
13 said was Exhibit 100.

14 A. Correct.

15 Q. And over which you had control and Tebele & Sons was the
16 owner of the building installing the sprinkler system. So they
17 had control over it, right?

18 A. Yes, sir.

19 Q. And it says: In complete working order. And we can
20 agree it was not in complete working order, correct?

21 A. Yes, sir.

22 Q. And the rest of this letter continues on to put all of
23 that together just like we did in the next paragraph, correct?

24 A. Yes, sir.

25 Q. And then there's discussion of your public adjuster and

1 attorneys have advocated in that section. You were the public
2 adjuster that was advocating for A. Tebele & Sons at this --
3 during the investigation of the claim, correct?

4 A. Yes, sir.

5 Q. And you showed all those emails, back and forth you were
6 trying to explain to Mr. Speak why the claim should be covered,
7 right?

8 A. Yes, sir.

9 Q. And one of the things you advocated is that the -- based
10 on your reading of the AS notation, Mr. Tebele and his family
11 business were not required to maintain an operational sprinkler
12 system at all, right? That was a position you were taking?

13 A. Correct.

14 Q. And Mr. Speak responds in this letter on behalf of the
15 insurers and says: This is incorrect. Doesn't he?

16 A. Yes, sir.

17 Q. And then he gives an explanation in those next several
18 sentences as to why that's the case, from his point of view?

19 A. That's his explanation, yes, sir.

20 Q. Right. I know you still don't agree with it; do you?

21 A. No.

22 Q. You don't get paid if this claim doesn't get paid; do
23 you?

24 A. That's correct.

25 Q. Further down on the same page, there's a new -- another

1 paragraph. Again: Your public adjuster and attorneys have
2 also advocated -- that's you, right?

3 A. Yes, sir.

4 Q. And the attorneys, that would have been at the time, the
5 Bellamy Law Firm, right?

6 A. Yes, sir.

7 Q. -- advocated that because the symbol "AS" was not noted
8 on the schedule of values, no sprinkler system was required to
9 be maintained by you. That was what position you were taking,
10 right?

11 A. That is correct.

12 Q. And Mr. Speak says: This is incorrect, indicating his
13 disagreement with that position, right?

14 A. Yes, sir.

15 Q. And he points out that the symbol "AS" is a legend for
16 the types of perspective safeguards subject to the fire
17 endorsement, all of which are cross-referenced with the
18 schedule of values on file for your insurers as applicable.
19 That is what he told the insurer, right?

20 A. That's what he wrote.

21 Q. And the scheduled values requires the loss location to
22 be 100-percent sprinklered. You still disagree with that;
23 don't you?

24 A. Yes. The schedule of values indicates that the loss
25 location was 100-percent sprinklered. It doesn't require that

1 it be.

2 Q. What is the function of a sprinkler system other than to
3 protect the property from the fire, is there one?

4 A. No, not that I'm aware of.

5 Q. Towards the end of this letter declining coverage, Mr.
6 Speak wrote: You proceeded to electronically sign your
7 application for this policy with your insurers containing the
8 protective safeguards fire endorsement three days later,
9 January 14th, 2019. You already testified he Docusigned
10 electronically that application, right?

11 A. Yes.

12 Q. And it says: There's no indication that your insurers
13 were ever made aware of the lack of an operational sprinkler
14 system until after the loss event occurred. Do you agree with
15 that statement?

16 A. Which paragraph are you reading from?

17 Q. I'm reading from the top of the last page of the letter,
18 the first -- partial first paragraph, second full sentence:
19 There is no indication that your insurers were ever made aware
20 of the lack of an operational sprinkler system until after the
21 loss event occurred.

22 My question to you, sir, is, are you aware of any
23 evidence that the insurers were made aware of the lack of an
24 operational sprinkler system prior to this lawsuit?

25 A. I believe that there was an email from Crescent Agency

1 to Amwins in which the agent at Crescent told Amwins that there
2 was no sprinkler system operational in the building and Amwins
3 responded: We'll note the file.

4 Q. And that was the email sent to Whitney Gurtzweiler, who
5 now goes by Whitney Northcutt, right?

6 A. I believe that's the person, yes.

7 Q. And she was the underwriter for the tenant's policy for
8 the restaurant, right?

9 A. I believe she was, yes, sir.

10 MR. WATSON: Mr. Twaddell, I thank you for your time.
11 I have no further questions for you.

12 MR. ADAMS: Nothing from Crescent Coast, Your Honor.

13 THE COURT: Thank you, Mr. Adams. Redirect?

14 MR. CONNELL: Yes, sir.

15 MR. WATSON: Your Honor, did I move 46 into evidence?
16 If not, I would like to. It's already in or not?

17 THE COURT: I had 46 circled.

18 MR. WATSON: Is that good or bad? Already in. Okay.
19 Thank you.

20 MR. CONNELL: Are you finished?

21 MR. WATSON: Yes.

22 MR. CONNELL: Okay.

23 **REDIRECT EXAMINATION**

24 BY MR. CONNELL:

25 Q. You've represented a lot of people who've had fire and

1 hurricane losses, correct?

2 A. Yes, sir.

3 Q. And people get upset when insurance doesn't pay; don't
4 they?

5 A. Yes, sir.

6 Q. And Mr. Tebele had one of his income-producing
7 properties for his family, and he had had insurance on it; did
8 he not?

9 A. Yes, he did.

10 Q. He had paid the premium, right?

11 A. Yes, sir.

12 Q. In fact, he paid some \$170,000, I believe it was,
13 through financing the premium for this; wouldn't that be right?

14 A. I don't know the exact number.

15 Q. Alright. And so Mr. Watson asked you about the AS
16 symbol.

17 A. Yes, sir.

18 Q. And who wrote the insurance policy?

19 A. The insurers wrote it.

20 Q. Alright. And did Mr. Tebele have a right to change
21 anything in their policy?

22 A. No.

23 Q. Is that a contract of adhesion under the law?

24 A. Yes.

25 Q. And explain to the Jury what a contract of adhesion is.

1 MR. WATSON: Objection, Your Honor.

2 MR. CONNELL: He opened it up. He opened it up.

3 MR. WATSON: Can I get my objection out, please?

4 He's going to be offering legal opinions about -- in a
5 non-expert capacity.

6 THE COURT: You all step up here.

7 **(Discussion was held off the record by Court and**
8 **counsel at this time.)**

9 BY MR. CONNELL:

10 Q. So Mr. Tebele had no right to change the contract?

11 A. No.

12 Q. And by its own terms, the insurer's policy says that the
13 scheduled values has to have an AS on it; is that right?

14 A. Yes, sir.

15 Q. And it's clear that they violate their own terms and
16 that it's not on schedule values; isn't that correct?

17 MR. WATSON: Objection, argumentative.

18 THE COURT: I'll allow him to answer the question.

19 BY MR. CONNELL:

20 Q. Now, were you here for Mr. Melvin's deposition?

21 A. I was here this morning for the last 20 minutes of it or
22 so.

23 Q. Did you hear some discussion about whether or not the AS
24 endorsement had been changed and now there was an endorsement
25 without the AS?

1 A. No.

2 Q. Didn't see that. And I'm understanding from what you
3 were saying earlier that Mr. Tebele contacted you on a regular
4 basis, hoping that you could somehow resolve this problem; is
5 that right?

6 A. Yes, we worked closely on that.

7 Q. And all the emails that we've seen are Mr. Tebele asking
8 you to try to get the Defendant's insurers to resolve this
9 issue; is that right?

10 A. Yes, sir.

11 Q. And Mr. Tebele has never been paid a dime on a fire; is
12 that right?

13 A. He was never paid a dime on this fire.

14 Q. And he's been waiting for -- this happened in 2019, it's
15 been four years?

16 A. Almost five.

17 Q. Is that the usual practice you have as a public
18 adjuster, waiting --

19 A. No.

20 Q. -- five, almost five years to get a claim paid when the
21 AS provision on the policy is not even on the scheduled values?

22 A. No.

23 Q. And Mr. Tebele was clearly correct in asking for the
24 maximum value; was he not?

25 A. Yes, sir.

1 Q. It was a total loss, right?

2 A. Yes.

3 Q. And there was an email that said something about
4 incontrovertible evidence; remember that? Mr. Tebele had
5 written: The evidence is incontrovertible. There was no AS on
6 the policy?

7 A. Yes, sir.

8 Q. It is incontrovertible; isn't that correct?

9 A. That is correct.

10 Q. And then there was an email 55-E that was discussed
11 where Mr. Tebele said: Why don't they just pay me and sue
12 someone else, sue the city, sue Crawford? Do you remember
13 that?

14 A. Yes, sir.

15 Q. And that showed Mr. Tebele's frustration over this whole
16 situation?

17 A. He was very frustrated.

18 Q. Were you?

19 A. Yes, sir.

20 Q. Did you ever get a real answer? They've talked about
21 Exhibit 46. What, if any, real answer did you get to your
22 emails that you wrote about this?

23 A. I did not get responses in real time. The only response
24 was in the denial letter.

25 Q. Alright. And in the denial letter, they never really

1 addressed the fact that the AS provision was not on the
2 schedule of values; did they? Take a look at 46 again. I
3 believe Mr. Watson wanted to talk about all the other parts of
4 it, but he didn't want to talk to you about the AS.

5 A. He attempts to address it, but quite frankly, I don't
6 understand what he's saying because it doesn't make any sense.
7 This is the second to last paragraph on the third page.

8 Q. So he never really addressed the emails; is that right?

9 A. That's correct, and he also goes on to state that the
10 schedule of values required the loss location to be 100 percent
11 sprinklered. That's simply untrue. All it did was report
12 which locations had sprinklers and what the percentage was.
13 There was no -- nothing on the schedule of values that said
14 that it was required to be sprinklered.

15 Q. And you really didn't have to do that anyway, right?
16 You didn't have to even put the sprinkler system in.

17 A. No.

18 MR. CONNELL: Alright. Thank you, sir. That's all
19 the questions I have, Your Honor.

20 MR. WATSON: Just a few, Your Honor. Briefly, may it
21 please the Court?

22 **RECROSS-EXAMINATION**

23 BY MR. WATSON:

24 Q. Mr. Twaddell, a policyholder can always request a change
25 to their policy by way of an endorsement; can't they?

1 A. They can, yes.

2 Q. And you don't agree with what Mr. Speak wrote in that
3 letter declining the claim because you had a different opinion,
4 right?

5 A. I disagree with it because he's misinterpreting the
6 policy.

7 Q. Reasonable minds can disagree on things; can't they,
8 sir?

9 A. In my opinion, in this case, there is no reason for
10 disagreement. There's no AS symbol on that schedule of values
11 which was required by the policy.

12 Q. And it's just a coincidence --

13 A. Your clients wrote the policy.

14 Q. And it's just a coincidence that the five locations
15 marked 100 percent sprinklered with a yes on that Scotch Tape
16 sheet that you testified about happened to be five locations
17 minus 1901 North Kings Highway that actually had operational
18 sprinklers systems in them. That was just a coincidence?

19 A. I'm not aware of whether the other four were sprinkled
20 or not. I've never done a survey.

21 MR. WATSON: Alright. I have no further questions.

22 MR. CONNELL: Just one, Your Honor. Just one.

23 **FURTHER REDIRECT EXAMINATION**

24 BY MR. CONNELL:

25 Q. You can't change the policy you didn't get; can you?

1 A. No.

2 Q. Mr. Tebele never got the policy before the fire; did he?

3 A. No.

4 MR. CONNELL: Thank you.

5 THE COURT: Alright. Sir, you may step down.

6 MR. CONNELL: Thank you.

7 **GERALD FINKEL WAS DULY SWORN AT THIS TIME AND**

8 **TESTIFIED AS FOLLOWS:**

9 THE COURT: Did they swear you in?

10 THE WITNESS: Yes, Your Honor.

11 **VOIR DIRE**

12 BY MR. CONNELL:

13 Q. Okay. Alright. Tell us your name, please, sir.

14 A. It's Gerald Finkel, F-I-N-K-E-L.

15 Q. Alright. Tell me what you do for a living.

16 A. I've been a lawyer for the last 53 years. I have also
17 been a law professor for a little bit of that time. I taught
18 at the University of South Carolina School of Law from 1972 to
19 2006. In 2006, I was asked to teach full-time at the
20 Charleston School of Law, where I was made a full professor
21 with tenure and during most of that time, from 1986 until I
22 retired from law school in 2017, I was the -- an insurance
23 professor. For 33 years, at the University of South Carolina
24 School of Law, I was the only insurance law professor in the
25 entire state, and I also taught the Bar Review to all of the

1 lawyers taking the South Carolina Bar.

2 MR. CONNELL: The Bar Review meaning the terrible
3 test you have to take to be a lawyer?

4 THE WITNESS: That's correct. In order to be
5 licensed, you have to take the South Carolina Bar. In 1986,
6 the Supreme Court of South Carolina put insurance law on the
7 Bar Exam, so it became a mandatory subject and I was the one
8 that taught that, and then there was a Bar Review that's at the
9 end of every -- just before every Bar Exam, and I would teach
10 the block on insurance law, so almost all of the lawyers in
11 here that are licensed in South Carolina and have a little gray
12 hair, I probably taught.

13 Q. So you taught law for 30 years?

14 A. In total, from 1972 to 2017.

15 Q. And you were one of the only professors -- or the only
16 professor in South Carolina that taught insurance law for a
17 period of time; is that right?

18 A. That is correct. For the first -- from 1986 to 2006.
19 In 2007, when I was teaching full-time at the Charleston School
20 of Law, I trained one other professor to teach with me because
21 everybody had to take the course and there were just too many
22 students. I couldn't teach 600 people at a time.

23 Q. Alright. What other -- what else have you done? Are
24 you a member of the ALI? I think you mentioned something about
25 that.

1 A. Yes. There is a group of lawyers, who about one-third
2 are judges, some of them are from the United States Supreme
3 Court and district courts and circuit courts and in the federal
4 system, a number of state court judges, so about one-third of
5 judges, about one-third of professors, and about one-third of
6 our practitioners. There are a total of about 2,600 lawyers in
7 the ALI. They were established in about 1922 to write the
8 restatement of law, so they look at all of the jurisdictions
9 and try to find some commonality and then record them in a
10 document called the restatement. There are books and there are
11 restatements on a number of subjects. I was on the
12 Consultative Committee of the American Law Institute to write
13 the restatement of liability insurance. I also had to write
14 the restatement of torts, and cases like this can come under
15 torts or general insurance law.

16 Q. So you mentioned the term torts. What is that exactly?

17 A. A tort is a civil wrong. It's when somebody deviates
18 from a standard of care that they owe to another. The simplest
19 way to explain it is if you're driving your car and somebody
20 crashes into you because they didn't pay attention, they've
21 committed a tort, a civil wrong. They had a duty to keep you
22 safe, to be aware of their surroundings, and they weren't, and
23 that's why you see all these personal injury claims, for
24 instance. That would be a tort. There are torts in the
25 insurance context of wealth, improper claims practices, failure

1 to adjust claims properly, fraudulent inducement of contract,
2 all of those would be a breach in duty of care.

3 Q. So one of the issues in this case is whether the
4 defendant insurers acted in bad faith.

5 A. Yes, that's right.

6 Q. Is that a civil? Is that a tort?

7 A. It can be, or it could be a breach of contract. South
8 Carolina is probably one of the first states to ever recognize
9 a claim of bad faith, because if you sued your insurance
10 company for all -- all that they owed you and that was all you
11 could get, it would be to the carrier's advantage not to pay a
12 claim because the worst that could happen to them is that they
13 have to pay a claim.

14 Q. So let me stop you, because I'm going -- I think that's
15 one of the things we're here about today. So in this
16 particular case, before the bad faith law came about, the -- if
17 you sued, you can only sue for the amount of the policy; is
18 that right?

19 A. That is correct.

20 Q. So in this case, \$2.85 million, right?

21 A. That is correct.

22 Q. And so the bad faith law allows The jury to do what?

23 A. Well, there's two ways to look at it. If -- if The Jury
24 finds that there's been a breach of contract on the contract
25 claim, then they, The Court imposes an award three times the

1 damage, plus attorney's fees, so that really is like quadruple
2 damages, attorney's fees up to a third of the amount. If they
3 find that there was a tort violation, and actually The jury can
4 make -- you can make the election after The jury comes back,
5 put it to The jury either way, there's a case on that, if they
6 do that then they can award punitive damages and there is no
7 cap on that, but they can't award attorney's fees.

8 Q. Alright. So have you testified in the past?

9 A. Yes, many times.

10 Q. About how many times have you testified and been offered
11 as an expert witness in the field of insurance bad faith?

12 A. Probably eight or nine times, both the federal and state
13 law.

14 Q. How many times have you testified in deposition or been
15 an expert in the issue of bad faith?

16 A. About 40.

17 Q. How many?

18 A. About 40 times.

19 Q. 40 times. Okay. And have you testified both for the
20 plaintiff and for defendant insurers in the past?

21 A. Yes, I have.

22 Q. And about how many times? What percentage, I should
23 say.

24 A. Probably I would say 60 percent is for insurance
25 carriers, about 40 percent for plaintiffs. When I get a case

1 to review, I review it at no obligation to the retaining
2 counsel until I can see enough documentation to feel like I can
3 support the position that they want. I want to be informally
4 consulted because if you're not informally consulted and then I
5 find I can't support you, I can be dragged into court and
6 testify against you, so if you're informally consulted, you
7 can't be dragged into court, so I don't accept any fee or
8 anything until I know that I feel comfortable with the case.

9 Q. So you look at a case without charge and first and
10 decide whether there is a case?

11 A. That is correct.

12 Q. And if the person who presented it to you doesn't have a
13 case, you don't take it?

14 A. I've turned down many, probably a third of the cases
15 that come to me.

16 Q. Alright. Now, are you -- would you consider -- I hate
17 to even ask for this, but I'm going to. Do you consider
18 yourself to be one of the preeminent experts on bad faith in
19 South Carolina?

20 A. I wish you'd tell my wife that.

21 Q. She wouldn't listen to you anyway.

22 A. I think I'm knowledgeable about it.

23 Q. Okay. Alright. And you charge by the hour?

24 A. I do charge by the hour.

25 Q. How much you charge then about an hour?

1 A. I charge \$600 an hour, and that's my standard fee for
2 any legal work that I would do.

3 Q. And currently you are in your own law firm; is that
4 right?

5 A. I am now with counsel, I no longer own an interest in
6 the law firm. We have about 24 attorneys. I help manage the
7 firm. I am working about half-time.

8 Q. You're kind of --

9 A. And in fact, Wednesday was my day off, but it's not
10 today.

11 Q. Not today. Alright. So have --

12 MR. CONNELL: Your Honor, I'd like to offer him as an
13 expert witness in the field of bad faith insurance.

14 THE COURT: And what was that field again? I'm
15 sorry.

16 MR. CONNELL: Bad faith insurance.

17 MR. WATSON: No objection.

18 THE JUDGE: Mr. Adams?

19 MR. ADAMS: No objection, Your Honor.

20 THE COURT: Ladies and gentlemen, testimony is now
21 going to be presented to you by the expert witness. Normally a
22 person cannot give opinion testimony. Normally when a person
23 testifies, they must testify as to what they either saw, what
24 they heard, what they smelled, what they sensed, or something
25 of that nature, however, there is an exception when someone has

1 been qualified because of their education or experience. They
2 are permitted to give their opinion in certain areas if this
3 Court qualifies them in that way. This witness will be
4 qualified in the area of bad faith insurance to give opinion
5 testimony in that area. That does not mean that you must
6 accept the opinion, but it is evidence for you to use any way
7 you choose to use it. Alright, Mr. Connell?

8 **DIRECT EXAMINATION**

9 BY MR. CONNELL:

10 Q. Alright. Now, speaking about that, does the insurer,
11 like Mr. Tebele, when he wants to get an insurance policy, does
12 he go in and try to negotiate with the insurance company kind
13 of like when I try to negotiate with a car dealer when I wanted
14 to buy a car?

15 A. It doesn't work exactly like that in the contract for an
16 insurer.

17 Q. Okay.

18 A. Usually, what happens is that he looks for a particular
19 line of insurance to cover a particular risk. He will probably
20 go to a broker to do that. The broker will let him know what
21 options are available to him, and then they'll source a
22 carrier. He may go directly to a carrier, some of them have
23 their own agents, but usually is a fairly structured business
24 just by way of information. Prior to 1944, every state did
25 what it wanted to do, really with no controls. There was a

1 U.S. Supreme Court case that came down in federal court saying
2 that insurance business was an interstate commerce, which is
3 regulated by federal law, and there was concern that the
4 insurance carriers would be liable for antitrust violations
5 because they would have tie-in arrangements about price fixing
6 and things, so the Court looked at that and said, there is no
7 business that is more infused into the lives of people than the
8 insurance business, it affects every man, woman, and child in
9 the United States. In fact, now in the United States in
10 premiums the insurance business takes in about \$2 trillion
11 dollars a year. That's \$2,000 billion dollars, that's a lot of
12 money, it's bigger than most nation states. So it is a huge
13 industry. So The Court at that time said, we, the federal
14 government, will regulate this business unless the states are
15 willing to regulate it, we'll stand back. That's what
16 happened, so every state in the union wound up coming up with
17 regulations that govern the business of insurance. The
18 concerns were many. Number one, that -- and I heard some
19 testimony before, you asked the question: Are these adhesion
20 contracts? They are adhesion contracts. What that means is
21 you stuck to it like flypaper. You don't get an opportunity to
22 negotiate the terms of the policy. The only thing you
23 negotiate is the amount of insurance and who the insurers are,
24 and you can buy different protection against different risks.
25 But the insert of the policy, the policy has a jacket, and that

1 has your name and all that information, you can go home and
2 look at your auto policy, you'll see that, but the inside is
3 printed. It is already made. It's usually, for property and
4 casualty, what's called an ISO form, and an ISO form is an
5 Insurance Services Office. After the 1944 case, the National
6 Association of Insurance Commissioners got together, all the
7 insurance commissioners from the different states, and said,
8 we're going to try to regulate this by making fairly uniform
9 provisions. In the meanwhile, the states created all kinds of
10 regulatory schemes and also made statutes governing the
11 business of insurance, so when the carrier, a foreign carrier,
12 say from Illinois or from North Carolina, wants to sell
13 insurance to South Carolina, that form has to be approved by
14 the South Carolina Department of Insurance, and they look at it
15 and see if it conforms to South Carolina law first, and then to
16 the ISO forms that govern South Carolina law. So these are
17 adhesion contracts, you don't have any negotiating posture, so
18 --

19 Q. Alright. So tell me, can you explain to me what Certain
20 Underwriters at Lloyd's means --

21 A. Yeah, certain --

22 Q. -- in English and how it works?

23 A. Yes. Because Lloyd is one of the oldest marine
24 insurance carriers in the United States, and by marine
25 insurance carrier, I don't mean just ships, but that's how it

1 started out in London, and what they would do is they would ask
2 different individuals or companies to take a piece of a risk.
3 So if you had a building and the building was worth \$2 million
4 dollars and Lloyd's was going to underwrite it, it would find
5 what they call names, and those are people that they generally
6 go to who are willing to risk a certain amount of money for a
7 percentage of that and hope that there are no claims and that
8 they'll get a return on their investment.

9 Q. Alright. So in this case, the caption is Certain
10 Underwriters at Lloyd's, and there's Lloyd's and HDI, I think,
11 and one other insurance company.

12 MR. WATSON: General Security.

13 MR. CONNELL: What's that?

14 MR. WATSON: General Security Indemnity.

15 MR. CONNELL: General Security. Thank you.

16 BY MR. CONNELL:

17 Q. So what are those -- what exactly are those insurance
18 companies doing with Lloyd's?

19 A. Well, they are laying off a portion of the risk, so they
20 are underwriting the risk, basically.

21 Q. So --

22 A. So they are agreeing to fund a loss.

23 Q. Alright. So if the jury were to find in favor of Mr.
24 Tebele, they would own a certain part of the risk based on what
25 risk they had accepted through the Lloyd's syndicate; is that

1 how it works?

2 A. That is correct.

3 Q. Alright. And so about how long has that type of
4 insurance arrangement been going on?

5 A. It's been a long time, since piracy around the 1800s.

6 Q. Okay. And so what is a -- so we understand, so the jury
7 understands, what's the difference between an admitted
8 insurance carrier and a surplus insurance carrier, and what are
9 the insurance carriers in this case?

10 A. Well, most of these are surplus lines.

11 Q. Which means what?

12 A. Which means that there may be some lost cap from a
13 regular carrier before they step in.

14 Q. Alright. So can you explain to me -- in this case, it
15 appears Mr. Tebele got solicited by Crescent Coast, Crescent
16 Coast went to Amwins, can you talk to me about how all that
17 works so that the jury can understand that?

18 A. Crescent Coast is a broker of different insurance lines,
19 and it tries to place insurance with somebody looking for
20 insurance. Mr. Egan was the representative, I think he's -- I
21 think that's Mr. Egan at the end there that just nodded to me.
22 Mr. Tebele went to Mr. Egan and said he needed to insure, I
23 believe, there are 23 buildings involved, and Mr. Egan helped
24 him out by sourcing Amwins, and they contacted a woman who was
25 an underwriter for Amwins Access and she received the

1 applications, and she sourced other underwriters within the
2 Amwins family to try to source this insurance.

3 Q. Alright. And so what do you understand Amwins to be?

4 A. Amwins appears to be, from their website, and that's all
5 the information I have, they appear to have a leadership group.
6 It's Amwins group, I think it's Inc., and they list 25 people
7 in leadership positions, and then they have a number of
8 subsidiaries which deal with different aspects of the insurance
9 business.

10 Q. And is Amwins -- who is Amwins executive for the
11 underwriter; do you know?

12 A. I have that information. I don't remember the names.

13 Q. Bob Effersit (phonetic) or something like that?

14 A. Well, for Amwins underwriting, and I can show you the
15 chart if you want.

16 Q. Okay, if you would.

17 THE WITNESS: Your Honor, may I step down?

18 THE COURT: Yes, sir.

19 MR. CONNELL: He's got some pair of PowerPoints he's
20 going to show if you want to come look at it.

21 MR. WATSON: May we approach, Your Honor?

22 THE COURT: Yes. Alright, ladies and gentlemen, if
23 you will be excused just for a few minutes to your jury room.
24 I've got a matter of law to take up. We'll be back with you
25 very quickly.

1 **(Jury exited the courtroom at this time.)**

2 THE COURT: Let's go through these as quickly as
3 possible.

4 MR. WATSON: Your Honor, I'm going to object entirely
5 to this PowerPoint presentation. Number one, he didn't have it
6 or offer it at his deposition. We asked him did express all of
7 his opinions in his written report, this is not his written
8 report, this is a brand new presentation.

9 THE COURT: It looks like it's just pulling directly
10 from things that are already in evidence.

11 MR. WATSON: On that slide four, already, there's
12 incomplete portions of the policy excerpted and not --

13 MR. CONNELL: You can cross examine on that.

14 MR. WATSON: I can't, though, because I didn't have
15 this until a minute ago, Mr. Connell.

16 MR. CONNELL: You can.

17 THE COURT: Go back, what was Four that you were
18 talking about?

19 MR. WATSON: This is not the actual endorsement, this
20 is excerpt. As you've seen, there's the box with the schedule
21 with the "AS" as shown in the schedule of values, so it's
22 misleading that he's going to pick and choose a piece of the
23 policy, you know here. If he wants to use exhibits that are
24 already in evidence, different story.

25 THE COURT: If it's demonstrative of something that's

1 already in evidence either, that's not an issue. Go to the
2 next slide. So that's part --

3 MR. WATSON: These are excerpts of the policy.

4 THE COURT: Go to the next.

5 MR. WATSON: This is an exhibit that I think has
6 already been admitted, or everyone's admitting. That's not an
7 issue.

8 THE COURT: This is straight from the website, this
9 is nothing that he's made.

10 MR. WATSON: But he's never testified that he did
11 research about Amwins, that he's offered opinions about Amwins,
12 they are not a party in this case, he's not going to be able to
13 offer opinions about what Amwins corporate structure --

14 THE COURT: He can't offer an opinion about who Scott
15 Purviance (phonetic) or Steven DeCarlo is, when it says it
16 right under their name?

17 MR. WATSON: No, it's absolute hearsay. He's never
18 offered testimony or opinions about this before today.

19 THE COURT: What's the point of asking him?

20 MR. CONNELL: So it just -- Your Honor, we've got to
21 talk about the agency issue and how it all fits under one
22 umbrella, and so, as Your Honor knows, experts in South
23 Carolina can clearly offer inadmissible hearsay as part of
24 their testimony. It's allowed. It's done all the time.

25 THE COURT: There's been hearsay all through the past

1 two and a half days, but, alright, next file, or next slide.

2 Alright. Who is this Robert "Bob" Petrilli?

3 MR. CONNELL: He is the president of Amwins
4 underwriting.

5 MR. WATSON: This is a name that's never been
6 mentioned by Mr. Finkel in his -- excuse me, Mr. Finkel. If
7 this --

8 THE COURT: Next slide.

9 MR. WATSON: What is the opinion that's going to
10 spawn out of this?

11 THE COURT: So this is just a list of the people and
12 this looks like it was just printed straight from their
13 website.

14 MR. CONNELL: That's correct.

15 MR. DESCHAMPS: Alright. Next.

16 MR. FINKEL: If you click on Mr. Petrilli's picture
17 on the prior exhibit, it has a little about him.

18 MR. WATSON: This is a name that was not mentioned at
19 his deposition and was not disclosed in his reports, and none
20 of us are aware of where this is going. This typifies an
21 unfair surprise from an undisclosed opinion from an expert.
22 Anybody can go do research on the internet and come in and talk
23 about what they see on the internet, but they've got to
24 disclose it first. This is not what -- it doesn't -- if he's
25 going to talk about the exhibits in this case, I have no issue.

1 If he's going to just start saying, hey, I went and looked up
2 Amwin's CEO corporate chart --

3 THE COURT: Well, let's go proffer his testimony.

4 MR. WATSON: What?

5 MR. DESCHAMPS: Let's go and proffer his testimony --

6 MR. WATSON: Alright.

7 MR. DESCHAMPS: -- if that's the case. That way
8 you're not surprised. What are you going to --

9 MR. WATSON: Can I see the rest of the --

10 THE CLERK: That's it.

11 MR. WATSON: Oh, it's the end of it?

12 THE CLERK: That's it.

13 MR. WATSON: Alright, well, it should be a short
14 proffer then, I would think about this Mr. Petrilli.

15 MR. CONNELL: Turn it back on number one.

16 THE COURT: I don't have any problem with one
17 through, until we start talking about Amwins. Let's just go to
18 that.

19 MR. CONNELL: Okay.

20 MR. DESCHAMPS: I'm going to allow the other stuff.
21 That's pulled straight from what's already in evidence.

22 MR. CONNELL: Alright. Go back to at the end,
23 Michelle was pulling.

24 THE COURT: From the website. Alright. Mr. Connell?

25

1 MR. CONNELL: So I'll just ask you, what is your
2 purpose in showing the Amwins guys picture and the Amwins 16
3 divisions? What's your purpose in doing that, Professor?

4 MR. FINKEL: In my deposition, the issue was raised
5 as to whether or not there was a Chinese wall between the
6 underwriter, Mrs. Gurtzweiler, and the other members of the
7 Amwins family and the other underwriters. Here, according to
8 their own website, Mr. Petrilli is the president of
9 underwriting and if you read his bio, if you can move it to his
10 picture. One more, one more. If you read that, it says that
11 he's responsible for 14 of the entities, which means that, at
12 least from a layman looking at their website, that the
13 underwriting really is a single division of the Amwins family.

14 MR. CONNELL: In other words, Amwins Access, Amwins
15 Brokerage, and Amwins SRU are, what; part of all that?

16 MR. FINKEL: They're all member organizations and,
17 obviously, if she's infused with certain knowledge, all of
18 that's imputed to them, whether she talks to them or not.

19 THE COURT: Mr. Connell, anything else?

20 MR. CONNELL: Just one other thing. Exhibit 28,
21 which has already been proffered, shows a premium finance
22 agreement. Who does it show to be the managing -- the
23 manager -- manager agent?

24 MR. FINKEL: Amwins Access Insurance Services.

25 MR. CONNELL: And is that where the money was paid?

1 MR. FINKEL: That's where the money was paid.

2 THE COURT: Mr. Watson, anything you want to add?

3 MR. WATSON: At your deposition, Mr. Finkel, did you
4 articulate anything about Mr. Petrilli, his position, his place
5 in the hierarchy, or his relationship to any of the other
6 Amwins entities?

7 MR. FINKEL: I did not.

8 MR. WATSON: I don't have anything further. I'll
9 object to Mr. Finkel testifying about, as a bad faith insurance
10 expert, which is the area he's been proffered, he is now going
11 to testify and speculate about the corporate hierarchy of a
12 company who's not a party in this case that he has not been
13 subpoenaed to come testify about a person who's not a witness,
14 who's not been subpoenaed to come testify, an opinion that was
15 never disclosed, that he's going to attempt to articulate
16 somehow, some way, that because there is an executive that has
17 a title that says underwriting, that we can disregard corporate
18 structure of different entities that other witnesses have
19 talked about under the Amwins Group Inc., and to offer this
20 Jury some form of legal opinion, given his status as a law
21 professor and an expert on bad faith. He's not an expert in
22 corporate structure. He doesn't say he's done any research
23 other than what any juror could have done to Google Amwins. It
24 doesn't assist the jury, in fact, it does the opposite, it
25 misleads the jury because he's testifying in an area in which

1 he's not an expert and which he's not proffered any opinions
2 prior to the start of this trial on.

3 THE COURT: Did you question him in his deposition
4 about agency? Did you bring anything up about that?

5 MR. WATSON: I questioned him -- the issue of the
6 agency status of Ms. Northcutt came up in the deposition.

7 THE COURT: Did it come up with you asking him the
8 question?

9 MR. WATSON: Yes. It came up with me asking him the
10 question.

11 THE COURT: I'm going to allow it.

12 MR. WATSON: Even if it was never disclosed?

13 THE COURT: You brought up the agency in the
14 deposition. If he went to looked this up after the fact --

15 MR. WATSON: But this is an -- he's offering an
16 opinion about something --

17 THE COURT: It didn't sound like he was offering an
18 opinion, he simply was saying that Bob Petrilli --

19 MR. WATSON: Has a title that's --

20 THE COURT: -- was the president of the underwriting
21 division. Yes.

22 MR. WATSON: And how is that relevant to this case?
23 How is that possibly linked to this case?

24 MR. CONNELL: Excuse me. Can I answer?

25 THE COURT: Everything we've talked about has been

1 related to this case.

2 MR. DESCHAMPS: It was Amwins Access --

3 MR. WATSON: No. We had an entire motion in limine
4 about precision with regard to Amwins and references to Amwins
5 --

6 THE COURT: I need it to be relevant, I'm going to
7 allow it, I'm going to allow him to testify.

8 MR. CONNELL: Okay. Take me back to the beginning.

9 **(Jury entered the courtroom at this time.)**

10 THE COURT: Alright, ladies and gentlemen, thank you.
11 Alright, Mr. Connell, you can continue your direct examination
12 of Mr. Finkel.

13 MR. CONNELL: Thank you, Your Honor.

14 **DIRECT EXAMINATION (continued)**

15 BY MR. CONNELL:

16 Q. Alright, so we had you prepared a short PowerPoint to
17 show the Jury?

18 A. I did.

19 Q. Alright. So what I'd like to do is just run through it,
20 and you tell me what you want to talk about, okay?

21 A. Sure.

22 BY MR. CONNELL:

23 Q. Okay. So what are we looking at here?

24 A. Well, this is just part of the policy, and this is an
25 abstract. It's not the entire policy. It's an abstract, so I

1 can get it on the screen for you, of the coverage part of the
2 policy. There are -- there is custom and usage in South
3 Carolina as part of the regulatory scheme that issues of
4 coverage are given broad meaning, and restrictions on coverage,
5 or exclusions, are read very narrowly in favor of the insured.

6 Q. Okay. What is that -- so I understand this in different
7 language in insurer, what do you mean by exclusion?

8 A. Well, coverage is general coverage and as Counsel said
9 before, that you could have an endorsement that limits that
10 coverage, and of course, the fire protection endorsement limits
11 coverage, so those are very narrowly construed.

12 Q. So in layman's terms, I'm buying the policy, the policy
13 says I'm covered for a fire insurance, that's broadly --

14 A. Broadly.

15 Q. -- construed, and if they provide an exclusion that says
16 X, that has to be narrowly construed.

17 A. That has to be narrowly construed and confined exactly
18 to its language.

19 Q. So Mr. Tebele gets this from the broad part of the
20 coverage and the insurance company gets this from the
21 exclusion.

22 A. That is correct.

23 Q. Okay.

24 A. And you can see that coverage as covered property as
25 used in this policy means the type of property described in

1 this section, A1, and limited in A2, that's property not
2 covered, and then it's the building, meaning a building, a
3 structure at an insured location, and then it includes other
4 things like fixtures and including outdoor fixtures and
5 machinery and equipment, et cetera.

6 MR. FINKEL: Can you move that?

7 MR. CONNELL: I'm sorry.

8 A. The second part of it is for the personal property,
9 which is covered, and then there's a very peculiar clause in
10 here, and it says: If not covered by other insurance,
11 additions under construction. And that becomes very important
12 because you've heard all of this testimony today, in fact, I'm
13 kind of blown away by the fact that there are at least nine
14 lawyers in here all fighting over what this means, so imagine
15 what Mr. Tebele had to know who's not a lawyer? But, if not
16 covered by other insurance, well, let's take a look at the next
17 one.

18 Q. So let me ask you about the additions to coverage first.

19 A. Okay.

20 Q. So does that mean -- and again, you're the insurance
21 person, I'm just trying to understand what it means, but does
22 that mean that I'm doing all the piping all over? Is that
23 construction that's covered under the policy?

24 A. It should be.

25 Q. Okay. Alright.

1 A. It should be.

2 Q. So that's the broad form, is that what we're talking
3 about?

4 A. That's the broad form.

5 Q. Okay.

6 A. And now it says: As a condition on this insurance --
7 this is the protective safeguards. This is the exclusion,
8 basically, that this case is about. It says: As a condition
9 of this insurance. And "condition" just means it has to be
10 satisfied before you get the insurance: You are required to
11 maintain the protective devices or services listed in the
12 schedule above. And it says: Protective safeguards to which
13 this endorsement applies are identified by the following
14 symbols: AS, automatic sprinkler system, including related
15 supervisory services. And then it defines what AS is. AS
16 doesn't exist in this case. And if you construe this narrowly,
17 this does not apply.

18 Q. Okay. So --

19 A. It's in the policy.

20 Q. So --

21 A. It just doesn't apply. Let me go on, if I may, because
22 I think it's important. This was never delivered to the
23 insured, and the carriers maintain: Well, that's his broker's
24 fault because the broker got it two days before the fire and
25 didn't turn it over to Mr. Tebele. Well, you've all seen that

1 policy, it's about an inch thick, so if they had turned it over
2 the same day, he would have never been able to read it in one
3 day. I can't read it in one day, and I'm an expert in this
4 area. So the protective fire endorsement was never delivered.
5 They take the position the broker belongs to the insured and
6 has nothing to do with Amwins.

7 Q. The broker being Crescent Coast?

8 A. Crescent Coast. And that's just not true.

9 MR. WATSON: Your Honor, may we approach?

10 THE COURT: Yes.

11 **(Off the record discussion was held at the bench by**
12 **Court and counsel.)**

13 BY MR. CONNELL:

14 Q. Alright. So Professor, the AS symbol, was that on the
15 schedule of values?

16 A. It was not.

17 Q. Alright. And what is the importance of that?

18 A. Well, it refers to the schedule of values that has an AS
19 symbol.

20 Q. Alright.

21 A. And since it doesn't, it doesn't apply.

22 Q. So he didn't have to have a sprinkler system?

23 A. He didn't have to have an operating -- I don't think the
24 protective endorsement --

25 Q. Okay.

1 A. -- governs that.

2 Q. Alright.

3 A. But since it wasn't delivered, the issue becomes an
4 agency issue. Who is the broker? The broker is a dual agent
5 and South Carolina is one of three jurisdictions in the United
6 States. That's regulatory schemes.

7 MR. WATSON: Your Honor, same objection.

8 THE COURT: I'm going to sustain it on this one.

9 BY MR. CONNELL:

10 Q. Alright. So he sustained the objection on that one.

11 A. I understand.

12 Q. So let's go on to, what other part of the PowerPoint do
13 we have to talk about? So another page?

14 A. Well, yes, there's another page.

15 Q. Now, tell me about that.

16 A. It says in number 5: If not covered by other insurance,
17 additions under construction. If the endorsement cuts down the
18 coverage in the broad coverage part, it's restored here on the
19 additions under construction.

20 MR. WATSON: Your Honor, same objection.

21 THE COURT: Overruled.

22 BY MR. CONNELL:

23 Q. Go ahead.

24 A. Okay. We need to go back to the --

25 MR. CONNELL: Take us back.

1 MR. FINKEL: Yeah. I need it to go back -- I need to
2 get back to the protective endorsement part of it. Okay. One
3 more. Do it again, please. I don't know what happened. Go
4 towards the end one more time. Do you have the protective
5 endorsement copy?

6 MR. CONNELL: It's right next to this other one.

7 MR. FINKEL: Okay.

8 MR. CONNELL: Do you want all of them? You need to
9 look at the exhibits.

10 MR. FINKEL: Okay. The policy.

11 MR. CONNELL: It's part of the exhibit. This is
12 Exhibit 2, already in evidence, this is the endorsement.

13 A. This is the full protective endorsement in Exhibit 2,
14 which is the policy, and it says in here, it says at the end:
15 The following is added to the exclusions section of the policy
16 referenced above. We will not pay for loss or damage caused by
17 or resulting from fire, if you fail to maintain any protective
18 safeguard listed in the schedule above over which you had
19 control. You all saw the picture with a ditch, and they were
20 waiting on the inspector from the City before they could put
21 into the tap. Mr. Tebele didn't have control over that, and
22 it's an issue of fact for you to determine whether he had
23 control or not, but I don't believe he had control, in my
24 opinion.

25 Q. Alright. So take us to the last slide.

1 THE CLERK: The very last slide?

2 MR. FINKEL: No, before we get to the last slide,
3 let's go back now towards the front. I want to put in those
4 emails.

5 THE CLERK: The emails --

6 MR. CONNELL: Yeah, that's the email.

7 THE COURT: Okay. So that's already in evidence.

8 A. In order to avoid a policy for misrepresentation in
9 South Carolina, you have to show that the insured had the
10 intent to deceive or defraud the carrier.

11 MR. WATSON: Your Honor, may we approach?

12 THE COURT: Yes, sir.

13 **(Off the record discussion was held at the bench by**
14 **Court and counsel.)**

15 BY MR. CONNELL:

16 Q. Alright. So that's Exhibit Number 23 in evidence
17 already, I believe.

18 A. That is correct.

19 Q. And tell me what that exhibit is and how Amwins is
20 connected to Sandra of Crescent Coast based on your review of
21 the evidence.

22 A. This occurred on January 11th, the same day as the
23 application. The application that was filed said that the
24 property was 100 percent sprinklered, and they checked that
25 box.

1 Q. That was from the Mexican restaurant, I believe; is that
2 right?

3 A. That's from La Casona, that's correct. And Sandra Nana
4 Nenna was with Crescent Coast, and she sends this email to
5 Whitney Gurtzweiler, who was with Amwins Access, and she's an
6 underwriter there. She also underwrote the Tebele property and
7 it's all on the same property --

8 Q. Okay.

9 A. -- 1901. And she says, on the same day as the
10 application: When the app was submitted for the risk, it was
11 represented that the building was 100 percent sprinklered, as
12 the sprinkler system was being installed at that time. We have
13 learned as of yesterday that the sprinklers have been
14 installed, but the landlord has not turned the water on to have
15 them operational. We just wanted to give you a heads up on
16 this. So Amwins was fully aware at the time that the
17 application was signed, which was on January 14th, when it was
18 DocuSigned, that it was not sprinklered at that time because it
19 wasn't hooked up.

20 Q. Alright. So let me see if I can understand this. So
21 Sandra Nenna from Crescent Coast apparently had some
22 conversation with the La Casona Restaurant people; would that
23 be right?

24 A. That's correct.

25 Q. And then she had sent an email to Amwins Access in

1 Charleston, to Ms. Gurtzweiler, and reporting that they have
2 just learned that the sprinkler system was not hooked up?

3 A. That is correct, and she's Mr. Tebele's tenant.

4 Q. Alright.

5 A. And she's got a policy as well as --

6 Q. And three days later, Crescent Coast and Amwins bind the
7 policy?

8 A. That is correct, and if you go one further, Whitney
9 Gurtzweiler says: Got it. We'll note the file. So now
10 they've admitted that they've got the information that it's not
11 sprinklered and --

12 Q. Okay. Does it matter that this was the tenant's policy
13 and the landlord policy with the same agent was being bound
14 three days later? Does it make a difference that they -- how
15 they knew it?

16 A. I think she was infused with knowledge because it was
17 the same address, it was 1901.

18 Q. Alright. Okay. Let me let you look at this a minute
19 here.

20 A. Okay.

21 Q. This is Exhibit 28. Why don't you come down and look at
22 this? The premium finance agreement between Mr. Tebele and
23 who?

24 A. It's the Lloyd's of London Certain Underwriters and
25 Amwins Access Insurance Services.

1 Q. Alright. And what does it say above, in the top
2 schedule policy? What else does it say?

3 A. It says: Insurance Company and General Agent.

4 Q. Alright. And so was Mr. Tebele going to finance his
5 \$140,000.00 policy with; is that right?

6 A. That is correct.

7 Q. And then he was going to have to pay interest, too, on
8 it; was he not?

9 A. That is correct.

10 Q. And how much was the total going to be?

11 A. It was a little over \$170,000.00, as I recall,
12 \$170,997.08.

13 Q. Alright. And does the term Lloyd's London Certain
14 Underwriters, does that appear on the premium finance
15 agreement, also?

16 A. Yes, it does.

17 Q. Alright. And so what does all that tell us about the
18 relationship between Amwins Access and Lloyd's of London?

19 A. Whatever information that Amwins Access had as related
20 to this property certainly was given to --

21 Q. Thank you, sir.

22 MR. CONNELL: Alright, Your Honor. I think we have
23 -- we've already offered Exhibit 28. Does anyone have any
24 objection to that?

25 THE COURT: I think we stipulated.

1 MR. CONNELL: Okay, I just want to make sure.

2 THE COURT: I don't have 28 being admitted yet. I
3 we'll admit 28 with stipulation.

4 MR. CONNELL: Thank you, Your Honor.

5 **(Plaintiff's Exhibit No. 28 was admitted into evidence.)**

6 MR. CONNELL: Alright. Thank you, Your Honor. Can
7 you staple the pages, please?

8 BY MR. CONNELL:

9 Q. Alright. So now we're down to the situation where Mr.
10 Tebele has paid the money as of January 14th, he hasn't gotten
11 the policy yet; has he?

12 A. He's not gotten the policy.

13 Q. Alright. The fire occurs February 24th. Based on the
14 evidence that's, and you know that, was Mr. Tebele presented
15 the policy before the fire?

16 A. He was not.

17 Q. Alright. When did Mr. Tebele find out and get the
18 policy?

19 A. I believe it was two days after the fire.

20 Q. Alright. So what is your opinion about that?

21 A. My opinion is that there was never a valid delivery of
22 the policy, and it still was within the dominion and control of
23 the agents.

24 Q. Alright.

25 A. When I say "the agents," and again, this is an agency

1 situation I did testify to in my deposition. South Carolina is
2 one of the minority jurisdictions, that if you fill out a
3 policy, transmit a policy, or collect money or premiums for a
4 policy, even though you're a broker, you become --

5 MR. WATSON: Objection, Your Honor. This is the
6 subject of previous objections.

7 THE COURT: Overruled. I'll allow it.

8 A. You become a producer for an agent of the insurer. So
9 it never really left the insurer's hands.

10 Q. Alright. So you've got three opinions; is that correct?

11 A. That is correct.

12 Q. Opinion number one is about the construction part of the
13 policy.

14 A. That is correct.

15 Q. Alright. And can you state that for us if you can?

16 A. Well, I believe that because of the exclusion, assuming
17 arguendo, which I, I disagree with.

18 Q. I don't know what that arguendo means.

19 A. I'm assuming, for the sake of argument --

20 Q. Okay.

21 A. -- that I would agree that if the policy was validly
22 delivered by delivery to Mr. Egan, assuming that, I still don't
23 think that the exclusion applied. First, because I think it
24 triggered the coverage portion where no insurance applied and
25 because it was under construction, and it clearly was under

1 construction. It was days away from completion, and in fact,
2 the evidence that I received was that Carolina Tap & Bore was
3 actually on site right up until the fire --

4 Q. Okay.

5 A. -- trying to tap in. So that's one opinion.

6 Q. Okay. Then you can have the taking the control opinion.

7 A. Yeah. I believe, and I think it's an issue of fact, but
8 the question is, did Mr. Tebele have control of the sprinkler
9 system, and he did not, in my mind.

10 Q. Because he was calling and asking when they could hook
11 it up and somebody else was in charge of it?

12 A. Well, he was waiting on an inspector to come, and they
13 still had to place a pipe and hook up the actual hookup.

14 Q. Alright.

15 A. So you know, that was all out of his dominion and
16 control.

17 Q. Alright. And what about the lack of the AS symbol on
18 the schedule of values? What about that?

19 A. Well, again, if you want to construe the exclusion
20 narrowly, which is the, you know, basic tenant of customer
21 usage in South Carolina, then missing AS means that it didn't
22 apply to this particular problem.

23 Q. Alright. Meaning, it can't be argued; is that right?

24 A. That's correct.

25 Q. Alright. And then the final thing I think you're

1 talking about, no delivery of policy. Are those the opinions
2 --

3 A. That's correct, the policy was never delivered.

4 Q. Alright.

5 A. And universally, the rule is, not just in South
6 Carolina, that if there are slips, riders, or exclusions, or
7 endorsements with a policy, they have to be affixed to the
8 policy so that somebody can read it.

9 Q. Alright. And then your opinion you've just stated about
10 the agency between Amwins Access and Lloyd's of London based on
11 Exhibit 28, I believe?

12 A. That is correct.

13 Q. Do you have any other opinions in this case?

14 A. No.

15 MR. CONNELL: We're done. Okay.

16 THE COURT: Any cross, sir?

17 MR. WATSON: Yes.

18 THE COURT: Let's go ahead and get started.

19 **CROSS-EXAMINATION**

20 BY MR. WATSON:

21 Q. Hi, Professor.

22 A. Good afternoon.

23 Q. Good afternoon. The first opinion you said was: The
24 construction part of the policy renders that the exclusion does
25 not apply. That was the first opinion I heard of your list

1 with Mr. Connell, right? That was --

2 A. Assuming that it was properly delivered, it would not
3 apply. It would not apply because this property was still
4 under construction.

5 Q. Now, in your PowerPoint, I'm pulling from Plaintiff's
6 Exhibit 2, which is the policy at issue here.

7 A. May I step down?

8 Q. Sure. Your discussion of this covered property section
9 emanates from this page of Plaintiff's Exhibit 2 with Bates
10 number 30 in the lower corner, right? Do you recognize this
11 page?

12 A. Yes.

13 Q. And that first sentence says: We will pay for direct
14 physical loss of or damage to Covered Property. And there's a
15 C and a P that are capitalized, right?

16 A. That is correct.

17 Q. And it says: At insured location. Right?

18 A. That is correct.

19 Q. Caused by or resulting from any covered cause of loss?

20 A. That is correct.

21 Q. Alright. So there's different parts there?

22 A. That is correct.

23 Q. So you're breaking it down: Direct physical loss of or
24 damage to. So something has to happen to this property?

25 A. Absolutely.

1 Q. And it's not just any property, it's the covered
2 property listed below?

3 A. That is correct.

4 Q. That's why the capital letters are there, the C and the
5 P?

6 A. (no audible response.)

7 Q. And included within the definition of covered property
8 is a the building, right?

9 A. (No audible response.)

10 Q. And it's -- there's a definition of what building means:
11 the completed editions, the fixtures, the machinery, the
12 equipment, all of those things in the building at an insured
13 location, right?

14 A. (No audible response.)

15 Q. And we can agree that 1401 North Kings Highway is an
16 insured location for purposes of this.

17 A. We can.

18 Q. Yes.

19 A. The question in my mind about whether it is a completed
20 addition --

21 Q. Well, we're not at that part of this language.

22 A. Okay.

23 Q. But for the purposes of the big covering language, where
24 it says: We will pay for direct physical loss over damage to
25 covered property at an insured location. For the purpose of

1 your opinions, 1401 North Kings Highway is an insured location?

2 A. That is correct.

3 Q. Alright.

4 MR. CONNELL: 1901. You said 1401.

5 MR. WATSON: Oh, excuse me. Thank you.

6 THE WITNESS: I heard, it was 1901, so.

7 MR. WATSON: It's been a long day.

8 BY MR. WATSON:

9 Q. In addition to the completed additions and the fixtures
10 it includes personal property owned by Tebele & Sons, right?

11 A. That is correct.

12 Q. And it includes, if not covered by other insurance, the
13 additions under construction, alterations, and repairs. So
14 what that means is, if a building -- if you buy insurance and
15 your building has a loss, but you might have been repairing
16 part of the building, that part that's under repair is still
17 included in what could potentially be covered. We can agree on
18 that, right?

19 A. Yes, with qualification, and that is that, I believe it
20 creates some ambiguity in there because when it talks about:
21 If not covered by other insurance. If the exclusion applies
22 then it's not covered by other insurance, and that, this
23 becomes an exception to that exclusion. If you read those pari
24 materia, that's the only way you can read it.

25 MR. WATSON: I would move to strike, Your Honor,

1 based on your prior rulings. The last part of that question
2 going right into the area which you had a ruling and motion
3 limine upon.

4 THE WITNESS: He asked the question.

5 THE COURT: You opened the door by asking that
6 question.

7 MR. WATSON: I did not ask him that. Well, we'll
8 move on for now.

9 BY MR. WATSON:

10 Q. You can agree that everything under this section
11 entitled "Covered Property" concerns this part, "covered
12 property," whether it's covered property or not?

13 A. That is correct.

14 Q. That doesn't mean a claim is covered, that just means
15 this is in the universe of things that can be covered if
16 damaged?

17 A. That is correct.

18 Q. Alright.

19 A. It is much broader than the rest of the policy.

20 Q. And just because something that was under repair or
21 construction gets damaged in a fire, it doesn't automatically
22 make it covered, the other parts of the policy still apply?

23 A. That is correct.

24 Q. For example, it had to have been caused by or resulting
25 from a covered cause of loss, and that's a defined term in the

1 policy with the capital CC?

2 A. That's correct.

3 MR. WATSON: Alright. That's all I needed this for.

4 BY MR. WATSON:

5 Q. Alright, Mr. Finkel, in your career, currently, the
6 Finkel Law Firm has about 20 lawyers across your two offices,
7 right?

8 A. Yeah, give or take a couple. We've just hired somebody
9 and I don't know the exact count because we're in two
10 locations.

11 Q. And you have a website, right?

12 A. We do.

13 Q. And you publish your bio on the website?

14 A. That's a little bio, but yes, sir.

15 Q. And you do your best to make that as accurate as
16 possible, right?

17 A. Yes. The most accurate one you have is the one that was
18 attached to my affidavit.

19 Q. And you were a past president of the South Carolina
20 Association for Justice, which used to be called the South
21 Carolina Trial Lawyers Association, and before that, it was
22 called the South Carolina Plaintiff's Attorney Association;
23 isn't that true?

24 A. That's even before my time when it was Plaintiff's
25 Attorney. Yes, I was a member and became the president, I

1 believe, in 1981.

2 Q. You've never been an insurance adjuster licensed to
3 handle claims?

4 A. That's correct.

5 Q. You've never had any type of CBCU or special designation
6 that adjusters get to adjust claims?

7 A. No.

8 Q. You've never been a retail insurance agent or broker?

9 A. Thank God, no.

10 Q. You've never been an underwriter writing policies --

11 A. No, I haven't.

12 Q. -- evaluating risks, deciding what premiums to charge?
13 You've never done any of that?

14 A. No, sir.

15 Q. And you've never been an employee of any insurance
16 company for any reason? The only times you've worked for
17 insurers is if they may have hired you as their attorney in the
18 case?

19 A. That is correct.

20 Q. But you never worked for as an employee of an insurer?

21 A. No, I have not.

22 Q. You have expertise in areas such as life insurance,
23 right?

24 A. I do.

25 Q. In auto insurance?

1 A. I do.

2 Q. Health insurance?

3 A. To some degree, yes.

4 Q. You teach on attorney ethics?

5 A. Yes.

6 Q. And you've given lots and lots of seminars and courses
7 through your long and storied career, right, and you've listed
8 them all on your website?

9 A. That's the price of getting older.

10 Q. And then on your website, there's a list of practice
11 areas that you have, correct, that you put in your bio? I'm
12 going to read these practice areas: Bankruptcy, business
13 litigation, construction litigation, corporate law, criminal
14 defense, default services, family law, homeowners association,
15 mediation, medical malpractice, personal injury, probate, real
16 estate, Social Security, wills and trusts. You've handled all
17 of these areas in your career?

18 A. I have not handled all of those areas. That's really
19 the law firm's.

20 Q. It's part of your website bio, right? I can show it to
21 you.

22 A. Okay. I don't --

23 Q. And then you issued a report in this matter. When you
24 were disclosed that you were going to be testifying in this
25 case, you gave a written report, right?

1 A. That is correct.

2 Q. And in your written report, you listed out a lot of
3 different seminars and articles and things you've written,
4 right?

5 A. That is correct.

6 Q. And one of them was given to the South Carolina Bar
7 Convention on January 24th, 2004, entitled, quote, I did it,
8 pay me anyway. Do you remember that you've given a course to
9 that?

10 A. That's correct. That was --

11 Q. Then let's talk about the --

12 A. That was a tongue-in-cheek. If I -- may I explain to
13 the Jury?

14 Q. Oh, you were being -- it was -- you were making a joke
15 with the title? Okay.

16 A. The title was we were talking about specious claims.

17 Q. Right. Where somebody didn't comply with something and
18 said I want to be paid anyway?

19 A. That is correct.

20 Q. Okay. Like having a sprinkler system marked as being
21 100-percent sprinklered on your property, and then having a
22 fire, but it wasn't actually connected, but asking the Jury to
23 pay him, something like that?

24 A. That was absolutely disclosed to your carrier, and Ms.
25 Gurtzweiler contacted other underwriters in different

1 subsidiaries when she was sourcing the policy, and she was
2 infused with that knowledge, and therefore reputed it to them,
3 so.

4 Q. How was she infused with this knowledge, some kind of
5 device infusing her with this knowledge? She got an email --

6 A. She --

7 Q. -- from a retail broker that the Jury already has seen
8 saying the sprinkler system has not been -- the water has not
9 been turned on.

10 A. She's --

11 Q. So that infused her with the knowledge --

12 A. Yes.

13 Q. -- about that day, about what was being transmitted to
14 her, right?

15 A. That is correct.

16 Q. And three days later, despite that knowledge being
17 transmitted, Mr. Tebele, on behalf of his business, signed an
18 application anyway saying the property was 100 percent
19 sprinklered, didn't he?

20 A. Yeah, but he made that -- after that disclosure was
21 made, and he made it to Mr. Egan.

22 Q. Right. Well, did Mr. -- did anyone on behalf of the
23 insurers know when he signed that application? Did he write
24 something on there with little asterisk --

25 A. The agent --

1 Q. Excuse me. Mr. Finkel, let me finish my question. You
2 know how we do this. Mr. Tebele, did he indicate when he
3 signed his application, any sort of disclaimer, like: Yeah,
4 but, this is what I told Mr. Egan? He didn't, did he? He just
5 signed it saying it's true and accurate, didn't he?

6 A. That's what he did.

7 Q. Now, the work you did in this case, all of the efforts
8 you undertook, you spoke to Mr. Deschamps when you got this
9 assignment, correct?

10 A. That is correct.

11 Q. And you were provided materials that Mr. Deschamps chose
12 to provide to you, correct?

13 A. Yes.

14 Q. And you took those in at your law firm, right?

15 A. That is correct.

16 Q. And you and another associate spent about 21 hours
17 reviewing that, right?

18 A. At least.

19 Q. And of those 21 hours, you billed for four of yourself,
20 and the other 17 went to your number of associates?

21 A. Because we don't --

22 Q. Alright.

23 A. People don't like my rate.

24 Q. You never talked to any parties in this matter, you only
25 spoke to Mr. Deschamps and counsel for Mr. Tebele?

1 A. I spoke to Mr. Tebele.

2 Q. Excuse me?

3 A. I spoke to Mr. Tebele.

4 Q. You spoke to him since your deposition?

5 A. Yes.

6 Q. But before -- but at the time when I took your
7 deposition a few months ago, you hadn't spoken to him?

8 A. I hadn't spoken to him.

9 Q. And you based your opinions not on anything he said to
10 you because you hadn't talked to him when I took your
11 deposition?

12 A. That is correct.

13 Q. Did he tell you something since your deposition that
14 caused you to make new opinions?

15 A. No.

16 Q. You never went to the site, right?

17 A. I did not.

18 Q. You reviewed deposition testimony of witnesses that were
19 provided to you, right?

20 A. That is correct.

21 Q. But one bit of testimony you didn't review because it
22 didn't exist was the deposition testimony of Mark Melvin; isn't
23 that right?

24 A. I did not see that.

25 Q. Alright. And you were not here yesterday when there was

1 a couple hours of his deposition played by video; were you?

2 A. I was not.

3 Q. So you don't know what he's going to say about his role
4 in the underwriting of this policy and how it came to be,
5 right?

6 A. I do not.

7 Q. And you don't know that he testified that he had no way
8 of accessing Whitney Northcutt's system at Amwins Access and
9 that she had no way of conveying information to him into his
10 system or seeing what was in his system?

11 A. That's a corporate failure. It doesn't comport with the
12 law.

13 Q. Okay. So you're saying Amwins Access or Amwins SRU
14 violated the law in some ways that a new opinion you're about
15 to form?

16 A. No, no. It's just, it's the old opinion. If she has
17 the knowledge and she's an Amwins employee, that should be
18 accessible to all of the underwriters that she dealt with.
19 She's the one to source the other underwriters.

20 Q. I'm putting the email up. If you want to see it again,
21 you're welcome to. It's the same one that was in your
22 PowerPoint today. This is Exhibit Defendant's 24, I believe,
23 which is already in evidence. This email, anywhere on this
24 email or on this follow-up from Ms. Gurtzweiler, does the
25 address 1901 North Kings Highway appear anywhere in these

1 emails?

2 A. No, but it does in the applications for insurance.

3 Q. But my question is about this email, the one that
4 infused her with all this power and knowledge, does it say 1901
5 North Kings Highway on it, yes or no?

6 A. It does not.

7 Q. Also, the date of this email, January 11th, 2019, that's
8 four days before coverage was bound for A. Tebele & Sons,
9 right?

10 A. Three days, yes.

11 Q. If she's noting the file, she would have had to note the
12 file for a property policy that did not yet exist, correct? It
13 was not effective yet, right?

14 A. That's correct.

15 Q. And her notes in the file tells you, in the subject
16 line, what she was noting. La Casona, that's the tenant's
17 business, right?

18 A. That is correct.

19 Q. NC127465, that's her policy number?

20 A. That's correct.

21 Q. 08/23/2018, that's the date effective of the tenant's
22 policy?

23 A. That's correct.

24 Q. So all of this knowledge that Ms. Gurtzweiler was
25 infused with had to do with the tenant's policy?

1 A. Ms. Gurtzweiler knew the address, and it was the same
2 address she was dealing with for Mr. Tebele's policy.

3 Q. The policy that didn't even go into effect yet, right?

4 A. It didn't go into effect yet, but the application had
5 already been sent.

6 Q. Right. And three days after this email saying: The
7 sprinklers have been installed, but the landlord has not turned
8 the water on. That sure makes it sound like all it takes is
9 flipping a switch and this water will be on; doesn't it?

10 A. I don't know what -- how she determined what that meant.
11 She said she would note the file.

12 Q. You're a smart man. If it says: The sprinklers have
13 been installed, but the landlord has not turned the water on.
14 It sounds like all he would have to do is turn the water on,
15 right?

16 A. That's what it sounds like.

17 Q. And so if he signed an application three days later
18 saying 100 percent sprinklered for this location, that's
19 consistent with somebody who turned the water on in those
20 intervening three days; wouldn't it be?

21 A. I don't know. If you want to speculate that that's the
22 case, yes, but that's pure speculation.

23 Q. Well, the insurers didn't get the benefit of this email.

24 A. The insured --

25 Q. They only got the -- they only got the application

1 signed by Mr. Tebele on behalf of his business. That was Mr.
2 Melvin's testimony, but you weren't here for that; were you?

3 A. I was not.

4 Q. You have no opinion in this matter as to whether the
5 contract was or was not breached, correct, you're not offering
6 that opinion in this case?

7 A. I am not offering that as an opinion, no.

8 Q. And you agree that without a breach under the facts of
9 this case, there would not be a finding of bad faith, right?

10 A. I'm not sure that that's correct, but I would agree that
11 in order to have a bad faith claim positive on this case, there
12 would have to be a breach.

13 Q. Right. That's what you told me earlier in your
14 deposition.

15 A. That is correct.

16 Q. You've assumed for purposes of the opinions about
17 whether the insurers acted in bad faith, that there was a
18 breach underlying that, that they somehow didn't do what they
19 were supposed to do on this policy?

20 A. That is correct.

21 Q. And you're not telling this Jury things about how to
22 interpret the policy that Judge Hyman is going to tell, right?
23 You're --

24 A. No, he will charge, and I'm sure he'll do a good job.
25 He will charge the Jury.

1 Q. To the extent that you've given opinions that sure sound
2 like something a judge might charge, you're deferring to Judge
3 Hyman to do that work for the Jury, correct?

4 A. Well, every expert has to give a basis for the opinion,
5 and in a regulated industry, and this is one of the most
6 regulated industries, a lot of that opinion is positive in the
7 law because it's a regulatory scheme.

8 Q. You're not trying to do Judge Hyman's job today?

9 A. Absolutely not.

10 Q. And you're also not determining, in your role of reading
11 these transcripts, you didn't look at any of these people or
12 evaluate their credibility as witnesses, correct?

13 A. I did not.

14 Q. So you assumed everybody was truthful in their testimony
15 because you didn't have any reason to believe otherwise?

16 A. I have every reason to believe that everybody was
17 truthful.

18 Q. And isn't it true that Ms. Northcutt testified in her
19 deposition that she did not underwrite Mr. Tebele & Sons'
20 property policy?

21 A. You need a fire policy separate from -- and is it Ms.
22 Gurtzweiler and Ms. Northcutt are the same person?

23 Q. Ms. Gurtzweiler and Ms. Northcutt are the same thing.
24 She got married, so yes.

25 A. I assume she got married.

1 Q. Maybe not, maybe the other way around, I don't know.

2 But she testified in her deposition she was not the underwriter
3 of the A. Tebele & Sons property policy, right?

4 A. That's what she testified.

5 Q. And assuming all witnesses are being truthful, you
6 accept that for purposes of rendering your own opinions, right?

7 A. That's correct. I think she contacted Mr. Bob Sellers.

8 Q. I'm sorry, I can't hear you.

9 A. I think she contacted another underwriter, Mr. Bob
10 Sellers.

11 Q. Right. You were aware, and we talked about in your
12 deposition, the differences between the different Amwins
13 Access, Amwins Brokerage of the Carolinas --

14 A. Amwins, that's right.

15 Q. -- Amwins SRU, and how they are different companies with
16 different functions and roles, correct?

17 A. That is correct.

18 Q. And yet, it's your opinion that the reason my clients,
19 the insurers in this case, knew about the sprinkler system not
20 being operational was because of this email, this Exhibit 24?

21 A. That is correct.

22 Q. And that that information somehow got from Ms.
23 Northcutt, Ms. Gurtzweiler, to them to inform them, right?

24 A. Well, according to the website that Amwins has, they
25 have a president of underwriting who's over 14 subsidiaries,

1 including these. So in terms of responsibility for the
2 underwriting, it seems like it goes all the way up to a group.

3 Q. Did you read any testimony from any --

4 A. I did not.

5 Q. -- executives at Amwins --

6 A. I did not. All I did was what any juror could do, they
7 could look up Amwins online, and they could see who the
8 leadership is, and then they'll see that Mr. Petrilli is
9 president of underwriting, and in his bio he's over the
10 underwriting for all 14 subsidiaries.

11 Q. I took your deposition for about three hours, a month or
12 so ago, right?

13 A. I think it was more than that. I --

14 Q. Did you ever mention Mr. Petrilli's name in the
15 deposition? You never did.

16 A. I didn't know it at that time.

17 Q. Right. You didn't. And that was the time when you were
18 going to be disclosing your opinions so we would know what
19 you're telling the Jury in this case, right?

20 A. That's correct.

21 Q. And today for the first time you decided to bring his
22 name up, right?

23 A. Well, you raised the agency issue in my deposition.

24 Q. Well, you rendered opinions about agency here today.

25 Let's talk about the claim investigation. Actually, no, let's

1 go back. You talked about delivery. One of your opinions is
2 the policy wasn't delivered to him. The policy wasn't
3 delivered to him. You said that several times. I think I
4 noted it. The "him" is Mr. Tebele, right?

5 A. That's correct.

6 Q. Mr. Tebele is not the name of the insured. It's a
7 business, right?

8 A. That's correct.

9 Q. A. Tebele & Sons General Partnership, right?

10 A. That is correct.

11 Q. That's a corporate -- that's a -- that's not a person,
12 it's a legal entity created by documents, right?

13 A. That's correct.

14 Q. And so they don't get delivery of a policy into the thin
15 air, they have designees who receive that information, right?

16 A. That is correct.

17 Q. And in this matter, they designated Crescent Coast as
18 their agent to receive the policy from my clients, correct?

19 A. I don't agree with that. I don't know that they
20 designated Crescent Coast to get it. I thought that they
21 probably would get it themselves.

22 Q. Well, if Mr. Tebele and Crescent Coast testify to that
23 relationship then you would be willing to have your mind
24 changed?

25 A. I'm willing to have my mind changed.

1 Q. And so the delivery of the policy would have occurred
2 when the legal agent for the business is provided with the
3 binder indicating coverage is now effective; isn't that true?

4 A. Well, again, to get back to the agency issue that he is
5 a producer for the insurers, until he relinquishes it, I
6 believe that the insurer still has control over the policy.

7 Q. And you agree with me that the term "delivery" is a
8 legal term of art in South Carolina?

9 A. Excuse me.

10 Q. Are you alright? I don't know the Heimlich, so. Do you
11 have enough water?

12 MR. WATSON: Do you have a glass of a water to give
13 to him? Will you make it? Are you okay? Thank you.

14 THE WITNESS: Okay. Let's try again.

15 BY MR. WATSON:

16 Q. Alright. The defendant insurers delivered this policy
17 by way of Amwins Brokerage of the Carolinas to Crescent Coast,
18 correct?

19 A. That's correct.

20 Q. And they don't interact directly with Tebele & Sons,
21 correct?

22 A. Who is "they"?

23 Q. "They," the insurers.

24 A. Yes, they don't.

25 Q. There's intermediaries between them.

1 A. That's correct.

2 Q. And delivery in the law is the last act before the
3 contract is formed, the contract goes into effect, right?

4 A. Well, in this case, there was a binder, and then the
5 contract followed that.

6 Q. But the concept of delivery, that means that's the last
7 act before the contract is formed?

8 A. That is correct.

9 Q. And so if there's no delivery, the contract has not been
10 formed, it has to happen, right?

11 A. Well, insurance doesn't quite work like that.
12 Insurance, a lot of times, you'll get a binder, and you don't
13 have any of the text of the policy, so you don't know -- CGL
14 policies are very, very complicated. The binder is a
15 relatively short document saying you have insurance. If you go
16 to a home closing, for instance, generally, you'll come with a
17 binder. It will just be a receipt for your money, it says
18 you're bound at the date, but you really don't know all of the
19 terms until the policy is actually issued within 30 days.

20 Q. And that's something that happens in a lot of lines of
21 work, like in buying a car, when you buy car insurance, and you
22 don't get the policy, the stack of policy, the day you buy it.
23 You get it weeks later --

24 A. That's correct.

25 Q. -- but you still have coverage from the moment you buy

1 it?

2 A. That is correct.

3 Q. And so this is the binder here, Exhibit Defendant's 25
4 which is already in evidence. You've seen this binder before?

5 A. I have, but I can look at it again.

6 Q. Sure.

7 A. Okay.

8 Q. This is the binder, right?

9 A. Yes, that's the binder.

10 Q. And in the binder, and again, it's on letterhead issued
11 by Amwins Special Risk Underwriters, right?

12 A. Right. That's correct. This is Amwins SRU that we've
13 been talking about.

14 Q. And so that the purchaser knows what they are receiving
15 in terms of the policy forms, there's a page that lists all
16 those forms; isn't there?

17 A. Yes. But it doesn't show you those forms.

18 Q. No, but it gives you different code numbers and letters
19 that indicate identifiers for those forms, right?

20 A. It does.

21 Q. And one of the identifiers on this list in the binder
22 that was given to A. Tebele & Sons by way of Crescent Coast is
23 SRU 0240710, Protective Safeguards, Fire, right?

24 A. That's correct.

25 Q. And so upon receiving this, Crescent Coast, if they had

1 questions --

2 MR. WATSON: You can sit down.

3 BY MR. WATSON:

4 Q. Crescent Coast, upon receipt of this binder, if they
5 wanted to, could ask questions or ask to see any of these
6 forms, right?

7 A. I imagine that they could have. It really doesn't tell
8 you what the protective safeguards, what properties it covers.
9 So you know, it's -- there's no descriptive, and then, again,
10 customer usage in the trade is that those endorsements aren't
11 really effective until they're delivered with the policy. So
12 that delivery issue that you raised before is the critical
13 issue.

14 Q. So you're saying none of these forms, even though all of
15 these forms are listed on January 15th and the binders being
16 part of the policy, none of them are effective until he
17 actually physically gets the policy?

18 A. That's correct.

19 Q. Alright.

20 A. We have a --

21 THE WITNESS: I'm afraid to testify this to the
22 lawyer, Your Honor, so if we could stay away from that.

23 THE COURT: Let's have him ask a question first.

24 THE WITNESS: Okay.

25 BY MR. WATSON:

1 Q. Alright. I'm approaching you, Mr. Finkel, with the
2 Plaintiff's Exhibit 2 of the policy you talked about, okay?

3 A. That's correct.

4 Q. What is the form number? Now, I'm looking at and I'm
5 showing you the same form you stood up here and went over, the
6 property damage coverage form where it said "Covered Property,"
7 capital C, capital P., and you went through all of that, okay?

8 A. That's correct.

9 Q. What is the form number on the lower right-hand corner
10 there starting with the SRU?

11 A. It's SRU double O three, and then it's -- sorry, January
12 18th.

13 Q. And if you look at the binder, SRU 003118 is on the
14 binder as one of the forms; isn't it?

15 A. Absolutely.

16 Q. But he didn't get that form until after the fire, so
17 that one also is not in effect at all? Right? According to
18 your opinion that you just gave.

19 A. The coverage is much broader, and the binder usually
20 says what the limits of insurance are.

21 Q. No, but you said if they don't deliver the policy form
22 to him, it's not effective, so he has really no coverage until
23 after the fire, according to you?

24 A. That's not true.

25 Q. Of course it's not true, because he bought and paid

1 premium and has an effective date of January 15th.

2 A. And he gave -- you took his \$170,000 and didn't give him
3 coverage.

4 Q. And you know very well why they didn't give him
5 coverage, because he didn't have a sprinkler system connected,
6 right?

7 A. He didn't ask. It would have been very easy --

8 Q. Now --

9 A. -- for the carrier -- it would have been very easy for
10 the carrier --

11 BY MR. WATSON:

12 Q. Mr. Finkel, I have no question pending. Let me ask you
13 the next question, okay? Part of your review of this case
14 concerned the investigation that was done by the insurers once
15 the claim was presented, correct? You reviewed the steps that
16 occurred once the claim was presented?

17 A. Yes. I don't have any problem with the general claim.

18 Q. Right. The things that they did to investigate
19 included, they sent out a field adjuster, that was appropriate,
20 right?

21 A. Right.

22 Q. They had someone go out and attempt to determine the
23 cause and origin of fire, that was appropriate, right?

24 A. Right.

25 Q. They wrote Reservations of Rights Letters, putting A.

1 Tebele & Sons on notice that they had a concern about the
2 protective safeguard endorsement, right?

3 A. That was appropriate.

4 Q. They asked the policyholder to provide testimony and
5 documents at what's called an examination under oath, right?

6 A. That's appropriate.

7 Q. That was appropriate?

8 A. That's standard.

9 Q. Right. And he was required to comply with that; wasn't
10 he?

11 A. He was.

12 Q. And he gave testimony, which you read?

13 A. Yes.

14 Q. And then after that testimony was given, about a month
15 later, the declination letter was issued on August 6th of 2019
16 informing Mr. Tebele's company about the coverage decision,
17 correct?

18 A. That is correct.

19 Q. And in that letter, they explained their position in
20 terms of which policy provisions they were seeking to decline
21 coverage based on, right?

22 A. That's correct.

23 Q. And which facts they were relying upon from their
24 investigation to make that decision, right?

25 A. That's correct.

1 Q. And they even put the policy provisions in there from
2 the protective safeguard endorsement that they were relying
3 upon, right?

4 A. That's correct.

5 Q. And all of that was appropriate for them to do in terms
6 of the form?

7 A. In terms of enforcement of the claim, that's correct.

8 Q. What you disagree with, and the only part of all of
9 their investigation you disagree with is the end result? You
10 just believe they should have not declined the coverage, they
11 should have paid the claim?

12 A. They should have paid the claim, and I believe they
13 subordinated their insured's interest to their own. They have
14 a quasi-fiduciary duty to their insured, and that's
15 well-settled in South Carolina, and I think they didn't do
16 that. Instead of looking for every opportunity to find
17 coverage, they looked for every opportunity to deny it,
18 including their own forms, and I started to say before, in
19 order to answer your question properly, that when they did the
20 protective fire endorsement, they could have said "including
21 any properties that are under construction" and eliminated it,
22 and that's why an adhesion contract is a problem. They didn't
23 put that into it.

24 Q. Let's talk about that adhesion contract. That implies
25 that an insurer is forcing a policyholder to agree to certain

1 terms, and then they can't --

2 A. If you want the coverage, you've got to -- you've got to
3 agree with their form.

4 Q. But the policyholder, in any circumstance, is able to
5 speak to their retail agent and request changes be made by way
6 of endorsement to their policy, correct?

7 A. Sure, as soon as you see the policy.

8 Q. And so he doesn't have to just live with what he has.
9 If the conditions have changed and he needs to change his
10 coverage, he goes to his agent and he says: I need to add a
11 location, I need to change a mortgagee, I need to change the
12 status of my sprinkler system, he could do that, right?

13 A. But --

14 Q. And that's just because you --

15 A. But he certainly can't rewrite the policy. He can't
16 rewrite the form. What he can do is he can change the
17 coverages.

18 Q. And if he doesn't like the policy he has, he can ask to
19 change insurers. He can say: I want to end my policy and get
20 a new one. Right?

21 A. That's correct.

22 Q. And we can agree that Tebele & Sons, A. Tebele & Sons,
23 owns many properties in South Carolina, yes?

24 A. Yes.

25 Q. He's not a novice, by any stretch, when it comes to

1 owning, leasing properties, commercial, right?

2 A. I would think not.

3 Q. And he's not a novice when it comes to procuring
4 insurance for all of his businesses, right?

5 A. Apparently not.

6 Q. And before applying for this policy, he had been
7 procuring insurance for these properties for years and years,
8 right?

9 A. I believe so.

10 Q. And on this property, on the schedule of values and on
11 the application, there are 5 locations noted as 100 percent
12 sprinklered, and there's 19 others that are indicated 0 percent
13 not sprinklered, right?

14 A. That's correct.

15 Q. And that was how it was noted on his application in
16 August when he met with Mr. Egan for the first time, right?

17 A. That's correct.

18 Q. And they sat down and went 30 -- I mean, 30, 45 minutes
19 over every property and said -- and filled out those pages
20 together way back in August, right? You read that testimony?

21 A. That is correct.

22 Q. And that's when the indications about 100 percent
23 sprinklered first showed up for 1901 North Kings Highway; isn't
24 that correct?

25 A. That is correct.

1 Q. And then that carried through to his application he
2 ultimately signed in January 2019, right?

3 A. That's correct.

4 Q. And that sprinkler system was a multi-year-long process
5 that started back in 2016, right?

6 A. That is correct. My understanding was that La Casona
7 couldn't operate unless they were the same location, according
8 to the City -- profile.

9 Q. And Mr. Tebele, on behalf of A. Tebele & Sons, if he was
10 unhappy with the speed at which the sprinkler system was being
11 installed in 2016, 2017, 2018, and 2019, could have fired them
12 and hired a new contractor at any point; couldn't he?

13 A. That, I don't know.

14 Q. Does an owner of the property have the right to do with
15 their property what they wish when it comes to construction,
16 assuming the authorities permit it?

17 A. Well, that's the assumption that I don't know, whether
18 the authorities would permit it.

19 Q. But you would agree that if the installation being slow
20 -- too slow for him was a problem, as the building owner he is
21 the one with the most power to do something about that, right?

22 A. That's correct.

23 Q. And he never got a new contractor, did he?

24 A. No, he didn't, because it was near the end when he made
25 the application.

1 Q. And we talked about control. We talked about the
2 covered property. You offered an opinion about the AS symbol
3 not being on the schedule of values. That's an opinion you're
4 now offering, right?

5 A. Well, I said that, yes.

6 Q. Right. You issued a 25-page report in this case, right?

7 A. Yes.

8 Q. That opinion was located nowhere in that report, right?

9 A. That's correct.

10 Q. The first time I heard it is today. Is this the first
11 time you've uttered it in front of a court reporter before?

12 A. That is correct.

13 Q. And you sat through Mr. Twaddell's testimony earlier
14 this morning, didn't you?

15 A. I did.

16 Q. And it just so happens that your opinion matches things
17 he was saying on the witness stand, right?

18 A. I knew about the AS issue before that. After you took
19 my deposition, I was still diving into this case.

20 Q. Right. You're a licensed attorney, right?

21 A. I am.

22 Q. You know the rules when it comes to expert witnesses and
23 disclosing things about --

24 MR. CONNELL: Objection, Your Honor. Objection.

25 MR. WATSON: I'm sorry.

1 MR. CONNELL: You heard me. I said objection.

2 THE COURT: You all come up here.

3 (Off the record discussion was held at the bench by
4 Court and counsel at this time.)

5 BY MR. WATSON:

6 Q. One last question, Mr. Finkel.

7 A. Yes, sir.

8 Q. Professor, were you here when Mr. Dover was testifying
9 in this case?

10 A. No, sir.

11 Q. So you've never heard before today that on February
12 13th, 11 days before this fire, Mr. Tebele was on site with Mr.
13 Dover looking at the unconnected sprinkler system? Is this the
14 first time you're hearing that?

15 A. First time I'm hearing that.

16 MR. WATSON: I have nothing further. Thank you.

17 THE COURT: Mr. Adams?

18 MR. ADAMS: No questions from Crescent Coast. Thank
19 you.

20 THE COURT: Alright. Brief Redirect?

21 MR. CONNELL: Yes, sir.

22 THE WITNESS: Your Honor, may I be excused?

23 THE COURT: We've got a couple redirect questions for
24 you.

25 MR. CONNELL: I know you're tired, but I'll ask a few

1 questions.

2 THE WITNESS: I'm not tired. I'll be tired tomorrow.

3 **REDIRECT EXAMINATION**

4 BY MR. CONNELL:

5 Q. Alright. So you were asked, and I don't think you've
6 ever seen this Plaintiff's Exhibit Number 25, you were asked
7 about the letter, infamous letter from Sandra Nenna, and that
8 was 100 percent?

9 A. That's correct.

10 Q. Let me show you this Exhibit 25, the commercial
11 insurance application filed, or pending January 11th, 2019,
12 with the contact name of Joey Sutherland, and let me ask you if
13 you can tell me who the -- I've got a yellow sticky on there,
14 you may have not seen this, who the insurance producer is.
15 This is Amwins Access. I think I got most of it up here, if
16 you want to look at that.

17 A. The underwriter says Amwins Access.

18 Q. And what day is that?

19 A. That's January 15th, 2019.

20 Q. Alright. And does it say January 11th up here?

21 A. It says January 11th.

22 Q. Alright. Is that the same day that Whitney Northcutt
23 got her email about 100 percent?

24 A. Yes.

25 Q. Alright. So turn to where I have the yellow marker, if

1 you would, and tell me, does that insurance application speak
2 to the same location, 1901 North Kings Highway?

3 A. (No audible response.)

4 Q. I'll make a mark for you. I'm going to ask you to look
5 at this address where that yellow sticker is.

6 A. Yes, it's 1901 North Kings Highway.

7 Q. Alright. So the same day, the exact same day that Ms.
8 Nenna sent the email about 100 percent not being sprinklered,
9 the same day this application was sent to Amwins Access?

10 A. That is correct.

11 MR. CONNELL: Alright. This is number 25. We want
12 to admit this.

13 MR. WATSON: Can I see? Did we not stipulate to
14 this?

15 MR. DESCHAMPS: It was previously stipulated.

16 MR. WATSON: If it's already stipulated.

17 THE COURT: I have it as previously stipulated, but
18 it has not been admitted into evidence yet. Exhibit 25 is
19 admitted into evidence.

20 **(Plaintiff's Exhibit No. 25 was admitted into evidence.)**

21 BY MR. CONNELL:

22 Q. And that's the very same day, is it not, that this
23 letter was written?

24 A. That is correct.

25 Q. And all the properties listed on Exhibit Number 25 are

1 Mr. Tebele's properties?

2 A. That is correct.

3 Q. Alright. So let me ask you this. Mr. Melvin's
4 affidavit was presented, two sprinkler endorsements. Here's
5 the one with the AS on it, and look at the number down there.
6 Do u see that?

7 A. Yes.

8 Q. And what number is that?

9 A. It's SRU 024 dated July 10th.

10 Q. Alright. So look at this one. It's also presented in
11 error, same sprinkler endorsement without the AS. What number
12 is that?

13 A. Same number, SRU 024.

14 Q. Do you find the AS symbol on that?

15 A. Not in the subsequently.

16 Q. Alright. What does that tell you?

17 A. That, obviously, the person that left it off the first
18 time, they decided just to leave it altogether.

19 MR. CONNELL: Alright. Thank you, sir.

20 MR. WATSON: Briefly, Your Honor?

21 THE COURT: Briefly.

22 **RECROSS-EXAMINATION**

23 BY MR. WATSON:

24 Q. With regard to those last questions you were just asked,
25 you knew that when you rendered your expert opinion in this

1 case, prior to your deposition, that the schedule with the AS
2 and AA in the box, that that was the proper form, right?

3 A. That is correct.

4 Q. And you were asked about Plaintiff's 25, this
5 application, and you weren't here for Mr. Melvin's testimony
6 where he indicated that he was the underwriter from Amwins
7 Special Risk Underwriters and not Amwins Access as it says on
8 this application, right?

9 A. I was not here for that, yes, sir.

10 Q. So for your opinions to be true, Ms. Northcutt should be
11 testifying that she underwrote this property policy, right?

12 A. That's what it says.

13 MR. WATSON: Alright. I have nothing further.

14 THE COURT: Alright. Professor Finkel, you may step
15 down.

16 THE WITNESS: I appreciate it. Thank you, sir. Your
17 Honor, may I hand you these exhibits so that they don't wind up
18 as my exhibits?

19 THE COURT: Alright, ladies and gentlemen. We held
20 you a little late yesterday, so I'm going to let you go a
21 little early tonight. I do want to remind you not to do any
22 independent research on your own. When you go home, don't
23 Google anything, Facebook me, or anything like that. Enjoy
24 your night, and be here tomorrow morning at 9:00 A.M. Thank you
25 so much.

1 THE CLERK: Can you raise your right hand for me? Do
2 you solemnly swear or affirm that the testimony that you're
3 about to give to the court in this case will be the truth, the
4 whole truth, and nothing but the truth, so help you God?

5 **WHITNEY NORTHCUTT WAS DULY SWORN AT THIS TIME AND**
6 **TESTIFIED AS FOLLOWS (Via Zoom):**

7 THE WITNESS: Yes.

8 THE CLERK: And please just state your name for the
9 Court.

10 THE WITNESS: Whitney Northcutt.

11 MR. CONNELL: Thank you. Alright. So, Ms.
12 Northcutt, I'm sitting in the witness chair, but the TV is
13 faced so the jurors can see you.

14 THE WITNESS: Okay.

15 MR. CONNELL: Alright? And I understand that you
16 could not come because you had a new baby a few weeks ago?

17 THE WITNESS: That is correct.

18 **DIRECT EXAMINATION**

19 BY MR. CONNELL:

20 Q. Alright. So let me start by asking you where you are
21 currently and what you do for a living?

22 A. Currently, I am at my home in Charleston, South
23 Carolina, and yes, I'm on maternity leave, and my full-time job
24 is an underwriter at Amwins Access.

25 Q. So we don't hear the baby screaming, so you must have

1 someone taking care of the baby?

2 A. Yes. They're upstairs, and hopefully he's napping.

3 Q. Alright. So how long have you worked for Amwins?

4 A. It'll be six years on January 1st.

5 Q. Alright. And what is your job at Amwins?

6 A. My title is Senior Vice President, and my job is in
7 underwriting.

8 Q. And so can you explain to the jurors what an underwriter
9 is and what you do as a senior vice president and your
10 experience?

11 A. Yeah, so I have over ten years experience in the
12 commercial insurance industry. I've worked for multiple other
13 brokers. My role as an underwriter is to get risks in from
14 retail agents and then start the underwriting process of those
15 risks, so looking at them, researching them a little bit, maybe
16 on Google or Facebook, determining if Amwins wants to take on
17 that risk with one of our carrier partners. If we do, I work
18 up a quote with one of our carrier partners. I send that quote
19 back to the retail agent. The retail agent gives that quote to
20 their insured, and then the insured tells the retail agent
21 either they want to bind the quote or they don't want the
22 quote, maybe they found another option. If they want to bind
23 the quote, that request comes back to me through the retail
24 agent, and then I bind the quote, I issue the policy, and then
25 we service the policy. So if there's any midterm endorsements

1 that come up, if there's any cancellations that come up, we do
2 all the servicing on behalf of the retail agent.

3 Q. Alright. And one of your -- you have an agreement with
4 Lloyd's, the Lloyd syndicates; would that be correct?

5 A. Lloyd's is one of our carriers that we have an agreement
6 with, yes.

7 Q. Alright. So what I'm hearing you say is that you get a
8 call from, say, in this case, Crescent Coast; would that be
9 right?

10 A. Correct.

11 Q. And then Amwins is a big company, I take it; is that
12 right?

13 A. Yeah, compared to other competitors, we're pretty large,
14 sure.

15 Q. And Amwins has offices throughout the United States;
16 would that be correct?

17 A. Correct, yes.

18 Q. And Amwins has different --

19 MR. HARPER: Your Honor, can we approach?

20 THE COURT: Yes.

21 MR. CONNELL: We've got to talk to the Court, so hang
22 on just a minute, okay?

23 **(Discussion was held off the record at the bench by**
24 **Court and counsel.)**

25 BY MR. CONNELL:

1 Q. We were talking about the Amwins group, I'll call it,
2 and I was asking you questions about what that is. Remember
3 that just a few minutes ago?

4 A. Uh-huh.

5 Q. And so you -- I was asking you, is Amwins a large
6 organization?

7 A. Yes, compared to our competitors, I would say large.

8 Q. And your office is in Charleston; would that be correct?

9 A. Mount Pleasant, South Carolina --

10 Q. Okay.

11 A. -- which is in the south of Charleston, yes.

12 Q. Alright. And Amwins has offices in Charlotte?

13 A. Yes, correct.

14 Q. Alright. And you contact and talk to the offices in
15 Charlotte on occasion, I take it; would that be right?

16 A. Yes.

17 Q. And you also contact and talk with offices, other Amwins
18 offices; is that right?

19 A. Yes.

20 Q. And so is there an Amwins Brokerage?

21 A. Yes. We have an Amwins Brokerage division.

22 Q. Alright. And you're in Amwins, what?

23 A. I'm in Amwins Access.

24 Q. Okay. And would that mean that you are the frontline
25 discussing with people such as Crescent Coast?

1 A. Yes, correct.

2 Q. So you said the retail agent, Crescent Coastal would
3 call Amwins Access, would that be how it worked?

4 A. Yes.

5 Q. Alright. And the other entities, Amwins Brokerage and
6 Amwins SRU, how do they all figure into how you all do your
7 job?

8 A. So Amwins Brokerage handles larger risks. It really
9 depends on the risk, so large property would be Amwins
10 Brokerage, small property and small casualty would be Amwins
11 Access, and then SRU is one of Amwins' carrier partners, so
12 they're doing the quoting, binding, et cetera for us.

13 Q. Alright. And where is the Amwins SRU office that you
14 worked at?

15 A. In Charlotte.

16 Q. Alright. Do you have a license to sell insurance in
17 South Carolina?

18 A. I have my P&C license, yes.

19 Q. Okay. Can you explain to the Jury what that is, a P&C
20 license?

21 A. Yes, so P&C means property and casualty license. So you
22 take a test, pass a test, receive a license to sell insurance
23 on behalf of insurance or retail agents, and then you have to
24 do continuing education every few years to keep your license in
25 force.

1 Q. Alright. Do you have a surplus lines license?

2 A. I do.

3 Q. Okay. Would you tell the Jury what a surplus line
4 license is?

5 A. So same idea as the P&C, take a test, pass a test, no CE
6 requirements, but that is to sell excess and surplus insurance
7 on behalf of retail agents and insurance.

8 Q. Alright. So can you tell the Jury what the difference
9 is between a P&C license and a surplus license and why you
10 would need a surplus license?

11 A. The surplus lines license, like I said, is for excess
12 and surplus carriers, which is what I do. The flip side of
13 that and where you wouldn't need a surplus lines license would
14 be if you only sold admitted products, so admitted products,
15 meaning, products that are highly regulated by the state, the
16 rates, the forms, et cetera, are set, versus, excess and
17 surplus not regulated by the state. We have more flexibility
18 in the forms and the rates.

19 Q. Alright. So a surplus line is a type of insurance, but
20 it's a different type than, say, Allstate or state would be a
21 regulated insurer; is that right?

22 A. Yes, that's correct.

23 Q. Alright. And surplus lines would be for hurricane
24 coverage in coastal South Carolina, is that one of the things
25 you would have a surplus lines for?

1 A. Yes. We use it for wind coverage, hurricane coverage,
2 yes.

3 Q. Okay. Now, I sent you previously some exhibits to look
4 at, and so what I'm going to do is I'm going to ask you about
5 each exhibit, and then I'm going to give it to someone else so
6 that they can put it on the screen so the Jury can see it.

7 A. Okay.

8 Q. So it's going to be a little bit tinted. Okay?
9 Alright. So let me ask you to start with Exhibit Number 9. Do
10 you recognize and do you have Exhibit Number 9 in your
11 possession?

12 A. I am pulling it up now, yes, I have it in front of me.

13 Q. Alright. And what is Exhibit Number 9?

14 A. So this is an email from David at Crescent Coast, our
15 retail agent, asking -- or sorry, he's sending us a new
16 business submission.

17 Q. Alright. Is that an email that you received from
18 Crescent Coast, and is it addressed to you?

19 A. Yes.

20 Q. And the name on two, your name, you had your maiden name
21 there; is that right?

22 A. Yes, Gurtzweiler is my maiden.

23 Q. And can you read the substance of the email to us,
24 please, ma'am?

25 A. Whitney, please see attached new submission. They also

1 have a five-million umbrella. Let me know if you need the
2 ACORD for that. I have attached loss runs from January. We
3 can look at new ones, however, they have not had any claims.
4 They're looking to switch mid term. I have current dec pages
5 if you want them. Sending over pics of dec pages in separate
6 emails.

7 Q. Okay. You read that awfully fast. So would you tell us
8 what that email means in just a few sentences?

9 A. Yes. So David was sending over a new business
10 submission to us for one of his insureds. He also was
11 wondering if we could do excess liability in terms of five
12 million on that. He sent us loss runs, so loss runs from prior
13 carriers. He mentioned they have not had any new claims. He
14 mentioned that he attached the current policy declarations
15 pages, and he mentions the insured was looking to switch
16 carriers in the middle of their policy term.

17 Q. Alright. And there are a bunch of ACORDs attached to
18 your email; would that be correct?

19 A. Correct.

20 Q. And can you tell the Jury what an ACORD is?

21 A. An ACORD form has all of the underwriting information
22 that I would need to make a decision if we were going to
23 proceed with underwriting and quoting the risk.

24 Q. Alright. So one of the ACORDs that is attached is
25 addressed as 1901 North Kings Highway. Can you take us to

1 that?

2 A. Do you have a page number by any chance? I'm scrolling
3 through.

4 Q. So I think that is Crescent -- if you look right at the
5 very bottom on the right, it says: Crescent Coast 01054.

6 A. I see it. Yeah, got it, yes, page 13.

7 Q. And my understanding is that that was one of the
8 properties you were quoting some excess liability coverage on;
9 would that be right?

10 A. I can't recall if I ended up quoting the excess or if
11 another division quoted the excess.

12 Q. Okay. If it was another division, would you have sent
13 the documents to another division?

14 A. I would if they were working on that for us.

15 MR. CONNELL: Okay. Let me have that back, and let
16 me have the other two. Alright. So, Your Honor, we'd like to
17 offer in evidence Exhibit Number 9.

18 THE COURT: Any objections to that?

19 MR. HARPER: No, Your Honor.

20 MR. ADAMS: None, Your Honor.

21 THE COURT: Plaintiff's 9 is admitted into evidence.

22 MR. CONNELL: Thank you, Your Honor.

23 **(Plaintiff's Exhibit No. 9 was admitted into evidence.)**

24 BY MR. CONNELL:

25 Q. Alright. So you see how the process works. I ask the

1 questions, you tell me if you know what the exhibit is, and I
2 asked the Court and the other lawyers if they agree that it's
3 an exhibit, so it takes a few minutes.

4 A. Okay.

5 Q. Okay. It's different than if you're here.

6 A. Right.

7 Q. Alright. So let's talk about Exhibit Number 10, please.
8 Do you have Exhibit Number 10?

9 A. I have it in front of me, yes.

10 Q. Okay. And what is Exhibit Number 10?

11 A. Ten is an email from myself to Barrett Sellers. He is
12 in the Brokerage Division of Amwins, and I am asking David --
13 or sorry, I'm asking Barrett if he could take a look at the
14 property on this risk.

15 Q. Alright. And why are you asking -- first of all, who is
16 Barrett Sellers?

17 A. Barrett Sellers is a property broker in Amwins
18 Brokerage.

19 Q. Alright. And why are you needing his assistance?

20 A. This property is too large for me to handle in Amwins
21 Access.

22 Q. Alright. And so we're going to put Exhibit Number 10 on
23 the screen for the Jury to see, and the first sentence says
24 something about "LRO." What is that?

25 A. LRO is lesser's risk only, so when someone owns a

1 building and is renting it out to tenants, it would be a
2 lesser's risk.

3 Q. Alright. And can you tell the Jury what the substance
4 of that Exhibit 10 email is?

5 A. Do you want me to sum it up?

6 Q. If you would.

7 A. So I am asking Barrett in our brokerage division to work
8 on this schedule of lesser's risk for our retail agent. I
9 provided some information to Barrett that I had already
10 received from the retail agent just to fill him in. So I told
11 Barrett that the risk is moving mid term, so the insured is
12 trying to move the coverage in the middle of their policy
13 period, and I told him why. They said the current January
14 effective date is too hectic with paying bills, et cetera, and
15 then I told him the loss runs, so the loss history was attached
16 and the insurance, and then I also told them I will work on the
17 casualty and the excess liability, and I told him I would send
18 current policy dec pages to him, to Barrett.

19 MR. CONNELL: Your Honor, we offer Exhibit Number 10
20 into evidence.

21 MR. HARPER: No objection, Your Honor.

22 MR. ADAMS: Nothing from Crescent Coast.

23 THE COURT: Plaintiff's 10 is admitted into evidence.

24 **(Plaintiff's Exhibit No. 10 was admitted into evidence.)**

25 BY MR. CONNELL:

1 Q. Let me let you now look at Exhibit Number 11.

2 A. I have 11.

3 Q. And is that an email from you to who?

4 A. This is an email from me to our binder processing team.

5 Q. And what date is the email?

6 A. Sent August 24th, 2018.

7 Q. Okay. And the email we just saw in Exhibit Number 10
8 was for Mr. Tebele's properties; would that be right?

9 A. Number 10 was for Tebele, yes.

10 Q. Alright. And so Mr. Tebele was talking about moving in
11 August 2018, and now we're talking -- now you're talking about
12 the Mexican restaurant that's in Mr. Tebele's property; is that
13 right?

14 A. Correct.

15 Q. And that's at the same location, 1901 North Kings
16 Highway?

17 A. Correct.

18 Q. Alright. And you were contacted about them getting
19 coverage by Crescent Coast, also; would that be correct?

20 A. Correct.

21 Q. Alright. And so tell me what you're doing in email
22 number 11, what are you doing there?

23 A. So in email number 11, Dana, the retail agent had
24 requested to bind two lines of coverage, so the property, the
25 liability, and the liquor liability, effective 8/23/18, and

1 then I am sending that request to bind those three quotes from
2 Melissa Garcia d/b/a, La Casona, to our processing team to
3 issue the binders.

4 Q. Alright. And the processing team is at another
5 location?

6 A. Correct.

7 Q. Where are they at?

8 A. Charlotte.

9 Q. Okay. And so attached to Exhibit Number 11 is an ACORD
10 form; would that be correct?

11 A. Correct.

12 Q. And would you look at the first page of the ACORD form,
13 122, I believe it is?

14 A. Yes, I have it.

15 Q. Alright. And you've got the contact information on the
16 top?

17 A. Crescent Coast is listed at the top.

18 Q. And is there a name for someone from Crescent Coast?

19 A. Sandra Nenna is listed as the contact name.

20 BY MR. CONNELL:

21 Q. And on page 2, do you have the address at Mr. Tebele's
22 property?

23 A. Yes, 1901 North Kings Highway.

24 Q. Okay. Alright. And on page, I'll call it page 4 of the
25 document, are there some signatures on page 4?

1 A. Yes. The producer, the retail agent, and the insured.

2 Q. And so the producer is signed by Mr. Egan; would that be
3 right?

4 A. Correct.

5 Q. Alright. Now, is Mr. Tebele a named insurance policy?

6 A. I do not believe so.

7 Q. Okay. And let me let you look at the last page of the
8 ACORD form.

9 A. I have it.

10 Q. And those are signatures of who again?

11 A. The retail agent, David Egan, and the insured.

12 MR. CONNELL: Okay. Your Honor, we'd like to offer
13 Exhibit Number 11 into evidence.

14 MR. HARPER: No objection, Your Honor.

15 MR. ADAMS: Nothing from Crescent.

16 THE COURT: Plaintiff's 11 is admitted into evidence.

17 **(Plaintiff's Exhibit No. 11 was admitted into evidence.)**

18 BY MR. CONNELL:

19 Q. Alright. So now we're going to look at Exhibit Number
20 12. Would you look at that for us?

21 A. I have it pulled up.

22 Q. Alright. Do you recognize Exhibit Number 12?

23 A. Yes.

24 Q. Okay. What is Exhibit Number 12?

25 A. This is the policy declaration pages for the named

1 insured, Melissa Garcia, La Casona Latin Cuisine.

2 Q. And what is the first page of Exhibit Number 12?

3 A. This page is typical of the first page of a Lloyd's
4 policy. It just, you know, says the insurer is Lloyd's.
5 Sorry, I'm reading through it, just some general information
6 about Lloyd's that is viewed as kind of a cover page on a
7 Lloyd's policy.

8 Q. Alright. And let me let you look at page number 2.

9 A. I've got it.

10 Q. And tell the Jury what page number 2 is, if you could.

11 A. Page 2 is a breakdown of the policy number, the name of
12 insurer, the retail agent, the policy effective dates, and then
13 the premium breakdown with fees and taxes.

14 Q. Alright. Now, I'm going to ask you to look at the last
15 page, if you would.

16 A. Got it.

17 Q. So we've got that on the screen. It's got a lot of
18 numbers and symbols. Can you tell the Jury what that is?

19 A. Yes. So Lloyd's of London is made up of different
20 carriers called syndicates, so each syndicate, which is the
21 syndicate number listed in the left column, each syndicate
22 takes on a portion of the risk. So if you look at the
23 right-hand column, that percentage is the portion of the risk
24 that syndicate is taking on.

25 Q. Alright. So let me ask you an example. Let's assume

1 that we have a loss of \$1,000,000.00. So syndicate number one
2 on the list, what percentage of the risk would they be
3 responsible for?

4 A. 50 percent.

5 MR. CONNELL: Okay. Thank you. Alright. We offer
6 Exhibit Number 12.

7 MR. HARPER: No objection, Your Honor.

8 MR. ADAMS: No objection.

9 THE COURT: Plaintiff's 12 admitted into evidence.

10 **(Plaintiff's Exhibit No. 12 was admitted into evidence.)**

11 BY MR. CONNELL:

12 Q. Is that how all the Lloyd's policies works, they have a
13 division of a loss between different carriers?

14 A. I wouldn't say 100 percent of the time. It's typical,
15 but I wouldn't say that's all of the time. There's several
16 different Lloyd's policies syndicates. Different brokers use
17 different Lloyd's syndicates, so typically, but I wouldn't say
18 always.

19 Q. Okay. I'm going to jump ahead to Exhibit Number 14.

20 A. I have it.

21 Q. And what is Exhibit Number 14?

22 A. This is an email from our binder processing team, which
23 is, Anthony Baker is a member of that. He is sending an email
24 to our inspection provider and asking them to perform a
25 property inspection on the insured, Melissa Garcia.

1 Q. And why is a property inspection performed?

2 A. So a property inspection would be performed so we can
3 make sure the risk that we say we're underwriting is actually
4 what we underwrote. So when we get the inspection back, we
5 compare it to what we thought the risk was and make sure
6 everything checks out to be the same.

7 Q. Alright. Now, I've handed the Jury Number 14, and
8 there's a section that says, "Verify." Do you see that on the
9 form?

10 A. I do not. Where are you referencing?

11 Q. There's a block on the form that says: Location, 1901.
12 Do you see that?

13 A. Yes, the top block, yes.

14 Q. Okay. And that's the location of the La Casona
15 restaurant; would that be right?

16 A. Correct.

17 Q. And that's Mr. Tebele's property; would that be right?

18 A. Correct.

19 Q. Alright. And then there's an inspection contact,
20 Melissa Garcia; is that right?

21 A. Correct.

22 Q. And she's the owner of the La Casona restaurant; is that
23 right?

24 A. To my knowledge, yes.

25 Q. And the date of the email is August 27th, 2018?

1 A. Correct.

2 Q. And you've got listed a local agent as Crescent Coast;
3 would that be correct?

4 A. Correct.

5 Q. And below that, it says: Verify. Do you see that?

6 A. Correct, yes.

7 Q. Alright. So now, in the "verify" section, is there a
8 block checked to verify for fire protection safeguards?

9 A. Yes.

10 Q. Alright. And what else did you -- what else were you
11 requesting be verified according to the form?

12 A. Receipts, BPP, which is business personal property
13 values, fire protection safeguards, theft protection
14 safeguards, and interior photos.

15 Q. Okay. And so let me show you the second page, and I
16 believe it has your name and Mr. Baker's name; would that be
17 right?

18 A. Correct.

19 Q. So was a inspection report requested by you and Mr.
20 Baker on this property?

21 A. Yes.

22 Q. Alright. We'd offer that as Plaintiff's Number 14.

23 MR. HARPER: No objection, Your Honor.

24 MR. ADAMS: No objection.

25 THE COURT: Plaintiff's 14 is admitted into evidence.

1 **(Plaintiff's Exhibit No. 14 was admitted into evidence.)**

2 BY MR. CONNELL:

3 Q. Alright. So let me let you look at Exhibit Number 13.

4 A. I have it.

5 Q. Okay. And what is Exhibit Number 13?

6 A. It was an email from one of our inspection processing
7 team members to me. They're advising me that on the
8 application, the square footage said 10,000, the inspection
9 said the square footage was 4,448, and they said they completed
10 the review of the inspection, they emailed it to the carrier
11 and they closed down their task.

12 Q. Alright. Do you get and routinely order inspection
13 reports all the time?

14 A. Yes.

15 Q. Are those part of your business records?

16 A. Yes.

17 Q. Are those reports that you look at and pass on to other
18 Amwins agents, subsidiaries, also at times?

19 A. No, we would not pass them on to any other Amwins
20 divisions.

21 Q. Okay. Is there a report for La Casona restaurant
22 attached from 21st Services LLC?

23 A. Yes.

24 Q. Now, would you look at the report, please, ma'am?

25 A. Yes, I have it.

1 Q. Alright. And what report -- what is the date of that
2 report?

3 A. Date of survey is October 3, 2018.

4 Q. Alright. And is there a block checked for a sprinkler
5 system?

6 A. Yes. There is a "yes" block checked.

7 Q. Alright. And let me ask you -- let's see, is it on the
8 far right-hand corner of the document; is that right?

9 A. It's on the right-hand column towards the top, yes.

10 Q. Now, let me let you look at the third page. Now, is
11 there a comment on the 21st Century report about the sprinkler
12 system?

13 A. I'm reading through it.

14 Q. About three paragraphs down, I want to say.

15 A. Yes. I see a comment in the protection detection
16 section.

17 Q. Okay. And what was the date of the report again?

18 A. The report date is October 3rd, 2018.

19 MR. CONNELL: Your Honor, we would offer Exhibit
20 Number 13 into evidence.

21 MR. HARPER: No objection, Your Honor.

22 THE COURT: No objection?

23 MR. ADAMS: No objection.

24 THE COURT: Plaintiff's 13 is admitted into evidence.

25 **(Plaintiff's Exhibit No. 13 was admitted into evidence.)**

1 BY MR. CONNELL:

2 Q. Have you used 21st Services before to do inspections?

3 A. Yes.

4 Q. Are they a national company?

5 A. They only work in certain states. I don't have a full
6 list, but primarily the southeast.

7 Q. Have you found their reports to be reliable?

8 A. Yes.

9 Q. Are you still using them?

10 A. Yes.

11 Q. Are they prompt and accurate with their reports?

12 A. Most of the time. There are some errors from time to
13 time, but most of the time, yes.

14 Q. Alright. There are some photographs attached to the
15 report. Do you see that?

16 A. Yes.

17 Q. And now we've got the photographs up there. I'm just
18 going to ask you: Is that the property owned by Mr. Tebele but
19 is rented to the La Casona restaurant?

20 A. I cannot confirm because A. Tebele wasn't one of my
21 insureds that I wrote.

22 Q. Let me ask it this way: 1901 Kings Highway is the
23 address of the La Casona restaurant; would that be correct?

24 A. Correct.

25 Q. Alright. And the photographs in the report are

1 photographs of 1901 Kings Highway, correct?

2 A. Yes, to my knowledge, they are.

3 Q. Alright. And back to the sprinkler section for a
4 minute, apparently part of the building was occupied and part
5 was unoccupied. Did you see that in the notes?

6 A. Where are you referencing in the notes?

7 Q. Let me see here, protection detection: There is a
8 sprinkler, riser is in unoccupied area of building and not
9 under insurer's control. There was video surveillance, there
10 is a burglar alarm and the fire alarm. Did you see that?

11 A. I see that.

12 Q. Alright. And the box was checked: Sprinkler system.
13 Is that right, on the front of the report?

14 A. Yes.

15 Q. Alright. And that was in 2018; would that be right?

16 A. Correct.

17 Q. Do you know what day the fire was?

18 A. I do not.

19 Q. Okay. Let me let you look at Plaintiff's Exhibit Number
20 20.

21 A. I do not have anything after 14.

22 Q. Okay. Do you have Exhibit Number 23?

23 A. I do not. I have 9, 10, 11, 12, 13, 14.

24 Q. Alright. I don't know why that is, but I'm going to
25 show you then, I'm trying to give you Exhibit Number 23 --

1 A. Okay.

2 Q. -- which I believe is already an evidence.

3 A. I can see that.

4 Q. Okay. Can you read that for us, please?

5 A. Yeah.

6 Q. Okay.

7 A. Whitney, when the app. was submitted for this risk, it
8 was represented that the building was 100 percent sprinklered
9 as the sprinkler system was being installed at that time. Can
10 you move it up a little bit?

11 Q. Sure.

12 A. We have learned as of yesterday that the sprinkler
13 systems have been installed, but the landlord has not turned
14 the water on to have them operational. Just wanted to give you
15 a heads-up on this. Best, Sandra.

16 Q. Alright. And that was Sandra Nenna from Crescent Coast?

17 A. Correct.

18 Q. Alright. And then your response was what, if you could?

19 A. Got it, I'll note the file.

20 Q. Alright. Now, is this the same property that had been
21 inspected in 2018 by 21st Services?

22 A. Yes.

23 MR. CONNELL: Alright. And Your Honor, I think 23 is
24 already in evidence. We'll offer it again. Anybody object?
25 Okay.

1 THE COURT: Twenty-three had previously been admitted
2 into evidence. Plaintiff's 23 is in evidence.

3 MR. CONNELL: Thank you, Your Honor.

4 BY MR. CONNELL:

5 Q. So Plaintiff's 23 is January 11th, 2019, correct, the
6 one I just showed you, I'm sorry, since you don't have it? I
7 apologize that you don't have it. That's the one you just
8 read?

9 A. Oh, yes, correct.

10 Q. And do you have any independent recollection of
11 receiving that letter from Crescent Coast?

12 A. Yes, I received the email.

13 Q. Okay. Do you have any independent recollection without
14 reading it about why you received it and any conversation you
15 had with Crescent Coast about that?

16 A. No conversation, that was the only correspondence we had
17 on it.

18 Q. Alright. And what was the purpose of you noting the
19 file?

20 A. We like to put any retailer correspondence, no matter
21 what it is, in the file, just things we talked about, about the
22 risk.

23 Q. Now, did you have any involvement in Mr. Tebele's
24 attempt to get property insurance coverage on the building and
25 fire policy?

1 A. I did not.

2 Q. And the emails we've seen about the liability coverage
3 were the emails that you passed on to Barrett Sellers, I
4 believe; would that be right?

5 A. Correct.

6 Q. And so would Crescent Coast's point of contact regarding
7 coverage be with Amwins Access first?

8 A. For which policy?

9 Q. For the fire policy for 1901 North Kings Highway?

10 MR. ADAMS: I'm going to object to that, Your Honor.

11 THE WITNESS: For which named insured?

12 MR. CONNELL: Hold on, ma'am, there's an objection.

13 Do you want to come up here?

14 MR. ADAMS: Yes.

15 **(Discussion was held off the record at the bench by**
16 **Court and counsel.)**

17 BY MR. CONNELL:

18 Q. So the question was asked about the fire policy, which
19 insured, I believe, is that what your response was?

20 A. Correct.

21 Q. Alright. And how about for La Casona, how about that?
22 Is there a fire policy?

23 A. It would be the contact for the fire policy on La
24 Casona.

25 Q. Okay. And that was the fire policy that you had the

1 inspection that saw the sprinkler system in 2018; is that
2 right?

3 A. Correct.

4 Q. And then in 2019, you had an email from Crescent Coast
5 that indicated that the sprinkler system was not 100 percent
6 effective?

7 A. Correct.

8 Q. And you put that in your file?

9 A. Correct.

10 Q. And did you contact 21st Services and ask them about
11 their inspection report in 2018?

12 A. I did not.

13 Q. Okay. And can I ask why you didn't do that?

14 A. We typically don't go back to the inspection company for
15 things like that.

16 Q. Okay. Was there a discrepancy between an inspection
17 company in 2018 and what Crescent Coast told you in 2019?

18 A. It could have been. The inspector could have looked at
19 it and seen that there was sprinklers, but they don't know if
20 they're operational or not.

21 Q. Alright. And that's not one of the things they check
22 for when they do an inspection?

23 A. I am not sure.

24 Q. It's not noted on the form, is it, the 2018 form, that
25 they checked to see if they were operational?

1 A. It's not noted whether they were or were not.

2 Q. It's not requested, is it, on the form?

3 A. It's not.

4 Q. They just want to see if there's actually one in the
5 building; would that be correct?

6 A. Correct.

7 Q. You said you didn't see -- apparently, I didn't send you
8 some of the documents is what I heard you say; didn't you? How
9 about Exhibit 21? Do you have that one?

10 A. I don't believe so. No, sir, I do not.

11 Q. Okay. I'm sorry. Let me show it to you. January 3rd,
12 2019.

13 A. I can see it.

14 Q. Okay. Would you read that to the Jury, please?

15 A. Can you bump it up a little bit?

16 Q. This way?

17 A. Yeah, right there.

18 Q. Okay.

19 A. One of our carriers has requested additional information
20 on the GL. Bullet point 1, recent applicant is deemed liable
21 for losses occurring both in the Dunkin' Donuts store and -- I
22 can't see some of the words. Go back a little bit. Can you
23 pull it away from the screen a little bit?

24 Q. Sure, yes, ma'am.

25 A. Yeah, there we go.

1 Q. Okay.

2 A. -- and from the store's outdoor seating, as Dunkin'
3 Donuts provides certificate of insurance with an
4 indemnification wording and AI status for the applicant. I
5 think Dunkin' Donuts would be responsible, not the applicant.
6 I would need to see copies. Can you go up a little bit?

7 Q. Sure.

8 A. Of contract use with the tenant, location and
9 information for the land LRO exposure.

10 Q. Okay. And can you tell me what that all means in kind
11 of English in a couple of sentences?

12 A. Yes, I don't really remember what was going on with the
13 Dunkin' Donuts store, but it seems like one of our carriers
14 that I sent it to was asking for some contracts between Dunkin'
15 Donuts, the tenant, and the landlord, and then -- well, can you
16 show me the second bullet point again?

17 Q. Sure.

18 A. Oh, and then the next thing I was requesting was
19 information for some vacant land, it looks like.

20 Q. Alright. Was that a Tebele policy or was that someone
21 else's policy?

22 A. This was for the Tebele policy for the general
23 liability.

24 Q. Okay. At 1901 North Kings Highway or somewhere else?

25 A. I am not sure. His policy had several locations listed.

1 Q. Okay. He had 23 different properties; is that right?

2 A. That sounds right. I'm not 100 percent sure how many it
3 was, but several.

4 Q. And they're all on the same policy; is that right?

5 A. I do not know since I didn't issue the policies for
6 Tebele.

7 Q. Okay. The next page attached to Exhibit 21 is this
8 page. Can you tell me what that is, please, ma'am?

9 A. So it looks like it's from Joey Sutherland, who works at
10 Crescent Coast, to David Egan. So that looks like it's an
11 email from an insured to a retail contact at Crescent Coast.

12 Q. Okay. It looks like Mr. Tebele is on the email or part,
13 would that be correct, see at the bottom there?

14 A. Correct, it appears to be from an Abe Tebele.

15 Q. Alright. And what did you do in response to the emails
16 on Plaintiff's Exhibit Number 21; do you remember?

17 A. I do not recall.

18 MR. CONNELL: We'd offer Exhibit Plaintiff's Number
19 21 into evidence.

20 MR. ADAMS: No objection, Your Honor.

21 MR. HARPER: No objection.

22 THE COURT: Plaintiff's 21 is admitted into evidence.

23 **(Plaintiff's Exhibit No. 21 was admitted into evidence.)**

24 MR. CONNELL: Alright. We'll let these other lawyers
25 talk to you, okay?

1 THE WITNESS: Okay.

2 MR. CONNELL: Thank you.

3 THE COURT: Alright, Mr. Harper, your witness.

4 MR. HARPER: Thank you, Your Honor.

5 **CROSS-EXAMINATION**

6 BY MR. HARPER:

7 Q. Good morning, Ms. Northcutt. How are you?

8 A. Good morning. I'm good. How are you?

9 Q. Good. I don't know if you recall meeting with me about
10 a year and a half ago at your deposition.

11 A. Okay.

12 Q. I didn't speak --

13 A. It's been a while.

14 Q. I didn't speak very much. It was more Mr. Matt Weaver
15 of Reed Smith --

16 A. Okay.

17 Q. -- the plaintiff's former attorney. So we've talked --
18 if I'm understanding you correctly, we've talked about two
19 different policies this morning with you; is that right?

20 A. Correct.

21 Q. So we've talked first about the tenant policy, or La
22 Casona, right?

23 A. Correct.

24 Q. And then there's a separate property policy for A.
25 Tebele & Sons. Is that your understanding?

1 A. Correct.

2 Q. And you underwrote the tenant policy for La Casona,
3 right?

4 A. Correct.

5 Q. But you didn't underwrite the A. Tebele & Sons property
6 policy, right?

7 A. Correct.

8 Q. I'm going to ask you to pull up Exhibit 11 for me that
9 Mr. --

10 A. I have it.

11 Q. -- Connell showed you? This is the initial application
12 for the tenant policy, correct?

13 A. Exhibit 11 is the bind request for the tenant policy.

14 Q. I'm sorry, you're correct. For this tenant policy,
15 you've quoted that policy, right?

16 A. Correct.

17 Q. And you passed that quote on to the retail agent?

18 A. Yes.

19 Q. And you've heard back from the retail agent that the
20 quote had been accepted?

21 A. Correct, yes.

22 Q. And so then you issued this binder Exhibit 11, right?

23 A. Yes.

24 Q. After you issued that binder, then you followed up with
25 the policy. You issued the policy, right?

1 A. Yes.

2 Q. So you have actually helped put that together?

3 A. I do not put the policies together, personally, we have
4 a processing team that does it.

5 Q. So your processing team at Amwins Access would have done
6 that for you?

7 A. Correct.

8 Q. And then that policy got sent back to the retail agent?

9 A. Yes.

10 Q. After you sent that policy back to the retail agent from
11 there, it would have just been a matter of servicing that
12 policy, right?

13 A. Correct.

14 Q. So if La Casona had any changes they wanted to make, or
15 something like that, you would handle that request?

16 A. Yes.

17 Q. And that request would come to you via the retail agent;
18 is that right?

19 A. Yes.

20 Q. When you received this application, it was noted that
21 the tenant space was 100-percent sprinklered, is that your
22 understanding?

23 A. I don't recall exactly what the application said.

24 Q. On the tenant policy, do you recall if there was a
25 sprinkler endorsement on that policy?

1 A. I believe that we did not warrant a sprinkler safeguard
2 on the policy.

3 Q. And so when you sent out 21st Services in October, can
4 you pull up Exhibit 13?

5 A. Yes.

6 Q. In terms of the second page of that, if you would?

7 A. Got it.

8 Q. It's basically on the Tebele 00041, the bottom of that
9 second page, the first page of the report.

10 A. Yes.

11 Q. And you see the bottom right corner, the ground floor
12 area?

13 A. Yes.

14 Q. It says 4,448 square feet, right?

15 A. Yes.

16 Q. That's a pretty small area; wouldn't you agree?

17 A. About average for a restaurant.

18 Q. Do you know how it compares to the rest of the building?

19 A. I do not.

20 Q. So is your understanding from this report that the area
21 being inspected was the tenant space only?

22 A. It should have been the tenant space only, yes.

23 Q. So if there are other areas in the building, the
24 inspector doesn't have any reason to go in there for your
25 purposes for the Amwins Access policy for the tenant, right?

1 A. Correct.

2 Q. And if you could flip back to the fourth page of that
3 report for me?

4 A. Got it.

5 Q. Under the protection detection section --

6 A. Uh-huh.

7 Q. -- and I think Mr. Connell went over this with you, but
8 it says: There is a sprinkler system, risers in an unoccupied
9 area of the building, and not under the insured's control. Is
10 that right?

11 A. Correct.

12 Q. And so the inspector, I assume, is out there with the
13 tenant?

14 A. Correct.

15 Q. And the insured that we're talking about here is the
16 tenant, right?

17 A. Yes, the insured is the tenant.

18 Q. And so when you get this report back at Amwins Access
19 office in Mount Pleasant, it's your understanding that the
20 property is sprinklered in the tenant space, based on this
21 inspection?

22 A. I did not review the report, our inspection team
23 reviewed it.

24 Q. But you don't have any information that would lead you
25 to believe that it was talking about anything other than the

1 tenant space, correct?

2 A. Correct.

3 Q. Sticking with the tenant policy still, you went over
4 with Mr. Connell that email you received in January of 2019; do
5 you recall that?

6 A. Yes.

7 Q. And in that email, Sandra Nenna had said to you that
8 when the application was submitted for this risk, it was
9 represented to be 100-percent sprinklered with the sprinkler
10 installed at that time; do you recall that?

11 A. Yes.

12 Q. But she said: We have learned as of yesterday that the
13 sprinklers have been installed. Right?

14 A. Yes.

15 Q. "But," and there's a "but," the landlord has not turned
16 the water on.

17 A. Correct.

18 Q. Do you know what that meant?

19 A. I do not. I mean, from what it says, they have a
20 sprinkler system, but it's not operational.

21 Q. Right. Sprinkler system seems to be installed, right?

22 A. Correct.

23 Q. But the water's not turned on?

24 A. Correct.

25 Q. But again, I think you said you didn't have a protective

1 safeguards endorsement on your tenant policy anyway, right?

2 A. Correct.

3 Q. So you noted your file and you moved on?

4 A. Correct.

5 Q. Can Amwins Access underwrite a property policy for a
6 total insurable volume excess of \$22 million dollars?

7 A. We cannot.

8 Q. And if you get a retail agent asking you to do that, you
9 just pass that along to some other entity, right?

10 A. We pass it along to Amwins Brokerage.

11 Q. Can a retail agent reach out to Amwins Brokerage
12 directly?

13 A. Yes.

14 Q. So if they already have a business relationship with
15 Amwins Brokerage, they might just do that if they know the
16 account is too large for Amwins Access, right?

17 A. Yes.

18 Q. If you pass an account or a potential account onto
19 Amwins Brokerage, is there any reason or need to involve Amwins
20 Access moving forward if Amwins Brokerage continues to quote or
21 bind a proposal for that policy?

22 A. No, there's not.

23 Q. The retail agent would work with Amwins Brokerage at
24 that point?

25 A. Correct.

1 Q. Ms. Northcutt, did you prepare a quote for Mr. Tebele's
2 company, A. Tebele & Sons' property policy?

3 A. I did not.

4 Q. Did you pass any quotes? You said you didn't prepare
5 one. Did you pass any quotes along to the retail agent for A.
6 Tebele & Sons?

7 A. I did not.

8 Q. And so I'm assuming you never heard back on any quotes
9 because you didn't pass any along to him?

10 A. Correct.

11 Q. And you didn't bind the property policy for Mr. Tebele's
12 company, A. Tebele & Sons; did you?

13 A. I did not.

14 Q. You didn't issue the property policy for Mr. Tebele's
15 company, A. Tebele & Sons; did you?

16 A. I did not.

17 Q. You didn't service any policy for A. Tebele & Sons? You
18 didn't process any endorsements or anything like that?

19 A. I did not.

20 MR. HARPER: Thank you, Ms. Northcutt. I'll turn you
21 back over to the other attorneys.

22 THE WITNESS: Thank you.

23 THE COURT: Yes, sir?

24 **CROSS-EXAMINATION**

25 BY MR. ADAMS:

1 Q. Hey, Ms. Northcutt, how are you?

2 A. Hi, I'm good. How are you?

3 Q. My name's Hunter Adams and I represent Crescent Coast,
4 and I only have a few questions for you, and I'll let you try
5 to get back to your newborn.

6 A. That's fine.

7 Q. Was Crescent Coast prompt and diligent in handling this
8 request to bind the policy for the tenant?

9 A. Yes.

10 Q. Did you have any criticisms of their conduct in
11 assisting you with getting the tenant coverage?

12 A. No.

13 Q. Have you worked with Crescent Coast a good bit?

14 A. Yes, I have.

15 Q. Do you find them to have been professional as real
16 estate -- or excuse me, insurance agents?

17 A. Yes.

18 Q. And just again to confirm, you've been asked this
19 several times, but you did not underwrite Mr. Tebele's property
20 coverage; is that correct?

21 A. Correct.

22 Q. And Crescent Coast, once you had passed it on to Amwins
23 Brokerage, did not communicate with you regarding Mr. Tebele's
24 policy any further; is that right?

25 A. Correct.

1 MR. ADAMS: Okay. That's all I have. Thank you.

2 THE WITNESS: Thank you.

3 THE COURT: Any Redirect?

4 MR. CONNELL: Just two questions, Your Honor.

5 **REDIRECT EXAMINATION**

6 BY MR. CONNELL:

7 Q. Can you tell us about the commission structure between
8 Crescent Coast and Amwins Access?

9 A. We, on Amwins Access, we typically give our retail
10 agents 10 percent of the commission, typically. There's some
11 exceptions.

12 Q. Okay. So if the retail agent, Crescent Coast, calls you
13 with a client, what do they get?

14 A. So if the policy is bound, they typically would get 10
15 percent of the policy premium.

16 Q. Alright. And what would Amwins get?

17 A. The remaining percentage, depending on how much the
18 carrier is giving us, plus policy fees.

19 Q. Alright. So you need to explain that to me a little bit
20 clearer. The carrier gets a fee --

21 A. Yeah, so --

22 Q. -- and then Amwins gets a fee, and Crescent Coast?

23 A. If, for example, Lloyd's was giving us 20 percent, 10
24 percent would go to the retail agent, 10 percent, Amwins, and
25 then the policy fee listed on the policy declarations would go

1 to Amwins, and the inspection fee would go to the inspection
2 company.

3 Q. Alright. So if Lloyd's is the carrier, they would tell
4 you what fees they would pay; would that be correct?

5 A. Correct, they would tell us the commission.

6 Q. So they would tell you our commission is 20 percent --

7 A. Correct.

8 Q. -- of the premium price; would that be right?

9 A. Correct.

10 Q. So if the premium's \$100,000, it would be \$20,000.00?

11 A. Correct.

12 Q. And so then you and Crescent Coast would split that 20
13 percent; would that be right?

14 A. Correct.

15 Q. And would it be 50/50, or would it be -- is it a
16 different relationship, or how was that?

17 A. Typically 50/50.

18 Q. And so would Crescent Coast be interested in trying to
19 get a policy with an insurer who paid a bigger commission?

20 A. I do not know.

21 Q. And is there a standard commission for a Lloyd's policy?

22 A. Anywhere from 20 to 24 percent.

23 Q. Of the premium?

24 A. Of the premium.

25 Q. Now, you said that the Crescent Coast people have been

1 professional. Have you dealt with Mr. Sutherland in the past,
2 Joey Sutherland?

3 A. A little bit, yes, not as much as others at Crescent
4 Coast.

5 Q. You were mostly dealing with Mr. Egan; would that be
6 right?

7 A. Correct.

8 Q. And Ms. Nenna worked for him, I believe? Is that the
9 person you dealt with?

10 A. Correct, yes.

11 Q. Those were the two you dealt with; would that be right?

12 A. Those were my two primary contacts.

13 Q. Were there others at Crescent Coast you dealt with?

14 A. No.

15 MR. CONNELL: Alright. Thank you, ma'am. I
16 appreciate it.

17 THE WITNESS: Thank you.

18 THE COURT: Alright. Very briefly.

19

20

21 **RECROSS-EXAMINATION**

22 BY MR. HARPER:

23 Q. Ms. Northcutt, if Amwins Access doesn't underwrite the
24 policy, the carrier or carriers don't collect a premiums,
25 right?

1 A. Correct.

2 Q. And so there's no commissions at issue for a policy
3 Amwins Access didn't underwrite, correct?

4 A. Correct.

5 MR. HARPER: Thank you, Ms. Northcutt.

6 MR. ADAMS: Nothing from Crescent.

7 THE COURT: Alright.

8 MR. CONNELL: Thank you so much, ma'am. We
9 appreciate you being with us today, okay?

10 THE WITNESS: Thank you.

11 THE COURT: Have a good day. Thank you.

12 THE WITNESS: You, too. Bye.

13 THE COURT: Alright. Ladies and gentlemen, I don't
14 think we could have timed this any better. I've got a matter
15 that I've got to take up at 10:30, so that's just about on the
16 nose, so why don't we take a ten-minute break to stretch your
17 legs. If you want to use the facilities, please do so, and
18 we'll start back at about 10:40; alright? Thank you. Alright,
19 ladies and gentlemen, I'll be very quick.

20 **(Recess taken.)**

21 THE COURT: We'll go ahead and get started. Anything
22 else before we need to bring the Jury in?

23 MR. DESCHAMPS: Just one thing. Your Honor, if you
24 don't mind giving me a couple of minutes to get these exhibits
25 together? I had a false-alarm call, so I freaked out for no

1 reason. I apologize.

2 THE COURT: No, no, no. That's good. Thank you.

3 MR. DESCHAMPS: Give me, like, two or three minutes.

4 **(Jury entered the courtroom at this time.)**

5 THE COURT: Thank you, ladies and gentlemen. Mr.
6 Connell?

7 MR. CONNELL: We want to read some requests for
8 admissions, a few of those, and we ask the Court to explain
9 what a request for admissions is based on.

10 THE COURT: Mr. Connell, I'm going to ask you to read
11 the request for admission and explain it to the Jury. Go
12 ahead.

13 MR. CONNELL: Okay. Thank you, Your Honor. So these
14 are requests for admissions between Crescent Coast Insurance
15 and answers, and I'm going to read again. I'll show you four
16 of them. Alright. So number one says: Admit that Crescent
17 Coast did not notify Amwins special risk underwriters, between
18 January 14th, 2019 and February 24th, 2019, that the lost
19 location sprinkler system remained unconnected to a water
20 supply. And the answer: Admitted as qualified. This
21 Defendant admits that between January 14th, 2019 and February
22 24, 2019, there were no communications with Amwins Special Risk
23 Underwriters pertaining to the sprinkler system being,
24 unconnected, however, there had been communication prior to
25 January 14th, 2019. Number two: Admit that Crescent Coast did

1 not notify Defendant insurers between January 14th, 2019 and
2 February 24th, 2019, that the loss location sprinkler system
3 remained unconnected to a water supply. Answer: Admit as
4 qualified. This Defendant admits that it did not have any
5 direct communication with Defendant insurers between January
6 14th, 2019 and February 24, 2019 concerning the loss location
7 sprinkler system being unconnected to a water supply. Number
8 three: Admit that Crescent Coast only notified one person or
9 entity, between January 14th, 2019 and February 24th, 2019,
10 that the loss location sprinkler system remained unconnected to
11 a water supply and that that person was Whitney Gurtzweiler of
12 Amwins small business. Answer: Admit as qualified. It is
13 believed that the communication with Whitney Gurtzweiler
14 occurred on January 11th, 2019. Number four: Admit that
15 Crescent Coast acted as the retail agent for procuring
16 insurance coverage for both, underlined "both," the plaintiff
17 and its tenant as of January 1, 2019 through the date of the
18 fire, February 24th, 2019. Answer: Denied. Prior to January
19 14th, 2019, Crescent Coast was engaged to obtain a quote for
20 coverage. The plaintiff had coverage through a different
21 agency prior to January 14th, and it is believed that the
22 plaintiff was obtaining quotes from at least one other agency.
23 Now I would like to offer that as the next as Plaintiff's
24 Exhibit Number 101.

25 MR. HARPER: No objection.

1 MR. ADAMS: None, Your Honor.

2 THE COURT: And that's Plaintiff's Exhibit 101?

3 MR. CONNELL: Yes, sir.

4 THE COURT: 101 is admitted.

5 **(Plaintiff's Exhibit No. 101 was admitted into evidence.)**

6 THE COURT: Ladies and gentlemen, the civil action
7 request for admission as a discovery tool allows one party to
8 request that another party either deny or admit the truth of
9 the statement under oath. If admitted, the statement is
10 considered to be true for the purposes of this trial. Alright.
11 Mr. Connell?

12 MR. DESCHAMPS: Yes, sir, Your Honor. At this time,
13 the Plaintiff will call Joey Sutherland.

14 THE CLERK: Can you raise your right hand? Place
15 your left hand on the Bible. Do you solemnly swear or affirm
16 that the testimony you are about to give in this Court will be
17 the truth, the whole truth, and nothing but the truth, so help
18 you God?

19 THE WITNESS: I do.

20 THE CLERK: Alright. You may be seated.

21 THE COURT: Alright, Mr. DesChamps?

22 **JOEY SUTHERLAND WAS DULY SWORN AT THIS TIME AND**
23 **TESTIFIED AS FOLLOWS:**

24 **DIRECT EXAMINATION**

25 BY MR. DESCHAMPS:

1 Q. Mr. Sutherland, I'll show you Exhibit 25 that's already
2 been entered into evidence.

3 A. I'll take a look.

4 Q. Mr. Sutherland, do you recognize that document?

5 A. Yes, the ACORD application.

6 Q. Okay.

7 MR. RISER: I'm sorry. The microphone.

8 MR. DESCHAMPS: Am I in the way?

9 THE COURT: Thank you, Mr. Riser.

10 MR. DESCHAMPS: Alright. Is everything square?

11 BY MR. DESCHAMPS:

12 Q. Okay, Mr. Sutherland, you said that's an ACORD
13 application?

14 A. Yes, sir.

15 Q. And is that application for A. Tebele & Sons?

16 A. Yes.

17 Q. Okay. And now, what's the date on the first page of
18 that application?

19 A. January 11th, 2019.

20 Q. Okay. And see the information on there in the little
21 boxes?

22 A. Yes.

23 Q. Okay. Is your name on there?

24 A. It is.

25 Q. Okay. And did you put the information on that document?

1 A. No, sir.

2 Q. Do you know who did?

3 A. I would imagine my boss filled out the application.

4 Q. Okay.

5 A. David Egan.

6 Q. Okay. And why is your name on there, if you could tell
7 us that?

8 A. I'm the producer.

9 Q. You're the producer? Okay. And as the producer, are
10 you saying you're the producer with respect to the insurance
11 policy that was being procured by A. Tebele & Sons?

12 A. Yes.

13 Q. I'll show you what's been entered into evidence as
14 Plaintiff's Exhibit 101. Okay. If you could tell me, as a
15 producer, was Crescent Coast acting as a broker or retail
16 broker for A. Tebele & Sons?

17 A. Retail agent.

18 Q. Retail agent. What's a retail agent?

19 A. They take the information and market it to their
20 insurance carriers.

21 Q. Okay. So I guess to explain to someone like me, I guess
22 at the first stage, can you walk me through the process where
23 you take the application, submit it, and then get coverage?

24 A. Yes, sir. We take the information on the business, on
25 the insurance, you know, take an application with all the

1 information on the building, and I submit it to the customer
2 service rep, or, you know, in this case, you know, David Egan,
3 the management partner, and because it was a large account and
4 he submits the applications to carriers for quotes.

5 Q. Okay. And as of January 11th, 2019, was Crescent Coast
6 acting as an agent for A. Tebele & Sons?

7 A. On January 11th, we didn't have -- he wasn't our client.
8 We hadn't found his -- we were still in the quoting process.

9 Q. You were still in the quoting process?

10 A. On January 11th.

11 Q. Okay. So when did he become your client?

12 A. When he signed in his policy was about on the 14th.

13 Q. Can you turn it over to the next page and read number
14 four, Crescent Coast's response?

15 A. Which one?

16 Q. Number four. It should be on page two, I think, in the
17 front and back, so take -- do you see it?

18 A. Alright, number four: Admit that Crescent Coast acted
19 as the retail agent for procuring insurance coverage for both
20 the Plaintiff and tenant as of January 1st, 2019 through the
21 date of this fire, February 24th, 2019.

22 Q. Okay. And at that time, who was Crescent Coast a retail
23 agent for? Was it either one of those, or?

24 A. We were a retail agent for La Casona.

25 Q. And what does a retail agent do? At what point does the

1 agency -- or your company become a retail agent for one of your
2 clients?

3 A. Well, we market their insurance coverage.

4 Q. Okay. Is it the initial contact? I'm trying to get an
5 understanding.

6 A. We would be the initial contact. If someone calls us
7 wanting insurance, we take their information and assist them in
8 getting insurance.

9 Q. So they become your client at the point when you take
10 their information and submit it for quotes? Is that -- am I
11 understanding you correctly?

12 A. Yes, sir.

13 Q. Okay. Alright. Let's move on to -- let's see. Mr.
14 Sutherland, can you tell us where you live?

15 A. Yes, in North Myrtle Beach.

16 Q. North Myrtle Beach. And what do you do for a living?

17 A. I own and manage restaurants.

18 Q. Okay. What kind of restaurants?

19 A. A family-style restaurant near the golf course in Longs.

20 Q. Okay. Are you currently employed with Crescent Coast?

21 A. No, sir.

22 Q. Okay. Have you ever been employed with Crescent Coast?

23 A. Oh, yes.

24 Q. Okay. Can you tell us when?

25 A. In 2018, until about three months ago.

1 Q. Okay. Before 2018, where were you employed?

2 A. I worked for Global Risk Partners Insurance, and also
3 managed -- owned and managed a restaurant.

4 Q. Okay. And what restaurant was that?

5 A. Tidewater Grill in North Myrtle Beach.

6 Q. Okay. And what did you do at Global Risk Insurance?

7 A. Producer.

8 Q. Producer? Can you explain as a producer, what kind of
9 stuff did you do?

10 A. You're like a salesman. You take, you know, you go out
11 and look for clients or take, you know, take what comes to you.

12 Q. Go out and try to get business; is that correct?

13 A. Yes, sir.

14 Q. Okay. And before you were at Global Risk Insurance,
15 what did you do?

16 A. Before Global Risk, I owned the Aspen Grille in downtown
17 Myrtle Beach.

18 Q. Oh, Okay. Do you know a Sam Lauren?

19 A. Yes, sir.

20 Q. Okay.

21 A. Lauren.

22 Q. Have you -- I'm sorry?

23 A. Lauren.

24 Q. Sam Lauren, that's how you say it?

25 A. Yes, sir.

1 Q. Okay. Sorry if I mispronounced it. All these years, I
2 thought it was Sam Lauren. And have you ever worked for Mr.
3 Sam Lauren?

4 A. Yes, sir.

5 Q. Okay. And when was that?

6 A. A couple of different times. Let me think for a minute.
7 In 2011.

8 Q. 2011?

9 A. For about a year, and then around 2014, for about a
10 year.

11 Q. Okay. And what did you do for Mr. Lauren?

12 A. Managed his restaurant.

13 Q. Managed his restaurant. Was that the -- was it the
14 Kansas City Steakhouse?

15 A. Kansas City Steakhouse, yes, sir.

16 Q. Okay. And when was that?

17 A. That was 2011-ish.

18 Q. Okay. And at some point in time, it changed from Kansas
19 City Steakhouse to, and then it changed to another name?

20 A. There was several different businesses in there.

21 Q. Wasn't there a sushi place in there?

22 A. Yeah, it was Kono.

23 Q. And when was Kono?

24 A. Kono, Kansas, Hamburger City.

25 Q. Okay, when was Kono? Was that before or after Kansas

1 City?

2 A. Both.

3 Q. Both?

4 A. Yeah, I didn't work in Kono, Kansas.

5 Q. Okay. And when were you at Kansas?

6 A. 2011, for about a year.

7 Q. 2011 to -- so 2011 to 2012?

8 A. And again, in 2014, I came back to work for Mr. Lauren
9 at Soho in Conway.

10 Q. Okay. So Kansas City, now where was that located?

11 A. 1900 North Kings Highway.

12 Q. And is that the same property that we're here about
13 today?

14 A. Yes, sir.

15 Q. So it's the same one that's owned by A. Tebele & Sons?

16 A. Yes, sir.

17 Q. Okay. Now, when you worked for Mr. Lauren at Kansas
18 City, what would you do as a manager? What kind of stuff did
19 you do, just out of curiosity?

20 A. Schedule and hire and train and cook.

21 Q. Okay. Did you manage the kitchen or the whole
22 restaurant?

23 A. The whole restaurant.

24 Q. So did you manage the cooks and the servers, the
25 bartenders, everybody?

1 A. That is correct.

2 Q. Do you know an Alan Campus (phonetic)? Am I pronouncing
3 that name right?

4 A. That does not sound familiar.

5 Q. How about a Melissa Garcia?

6 A. Yes, sir.

7 Q. And who is Melissa Garcia?

8 A. She was a manager with me at Soho in Conway.

9 Q. Okay.

10 A. And she opened her own restaurant, La Casona, at this
11 1900 North Kings Highway.

12 Q. Do you mean 1901?

13 A. Yes, sir.

14 Q. Okay. And was Kansas City Steakhouse at 1901 North
15 Kings Highway?

16 A. It was there, yes, sir.

17 Q. Okay. Did you ever sell any insurance to Ms. Garcia?

18 A. I did.

19 Q. Okay. And when was that?

20 A. 2018.

21 Q. 2018. And in 2018, were you employed with Crescent
22 Coast?

23 A. Yes, sir.

24 Q. Okay. How about before 2018? Did you sell her any
25 insurance?

1 A. No, sir.

2 Q. And do you know Mr. Abe Tebele?

3 A. I do.

4 Q. And when did you first meet Mr. Abe Tebele?

5 A. That would be around 2011, when I was working at Kansas
6 City Steak House.

7 Q. Okay. So you knew him, did you know him as the
8 landlord, or an --

9 A. He was a customer.

10 Q. A customer?

11 A. You know, he introduced himself as the landlord.

12 Q. Okay. And did you, I guess, did you formulate some kind
13 of friendly relationship or just knew of him?

14 A. I just, he was friendly and I was friendly, and that was
15 my job.

16 Q. Okay. Did you ever speak to Mr. Tebele about insuring
17 the 1901 North Kings Highway property?

18 A. Yes, sir.

19 Q. Okay. And when did you first speak to him,
20 approximately, about insuring this property?

21 A. Approximately, the first time I spoke to him about it
22 would be when I was with Global Risk Partners around 2016,
23 maybe.

24 Q. Okay. And then, if you don't mind, can you tell me when
25 you left Global Risk Partners again?

1 A. 2018.

2 Q. Okay.

3 A. I left them in January of 2018 and started working with
4 Crescent Coast around March of 2018.

5 Q. Okay. March 2018.

6 MR. DESCHAMPS: I'm going to mark this as, I think
7 we're at 102, Plaintiff's 102.

8 BY MR. DESCHAMPS:

9 Q. I marked this Plaintiff's 102. Could you take a look at
10 that for a second? Mr. Sutherland, you recognize that
11 document?

12 A. No.

13 Q. You don't? You don't recall having text messages
14 between you and Mr. Tebele?

15 A. This was 2017.

16 Q. How about glance through all the pages, maybe it can
17 refresh your memory.

18 A. Yeah, this is when I was working with Global Risk
19 Partners and soliciting insurance business with Mr. Tebele.

20 Q. Can you speak up, please? Can you repeat what you just
21 said?

22 A. Yes, this is when I was working with Global Risk
23 Partners soliciting insurance for Mr. Tebele.

24 Q. Okay. And that was --

25 A. Right here.

1 Q. And you're on page two?

2 A. Yeah.

3 Q. Okay. And is this a true and accurate depiction of the
4 text messages between you and Mr. Tebele?

5 A. Yes, sir.

6 Q. It is? Okay.

7 MR. RISER: I'll just object that, only that the
8 dates were not specified. The true and accurate copy of the
9 text between --

10 MR. DESCHAMPS: We're getting to that.

11 BY MR. DESCHAMPS:

12 Q. Alright, Mr. Sutherland, can you skim through? There's
13 a -- there's a date range. It's not just for the 2007 date you
14 were testifying to, there's more continuous text messages. So
15 if you could glance through all those and verify the date range
16 or give us a date range?

17 A. The date range starts in October 26th, 2017 and
18 continues to March 5th, 2019.

19 Q. Okay. And these text messages that you're looking at,
20 this is a true and accurate depiction of the text messages or
21 communications between you and Mr. Tebele between October 26th,
22 2017 and March 5th, 2019; is that correct?

23 A. Yes.

24 MR. DESCHAMPS: Okay. Your Honor, I'd like to
25 introduce or move to admit. I'd like to move to admit

1 Plaintiff's Exhibit 102 into evidence.

2 MR. RISER: No objections.

3 MR. HARPER: No objections, Your Honor.

4 THE COURT: Plaintiff's 102 is admitted into
5 evidence.

6 **(Plaintiff's Exhibit 102 was admitted into evidence.)**

7 BY MR. DESCHAMPS:

8 Q. Okay. Tell me a little bit about 2017. Turn to page
9 two. Can you see that there's a little bunny rabbit towards
10 the bottom?

11 A. The bunny rabbit's all the way down?

12 Q. Yeah, towards the bottom.

13 A. Okay.

14 Q. Alright. Can you read that for us?

15 A. Okay, I will call you back later this morning.

16 Q. There it is. On the second page there. Do you want to
17 come on down? How about just read this one on the screen, then
18 we don't have to worry about us getting confused between each
19 other. How about that?

20 A. Okay.

21 Q. Can you come stand over here so they can see?

22 A. Okay. Right here? The last one?

23 Q. Yes.

24 A. We're set for Wednesday at 3:00, correct? No, I wanted
25 to meet with you about Melissa to talk about her property

1 insurance.

2 Q. Okay. And is that -- is that your text in the yellow?

3 A. Yes, yes, sir.

4 Q. Okay. And did you send that text to Mr. Tebele?

5 A. Yes, sir.

6 Q. Okay. And who is Melissa?

7 A. Melissa is Melissa Garcia.

8 Q. Okay.

9 A. She's the owner of La Casona.

10 Q. Okay.

11 A. But not at that time.

12 Q. Okay. And in 2017, did you --

13 A. In 2017, she was trying to lease space from Mr. Tebele
14 to open La Casona in his building.

15 Q. Okay. And did you ever sell Ms. Garcia any insurance?

16 A. Not until 2018 when she did open.

17 Q. Okay. And why did you want to meet with Mr. Tebele back
18 in 2017 without Ms. Garcia?

19 A. Well, I wanted to talk about his business. She didn't
20 have any business.

21 Q. Okay. And what do you want to say about -- talk to him,
22 Mr. Tebele, about with his business?

23 A. Getting his property insurance business for his company.

24 Q. Okay. And did you get his insurance business in 2017?

25 A. No, sir.

1 Q. Alright. In 2018, did you approach Mr. Tebele regarding
2 selling any insurance coverage?

3 A. Yes, sir.

4 Q. Okay, and tell us a little bit about that.

5 A. I called him on the phone and asked him if he would be
6 interested in Crescent Coast quoting on his insurance business.

7 Q. Okay. And about what time do we have there? You can
8 take a seat back here so you don't have to stand here. Okay.
9 So take us back, 2018.

10 A. What was the question again?

11 Q. Did you approach Mr. Tebele after 2017 about selling
12 insurance?

13 A. Yes, sir.

14 Q. Okay. And so tell us a little bit about that, if you
15 can.

16 A. Well, I simply called him and asked him if he, you know,
17 would be interested or allow us to, you know, quote his
18 property coverage.

19 Q. Okay. And in 2018, when was that, your phone call,
20 approximately, if you can recall the month?

21 A. I can't. I don't know.

22 Q. Do you know if it was January, April, winter, spring,
23 fall? Do you have any idea?

24 A. Well, his renewal was January, so it would probably be
25 about late summer.

1 Q. Late summer of 2018?

2 A. Yes, sir.

3 Q. Okay. And in 2018, late summer of 2018, did you sell
4 Mr. Tebele any insurance or did you do anything for him? Did
5 he retain Crescent Coast?

6 A. Well, in 2018 we started working on his account. He
7 provided the information on all of his buildings and we filled
8 out applications and started working on the process of getting
9 him quotes for his insurance.

10 Q. And at that time, did you represent, or Crescent Coast,
11 excuse me, not you individually -- was Crescent Coast the
12 retail broker for Ms. Garcia?

13 A. We were the agent, retail agent for Ms. Garcia.

14 Q. Okay.

15 A. And her coverage was bound, I believe, around March of
16 2018.

17 Q. March of 2018? And did she have coverage, the same
18 coverage for the entire year of 2018?

19 A. Yes, sir.

20 Q. Okay. Mr. Sutherland, do you have any licensing,
21 licenses in South Carolina?

22 A. A producer's license.

23 Q. Producer's license? And when did you first obtain a
24 producer's license?

25 A. 2010, approximately.

1 Q. Any other types of license, licensing?

2 A. Surplus lines broker.

3 Q. Surplus lines broker? And when did you obtain that?

4 A. Probably around same time, 2010, 2011.

5 Q. And have you maintained that license since 2010 and
6 2011?

7 A. It did lapse for a while between -- I don't remember
8 when, but it did lapse for a while.

9 Q. Can you give me an approximate range, at least a year
10 range?

11 A. 2018, '17, 2017, 2018. I renewed it when I started
12 working with Crescent Coast.

13 Q. And which one did you renew, the producer or the surplus
14 lines?

15 A. Both.

16 Q. I'm going to show you what's been marked as Plaintiff's
17 Exhibit 74. Let me see.

18 MR. DESCHAMPS: Your Honor, please verify. I thought
19 we stipulated to this.

20 THE COURT: I have number 74 as stipulated.

21 BY MR. DESCHAMPS:

22 Q. Mr. Sutherland, I'm handing you what's been stipulated
23 into evidence as Plaintiff's Exhibit 74. You can just thumb
24 through it straight to page 4, if you would like. Do you see
25 your licensing information on there?

1 A. Yeah, but not on page 4.

2 Q. Let me know when you're done.

3 A. Okay.

4 Q. And I documented the picture of surplus lines license
5 number; is that correct?

6 A. Yes.

7 Q. Okay. How about your producer's license?

8 A. I don't see the number for that.

9 Q. See the next page. There should be one on there. I
10 don't have a copy in front of me, so. Do you want to display
11 it on the screen here?

12 A. What are you asking me for?

13 Q. I'm asking if that document shows your producer's
14 license number.

15 A. Yes.

16 Q. Or anything about your information?

17 A. Yes, sir.

18 Q. Okay. And what is that information?

19 A. That my producer's license is active and my surplus
20 lines broker license is inactive as of March 31st, '22.

21 Q. Okay. And is it still inactive?

22 A. Yes, sir.

23 Q. Okay. And how about your producer's license? What's
24 the first issuance date on that?

25 A. March 5th, 2023. Effective date, March 5th, 2023.

1 Q. That's the first issuance date?

2 A. Yes.

3 Q. Okay. Alright. And you previously testified that you
4 spoke with Mr. Tebele and obtained insurance for him in August
5 2018; is that correct?

6 A. Yes, sir.

7 Q. Okay.

8 A. Well, I did not retain any quotes in 2018. We worked
9 with him in the fall of 2018 to get quotes.

10 Q. To get quotes then?

11 A. Yes, sir.

12 Q. Okay. And did you obtain quotes from Mr. Tebele?

13 A. Yes, sir.

14 Q. And ultimately -- well, I'll just hand you Exhibit 25.
15 That's Mr. Tebele's application for insurance; is that correct?

16 A. Yes, sir.

17 Q. Okay. And your name's on that first page; is that
18 correct?

19 A. Yes, sir.

20 Q. Okay. And did you complete that application for Mr.
21 Tebele?

22 A. No, sir.

23 Q. Did Crescent Coast bind coverage for Mr. Tebele in
24 January of 2019?

25 A. Yes, sir.

1 MR. RISER: Objection. I think that misstates
2 testimony and any evidence that Crescent Coast did not bind the
3 coverage.

4 MR. DESCHAMPS: Okay. I'll rephrase that.

5 BY MR. DESCHAMPS:

6 Q. And did Crescent Coast submit Mr. Tebele's application
7 for coverage on January 14, 2019?

8 A. Yes, sir.

9 Q. Okay. And did you have a license at that time as either
10 a producer or surplus line insurer?

11 A. Yes, sir.

12 Q. You did? 2019?

13 A. Yes, sir.

14 Q. Can you go back to -- now tell me the -- read that
15 exhibit again. If you could turn to your producer's license?
16 What's the first issuance statement of that?

17 A. Producer's license?

18 Q. Yes, sir.

19 A. May 17th, 2023.

20 Q. Okay. How about your other license?

21 A. February 28th, 2023.

22 Q. Okay. So how were you licensed in 2019?

23 A. This says, August 29th, 2017 through May 17th, 2023.

24 Q. Can you go back and tell me the first issuance date --
25 issuance dates for both those licenses, please?

1 A. May 17th, 2023.

2 Q. And which license is that?

3 A. Insurance producer.

4 Q. Okay. And how about the surplus line license?

5 A. February 28th, 2023.

6 Q. Alright. Thank you. Mr. Sutherland, I'm going to hand
7 you what's already been put into evidence, Plaintiff's Exhibit
8 23. Can you take a look at that?

9 MR. DESCHAMPS: Paper clip it for me, if you don't
10 mind. I don't want it to get messed up.

11 BY MR. DESCHAMPS:

12 Q. Do you recognize that email?

13 A. Yes, sir.

14 Q. Okay. Do you recall receiving that email?

15 A. Yes, sir.

16 Q. Alright. And what's the date of this email?

17 A. January 11th, 2019.

18 Q. Okay. And at that time was Crescent Coast representing
19 La Casona?

20 A. Yes, sir.

21 Q. Okay. And how about Mr. Tebele, were they the -- was
22 Crescent Coast the retail agent for Mr. Tebele on January 11th,
23 2019?

24 A. That was just a few days before we bound his coverage.

25 Q. And at that time -- so on January 11th, 2019, is it your

1 testimony that Crescent Coast was not representing Mr. Tebele?

2 A. We were working with Mr. Tebele to get his insurance
3 business.

4 Q. Okay. At that point in time did you consider Mr. Tebele
5 to be a client of Crescent Coast?

6 A. Yes, sir.

7 Q. Okay. And so you were representing Mr. Tebele on
8 January 11th, 2019? Excuse me, Crescent Coast was?

9 A. Yes, sir.

10 Q. Okay. Now, was Mr. Tebele's coverage bound, ultimately
11 bound to insure his property?

12 A. I believe on the 14th of January.

13 Q. Okay. And do you know if Crescent Coast was paid a
14 commission?

15 A. Yes, sir.

16 Q. Okay. And did you receive any kind of commission or
17 payment after coverage was bound?

18 A. Yes, sir.

19 Q. Okay. How much was that? Do you recall?

20 A. I do not recall.

21 Q. Okay. And can you tell us what that payment was based
22 off of?

23 A. The percentage of his property coverage. The commission
24 would be 10 percent of what his premium was.

25 Q. Okay. And how about the payment to you? Is that based

1 off anything?

2 A. I would receive, I believe, 40 percent of what the
3 agency received.

4 Q. And how does that arrangement come about? I guess, is
5 it based on business you bring in, or?

6 A. Business that is brought in, yes, sir.

7 Q. Okay. And so were you paid that percentage because you
8 brought in Mr. Tebele to Crescent Coast?

9 A. Yes, sir.

10 Q. Okay.

11 MR. DESCHAMPS: I'll mark this as 103. There you go.

12 BY MR. DESCHAMPS:

13 Q. Mr. Sutherland, do you know a Mr. Bill Nutt? Do you
14 recall the name?

15 A. No, sir.

16 Q. Okay. In December of 2018, do you recall if you
17 remember any inspections were done at the 1901 property?

18 A. I don't -- I wouldn't know.

19 Q. Let me show you Plaintiff's Exhibit 103 and see if that
20 will refresh your memory. Take a look at that.

21 A. Okay.

22 Q. Can you look in the, we'll just call them the address
23 lines, or the email addresses in there?

24 A. Yes.

25 Q. Alright. Do you recognize that document?

1 A. Yes. This would be the inspector trying to get into
2 Melissa's business to do an inspection.

3 Q. Okay. And what's that inspector's name?

4 A. William Nutt.

5 Q. Okay. And are you copied on that email?

6 A. I am.

7 Q. Okay. What's the date of that email?

8 A. December 19th, 2018.

9 Q. Okay. And do you know if Mr. William Nutt ever
10 completed or performed that inspection?

11 A. I do not know.

12 Q. You never had any communications with Mr. Nutt?

13 A. Not that I remember, no, sir.

14 Q. I'm showing you Plaintiff's Exhibit 21. Take a look at
15 that for me?

16 MR. DESCHAMPS: It's already been put into evidence,
17 but you can look at it. It's already been admitted into
18 evidence.

19 BY MR. DESCHAMPS:

20 Q. It's not long. You can thumb through the rest of it.
21 It's on that second page or third page of -- are you on that
22 email correspondence? Hey, why don't you come down here? Do
23 you mind stepping down a second, sir? Let's put it on this
24 overhead. I think it would be a lot easier. Do you mind
25 taking another step right over here, here so everybody can see

1 you? Alright. There we go. Alright. Now, page 21, do you
2 recognize that?

3 A. No, sir.

4 Q. That's an email chain. How about the second page? This
5 is all attached as one exhibit. That's your email address up
6 there at the top, correct?

7 A. Yes, sir.

8 Q. Okay. And what's going on there? Mr. Tebele is giving
9 you certain information, correct?

10 A. I asked him for a tenant list.

11 Q. Okay. And you request from him a tenant list?

12 A. Yes, sir.

13 Q. Okay. And did he provide that?

14 A. Yes, sir, I believe so.

15 Q. Okay. And what was the date of this email?

16 A. That would be December 26th.

17 Q. Okay. And at that time was Mr. Tebele Crescent Coast's
18 client?

19 A. We were trying to get him as a client.

20 Q. You were trying to get him as a client?

21 A. Yes, sir.

22 Q. Alright.

23 MR. DESCHAMPS: Mr. Sutherland, I don't have any
24 further questions. If you would please answer any questions
25 opposing Counsel may have?

CROSS-EXAMINATION

1

2 BY MR. HARPER:

3 Q. Good morning, Mr. Sutherland. How are you?

4 A. Good morning.

5 Q. When you were in the process of trying to get the A.

6 Tebele & Sons property policy, did you get -- solicit quotes

7 from different brokers?

8 A. I didn't solicit quotes. I took his applications and

9 turned them in to David Egan.

10 Q. David Egan would have handled that process then?

11 A. And then he would take it from there and solicit quotes.

12 Q. Mr. DesChamps showed you an email to Ms. Gurtzweiler; is

13 that correct?

14 A. Yes, sir.

15 Q. About the sprinkler?

16 A. Yes, sir.

17 Q. At the property at 1901 North Kings Highway?

18 A. Yes, sir.

19 MR. RISER: You have it right there? There it is.

20 BY MR. RISER:

21 Q. Was it your understanding, are you the one who gave that
22 information to Ms. Sandra Nenna to pass on to Ms. Gurtzweiler?

23 A. Yes, sir.

24 Q. And is the email an accurate reflection of the

25 information, your knowledge of what the sprinkler system was at

1 that time?

2 A. This was -- I received a phone call from Ms. Garcia, and
3 an inspector had come to her building and told her that she had
4 a problem, and he may have told her that she may have a problem
5 because she had a fire or some issue, that the sprinkle system
6 didn't have water to it. She called and she panicked and
7 called me and so I asked Sandra, the customer service rep,
8 Sandra, what to do, and she said she would call Whitney or
9 email Whitney. Whitney said she noted the file and that was
10 it.

11 Q. As far as you know, though, the information that's
12 stated in that email, that's the status of the sprinkler system
13 on January 11th of 2019?

14 A. Yes, sir, as far as I know, yes, sir.

15 MR. HARPER: Thank you, Mr. Sutherland.

16 THE WITNESS: Yes, sir.

17 MR. RISER: Your Honor, if I could have a brief
18 moment to take a couple of the original exhibits out.

19 THE COURT: Sure.

20

21 **CROSS-EXAMINATION**

22 BY MR. RISER:

23 Q. Good morning, Mr. Sutherland.

24 A. Good morning.

25 Q. I'm going to have trouble calling you Mr. Sutherland, if

1 Joey's okay, I may?

2 A. That's fine with me.

3 Q. Okay. Where are you from, Joey?

4 A. Conway, South Carolina.

5 Q. And did you go to high school here?

6 A. Yes, sir.

7 Q. Okay. When did you graduate?

8 A. 1978.

9 Q. You've worked in the restaurant business for a while;

10 haven't you?

11 A. Yes, sir.

12 Q. How long?

13 A. Since about 1976.

14 Q. And how long have you worked in the insurance business?

15 A. Since 2010.

16 Q. And where have you worked in the insurance business,

17 what companies?

18 A. For Global Risk Partners for a number of years and then

19 Crescent Coast Insurance.

20 Q. And is that all locally?

21 A. Global Risk Partners is out of New Jersey.

22 Q. Okay.

23 A. They were licensed in South Carolina.

24 Q. But you worked here in the Myrtle Beach area?

25 A. I worked, yes, sir, here.

1 Q. Okay. And you reported earlier, and you testified
2 earlier that you may have had a brief lapse in one of your
3 insurance licenses. Which one was that?

4 A. Probably both of them a few years ago.

5 Q. Why was the lapse?

6 A. If I remember correctly, I was behind on my continuing
7 education.

8 Q. Okay. Were you also working in the restaurant business
9 at the time?

10 A. Yes, sir.

11 Q. So would that correlate with you doing less insurance
12 and more restaurant?

13 A. Absolutely.

14 Q. Okay. Alright. You were asked about Exhibit 74. I
15 don't know if it's still up here or not.

16 MR. RISER: Thank you.

17 Q. Before today, have you ever seen that document before?

18 A. No, sir.

19 Q. So you don't know where that information is from or
20 exactly what was put in to put that report out?

21 A. It looks like it's from their website from NAIC.

22 Q. Alright. You said you renewed your licenses when you
23 started with Crescent Coast, right?

24 A. Yes, sir.

25 Q. Okay.

1 A. Roughly, yes.

2 Q. And those 2023 dates that were on there of when that,
3 could that be another renewal?

4 A. Those are from this year.

5 Q. Okay. You were asked about Exhibit 25. Let's take a
6 look at that again. And what date is that?

7 A. January 11th, 2018 -- 2019, excuse me.

8 Q. And that was -- you identified this as the final
9 application for insurance, for property insurance for Mr.
10 Tebele?

11 A. Looks like it, yes, sir.

12 Q. Okay. Were you -- and your name is at the top, right?

13 A. Yes, sir.

14 Q. Why would your name be at the top?

15 A. I was the producer on the account.

16 Q. This application is the only one that's signed; is that
17 right?

18 A. Yes, sir.

19 Q. Will you flip to one of those signature pages? Who
20 signed that application?

21 A. The applicant or the producer?

22 Q. Both.

23 A. The producer's signature, David Egan, the Applicant's
24 signature, Abraham Tebele.

25 Q. So your boss, Mr. Egan, signed that, right?

1 A. Yes, sir.

2 Q. So it's his insurance license that was related to that
3 application, not yours?

4 A. Yes, sir.

5 Q. Okay. What was your role at Crescent Coast?

6 A. Insurance producer.

7 Q. And what, generally, does the producer do?

8 A. Solicit sales, business.

9 Q. So you find clients?

10 A. Find clients and help them obtain insurance.

11 Q. Okay. Generally, how does the retail insurance process
12 work? You meet with a client and get an idea of what their
13 insurance needs are, right?

14 A. Yes, sir.

15 Q. How do you get them or connect them with carriers?

16 A. You take all their information about their business and
17 what their needs are and submit it to the customer service rep
18 or, in my case, to my boss, David Egan, and he will go to the
19 carriers or the brokers and find them coverage.

20 Q. So if Crescent Coast -- because it's a retail agent,
21 right?

22 A. Yes, sir.

23 Q. If Crescent Coast has direct relationships with carriers
24 that fit a client's needs, then you can connect them there,
25 right?

1 A. I've never done that. I always submit it.

2 Q. That would be a job for Mr. Egan?

3 A. Yes, sir. I don't deal with the carriers or the
4 brokers.

5 Q. Okay. If Crescent Coast does not have connections with
6 carriers to fit a client's needs, it has to go to a broker?

7 A. Yes, sir.

8 Q. Okay. Retail agents don't bind policies; do they?

9 A. No, sir.

10 Q. That's for insurance carriers?

11 A. Yes, sir.

12 Q. Okay. Retail agents don't underwrite policies, right?

13 A. Correct.

14 Q. So they don't research the risk and determine if a risk
15 is insurable or what sort of conditions that might be on it?

16 A. The underwriters do that.

17 Q. Okay. That's someone else?

18 A. Yes, sir.

19 Q. And retail agents don't even investigate or verify what
20 a client says is true about their properties?

21 A. No, sir.

22 Q. Why is that?

23 A. Somebody else is going to do it.

24 Q. And you also rely on what the client says, right?

25 A. Yes, sir.

1 Q. And then they're going to verify that information with a
2 signature?

3 A. Yes, sir.

4 Q. Just like we did on that application in Exhibit 25?

5 A. Correct.

6 Q. Okay. If somebody in the underwriting process wants to
7 order inspections or do an investigation, that's somebody
8 else's job?

9 A. Yes, sir.

10 Q. You were asked about Exhibit 103. I believe it's up
11 here for you. Can you take a look at that again? You
12 identified that as an email that you were copied on, right?

13 A. Yes.

14 Q. Why were you copied on that?

15 A. They would want me to help the inspector get in touch
16 with the insured to have access to the building.

17 Q. So that's an email -- did Sandra send it to Melissa?

18 A. This is from Sandra to Melissa.

19 Q. Okay. And if you would, read that email again.

20 A. Please be advised, we have contacted Mr. Bill Nutt of
21 ISO Inspection Services. He has made several attempts to
22 contact you via voice mail and has not received a return call.
23 We will be in the Myrtle Beach area today. Please contact him
24 ASAP at his phone number or his email so he can complete the
25 inspection as mandated by the carrier. Please kindly note that

1 he will not be in the area again until after the New Year.

2 Q. So Crescent Coast wasn't ordering that inspection?

3 A. No, sir.

4 Q. You were just copied because the inspector couldn't get
5 into the building?

6 A. It's very common that we have to help an inspector get
7 access to the insured.

8 Q. Okay. That's all I have about that. In 2018, you
9 talked about -- you talked with Mr. Tebele about bringing
10 insurance policies over to Crescent Coast, right?

11 A. Yes, sir.

12 Q. Did you consider Mr. Tebele an experienced insurance
13 buyer?

14 A. Yes, sir.

15 Q. Because he had lots of properties?

16 A. Yes, sir.

17 Q. And they were in different shapes and sizes?

18 A. Correct.

19 Q. And as a commercial property owner, he has to get
20 insurance coverage every year, right?

21 A. Yes, sir.

22 Q. Okay. Because it renews, or it's canceled?

23 A. Policy is 12 months.

24 Q. Okay. You began those meetings with Mr. Tebele in
25 August of 2018; is that right?

1 A. Formally, yes, sir, or more intensely, yes, sir.

2 Q. Okay. And are you aware that the first insurance
3 application was submitted to a broker on August the 20th, 2018?

4 A. Yes, sir.

5 Q. I'll hand you what's been marked for identification as
6 Defendant's Exhibit 61. Just take a look at that for me.

7 A. Okay.

8 Q. And can you describe that document for me?

9 A. Yes. This is to Whitney from David Egan asking for loss
10 runs -- current loss runs, sending over pictures of the
11 declaration pages in a separate email.

12 Q. What date is that?

13 A. This is dated August 20th, 2018.

14 Q. Can you read the first part?

15 A. Yes. It says: Please see attached new submission.
16 They also have a \$5 million dollar umbrella. Let me know if
17 you need the ACORD for that. I have attached loss runs from
18 January. We can, will get new ones, however, they have not had
19 any new claims.

20 Q. You believe that, generally, is the email from Crescent
21 Coast to Whitney Gurtzweiler starting the process of submitting
22 information for Mr. Tebele's policies?

23 A. It sounds like asking her if what she has is good enough
24 or does she need new loss runs.

25 Q. Do you think that also would have included ACORD

1 applications?

2 A. It's asking if she needs the ACORD for the umbrella.

3 Q. Would Mr. Egan have also submitted an ACORD application
4 for the properties?

5 A. Yes, sir.

6 Q. Okay. I'm going to hand you what's been marked for
7 identification as Defendant's Exhibit 60. Can you take a look
8 at that for me? Do you generally know what that form is?

9 A. Yes, sir.

10 Q. What is it?

11 A. It's an ACORD application for commercial insurance.

12 Q. Okay. And what's the date at the top right?

13 A. August 20th, 2018.

14 Q. If you would, take a second to look through there.

15 A. Okay.

16 Q. Okay. Do you have any reason to believe that that is
17 not a true and accurate copy of the first ACORD application
18 submitted to a broker to begin the process of getting Mr.
19 Tebele quotes on his property insurance?

20 A. This is the application for liability, general
21 liability, unless the property is continued.

22 Q. Okay. Keep looking, sir.

23 A. Yes. This is for both.

24 Q. Okay. So it includes -- it's general liability and
25 property?

1 A. It might be.

2 Q. Okay.

3 A. Yes, sir.

4 Q. Do you believe that's a true and accurate copy?

5 A. There's no reason not to.

6 Q. Okay. And the date on that at the top right is August

7 the 20th?

8 A. Yes, sir.

9 Q. And your name is listed as contact; is that right?

10 A. Yes, sir.

11 Q. Okay. Again, because why?

12 A. I was Mr. Tebele's contact.

13 Q. Okay. You were the producer?

14 A. Yes, sir.

15 Q. Okay. But the email address for contact is what?

16 A. David Egan.

17 Q. Why is that?

18 A. It would be quicker response and transfer of information

19 for it to go directly to David Egan instead of coming to me,

20 and then I transfer to him.

21 Q. Was David the one that signed most applications when --

22 before coverage was bound?

23 A. Yes, sir.

24 Q. Okay. The proposed -- if you look midway down there on

25 the first page, there's policy information, and it says,

1 "Proposed EFF date." What does EFF mean?

2 A. Effective, proposed effective date.

3 Q. Okay. What's that date?

4 A. That would be the date the insurance starts.

5 Q. And what date is written there?

6 A. September 1st, 2018.

7 Q. And then the proposed EXP date, what does EXP mean?

8 A. Expiration.

9 Q. And what's that date?

10 A. One year later. It's September 1st, 2019.

11 Q. And you understood, I believe you testified earlier that
12 you understood Mr. Tebele's current policies were going to
13 expire on January the 14th, 2019, right?

14 A. Yes.

15 Q. Why would the first application have a September date?

16 A. If I remember correctly, we were looking at rewriting
17 midterm to get him -- to get him out of a wintertime renewal
18 because it's easier to come up with, you know, the premium
19 during the season than it is in wintertime.

20 Q. And that was a suggestion for Mr. Tebele, not from
21 Crescent Coast?

22 A. Yes, sir.

23 Q. Okay. But ultimately, it worked out to where the
24 renewal happened in January?

25 A. Yes, sir.

1 Q. Okay. So, again, you met Mr. Tebele the first time in
2 August of 2018, right?

3 A. That was not the first time I met him.

4 Q. Sorry, I meant to discuss his insurance needs with
5 Crescent Coast.

6 A. Yes.

7 Q. Okay. And if that application had an August 20th date
8 on it, how much sooner than that would you have met with Mr.
9 Tebele?

10 A. Maybe a month.

11 Q. Okay. Or, I mean, certainly within the month, within
12 four weeks?

13 A. Probably, yes, sir.

14 Q. Okay. How did that process work when you sat down with
15 him the first time? How do you begin taking information?

16 A. We met at his office and he provided me a list of
17 properties and coverages from his previous agent or his current
18 agent. I took that and gave it to David Egan, who composed
19 ACORD apps with it, then went back to Mr. Tebele's office and
20 go through the ACORD apps and fine-tuned any information on
21 there.

22 Q. And so Mr. Tebele has the opportunity to go through and
23 verify information?

24 A. We went through each one for each building, each
25 property and verified the different information.

1 Q. What sort of information do you have to verify for those
2 applications?

3 A. The construction type of the building, the value or the
4 limit on the property, any updates to the roof, common,
5 electrical, that sort of thing.

6 Q. And whether or not a building is sprinkled or not?

7 A. Yes, sir.

8 Q. Okay. What are the questions on the ACORD application
9 related to sprinklers? And if you need to flip back there to a
10 property section, that's fine.

11 A. Let's see. It says, premises, fire protection,
12 sprinkler, standpipe, asking what type of sprinkler, percentage
13 of the building that is sprinklered. That's all.

14 Q. Okay. Does it matter to Crescent Coast what the answers
15 are to those questions?

16 A. No, sir.

17 Q. So it doesn't matter to Crescent Coast if a building is
18 sprinklered or not?

19 A. No, sir.

20 Q. You just want to get accurate information if you have to
21 send it in to a broker?

22 A. Yes, sir.

23 Q. Okay.

24 A. So they can properly quote.

25 Q. And in this case, Mr. Tebele had 23 properties; does

1 that sound about right?

2 A. Sounds right.

3 Q. And only five of them had sprinklers, right?

4 A. That sounds about right, yes, sir.

5 Q. So the overall the premium difference would be
6 negligible on 23 properties?

7 A. It might, I don't think it would make much difference.

8 Q. Okay. And you don't indicate on an application if there
9 are sprinklers in a property unless a client tells you to?

10 A. Correct.

11 Q. Okay. And what did Mr. Tebele tell you about 1901 North
12 Kings at that August meeting?

13 A. That the sprinkler was being installed and it would be
14 completed.

15 Q. Before renewal?

16 A. I don't remember exactly how it was said, but it was to
17 be completed shortly.

18 Q. And did he tell you how much of the building it covered?

19 A. All of the building, 100 percent.

20 Q. 100 percent. Is that what you indicated on the
21 application?

22 A. Yes, sir.

23 Q. And because he thought that it was going to be completed
24 in a short amount of time, he told you to mark it 100 percent
25 sprinklered?

1 A. Yes, sir.

2 Q. Okay. You were here yesterday for a while for
3 testimony; weren't you?

4 A. Yes, sir.

5 Q. And did you hear -- you were because you were going to
6 testify?

7 A. Yes, sir.

8 Q. You didn't just come for fun?

9 A. That is correct.

10 Q. Okay. Did you hear some of the testimony from a man
11 named James Twaddell?

12 A. Yes, sir.

13 Q. Okay. He was asked about some emails between him and
14 Mr. Tebele, right?

15 A. Yes, sir.

16 Q. You heard that testimony?

17 A. Yes, sir.

18 Q. I'm going to hand you what's been previously moved into
19 evidence as Exhibits 55E and 55F. If you could take a look at
20 those? Did you review them both?

21 A. Yes, sir.

22 Q. Exhibit 55E, is that an email from Jim Twaddell to Abe
23 Tebele?

24 A. Yes, sir.

25 Q. Dated April the 5th, 2009 -- excuse me, 2019?

1 A. Yes, sir.

2 Q. If you could read for the Jury, about midway through
3 there, there's a sentence that says: There may have been.
4 Would you read that sentence down to "moot issue"?

5 A. The top or the bottom?

6 Q. It's the top of Exhibit 55. So beginning: There may.

7 A. There may have been unforeseen circumstances that led to
8 delays that were beyond anyone's control. Don't forget, at the
9 time the broker filled out the application and obtained final
10 quotes, the full expectation was that the connection work would
11 take a week or two weeks, which would have been well in advance
12 of the loss and make all of this a moot issue.

13 Q. Okay. If you'll turn over to 55F, and that's an email
14 from Jim Twaddell to -- or, excuse me, from Mr. Tebele to Jim
15 Twaddell, on March 8th, 2019.

16 A. This is to Mr. Twaddell from Abe Tebele.

17 Q. Yes. And it says -- will you read the last sentence of
18 the top email?

19 A. There is no way to have foreseen that it would not be
20 connected by the time this policy was binding.

21 Q. And it was bound on January the 15th, 2019?

22 A. Yes, sir.

23 Q. Are those emails from Mr. Tebele?

24 A. Yes, sir.

25 Q. And are they consistent with what he told you in August

1 2018 about the status of the sprinkler system?

2 A. Yes, sir.

3 Q. That it would be done well in advance of the renewal?

4 A. Yes, sir.

5 Q. Okay. Did Mr. Tebele tell you anything more about the
6 sprinkler system construction at 1901 North Kings after that
7 August 2018 conversation?

8 A. No, sir.

9 Q. But you would answer questions or get information from
10 Mr. Tebele from time to time from August until the policy was
11 bound, right?

12 A. Yes, sir.

13 Q. And what sort of information would you seek or ask him
14 for?

15 A. Questions or more information that the underwriting
16 wanted.

17 Q. Like tenant lists?

18 A. Tenant lists --

19 Q. I think you were asked about that for Mr. DesChamps?

20 A. Tenant lists, explanations of claims, you know, I
21 believe it was a fire claim they wanted more information on,
22 that sort of thing.

23 Q. Is that a normal part of the process?

24 A. Yes, sir.

25 Q. Okay. Did Mr. Tebele ever ask you any questions about

1 coverages, exclusions, conditions, or endorsements?

2 A. No, sir.

3 Q. You didn't deal with a broker on Mr. Tebele's property
4 insurance; did you?

5 A. No, sir.

6 Q. Did David do all of that work?

7 A. Yes, sir.

8 Q. And so after 2000 -- or August, when you gathered
9 information for David to put into that ACORD, the bulk of your
10 work was done?

11 A. Just be there to help, to be helpful.

12 Q. Okay. And you moved on to get other clients?

13 A. Yes.

14 Q. Okay. Let me ask you something to clarify this for the
15 Jury because there were several questions about it and I want
16 to make sure that it's crystal clear, about how it works with
17 retail agents and clients before policies are bound. From when
18 Mr. Tebele first met you to discuss this in August of 2018,
19 until the policy was bound, he was not a client of Crescent
20 Coast, right?

21 A. No, sir.

22 Q. He was a prospective client?

23 A. Yes, sir. We wanted him to be a client, yes, sir.

24 Q. And he's not a client until he actually has a policy
25 bound?

1 A. Yes, sir.

2 Q. Okay. Alright. And Mr. Tebele actually was -- when he
3 was getting quotes and having you submit information to brokers
4 for premium prices, he was doing the same thing with his
5 current insurance retail agent; wasn't he?

6 A. Yes, sir, that's normal to shop.

7 Q. Okay. So he was seeing what their price would be and
8 then seeing what Crescent Coast's price would be?

9 A. Yes, sir.

10 Q. Okay. He didn't even decide to go with Crescent Coast
11 over his former agent until the day before the policy was
12 bound?

13 A. Yes, sir, it was last minute.

14 Q. Okay. Because he was getting quotes from both sides?

15 A. Yes, sir.

16 Q. And then, ultimately, Crescent Coast got him an overall
17 better premium deal?

18 A. Yes, sir.

19 Q. Okay. So you had five months of working to get Mr.
20 Tebele's insurance business for Crescent Coast, you weren't
21 working with him as an existing client for five months?

22 A. Correct.

23 Q. Alright. Mr. DesChamps asked you about a January 11th,
24 2019 phone call you got from Ms. Garcia, do you remember that?

25 A. Yes, sir.

1 Q. Do you remember exactly what she told you on the phone?

2 A. No, sir. She's hard to understand, but I remember she
3 told me that an inspector had come to her building and told her
4 there was no water connected to her sprinkler and she could
5 have a problem, and she wanted to know what to do.

6 Q. You were asked about Plaintiff's Exhibit 23. So once
7 you received that phone call from Ms. Garcia, what did you do?

8 A. I went to a customer service rep's office, Sandra Nenna,
9 and asked her what to do, and she said she would notify William
10 who was an underwriter and find out what we needed to do.

11 Q. Okay. So Ms. Garcia was concerned that someone else
12 told her the water might not be turned on in the building for
13 the sprinklers?

14 A. Yes.

15 Q. And you now know that the water pipe that connects to
16 the street wasn't even connected, right?

17 A. Yes, sir.

18 Q. But you didn't know that on January 11th, 2019?

19 A. No, sir.

20 Q. And you didn't know that the sprinkler system couldn't
21 be made fully operational by turning on a switch; did you?

22 A. No, sir.

23 Q. You only knew what Melissa told you?

24 A. Correct.

25 Q. And it didn't sound like Ms. Garcia knew exactly what

1 was going on either; is that right?

2 A. Correct.

3 Q. You just knew what she told -- what someone else told
4 her?

5 A. Yes, sir.

6 Q. Okay. But she had questions about how it might affect
7 her insurance?

8 A. Yes.

9 Q. And then you instructed Sandra Nenna to contact the
10 broker, or the underwriter?

11 A. Yes, sir.

12 Q. And so you acted swiftly to answer a question from --
13 about coverage for the client who did call you, and that was
14 Melissa Garcia?

15 A. Yes, sir.

16 Q. And Mr. Tebele never called to tell you anything more
17 about the sprinkler system after that 2018, or August 2018
18 meeting?

19 A. No, sir, correct.

20 Q. That's right. After the fire on February the 24th,
21 2019, what was your role in the claim?

22 A. I really didn't have one. It had been reported. I was
23 out of town when the fire occurred, and when I returned to
24 town, it had been filed already.

25 Q. Okay.

1 A. By David Egan.

2 Q. Okay. Did you answer some questions from Mr. Tebele and
3 help him gather information?

4 A. Oh, yes.

5 Q. Okay. And Crescent Coast doesn't have any decision
6 whether or not an insurance claim is paid?

7 A. That's true, yes, sir.

8 Q. And Crescent Coast, they just gather what information is
9 necessary for whoever's investigating it, and they submit a
10 claim?

11 A. Yes.

12 Q. And someone else makes the decision on whether or not an
13 insurance -- and insured or a client gets paid on their claim,
14 right?

15 A. Yes, sir.

16 Q. If you'll bear with me one moment, I think I might be
17 finished. Thank you, Joey. That's all I had. I appreciate
18 your time.

19 A. Yes, sir.

20 MR. RISER: Please answer any additional questions
21 there may be.

22 **REDIRECT EXAMINATION**

23 BY MR. DESCHAMPS:

24 Q. Mr. Sutherland, you previously testified that you first
25 solicited Mr. Tebele to sell him insurance in 2017; is that

1 correct?

2 A. Yes, sir, possibly, yes, sir.

3 Q. Okay. And as of August of 2018, you previously
4 testified that A. Tebele & Sons was not your client at that
5 juncture; is that correct?

6 A. August of 2018, correct.

7 Q. Okay. And when did A. Tebele & Sons first become
8 Crescent Coast's client?

9 A. When his coverage was bound.

10 Q. Okay. And that sold, that would be January 14th of
11 2019; is that correct?

12 A. Yes, sir.

13 Q. Okay. Do you have Exhibit 23, it's over there in front
14 of you?

15 A. Yes, sir, I do, I have a lot.

16 Q. Okay. Now, you were copied to this email from Sandra
17 Nenna to Whitney Gurtzweiler, who is now Ms. Northcutt; is that
18 correct?

19 A. Yes, sir, that is correct.

20 Q. Okay. So what's the date of that email?

21 A. January 11th, 2019.

22 Q. Okay. So as of January 11th, 2019, you were aware that
23 the sprinkler system in 1901 was not operational; is that
24 correct?

25 MR. RISER: Objection. That misstates testimony.

1 BY MR. DESCHAMPS:

2 Q. At that time, were you aware that the sprinkler was not
3 operational at 1901?

4 A. I was aware Ms. Garcia was concerned that it was not,
5 yes.

6 Q. Okay. Let's see. Do you have the August application?
7 I believe it's -- okay.

8 A. 25?

9 Q. Yes, Exhibit 25, it's an application; is that correct?

10 A. It's an ACORD application.

11 Q. Okay. And what's an ACORD application?

12 A. It's a standardized form that you fill out --

13 Q. Okay.

14 A. -- to give to the carriers for quotes.

15 Q. Alright. And you submitted that in August of 2018; is
16 that correct?

17 A. Not this one, but a preliminary one, yes.

18 Q. Is that the --

19 A. This is January.

20 Q. Okay. You have the preliminary up here. Here we go.
21 Okay.

22 A. This one is August --

23 Q. What exhibit is that?

24 A. Exhibit 60.

25 Q. Okay. What's the date of that?

1 A. August the 20th, 2018.

2 Q. Okay. And did you submit that ACORD for coverage
3 quotes?

4 A. Mr. Egan would have.

5 Q. Mr. Egan did. Did you input that data on there?

6 A. I did not, no, sir.

7 Q. Okay. Do you know who input that data?

8 A. I would imagine Mr. Egan did.

9 Q. Okay. You previously testified about the information
10 that's typically depicted on those form ACORDs; is that
11 correct?

12 A. Say that again.

13 Q. Didn't you previously testify as to, I guess, the source
14 of the information depicted on those ACORDs?

15 A. Yes, this is from the insured.

16 Q. Okay. What type of information is on there? So, like,
17 certain codes? Here, let's turn to -- let's turn to the page
18 for 1901. Are there any codes entered on any of those boxes?

19 A. Codes?

20 Q. Yeah, codes, or what type of information is on there?

21 A. I'd ask about updates for wiring, roofing, plumbing,
22 heating, type of roof, type of construction for the building,
23 the year of the building.

24 Q. Okay, what's the type of construction?

25 A. It is masonry non-combustible.

1 Q. Okay. And is there any kind of rating code or
2 classification code?

3 A. That would be -- it's not on here, but it would be 4, I
4 believe.

5 Q. Okay. And where would that type of information come
6 from?

7 A. Well, from the insured.

8 Q. A code? Is that your testimony that a code number 4 is
9 going to come from an insured?

10 A. No, he's going to tell me what his building's made out
11 of.

12 Q. Okay.

13 A. And then there's ISO classifications for the different
14 construction types.

15 Q. Okay. And ISO, what's that? I don't know much about
16 insurance.

17 A. It's standard something. I don't very well --

18 Q. Insurance -- what does ISO stand for?

19 A. I -- I don't know.

20 Q. You don't know? Okay. Do you have it -- where do you
21 get that ISO code from?

22 A. You can -- you can google it.

23 Q. Is it like a database then?

24 A. You can -- you know, I have -- in my file, I have a
25 list.

1 Q. Okay. And so you'll just put the code off your list
2 onto the, I guess, the property or the application that it
3 pertains to?

4 A. Yes, sir.

5 Q. Okay. Alright. If you'll look, is there a --

6 A. You want to see it?

7 Q. Sorry. Exhibit 66. Can you thumb through that and tell
8 me if there's any signature of anybody? Did anybody sign that
9 document?

10 MR. RISER: For the record, is that Exhibit 60 or 61?
11 You said 66.

12 MR. DESCHAMPS: It's the August 2018 quarter.

13 MR. RISER: Can you just tell me the number?

14 Q. What's the exhibit number; do you know?

15 A. The exhibit number is 60. I do not see any signatures.

16 Q. Okay. So Mr. Tebele never signed that document; is that
17 correct?

18 A. Correct.

19 Q. Okay. And you previously testified that you earned a
20 commission; is that correct?

21 A. Yes, sir.

22 Q. Okay. Alright. How much was your commission again?

23 A. I don't remember the amount, but it would be about 40
24 percent of the agency commission, which would be 10 percent of
25 the premium.

1 Q. Alright, let's do some math. How about that? Do you
2 mind?

3 A. Alright.

4 Q. Do you have decent handwriting?

5 A. No.

6 Q. Mine's terrible.

7 A. Mine's awful.

8 Q. Alright. Well, let's try it. How about that? Do you
9 mind stepping out? We'll do a little math here. If you don't
10 mind, I guarantee your handwriting is better than mine. Can
11 you read your own handwriting?

12 A. I guarantee you it's not.

13 Q. I can't read my own handwriting, so. Alright. This is
14 the Premium Finance agreement from Mr. Tebele that's already
15 been introduced into evidence. I'm going to just put it on
16 here for reference. Alright. So that --

17 A. Can we round up?

18 Q. That's what I was about to propose so it would be
19 easier. So you see the commission amount, correct? That's the
20 \$170,907, and for purposes of math, we're just going to go to
21 170.

22 A. 170.

23 Q. Alright.

24 A. Okay. So 10 percent of that --

25 Q. Alright. So write -- if you don't mind, you write the

1 premium amount up there.

2 A. Okay.

3 Q. Okay. And then we heard Ms. Northcutt, correct, Amwins
4 would take some sort of percentage of 20 percent. You heard
5 her testimony; is that correct?

6 A. Our industry would get 10 percent.

7 Q. Okay. Alright. So let's do that. How would you
8 calculate it?

9 A. 10 percent of this.

10 Q. I'm not sure how it's done. It's important, but --

11 A. 17,000.

12 Q. -- the Amwins will take half and then you take the rest?

13 A. And then -- that's 40. Can I use your phone?

14 Q. Alright. There you go. Alright. Why don't you do it?

15 A. \$6,800.00.

16 Q. And the 6,800, what is that?

17 A. That would be my commission.

18 Q. Okay. On Mr. Tebele's policy?

19 A. Yes, sir.

20 Q. Okay. Alright. Can I have my phone back? Alright. Do
21 you mind taking a seat?

22 MR. DESCHAMPS: Your Honor, I'd like to mark this as
23 Plaintiff's Exhibit, what number are we on, 103?

24 THE REPORTER: 104.

25 MR. DESCHAMPS: 104?

1 THE COURT: Any objection to Exhibit No. 104?

2 MR. HARPER: No, Your Honor.

3 MR. RISER: No, Your Honor.

4 THE COURT: Plaintiff's Exhibit 104 is admitted into
5 evidence.

6 **(Plaintiff's Exhibit No. 104 was admitted into evidence.)**

7 BY MR. DESCHAMPS:

8 Q. I'll show you what's been marked as Plaintiff's Exhibit
9 27. What is that?

10 A. It's a down payment check to Crescent Coast for \$34,199.

11 Q. Okay. And who issued the check?

12 A. Kings Department Store.

13 Q. And who's on that?

14 A. A. Tebele & Sons.

15 Q. Okay. And did your commission come from a portion of
16 that check?

17 A. I don't know.

18 Q. When were you paid your commission?

19 A. 30 days after we bound.

20 Q. Okay. And so approximately what date would that be?

21 A. February 13th.

22 Q. Okay. Let's go back to Exhibit -- well, go back to
23 Exhibit 74. When I was previously questioning you, we were
24 talking about your licensing, your producer's license, and who
25 issues the license? Is that the National Association of

1 Insurance Commissioners?

2 A. South Carolina Department of Insurance.

3 Q. Take a look at that. Now, Mr. Sutherland, you see the
4 producer's license under there, is that your license number?

5 A. No.

6 Q. Whose license is it?

7 A. I don't know.

8 Q. You don't know? Is it your testimony that this
9 insurance producer license number 15652376 is not yours?

10 A. That's not what this says.

11 Q. You must be on the wrong page. Go to page 4,
12 plaintiff's page 4.

13 A. Yes, this is my producer number.

14 Q. What number is that?

15 A. 15652376.

16 Q. Okay. What's the first active date on that?

17 A. On here, 04/05/23.

18 Q. Okay. And do you dispute that first active date?

19 A. No. Because my license expired in February, and I
20 renewed it in April of this year.

21 Q. Why does it say this is the first active date?

22 A. I don't know.

23 Q. You don't know? Did you have a license at the time you
24 sold the policy to Mr. Tebele?

25 A. Yes, sir.

1 Q. You did?

2 A. Yes, sir.

3 Q. So this wasn't the first issue that was stated on that
4 license?

5 A. Correct.

6 Q. Okay. When was the first issue then?

7 A. 2010.

8 Q. 2010. How about your surplus lines?

9 A. Same thing.

10 Q. Okay. Was your license active when you were working for
11 Mr. Sam Lauren?

12 A. Yes.

13 Q. When you were a manager at 1901 North Kings Highway?

14 MR. RISER: Objection.

15 THE WITNESS: I don't remember, but I would think so,
16 yes.

17 MR. RISER: Misstates testimony. The manager at a
18 restaurant in 1901.

19 MR. DESCHAMPS: What's your objection?

20 MR. RISER: You said he managed 1901 North Kings.
21 That wasn't his testimony.

22 MR. DESCHAMPS: He previously testified he did.

23 MR. RISER: He managed a restaurant at 1901 North
24 Kings.

25 BY MR. DESCHAMPS:

1 Q. When you managed a restaurant at 1901 North Kings
2 Highway, did you have an understanding of the layout of the
3 building?

4 A. Yes, sir.

5 Q. Okay. And do you know if the layout changed after you
6 were done managing?

7 A. I don't know.

8 Q. So you were pretty familiar with the property; is that
9 correct?

10 A. Yes, sir.

11 Q. Okay. And you first started -- or you first solicited
12 Mr. Tebele to purchase -- or to sell him insurance in 2017; is
13 that correct?

14 A. Yes, sir, I believe so.

15 Q. Okay. And it was your testimony that Mr. Tebele was not
16 Crescent Coast's client until the time of binding; is that
17 correct?

18 A. I don't -- yes, sir.

19 Q. Okay. In January, when you got -- received the email
20 from Sandra Nenna stating that Crescent Coast learned, as of
21 the prior day, which would be January 10th, that the sprinkler
22 was not operational, did you communicate that information to
23 Mr. Tebele?

24 A. No, sir.

25 Q. Did you not feel the need to communicate that

1 information to Mr. Tebele?

2 A. No, sir.

3 Q. And why not?

4 A. He knew more about his building than I did, or Sam
5 Lauren --

6 Q. Did you know it was a condition of --

7 MR. RISER: Let him finish his answer.

8 Q. I'm sorry, go ahead.

9 A. I mean, he would know the condition of his building.

10 Q. If you had communicated that information, would that
11 interfered with your commission payment?

12 A. No, no, sir.

13 Q. And prior to binding, did you think that you had any
14 duties to Mr. Tebele?

15 A. No, sir.

16 Q. You didn't owe any duties to Mr. Tebele until the time
17 of binding?

18 A. My duty was to be as helpful as I could to get him what
19 he wanted, get him his insurance.

20 Q. Did you know whether the sprinkler being operational was
21 a condition of Mr. Tebele's insurance?

22 A. No, sir.

23 MR. DESCHAMPS: Thank you. I have no further
24 questions.

25 MR. RISER: Recross.

1 THE COURT: Very brief.

2 **RECROSS-EXAMINATION**

3 BY MR. RISER:

4 Q. Joey, Crescent Coast doesn't have -- they don't have any
5 role in determining what the commission is for a particular
6 policy, do they?

7 A. No, sir.

8 Q. So that's determined by the underwriters or the
9 carriers?

10 A. Yes.

11 Q. Okay. And on Exhibit 104, which calculated down to
12 approximately a \$6,800.00 commission on Mr. Tebele's property
13 insurance policy; is that right? That was your commission?

14 A. Those are rough numbers.

15 Q. Approximately, yes. That would be the commission for
16 all 23 of his properties, not just 1901?

17 A. Correct.

18 Q. So 1901 would be a much smaller -- a much smaller
19 number?

20 A. Yes, sir.

21 Q. Okay. And are you aware that Crescent Coast waived
22 commissions to help with the total -- the overall premium?

23 A. Yes, sir.

24 Q. They waived commissions for GL -- the general liability
25 and the excess; is that right?

1 A. For the liability, we -- yes.

2 Q. And do you know how much that money -- how much it was
3 that Crescent Coast left on the table?

4 A. I do not know.

5 Q. If I told you it was approximately \$6,000.00, would you
6 disagree?

7 A. That sounds about right.

8 MR. RISER: Okay. And, Your Honor, one last thing.
9 I would like to move into evidence, Exhibits 60 and 61 that
10 were identified and discussed by Mr. Sutherland.

11 MR. WATSON: No objection, Your Honor.

12 MR. DESCHAMPS: No objection, Your Honor.

13 THE COURT: Alright. Defendant's 60 and 61 are
14 admitted into evidence.

15 **(Defendant's Exhibits 60 & 61 were admitted into**
16 **evidence.)**

17 MR. RISER: Thank you, Mr. Sutherland.

18 THE COURT: Mr. Sutherland, you may step down.

19 MR. DESCHAMPS: Your Honor, I only have one more
20 thing. We need to introduce Exhibit 25 into evidence. I
21 believe it stipulated, the insurance applications.

22 THE COURT: Alright. Plaintiff's 25 is admitted into
23 evidence.

24 MR. RISER: Thank you, Mr. Sutherland.

25 THE COURT: You may step down. Alright, ladies and

1 **(Jury entered the courtroom at this time.)**

2 THE COURT: Madam Forelady, ladies and gentlemen of
3 the Jury, I appreciate y'all getting back here on time. I
4 understand y'all were starting back directly at 2:00, we had a
5 few matters to take up outside your presence, but we've gotten
6 those taken care of. I do want to let you know when I gave you
7 my initial instructions on how this case would proceed, I
8 believe I told you that the Plaintiff would go forward first,
9 and they would enter their evidence, and then the defense would
10 go. Because of scheduling issues, we -- well, I say "we," all
11 of the parties have agreed to allow a couple of witnesses to
12 testify out of turn. This is not the norm, but I am telling
13 you that the Plaintiff has not rested. The Plaintiff will
14 still put up evidence, however, we are going to allow the
15 Defendant, or one of the Defendants, call witnesses at this
16 time because of some travel issues. Alright. Yes, sir. Mr.
17 Watson?

18 MR. WATSON: Alright. The Insurer Defendants would
19 call Clark Hanness to the stand.

20 THE CLERK: Raise your right hand. Do you solemnly
21 swear or affirm that the testimony you're about to give to the
22 Court in this case will be the truth, the whole truth, and
23 nothing but the truth, so help you God?

24 **CLARK HANNESS WAS DULY SWORN AT THIS TIME AND**
25 **TESTIFIED AS FOLLOWS:**

1 THE WITNESS: I do.

2 THE CLERK: You may be seated. State your name for
3 the Court, please.

4 THE WITNESS: Clark Hanness.

5 **DIRECT EXAMINATION**

6 BY MR. WATSON:

7 Q. Sir, please state your name loud and clear for the Jury.

8 A. Clark Hanness.

9 Q. And Mr. Hanness, where do you live?

10 A. London.

11 Q. And we're used to accents here in South Carolina, but
12 the Jury may not be used to yours, so if you can go nice and
13 slow, it would be good for everybody. How old are you, sir?

14 A. I'm 48.

15 Q. Married?

16 A. I'm married, yes.

17 Q. Children?

18 A. Yeah, two children, a boy and a girl.

19 Q. And where do you work?

20 A. I work at Tokio Marine Kiln, TMK for short.

21 Q. And what is Tokio Marine Kiln?

22 A. TMK is a Lloyd's syndicate.

23 Q. And if you can go even a little louder, or move the
24 microphone closer to you.

25 A. I'm sorry. Is that better? Is that better?

1 Q. So Tokio Marine is a Lloyd's syndicate; is that what
2 you're saying?

3 A. That's correct, yes.

4 Q. And what does that mean, for the members of the Jury who
5 don't know what a Lloyd's syndicate is?

6 A. So the Lloyd's insurance market is basically a
7 collection of insurers, and each insurer is called a syndicate
8 and syndicates are made up of different financial bankers
9 names, or it could be a corporate entity like myself.

10 Q. And how long have you worked with Tokio Marine Kiln?

11 A. Coming up for seven years now.

12 Q. And where is that syndicate based? Where is their home?

13 A. London.

14 Q. And Mr. Hanness, tell the Jury a little bit about your
15 experience in the insurance industry.

16 A. I've been working all over the Lloyd's market now, maybe
17 30 years. I started when I left university, I started off with
18 sort of an credit control area of insurance, it was meant to be
19 temporary where I had travel plans but never materialized and
20 over the years the world has changed and through different
21 avenues, through the insurance, insurance world, of handling
22 the majority of my time is North American property business.

23 Q. And North American property, being the United States
24 property policies like the A. Tebele & Sons policy that we're
25 here about?

1 A. Exactly, yes.

2 Q. And have you over your career in the insurance industry,
3 you've handled some major claims. What kind of examples are
4 some of the claims you've worked?

5 A. So in my time, I've sort of experienced, starting out, I
6 think it's, like, WTC, Katrina, most of the hurricanes and
7 storms that have unfortunately happened over the last few
8 years, the wildfires in California, wildfires even more
9 recently in Hawaii.

10 Q. And WTC is what?

11 A. Oh, sorry, the World Trade Center losses.

12 Q. So for 9/11?

13 A. Yes.

14 Q. So the insurance claims that spun out of the 9/11
15 events?

16 A. Yes.

17 Q. And the Jury's heard a little bit about this, but what
18 -- explain the Lloyd's insurance market and how that's
19 different from the insurers that they may know from the States.

20 A. Okay, yeah. So I don't know how far you want me to go
21 back, but Lloyd's started out, Edward Lloyd, back in 1688, I
22 think it was, he had some friends that were shipping the marine
23 and a few people lost cargo just because of the nature of the
24 sea. Through agreements, literally over cups of coffee in the
25 coffee house, as Lloyd's was first called, agreements were made

1 between businessmen to share portions of risk. So if someone
2 was to take their cargo, I don't know, from, either from, let's
3 say, from America to England, send them some goods, to
4 underwrite that risk and to hopefully in the event of a loss
5 transfer some of that risk to other people, and for that
6 benefit of doing that they shared some of the -- they pay a
7 premium for that, as using those people's money to protect
8 their goods and products.

9 Q. And do you work for Lloyd's?

10 A. No.

11 Q. And is Lloyd's an insurance company?

12 A. No.

13 Q. So the Jury's heard a lot about Lloyd's of London and
14 the Lloyd's policy. Does Lloyd's actually provide insurance to
15 A. Tebele & Sons?

16 A. No. Lloyd's is a, it's just a building, it's a house,
17 it's a marketplace. It's just where the insurers, the
18 syndicates, as they're known, operate and sort of trade their
19 business.

20 Q. And how many, roughly, syndicates are there in the
21 Lloyd's market?

22 A. I don't know the last count. I think there's around 80.
23 There's some new players that either get merged or a new
24 interest in the market, or different syndicates wind up and
25 they are in several areas of it, I'd have to check that.

1 Q. Now, does your syndicate, Tokio Marine Kiln, are they
2 one of the syndicates that are insuring the A. Tebele & Sons
3 property?

4 A. Yes.

5 Q. Are they the only one?

6 A. No.

7 Q. And roughly, how many are there?

8 A. I don't know off-hand, eight or ten.

9 Q. And among those eight or ten syndicates, do each of them
10 have a percentage interest in the risk?

11 A. Yes.

12 Q. So if there's a claim, each is responsible for their own
13 percentage share?

14 A. Correct.

15 Q. Now, is it common to refer to the different syndicates
16 that are involved in a particular policy as the interested
17 underwriters?

18 A. Interested underwriters or Certain Underwriters at
19 Lloyd's.

20 Q. And so for the A. Tebele & Sons policy, are the Certain
21 Underwriters that are on that risk the only insurers on that
22 policy?

23 A. No. This risk is made up of the Lloyd's market as the
24 syndicates, as I hopefully explained. I think we take about,
25 as a market, 63 percent, and then there's HDI, and I can never

1 get the name right, but Security General Insurance, I don't
2 know the exact name.

3 Q. General Security Indemnity.

4 A. General Security, okay.

5 Q. And so each of those other two companies, they have a
6 percentage, as well?

7 A. Yes.

8 Q. But the Certain Underwriters have the largest share of
9 63 percent; is that what you're saying?

10 A. Yes, as the market, yes.

11 Q. Now, how does, or specifically with regard to Certain
12 Underwriters of Lloyd's that you're here on behalf of, how do
13 they become the insurers of customers in the United States?

14 A. So you may have heard the phrase we mentioned about the
15 excess of service lines, so as the fully insurers we provide
16 binding authorities to companies like managing general agents,
17 like Amwins SRU.

18 Q. So specifically for this policy, the A. Tebele & Sons
19 policy, Amwins SRU, were they delegated the authority to bind
20 coverage?

21 A. Yes, they were.

22 Q. And you were here for Mr. Melvin's testimony. Was he
23 the individual in charge of that for this policy?

24 A. Yes, for this risk, yes.

25 Q. Now, do you work in the underwriting of policies?

1 A. No, purely claims.

2 Q. And with respect to how this policy came into existence,
3 did you play any role in that?

4 A. No.

5 Q. Giving a little background, though, is there actually
6 written documentation regarding the authority that's given to
7 someone like Mr. Melvin at Amwins SRU as far as which policies
8 and which types of policies they should seek to issue?

9 A. Yeah, definitely. We operate under what we call a
10 binding authority. So that's an agreement between the insurers
11 and the MGA, managing general agent, SRU in this case, and
12 within that you'll get parameters of the type of risks that can
13 and can't be written, sort of size, given the parameters of
14 what they can and can't bind on their behalf.

15 Q. And do those parameters include which types of forms to
16 use in the policies that they're going to be issuing for you?

17 A. Yes, they handle the whole policy.

18 Q. And for example, a form like Protective Safeguard
19 Endorsement that we've heard all about the last three and a
20 half days, is that the type of form that Amwins SRU is given
21 binding authority to include in the policies?

22 A. Yes.

23 Q. And even though we have three different insurers, that's
24 the insurers, you have the Certain Underwriters, HDI and
25 General Security, their risk is all in one policy?

1 A. It's one policy, yes.

2 Q. And so if there's a loss to be paid out, how do you make
3 decisions amongst you?

4 A. Well, we're all separate insurers, so as the lead of the
5 Lloyd's Market, I agree, review, and assess the loss on behalf
6 of the Lloyd's Market, and the other two insurers will do their
7 own assessment for their relative shares.

8 Q. And do you then -- are there occasions where you may
9 confer with the other members of the market on a decision?

10 A. Yes, regularly, yes.

11 Q. And is that's something that typically happens?

12 A. Yes, yes, definitely.

13 Q. And if from time to time one member of the market may
14 have a different opinion on how a claim should come out than
15 the other?

16 A. Definitely, yeah. They can make their own decision.

17 Q. And is that usual in the Lloyd's insurance market, in
18 particular, to do a lot of group decision-making, where there's
19 multiple people involved and you're having to work amongst a
20 group of people to make a decision?

21 A. Yes.

22 Q. Now, in the claims role that you're in, do you typically
23 know about the process by which a policy came into existence,
24 came into be bound?

25 A. No.

1 Q. What's the first thing you learn about in a claims role
2 when it comes to a new loss?

3 A. So we operate under another agreement for the claim site
4 because of the time difference and the different time zones and
5 different territories, so we outsource our claims to what's
6 known as a TPA, a third-party administrator, and they, similar
7 to the binding authority for the MGA, they'll have an agreement
8 where they can handle claims on our behalf, much within certain
9 sort of guidelines and authorities, and the main point of that
10 is to make sure the FNOL, which is short for first notification
11 of loss is received by someone local, so we can get things
12 moving, get adjusters on the ground, and experts appointed as
13 such.

14 Q. So this first notice of loss is what starts the claim
15 process that you would then be involved with?

16 A. Correct.

17 Q. And upon receiving a new loss, are you provided with or
18 do you obtain the policy that's at issue?

19 A. Oh, so, yeah. So normally, at the first notification,
20 you'd expect to see the loss of code form, the word code we
21 used before, which is a standard form with brief details of the
22 loss notification, the policy, certificate of insurance, or
23 declaration, interchangeable name, and to get the starting
24 facts of the loss and the investigation.

25 Q. I've put a set of documents next to you, which are all

1 the ones I'm going to ask you about before and we've agreed and
2 we stipulated. Go to the second one in the stack.

3 A. The second document?

4 Q. Yes. And it would be marked Defendant's Exhibit 31.
5 And at the same time, these have all been stipulated to in
6 evidence.

7 **(Defendant's Exhibit No. 31 was admitted into evidence.)**

8 BY MR. WATSON:

9 Q. Okay. And what is Defendant's Exhibit 31 in front of
10 you?

11 A. That is the policy, the insurance policy.

12 Q. Is that the policy for A. Tebele & Sons that we are here
13 about?

14 A. Yes, it is.

15 Q. And if you turn to the second page, the third -- I've
16 tagged some things with sticky notes to try and move things
17 along. Do you see this, the page entitled Property
18 Declarations? Are you on that one?

19 A. Yes.

20 Q. And in the top box, is that indicating the different
21 insurers and their individual policy numbers?

22 A. Yes, I see it, yes.

23 Q. And then down below, policy period, we know from other
24 testimony was effective January 15th, 2019 through 2020,
25 correct?

1 A. Correct.

2 Q. Skip to the next tabbed page. This would be the page
3 that says: Forms Applicable to Common Forms. What is on this
4 page?

5 A. This is this list of all the policy forms and any
6 endorsements or attachments that form that policy.

7 Q. And does have any relationship to the forms that are on
8 a binder when a policy is first bound?

9 A. Yes.

10 Q. And what would the relationship be?

11 A. It's the one at the start of the contract. It's a
12 physical piece of that.

13 Q. So they match?

14 A. Yes.

15 Q. On this form, in particular, about two-thirds of the way
16 down is their SRU-024, the Protective Safeguards Endorsement
17 that we've heard so much about?

18 A. Yes.

19 Q. And so that was a part of this policy?

20 A. Correct.

21 Q. Next, I'm going to the next tabbed page, which is
22 entitled: Property Damage Coverage Schedule. This is one that
23 we've not talked about before. Are you on that page?

24 A. Yes.

25 Q. Now, on this page, do you see subsection C where it says

1 "Insured Location"?

2 A. I do.

3 Q. And it's in quotes. Why is it in quotes? What is the
4 quote -- seeing something in quotes like that signify to you in
5 a policy?

6 A. It's just identifying, emphasizing.

7 Q. Is it a term that would be potentially defined or
8 discussed in the policy?

9 A. Yes.

10 Q. And so in that Section C is the term Insured Location
11 defined?

12 A. It is, yes.

13 Q. And with regard to this particular policy, does it
14 contain itself in the text of the document, a list of all the
15 locations that are insured, or are those documents somewhere
16 else, would that be somewhere else?

17 A. Oh, sorry, the insured locations.

18 Q. Right. And that's what's indicated here in this
19 definition section under number 1? It says: An insured
20 location is within the policy territory. And that's just being
21 where, the United States?

22 A. Yes, for this contract, yeah, it might be different
23 depending on the contract, but for this one, yes.

24 Q. And it says: Listed on the schedule of the locations
25 attached to this policy, or listed on the latest schedule on

1 file with us. Do you understand that to mean that the schedule
2 of values that we've heard so much about that we had blown up
3 with the yellow and orange on it?

4 A. Yes, yes.

5 Q. And so is that what tells you as someone handling the
6 claims which locations are the subject of the policy?

7 A. Definitely, yes.

8 Q. Next, we're going to another page that the jurors and
9 the Court has seen already. This one is entitled Property
10 Damage Coverage. Are you at that page, Mr. Hanness?

11 A. I believe so, yes.

12 Q. Now, would you read the first sentence under Section A,
13 the coverage?

14 A. A, Coverage: We will pay for direct physical loss or
15 damage to Covered Property at the insured location caused by or
16 resulting from a Covered Cause of Loss.

17 Q. And so in the industry, is this what's called the
18 covering language, or the insuring language?

19 A. Yes.

20 Q. And it has different elements to it. We've already
21 talked about one, the notation where it says: Insured Location
22 in quotes. That's the list of the 24 locations?

23 A. Scheduling of values, yes.

24 Q. Schedule of values. Now, direct physical loss or
25 damage, is there anything unusual about that? What does that

1 mean in insurance world to you? Direct physical loss or
2 damage.

3 A. So where were we?

4 Q. In the beginning of the definition, right?

5 A. Oh, sorry. Back up. Yeah. So that's, yeah, it's
6 something that's -- occurs, like fire, windstorm.

7 Q. You've had an event happen to your property?

8 A. Yes.

9 Q. Something has damaged your property?

10 A. Yes.

11 Q. Now, we know at which location the property would be at,
12 but then it says something else. It says: To Covered
13 Property, capital C, capital P, which was the subject of some
14 testimony earlier today. What is the meaning of Covered
15 Property there with relationship to this coverage? What does
16 that mean?

17 A. It's identifying that the property that's listed in the
18 schedules is what's covered and the different elements of that
19 as you went down to different, I'm sorry, what do you call it?
20 Different bullet points, numbers, it's like fixtures or
21 fittings, the building itself.

22 Q. So it defines the different parts of a building that
23 this policy could cover at this insured location?

24 A. Yes, subject to a loss, yes.

25 Q. And does the fact that something is listed in this

1 covered property section make it automatically reimbursable
2 under the policy if it gets damaged?

3 A. No. It's got to be caused by a covered cause of loss.

4 Q. And that's the rest of the sentence up there: Covered
5 Cause of Loss, which again, you note is capital C, capital C,
6 capital L, right? And does that mean that it's discussed in
7 the policy and defined?

8 A. Yes.

9 Q. Alright. Let's go to the next page. And now I'm
10 showing -- this is one that has not been discussed directly
11 yet. Can you identify this section that starts on this page?

12 A. So what page are you on? Was it the next page?

13 Q. The Covered Causes of Loss, the next post-it tab. I'm
14 sorry.

15 A. Yes.

16 Q. And this section then defines what Covered Causes of
17 Loss means that ties back to that sentence we read before?

18 A. Correct.

19 Q. And in that Section A, explain the meaning or how you
20 look at that section.

21 A. Well, so say you've got Covered Causes of Loss that
22 could cause the damage, but there will be elements that are
23 excluded, not covered.

24 Q. And so sometimes people in the industry talk about an
25 all-risks policy. Does this language feed into that at all?

1 A. Yes. It's you think about it always as a starting
2 point, however, there will be some exclusions or limitations on
3 that.

4 Q. And so as per the wording, it says: Direct physical
5 loss unless the loss is excluded or limited. And so for
6 something to not be able to be covered, there has to be an
7 exclusion or a limitation that applies?

8 A. Correct.

9 Q. Let's go to the next tab page, which is one we've seen a
10 lot entitled Protective Safeguards Fire Endorsement.

11 A. Yes.

12 Q. Are you there?

13 A. Yeah.

14 Q. And do you recognize this page to be the operative
15 Protective Safeguard Fire Endorsement for this policy?

16 A. I do, yes.

17 Q. And there's been a lot of discussion among witnesses
18 about this, the symbol AS. First off, let's start with the
19 text under the protective safeguard, Section A. It starts off:
20 As a condition of this insurance. What is a condition?

21 A. A condition is something you have to comply with and do.

22 Q. In order to even get started; is that what you mean?
23 It's a requirement?

24 A. Yes. So that's probably a better word, requirement,
25 yeah.

1 Q. And the condition referenced here is to maintain the
2 protective devices or services listed in the Schedule above,
3 the capital S. What does "the schedule above" refer you to?

4 A. So the schedule above is, it lists out the associated
5 elements, the conditions that are required to be adhered to by
6 an insured. On the left-hand side, it's sort of two columns,
7 on the left-hand side, you've got the corresponding legend,
8 which refers to which of the five conditions apply. If you see
9 that on the screen, you've got basically 1, 2, and 5 of the
10 five. You've got AS, AA, and other. And then the next column
11 along, it says that -- what location is applicable to. And it
12 refers to the schedule that we talked about earlier at the
13 beginning of the policy.

14 Q. And so the notation of the AS, AA, and other in the box
15 at the top of the page, that ties down to numbers 1, 2, and 5
16 below?

17 A. That's correct, yes.

18 Q. And specifically, subsection 1, the AS, that one is
19 defined to mean the automatic sprinkler system, right?

20 A. Correct.

21 Q. And that definition requires, as expressed there, there
22 has to be a connected system?

23 A. Correct.

24 Q. The schedule of values that's being referred to doesn't
25 contain these AS symbols, though?

1 A. No, because the AS refers to legend. On the left-hand
2 side, as I said, you've got two columns here. You've got the
3 symbols that would refer back. The legend is referring back to
4 the text below. And then what location it applies to, and it
5 says: Per the schedule.

6 Q. And so have you ever seen this AS symbol on a schedule
7 of the values in that way, as Mr. Twaddell and Mr. Finkel
8 testified about?

9 A. Not that I recall.

10 Q. And because you didn't have the AS symbol on the
11 schedule of values, does that mean that the insured was not
12 required to have an automatic sprinkler system at the given
13 locations?

14 A. Not at all. If that location is, as per the column on
15 the right-hand side, if that location is identified as evidence
16 with the system on the schedule of values, then the conditions
17 apply.

18 Q. And then towards the bottom of this page, in addition to
19 the condition there's a sub B, it may be a little tough to
20 read. It says: The following is added to the exclusions
21 section of the policy in boldface and all caps. Where does the
22 exclusion section live in the policy?

23 A. I think it goes back to where we started early on.

24 Q. The Covered Causes of Loss?

25 A. Under the covered Causes of Loss, those that wouldn't be

1 covered.

2 Q. So this endorsement is adding a new exclusion to the
3 list?

4 A. Yeah. It's only under the exclusion if the conditions,
5 as I said, the requirements wasn't met, failure to meet the
6 conditions would -- it's not constantly there. If you apply
7 the conditions, then it doesn't -- it doesn't activate, but if
8 the conditions are not met, then the exclusion applies.

9 Q. And specifically, with regard to perils, the type of
10 perils, which perils would be excluded based on this section?

11 A. This particular exclusion says: We will not pay for
12 loss or damage caused or resulting from fire.

13 Q. So even if an insurer didn't have the proper sprinkler
14 system, but a hurricane hits the property, would this
15 endorsement have any impact?

16 A. No.

17 Q. And so the rest of the exclusion then requires the
18 policyholder to maintain a protective safeguard listed in the
19 schedule above? And schedule above, again, is the box like
20 we've already talked about?

21 A. Yes. The location schedule, the box that it refers to.

22 Q. And then it says: Over which you have control. The A.
23 Tebele & Sons was the building owner on this matter; is that
24 right?

25 A. Yes.

1 Q. And the last section then would be: Incomplete Working
2 Order. We've heard ample testimony already about this. Was
3 the sprinkler system at 1901 North Kings Highway in any kind of
4 working order on February 24th of '19?

5 A. I believe the sprinkler system needs water to be
6 operational, so, no.

7 Q. Now, when you read policies like we've done, are there
8 some times where there are new additions made to a policy after
9 its inception date?

10 A. There can be changes, yes.

11 Q. And so those take the form of something called
12 endorsements?

13 A. Correct.

14 Q. Okay. And go to the last tab here with this exhibit,
15 and this is an example for the Jury. What is the change that's
16 been made to this policy by way of this endorsement?

17 A. So it's someone at the insurance obviously requested a
18 change in/or adding the location.

19 Q. So the policy has added 504 33rd Avenue North in Myrtle
20 Beach, too, as an additional location?

21 A. Correct.

22 Q. And is that something that you routinely see in your
23 role handling claims, the endorsements?

24 A. Yeah, on these type of policy, especially commercial,
25 when you've got a portfolio of properties like this, things --

1 sometimes things sell, you move on, you add new properties,
2 they allow for that sort of flexibility, and then the
3 submission will be made through the normal channels. This
4 would have made its way to SRU at some point, who would have
5 considered the request, and I think there's a reference to
6 adjustment in premium and such.

7 Q. Put the policy aside and go to the next document in your
8 stack, which is marked Defendant's Exhibit 33. Do you
9 recognize this to be the individual fire endorsement, just
10 isolated for the purpose of the record?

11 A. Yes, I do.

12 Q. And we didn't talk about it but we went through the
13 policy. In the lower right corner, does that number correspond
14 with the number on that forms list we looked at earlier on in
15 the beginning of the policy?

16 A. Yeah, that should match one of those listed forms, yes,
17 it does.

18 Q. And when you reviewed this policy related to this claim,
19 was the contents of the schedule box as shown on Exhibit 33
20 with the AS, AA, and other as the symbol referenced in the box?

21 A. The scheduled locations?

22 Q. No, no, no. In the box on this endorsement, is this
23 version of the Protective Safeguards Fire Endorsements the one
24 that was contained in the subject policy for A. Tebele & Sons?

25 A. Yes.

1 Q. And go to the next document, if you would, Mr. Hanness.
2 We've marked previously and it's been stipulated in evidence as
3 Defendant's Exhibit 32, which we've seen in other form earlier
4 in the case. I'm not going to ask you to try and read any of
5 this, but do you recognize what this is?

6 A. This would be the scheduled locations that I'm we were
7 talking about.

8 Q. And this is what in the Protective Safeguard Endorsement
9 where it says: The schedule on file with us. That would be
10 Defendant's Exhibit 32 or something more legible and large?

11 A. Yeah, the box on the right of that, the column on the
12 right of that box is what that's referring to.

13 Q. And not only, that's where one would go not only to look
14 for the sprinkler information, but also for the addresses of
15 which locations are insured at all?

16 A. Yeah, the first point of adjusting any loss, you've got
17 to make sure there's coverage in place so you check the
18 relevant location, and again, some of the bigger schedules and
19 locations in the commercial world, you've just got to make sure
20 they're an appropriate location where a loss occurred is on the
21 schedule covered by the policy.

22 Q. Okay. And also on that same schedule of values is where
23 one can find the different limits for the different types of
24 coverage?

25 A. Yes. That would be the values of the buildings, et

1 cetera.

2 Q. And the Jury's been told several times about what those
3 are for this policy for this location, so I'm going to move
4 forward. Let's talk now about this claim as it was handled by
5 Certain Underwriters at HDI Global and General Security. How
6 did -- when, I should say, you already said how, when did the
7 insurers receive notice that a fire had occurred?

8 A. So I don't know the date off hand, I'd have to check the
9 report.

10 Q. Was it close in time to the fire?

11 A. Yes.

12 Q. And was Peninsula Insurance Bureau designated as the
13 entity to lead the adjustment process for you in the United
14 States?

15 A. Yes, PIB Peninsula Insurance Bureau are the TPA for this
16 contract.

17 Q. And TPA, again, is a third-party administrator?

18 A. Correct.

19 Q. And so they're given, similar to the way Amwins SRU is
20 given underwriting authority, is that entity given adjusting
21 authority?

22 A. Yes.

23 Q. Was there an investigation done of the scene of the
24 fire?

25 A. Yes.

1 Q. And we've seen some photographs from Lauraleigh Weaver.
2 Who would have retained Ms. Weaver to do those photographs in
3 that investigation?

4 A. That would have come from the TPA, PRB.

5 Q. And they're doing that as authorized by the insurer?

6 A. Definitely.

7 Q. And after the field inspection was done and the photos
8 were taken, did you investigate the cause of the fire?

9 A. Yeah, a cause and origin expert was retained.

10 Q. And that was done through a type of expert that does
11 that?

12 A. Yeah, specialized in that field.

13 Q. And was the cause of the fire any type of concern
14 relating to the applicability of the policy?

15 A. The cause of the fire, no.

16 Q. After that, do you get reports from Peninsula along the
17 way during the process of their adjustment?

18 A. Yeah.

19 Q. And was it identified -- at what point in the adjustment
20 was it identified about the lack of inoperative sprinklers
21 system at this property?

22 A. Quite early on. I can't remember the exact dates, the
23 start of March, possibly.

24 Q. If you go back to your stack of documents.

25 A. Yeah.

1 Q. You can jump ahead a couple to what's marked as
2 Defendant's Exhibit 38, March 15th. Okay.

3 A. Alright.

4 Q. And this is Defendant's Exhibit 38, it has already been
5 agreed, agreed to publish it. This is a letter authored by
6 your third-party administrator, Peninsula?

7 A. Correct.

8 Q. And what is being requested here on March 15th?

9 A. This is the request for proof -- yeah, the request for
10 insured's proof of loss.

11 Q. And what is the proof of loss?

12 A. Evidence as sort of cost of expectations of a loss.

13 Q. And are proofs of loss something that's requested in the
14 claims process on a regular basis?

15 A. Yeah, it can be.

16 Q. And is a proof of loss just the policyholder giving you
17 a number, or is there something in that process that makes it
18 more authoritative than just them writing it down?

19 A. So I don't --

20 Q. Do they take an oath relating to their proof of loss?

21 A. Yeah. It's got to be accurate. It's basically accurate
22 information and to the best of their knowledge.

23 Q. So they're swearing to tell the truth that it's a
24 truthful --

25 A. Yes.

1 Q. -- truthful number, I should say. Alright. If you go
2 to the next document, Defendant's Exhibit 39.

3 A. Yes.

4 Q. This was another letter from your third-party
5 administrator, Mr. Speak, with Peninsula on March 19th, 2019.
6 Now, in the letter, does Mr. Speak on your behalf address the
7 issue of the lack of the protective sprinkler system?

8 A. Yes, he does.

9 Q. And is that putting the insured on notice of the
10 concerns that the insurers were having?

11 A. Yeah. This is what we refer to as the reservation of
12 rights. That's is to keep communication with an insured that
13 we investigate the losses on the claim, but we also let them
14 know as soon as we realize that there is a potential element in
15 the policy, maybe an exclusion applies, in this case the
16 endorsement, about the condition not being complied with based
17 on the preliminary findings, and therefore, it's sort of a
18 carried on in investigation, however, we might need some more
19 information. We need to gather all the facts to that before we
20 make a final determination on the claim so it gives us
21 opportunity to advise something if it has been missed or the
22 insured wants to give us further information to support their
23 claim.

24 Q. So is this a denial of the claim?

25 A. Oh, definitely not, no, not this stage. We're trying to

1 gather more facts. We didn't have enough information at the
2 time to make a determination. Unfortunately, there are times
3 when denials have to be issued for breach of conditions or
4 exclusions, but before we make that decision, we take it very
5 seriously and we're always try to find in favor of the insured.
6 If we can find coverage, we will.

7 Q. And do you provide reference to the policy language from
8 the Protective Safeguard Enforcement in this letter?

9 A. Yeah. That's the idea of the resolution is to help you,
10 it's to help the insured with what we're looking at because
11 while we're saying, oh, we aren't paying your claim yet, and
12 you're going to find out why, it's to try and assist in
13 understanding and make it clear as to why we can't make a
14 decision at that time, and I think we even say towards the end
15 confirming it's not denial, that's just our investigation is
16 ongoing.

17 Q. And you invite the insured towards the end of the letter
18 to provide any information that they have to assist you?

19 A. Exactly that, because especially on a portfolio this
20 size if something's been missed or a request was made to change
21 something that may not have made it into the packet and made it
22 over to us, possibly.

23 Q. So you've now asked Tebele & Sons for a proof of loss
24 and you issue your reservation of rights letter. I'm going to
25 jump ahead. I think your file may have been out of order.

1 Will you locate exhibit Defendant's 41.

2 A. Which one? I've got that.

3 Q. Alright. What is that?

4 A. That is the sworn statement of proof of loss.

5 Q. And so this is what you requested of him?

6 A. Yes.

7 Q. And I think Mr. Twaddell testified, even though it was a
8 few days late, A. Tebele & Sons provided it anyway?

9 A. Yes.

10 Q. And they signed -- Mr. Tebele signed and added some
11 language next to his name. Can you see what that says?

12 A. Is it manager -- KR -- sorry, I can't read that.

13 Q. KRSC, perhaps?

14 A. Possibly, yeah.

15 Q. And what was Tebele & Sons making claim for by way of
16 this document?

17 A. In terms of the numbers?

18 Q. Correct.

19 A. Well, the numbers we have been mentioned before, it says
20 2,850,000.

21 Q. And do you understand that that could be the sum of the
22 three coverages on this policy?

23 A. Yes.

24 Q. At this point, did you engage the assistance of counsel
25 to guide -- or provide your advice relating to this claim?

1 A. Yeah, I can't remember exact dates.

2 Q. If you can look at the next exhibit, Defendant's 42?

3 A. Yes.

4 Q. So it's a five-page letter. Take a moment if you need
5 to look at it, but in broad strokes, what is the purpose of
6 this letter?

7 A. This is a letter requesting the examination under oath
8 of an insured representative.

9 Q. And what is an examination under oath in the insurance
10 world?

11 A. An examination under oath is like a deposition or
12 testimony of facts in a situation.

13 Q. And is there a provision in the policy that governs
14 whether you can ask a policyholder to do that?

15 A. Yes, there is.

16 Q. Okay. And is that the, you used the word "conditions"
17 earlier, is that a condition of the policy?

18 A. It is a condition of the policy, yes.

19 Q. And Defendant's Exhibit 42 is the letter we've been
20 speaking of, and this was sent to Tebele & Sons, April 26th of
21 2019?

22 A. Yes.

23 Q. So we're about two months after the fire, and is this
24 being requested just on Certain Underwriters' behalf or on
25 behalf of the entire set of insurers?

1 A. No, this is all the insurers. The first paragraph even
2 clarifies that, as well.

3 Q. And in the next paragraph, are the insurers pointing out
4 that there's an issue that requires further investigation?

5 A. Yes.

6 Q. And in substance, what was that issue?

7 A. That issue is the, not the lack of operating fire --
8 fire alarm -- smoke alarm systems -- sprinkler systems, sorry.

9 Q. And is there a reference made to the endorsement for the
10 protective safeguards here in this letter?

11 A. Yes.

12 Q. And is that the same form number that we've been talking
13 about, SRU-024?

14 A. Yes.

15 Q. And this comes from Coverage Counsel?

16 A. Correct.

17 Q. And looking further, there's a reference to March
18 correspondence from Mr. Twaddell, in the 3rd paragraph.

19 A. Yes, there is.

20 Q. And your counsel is responding to inquiries from Mr.
21 Twaddell that he had made to Mr. Speak?

22 MR. CONNELL: Your Honor, can we have a moment,
23 please?

24 THE COURT: Yes.

25 **(Discussion was held off the record at the bench by**

1 **Court and counsel.)**

2 THE COURT: Mr. Watson, you can proceed.

3 MR. WATSON: Thank you.

4 BY MR. WATSON:

5 Q. Mr. Hanness, the examination under oath, according to
6 this exhibit when was it scheduled to occur?

7 A. This was Thursday, the 16th -- I'm sorry. I'll go into
8 English, Thursday, May 16th, 2019.

9 Q. And as part of this request for the examination under
10 oath, did the insurers also request documents to be provided?

11 A. Yes.

12 Q. And are the list of what they requested set forth in the
13 letter?

14 A. I believe they are, yes.

15 Q. And did that examination under oath go forward?

16 A. Yes, it did.

17 Q. And if you turn us to the next exhibit, Defendant's 44.

18 A. Okay.

19 Q. Are you able to identify what Defendant's Exhibit 44 is?

20 A. The transcripts of the examination under oath of Abraham
21 Tebele.

22 Q. And on what date did that examination ultimately occur?

23 A. Wednesday, the 3rd of July, 2019.

24 Q. And did the insurers rely upon the contents of the
25 testimony given in that examination under oath as part of

1 making their claims decision?

2 A. Yes.

3 Q. And during that examination, was a representative
4 provided for A. Tebele & Sons to give that testimony?

5 A. Yes, I believe so.

6 Q. And who was that?

7 A. Abraham Tebele.

8 Q. And was he asked questions regarding the facts and
9 circumstances surrounding this claim?

10 A. Yes.

11 Q. Following the examination under oath that was taken in
12 July, if you turn to Defendant's Exhibit 46.

13 A. Yes.

14 Q. What occurred next in the process?

15 A. Following the outcome of that, the contents of the
16 examination under oath was reviewed, along with all the other
17 information that had been gathered, and this claim decision was
18 made, and unfortunately in this situation, this letter was then
19 drafted to the insured.

20 Q. And what was the ultimate decision made on the claim?

21 A. From the evidence gathered and provided, the condition
22 of the endorsement that we looked at earlier, the sprinkler
23 system wasn't met, therefore, the exclusion applied.

24 Q. And there's been some discussion about this letter
25 already. Just a few questions about it. Did the insurers

1 quote the policy language that they were relying upon to
2 decline coverage in the letter?

3 A. Yes, I believe they did.

4 Q. And is it the same protective safeguards endorsement
5 language that we've been talking about during your examination
6 so far?

7 A. Yes, it is.

8 Q. And did the insurers in this letter include an
9 explanation of why they were declining the claim, as opposed to
10 just putting the language in the letter? Is there more
11 explanation than that?

12 A. Yeah, exactly. It's never easy having to advise someone
13 that the policy isn't going to respond, so we don't just tell
14 people, you're not covered, go away. We explain the reasons
15 why. And that's why we do things like examination under oath
16 and make sure that we're doing the right things in the right --
17 we deal with all the states across the U.S., so everyone's got
18 their own set of laws. Like, Mr. Finkel, was it, yesterday
19 testified that South Carolina has got its own --

20 MR. CONNELL: Objection, Your Honor, about what Mr.
21 Finkel, that would be pinning one witness against another.

22 THE COURT: Sustained.

23 THE WITNESS: I didn't know what to do, sorry.

24 BY MR. WATSON:

25 Q. Give a different example than Mr. Finkel.

1 A. Oh, South Carolina will have certain different
2 requirements or procedures than another state, so we use
3 counsel to make sure we get that right and do right by the
4 insured.

5 Q. And in the letter at page 3, as part of the explanation,
6 did the insurers explain their position relating to the AS
7 legend in protective safeguard endorsement that has been the
8 subject of a lot of testimony?

9 A. Yes.

10 Q. Was that letter, Defendant's Exhibit 46, authorized to
11 be issued by Mr. Speak on all of the insurers they have?

12 A. Yes, it was.

13 Q. And from your point of view as a claims handler, did it
14 fully and completely explain the reason for the declination of
15 the claim?

16 A. Yes, it did.

17 Q. When you're evaluating whether a claim is covered or not
18 under a policy, does the amount of the premium charged for any
19 particular location matter?

20 A. Not at all.

21 Q. Do you look at it at all when doing your evaluation?

22 A. No.

23 Q. Did the insurers look for a way to find coverage for
24 this claim?

25 A. Yeah. As I said, we do our investigation, and that's

1 why, unfortunately, it can't always be as quick as we hope, but
2 we don't want to make the wrong decision too fast. We just
3 didn't give someone -- as I say, in an example like this, if
4 there was something that was missed or overlooked, we want to
5 give everyone the opportunity to present their information.

6 Q. And in the investigation of the claim from the Certain
7 Underwriters point of view, did the underwriters, Certain
8 Underwriters here ever receive information indicating that this
9 system was connected to water and operational at the time of
10 the fire?

11 A. You're asking me -- sorry?

12 Q. Did you receive any information that this sprinkler
13 system was connected at the time of the fire?

14 A. Sorry --

15 Q. Too many "nots" in the sentence?

16 A. Yeah.

17 Q. Sorry. Did the basis for your declination is that the
18 sprinkler system that should have been connected to water was
19 not?

20 A. Was not connected. Yes.

21 MR. WATSON: Alright. At this point, I would move
22 into evidence the documents we've talked about. Some of them
23 will be duplicative. We have Defendant's 31, the policy;
24 Defendant's 33, which is the fire endorsement page; Defendant's
25 32 which is the reduced size schedule of values page;

1 Defendant's 38, which was the March 15, 2019 letter; we have
2 Defendant's 39 which was the March 19, 2019 letter; we have
3 Defendant's 41 which was the proof of loss; we have Defendant's
4 42 which was the EUO Request Letter and Defendant's 46 the
5 Declination and some of the things would already be in evidence
6 as our exhibits, but for completeness we want to make sure
7 they've all been admitted.

8 THE COURT: Defendant's 31, 33, 32, 38, 39, 41, 42
9 and 46 are admitted into evidence.

10 **(Defendant's Exhibits Nos. 31, 33, 32, 38, 39, 41, 42 and**
11 **46 were admitted into evidence.)**

12 THE COURT: Alright.

13 MR. WATSON: Thank you, Mr. Hanness. Please answer
14 everyone else's questions.

15 THE WITNESS: Thank you.

16 **CROSS-EXAMINATION**

17 BY MR. CONNELL:

18 Q. Alright. Let me just talk to you about a couple of
19 things if I could please, sir.

20 A. Of course.

21 Q. So Mr. Hayter (phonetic), I believe, if I got his name
22 right, he was actually the person who was supposed to come
23 testify; is that right, but he left the company?

24 A. He left, yes.

25 Q. And so he was the one who actually was involved in the

1 case from the beginning to the end; is that right?

2 A. Correct.

3 Q. And you had no real involvement in the case prior to
4 having to take Mr. Hayter's (phonetic) place to come to the
5 trial; is that right?

6 A. I think so, yes.

7 Q. And it's true, is it not, that you have testified in a
8 number of cases in the United States involving lawsuits against
9 Lloyd's; isn't that right?

10 A. Testified, as in?

11 Q. Come to court, like here.

12 A. No, I haven't.

13 Q. This is the first time?

14 A. Yes. I've done depositions. Is there a difference
15 between testifying -- I've done depositions. I've never done
16 this before.

17 Q. Alright. This is your first time in court?

18 A. Yes, sir.

19 Q. Alright. And you mentioned in your direct testimony, I
20 believe, that there had been lawsuits against 9/11 over Lloyd's
21 policies; would that be right?

22 A. I didn't say there's lawsuits, I said I handled claims
23 involving 9/11.

24 Q. I'm sorry. I couldn't understand.

25 A. I said I handled claims involving 9/11.

1 Q. You handled claims?

2 A. Yeah.

3 Q. And there were actually lawsuits, too; were there not?

4 A. I believe so, yes.

5 Q. There were many; were there not?

6 A. Possibly. I don't know all the policies in Lloyd's.

7 Q. And then you also mentioned that you had had -- you had
8 been involved in Katrina lawsuits, or Katrina cases; isn't that
9 correct?

10 A. Yes.

11 Q. That was the big hurricane that flooded the City of New
12 Orleans?

13 A. Yes.

14 Q. And Lloyd's argued about those claims; is that right?

15 A. I can't speak on behalf of all the Lloyd's.

16 Q. Did you hear Mr. Twaddell yesterday saying that he
17 testified, that he testified in the New Orleans claims against
18 Lloyd's; did you hear that?

19 A. I -- I -- he has, yes.

20 Q. You didn't have to testify in that case?

21 A. What case?

22 Q. The case in New Orleans that Mr. Twaddell testified?

23 A. I've got no idea what case you're referring to.

24 Q. You were talking about the Katrina cases. Did you hear
25 him yesterday talk about that?

1 A. Katrina took out half of New Orleans, most of New
2 Orleans. There's multiple cases.

3 Q. Alright. There were many lawsuits; were there not?

4 A. I wouldn't know.

5 Q. Alright. But you mentioned that as part of your direct
6 testimony, the Katrina lawsuits of litigation?

7 A. I never said lawsuits of litigation, I said claims.

8 Q. Alright. Claims.

9 A. Yes.

10 Q. There were lawsuits though; were there not?

11 A. I would assume so.

12 Q. Alright. Now, currently, you were talking about the big
13 wildfire that occurred in Hawaii; is that right?

14 A. Correct.

15 Q. And there are a bunch of claims with that; are there
16 not?

17 A. There are.

18 Q. And y'all are investigating those claims; is that right?

19 A. According the state of every claim, some have been paid
20 or if they've been made, they would have been investigated
21 and/or paid.

22 Q. And some that are lawsuits, too, are there not?

23 A. Again, I can't comment on that.

24 Q. And Lloyd's, it's true, is it not, that Lloyd's is
25 probably the largest insurer in the world; isn't that right?

1 MR. WATSON: Objection, Your Honor. Terminology,
2 subject to motion in limine and on direct, Lloyd's is not an
3 insurer.

4 THE COURT: Re-ask the question then.

5 BY MR. CONNELL:

6 Q. Alright, let's do it this way. Lloyd's -- Certain
7 Underwriters at Lloyd's, you've already talked about that;
8 isn't that true?

9 A. I have.

10 Q. And it's true that Certain Underwriters at Lloyd's is a
11 collection of either rich people or insurance companies that
12 take risks; isn't that right?

13 A. I wouldn't know if they're rich or not, but it's made up
14 of names and organizations that take risks like any insurance
15 company does, yes.

16 Q. And so they all meet together, right, at the Lloyd's
17 House, I think you've said, right? Isn't that right?

18 A. In Lloyd's building, but they don't meet together. It's
19 a marketplace, and as I tried to explain earlier, each
20 syndicate is its own entity, and Lloyd's is just the brand name
21 of the marketplace. It's not an insurer. They're not
22 collective. We don't work together. I work for Tokio Marine
23 Kiln. There's other syndicates involved in this policy by
24 different names, different entities, different money, different
25 banking.

1 Q. Everybody decides how much they're going to go in for
2 the risk, correct?

3 A. Yeah, if they want to participate, yes.

4 Q. So in your case, the syndicate that you're here about
5 today decided how much of a risk they were going to take,
6 right?

7 A. Yes.

8 Q. And there are other people there doing the same thing,
9 right?

10 A. Yes.

11 Q. And it's all about making money; is it not?

12 A. Making money is business.

13 Q. Yeah, making profits, correct?

14 A. It's commerce.

15 Q. Everybody's trying to make -- to take a risk and see if
16 they can make money, correct?

17 A. It's a business, yes.

18 Q. Yeah.

19 A. It's a business.

20 Q. It's a business, and Lloyd's gets a cut, right?

21 A. Sorry?

22 Q. Does Lloyd get a cut of the business?

23 A. Lloyd's, no.

24 Q. Alright.

25 A. There's no difference to the other insurers on this,

1 it's not Lloyd's, it's insurers.

2 Q. I understand, but they're all --

3 A. I'm sure you do because you're saying Lloyd's, it's not
4 Lloyd's, each syndicate is an insurer.

5 Q. Right. And there are certain people, certain insurance
6 companies that make up part of the risk, correct?

7 A. Yeah. In this example, as I explained earlier, we've
8 got Certain Underwriters of Lloyd's, HDI, and sorry, I forget
9 the other.

10 Q. Let me show you an example that works in this case.
11 You've seen this -- y'all actually did the policy for the La
12 Casona Restaurant; is that right? Do you know anything about
13 that?

14 MR. WATSON: Objection, to the form "y'all." Could
15 we have some definition of your terms for clarity, please.

16 MR. CONNELL: I'm sorry. I apologize for that.

17 Q. Lloyd's wrote the policy for the Casona Restaurant.

18 MR. WATSON: Same objection.

19 THE COURT: Change to Certain Underwriters of
20 Lloyd's.

21 BY MR. CONNELL:

22 Q. Alright. Certain Underwriters of Lloyd's wrote the
23 policy for La Casona Restaurant?

24 A. I believe so, yes.

25 Q. Alright. Let me show you this document right here.

1 This is the back page. Would you look at it, please for me,
2 sir?

3 A. Yes.

4 Q. And does it list all the people or the groups or the
5 insurance companies who were taking a risk?

6 A. What is this for? Sorry?

7 Q. That's for the tenants policy for the 1901 property that
8 burned down.

9 A. I don't know it's the tenant's policy. I don't know
10 what I'm looking at. What reference number there? Have you
11 got the insured's name on there?

12 Q. Look at this one for me.

13 A. Again, I don't know what that first is.

14 Q. Doesn't BRT -- let me see here. Isn't this you guys?
15 Isn't this Lloyd's Certain Underwriters, KLN or BRT?

16 A. Oh. So KLN is Tokio Marine Kiln. That's a pseudonym.
17 But what I'm saying is, I don't know what policy this attaches
18 to.

19 Q. Okay. And I'm representing to you that this is the back
20 page of the restaurant tenant policy on the property that
21 burned down.

22 A. Again, if you're saying so, I'll need to see the full
23 policy.

24 Q. Okay. And so, if that's true, you would agree with me,
25 would you not, that KLN, which is your --

1 A. My syndicate.

2 Q. -- underwriter, your syndicate, they actually shared
3 part of the risk on that policy?

4 A. If that is that policy, yes.

5 Q. Okay. Alright. Now, since they served -- they shared
6 part of the risk, were you aware until you got to this
7 courtroom that in 2018 there had been an inspection of the
8 property and there were sprinklers at that time; were you aware
9 of that?

10 A. No.

11 Q. Alright. The first time you heard that was here?

12 A. Well, through the process of the --

13 Q. Through the trial, right?

14 A. Yeah.

15 Q. You've heard all about it --

16 A. Yeah.

17 Q. -- and so? Alright. And that was actually ordered by
18 Lloyd's agents of the United States; is that correct?

19 A. I think, yeah, the other testimony was Amwins ordered
20 that, yes.

21 Q. And that's true; is it not?

22 A. Yes.

23 Q. Alright. And so, if you look at Exhibit 28, Lloyd's
24 Certain Underwriters is also in the business of financing your
25 policy premium; is it not?

1 A. No, not that I'm aware of.

2 Q. Okay. Well, look at this: Premium finance agreement,
3 that Mr. Tebele entered into. He was going to finance the
4 premium for \$140,000.00, and look who happens to be named as
5 the insurer and the agent. Can you read that for the Jury,
6 please, sir?

7 A. What am I reading, sir?

8 Q. Right here.

9 A. So it says: Schedule of policies, insurance company,
10 and general agent, Lloyd's London, Certain Underwriters, Amwins
11 Access Insurance Services.

12 Q. Alright. And it says: Agent. Does it not?

13 A. Where does it say agent?

14 Q. Right here.

15 A. Insurance company and general agent.

16 Q. Right.

17 A. So you're listing the insurance company --

18 Q. Right.

19 A. -- and the agent.

20 Q. Alright. So it's --

21 A. It's two different things, yeah.

22 Q. I appreciate that. And it's true, is it not, Amwins
23 Access is an agent of Lloyd's consistent with Exhibit 28,
24 that's what it says?

25 MR. WATSON: Objection to form, Lloyd's.

1 THE WITNESS: I don't understand. I don't understand
2 what you're asking.

3 MR. WATSON: Wait. Objection to form, Lloyd's.
4 Please use the proper term.

5 MR. CONNELL: Lloyd's, the Certain Underwriters. How
6 about that?

7 BY MR. CONNELL:

8 Q. So I mean, it does say that on here; does it not?

9 A. It does. Although, I don't know what that is, though.

10 Q. You don't know what?

11 A. I don't know what that is, sorry, I don't don't know
12 what that agreement is.

13 Q. Isn't that a premium finance agreement?

14 A. Yeah, it says at the top, yes.

15 Q. Alright. And isn't that where the premium is going to
16 be financed? He's going to pay \$140,000.00 and the premium is
17 going to be financed by a certain interest rate; is that right?

18 A. If that's what that means, but I don't know what that
19 is.

20 Q. Alright. And so do you agree with me or not that
21 according to this document, Amwins Access Insurance Services is
22 a general agent?

23 A. So the two headings in bold --

24 Q. Yes, sir.

25 A. -- insurance company and general agent.

1 Q. Okay.

2 A. So --

3 Q. Insurance company is?

4 A. On looking at that, I'm assuming, I shouldn't assume
5 anything, but it looks as if Lloyd's London Certain
6 Underwriters -- again, it's hard to tell how that's been
7 listed. I don't know that document.

8 Q. You've never seen it before?

9 A. I'm not aware if I have, no.

10 Q. Alright. Did you see that, apparently, some interest
11 money is going to be made by either Lloyd's or somebody; do you
12 see that?

13 A. Any finance movement has interest, right?

14 Q. Yes, sir.

15 A. Based on their money --

16 Q. That's for --

17 A. -- you've got to make money.

18 Q. Isn't that a part of making money with Lloyd's?

19 A. I guess, so, yes.

20 Q. I thought so. Okay. Alright. So the same companies
21 that are on this premium finance agreement also inspected it in
22 2018, long before this fire occurred; isn't that right?

23 A. Lloyd's didn't inspect anything, did they?

24 Q. No. But didn't Amwins Access hire 21st Century, or 21st
25 Services, to inspect the property in October 2018, long before

1 the fire?

2 A. Yes. That was stated earlier, wasn't it?

3 Q. Yes, sir, and this 21st Services Agreement showed a
4 sprinkler system; isn't that right?

5 A. I haven't reviewed that.

6 Q. You haven't seen it?

7 A. I'm not saying I haven't seen it, I haven't reviewed it
8 in very much detail.

9 Q. You've heard about it when you were here, right?

10 A. Yes.

11 Q. And it's true, is it not, that that was done by -- that
12 was ordered through Lloyd's; isn't that right?

13 A. It was ordered by Amwins Access.

14 Q. And Amwins Access is a general agent for Lloyd's?

15 A. Yes, but it was ordered by Amwins Access, not by
16 Lloyd's.

17 Q. And so it got into the Lloyd's system --

18 A. So --

19 Q. -- that there was the sprinkler system --

20 A. What's a Lloyd's system?

21 Q. Well, so what I'm getting at is, Lloyd's of London,
22 Certain Underwriters and Amwins Access Insurance Services had
23 notice of this sprinkler system in October of 2018, long before
24 this fire occurred?

25 A. On that policy, yes.

1 Q. Yes, sir. They knew about it, right?

2 A. On that policy, yes.

3 Q. Right. And apparently, it was a mistake; isn't that
4 right, because you wouldn't have insured it if it didn't work,
5 right?

6 A. Again, that's the tenant's policy on here talking about
7 the tenants policy.

8 Q. No, sir. This is not the tenant's policy.

9 MR. WATSON: Excuse me, Your Honor. Let the witness
10 be allowed to answer before Mr. Connell asks other questions.

11 THE WITNESS: I'm getting confused, I apologize.

12 BY MR. CONNELL:

13 Q. Okay. Look up here. Who's the insured on the premium
14 finance agreement?

15 A. Oh, so sorry, A. Tebele & Sons. Okay.

16 Q. So it's not the restaurant. It's not the tenant, right?

17 A. That's the building, so yeah.

18 Q. This is a document, right?

19 A. That's a finance document, yes.

20 Q. Okay. Now, you made a number of comments about the
21 protective services endorsement.

22 A. Safeguard, yes.

23 Q. Yeah, I'm sorry, safeguard. And do you know Mr. Melvin
24 who testified way back at the start of this trial?

25 A. I don't know him personally, no.

1 Q. Did you see him on video where nobody could really see
2 him very well?

3 A. Well, I heard him on video, yeah.

4 Q. Okay. And did you know that he had presented that --
5 he's an authorized agent for Lloyd's, too; is he not?

6 A. SRU.

7 Q. Lloyd's, a Certain Underwriter.

8 A. SRU, right.

9 Q. Did you ever see his affidavit?

10 A. I'm not sure I have, no.

11 Q. Did you see where he actually attached two separate
12 versions of the protective safeguard endorsement?

13 A. Okay.

14 Q. And one was right and one was wrong; isn't that right?

15 A. One was attached to his policy, one wasn't.

16 Q. And so why would he attach two of the same documents to
17 his affidavit? He was wrong about that; was he not?

18 MR. WATSON: Object to the form, cause for
19 speculation.

20 THE WITNESS:

21 A. Yeah. I can't comment on why he sent it.

22 THE COURT: Rephrase the question.

23 MR. CONNELL: Thank you, Your Honor.

24 BY MR. CONNELL:

25 Q. Alright, let's do it this way. Plaintiff's Exhibit No.

1 2, Mr. Melvin, do you want to look at it?

2 A. No, that's fine.

3 Q. Alright. Mr. Melvin is an Amwins SRU employee?

4 A. Yes, correct.

5 Q. And he's the big guy in our area, right? He's the one

6 who can buy into Lloyd's and all that, right?

7 A. Yes, sir.

8 Q. And he's the one who can sign the names, right?

9 A. He's SRU, yes.

10 Q. Okay. And so his affidavit has two protective services

11 endorsements; does it not?

12 A. If you say so.

13 Q. You can look at them. I've got them yellowed for you.

14 Here's one right here.

15 A. One minute. Okay.

16 Q. Okay? And second one.

17 A. Yes.

18 Q. Alright. So which one's the right one?

19 A. The one that forms part of the policy you've been

20 talking about.

21 Q. Well, tell me which one's the right one on his.

22 A. On here, that one, that's what we're looking at.

23 Q. And what about the last one?

24 A. What about it?

25 Q. Is that the wrong one?

1 A. It's not the wrong one. It's not attached to his
2 policy.

3 Q. Okay. It's not -- he should not have put that in there;
4 should he?

5 A. I'm not sure. It's hard to say. It's not formally part
6 of the policy. I mean --

7 Q. It's not part of the policy?

8 A. It's in form, yeah.

9 Q. Alright. And the one that's part of the policy has the
10 symbol AS we've heard about for the last three days; is that
11 right?

12 A. He refers to AS in the legend, yes.

13 Q. Alright. And it says: "AS" as indicated on the schedule
14 of values on file with the company.

15 A. It doesn't actually say that. It's two columns.

16 Q. Let me read this.

17 A. You can read it like that. You can read it as a
18 sentence. As I tried to explain earlier, it has two columns.
19 One there, there's two in the back where the legend is
20 referring to these five points here, and in the second column
21 is the list of locations, and if there's one particular
22 location, it would be there, but this being a commercial
23 property, a commercial policy, there's multiple locations. So
24 their -- they won't be able to get all those addresses in that
25 box, so they refer to the schedule of locations. It's two

1 separate columns.

2 Q. Come on down here. I want you to tell the Jury about
3 that. So let me ask you something before we start on that.
4 There it is right there. It's one full box, right?

5 A. Yeah, correct.

6 Q. And you're saying that you can read it two different
7 ways; isn't that right?

8 A. No. No, sir. Only one way.

9 Q. Well, you don't read left to right?

10 A. I do read left to right.

11 Q. You do?

12 MR. WATSON: Your Honor, can the witness be allowed
13 to answer? Mr. Connell wants to testify and interrupt him
14 after every question.

15 MR. CONNELL: No problem.

16 BY MR. CONNELL:

17 Q. So if you read left to right, I'm reading: "AS" as
18 indicated on the schedule of values on file with the company.

19 A. If that's what you're reading.

20 Q. Okay. How are you reading it?

21 A. I read that as "AS," -- you can see where the indent is
22 there, as well, upward, when he scrolls upward, and it starts
23 again. When I read a sentence, I expect the words to be next
24 to each other, not a big space in between. So that legend is
25 clearly listing all these five points. You've got AS, AA, SS,

1 SC. Three and four, you can interchange while we look at it,
2 are not applicable to this policy, so we don't have any in
3 there. That is just telling us which safeguards are applicable
4 in the condition of the policy and then what locations they
5 refer to separate. What locations are they under this heading?
6 It says as in the schedule of locations.

7 Q. Mr. Hanness, you would agree that that's confusing;
8 isn't it?

9 A. I -- no.

10 Q. It isn't? You've got a box right here?

11 A. Yes.

12 Q. And last time I went to school, I read from left to
13 right. That's not how y'all read inside the box?

14 MR. WATSON: Objection, asked and answered,
15 argumentative.

16 THE COURT: Let's move on.

17 BY MR. CONNELL:

18 Q. Alright. There is a box, though, right?

19 A. Yes.

20 Q. It's all around that; isn't that right?

21 A. Correct.

22 Q. Okay. So you can go back.

23 A. Thank you.

24 Q. Thank you, sir. So it's your testimony that despite
25 what's in the box, that the schedule of values, which we've

1 heard all about, did not have to have the AS symbol?

2 A. Correct.

3 Q. Alright. Now, did you look at Mr. Hayter's (phonetic)
4 deposition before you came in today?

5 A. I have not today. I have looked through it, yes.

6 Q. Did you read it?

7 A. We read through it, yes, over time.

8 Q. I'm sorry? You --

9 A. Looked at it over time before coming in.

10 Q. Did you read in his deposition that he said Mr. Tebele
11 was, quote, credible and believable? Did you read that in his
12 deposition?

13 MR. WATSON: Objection, Your Honor. This is
14 improper. It's impeachment. You can't just read the contents
15 of a deposition of a witness that hasn't testified.

16 THE COURT: He's asking if he has.

17 MR. WATSON: But he --

18 MR. CONNELL: I'm asking if he read it.

19 BY MR. CONNELL:

20 Q. Did you read it or not?

21 A. I've flipped through it. I couldn't remember all of it.
22 That point that --

23 Q. I understand. This is just a yes or no question. Did
24 you read the part in the deposition where he said, Mr. Hayter,
25 your former, in your job formally, said: Mr. Tebele was both

1 credible and believable?

2 A. I can't recall whether -- I really can't recall, sir.

3 Q. Alright. Now, you didn't go over any part of the policy
4 regarding additions and constructions, did you?

5 A. In what context?

6 Q. You know, the part of the policy that says, if we're
7 doing construction inside, a building is still covered. Do you
8 remember that part of the policy when it was talked about?

9 A. In terms of the covered property?

10 Q. Yes, sir.

11 A. Yes.

12 Q. You didn't go over that; did you? You didn't talk about
13 construction inside the building?

14 MR. WATSON: Objection to the form. This is vague.
15 Talk about it when?

16 MR. CONNELL: During the trial.

17 THE COURT: I'm going to allow it.

18 Q. Remember the two experts got up here. Mr. Twaddell,
19 Professor Finkel said, look at this part of the policy that
20 says construction.

21 A. Okay. You asked me -- I haven't spoke to that.

22 Q. You didn't talk about that, you haven't talked about
23 that; isn't that true?

24 A. I haven't been asked anything about that.

25 Q. Alright, let me ask you this. Do you find it -- so this

1 is an exhibit that's already in the trial. You've read this
2 before?

3 A. I don't recognize it, no. Oh, that was referenced
4 earlier, yes.

5 Q. Yes, sir. That was referenced earlier by an employee of
6 Amwins Access.

7 A. Yes.

8 Q. And so apparently, the agent, Crescent Coast, wrote a
9 letter on the tenant's policy --

10 A. Yes.

11 Q. -- saying: Hey, we've just learned it's not sprinkled
12 100 percent. Do you see that?

13 A. It doesn't say that. It says sprinkler -- it was 100
14 percent sprinklered.

15 Q. That it's not operational. I'm sorry. Alright. So you
16 just read that, right? So let me ask you something. Do you
17 think that Crescent Coast employee should have notified Lloyd's
18 agent, Amwins Access, before three days -- or, I should say,
19 three days afterwards, they take the money on the policy when
20 they know that it's not operational?

21 MR. ADAMS: Objection. Cause for speculation. And
22 argumentative.

23 THE COURT: I'm going to sustain.

24 BY MR. CONNELL:

25 Q. Alright. Let's go back. Not operational on January

1 11th, right?

2 A. Okay.

3 Q. Crescent Coast knows that, correct, according to the
4 testimony?

5 A. Based on the email.

6 Q. Yes, so based on -- I mean, they know it, right?

7 A. Yes.

8 Q. And that's January 11th, right?

9 A. Okay.

10 Q. That's January 11th, right?

11 A. Yes.

12 Q. And despite the knowledge of that, they write Mr. Tebele
13 a policy three days later.

14 MR. ADAMS: Objection, Your Honor. We don't write
15 policies. Misstating facts not in evidence.

16 MR. CONNELL: I'll restate it.

17 THE COURT: Rephrase the question, please.

18 MR. CONNELL: Thank you, Your Honor.

19 BY MR. CONNELL:

20 Q. Despite the knowledge of that, they put an application
21 into Amwins Access?

22 MR. WATSON: Objection to form on "they."

23 BY MR. CONNELL:

24 Q. Crescent Coast puts an application into Amwins Access?

25 A. For?

1 Q. For a policy for Mr. Tebele.

2 A. Yeah, what date was that, you have to remind me.

3 Q. January 14th.

4 A. Okay.

5 Q. So three days later --

6 A. Okay.

7 Q. They've already gotten this information.

8 A. Okay.

9 Q. Amwins Access has this information on the tenant policy.

10 A. Yes, on the tenant policy.

11 Q. And now Crescent Coast is going to write a policy three

12 days later.

13 A. I don't believe they've already put --

14 Q. They're going to send an application in, I apologize.

15 They're going to send an application in three days later,

16 right?

17 A. Okay.

18 Q. And they don't say a word about this?

19 A. I can't comment to how they replied.

20 Q. Do you think that's ethical?

21 MR. WATSON: Objection, to form. Foundation.

22 THE COURT: Sustained.

23 MR. ADAMS: Same objection.

24 BY MR. CONNELL:

25 Q. You can't comment on that?

1 A. I can't comment on the operations of how their processes
2 work, I don't know that.

3 Q. They sure got the money, though, didn't they?

4 MR. WATSON: Objection to form, argumentative.

5 BY MR. CONNELL:

6 Q. They got the premium, isn't that right, from Mr.
7 Tebele's policy?

8 A. They got the -- they didn't get the premium.

9 Q. Crescent Coast bound the policy three days after they
10 had this knowledge?

11 MR. ADAMS: Your Honor, same objection. We don't
12 bind policies.

13 BY MR. CONNELL:

14 Q. They sent an application in. They sent an application
15 in --

16 A. Okay.

17 Q. -- with this knowledge, right?

18 A. Yeah, it appeared that way, yes.

19 Q. And you don't have any comment about that?

20 MR. WATSON: Object to the form. Argumentative,
21 foundation.

22 MR. ADAMS: Same objection.

23 BY MR. CONNELL:

24 Q. No comment?

25 THE COURT: I'm going to allow him to answer.

1 Overruled.

2 BY MR. CONNELL:

3 Q. No comment about that?

4 A. I have no comment, no.

5 Q. How about this? Did y'all ever offer to give Mr. Tebele
6 back his money?

7 A. Sorry? Repeat that?

8 Q. Did you ever offer to give him back his \$170,000.00
9 premium?

10 A. \$170,000.00 premium?

11 Q. 140, plus the interest and all he paid, did you ever
12 offer to give that back to him?

13 A. Well, I don't understand the question. What?

14 Q. So Exhibit 28, Mr. Tebele, paid \$170,997.08.

15 A. Okay.

16 Q. Did you ever offer to give him his money back?

17 A. For what?

18 Q. You didn't pay the fire claim, did you offer give him
19 his money back?

20 A. No, because the policy was still in force. He still had
21 23 --

22 Q. How --

23 A. -- 24 properties on the schedule of values.

24 Q. How is it in force when you have a claim and you don't
25 get any payment for it?

1 A. Because the conditions weren't met by the insured.

2 Q. So you think that you get to keep the money, the
3 \$170,000, right?

4 A. For the policy in force for all the properties,
5 including the damaged property, which some testimony earlier
6 indicated that possibly some of it could be repaired, so that
7 -- even the damaged property is still covered should a
8 windstorm come through, as an example.

9 Q. Oh, a windstorm would be -- I see.

10 A. So he still -- so the damaged property as well as all
11 these other properties is still in force, so the contract's
12 still there.

13 Q. Just not a fire at this property?

14 A. Not fire, a fire that conditions weren't met by the
15 insured.

16 Q. So what about this. You heard the testimony yesterday
17 that the premium for Mr. Tebele's property wouldn't be
18 different if it was with a safeguard sprinkler system or not.

19 A. I don't handle premium. I don't know how it's --

20 Q. You don't know how that works?

21 A. I'm claims, that's underwriter.

22 Q. And you don't argue what Mr. Twaddell said, which is
23 that the premium was the same for a property that had a
24 sprinkler and one that didn't?

25 A. I haven't seen the numbers. He referenced numbers, but

1 --

2 Q. You didn't see that exhibit?

3 MR. WATSON: Objection, Your Honor. He's trying to
4 answer the question. Mr. Connell is interrupting him.

5 THE WITNESS: I can't --

6 THE COURT: The witness can answer.

7 THE WITNESS: Sorry.

8 A. I'd have to think back. I think, often there's a -
9 what's the word -- reference to his math, but I can see how
10 that's broken down, how he got to that calculation. You
11 referenced two properties, I don't know the square footage of
12 those properties. Again, I don't deal with premiums, so I
13 don't know how that's calculated.

14 Q. How about this question? What if Crescent Coast had
15 called Amwins and said, hey, we want to let everybody know that
16 we just found out that the property involved doesn't have a
17 working sprinkler, and we want to let Amwins know that so they
18 can figure it into the premium. Would Lloyd's have accepted
19 that?

20 MR. WATSON: Objection, Amwins --

21 MR. ADAMS: Objection. Calls for speculation.

22 MR. WATSON: Also, which Amwins, Your Honor?

23 BY MR. CONNELL:

24 Q. Would Amwins have accepted that?

25 MR. WATSON: Same objection.

1 THE COURT: I'm going to allow it. Overruled.

2 A. Amwins who?

3 Q. Amwins Access, Amwins SRU, would they have accepted
4 that?

5 A. What do you mean accepted?

6 Q. So we're back to the real question in this case. If
7 there's no sprinkler endorsement, whatever you want to call it,
8 sprinkler endorsement on the policy, and the agent, Crescent
9 Coast, knows about it, and they called up Amwins and said, hey,
10 we just found out that the sprinkler is not operational, would
11 Lloyd's have covered that?

12 MR. WATSON: Objection, improper --

13 MR. ADAMS: Objection. Calls for speculation.

14 MR. CONNELL: Would Amwins --

15 MR. ADAMS: He's not an expert witness.

16 MR. WATSON: Calls for speculation.

17 THE COURT: I'm going to sustain the objection.

18 BY MR. CONNELL:

19 Q. Alright. Let's go back to the schedule of values.
20 There are properties on there that don't have a sprinkler
21 endorsement; are there not?

22 A. Correct.

23 Q. And in fact, there's 23, and they're, like, 15 that
24 don't, right?

25 A. Sorry, I want to correct that. So are you saying that

1 you mean that indicates not being sprinklered on the schedule.
2 Yes.

3 Q. Right. And so Lloyd's does do policies without
4 sprinkler endorsements; do they not?

5 MR. WATSON: Objection, Your Honor. Lloyd's.

6 MR. CONNELL: Alright. Well, at Certain Underwriters
7 of Lloyd's. Does that make you happy?

8 MR. WATSON: Yes, sir.

9 BY MR. CONNELL:

10 Q. Okay. Certain Underwriters of Lloyd's, they do offer
11 insurance policies for properties that don't have sprinklers?

12 A. Correct.

13 Q. And in fact, they offered that on all but four of these
14 properties; isn't that right?

15 A. So there's 23 properties, five are listed with
16 sprinklered.

17 Q. Four or five, I don't know exactly.

18 A. Yeah. So what's the question, sir?

19 Q. So there are properties on there that are unsprinkled?

20 A. Correct.

21 Q. And you did insure them?

22 A. Yes.

23 Q. Okay. And in fact, the year before, Mr. Tebele was
24 putting the sprinkler system in, Certain Underwriters at
25 Lloyd's had done the same thing; isn't that right?

1 A. I don't know the policy.

2 Q. You didn't go back and look at the policy before to see
3 if they'd done that before?

4 A. I'm not aware. I don't underwrite policies, I don't
5 know what's on the policy.

6 Q. You wouldn't have the part of your policies; is that
7 what you're saying?

8 A. I don't believe I've seen one.

9 Q. No one showed it to you?

10 A. I'm happy to review it.

11 Q. Okay. You would be willing to review that?

12 A. Yeah.

13 Q. Now, you really don't know how the policy came to be; do
14 you?

15 A. Sorry?

16 Q. You weren't involved in the policy process, right?

17 A. No. As I explained, I don't underwrite policies, I do
18 claims.

19 Q. But you would agree, would you not, that this poor man
20 didn't get the policy until after the fire; isn't that right?

21 A. Are you referring to the individual --

22 Q. Mr. Tebele did not get the policy until after the fire
23 burned his place down.

24 A. I believe, the insured, A. Tebele & Sons, et al, and
25 there were other names, I believe, the policy was given to

1 their agent.

2 Q. The policy was given to their agent; is that what you're
3 saying?

4 A. Well, the binder was handed to a representative of the
5 insured, which listed the policy conditions, or the policy
6 form, sorry.

7 Q. The policy that you've been shown by Mr. Watson earlier,
8 the big thick policy?

9 A. Yes.

10 Q. That was not given to him before the fire; was it?

11 A. The binder was with the list of all the forms, yes.

12 Q. Not the binder, the policy, the thick policy.

13 A. That is the policy. The binder forms -- that's the
14 start of the policy --

15 Q. But why --

16 A. -- on the 15th of January of '19 is the start, when that
17 is bound, the binder forms start of the policy from there.

18 Q. Alright. He was not given the big thick policy Mr.
19 Watson just showed to you until after the fire, correct?

20 A. I don't know what date the individual was given the
21 policy.

22 Q. And you haven't heard the testimony about that by
23 Professor Finkel and by Mr. Twaddell saying, we never got the
24 policy before the fire?

25 A. Oh, that testimony, yeah. I don't know, but someone

1 said it, so --

2 Q. Okay.

3 A. That's what people represented.

4 Q. You don't disbelieve it, though; do you?

5 A. Oh, no, I don't disbelieve it.

6 Q. Let me let you look at this, please, sir. Exhibit 48,

7 we have claimed notes.

8 A. Okay.

9 Q. Have you seen that before?

10 A. No.

11 Q. First time?

12 A. I believe so.

13 Q. Alright. You never looked at that?

14 A. No.

15 Q. Isn't that the record of how the claim started after the

16 fire?

17 A. This is the file claim notes for the insured's insurance

18 bureau, also known as PRB of the -- it looks like the system

19 entries for -- the file --

20 Q. Alright. Those are the claim notes from Peninsula

21 Insurance Bureau --

22 A. Yes.

23 Q. -- is that right?

24 A. Yes, the TPL, yes.

25 Q. And but you have not had a chance to ever look at these

1 in the past?

2 A. No.

3 MR. CONNELL: Alright, sir. That's it. Thank you.

4 THE COURT: Yes, sir, Mr. Adams?

5 **CROSS-EXAMINATION**

6 BY MR. ADAMS:

7 Q. Good afternoon.

8 A. How you doing?

9 Q. I know we've met before, but I'm Hunter Adams here for
10 Crescent Coast. I've just got a couple of questions for you.

11 A. Sure.

12 Q. You as the carrier, insurance company, you rely on
13 information that's provided in the application when the policy
14 is going to be written, correct?

15 A. Yeah, for the underwriting party, yes.

16 Q. And that process in this case and in typical cases, the
17 information may be gathered by a retail agent in which it's
18 then put into an ACORD and that's what's eventually sent on to
19 the carrier; isn't that right?

20 A. Correct, yes.

21 Q. And so the agent in this case is relying on the --
22 excuse me, the information supplied by the perspective insured;
23 isn't that right?

24 A. Yes.

25 Q. And you've sat through the trial so far, and there's

1 been no testimony that Crescent Coast indicated it was 100
2 percent sprinklered on their own volition; isn't that right?

3 A. I don't know where the information came from, so I don't
4 if I heard anyone say it was in there.

5 Q. The information about the status of the sprinkler system
6 came from Mr. Tebele; didn't it?

7 A. Yes, I believe so.

8 Q. And whether or not he physically filled that form in the
9 box, what we do know is his e-signature was attached to that
10 application; wasn't it?

11 A. I agree, yes.

12 Q. Right below language, it said: The information
13 contained herein is as truthful and accurate as to the best of
14 my knowledge. Isn't that right?

15 A. I believe so, yes.

16 Q. So that's what Mr. Tebele signed, and the application
17 said it was 100 percent sprinklered?

18 A. Yes.

19 Q. And so you've been shown this email that the Jury's seen
20 plenty of times, and as we've gone over, it says: The building
21 was 100 percent sprinklered, consistent with what Mr. Tebele
22 told my agent, correct?

23 A. Right.

24 Q. And we have learned as of yesterday the sprinklers have
25 been installed, but the landlord, Mr. Tebele, has not turned

1 the water on.

2 A. Yes.

3 Q. And would you agree with me it's common sense, there is
4 a big difference between a sprinkler system being installed and
5 the water not being turned on versus a sprinkler system where
6 the pipe is ten feet away from it even being connected to the
7 water main; isn't that right?

8 A. Technically.

9 Q. And you've heard no testimony that Mr. Tebele ever
10 informed my client the actual status of the sprinkler system at
11 the time of the application was signed by him; is that right?

12 A. Yes.

13 Q. This is the only thing?

14 A. Correct.

15 Q. The Plaintiff's went out and blew this up because they
16 think it's so important, and it doesn't say it wasn't 100
17 percent sprinklered. It says it was 100 percent sprinklered --

18 A. Agreed.

19 Q. -- but hadn't been turned on?

20 A. Correct.

21 MR. ADAMS: No further questions.

22 MR. WATSON: Very briefly, Your Honor.

23 THE COURT: Okay.

24 **REDIRECT EXAMINATION**

25 BY MR. WATSON:

1 Q. Mr. Hanness, you were asked some questions about this
2 premium finance agreement. Are Certain Underwriters at Lloyd's
3 in the business of financing premium and making up these
4 agreements?

5 A. Not that aware of. I don't really know what that is.
6 It's obviously some sort of finance agreement, the loan or
7 anything. Again, I'm just going to assume, it's first time
8 I've seen it, but as to how the names in that work or the offer
9 to explain what that means, how it works, and who are the
10 parties, that, for all I know, thinking about it more
11 specifically shown to me, that is actually referencing the
12 policy, yeah. It actually says it schedule of the policies,
13 it's referencing the policy in which -- is that -- I don't
14 know, is it referencing the policy in which the premium is
15 relating to?

16 Q. Did Mr. Connell tell you who prepared this?

17 A. No.

18 Q. Did he tell you what role INTRUST Bank on the letterhead
19 had in preparing this?

20 A. I didn't even see that, no. I'm sorry.

21 Q. But you said, I think you even made a quip about banks
22 financing things.

23 A. Yes. Most of us need to go through life borrowing money
24 for our homes, cars.

25 Q. Oh, this is because Tebele & Sons, Mr. Tebele, didn't

1 want to pay the 170,000 in one shot, they financed it with the
2 bank.

3 A. Yes, I guess it's easier to pay in installments
4 sometimes, I assume.

5 Q. And so someone on behalf of the bank put information on
6 this form, does that change any aspect of your evaluation of
7 this claim?

8 A. On the claim, no. I don't see it. I don't look at
9 anything like that when I'm looking at the claim.

10 Q. And when it comes to -- there's been a lot of talk about
11 commissions today that you've been here for. Isn't it true
12 that Ms. Gurtzweiler, or Ms. Northcutt, testified this morning
13 that Amwins Access is not the underwriter of the policy -- the
14 property policy that's the subject of this lawsuit?

15 A. Yeah, 100 percent it's not, right.

16 Q. So if she's not the underwriter, does she get
17 commission, or her company, rather?

18 A. Does she get commission for the Tebele policy?

19 Q. For a policy that they did not underwrite?

20 A. No, of course not.

21 Q. And we've given, Tony Hayter (phonetic) was brought up
22 by Mr. Connell when giving him short trip. In the chain of
23 command, while Mr. Hayter was working on this claim, where were
24 you?

25 A. I was his line manager, his direct report.

1 Q. His superior?

2 A. Yes.

3 Q. And Mr. Hayter, approximately, how many years of
4 experience did he have in the insurance industry at the time
5 you were his manager?

6 A. Probably about -- we're the same age, so probably about
7 the same, 30-odd years maybe.

8 Q. And when Mr. Hayter -- why did Mr. Hayter leave Tokio
9 Marine Kiln?

10 A. Another opportunity. He had another syndicate.

11 Q. And when it came time to provide testimony about this
12 case, were you the best person to do so in his place?

13 A. Yes. I took over to handling of the claim.

14 Q. And you were his manager at the time this claim was
15 being adjusted?

16 A. Correct, yes.

17 MR. WATSON: I have nothing further.

18

19

20

21 **RECROSS-EXAMINATION**

22 BY MR. CONNELL:

23 Q. One more time, come down here, please. Alright. Look
24 at this again with me, please, sir.

25 A. Yes.

1 Q. So what is the purpose on the form -- did you make this
2 form up?

3 A. No.

4 Q. Who did; do you know?

5 A. It would be policy doctrine. I don't know how that
6 works in this.

7 Q. A lawyer somewhere made it up; didn't they?

8 MR. WATSON: Objection, Your Honor. This is beyond
9 the scope of my redirect, and it's treading ground already
10 covered.

11 THE COURT: I'm going to allow him to ask it.

12 BY MR. CONNELL:

13 Q. Look at the box.

14 A. Yes, I see the box.

15 Q. So what's the purpose of the box, you think?

16 A. I don't understand the question, sir.

17 Q. As I understand it, you're reading the form with the
18 symbols and going down this way.

19 A. Not all the way down, no. In there, yeah. So that's
20 right this, two uneven line here. We read books, I've never
21 read a book that's got an inch-and-a-half gap in between
22 sentences. Yeah?

23 Q. Have you read --

24 A. If that was next to there, yes, -- it's not -- it's a
25 different column. You have two columns. The columns were

1 simply -- the -- the columns even got headings. This is blank
2 here. You have two headings there, yeah? You've got symbols
3 or locations applicable.

4 Q. Have you ever read a textbook when you went to school?

5 A. A textbook as in a learning book?

6 Q. Studying math, science, biology?

7 A. Yeah.

8 Q. Math is a good example because you have columns.

9 A. Okay.

10 Q. What about boxes? When you have big box on the page
11 like this, isn't that more important than this part?

12 A. Not at all. Why would it be more important?

13 Q. Well, why do they put a box around it then?

14 A. It's just to separate it from that section. That's just
15 the leading part. It just separates the --

16 Q. Alright. Well, when I want to look at AS, am I going to
17 read from left to right?

18 MR. WATSON: Objection, Your Honor, asked and
19 answered. This is the fourth time he's asked about reading
20 that.

21 THE COURT: I'm going to sustain your objection.

22 MR. CONNELL: Alright. Thank you, sir. I appreciate
23 you.

24 THE WITNESS: Yes. Sure.

25 MR. CONNELL: Thank you, Your Honor. That's all I

1

2

3

4 **(Whereupon proceedings reconvened Friday, December 8, 2023)**5 THE COURT: Alright. Do we have any matters we need
6 to take up before we bring the Jury in?

7 MR. CONNELL: No, Your Honor.

8 THE COURT: Alright.

9 MR. DESCHAMPS: Can I have a couple of minutes to put
10 these exhibits in order so we can move faster?

11 THE COURT: Yes. Thank you.

12 **(Jury entered the courtroom at this time.)**13 THE COURT: Good morning, ladies and gentlemen. I
14 hope that y'all had a good night and that you've had a good
15 morning so far. We're going to go ahead and get started and
16 try to get as much done as we can. Yes, sir, Mr. Deschamps?

17 MR. DESCHAMPS: Plaintiff calls David Egan.

18 THE CLERK: Please raise your right hand and place
19 the other on the Bible. Do you solemnly swear or affirm that
20 the testimony you're about to give in Court will be the truth,
21 the whole truth, and nothing but the truth so help you God?

22 THE WITNESS: Yes.

23 **DAVID EGAN WAS DULY SWORN AT THIS TIME AND TESTIFIED**
24 **AS FOLLOWS:**

25 THE CLERK: Please be seated. Just state your name

1 for the Court.

2 THE WITNESS: David Egan.

3 **DIRECT EXAMINATION**

4 BY MR. DESCHAMPS:

5 Q. Hey, Mr. Egan, how are you?

6 A. I'm doing well. How about yourself?

7 Q. Not too bad. You're an owner of Crescent Coast; is that
8 correct?

9 A. Yes, sir.

10 Q. Okay. And is Crescent Coast, is that a South Carolina
11 Limited Liability Company?

12 A. Yes, sir.

13 Q. Okay. And who is Infinity Insurance, LLC?

14 A. We were formally known as Infinity Insurance. There's
15 actually an Infinity Auto Insurance that we were not aware
16 about, and they didn't like our name, so we had to change the
17 name.

18 Q. Okay. So you just changed your name. Is that in 2016?

19 A. I believe so.

20 Q. Okay. But same company, Crescent Coast and Infinity?

21 A. Yes.

22 Q. Okay. Great. Now, what type of business does Crescent
23 Coast do?

24 A. We are a retail property and casualty insurance agency.

25 Q. And does Crescent Coast have an agency license in South

1 Carolina?

2 A. Yes, sir.

3 Q. And kind of explain the, I guess, the retail agency in a
4 general sense.

5 A. We are the liaison between a person seeking insurance
6 coverages, and what we do is we gather the information that is
7 given to us by a customer seeking insurance. We compile it
8 into the applications, and then we submit this information to
9 an insurance carrier, or an insurance broker to obtain
10 insurance quotes.

11 Q. Okay. Do you place coverage, insurance coverage?

12 A. No, sir.

13 Q. Okay. How about not-admitted carriers? How are you
14 able to get access to them?

15 A. We have to go through what's called an insurance broker,
16 so they are almost the middleman to the carrier for us, so I do
17 not have any direct relationship with any of the Lloyd's
18 syndicates, so an insurance broker does, and that's how I'm
19 able to obtain a Lloyd's syndicate quote.

20 Q. Okay, like the -- isn't it true you have a written
21 contract with the AmWins entities?

22 A. Yes, sir.

23 Q. And is that how you obtain access to the Lloyd's
24 syndicate?

25 A. Yes, sir.

1 Q. And do you know a Melissa Garcia?

2 A. Not personally, no.

3 Q. Did you obtain coverage for her, or did Crescent Coast
4 coverage for her?

5 A. Yes, sir.

6 Q. Alright. I'm going to show you, it's already in
7 evidence, Plaintiff's Exhibit 11. Do you recognize Exhibit 11?
8 What's on that 1st page?

9 A. This is a binder request that was sent by myself to
10 Whitney Gurtzweiler for the La Casona account.

11 Q. Okay. And that's the, La Casona, that's was the tenant
12 at Mr. Tebele's property at 1901?

13 A. Yes, sir.

14 Q. Okay. And what's the date of that email?

15 A. I sent this email on August 23rd of 2018.

16 Q. Okay. And there's an application, an insurance
17 application attached there; isn't there?

18 A. Yes, sir.

19 Q. Okay. And I think you turn to page 4 of that
20 application. Is that your signature --

21 A. Yes, sir.

22 Q. -- down there at the bottom? It is?

23 A. Yes, sir.

24 Q. What's the date on that, if you don't mind telling me?
25 Is there a date?

1 A. No, it looks like the insurer did not date it.

2 Q. Okay. And you signed that application as producer; is
3 that correct?

4 A. Yes, sir.

5 Q. And what does that mean?

6 A. That would mean that I was the agent on the account.

7 Q. Okay. If you'll turn to page 7, or page 5, I'm sorry,
8 of the application. There's property information on there.
9 Did you enter that information?

10 A. Actually, no, I did not enter this.

11 Q. Do you know who did?

12 A. Sandra Nenna did.

13 Q. Sandra, and who is she?

14 A. She was our customer service representative at the time.

15 Q. Okay. And so she just imputed data on applications and
16 --

17 A. Yes.

18 Q. Okay. So does she typically enter data on the
19 application, and then it's sent to the client to DocuSign?

20 A. Yes, on an account like this.

21 Q. Okay. And DocuSign, can you explain how DocuSign works
22 in a general sense?

23 A. It's an electronic signing service program, so it can be
24 done through email versus in-person.

25 Q. And when somebody gets a DocuSign, can they make any

1 changes, or do they just have to click a button to DocuSign it?

2 A. No, they can't make any changes to it.

3 Q. Alright. And did Crescent Coast ultimately obtain
4 coverage from Ms. Garcia?

5 A. Yes.

6 Q. Was there an insurance policy issued?

7 A. Yes, sir.

8 MR. DESCHAMPS: I'll mark this as Plaintiff's 105, I
9 believe.

10 (Plaintiff's Exhibit No. 105 was marked for
11 identification.)

12 BY MR. DESCHAMPS:

13 Q. Alright, Mr. Egan, that's Plaintiff's Exhibit 105. Take
14 a minute and thumb through it.

15 A. Okay.

16 Q. Alright. Do you recognize that document?

17 A. Yes, sir.

18 Q. Okay. Tell me what that is.

19 A. This is a commercial property insurance policy.

20 Q. Okay. And who's the insured on that policy?

21 A. This is Melissa Garcia, doing business as La Casona,
22 Latin Cuisine.

23 Q. And does that policy provide the coverage that Crescent
24 Coast obtained or procured for Ms. Garcia?

25 A. Yes, sir.

1 Q. Okay. Is that a true and accurate copy of the insurance
2 policy that you got -- that Crescent Coast procured or obtained
3 for Ms. Garcia, La Casona?

4 A. Yes, sir.

5 MR. DESCHAMPS: Your Honor, I'd like to move to enter
6 Plaintiff's Exhibit 105 into evidence.

7 MR. HARPER: No objection, Your Honor.

8 MR. RISER: No objection.

9 THE COURT: Alright. Plaintiff's 105 is admitted.

10 **(Plaintiff's Exhibit No. 105 was admitted into evidence.)**

11 BY MR. DESCHAMPS:

12 Q. Alright, Mr. Egan, if you'll pull 105 back out?

13 A. Sorry.

14 Q. Oh, no, you're fine.

15 A. Okay.

16 Q. Alright. There you go.

17 A. Do you want this first one we got?

18 Q. I don't want it.

19 A. Okay.

20 Q. If you can go to that second post-it.

21 A. Yes.

22 Q. It's page 90-something of that policy.

23 A. I've got it pulled up.

24 Q. Okay. And page 94, that's a protective safeguard
25 endorsement; is that correct?

1 A. Yes, sir.

2 Q. Okay. And just glancing at that endorsement, can you
3 tell me if that endorsement requires an automatic sprinkler
4 system or not?

5 A. No, sir.

6 Q. And at the top of that endorsement, does it have any, I
7 guess, coverage parts or policies identified? What I'm trying
8 to say is, does it tell you which policies it modifies or
9 applies to?

10 A. Yes. The policy number is listed at the top.

11 Q. Yeah, but as far as the type of coverage, the coverage
12 part?

13 A. Well, it -- it's --

14 Q. Or it's just saying: This endorsement modifies
15 insurance provided under --

16 A. Yes, for the policy number that matches.

17 Q. How about the coverage part named below it?

18 A. Yes.

19 Q. The big capital letters. Can you tell me what they say?

20 A. Can you show me what you're talking about?

21 Q. Right here (indicating.)

22 A. Oh, yes. Okay. Yes, it says, Commercial property
23 coverage part.

24 Q. Okay. And then under the bottom, does it say else?

25 A. Standard property policy.

1 Q. Okay. And what does that mean to you?

2 A. This means this is an endorsement that is included with
3 the standard property policy board.

4 Q. Okay. And if we can go back to, do you have Exhibit 11?
5 Here, let's put this back together real quick.

6 A. Yes.

7 Q. Alright, on the Exhibit 11 there, can you turn to, I
8 guess, that would probably be around page 7? We were already
9 there before. There's probably a post-it on there.

10 A. Okay.

11 Q. Okay. And is there a notation for percentage sprinkler
12 on there?

13 A. Yes, sir.

14 Q. Alright. What's that?

15 A. It says 100 percent.

16 Q. Okay. And that's for Ms. Garcia's policy?

17 A. Yes, sir.

18 Q. And what does that 100 percent mean?

19 A. It means that the building is 100 percent sprinklered.

20 Q. And meaning, can you elaborate?

21 A. Well, in this meaning it would be for her premises, per
22 unit.

23 Q. Okay. But it doesn't mean that her policy requires an
24 automatic sprinkler system for coverage; is that correct?

25 MR. HARPER: Objection, Your Honor. Speculation from

1 the witness, the location in contract.

2 THE COURT: I'm going to let him answer the question.

3 THE WITNESS: Can you repeat it again?

4 BY MR. DESCHAMPS:

5 Q. Okay. Ms. Garcia's policy, you just testified that it
6 did not require -- the protective safeguards of Ms. Garcia's
7 policy did not require an automatic sprinkler system; is that
8 correct?

9 A. Yes, that's correct.

10 Q. Okay. So what I'm asking: What does the 100 percent
11 notation on her insurance application mean?

12 A. That was a mark put in the application, that it was 100
13 percent sprinklered.

14 Q. And 100 percent sprinklered means?

15 A. That is for the unit.

16 Q. It's for the unit, but does it mean that she has to have
17 a sprinkler system for coverage on the policy?

18 A. No, sir, not according to the protective safeguard
19 endorsement for her policy.

20 Q. What about according to that application?

21 A. This --

22 Q. What does it mean just with the application?

23 A. This means that that it's 100 percent sprinklered.

24 Q. And what does that mean? Say there's no policy, what
25 does it mean? If I enter 50 percent in there, what would that

1 mean? I'm trying to understand what this notation means.

2 A. That would mean that the building was 50 percent
3 sprinklered.

4 Q. And 50 percent sprinklered means what? Does it mean
5 area? Does it mean --

6 A. Yes.

7 Q. Okay.

8 A. Yes.

9 Q. So if I have 50 percent, I only have half the building
10 sprinklered, if I have 100 percent, that's all of it?

11 A. Yes, correct.

12 Q. Okay. Thank you. Alright. I'll show you Exhibit 25,
13 it's already been entered into evidence, Mr. Tebele's insurance
14 application. Here, we'll trade. Do you got it?

15 A. Yes, sir.

16 Q. Okay. On that application, can you turn to, I believe
17 it's page 4, signature page?

18 A. Yes.

19 Q. Okay. And is that your signature?

20 A. Yes, sir.

21 Q. On that page? Okay. And when did you sign that
22 application?

23 A. This was on January 14th of 2019.

24 Q. January 14th. Okay. And if you can just skim through,
25 what's all that stuff behind the signature page? There's

1 different type forms. If you could just tell me, like, what it
2 -- in a general sense, what kind of information it has on it,
3 what it does, because there's a couple of different form codes
4 on the bottom, and there's a list of properties. I don't know.

5 A. Alright. It's like --

6 Q. I'm not trying to trick you.

7 A. Yeah.

8 Q. I'm just wondering what kind of stuff is on there.

9 A. Okay. Well, this first application consists of, you
10 know, street addresses, you know, basic information. Then
11 you'll have things like additional named insureds, mortgagees,
12 things like that associated with different properties.

13 Q. Okay.

14 A. And that's, you know, the gist of what the ACORD 125 is.

15 Q. Alright. Is there anything else behind there, like
16 stuff kind of specific to a property?

17 A. Yes, that's the ACORD 140.

18 Q. Okay. And did you enter that information on those ACORD
19 forms?

20 A. Yes, sir.

21 Q. Alright. Do you recall when you entered the form -- or
22 the information?

23 A. I believe that my initial -- when I entered this
24 information was in August of 2018.

25 Q. How about on that application though?

1 A. This would be a modified application from my original
2 one from August of 2018.

3 Q. Okay. And you're talking about the ACORDS?

4 A. Yes, sir.

5 Q. Alright. And those August 20 ACORDS, did you sign
6 those?

7 A. No, sir.

8 Q. Did Mr. Tebele sign those?

9 A. No, sir.

10 Q. Okay. Did you give those to Mr. Tebele to review?

11 A. I wouldn't believe so.

12 Q. And those are the ACORDS that you sent to, or emailed to
13 Whitney Gurtzweiler; is that correct?

14 A. Yes, sir.

15 Q. And that was for the purposes of obtaining coverage
16 quotes; is that correct?

17 A. Yes, it was for the purpose of obtaining an insurance
18 quote.

19 Q. Okay. If you could go put that application back
20 together? If you look at the first page, there's a --

21 A. This one?

22 Q. Yes.

23 A. Okay.

24 Q. There's a date on there, I believe, what's the date of
25 that?

1 A. Are you talking the top right corner?

2 Q. Yeah, what's the date of the form?

3 A. Yes, it says January 11th of 2019.

4 Q. And did you email that application to Mr. Tebele?

5 A. Yes, sir. It was sent via DocuSign on the 11th.

6 Q. I'm going to show you two exhibits, Plaintiff's Exhibits
7 17 and 18. I'll start with the Exhibit 17. Do you recognize
8 that document?

9 A. Yes, sir.

10 Q. And what is it?

11 A. This is an email between me and Ms. Hollan Delany at
12 AmWins Brokerage.

13 Q. Okay. What's the date? Is it like an email chain,
14 like, a couple of emails?

15 A. This email chain started on December 17th of 2018.

16 Q. Okay. And does that email reference an attachment?

17 A. Yes, sir. This is a schedule of values.

18 Q. Okay. Let's move on to the Exhibit 18. Tell me what
19 Exhibit 18 is.

20 A. This is a schedule of values.

21 Q. Okay. Now, Exhibit 17, is that a true and accurate
22 depiction of the emails between you and Mrs. Delany in December
23 of 2018?

24 A. Yes, it is.

25 Q. Okay. And Plaintiff's 18, that's the same schedule of

1 values that was attached to that email?

2 A. Yes.

3 MR. DESCHAMPS: Your Honor, at this time, I'd like to
4 move Plaintiff's Exhibits 17 and 18 into evidence.

5 THE COURT: I have these stipulated previously; is
6 that correct?

7 MR. HARPER: I believe so, Your Honor.

8 MR. RISER: No objection.

9 THE COURT: Plaintiff's 17 and 18 are admitted into
10 evidence.

11 **(Plaintiff's Exhibits Nos. 17 & 18 were admitted into**
12 **evidence.)**

13 BY MR. DESCHAMPS:

14 Q. Alright, let's go back to Exhibit 17, your emails with
15 Mrs. Delany.

16 A. Yes.

17 Q. Alright. And who's Ms. Delany?

18 A. She was an underwriting assistant for Barrett Sellers at
19 AmWins Brokerage.

20 Q. Okay. And what's she asking you in that email? Why is
21 she sending you a schedule of values?

22 A. The schedule with the values was needed for the
23 underwriting process.

24 Q. Okay. Is she asking you to do anything with the
25 schedule of values?

1 A. Not from these emails. It doesn't look that way.

2 Q. How about turn to, is it the third page? She's asking
3 somebody to update it; is that correct?

4 A. Oh, yes, sir, I see that.

5 Q. Okay. Is she asking you to update it?

6 A. Yes.

7 Q. And updating, does she mean inputting data?

8 A. Yes, sir.

9 Q. And did you input any data?

10 A. I believe so, yes.

11 Q. Do you recall what kind of data you put in there?

12 A. Well, this is -- addresses, you know, square footages,
13 type of construction, year of builds, updates.

14 Q. Alright. If you can glance at the small one and then
15 glance back there, what's that, Exhibit -- tell me what exhibit
16 that is, 100?

17 A. 100.

18 Q. Okay. If you can tell me Exhibit 100 and Exhibit 18 are
19 the same, as far as the same information, that's just a big
20 blown-up copy?

21 A. I mean, I couldn't say for sure because I can't read
22 this, but I mean, I would dare to say that it's the same.

23 Q. Okay. Alright. And can you find the 1901 property on
24 there?

25 A. Yes, sir.

1 Q. Okay. Go all the way down over here. Tell me if you
2 can find that 100 percent sprinklered thing for 1901 that we
3 keep talking about, keep hearing about.

4 A. Yes, sir.

5 Q. Is that 100 percent notation in there?

6 A. Yes, sir.

7 Q. Okay. So that 100 percent notation was on that schedule
8 of values back in December; is that correct?

9 A. Yes, sir.

10 Q. Do you know who put that data in there?

11 A. I believe I would have.

12 Q. So did you put the 100 percent on the schedule of
13 values?

14 A. I believe so.

15 Q. Okay. Do you know approximately when you would have
16 done that?

17 A. It possibly was before this 17th December date, but I
18 mean, it could have been the 17th of December.

19 Q. And is that schedule of values, is that a template that
20 Crescent Coast uses?

21 A. Yes. Every once in a while for a large schedule of
22 properties, we will use this.

23 Q. And this was prepared by AmWins, any of the AmWins
24 entities?

25 A. I don't believe so, they might have helped prepare some

1 of this, but I don't recall.

2 Q. And why was Hollan Delany emailing schedule of values to
3 you in December? Had you already sent her a draft of the
4 schedule of values or --

5 A. Yes, more than likely.

6 Q. And when you were preparing the schedule of values for
7 input and data, were you aware that that document or the
8 information there would affect any terms of the coverage under
9 Mr. Tebele's policy?

10 A. Yes, to a degree.

11 Q. Did Mr. -- were you aware -- did you ever advise Mr.
12 Tebele that a building sprinkler system would be required for
13 coverage of his 1901 property?

14 A. Yes, I believe so.

15 Q. And when was that?

16 A. I don't recall, it would have been over the phone.

17 Q. Over the phone? Do you know the month, the time?

18 A. It was probably in December when I had started initially
19 sending quotes to him.

20 Q. Now, Ms. Sandra Nenna, she worked on this policy, as
21 well; is that correct?

22 A. Not that much, no.

23 Q. Well, in the capacity similar to the La Casona, she
24 gathered information and --

25 A. No, sir.

1 Q. How about Mr. Sutherland? He worked on this policy.

2 A. Yes.

3 Q. Is that correct?

4 A. Yes.

5 Q. And on January -- isn't it true on January 10th of 2019
6 that Crescent Coast knew that the building sprinkler system in
7 1901 was not operational?

8 A. No, sir.

9 Q. Alright. I'll show you Plaintiff's Exhibit 23. What's
10 that?

11 A. This was an email from Sandra Nenna to Whitney
12 Gurtzweiler at AmWins Access --

13 Q. Okay.

14 A. -- regarding La Casona.

15 Q. Alright. Read it for me. What does Sandra say?

16 A. Whitney, when the app was submitted for this risk, it
17 was represented that the building was 100 percent sprinklered,
18 as the sprinkler system was being installed at that time. We
19 have learned as of yesterday that the sprinklers have been
20 installed, but the landlord has not turned the water on to have
21 them operational. We just wanted to give you a heads up on
22 this. Best, Sandra.

23 Q. Okay. And Joey Sutherland's copied on that email; is
24 that correct?

25 A. Yes.

1 Q. Alright. And what time was that email sent?

2 A. Friday, January 11th, 2019.

3 Q. How about, is there a time?

4 A. 12:10 P.M.

5 Q. 12:10 P.M.. I'll mark this as Plaintiff's Exhibit 46.

6 **(Plaintiff's Exhibit No. 46 was marked for**
7 **identification.)**

8 Q. Can you tell me the time of that email again?

9 A. 12:10 P.M.

10 Q. I'm going to show you what's been marked as Plaintiff's
11 Exhibit 47. You can thumb through it, see what it is.

12 THE COURT: 47 is stipulated.

13 MR. DESCHAMPS: Okay.

14 BY MR. DESCHAMPS:

15 Q. Tell us what Exhibit 47 is.

16 A. It appears these are text messages between myself and
17 Mr. Tebele.

18 Q. Okay. Alright. And what's the time period there?

19 A. This started Friday, January 4th at 1:08 P.M.

20 Q. Okay. January 2019?

21 A. Yes.

22 Q. Alright. I thumbed through it. Is that a true and
23 accurate depiction of the text messages between you and Mr.
24 Tebele in January of 2019? You're not disputing that the text
25 messages?

1 A. No, sir.

2 MR. DESCHAMPS: Plaintiff moves to enter Exhibit 47
3 into evidence. Plaintiff's Exhibit 47, excuse me.

4 MR. HARPER: It's been stipulated. No objection,
5 Your Honor.

6 THE COURT: Plaintiff's 47 is admitted into evidence.

7 **(Plaintiff's Exhibit No. 47 was admitted into evidence.)**

8 BY MR. DESCHAMPS:

9 Q. Turn to page 3 on Exhibit 47 for me.

10 A. Okay.

11 Q. Alright. And then you requested Mr. Tebele or you tell
12 him you're sending him something. Read that for me. Something
13 about a DocuSign?

14 A. Yes, sir. I said: Really the only thing left to do is
15 complete the DocuSign and that's it. We didn't change a thing
16 with the quote except for the named storm deductible, but I
17 don't mind getting it done this weekend.

18 Q. Okay. And you're talking about, on the DocuSign, you're
19 talking about his insurance application?

20 A. At this point, I was talking about the insurance quote.

21 Q. Here. Take a look at that. That insurance application.

22 A. Yes, sir.

23 Q. You're not -- what were you talking about there?

24 A. I'm talking about the insurance quote.

25 Q. What quote was that?

1 A. For the commercial property.

2 Q. Is it a written quote?

3 A. Yes. We made several amendments.

4 Q. How about this? Tell me the date on there. Tell me the

5 date and time of that text message.

6 A. It does not say.

7 Q. Look.

8 A. Where?

9 Q. Right there.

10 A. Okay. That's when they've screenshotted. This is a

11 timestamp for a text message.

12 Q. Yeah. What was that?

13 A. Well, the last one was Friday, January 11th at 3:20 P.M.

14 Q. Okay. We have a time there?

15 A. That's a screenshot from a text message chain.

16 Q. Okay. What time was that?

17 A. This Monday, January 14th at 11:26 A.M.

18 Q. Okay. What are you asking him to DocuSign there on

19 January 14th? Are you still obtaining the quotes?

20 A. Yes. We were making amendments to the quotes at the

21 last day before binding.

22 Q. And you look at Mr. Tebele's application again?

23 A. Yes.

24 Q. Okay. When was that DocuSigned by Mr. Tebele?

25 A. January 14th of 2019.

1 Q. Okay. And when did you DocuSign it?

2 A. January 14th of 2019.

3 Q. And when did you send that application to Mr. Tebele to
4 DocuSign it?

5 A. On January 11th of 2019.

6 Q. I'm going to show you what's been marked as Plaintiff's
7 Exhibit 27. Do you recognize that?

8 A. Yes, sir.

9 Q. And what is it?

10 A. This is an email to Mr. Tebele regarding a finance --
11 premium finance agreement.

12 Q. Okay. And that's for this policy that we're talking
13 about today?

14 A. Well, it's for the commercial property, the general
15 liability, and the commercial umbrella.

16 Q. The insurance policy.

17 A. Insurance policy, yes.

18 Q. Okay. Alright. And who sent that email?

19 A. I did.

20 Q. And when was it again? When did you send that?

21 A. January 15th of 2019 at 11:24 A.M.

22 Q. Okay. I'm going to show you what's already been
23 admitted into evidence as Plaintiff's Exhibit 28. Is that the
24 same premium finance agreement just referenced in that email?

25 A. Yes, sir.

1 MR. DESCHAMPS: Alright. At this time, Your Honor,
2 I'd like to move to admit Plaintiff's Exhibit 27 into evidence.

3 THE COURT: I have that that was stipulated
4 previously. Plaintiff's 27 is admitted into evidence.

5 **(Plaintiff's Exhibit No. 27 was admitted into evidence.)**

6 BY MR. DESCHAMPS:

7 Q. Alright. So looking at Exhibit 28, see the first page
8 at the bottom?

9 A. Yes, sir.

10 Q. It says: Signature of agent. Is that your signature?

11 A. Yes, sir.

12 Q. Okay. And what date did you sign?

13 A. January 15th of 2019.

14 Q. Did you ever make any corrections to this document or
15 any modifications or anything?

16 A. Not that I'm aware of, no.

17 Q. And can you tell me who is the insurance company and the
18 general agent listed on page 1?

19 A. It says Lloyd's London, Certain Underwriters, AmWins
20 Access Insurance Services.

21 Q. Okay. And Lloyd's of London, that's the insurance -- or
22 that's the Certain Underwriters At Lloyd's that provided
23 coverage to Mr. Tebele under this policy --

24 A. Yes.

25 Q. -- or sold him coverage? And AmWins Access Insurance

1 Services, that was the general agent?

2 A. It should have been AmWins Brokerage Insurance.

3 Q. But there were no changes made to this document?

4 A. No, sir.

5 Q. Okay. You didn't notify anybody that any information on
6 here was inaccurate?

7 A. Well, I send in -- when I submit this premium finance
8 agreement, I will send in the insurance binders with it.

9 Q. Okay. So you just submitted it?

10 A. Yes.

11 Q. Okay. If you could turn to the next page for me. You
12 see, going towards the bottom, it says: Agent Broker
13 Representations?

14 A. Yes.

15 Q. Okay. And agent broker, that would be you on this?

16 A. Yes.

17 Q. Okay. And you see that first sentence, if you could
18 read that first sentence for me?

19 A. Yes.

20 Q. And then stop at the parentheses, and then go to the
21 bottom, see, like, number 12 at the bottom?

22 A. Yes.

23 Q. So you don't read all that stuff in between. Can you do
24 that for me?

25 A. Yeah, I can do that: The agent/broker in executing this

1 and any future agreements represents, warrants, and agrees,
2 down to number 8 --

3 Q. Number 12.

4 A. Just number 12: To properly notify the lender in
5 writing if any information on this agreement becomes
6 inaccurate.

7 Q. Okay. And you didn't do that; is that correct?

8 A. I submitted the insurance binders with this.

9 Q. Okay. So you just submitted the insurance binders?

10 A. Yes. Showed proof of insurance.

11 Q. But you didn't notify the lender in writing that any
12 information is inaccurate, like a letter or something like
13 that?

14 A. No.

15 Q. Okay. I'll show you what's been marked as Plaintiff's
16 Exhibit 26. I'll show you what's been marked as Plaintiff's
17 Exhibit 26.

18 MR. DESCHAMPS: Your Honor, I believe this has been
19 stipulated too.

20 THE COURT: 26, yes, I have it.

21 MR. DESCHAMPS: It might have been put into evidence.

22 THE COURT: I don't have this one in evidence.

23 MR. DESCHAMPS: Okay.

24 BY MR. DESCHAMPS:

25 Q. Do you recognize that?

1 A. Yes, sir.

2 Q. Tell me what it is.

3 A. This is a down payment check from Mr. Tebele.

4 Q. Okay.

5 A. Or his company A. Tebele & Sons.

6 Q. And did he deliver that to you?

7 A. I believe I went and picked it up from him.

8 Q. Did you request that?

9 A. Yes, sir.

10 Q. I think it's, is it referenced in the email we were just
11 speaking about?

12 A. It references as a down payment made payable to us.

13 Q. How much?

14 A. \$34,199.42.

15 Q. And after you received that check from Mr. Tebele,
16 what'd you do with it?

17 A. We submit the finance agreement to the finance company,
18 and then we submit any additional funds that are due to the
19 insurance broker to them.

20 Q. Did you take any premium out of it? I know Mr.
21 Sutherland previously testified about it.

22 A. Yes, we withhold our commission on from this down
23 payment.

24 Q. And how does that work? Do you take a commission as a
25 company like Crescent Coast and then you distribute some to Mr.

1 Sutherland? How does that work?

2 A. Yes. We will distribute -- Crescent Coast brings in the
3 money and then we distribute, you know, a percentage of it as,
4 you know, payment for the insurance producer.

5 Q. Okay. And the rest of it, you should then send that off
6 to the general agent; is that correct?

7 A. Yes, to the insurance broker.

8 Q. Okay. Do you recall when you sent in the request of
9 buying coverage under Mr. Tebele's policy?

10 A. I believe it was on January 14th of 2019.

11 Q. Okay. But you didn't get the policy right then, did
12 you?

13 A. No, sir.

14 Q. When did you get the policy?

15 A. I believe the first draft of the commercial property
16 policy came on February 7th.

17 Q. And did you send that to Mr. Tebele?

18 A. At that time, no, I did not.

19 Q. Did you discuss any revisions with him or --

20 A. Yes, I would have asked him when I sent him the binder
21 to review and to let us know if he had any questions.

22 Q. I'm talking about the policy.

23 A. No, sir.

24 Q. Here, I'll hand it to you.

25 A. Yeah.

1 Q. And see, the fire was February 24, 2019; is that
2 correct?

3 A. Yes, sir.

4 Q. Okay. And after the fire a couple of days -- four or
5 seven days after the fire, did you go to the property and did
6 you participate in a joint inspection; is that correct?

7 A. Yes, sir.

8 Q. Alright. And who was in that joint inspection?

9 A. I can't remember the field adjuster's name.

10 Q. Lauraleigh Weaver?

11 A. Yes, she was there, I believe Mr. Sutherland came, and I
12 was there, as well.

13 Q. And Mr. Tebele was there?

14 A. Yes, sir.

15 Q. And then that's when you delivered the policy to him; is
16 that correct?

17 A. Yes, sir.

18 Q. So you just physically handed it to him?

19 A. Yes.

20 Q. In front of his burnt down building?

21 A. Yes.

22 Q. Did you tell him any of the terms then? Did you talk
23 about the protective safeguards?

24 A. We had a little bit more going on that morning than, you
25 know, discussing a policy.

1 Q. And that was the first time you showed him the policy or
2 delivered it to him; is that correct?

3 A. Yes.

4 Q. You didn't email it to him?

5 A. I emailed Mr. Tebele the binder.

6 Q. The policy, not the binder.

7 A. The policy, no.

8 Q. And after the fire and after the joint inspection, did
9 you submit any loss claim?

10 A. Yes, sir.

11 Q. And about when was that? Do you recall?

12 A. I believe I might have done that the day after the fire.
13 I went into the office and filed a claim.

14 Q. And Mr. Tebele, he was your client; is that correct?

15 A. Yes, sir.

16 Q. Crescent Coast's client?

17 A. Yes.

18 Q. And so after the loss claim, after you submitted the
19 loss claim, you tried to help Mr. Tebele out, right, with
20 communications, and trying to get --

21 A. Yes, absolutely.

22 Q. And after the loss claim was submitted, did you try to
23 get information from any of the AmWins companies or the
24 carriers for Mr. Tebele, any types of information?

25 A. I would believe so, yes.

1 MR. DESCHAMPS: Let's mark this. I'm going to mark
2 this as Plaintiff's Exhibit Number 106.

3 **(Off the record discussion was held at the Bench by**
4 **Court and counsel.)**

5 THE COURT: Your objection is noted.

6 MR. HARPER: Thank you, You Honor.

7 THE COURT: Mr. Deschamps, this Plaintiff 106 has
8 been marked?

9 MR. DESCHAMPS: Yes, sir. I'll show you what's been
10 marked as Plaintiff's Exhibit 106.

11 **(Plaintiff's Exhibit No. 106 was marked for identification.)**

12 BY MR. DESCHAMPS:

13 Q. Do you recognize that document?

14 A. Yes, sir, I do.

15 Q. Okay. Tell me what it is.

16 A. This is an email that I sent to Barrett Sellers at
17 Amwins Brokerage.

18 Q. Okay. And what's the date you sent that email?

19 A. This is May 8th of 2019 at 9:09 A.M.

20 Q. And is that a true and accurate copy of the email you
21 sent on that date to Mr. Barrett Sellers?

22 A. Yes, sir.

23 MR. DESCHAMPS: Okay. Plaintiff moves to admit
24 Exhibit 106 into evidence.

25 THE COURT: Plaintiff's 106 is admitted over

1 objection.

2 **(Plaintiff's Exhibit No. 106 was admitted into evidence.)**

3 BY MR. DESCHAMPS:

4 Q. Alright, Mr. Egan, what are you asking in that email?

5 A. I say: Barrett, I am under the assumption that Lloyd's
6 is not willing to share any of this information. We are in a
7 bit of a battle with Lloyd's on this claim, so anything you can
8 get us will be a help in getting it settled.

9 Q. Okay. And you're just trying to help your client get
10 some information; is that correct?

11 A. Yes, sir.

12 Q. And were you successful? Were you able to get any
13 information?

14 A. No, sir.

15 Q. And you followed up later on to try to get some
16 information to help Mr. Tebele; is that correct?

17 A. Yes, sir.

18 MR. DESCHAMPS: Let's mark this is Plaintiff's
19 Exhibit 36.

20 **(Plaintiff's Exhibit No. 36 was marked for identification.)**

21 THE COURT: I do not have 36 as stipulated.

22 MR. DESCHAMPS: It's not.

23 MR. HARPER: Lay the foundation.

24 BY MR. DESCHAMPS:

25 Q. Mr. Egan, I'm going to show you what's been marked as

1 Plaintiff's Exhibit 36. Do you recognize that document?

2 A. Yes, sir.

3 Q. Okay. And what is it?

4 A. This is another email to Barrett Sellers at AmWins
5 Brokerage.

6 Q. And an email from who? Who sent the email?

7 A. I sent the email.

8 Q. Okay. That's to Barret Sellers, anybody else? I
9 thought there were some other people on there.

10 A. It does look like Hollan Delany was CC'd and Whitney
11 Gurtzweiler.

12 Q. Okay. And what was the day you sent that email? The
13 date, I'm sorry.

14 A. Wednesday, October 30th of 2019 at 11:57 A.M.

15 Q. I'm sorry, can you repeat that, October?

16 A. October 30th of 2019.

17 Q. Okay. And is Exhibit 36, is that a true and accurate
18 depiction of the email you sent to Barrett Sellers, Hollan
19 Delany, and Whitney Gurtzweiler on October 30th, 2019?

20 A. Yes, sir.

21 MR. DESCHAMPS: Okay. Plaintiff moves to enter
22 Exhibit 36 into evidence.

23 MR. HARPER: No objection.

24 MR. RISER: None, Your Honor.

25 THE COURT: Alright. Plaintiff's 36 is admitted in

1 evidence.

2 **(Plaintiff's Exhibit No. 36 was admitted into evidence.)**

3 BY MR. DESCHAMPS:

4 Q. Mr. Egan, can you step down?

5 A. Yeah.

6 Q. Alright, Mr. Egan, can you read that for us? Read the
7 email.

8 A. Barrett, please be advised that the adjuster, Duncan
9 Speak, has given us authorization to request any and all
10 inspection reports for the above referenced accounts. He has
11 advised that AmWins would not have this -- would have this
12 documentation. These are imperative for us to obtain, as my
13 client and myself need to know if there are any loss control
14 issues that need to be addressed. Please forward all
15 inspection reports that AmWins has so that we can complete our
16 underwriting file.

17 Q. Okay, thank you, Mr. Egan. Return to your seat. Now,
18 Mr. Egan, were you ever able to get any kind of reports?

19 A. No, sir.

20 Q. And did you subsequently make any requests for
21 information?

22 A. I don't remember going forward after that.

23 Q. Were you able to obtain any information from any of
24 these AmWins entities?

25 A. No, sir.

1 Q. And how about any of the insurers on the Tebele policy?

2 A. No, sir.

3 Q. Did you ever have any communications from them?

4 A. I don't recall any.

5 MR. DESCHAMPS: Alright, Mr. Egan, I don't have any
6 further questions. Please answer any questions of counsel.

7 THE COURT: Alright. Mr. Harper?

8 **CROSS-EXAMINATION**

9 BY MR. HARPER:

10 Q. Good morning, Mr. Egan. How are you?

11 A. I'm doing well. How about yourself?

12 Q. I'm fine, thank you. Mr. Egan, the tenant policy that
13 you were the retail agent for, does that have anything to do
14 with litigation?

15 A. In my -- no, sir.

16 Q. This litigation -- the claim for this litigation, the
17 insurance claim, was that made under the tenant policy?

18 A. No.

19 Q. That's under a different policy, right?

20 A. Yes, correct.

21 Q. The A. Tebele & Sons policy?

22 A. Yes.

23 Q. You mentioned with Mr. Deschamps, an agreement that you
24 had with the AmWins Group?

25 A. Yes, sir.

1 Q. You're an independent contractor under that agreement?

2 A. Yes.

3 Q. And you would agree with that term?

4 A. Yes, yes. We'd be 1099.

5 Q. And do you have any binding or representational
6 authority on behalf of any AmWins entity?

7 A. No, I wouldn't, no.

8 Q. When you're placing insurance for a client, who is your
9 client, I guess? Who are you servicing?

10 A. In this case, it would be Mr. Tebele, who's my customer.

11 Q. Mr. Tebele and his entities?

12 A. Yes.

13 Q. When you were in the process of soliciting the business
14 of Mr. Tebele's businesses, you're in the process of soliciting
15 the business of A. Tebele & Sons, and their insurance business,
16 did you obtain quotes from multiple different carriers?

17 A. I don't believe we did, no.

18 Q. The only quote you ever got was an AmWins SRU quote?

19 A. Yes, sir. We were blocked with other markets.

20 Q. What do you mean by that?

21 A. It means when another insurance agent submits an
22 application to either a broker or he submits it to another
23 insurance carrier, we no longer would be able to have access to
24 that carrier or broker.

25 Q. So would I be correct in understanding then that you did

1 attempt to get quotes from other carriers?

2 A. Yes, sir.

3 Q. But it seems another agent was also getting quotes from
4 them already?

5 A. Yes, sir.

6 Q. Is it your understanding that Mr. Tebele was working
7 with another retail agent while he was also entertaining bids
8 from your agency?

9 A. Yes, sir.

10 Q. And the purpose of that, he was trying to go back and
11 forth between the agencies to see who have the better price,
12 right?

13 A. Yes.

14 Q. We've already talked a lot about the 100 percent
15 sprinklered, right?

16 A. Yes.

17 Q. Mr. Egan, if the pipe from the city main into the
18 building isn't even connected to it, is it 100 percent
19 sprinkled, in your opinion?

20 A. No, sir.

21 Q. So to the extent the application says that, we know now
22 it's incorrect, right?

23 A. Yes.

24 MR. HARPER: I'm showing Mr. Egan what's been marked
25 as Defendant's Exhibit 28.

1 THE COURT: This has already been stipulated?

2 MR. HARPER: Yes, Your Honor.

3 BY MR. HARPER:

4 Q. Do you recognize that document, Mr. Egan?

5 A. Yes. This would be emails between myself and Mr.
6 Tebele.

7 Q. Is this a true and accurate copy of those emails between
8 you and Mr. Tebele?

9 A. Yes.

10 MR. HARPER: Moving into evidence, Defendant's
11 Exhibit 28, Your Honor.

12 MR. DESCHAMPS: No objection.

13 MR. RISER: None, Your Honor.

14 THE COURT: Alright. Exhibit 28 is admitted into
15 evidence.

16 **(Defendant's Exhibit No. 28 was admitted into evidence.)**

17 BY MR. HARPER:

18 Q. Mr. Egan, in this email, the bottom of the first page of
19 the exhibit, it seems that you're writing to Mr. Tebele; is
20 that correct?

21 A. Yes, sir.

22 Q. And it mentions that you've attached some binders, your
23 insurance binders?

24 A. Yes, sir.

25 Q. Is this the email on January 17th of 2019 when you

1 submitted the property binder to Mr. Tebele for A. Tebele &
2 Sons?

3 A. Yes, sir.

4 Q. And previously, the Defendant had marked Exhibit 25 and
5 entered it into evidence.

6 A. Yes, this is the insurance binder.

7 Q. For the property policies?

8 A. Yes, just for the property.

9 Q. And is there a number on the bottom right-hand corner of
10 that for the premium?

11 A. Yes.

12 Q. What's the total premium for that, Mr. Egan?

13 A. The total premium is \$105,000.00.

14 Q. And that's for the property?

15 A. That's for the property.

16 Q. The property policy element. So when we saw the premium
17 finance agreement for the \$170,000, that's other policies that
18 cover other things that are included in that?

19 A. Yes, sir.

20 Q. And again, you sent this binder to Mr. Tebele?

21 A. Yes.

22 Q. Can you turn to the second page of the binder for me,
23 please? In the comment section of that binder, there's a
24 notation that there's an automatic sprinkler system requirement
25 on the binder; is that correct?

1 A. Yes, that's correct.

2 Q. And if we turn to the list of forms?

3 A. Yes.

4 Q. We have the protective safeguards fire endorsement form,
5 correct?

6 A. Yes, sir.

7 Q. And that's the same form that was in the policy when it
8 was delivered to your agency?

9 A. Yes.

10 Q. I'm showing what's been marked as Defendant's Exhibit
11 34, Mr. Egan. Do you recognize that document, Mr. Egan?

12 A. Yes, sir.

13 Q. What is it?

14 A. This was a receipt of the property policy copy from
15 AmWins Brokerage.

16 Q. Is it a true and accurate copy of the email?

17 A. Yes, sir.

18 MR. HARPER: Move into evidence, Your Honor, Defense
19 Exhibit 34.

20 MR. DESCHAMPS: No objection.

21 MR. RISER: None, Your Honor.

22 THE COURT: Alright. Defendant's Exhibit 34 is
23 admitted into evidence.

24 **(Defendant's Exhibit No. 34 was admitted into evidence.)**

25 BY MR. HARPER:

1 Q. And consistent with your testimony earlier, the date of
2 this policy delivery via email to you is February 7th of 2019,
3 correct?

4 A. Yes.

5 Q. Before the fire?

6 A. Yes.

7 Q. And before the visit by Mr. Tebele to his property on
8 February 13th of 2019, that was testified to earlier in this
9 trial, correct?

10 A. Yes.

11 Q. Do you recall Mr. Dover saying that Mr. Tebele was out
12 at the property on February 13th, 2019?

13 A. That is correct.

14 Q. And knew that the sprinkler was not connected?

15 A. That is correct.

16 Q. Did he ever tell you about that?

17 A. No, he did not.

18 Q. I believe you testified earlier, Mr. Egan, with respect
19 to the premium finance agreement that the binders were included
20 with that when you submitted it; is that correct?

21 A. I believe I've said that.

22 Q. The binder's in writing, isn't it?

23 A. Yes.

24 Q. What AmWins' entity is denoted on the binder for the
25 property policy in the top left corner?

1 A. It says: AmWins Special Risk Underwriters.

2 Q. That seems pretty clear to me, doesn't it to you?

3 A. Yes, sir.

4 Q. The schedule of values, there's been a couple of
5 different iterations of that floating around, are you familiar
6 with that document?

7 A. Yes, sir.

8 Q. And that's the document that was submitted with your
9 submission to the broker, correct?

10 A. Yes, sir.

11 Q. And there's no dispute that on both that document and on
12 Mr. Tebele's signed application, the sprinkler system for this
13 property that we're here about is indicated to be 100 percent
14 sprinklered?

15 A. No, there's no dispute.

16 Q. It's on both, the same?

17 A. Yes.

18 MR. HARPER: Thank you, Mr. Egan. No further
19 questions.

20 THE COURT: Mr. Riser?

21 MR. RISER: These gentlemen talked about some of the
22 same documents I am, so I've been changing numbers as much as
23 fast as I can.

24

25

1 CROSS-EXAMINATION

2 BY MR. RISER:

3 Q. Is it okay if I call you David?

4 A. Yes, that's fine.

5 Q. David, where are you from?

6 A. Originally from Spartanburg, South Carolina.

7 Q. Where do you live now?

8 A. I live in Myrtle Beach, South Carolina.

9 Q. How long?

10 A. Since 2006.

11 Q. Okay. How long have you been in the insurance business?

12 A. I've been in the business since 2008.

13 Q. And how long you've been with Crescent Coast under
14 Liberty?

15 A. Since 2016.

16 Q. Okay. Other than the insurance business for Mr. Tebele
17 from January 15th, 2019 until January the 15th, 2020, Crescent
18 Coast doesn't have any business connection with Mr. Tebele or
19 any of his companies, right?

20 A. No.

21 Q. Mr. Deschamps asked you what a retail agency or what
22 Crescent Coast does, and you gave him an answer, but it does
23 not write insurance policies, does it?

24 A. No, sir.

25 Q. And it doesn't underwrite policy requests or put

1 together policies?

2 A. No, sir.

3 Q. And it doesn't make coverage decisions?

4 A. No, sir.

5 Q. Okay. So I believe you testified earlier that Crescent
6 Coast helps gather info from prospective clients to send
7 carriers or brokers?

8 A. Yes.

9 Q. Okay. And it helps clients, like Mr. Tebele, file
10 claims after losses?

11 A. Yes.

12 Q. Does Crescent Coast have any direct contractual
13 relationships with some carriers?

14 A. Yes, sir.

15 Q. But not carriers that have the capacity to ensure the
16 amount of property for Mr. Tebele?

17 A. Yes, correct.

18 Q. Right. So you don't have direct connections with those
19 carriers?

20 A. No, sir.

21 Q. So you have to go to a broker?

22 A. Yes, sir.

23 Q. And what is a managing general agent?

24 A. I would assume that would be what you would consider a
25 broker.

1 Q. Okay. And AmWins is a managing general agent?

2 A. Yes.

3 Q. And AmWins has divisions, right?

4 A. Yes, sir.

5 Q. And Access and Brokerage are two of those?

6 A. Yes, sir.

7 Q. Okay. And you had to go to AmWins because you didn't
8 have any connection to the carriers, right?

9 A. Yes, sir.

10 Q. Okay. When did you first meet Abe Tebele?

11 A. It was in August of 2018.

12 Q. And that relationship started through Joey Sutherland?

13 A. Yes, sir.

14 Q. What was he looking to do, to get?

15 A. He wanted us to shop his insurance to find him a better
16 price.

17 Q. Was there anything special about the date January the
18 15th, 2019?

19 A. That was the date that the policy was actually issued.

20 Q. And that was the date Mr. Tebele was well aware of?

21 A. Yes.

22 Q. And well, let me ask you this: was his current policies,
23 would they end on January the 14th, 2019?

24 A. They ended midnight on January 15th, so 12:01 --

25 Q. Okay.

1 A. -- A.M., January 15th, those policies are over.

2 Q. So that he had to have new policies or renew the old
3 policies for the calendar year of 2019?

4 A. Yes.

5 Q. Okay. You said you first met him in August 2018. Is
6 that when the ACORD application started to coming in?

7 A. Yes, sir.

8 Q. You identified them earlier, the August ACORD apps.
9 Just generally, what are those applications? What are those
10 ACORD documents?

11 A. These are standard independent agent forms that we use
12 to gather information to send to an insurance broker to obtain
13 an insurance quote.

14 Q. And so you and Joey Sutherland sat down with Mr. Tebele
15 and started to take down the information he gave you about his
16 properties?

17 A. Yes, sir.

18 Q. And that information made it onto an ACORD?

19 A. Yes, sir.

20 Q. Okay. And the first one was submitted in August?

21 A. Yes, sir.

22 Q. That application included 1901 North Kings that we're
23 here about, right?

24 A. Yes, sir.

25 Q. And do you recall how many buildings total Mr. Tebele

1 wanted to get insured?

2 A. I believe it was 23.

3 Q. And do you know how many of those -- do you remember how
4 many of those actually had sprinklers?

5 A. Off the top of my head, five.

6 Q. Okay. What did Mr. Tebele tell you about 1901 North
7 Kings?

8 A. He told us that this sprinkler was nearly complete, and
9 I don't know verbatim what he said, but it was it's going to be
10 done well before the renewal on January 15th.

11 Q. Did he indicate: Put 100 percent sprinklered because
12 it's going to be done?

13 A. Yes, he told us to put 100 percent sprinklered.

14 Q. And it's going to be -- it was five months at that time,
15 right? From when you met him to when the policy renewal?

16 A. Yes.

17 Q. So he had five months to get it done?

18 A. Yes.

19 Q. Okay. And you've heard -- you've been here for the
20 entire trial, haven't you?

21 A. Yes.

22 Q. And you heard the testimony from a witness named Jim
23 Twaddell about his communication with Mr. Tebele?

24 A. Yes.

25 Q. And he indicated that Mr. Tebele indicated in that

1 communication that it was unforeseeable?

2 A. Yes.

3 Q. That it wouldn't be done by the time of renewal, right?

4 A. Yes.

5 Q. And so that's consistent with what he told you and Joey
6 in August 2018?

7 A. Yes.

8 Q. Did Mr. Tebele ever report to you that the sprinkler
9 system was not completed and operational?

10 A. No, sir.

11 Q. Did Mr. Tebele ever give you any more update on the
12 sprinkler system at 1901 North Kings after that August 2018
13 meeting?

14 A. No, sir.

15 Q. You don't verify -- so Crescent Coast, I mean, you don't
16 verify the information that's given to you by a prospective
17 client that goes onto an ACORD app; do you?

18 A. No, sir.

19 Q. Is that even possible?

20 A. I wouldn't be qualified to even do it.

21 Q. And I mean, how many clients right now does Crescent
22 Coast have?

23 A. At this point, it's, you know, almost 2,500.

24 Q. That's just the clients, that's not policies?

25 A. That's not policies.

1 Q. So --

2 A. There's thousands more.

3 Q. It'd be virtually impossible to verify every piece of
4 information that's given to you by a client or a prospective
5 client?

6 A. Yes.

7 Q. And you take your prospective clients at their word that
8 the information is true and accurate, right?

9 A. Yes, sir.

10 Q. And verifying that information is the job of an
11 underwriter, not Crescent Coast?

12 A. Yes, sir.

13 Q. Between Crescent Coast and the property owner, who knows
14 more about the property?

15 A. The property owner would know more about their building
16 than I would.

17 Q. And that would include the value of the building?

18 A. Yes, sir.

19 Q. And its safety features?

20 A. Yes, sir.

21 Q. How much square footage it has?

22 A. Yes.

23 Q. Basically everything about it, they know more about it
24 than you?

25 A. Yes.

1 Q. Do you recall the total value of the 23 properties that
2 Mr. Tebele wanted insured?

3 A. A rough estimate off the top of my head, it was around
4 \$22 million dollars.

5 Q. Did you submit multiple ACORDS to an AmWins entity
6 during this process?

7 A. Yes.

8 Q. And why would multiple forms be submitted?

9 A. Well, we had one multiple ACORD form we had to use, it
10 was a 125, a 140, a 126, and these are insurance -- these are
11 different insurance policies we're trying to obtain, and then
12 also in Tebele's case, there was -- you know, we had to do
13 multiple additions, you know, to these ACORDS, you know,
14 through the months.

15 Q. But you built an ACORD that included all the property
16 information --

17 A. Yes.

18 Q. -- that was submitted in August 2018 to AmWins?

19 A. Yes.

20 Q. And then that same application was just added to and
21 revised?

22 A. Yes, sir.

23 Q. Eventually leading up into a January 14th, 2019 signed
24 copy?

25 A. Yes, sir.

1 Q. Okay. Did anything change on any of those ACORD forms
2 related to 1901 North Kings and whether or not it was 100
3 percent sprinklered?

4 A. No, sir.

5 Q. Okay. Who did you contact about getting insurance
6 quotes for Mr. Tebele?

7 A. I initially sent the applications to the contact I knew
8 at AmWins Access, which was Whitney Gurtzweiler who is now
9 Whitney Northcutt.

10 Q. So she's the main contact for Crescent Coast for AmWins?

11 A. Yes.

12 Q. Okay. Do you know if Ms. Northcutt works with any
13 particular division of AmWins?

14 A. She's with AmWins Access Insurance.

15 Q. Well, did Ms. Northcutt tell you anything when you
16 reached out about the policies?

17 A. She -- that's like she sells seashells on the seashore.
18 She said that she would not be able to help me on the property
19 because it was out of her scope of what she was able to
20 underwrite, that she would have to refer it to another
21 underwriter.

22 Q. And she referred it to Barrett Sellers?

23 A. Yes, sir.

24 Q. And he's with what division of AmWins?

25 A. He's with AmWins Brokerage of the Carolinas.

1 Q. And you received quotes during that four to five-month
2 process?

3 A. Yes, sir.

4 Q. Of gathering information and then getting prices, right?

5 A. Yes, sir.

6 Q. Did you send those quotes to Mr. Tebele?

7 A. Yes, sir.

8 Q. If you can look there and see if you have --

9 A. Okay.

10 Q. If you look at what's been, I believe, just previously
11 admitted into evidence, Plaintiff's Exhibit 47.

12 A. Yes.

13 Q. You were asked about, you said, it's on the first page
14 there, I believe we're looking at the same thing, about midway,
15 it says January 11th, 2:00, or 2:18 P.M., sorry.

16 A. Yes.

17 Q. Okay. It says: Went ahead and sent you the DocuSign on
18 the property. Again, is that, are you referring to the quote
19 or are you referring to the policy -- or excuse me, the ACORD
20 application, or both?

21 A. This would be the ACORD applications.

22 Q. Okay. And underneath it, I believe, are those Mr.
23 Tebele's texts?

24 A. Yes.

25 Q. It says: Our quote's attached. I see the remarks. Did

1 I read that correctly?

2 A. Yes.

3 Q. I think you'll turn over to the next page, and then
4 there's your reply.

5 A. Yes.

6 Q. I can email it separate. Are you talking about sending
7 in the quotes at that time?

8 A. Yes.

9 Q. Okay. And then just down the page, you say: I just
10 emailed it to you.

11 A. Yes.

12 Q. Okay. The next page is Mr. Tebele's response at the
13 top?

14 A. Yes.

15 Q. I printed it out. Well, you read it.

16 A. I printed it out. I'm literally exhausted, and Sabbath
17 begins shortly. Can we finalize over the weekend or Monday?

18 Q. So the quotes and the application were sent to Mr.
19 Tebele on the 11th?

20 A. Yes.

21 Q. And he needed some time to review?

22 A. Yes.

23 Q. Okay. Also down there, if you look on that same page --
24 so again, this is January the 11th, 2019, right?

25 A. Where did you go to?

1 Q. I'm on the same page where Mr. Tebele says, I printed it
2 out.

3 A. Yes.

4 Q. Down there, his responses -- tell you what, what do you
5 tell him after he says: I'm tired, I'll deal with it later.

6 A. I said: Really, the only thing left to do is complete
7 the DocuSign, and that's it, we didn't change a thing with the
8 quote except for the named storm, well, it says, NS deductible,
9 which that stands for named storm, but I don't mind getting it
10 done this weekend.

11 Q. So you were just telling -- you're telling Mr. Tebele,
12 hey, we're ready to get this -- to submit this for binding for
13 you, you just need to review and sign the documents?

14 A. Yes.

15 Q. Okay. What's his response?

16 A. I appreciate it. I spoke to Alice and she won't split,
17 so if we go with this, you get both.

18 Q. Who is Alice?

19 A. I believe she was another insurance agent that he was
20 working with.

21 Q. So Mr. Tebele was getting quotes from another agency, as
22 well as Crescent Coast?

23 A. Yes, sir.

24 Q. And is this an indication to you that he didn't indicate
25 that he was going to go with Crescent Coast and their quotes

1 until January the 11th?

2 A. Yes. This is -- he's still not committed to us yet.

3 Q. So he's not committed until the policy's bound?

4 A. Yes.

5 Q. Okay. Mr. Egan, I'm going to hand you what's been
6 marked as Defendant's Exhibit 64.

7 A. Yes.

8 Q. Can you review that document?

9 A. This is a property insurance quote from AmWins' Special
10 Risk Underwriters.

11 Q. And is that what you're referring to in the text
12 messages with Mr. Tebele?

13 A. Yes.

14 Q. And that's a document you sent him?

15 A. Yes.

16 Q. Would there be any other document that has quoted
17 information on it that you would have sent him?

18 A. At that time I believe it was just the property I had
19 already sent him on the liability and excess quotes I had.

20 Q. What sort of information is on the quote?

21 A. It gives an entire breakdown of the insurance you're
22 purchasing, like your total insured value, your deductibles,
23 you know, policy premiums.

24 Q. What's on the second page?

25 A. Conditions of the policy, or conditions of the quote.

1 Q. What does it say under: Comments conditions?

2 A. Okay, it does say: The following are required within
3 five days of binding.

4 Q. If you could just read a little slower.

5 A. The following are required within five days of binding.
6 One is signed TRIA notice, that's a terrorism form: Home state
7 signed flood notice, and below that is, protective safeguards,
8 number one being an automatic sprinkler system, two automatic
9 fire alarm, and number three is ANSUL systems, heating and
10 ventilation, and air conditioning is maintained in an operation
11 at all times, and that if there's any aluminum wiring in the
12 building that are properly pigtailed or retrofitted.

13 Q. And next to the end, is there a list of forms?

14 A. Yes, sir.

15 Q. And what are those?

16 A. These are all the forms of endorsements that will go
17 with policy once it's issued.

18 Q. And I don't want to be presumptuous, but if there are
19 boxes next to the numbers, or next to the form names, if a box
20 is checked, does that mean that that applies to that policy?

21 A. Yes, sir.

22 Q. Okay. And is the protective safeguard endorsement on
23 there?

24 A. Yes, sir.

25 Q. Okay. Where is it?

1 A. It is a little over halfway down.

2 Q. Okay. And if you could put that back together?

3 A. Yes.

4 Q. And do you believe that's a true and accurate copy of
5 the quote that was sent to Mr. Tebele prior to binding the
6 policy?

7 A. Yes, sir.

8 MR. RISER: Your Honor, I'll now move this
9 Defendant's Exhibit 64 into evidence.

10 MR. DESCHAMPS: No objection.

11 MR. HARPER: None, Your Honor.

12 THE COURT: Alright. Defendant Crescent's number 64
13 is admitted into evidence.

14 **(Defendant Crescent's Exhibit No. 64 was admitted**
15 **into evidence.)**

16 BY MR. RISER:

17 Q. So the final ACORD application, which you may have up
18 there is Defendant's 23, that was submitted on January the
19 14th, 2019?

20 A. Yes, sir.

21 Q. And is there anything different about that one versus
22 the others that you submitted?

23 A. Slight differences just after we had updated some of the
24 information.

25 Q. So the information is supposed to be complete at that

1 time?

2 A. Yes.

3 Q. And then what's the purpose of sending this to the
4 client?

5 A. Well, this is for the client to review and make sure
6 that this information is correct and accurate before they sign
7 it.

8 Q. And those text messages we read indicated that Mr.
9 Tebele printed it out?

10 A. Yes.

11 Q. And he got it on the 11th, right?

12 A. Yes.

13 Q. And it was submitted to you via DocuSign on the 14th?

14 A. Yes.

15 Q. And so he had three days to review it?

16 A. Yes.

17 Q. Did he sign that document?

18 A. Yes, he did.

19 Q. And did you sign it, as well?

20 A. Yes.

21 Q. And there are multiple places to sign that document,
22 right?

23 A. Yes.

24 Q. And at least two of those, like on, if you'll look down,
25 I think it's on the third page.

1 A. Probably fourth.

2 Q. Okay. You know it better than I do. What's the
3 language just above the signatures?

4 A. The undersigned is an authorized representative of the
5 applicant and represents that reasonable inquiry has been made
6 to obtain the answers to questions on this application. He/she
7 represents that the answers are true, correct, and complete to
8 the best of his/her knowledge.

9 Q. And did you believe that information was true?

10 A. Yes.

11 Q. Because otherwise you wouldn't have signed it?

12 A. No, sir.

13 Q. So you indicated earlier that it wasn't until around
14 January the 11th that Mr. Tebele decided to go with Crescent
15 Coast, right?

16 A. Actually, I believe it was January 14th.

17 Q. So it was actually the day before --

18 A. Yes.

19 Q. -- the policy went into effect?

20 A. Yes.

21 Q. And so you worked for him from August 2018 until the day
22 before binding, not knowing if Mr. Tebele was going to be your
23 client or not?

24 A. Yes.

25 MR. RISER: Do you have a copy of the binder?

1 MR. DESCHAMPS: I don't think it's been put into
2 evidence, but I have one.

3 THE COURT: I have 28 that's been admitted.

4 MR. RISER: Great. Thank you. Thank you, Your
5 Honor.

6 BY MR. RISER:

7 Q. I'm going to hand you what's been marked as Defendant's
8 Exhibit, the Judge tells me it's in evidence as 28 and that's
9 what I'm going to go by.

10 THE COURT: That's what I have. Is that the binder?

11 MR. RISER: Yes.

12 BY MR. RISER:

13 Q. Will you review that document and tell me what it is.

14 A. This is a property, commercial property insurance binder
15 for A. Tebele & Sons.

16 MR. RISER: Actually, I have it. I have it here. It
17 may have been admitted twice. I got Defendant's Exhibit 25
18 written on it.

19 THE COURT: I'm not sure. I have a 28 here that was
20 admitted. I'm not sure if it was the binder or what.

21 MR. RISER: Okay. I'll tell you what, I think
22 they're probably the same thing.

23 BY MR. RISER:

24 Q. Why don't we look at the one with the blue sticker on
25 it?

1 A. Okay.

2 Q. Defendant's Exhibit 25, if you'll tell me what that is.

3 A. This is a commercial property insurance binder for A.

4 Tebele & Sons.

5 Q. And do you think that's a true and accurate copy of that
6 document?

7 A. Yes.

8 Q. And what is a binder?

9 A. This is proof of insurance that you have an insurance
10 policy enforced with the carrier.

11 Q. Is the information on that binder is the same as the
12 quote?

13 A. Yes.

14 Q. And all the information related to the price at the
15 bottom, which is the premium value for the property insurance,
16 right?

17 A. Yes.

18 Q. And all the information, including standard information
19 about the property itself?

20 A. Yes.

21 Q. And the conditions?

22 A. Yes.

23 Q. And if you turn over there, is the information regarding
24 protective safeguard on that?

25 A. Yes, sir.

1 Q. And is there also a list of forms?

2 A. Yes, sir, the second to last page.

3 Q. Okay. And so that's a document that Mr. Tebele received
4 from you, right?

5 A. Yes.

6 Q. You received it on January the 17th?

7 A. Yes, I believe that's the correct date.

8 Q. Do you have Exhibit 27 there in front of you?

9 A. Yes.

10 Q. Is that the email from you to Mr. Tebele on January the
11 17th, sending that binder?

12 A. This one's referring to the finance agreement.

13 MR. RISER: Now we got it. Thank you.

14 BY MR. RISER:

15 Q. Defendant's Exhibit 28 is the email for you sending that
16 binder to Mr. Tebele, correct?

17 A. Yes.

18 Q. And did Mr. Tebele ever ask you about any provisions in
19 that binder?

20 A. No, sir.

21 Q. Did he ask you about any forms?

22 A. No, sir.

23 Q. Could you have provided that information if he had
24 asked?

25 A. Yes, absolutely.

1 Q. After coverage was bound, were you done with the
2 property policy?

3 A. No.

4 Q. Why not?

5 A. There was several revisions that had to be made
6 post-binding.

7 Q. Who asked you to make changes?

8 A. Mr. Tebele.

9 Q. And what sort of changes were made?

10 A. There were some incorrect addresses. A property was
11 left off.

12 Q. David, I'm going to hand you what's been previously
13 marked for identification purposes as Defendant's Exhibit 109?

14 A. Yes.

15 Q. Can you review and identify that document for me?

16 A. Yes, this was a email from, I believe it was Mr.
17 Tebele's -- I don't know if her title is assistant or manager,
18 I don't know what her --

19 Q. What's her name?

20 A. Marie Simonetti (phonetic).

21 Q. Is that someone that you interacted with sometime with
22 Mr. Tebele?

23 A. Yes.

24 Q. And she sent things on or behalf of Mr. Tebele?

25 A. Yes.

1 Q. Okay. And what is she asking you to do in that email?

2 A. She says: Upon review of your property insurance
3 breakdown, the following locations, addresses need to be added
4 and adjusted. And it was changing the actual numbers of, it
5 looks like three different buildings, and then there was a
6 building that had not been added initially on the policy.

7 Q. There's some handwriting on that page. Is that your
8 handwriting?

9 A. Yes.

10 Q. Okay. Is that a true and accurate copy of the email
11 from Mr. Tebele's employee to you asking for changes in the
12 policy?

13 A. Yes.

14 Q. What date is that was that sent?

15 A. January 30th of 2019.

16 MR. RISER: Your Honor, I'll now move or ask for that
17 Defendant's Exhibit 109 be moved into evidence.

18 MR. DESCHAMPS: No objection.

19 MR. HARPER: None, Your Honor.

20 THE COURT: Alright. Defendant's Crescent 109 is
21 admitted into evidence.

22 **(Defendant Crescent's Exhibit 109 was admitted into**
23 **evidence.)**

24 THE COURT: Mr. Riser, just for my record, 28 you
25 referred to originally is a different 28. The binder is one

1 number that hasn't been admitted.

2 MR. RISER: The binder, Your Honor, has a sticker of
3 Defendant's Exhibit 25 on it.

4 MR. DESCHAMPS: What's 28 then?

5 THE COURT: 28 is an email.

6 MR. RISER: 28 is the January 17th, 2009 email
7 sending the binder to Mr. Tebele.

8 THE COURT: Okay.

9 MR. RISER: Just for the record, Your Honor, it's
10 been identified and spoken about, I'll move Defendant's 25 into
11 evidence, the binder. Any objection?

12 MR. HARPER: None.

13 MR. DESCHAMPS: No objection.

14 THE COURT: Alright.

15 MR. RISER: Thank you, Your Honor.

16 THE COURT: Defendant Crescent's 25 is admitted into
17 evidence.

18 **(Defendant Crescent's 25 was admitted into evidence.)**

19 BY MR. RISER:

20 Q. And so Mr. Tebele left some properties out of the
21 application, not Crescent Coast?

22 A. Yes, correct.

23 Q. How did you handle that request?

24 A. I immediately got the information about these changes
25 and this new property that needed to be added and immediately

1 submitted it to the underwriter.

2 Q. David, I'm going to hand you what's been marked for
3 identification Defense Exhibit 70.

4 **(Defendant's Exhibit No. 70 was marked for identification.)**

5 Q. If you could review that and tell me what that is.

6 A. This was an email to Marie Simonetti (phonetic), I'm
7 sorry if I'm not saying that correctly, and it says: Marie, I
8 have sent this to endorse the addresses we discussed as well as
9 sent it to add the 33rd Avenue House.

10 Q. There's some emails behind there as well. Could you
11 review those and give you the dates?

12 A. Okay. I'll start from the very bottom of the page --

13 Q. Sure.

14 A. -- the second page. This would be to -- my first email
15 would be to Hollan Delany at Amwins Brokerage, and the other
16 one would be to Claudia Cieslak (phonetic) at Amwins Brokerage
17 is copied on this. You know, it was sent of high importance on
18 January 31st of 2019, and I say: Hollan and Claudia, I need to
19 update some addresses as to how the insured would like them
20 listed. The majority of these changes are on the strip centers
21 where each unit has its own number. And it goes: 2909 Highway
22 17 South, Atlantic Beach needs to be 2901 and 2909 and 310 9th
23 Avenue North needs to be 312.

24 Q. You don't need to --

25 A. Okay.

1 Q. -- review the whole email. I was just asking, what
2 dates were those sent?

3 A. This was January 31st of 2019.

4 Q. Okay. So the information you got in from Mr. Tebele's
5 assistant, you then sent to Amwins?

6 A. Yes.

7 Q. And what's the front email there on Exhibit 70? What's
8 that?

9 A. This was just an email to Mr. Tebele's assistant,
10 whatever title she had, just saying that I have sent these
11 endorsement requests to the broker to make these policy
12 changes.

13 Q. Okay. So you were just confirming that her request was
14 done?

15 A. Yes.

16 MR. RISER: Your Honor, I'll now move Defendant's
17 Exhibit 70 into evidence.

18 MR. DESCHAMPS: No objection.

19 MR. HARPER: No objection, Your Honor.

20 THE COURT: Defendant Crescent's Number 70 is
21 admitted into evidence.

22 **(Defendant's Crescent Exhibit No. 70 was admitted into**
23 **evidence.)**

24 BY MR. RISER:

25 Q. How are those requested changes -- now, this is two

1 weeks after the policy was bound, right?

2 A. Yes.

3 Q. How are those requested changes handled by the carriers?

4 A. Well, these get submitted to the underwriters, and then
5 the underwriters will submit this to the carriers, and what the
6 carrier has to do is actually issue that endorsement for each
7 one of these changes. So they actually, an endorsement is how
8 you change an insurance policy. So they have to actually
9 process an endorsement for each one of these changes that we've
10 requested.

11 Q. And so a policy isn't complete until all the
12 endorsements are also with it?

13 A. No.

14 Q. Okay.

15 A. Well --

16 Q. So is a policy complete before the endorsements are
17 there?

18 A. Well, yes and no. It's, you know, we -- we get the
19 policy and then if we -- we've added endorsements, we're also
20 waiting on those endorsements which will go with the policies.

21 Q. So you don't want to give someone a policy piecemeal.
22 You want it all complete.

23 A. I want it complete.

24 Q. Okay. What's Crescent Coast standard procedure for a
25 client like this that has multiple policies and multiple

1 buildings on -- what's their policy on gathering together the
2 policies themselves and then giving them to the client?

3 A. Well, what we do for a client like Mr. Tebele is we like
4 to get the policy. We need to review this policy to make sure
5 that it is accurate and matches what we've found, and then what
6 we will do is we will print off this policy, you know,
7 hole-punch it, and we like to put together a nice folder to
8 present to the client. So, in Mr. Tebele's case, I'm waiting
9 on a property policy, I have a separate general liability
10 policy, and then I have a separate excess or umbrella policy
11 that I'm trying to put together in one folder.

12 Q. And you were asked earlier, I think Mr. Harper asked you
13 about an exhibit, if you looked at Defendant's Exhibit 34.

14 A. Defendant 34?

15 Q. Yes.

16 A. Hold on. I got a million pages up here.

17 Q. It's in Defendant's Exhibit 34. I guess it's just an
18 email saying that the property policy got to you on February
19 the 7th, right?

20 A. Yes.

21 Q. And that's the biggest part of the policy?

22 A. Yes.

23 Q. And after that you're waiting on the endorsements?

24 A. Yes, sir.

25 Q. And those endorsements are necessary because Mr. Tebele

1 made changes?

2 A. Yes.

3 Q. The general liability and excess policies were also
4 bound on January 15th, right?

5 A. Yes.

6 Q. Those policies had to come in?

7 A. Yes.

8 Q. David, I'm going to hand you what's been marked as for
9 identification purposes Defendant's 104 and 105. If you could
10 identify those for me.

11 A. Okay. One is a -- 104 is an email from Claudia, I can't
12 pronounce her last name -, at Amwins Brokerage, and this was
13 sent on Friday, February 22nd of 2019, and this was an email
14 from them sending over the general liability policy copy.

15 Q. What's the next one?

16 A. The next one is, again, another email from Claudia that
17 Amwins Brokerage sent off February 22nd of 2019 at 1:42 P.M.,
18 and this was: Please find the attached excess liability policy
19 for the following accounts, A. Tebele & Sons, et al.

20 Q. And February 22nd was just two days before the fire?

21 A. I believe that's accurate.

22 Q. The fire happened in the middle of the night on a
23 Sunday, right?

24 A. Yeah, I mean, I think it was, like, 3:00, 4:00 in the
25 morning, so Sunday morning.

1 Q. So you didn't even have the body of -- you didn't have
2 the body of the property policy, the excess policy, or the GL
3 policy together, not even one business day before the fire?

4 A. No, it was a half of business -- it was at 1:36 P.M., I
5 received the general liability.

6 Q. And there are endorsements on the property policies,
7 right?

8 A. Yes, and liability have endorsements.

9 Q. I'm going to hand you what's been marked for
10 identification purposes Exhibit 103.

11 A. Okay.

12 Q. Can you tell me what that is?

13 A. Now, this was an endorsement to the property policy and
14 I believe this was when we added that building that was not
15 originally on the binder, and this was sent off February 18th
16 of 2019.

17 Q. And so you still didn't have a full property policy, did
18 you, with all the endorsements?

19 A. No.

20 Q. As of February the 18th?

21 A. No.

22 Q. Okay. Is it unusual for policy information to come in
23 over a period of weeks?

24 A. Yes.

25 Q. Did you --

1 A. Or, no, it's not unusual.

2 Q. Yeah. No. It does happen from time to time?

3 A. Yes.

4 Q. And it varies on -- it depends on the size and
5 complexity of the policies?

6 A. Yes.

7 Q. So you did not have a complete policy package before the
8 fire?

9 A. No.

10 Q. You heard a good deal in the trial, and certainly, you
11 were asked by Mr. DesChamps about not providing a hard copy of
12 the policy to Mr. Tebele before the fire, right?

13 A. Yes.

14 Q. Did that mean his coverage wasn't bound?

15 A. No, sir.

16 Q. Because there was a binder in the coverage, right?

17 A. Yes.

18 Q. And that was on January the 15th?

19 A. Yes.

20 Q. And that's good for at least 90 days?

21 A. Yes.

22 Q. And that would have been in the mid-March?

23 A. Yes.

24 Q. Okay. So not getting a hard copy of the policy before
25 the fire didn't mean he didn't have coverage?

1 A. Yes, that's correct.

2 Q. Okay. Have you ever been involved in a case where
3 property is completely destroyed less than six weeks after the
4 coverage is bound?

5 A. Not that I can remember.

6 Q. That is unusual in this business?

7 A. Yes.

8 Q. You were asked about La Casona.

9 MR. RISER: Your Honor, before it gets away from me,
10 I'll now move Defendant's Exhibits 103, 104, 105 into evidence.

11 MR. DESCHAMPS: No objections.

12 MR. HARPER: No objections.

13 THE COURT: Defendant Crescent's 103, 104, and 105
14 admitted into evidence.

15 **(Defendant Crescent's 103, 104, 105 were admitted**
16 **into evidence.)**

17 BY MR. RISER:

18 Q. So you were asked a good deal about the email from
19 Crescent Coast to Amwins Access on January the 11th, 2019,
20 right?

21 A. Yes.

22 Q. I believe that's Plaintiff's Exhibit 11. You heard
23 Joey's testimony, Joey Sutherland's testimony on that issue,
24 right?

25 A. Yes.

1 Q. He got a call from a client who had a question about
2 coverage, and he worked with Sandra Nenna to contact the
3 broker; is that right?

4 A. Yes.

5 Q. And Sandra notified the underwriter at Amwins Access,
6 Whitney Northcutt?

7 A. Yes.

8 Q. Is that standard operating procedure?

9 A. Yes, absolutely.

10 Q. Now, what Amwins may have or may have not done with that
11 notice behind the scenes, you don't know about; do you?

12 A. No, that's out of my control.

13 Q. And Mr. Sutherland was asked why he didn't notify Mr.
14 Tebele; didn't he?

15 A. Yes.

16 Q. Well, Mr. Tebele wasn't even a client on January the
17 11th; was he?

18 A. No, sir.

19 Q. He didn't decide to go with Crescent Coast until three
20 days later?

21 A. Correct.

22 Q. Did anybody at Crescent Coast know what that email
23 meant: The landlord hadn't turned the water on?

24 A. No, sir.

25 Q. And Mr. Tebele knows more about his property than his

1 tenant, right? Or should?

2 A. Yes, I would hope so.

3 Q. Now, that email came in on January the 11th, right?

4 A. Yes.

5 Q. Mr. Tebele verified and signed the final ACORD
6 application three days later, right?

7 A. Yes.

8 Q. So Mr. Tebele had the last clear chance to tell the
9 status of the sprinkler system before the application was
10 submitted, right?

11 A. Yes.

12 Q. Did Mr. Tebele or someone employed by him ever contact
13 Crescent Coast that the sprinkler system was not completed at
14 1901 North Kings after the August 2018 conversation?

15 A. No, sir.

16 Q. I'll give you a hypothetical for a moment based on your
17 experience in the industry and with Mr. Tebele's applications.
18 If Mr. Tebele had given Crescent Coast notice of that sprinkle
19 system not being functional, what would Crescent Coast have
20 done?

21 A. I would have immediately contacted the underwriter to
22 discuss.

23 Q. And Crescent Coast could notify the broker about that
24 issue before coverage was bound?

25 A. Yes.

1 Q. If you know about it?

2 A. Yes.

3 Q. And you could notify the broker after the coverage is
4 bound, right?

5 A. Yes, absolutely.

6 Q. Because Mr. Tebele and/or his assistants did that. They
7 changed the policy after coverage was bound?

8 A. Yes.

9 Q. And he just never told you anything about the status of
10 the sprinkler system at 1901 North Kings?

11 A. No, sir.

12 Q. You were asked about that gigantic exhibit, and I'm not
13 going to pull it here, Plaintiff's 100.

14 A. Yes.

15 Q. And there may be a small version there. It's probably
16 page 17 or 18. I'm not going to stay on it long. I'm not
17 going to ask you to read anything.

18 A. Are you talking about the SOV?

19 Q. Yes. An SOV is statement of values?

20 A. Yes, sir.

21 Q. That form was not created by Crescent Coast, right?

22 A. No, we did not draft the original form, no.

23 Q. It's a standard industry form?

24 A. Yes.

25 Q. And in this case, I mean, it's not used on every

1 application or every underwriting; is it?

2 A. No, thank the Lord.

3 Q. Amwins Brokerage required you to use that form?

4 A. Yes, sir.

5 Q. And Crescent Coast had no role in creating it or
6 determining what information would be included or not included,
7 right, they just required you to use it?

8 A. Yes. Yes.

9 Q. You can't modify that form?

10 A. No.

11 Q. And in fact, I think in the email you might have --
12 that's already in evidence, you indicated that you hated using
13 it?

14 A. Yes.

15 Q. Okay. Did you input the information on there, or was it
16 sent to you with some information already on it, and you just
17 had to review and edit?

18 A. I believe, I mean, this was, you know, five years ago at
19 this point, I believe, like, it was possible that I got some
20 information put in, and I went in and verified and updated as
21 necessary.

22 Q. One of those emails indicate where you say you're having
23 trouble -- you're having trouble editing it, putting in an
24 address?

25 A. Yes. Yes.

1 Q. So is it's more likely that it came to you from Amwins
2 Brokerage filled out, and you had to do some edits?

3 A. Yes, more than likely.

4 Q. Okay. Nevertheless, the information that's on it that
5 came to you or the information you put in is consistent with
6 the ACORD apps that started in August 2018?

7 A. Yes.

8 Q. And the information regarding 1901 North Kings and the
9 fact that it was 100 percent sprinklered, that never changed --

10 A. No, sir.

11 Q. -- on the ACORD apps? And so it's indicated 100 percent
12 sprinkler on the statement of values?

13 A. Yes, sir.

14 Q. Okay. Now, in this process, in the process of that
15 application, Mr. Tebele was primarily worried about the price,
16 right?

17 A. Yes, sir.

18 Q. And that's what he communicated with you about most?

19 A. Yes, sir.

20 Q. And you cut your fee in this; didn't you?

21 A. Yes.

22 Q. And I said "fee." Well --

23 A. Commission.

24 Q. How does Crescent Coast get paid?

25 A. We make commissions off of insurance premiums.

1 Q. That's the only way Crescent Coast gets paid, right?

2 A. Yes.

3 Q. And you don't do your work for free?

4 A. No.

5 Q. Okay. But in this case, you had a consideration to
6 actually cut part of your premium fee, right?

7 A. Yes.

8 Q. Why did you do that?

9 A. I did -- we were neck and neck with another agent. I
10 had put five months of hard labor into this, and it came down
11 to the wire where I was about to get nothing for five months of
12 work, so I made the management decision that it was better to
13 take a little of something than a full amount, so I believe I
14 ended up -- I ended up cutting my commission entirely from the
15 general liability and the excess liability policy, which is,
16 you know, around 6 or 7 thousand dollars, and I was looking to
17 have a long-term relationship with Mr. Tebele, a long-term
18 business relationship.

19 Q. So let me ask you this way: You gave up money --

20 A. Yes.

21 Q. -- to try and get Mr. Tebele as a client?

22 A. Yes.

23 Q. Okay. You didn't manipulate anything to get more money?

24 A. No.

25 Q. Okay. And would Crescent Coast have any financial

1 incentive to pretend that 1901 North Kings was fully
2 sprinklered when it's not?

3 A. Absolutely not.

4 Q. Again, Mr. Tebele never asked you about coverage or
5 exclusions or endorsements?

6 A. No, sir.

7 Q. Were you willing to give him endorsement forms or even
8 sample policies if he asked?

9 A. Yes.

10 Q. You've been doing this since when, insurance business?

11 A. 2008.

12 Q. And Mr. Tebele, you considered him a sophisticated
13 insurance buyer?

14 A. Yes.

15 Q. I mean, he owned and managed millions of dollars worth
16 of property?

17 A. Yes.

18 Q. And he has to procure or renew insurance on those
19 properties every year, right?

20 A. Yes.

21 Q. And he also knew to shop premiums between one agency and
22 another?

23 A. Yes.

24 Q. And several of the properties that are issued had
25 sprinkler systems. You indicated 5 of the 23, right?

1 A. Yes.

2 Q. So having that endorsement applied to other properties
3 was probably something he was familiar with?

4 A. Yes, I would imagine.

5 Q. Mr. Egan, do you have anything against Mr. Tebele?

6 A. Absolutely not.

7 Q. In fact, you may have expressed to him after the fire
8 that you hoped his claim was paid; didn't you?

9 A. Yes.

10 Q. That's a wish for your clients, in general, right?

11 A. Yes.

12 Q. Why?

13 A. I want to take care of my clients.

14 Q. And that's good business; isn't it?

15 A. Yes.

16 Q. Insurance agents don't have a good reputation if their
17 clients never get their claims paid?

18 A. No, sir.

19 Q. And Crescent Coast just doesn't have any say in how the
20 claims process is conducted or the decisions that carriers make
21 whether to pay or not, right?

22 A. No, sir.

23 Q. And Mr. Egan, Mr. Tebele never updated Crescent Coast on
24 the status of that sprinkler at 1901 North Kings after that
25 August 18th meeting -- or August 2018 meeting?

1 A. No, sir.

2 Q. And that was after he -- you verified that information
3 with him at several meetings, correct?

4 A. Yes.

5 Q. It was after he reviewed and signed the ACORD
6 application on January the 14th, right?

7 A. Yes.

8 Q. And after even making changes to the policy after
9 binding, right?

10 A. Yes.

11 Q. You could have gotten that information to the broker at
12 any time if Mr. Tebele gave it to you, right?

13 A. Yes.

14 Q. Do you wish he had?

15 A. 100 percent, absolutely.

16 Q. We probably wouldn't be here today, would we?

17 A. No, sir.

18 MR. RISER: Alright. Thank you, David.

19 THE COURT: Yes, sir? Briefly.

20 **REDIRECT EXAMINATION**

21 BY MR. DESCHAMPS:

22 Q. Mr. Egan, I believe when you were answering Mr. Riser's
23 questions that you testified that you didn't input any of that
24 data on that schedule of value; is that correct?

25 A. I didn't say I didn't put any.

1 Q. Okay. Well, what data did you put in?

2 A. This was from five years ago, I'm not 100 percent on
3 what I had put into this.

4 Q. When you answered my questions previously, didn't you
5 testify that you input data onto that schedule of values,
6 including the 100 percent?

7 A. Yes.

8 Q. Is that correct?

9 A. Yes.

10 Q. So which is it? Did you input data?

11 A. No, I did -- I input data into this.

12 Q. And you're just testifying and referencing a binder; is
13 that correct?

14 A. Yes, sir.

15 Q. Do you have that with you? I think I just saw it. And
16 this binder you provided to Mr. Tebele on January 14th, 2019;
17 is that correct?

18 A. I believe it was the 17th I emailed it to him.

19 Q. Okay. Can you take a look at that? Can you tell me
20 what exactly is it, what kind of information does it provide
21 Mr. Tebele?

22 A. It gives him the total insured value of all his
23 buildings, business/personal property, and business income. It
24 is talking about the perils it covers. It's talking about the
25 deductibles.

1 Q. What about the sprinkler, the sprinklers requirement?

2 A. That is on the second page under Comments and
3 Conditions. It's referencing the protective safeguards.

4 Q. Okay. For any kind of property, a particular property?
5 I don't see anything on there.

6 A. No, it does not specifically list a property.

7 Q. Okay. Does that binder -- is that a binder for all
8 these properties on the schedule of values?

9 A. Yes, sir.

10 Q. Okay. And do all these properties under the policy --
11 are all these properties required to be sprinklered as a
12 condition of coverage?

13 A. Not all of them, no.

14 Q. Okay. Now, can you tell us how Mr. Tebele is supposed
15 to know that 1901 was required to have a sprinkler by reading
16 that binder?

17 A. (No audible response.)

18 Q. Mr. Egan, can you step down, right down here, because
19 I'm confused. Is that the sprinkler thing right there --

20 A. Yes, sir.

21 Q. -- that you're talking about?

22 A. Yes.

23 Q. So from reading that and we have, can you see this
24 enough to read it, to identify the properties?

25 A. Yes.

1 Q. Alright. How many properties in there are supposed to
2 have a sprinkler according to the schedule of values?

3 A. There's five of them.

4 Q. Okay. And how many are not required to have a
5 sprinkler?

6 A. Well, 18.

7 Q. Okay. And on that binder, that's what Mr. Tebele had
8 prior to the fire on February 24th, 2019?

9 A. Yes.

10 Q. Can you show us where it -- from reading that document,
11 how he's supposed to know that 1901 has to have a sprinkler?

12 A. I mean, it says it right there: Automatic sprinkler
13 system.

14 Q. Okay. And this binder is for all the properties,
15 correct?

16 A. Yes.

17 Q. Where does it say 1901?

18 A. It does not refer to 1901 on that.

19 Q. How are we supposed to know by reading that?

20 A. Well, you would know because you know more about your
21 building that you have a sprinkler system in this building.

22 Q. But you don't know about an insurance policy that you're
23 not given until your building burnt down?

24 A. It says it right there.

25 Q. Okay. Well, does this apply to, for instance, let's

1 see, 2909 Highway 17 South? Okay. Does that binder apply to
2 this?

3 A. Alright. How far down?

4 Q. It's the top one. The one that says 0 percent.

5 A. Yes, 0 percent, no.

6 Q. So that doesn't require a sprinkler?

7 A. No.

8 Q. Okay. From reading that, how would I know that?

9 A. Because that property does not have an automatic
10 sprinkler system.

11 Q. But where does it say that on there? I'm confused. I
12 don't understand how this -- did you ever give a schedule of
13 values to Mr. Tebele?

14 A. No, Mr. Tebele did not see that.

15 Q. Okay. Well, how is he supposed to know what's on there?

16 A. No. I would assume he would.

17 Q. Just assume he would. Okay. Fair enough. Alright.

18 You can take a seat. Just to clear a couple of things up. And
19 you're talking about Mr. Sutherland, correct --

20 A. Yeah.

21 Q. -- when you were answering Mr. Riser's question?

22 A. Yes.

23 Q. Now, Mr. Sutherland, he started soliciting Mr. Tebele to
24 sell him insurance in 2017; is that correct? That's what he
25 testified to yesterday?

1 A. Yes.

2 Q. Alright. And he finally hooked him in in August of
3 2019; is that correct?

4 A. Yes. We met with Mr. Tebele in August of 2018.

5 Q. Okay. And did Mr. Sutherland arrange for that meeting?

6 A. Yes.

7 Q. And you were testifying about some ACORDs. You answered
8 Mr. Riser's questions --

9 A. Yes.

10 Q. -- ACORDS in August -- is that correct, August of 2018?

11 A. Yes.

12 Q. And Plaintiff's Exhibit, page number 9, the first page
13 is an email, and can you turn that page?

14 A. Yes.

15 Q. Okay. Are those the ACORDs you were talking about?

16 A. Yes, sir.

17 Q. Okay. And that's the ones you were talking about when
18 you were submitting -- or were trying to get submitted to get
19 quotes for Mr. Tebele?

20 A. Yes.

21 Q. Okay. And can you go back to page 1?

22 A. Yes.

23 Q. Who did you submit those quotes to?

24 A. Whitney Gurtzweiler and Amwins.

25 Q. Okay. Who else is copied on that email? I don't have

1 it in front of me.

2 A. That was Sandra --

3 Q. And she was --

4 A. -- at Crescent Coast.

5 Q. -- she's an employee at Crescent Coast?

6 A. Yes.

7 Q. Didn't she -- wasn't she an Amwins employee?

8 A. I don't believe so.

9 Q. Was Joey Sutherland on that email?

10 A. Yes, sir.

11 Q. And he was involved in the whole process with Mr. Tebele
12 from the time of the quotes to the binding; is that correct?

13 A. The vast majority of it, yes.

14 Q. And he got paid a commission from Mr. Tebele's -- for --
15 from the binding of Mr. Tebele's policy; is that correct?

16 A. Yes.

17 Q. And Sandra, is it Nenna?

18 A. Nenna.

19 Q. Nenna. Okay. And she was involved -- or at least on
20 gathering some of the information, she was involved with Mr.
21 Tebele's policy or the whole process of getting the quotes sent
22 to, I guess, the binding or request to bind; is that correct?

23 A. Ms. Nenna?

24 Q. Yes.

25 A. Mr. Tebele? No, sir, she was not.

1 Q. I'm going to show you Plaintiff's Exhibit 21. Now,
2 what's Exhibit 21?

3 A. This is an email to Ms. Gurtzweiler on January 3rd of
4 2019.

5 Q. Okay. And who's it from?

6 A. This is from myself.

7 Q. From yourself, and what are you sending? I think the
8 attachments is attached to both.

9 A. No, I don't think it is.

10 Q. It refers to a tenants list; is that correct?

11 A. Yes.

12 Q. Okay. And that was a tenant list for Mr. Tebele's
13 properties?

14 A. Yes.

15 Q. And 4A, Plaintiff's 4A is already in the evidence. For
16 some reason, it's a different part of the same email chain, but
17 go ahead and flip through it and see if that tenants list was
18 included -- attached to that.

19 A. Yeah.

20 Q. And was that tenants list, was that obtained from Mr.
21 Tebele?

22 A. Yes.

23 Q. Okay. And then it went through Joey Sutherland; is that
24 correct, then to you?

25 A. Yes.

1 Q. Okay. What's the date of that email?

2 A. The first one --

3 Q. Have you sent?

4 A. Let's see. A lot of emails. It looks like I submitted
5 -- forwarded this to Ms. Gurtzweiler on December 26th of 2018.

6 Q. Okay. And was that in response to Ms. Gurtzweiler's
7 request for information?

8 A. Yes, sir.

9 Q. And what was she requesting information for Mr. Tebele's
10 properties?

11 A. Well, this was information for the general liability for
12 Mr. Tebele's properties.

13 Q. Alright. Now, Mr. Sutherland, he got paid a commission
14 after the binding of Mr. Tebele's policy; is that correct?

15 A. Yes, sir.

16 Q. And are you Mr. Sutherland's boss or supervisor, if
17 that's appropriate?

18 A. Yes.

19 Q. And have you ever check his licensing status?

20 A. Yes.

21 Q. Are you aware that he first obtained his insurance
22 producer's license on April 5th, 2023?

23 MR. RISER: Objection, Your Honor, misstates --

24 THE COURT: I'm going to sustain your objection.

25 BY MR. DESCHAMPS:

1 Q. Do you have any reason to dispute the licensing
2 information obtained on that document? What's the exhibit
3 number on that, if you don't mind?

4 A. There's multiple.

5 Q. You can take your time.

6 A. Okay. I mean, I'm not going to dispute that it says
7 04/05/2023.

8 Q. Okay. So you don't have any reason to dispute that
9 information on there?

10 A. No, sir.

11 Q. And what exhibit is that?

12 A. Number 74.

13 Q. Okay. Thank you. Mr. Egan, when I was previously
14 asking you questions, we went over some -- or we went over the
15 Ms. Garcia's application?

16 A. Yes.

17 Q. Do you recall? And she had a 100 percent sprinkler
18 notation on her application; is that correct?

19 A. Yes.

20 Q. Okay. And if you can help me out, did you input that
21 information on that application?

22 A. No, I did not, Sandra Nenna input that.

23 Q. And do you know where that information came from?

24 A. I would assume that came from Ms. Garcia.

25 Q. Ms. Garcia. And did Crescent Coast do anything to

1 notify any of the underwriters involved in that policy as to
2 the connection --

3 MR. RISER: Your Honor, I object. This is beyond the
4 scope of redirect.

5 THE COURT: I'm going to sustain your objection.
6 BY MR. DESCHAMPS:

7 Q. I don't know where the original one -- the original was
8 submitted into evidence. Exhibit 23, I believe you previously
9 testified to that email?

10 A. Yes.

11 Q. Okay. And can you read that for me, the email to
12 Whitney?

13 A. Whitney, when the app was submitted for this risk, it
14 was represented that the building was 100 percent sprinklered,
15 as the sprinkler system was being installed at that time. We
16 have learned as of yesterday that the sprinklers have been
17 installed, but the landlord has not turned the water on to have
18 them operational. We just wanted to give you a heads-up on
19 this.

20 Q. What is that 100 percent referring to?

21 A. The 100 sprinklered --

22 Q. On --

23 A. -- for La Casona.

24 Q. Okay. Where's that notation? Where does that 100
25 percent come from?

1 A. That was -- that came from Ms. Garcia at that time.

2 Q. Okay. The 100 percent on her application?

3 A. Yes.

4 Q. And who else is on that email, anybody copied?

5 A. Joey Sutherland.

6 Q. Joey Sutherland. And he was paid a commission on the
7 binding of Mr. Tebele's policy; is that correct?

8 MR. RISER: Objection, asked and answered.

9 THE COURT: I'm going to overrule your objection.

10 THE WITNESS: Yes, he was.

11 BY MR. DESCHAMPS:

12 Q. Okay. So Crescent Coast knew when that email was sent
13 that the sprinkler system in 1901 was not operational; is that
14 correct?

15 MR. RISER: Objection, leading the witness.

16 THE COURT: Overruled.

17 MR. RISER: He's on redirect.

18 THE COURT: Okay.

19 BY MR. DESCHAMPS:

20 Q. When that email was sent to Ms. Whitney Gurtzweiler,
21 what was Crescent Coast's knowledge as to the operational
22 status of Mr. Tebele's sprinkler system?

23 A. We had none for Mr. Tebele. We knew that the tenant did
24 not have an operational sprinkler system.

25 Q. But isn't it that same building?

1 A. Yes.

2 Q. Okay.

3 A. It's a different client.

4 Q. But it's the same property; is that correct?

5 A. Yes.

6 Q. Okay. So it's your position, if it's a different
7 client, the same property, you don't have knowledge of the
8 status of something on the property; is that how I understand
9 you? I'm really confused.

10 A. What we do as an insurance agent, when we have a
11 customer call us with an issue or anything, what we do is we
12 notify the underwriter for their specific policy.

13 Q. Okay. But you didn't think it was your obligation to
14 notify Mr. Tebele of the operational status?

15 A. No, sir. Mr. Tebele never notified us.

16 Q. And when did you send the Docusign application to Mr.
17 Tebele?

18 A. It was on January 11th.

19 Q. And that was after January 10th, correct?

20 A. This email was on January 11th.

21 Q. Can you read that email for me again, please?

22 A. Whitney, when the app was submitted for this risk, it
23 was represented that the building was 100 percent sprinklered,
24 as the sprinkler system was being installed at that time. We
25 have learned as of yesterday that the sprinklers have been

1 installed, that the landlord has not turned the water on to
2 have them operational. We just wanted to give you a heads-up
3 on this.

4 Q. Okay. And the word "yesterday" in that email, what date
5 would that be?

6 A. Well, yes, that's the 10th.

7 Q. Okay. I believe you were testifying when you answered
8 Mr. Riser's questions about, well, I guess, help your client,
9 Mr. Tebele, you know, do what you can to help him get coverage
10 --

11 A. Yes.

12 Q. -- about helping him change the policy, and whatnot?

13 A. Yes.

14 Q. I'm a little confused. I don't understand how someone
15 can change a policy that they've never seen.

16 A. You can still submit an endorsement to change an
17 insurance binder or, you know, policy.

18 Q. The binder, that couple of little page, little document?

19 A. Yes, sir.

20 Q. What about the policy? It looks a lot bigger. It has a
21 lot more stuff to me.

22 A. Well, yes, it does.

23 Q. So how would Mr. Tebele even know what the policy says
24 before he gets it?

25 A. Because it is listed in the binder on the policy forms

1 that he can request from us.

2 Q. And the policy forms, it -- how are they listed in
3 there, by code?

4 A. Yes, they're coded, and the title of them is listed in
5 the binder.

6 Q. And what would that tell a person, a code number?

7 A. Well, this is where the person, you know, if they had a
8 question and could request that particular endorsement.

9 Q. Just based on a code number?

10 A. Yes, so it gives a brief description of what that code
11 is.

12 Q. We are looking at -- you got to explain this to me.
13 Could you walk up to it, I'm confused.

14 MR. DESCHAMPS: Make sure everybody can see. Is it
15 clear?

16 Q. Okay. Now, what does that show anyone, or prospective
17 insured or insured?

18 A. Okay. So this goes through all the codes that would be
19 in the policy, and it gives a brief description as to what that
20 form is.

21 Q. Okay. And --

22 THE WITNESS: It's really fuzzy. Can we --

23 MR. DESCHAMPS: That's fuzzy. Well, actually, it's
24 better than reading it with a magnifying glass. There we go.

25 BY MR. DESCHAMPS:

1 Q. Okay. So there's some numbers on there and a couple
2 words beside them. What in the world does that tell you?

3 A. Well, this is just saying what endorsements are going to
4 be on the policy and a brief description of what that
5 endorsement is.

6 Q. Like a title?

7 A. Yes.

8 Q. Okay. But that's all?

9 A. Yes.

10 Q. Fair enough. Is there anything else on there that is --

11 A. No, sir, that's what I see.

12 Q. Okay. Fair enough. You can take a seat. Was it your
13 understanding that Mr. Tebele's policy required an automatic
14 sprinkler system at 1901?

15 A. Yes.

16 Q. And do you recall when you acquired knowledge as to
17 that?

18 A. When I received the first claim.

19 Q. And that was on?

20 A. I believe it was early January.

21 Q. And what information was in that quote that you
22 understood that to be a condition?

23 A. They had that protective safeguard listed in conditions.

24 Q. Just the -- okay. But they didn't identify any specific
25 property, or?

1 A. No.

2 Q. And that quote applied to all of Mr. Tebele's properties
3 that are listed on that schedule of values?

4 A. Yes, sir.

5 Q. And did you ever inform Mr. Tebele that a sprinkler was
6 a condition for coverage of 1901?

7 A. I believe I said, please review the conditions. I don't
8 recall if I specifically said 1901 or any of the other
9 properties that had a sprinkler system.

10 Q. And how about at the loss site when you first gave Mr.
11 Tebele the policy in front of the burned-down building, did you
12 tell him then?

13 A. No, sir.

14 Q. And this January 11th, 2019 email, you provided a copy
15 of that to Mr. Tebele, correct?

16 A. Yes, at a later date.

17 Q. Do you recall about what time?

18 A. I wouldn't know. It was well after the fire.

19 Q. Okay. Was it after the loss claim was submitted?

20 A. Yes.

21 Q. Okay. That was when you were trying to help Mr. Tebele,
22 right?

23 A. Yes, absolutely.

24 MR. DESCHAMPS: Thanks. I have no further questions.

25 THE COURT: Very brief.

1 MR. HARPER: Yes, Your Honor.

2 **RECROSS-EXAMINATION**

3 BY MR. HARPER:

4 Q. Mr. Egan, this is the binder. It was marked as Exhibit
5 25. Do you see the "insured" block at the top left?

6 A. Yes, sir.

7 Q. Could you tell the Jury the address that's listed under
8 the insured's name?

9 A. Under the named insureds?

10 Q. Uh-huh.

11 A. So PO Box 1496, Myrtle Beach, South Carolina 29578.

12 Q. Is there any other address associated with the insured
13 listed in this binder?

14 A. Just scrolling through quickly, no.

15 Q. The limits of liability on the first page, how much are
16 they?

17 A. \$22,155,400.00.

18 Q. Are we to understand then that Mr. Tebele has insured
19 his A. Tebele & Sons entity for \$22,155,400.00 for a PO Box?

20 A. No, sir.

21 Q. This is an ongoing process. We understand what's
22 happening here, right?

23 A. Yes.

24 Q. The protective safeguards endorsement at issue, you
25 received that in the policy package you received on February

1 7th of 2019, correct?

2 A. Yes.

3 Q. And that's the one that's at issue here, right?

4 A. Yes.

5 MR. HARPER: Thank you, Mr. Egan.

6 THE COURT: Just very brief.

7 MR. RISER: Yes, Your Honor.

8 **RECROSS-EXAMINATION**

9 BY MR. RISER:

10 Q. Dave, you were asked about the quotes and binder forms.
11 That's not a form that Crescent Coast creates, right?

12 A. No, sir.

13 Q. They have Amwins logo on them?

14 A. Yes.

15 Q. So that's someone else's form and the information is put
16 on there?

17 A. Yes.

18 Q. Crescent Coast can't change it?

19 A. No.

20 Q. Regarding the statement of values, that information,
21 regardless of who -- or what -- or who put in the information,
22 is the same information that was on the ACORD app sent to Mr.
23 Tebele on January the 11th, 2019?

24 A. Yes.

25 Q. And that was confirmed and signed by him on the 14th?

1 A. Yes.

2 Q. You were asked if Sandra Nenna had any involvement in
3 Mr. Tebele's property policies, and you were presented
4 Plaintiff's 21, which is an email about tenant lists?

5 A. Yes.

6 Q. I believe you, I just wanted to make sure that it was
7 confirmed, you said that wasn't for the property policy, it was
8 for the general liability policy, right?

9 A. Yes, correct.

10 Q. And finally, on that Sandra Nenna email on the La Casona
11 policy on January the 11th, 2019, Crescent Coast knew what that
12 email said about the sprinkler system, that the landlord hadn't
13 turned it on?

14 A. Yes.

15 Q. Crescent Coast didn't have any knowledge on the true
16 status of that system?

17 A. No.

18 Q. And again, four -- three days later, Mr. Tebele
19 confirmed by signing the application that 1901 North Kings was
20 100 percent sprinklered?

21 A. Yes.

22 MR. RISER: Thank you.

23 THE COURT: Thank you. You may step down. Ladies
24 and gentlemen, it is five after 12:00. We're going to break
25 for lunch. Please be back here by 1:30, okay?

1 **(Jury exited the courtroom at this time.)**

2 **(Lunch Recess taken.)**

3 THE COURT: Ladies and gentlemen of the jury, I
4 appreciate y'all getting back here as quick as you can.
5 Alright. We'll go ahead and start back. Mr. Connell, you can
6 call your next witness.

7 **ABRAHAM TEBELE WAS DULY SWORN/AFFIRMED AT THIS TIME**
8 **AND TESTIFIED AS FOLLOWS:**

9 THE REPORTER: Do you affirm that the testimony
10 you're about to give to the Court in this case will be the
11 truth, the whole truth, and nothing but the truth, so help you
12 God?

13 THE WITNESS: I affirm.

14 THE REPORTER: Could you state your name for the
15 Court, please?

16 THE WITNESS: Abraham Tebele.

17 **DIRECT EXAMINATION**

18 BY MR. CONNELL:

19 Q. Alright. Mr. Tebele, tell me where you live, please,
20 sir.

21 A. So I'm a Myrtle Beach resident. I've been so for many,
22 many years doing business here in the community. My family
23 business started out, you know, decades ago. First my
24 grandfather, who was also Abraham Tebele, and his two sons.
25 One, my father, was David Tebele and my uncle Edward, and they

1 were Depression-era kids. My dad actually was placed in the
2 foster care as a child. He had to run away from a foster home
3 and anyway, family was really struggling, but we had an uncle
4 who lived in Myrtle Beach, Mr. Raymond Massry, and he had told
5 my grandmother, his sister, that she should come to Myrtle
6 Beach and attempt to, you know, build some type of future for
7 her children. At that time the family was really struggling.

8 Q. Let me stop you right there.

9 A. Sure.

10 Q. So how old are you currently?

11 A. Fifty-five.

12 Q. And your father and uncle came to Myrtle Beach in what
13 year?

14 A. So they came in the '50s, and my uncle actually had
15 served in Korea, and during that time, my dad was more or less
16 running the business, which at the time was a very small retail
17 store on 9th Avenue, around, for those of you who are familiar
18 with The Bowery and Myrtle Beach and Pavilion area, so they
19 were really there early on, but, you know, the family was
20 struggling. The whole family was basically working in the
21 store, and they actually lived on top of the store, from what I
22 understand.

23 Q. Alright. So you lived here with your father; is that
24 right?

25 A. So actually, so my parents -- my parents were married in

1 the '60s, I'm a middle child, so I was born in '68, but then my
2 mom made the decision that, you know, she wanted us to be in
3 New York because that's where most of her family was, and since
4 Myrtle Beach was a very seasonal business, my dad would just
5 work, you know, nonstop during the season, very long hours.
6 And of course, during the summers and holidays, we would be in
7 Myrtle Beach, and then when the store was not open, my dad
8 would typically come up north and then take a second job to try
9 and support the family, you know, so I actually ended up going
10 to school in New York.

11 Q. Alright. And you've been running the business; would
12 that be right?

13 A. Yes.

14 Q. And how long have you run the business?

15 A. So after my son was born, which was in '95, I made a
16 decision to come down and work full-time, you know, my dad and
17 myself, which I was fortunate to be able to really learn under
18 him, you know, management business integrity and qualities,
19 and, you know, even these days, like, people stop me all the
20 time, and they just say, you know, there's no substitute, so I
21 had a very good teacher, I believe. Unfortunately, my dad
22 passed away at the end of '09 right around Christmas time, and
23 I've been, yeah, running things here myself ever since.

24 Q. And your uncle, when did he die?

25 A. So my uncle passed away January of 2020. It was right

1 before COVID. He was the older brother. He outlived my dad,
2 you know, by many years, but of course, he was really not
3 active in the business for quite some time, even back to the
4 time that I was working with my dad.

5 Q. Alright. And your dad and your uncle were in
6 partnership together?

7 A. Yes.

8 Q. And they started out in the retail business?

9 A. Yes.

10 Q. And then they started to buy properties, is that how it
11 worked?

12 A. Right. So they started buying properties because Myrtle
13 Beach was early on in its sort of, like, growth period, and at
14 that point, when they would build a new store, my dad would
15 just stay down here for the winter and supervise the
16 construction, and we didn't see him that often, but of course,
17 you know, obviously we spoke on the phone a lot, and he
18 traveled up north whenever he could, and of course, we always
19 spend summers down here, you know, I and my siblings, you know,
20 everybody worked in the store.

21 Q. So all of the properties that were on the insurance
22 policy are properties that your family acquired over the last
23 75 years?

24 A. I would say, you know, if you begin -- because they
25 started working in the '50s, but they actually didn't acquire

1 the first property until the '60s, so I would say, and if I'm
2 not mistaken, like '65 is when they built the store in the
3 downtown Myrtle Beach area.

4 Q. Okay.

5 A. So I guess if you do some quick math, you're talking
6 about almost 60 years.

7 Q. Alright. Now, can you describe for the Jury -- well,
8 let me ask you this: The partnership, Tebele & Sons --

9 A. Yes.

10 Q. -- who are beneficial owners of that partnership?

11 A. So basically, it's the families because, you know, my
12 dad and my uncle have, each have three children, and they both
13 have surviving spouses and my mom, God bless her, she's turned
14 80 this year and doing well, and of course, my aunt, who's much
15 younger, but nevertheless, the entire family relies on the
16 income from this business for support, and of course, I've been
17 the one that's down here, and they rely on me.

18 Q. Alright. So how many are there on each side? How many
19 brothers and sisters do you have?

20 A. So I have two siblings. I have a brother and a sister.

21 Q. Alright.

22 A. And then my uncle has two daughters and a son, and then
23 with the spouses, so technically we're eight people, but, you
24 know, we're obviously more now because I, myself, have five
25 children, you know, my sister has five, et cetera, so the

1 family has grown substantially.

2 Q. The partnership consists of your cousins, your aunt, and
3 your brothers and sisters?

4 A. My cousins and my siblings and the two surviving
5 spouses.

6 Q. Alright. Can you name them all for us, please?

7 A. Sure. So my sister's Alice Tawil (phonetic) and I have
8 a brother, Gary Tebele, my mom is Jacqueline. My cousins, I
9 have, there's another named Abe Tebele who is actually much
10 younger than I am, but he's the youngest of the three kids, and
11 then two daughters, Lauren and Alice, and my uncle's wife is
12 Susan, who's -- she's not even joined Social Security yet, I
13 mean, she's a fairly young woman, so that's really the makeup
14 of the family. My brother is still single, as is Abe, everyone
15 else is married and has children.

16 Q. Alright. Do you understand the term insurable interest?

17 A. Yes, somewhat. I've heard the term.

18 Q. Can you explain to me -- the 23 properties, some are in
19 different names; would that be correct?

20 A. That's correct.

21 Q. And how are they all -- are they all part of the
22 umbrella of the Tebele & Sons Partnership?

23 A. So they're all coming out of the family office,
24 basically, we're all kind of joint partners and everything. We
25 manage everything together. We do, let's say, charitable work

1 and things like that, that all gets paid together, and then as
2 far as me, you know, my compensation, I'm mainly compensated by
3 A. Tebele & Sons. So A. Tebele is the umbrella. We pay the
4 health insurance for, you know, me and my family. It's paid
5 for my brother, my mom, you know, my aunt's on the policy, my
6 cousin with her seven kids, and her younger brother. So, you
7 know, we have, like I said, health insurance and all that all
8 paid out of the main company as our charitable contributions
9 and I would say other expenses for the family.

10 Q. Let me show you Plaintiff's Exhibits Number 1 and 2.

11 THE COURT: Plaintiff's 1 and 2 were stipulated
12 previously?

13 MR. CONNELL: Yes, sir.

14 THE COURT: But not into evidence.

15 BY MR. CONNELL:

16 Q. So I've got the deeds for you for the property with the
17 fire loss, Plaintiff's 1 and Plaintiff's 2.

18 A. Okay.

19 Q. Can you talk to me first about Plaintiff's 1, what that
20 is?

21 A. So this is, it looks like the deed for the original
22 purchase of this nightclub/restaurant property that was, you
23 know, purchased by David Tebele, my dad, and Edward. So it was
24 originally purchased by A. Tebele & Sons.

25 Q. What year was that?

1 A. Let's see. 1990, it actually closed in June of 1990.

2 Q. And it was the old Camelot Theatre, I believe?

3 A. Yes, yes.

4 MR. CONNELL: Alright. Your Honor, we offer
5 Plaintiff's Number 1 into evidence.

6 MR. HARPER: No, objection.

7 MR. RISER: None, Your Honor.

8 THE COURT: Plaintiff's Exhibit Number 1 is admitted
9 into evidence.

10 **(Plaintiff's Exhibit No. 1 was admitted into evidence.)**

11 BY MR. CONNELL:

12 Q. Plaintiff's Exhibit Number 2. What is that?

13 A. So this looks like the deed when the partnership, or
14 actually my dad and my uncle as partners of the general
15 partnership, deeded the property to a new entity, which was
16 King's Realty Limited Partnership, which actually still holds
17 the title today, and I believe they did this because they
18 wanted to, you know, transfer some of their interests to the
19 children, and, you know, at this point, all my cousins of this
20 family and my siblings are all partners in this property, as
21 well as surviving trust of my uncle, it still has an interest
22 in King's Realty Limited Partnership.

23 Q. Are the partners in A. Tebele & Sons the same partners
24 as the partners in this property?

25 A. I would say yes.

1 Q. Now, can you tell me, if you would, the relationship
2 between, you know, I'll call it the Camelot Theatre, because
3 that's what I know it as, and the LLC that it's in, I believe.
4 Is it an LLC?

5 A. The property is an LP.

6 Q. LP?

7 A. Yes.

8 Q. Was it purchased with partnership funds from A. Tebele?

9 A. Absolutely.

10 Q. And has it been in that legal entity since?

11 A. Since 1990, right, when it's been deeded over.

12 Q. Now, is it your understanding, or does it work such that
13 all the monies that are paid in from any tenants go into A.
14 Tebele & Sons umbrella? The bills are paid, and then any
15 monies that's leftover is divided by out into --

16 A. So some of the entities do have their own accounts and
17 distribute directly to the members, but a lot of the joint
18 income and joint expenses are paid out of A. Tebele & Sons, so
19 that's really sort of the general fund, really, for the family.

20 Q. Has A. Tebele & Sons, which is the named policyholder in
21 this case, has A. Tebele & Sons, have they lost monies as a
22 result of this fire loss?

23 A. Yes, very much so.

24 Q. And have your -- has the income that will be distributed
25 to your brothers, and sisters, and cousins, and mother, and

1 aunt, have they --

2 A. It's --

3 Q. -- had less money --

4 A. Yeah.

5 Q. -- as a result?

6 A. It's dramatically decreased for several reasons. Any
7 time, you know, we have long-standing relationships with many
8 of our tenants, and what I found, anytime a property is vacant
9 for a protracted period of time, it's expensive to maintain.
10 As a general rule, for that reason, we like to keep our
11 properties leased and maintained, and in this case, there's no
12 possibility of really generating any income from this property.
13 The property itself is over 2 acres, so, you know, cleanup and
14 supervising of the site, we've had to fence the building
15 because, you know, we don't want anybody getting hurt, so we've
16 always had fencing around it. The City's been pretty diligent
17 in contacting us to make sure we keep the, you know, the growth
18 to a minimum, cut it down, you know, keep it, keep it free of
19 debris, and I have to say this, but, you know, unfortunately,
20 there is a homeless problem in Myrtle Beach. Those of you who
21 live there know that, and that's also a big part of it, that we
22 have to constantly visit the property to make sure that, you
23 know, the homeless people are not there because, again, we
24 don't want anybody being hurt, and in general, you know, that
25 puts us in a -- in a difficult situation, so it's -- it's

1 really -- it's taken a lot of our resources in the situation.

2 Q. Has A. Tebele & Sons, have they been able to get
3 together the money to demolish the building and take it off the
4 land at this point?

5 A. It's been very difficult to do that, and one of the
6 reasons, and we heard testimony regarding the structure, you
7 know, that some people had said, you know, maybe a portion of
8 it possibly could be saved, but even that would require some --
9 that there's like a common joining wall, and you have to do
10 some exploratory and engineering work, and, you know, it's
11 quite expensive just to upkeep it now, and of course, the time
12 that's gone by has made it almost impossible to look at that
13 scenario. So given that, you know, it's taken this long, the
14 fire occurred, as you all know, because you've been here and
15 listening to all the testimony, February 24th of '19, and we're
16 now in December of '23, obviously, so, you know, we've been
17 maintaining the site for almost five years with no income, and
18 it's difficult to find the money to move forward, I have to
19 say. You know, we've definitely tried to find solutions and
20 maybe, possibly, trying to find a tenant that maybe was
21 interested in development, nothing has really materialized.

22 Q. Does A. Tebele & Sons have the money to rebuild the
23 building at this point?

24 A. Definitely not.

25 Q. Now, let me switch a little bit to what's going on in

1 this case. Now, were you solicited by Joey Sutherland to
2 obtain insurance on these 23 properties?

3 A. Yes. So --

4 Q. Can you explain that to the Jury, what and how that
5 happened?

6 A. Sure.

7 Q. What I specifically want to know is this, were you going
8 to Crescent Coast Insurance Company's office and meeting with
9 them --

10 A. Never.

11 Q. -- or was Mr. Sutherland calling you, talking to you,
12 and --

13 A. So Mr. Sutherland called me on a constant basis, and if
14 you recall his testimony, he's been in, like, several
15 restaurants. It sounds like he's been in the restaurant
16 business, you know, for quite a while, and truthfully, I felt
17 that he -- he was knowledgeable enough about restaurants from
18 what he was telling me to understand all the special
19 considerations when it comes to insuring that type of building
20 or maintaining the systems, et cetera. You know, he's a chef,
21 he cooks, he runs a staff, he knows about, you know, safety
22 devices, inspections, et cetera, so, you know, he approached me
23 that he really wanted our business.

24 Q. Was he working at one of the restaurants in the old
25 Camelot Theatre at the time?

1 A. Yes. So --

2 Q. Which one was that?

3 A. Right. So the way I met Joe, he was actually working in
4 the steakhouse. He was the GM for Sam Loren (phonetic), and
5 Sam Loren had the building from, I think, roughly 2009 until
6 about the end of 2014, and as recent as I can remember, Joe was
7 there at the tail end of that, so that's how I knew Joe. And
8 actually, even after we started leasing to Ms. Garcia in, let's
9 say, 2017, we were talking to both Joe -- I mean, he didn't say
10 this, and I didn't have any testimony, but we were talking to
11 Ms. Garcia and Joe about them possibly, you know, opening up
12 the rest. He wanted to do something like an Italian buffet,
13 and like I said -- and he was, you know, I don't know if he
14 said that because he wanted my business for insurance, but I
15 think it gave him an excuse to, you know, come around and say
16 he could really help us.

17 Q. Now did he -- during that period of time, what year was
18 that?

19 A. I would say 2017.

20 Q. And at that time, did he represent to you that he was a
21 licensed insurance agent?

22 A. From my understanding, he was doing restaurants and he
23 was selling insurance, so --

24 Q. And where did he tell you he was working?

25 A. So he didn't say it first. Now in retrospect, because I

1 looked at a lot of the communication and emails and stuff, he
2 was working at a company called Global Risk Partners, and he
3 was actually insuring the 1901 building for Ms. Garcia, you
4 know, back to 2017, and there's also special considerations as
5 a landlord. When you have a bar and nightclub operating in
6 your business, you also want other coverages, like, you want to
7 be named on the liability coverage, and you want to be named on
8 the liquor policy, and, you know, it's unfortunate, but I'm
9 sure, like, y'all know of cases, because we've heard of cases
10 where people have bars and, God forbid, you know, someone's
11 killed, and there's a lawsuit, and of course, they sue
12 everybody, so, you know, we needed to be named on a lot of
13 those policies, and --

14 Q. So in 2017, he was soliciting you. Would he call you or
15 email you?

16 A. He would come around the office or anytime I was at the
17 building he would, like, warm up to me and say: You know, Mr.
18 Tebele, I could save you a lot of money, let's sit down, et
19 cetera, and you know, I'm a fair opportunity guy, so even
20 though, like I said, you know, I've been with the same
21 insurance broker for years, you know, I said, why not give them
22 a shot. You know, rates keep going up, and, you know, I did
23 arrange, you know, to meet with them. I gave them time. They
24 came to my office. Originally, it was Joe, and then later on,
25 you know, Joe Sutherland and David Egan.

1 Q. Now, when did he tell you he was working for Crescent
2 Coast? Was that in 2018?

3 A. I would say, yeah, it must have been '18 that he made
4 the switch. I looked back at my records. Like I said, in '17,
5 he was clearly with Global Risk, and it sounds like he joined
6 Crescent Coast in '18.

7 Q. Now, did you know prior to this litigation or during
8 2017 and 2018, he did not have a South Carolina license as an
9 insurance agent? Were you aware of that when he was talking to
10 you?

11 MR. RISER: Objection, Your Honor. Misstating
12 testimony.

13 THE COURT: I'm going to sustain your objection.
14 BY MR. CONNELL:

15 Q. What do you know based on what's been presented and what
16 you're aware of as to whether or not Mr. Sutherland had an
17 insurance license?

18 A. Right. So according to Mr. Sutherland, and you know,
19 I'm not sure of the exact licensing issue, but you know, he did
20 mention that his license did lapse, he did say that under
21 testimony, and it was because he didn't do his continuing ed.
22 I'm --

23 Q. Were you ever told that in 2017 to 2018?

24 A. No, absolutely not, and I'm familiar with continuing ed
25 because I do some of that myself, and it is very important, and

1 it is required to maintain your license, so.

2 Q. Were you told that prior to purchasing the policy, that
3 he was unlicensed?

4 A. Absolutely not.

5 Q. Would you have ever dealt with an unlicensed insurance
6 agent if you had been told that?

7 A. For sure not.

8 Q. Would you have ever purchased a policy from an
9 unlicensed insurance agent if you had been told that?

10 A. Never.

11 Q. Alright. So take me to 2018. He's asked you in 2017
12 and now we're in 2018 --

13 A. Right.

14 Q. -- and he's still calling you and asking you?

15 A. Still calling. So at the end of '17, he was trying to
16 quote our business, but he actually could never come up with a
17 quote, and as a result, you know, it just -- we had to renew
18 our existing program, and to be honest, '18 was really not that
19 much different because they were telling me, we could get you
20 all these admitted carriers.

21 Q. Who's "they"? Who is "they"?

22 A. Mostly Joe. Forgive me. It was mostly Joe that was
23 saying, I think I could get you possibly Liberty or Travelers,
24 some of these, like, well-known companies, which we hadn't went
25 with before, so, of course, you know, I was interested in that.

1 Q. Why were you interested in getting a -- I'm sure the
2 Jury doesn't know, and I'm not sure I know why, why were you
3 interested in getting an admitted carrier vs. a non-admitted
4 carrier?

5 A. So I know a lot more now about insurance than I did at
6 the time.

7 Q. Because of this case, you mean?

8 A. Because of largely because of this case.

9 Q. Alright.

10 A. And there is a big difference between admitted and
11 non-admitted. Admitted, and I'm just going to tell you what I
12 know, I'm not an expert, but from what I understand, with an
13 admitted carrier, if you ever have a dispute, you can actually
14 go to the South Carolina Department of Insurance, and they
15 will, in some form, get involved in your dispute. I don't know
16 what the exact process is, but since they're admitted, you have
17 somewhere to go, which -- and I think, looking at the facts of
18 this case, and of course, I understand much more now than I did
19 back in '18, but, you know, we're talking about a policy here
20 where there's a managing general agent who's not an insurer,
21 and that general agent is assembling a group of insurers
22 basically through a broker, and there's many layers in between,
23 but the significant fact is that it's not like having Liberty
24 or State Farm or Allstate because you literally -- you don't
25 know where to go if you have an issue. And I could say, prior

1 to this claim, our company, in my recollection, has never had
2 an issue with, you know, coverage, unless if it fell out of
3 our, you know, outside of deductible or it was a form of
4 coverage that we didn't have. You know, for instance, some
5 buildings, you don't carry flood insurance if you're not in a
6 flood zone, typically, so that -- that wouldn't be something
7 that you'd be looking for coverage, but as far as covered, if
8 I'm using the correct terminology, if we're talking about
9 covered causes of loss, I can't recall when our company has
10 ever had an issue with a claim, and we're talking multiple
11 storms. We're talking, we haven't had many fires, we actually
12 had once, like, it was a small fire, it did a lot of damage,
13 but basically just a neon sign that caught fire and did a bunch
14 of smoke damage. But other than that, we never had a building
15 with major structural damage unless it was due to, like, a wind
16 event, and we certainly never had a situation like this.

17 Q. Alright. Let me take you --

18 A. Yeah.

19 Q. -- back. So you've been talking to Mr. Sutherland. Had
20 you talked to Mr. Egan in the beginning or not?

21 A. Not in the beginning, and --

22 Q. When did Mr. Egan come into the picture? After that?

23 A. Right. So Joe had told me about Mr. Egan that, you
24 know, we should meet, and then, you know, they came over. Like
25 finally, I agreed to meet them, and they did come to my office,

1 and it was really just to have a general meeting sort of like
2 to see, you know, what are you offering us, what can you do for
3 us, and like I said, I'm a fair opportunity person. So, you
4 know, the fact that they were smaller brokerage than where I
5 was, I didn't not give them a chance. I said, you know, as
6 manager, let me give them a chance to bid the risk so I could
7 see, you know, if, first of all, what I have now is competitive
8 and possibly either get better coverage or go with deductibles,
9 et cetera. You know, whatever people -- whatever you would
10 normally look for in an insurance.

11 Q. What was the best thing they offered you that really
12 made you think, this might be a policy I want to buy?

13 A. So the original quote, and I don't remember the exact
14 deductible, but I would say, you know, it did not dramatically
15 -- it was not dramatically better than what we had or what we
16 were being offered with our existing broker, and as a result, I
17 told them, I said, you know what, guys, I know you worked on
18 this, et cetera, I think I'm going to stay where I'm at. And
19 then, you know, it was more David who really, Mr. Egan, who
20 kept calling me, and it sounds like he kept -- you know, he's
21 like, I'm going to go back to my people, I'm going to go back
22 to my people, and he would come back with a lower and lower
23 price and a lower and lower deductible.

24 Q. Okay. What does that -- what do you mean by a lower
25 deductible?

1 A. So to give an example, and for those of you who live in
2 Myrtle Beach, there's actually a hailstorm event that over a
3 small pocket of the area, that there was hail, and it damaged
4 most of the roofs in Myrtle Beach, and, you know, many people
5 made claims. We didn't initiate, you know, or try to start out
6 making a claim, so actually, you know, these roofers were going
7 around and they said, you know, we're going to go look at your
8 claim and look at your roof, so they visited all of our roofs.
9 They came back to us and said, you know, you have an excess of,
10 like, 300,000 in damage, but due to the policy and the
11 deductibles, I think the insurance carrier offered us like a
12 small amount of that because our deductibles were, you know,
13 pretty substantial. So, you know, in a case of 1 percent, to
14 put it in simple terms, if you had a, you know, million-dollar
15 loss, right, so you paid 10,000 out of pocket, but then
16 everything else should be covered, which, you know, that's
17 really good, you know, because in the event of a catastrophic
18 loss --

19 Q. You had never seen a deductible that low before, had
20 you?

21 A. Not in my memory had I ever had that.

22 Q. And that was the deductible they were offering you and
23 the policy that they eventually sold you; is that right?

24 A. Yes.

25 Q. And the prior policy that you had, who was your agent

1 for that?

2 A. So --

3 Q. All these properties were insured before, right?

4 A. Yes.

5 Q. Who was that?

6 A. So I was using McGriff Insurance, which originally,
7 like, the family started out with Woodbury Company. I think
8 they were purchased by Puckett, Scheetz & Hogan and went to, I
9 think, BB&T. It was actually BB&T for a few years, and then
10 eventually became McGriff, and, obviously, they're a very large
11 company. It, you know, it's difficult to say, you know, with
12 hindsight, you know, we felt that they did do a good job with
13 our insurance, and they took care with our properties, and
14 that's the kind of service that I was, you know, used to, and
15 as you heard, you know, 23 properties, you would expect that
16 whoever's handling your insurance is going to, you know, treat
17 you, you know, as a customer that, you know, is a valued client
18 and, you know, look out for your interests and --

19 Q. The insurance premium on 23 properties is one of the
20 biggest things; is it not?

21 A. Yes, absolutely, and even today, as you know.

22 Q. Alright. Now, take -- let's talk about the situation
23 we're in today of what happened. Now, is it my understanding
24 that you had to put a sprinkler system in the building, the old
25 Camelot movie theatre, so that the City of Myrtle Beach would

1 allow you to do some renovation in it?

2 A. That's kind of what happened. The previous tenant,
3 which is the one that Joe Sutherland worked in, Kono, Kansas,
4 et cetera, they vacated, really, in '15. They officially ended
5 as a restaurant in '14, but I think they were still running a
6 bar for part of '15, and eventually they vacated. We tried
7 leasing the building to somebody else, and actually, Ms.
8 Garcia, she was one of the only people that really showed an
9 interest that she kept, you know, pursuing us. She really
10 wanted to lease the property, and she actually put a business
11 license application in with the City, and then one of the
12 inspectors in the City had said that due to a change in the
13 Southern Fire Code, if I'm correct, that those of you who are
14 familiar, and I know you have some people that are familiar
15 with what that is.

16 Q. I'm sure someone on this Jury knows about the NFP.

17 A. Yes. So due to changes in the Southern Fire Code, they
18 said, you know, we want you to install a sprinkler system, and
19 really, we could have possibly made the argument that we were
20 grandfathered, and I did speak to, you know, my attorneys about
21 it, but at the end of the day, I decided I was going to
22 cooperate with the City. I said, you know what, let me just
23 cooperate with them, this way the building will have a
24 sprinkler, occupants would be safer, it would open us up for
25 more uses. The building is a unique building. I had many

1 people at that time that advised me that, you know, the
2 building was older, that maybe I should just, you know, knock
3 it down, et cetera, but, you know, being a substantial building
4 in size, you know, roughly 20,000 square feet with some
5 mezzanine space, et cetera, and some beautiful improvements, I
6 decided to, you know, go with this installation of the
7 sprinkler system, and just so you --

8 Q. Now, this was long before Crescent Coast came into the
9 picture?

10 A. Yes, yes. So we're going back to about 2016, and I
11 interviewed some local fire, you know, installers, and again,
12 those of you who are familiar with some of them, but one of
13 these guys in Myrtle Beach told me, he said, your job is so
14 big, in order to do this I have to put every member of my crew
15 on this job, so essentially, you would be my only customer, and
16 so I think his quote was close to like seven figures, and I'm
17 not exaggerating. It was, you know, a tremendous project. We
18 didn't think -- we didn't think that that was feasible for us
19 to spend, you know, close to a million dollars to sprinkle the
20 building. Now, Crawford had actually been the installer on a
21 grocery property that we had developed, and they had a good
22 reputation, and I got in touch with Crawford, and they said,
23 yeah, we'll look at the job, we'll estimate it, et cetera. I
24 don't know if they were the second people we went to, they may
25 have been the third or fourth people we went to, but at any

1 rate, it took a substantial amount of time for them to even
2 quote it. We had to get them plans, and the City was very
3 insistent that they wanted sprinklers, like, throughout the
4 entire building. Meaning, I tried to tell them, you know, do
5 we need it in the outside deck? Yes. Do we need it in this
6 mezzanine? Yeah. Anywhere we had area that could be occupied,
7 they wanted it sprinklered, and a lot of the -- a lot of the
8 install, we even had to have, you know, coming from diagonals.
9 It was a complicated design, but like I said, we felt that
10 Crawford was the right people.

11 Q. Now, let me show you Exhibit Number 40 and ask if you
12 can identify that.

13 A. Yes.

14 Q. What is it?

15 A. This is, I guess, our --

16 Q. Just tell me where it is. I've got to get these other
17 lawyers to help me set it up.

18 A. Right. So this is Crawford's billing where they're
19 showing, you know, I guess draws of what they need.

20 Q. How much you pay for the system?

21 A. So it looks like 226,000 and some change.

22 Q. Was the system still under construction at the time of
23 the fire?

24 A. From what we had realized now, yes.

25 MR. CONNELL: Okay. Exhibit 40.

1 THE COURT: Stipulated.

2 MR. CONNELL: There's so many exhibits, I want to
3 make sure they don't cross the paths here.

4 BY MR. CONNELL:

5 Q. Alright. So let me let you look at Exhibit Number 39.
6 What's that?

7 A. So this is a ledger of A. Tebele & Sons, a General
8 Partnership and all the payments that we have, you know, for
9 the sprinkler, and it looks like almost every payment was
10 funded, like, wholly by A. Tebele & Sons.

11 Q. Now, when did the job start?

12 A. So I'll do it from as best as I could recollect. They
13 started in 2017. The tenant at that point was able to operate.
14 The City stipulated, I guess they felt that since Ms. Garcia
15 put in a business license application, that it was only fair
16 that they let her operate, but the condition really was, you
17 know, she can operate if you guys are proceeding with this. So
18 I said, I definitely don't want to have a vacant building, and
19 I definitely want for the future to be able to lease, you know,
20 fully lease out this property. You know, I wasn't interested
21 in owning just a white elephant, so, you know, so Crawford
22 started their work, if I had to go best of memory, I would say
23 June of '17, and when I look back now at the notes, I believe
24 they went through, not all of '18, but a decent amount of '18,
25 roughly until, like, some point in the summer that they were

1 still installing.

2 Q. There was still construction work to be done when the
3 fire occurred?

4 A. Yes.

5 Q. Alright. And what do you understood had been done
6 inside the building, and then talk to us about the issue about
7 getting it connected up to the city water main --

8 A. Right.

9 Q. -- outside?

10 A. So all -- forgive me. All the piping in the building
11 was done, and the only thing that remained is we needed a
12 utility contractor to connect to the tap.

13 Q. And let me stop you right there. And that's a more
14 sophisticated connection than Crawford doing that; would that
15 be right?

16 A. Well, it has to be done by a special utility contractor,
17 and even though we have some locally, you know, Mike Dover,
18 being that he's from I think Lugoff, which is I guess near
19 Columbia, he wanted to go with somebody that is familiar with
20 his systems that they could, you know, jointly coordinate the,
21 you know, finishing up and testing of the system, and so he
22 recommended Carolina Tap. Mike, I feel is very, you know, very
23 trustworthy guy and, you know, always gave me the option and
24 gave me whatever information, but that was the recommendation
25 of who to use, and that's who we decided to go with.

1 Q. Now, that was another charge beyond the \$220,000.00 for
2 them to do that?

3 A. Yes. So the cost for the utility contractor was, I
4 think it was about 37,000, maybe closer to 39,000, but
5 somewhere in that range.

6 Q. And did the work proceed in 2017 into 2018, or did it
7 start in 2018?

8 A. Are we talking about the sprinkler work?

9 Q. Yes, sir.

10 A. So the internal work for the sprinkler, '17 and '18.
11 Now, as far as the connection, they may have done some
12 preliminary work inside to prep it, but from everything we
13 know, they started, really, in '19 to finish up that utility
14 connection.

15 Q. Alright. Now, in 2018, was it difficult to get Carolina
16 Tap & Bore to come and actually do their digging outside of the
17 work that was going to get the hydrant?

18 A. Right. So --

19 Q. And tell the Jury why that was and what happened in
20 2018.

21 A. Right. So they're a very reputable company, and, you
22 know, Columbia, as many of you know, if you go there is
23 booming. It's like a lot of our state, thank God, and they're
24 very busy, you know, there's road work, there's all kinds of
25 projects that these guys have, and I think I saw it after. I

1 didn't see it when I hired them, but I think, you know, after
2 all this happened, I think I saw in their notes that they were
3 on, probably, like, more than 10 jobs, so apparently these guys
4 were very busy. Now, in September, I actually go to New York
5 to be with my family and family members for the holidays, and
6 that's when we had one of the worst storms as far as flooding,
7 which was Hurricane Florence, and I remember it well because I
8 was actually sweating bullets, because one of our buildings is
9 right here in Conway, and we kept getting reports of how much
10 rain they were going to get, and I think ultimately, Florence
11 dropped something like 30 inches of rain. I don't know if you
12 all remember, you know, drone videos of the churches and stuff
13 around this area that you wouldn't even get to, I mean, this
14 place was completely flooded out to the point where Highway 501
15 was actually closed to incoming traffic, and they brought in
16 the Army Corps of Engineers to lay booms on 501, because
17 otherwise we wouldn't have -- we wouldn't have an ingress and
18 egress at this area, which sort of creates a safety issue.

19 Q. So was that a delay in the construction of the hydrant
20 system at the old Camelot movie theatre?

21 A. So I did see remarks in the file regarding that where
22 they're saying that it didn't really delay them, and I believe,
23 you know, there's no doubt it delayed them, thirty inches of
24 rain, and I'm sure it spread to other parts of the state, and
25 I'm sure it shut down jobs that they were in the middle of. I

1 don't know the exact amount of time, but I know at least for
2 September that that took it out of the realm of -- in other
3 words, if they had to slot it in, then that that wouldn't be a
4 possibility.

5 Q. And I believe during that period of time in August, you
6 had been getting calls from Crescent Coast and from Mr.
7 Sutherland; would that be right?

8 A. Yes.

9 Q. And so we're getting to where you're going to talk to
10 them about maybe letting them get coverage for you?

11 A. Yes.

12 Q. Was it about that time?

13 A. Yes. So I sat down with them, because like I said, you
14 know, fair opportunity, everybody has a right to make a living,
15 let's let them give us a quote, and, you know, Joe was, you
16 know, kind of like calling us for a very long time, and they
17 came in the office, and they -- you know, mainly, when you go
18 over insurance, really, you know, the main thing you're really
19 concerned about is, you know, how much insurance am I buying?
20 And, you know, I know my dad used to tell me, you know, you
21 always want to insure it for enough because if you don't then
22 you could potentially fall under, like, a co-insurance, so, you
23 know, that's like the biggest lesson I learned from my dad.
24 And so really, we're mainly going over the values and the
25 properties and just trying to guesstimate, what would the

1 replacement cost be, and then typically what you do is try and
2 insure it for, like, at least 80 percent of what you think the
3 replacement is. That's the standard, you know, way. And of
4 course, along the way, whatever questions they ask me, I
5 answered truthfully because no reason to ever not be truthful.

6 Q. What did you --

7 A. I'm happy to.

8 Q. Key question.

9 A. Yes.

10 Q. What did you tell them about the sprinkler system at the
11 old theatre? What did you tell them?

12 A. I told them the truth. I said: We're in the process of
13 installing a sprinkler. It's not connected. We have to hire
14 the utility contractor, because at that point, we hadn't
15 officially hired anybody, and then I told them my understanding
16 is once we get a utility guy on site that based on what Mike
17 Dover from Crawford was telling me, it was a couple of weeks of
18 work, so. But of course, several things had to happen for that
19 to take place.

20 Q. Now, when did you learn that Mr. Sutherland had
21 apparently solicited the Mexican restaurant and got a policy
22 with the same -- with Lloyd's at -- Certain Underwriters at
23 Lloyd's as the policyholder, what you learned about that?

24 MR. RISER: Objection, leading the witness.

25 THE COURT: Rephrase the question, please.

1 BY MR. CONNELL:

2 Q. Tell me about the policy with -- tell me about your
3 knowledge of the policy with the Mexican restaurant with
4 Lloyd's.

5 A. Right. Okay. So basically, as landlord, we want
6 certain coverages, as I said before, and we reflected to Ms.
7 Garcia that we need to be on a liquor policy and also her
8 liability, and, you know, the slight liability is, like, really
9 the slip and fall, right? Someone slips and gets hurt, then,
10 you know, usually they're going to sue the landlord, the
11 tenant, you know, whoever else. So just, as a matter of, you
12 know, good practice, you want to maintain those coverages.

13 Q. You know what the term "co-insured" means or "additional
14 insured"?

15 A. Yes.

16 Q. What does it mean?

17 A. So additional, if you're an additional, and there's some
18 distinctions, but from what I've learned, you know, if you're
19 additional insured or additional named insured, as I've heard
20 it called, so basically, if let's say someone slips, you know,
21 it's a pure accident, mop the floor, somebody slips, you know,
22 they go to an attorney, I don't want to mention any of the ones
23 we know by name, but, you know, y'all know most of the, you
24 know, large personal injury guys, you know, they're going to
25 most likely file a lawsuit, and they're going to name all the

1 parties, so being named an additional insured, basically, their
2 carrier is just going to make sure that you're covered against
3 these liability claims, which is good protection, you know, for
4 the landlord, and, of course, but we also carry our own
5 coverage. We don't just rely on the tenant's coverage because,
6 you know, the tenant may not have enough insurance. Some
7 tenants under-insure, some might carry 300,000, which is, you
8 know, not nearly enough, especially if it's a -- if it's a
9 serious injury, so for that reason, if you have properties and
10 a lot of buildings, you usually want to carry an umbrella that
11 will cover you against, you know, excess liability.

12 Q. What information do you have about whether or not an
13 inspector had been to the old Camelot Theatre as a result of
14 the Mexican restaurant getting a policy of insurance?

15 A. Right. So all this, you know, I've learned throughout
16 this process that we've been going through, and it sounds like
17 there were several inspections done. I can't -- I can't --

18 MR. WATSON: Your Honor, I'm sorry to interrupt. I'm
19 going to object on hearsay grounds about contents of
20 inspections per our motions in limine, previously heard.

21 THE COURT: You all step up here for a second.

22 **(Off the record discussion was held on the bench by**
23 **Court and counsel.)**

24 BY MR. CONNELL:

25 Q. Was there a car left by the inspector at the location at

1 the old Camelot Theater?

2 A. So there had been inspections, including one by a Mr.
3 Nutt, who was actually at the property, as it turns out,
4 January 10th of 2019. I had an opportunity to meet Mr. Nutt.

5 Q. Don't tell me what he says.

6 MR. WATSON: Your Honor?

7 MR. CONNELL: He's going to object. We'll talk about
8 that later.

9 THE WITNESS: I wasn't going to say what he said.

10 MR. CONNELL: Okay.

11 BY MR. CONNELL:

12 A. But I was just going to say I did have an opportunity to
13 meet him personally because a lot of these same inspectors
14 cover the region, and he actually had come to another one of
15 our properties, so that's how I came to meet Mr. Nutt.

16 Q. Was his car left at the old Camelot Theatre?

17 A. I believe so.

18 Q. And was that how you found out he had done an
19 inspection?

20 A. We actually, in, in actually, a lot of the
21 communication, they had mentioned that Mr. Nutt was visiting
22 the property, or attempting to visit the property, but I didn't
23 know about any of that communication until well after this loss
24 event.

25 Q. Alright. Now, after your August meeting with Mr.

1 Sutherland, what other meetings did you have with him in the
2 fall of 2018?

3 A. So the meetings were really scarce. I don't think there
4 were many meetings. I would see Joe from time to time, Mr.
5 Sutherland, at the property. So, you know, if I went to the
6 property I would see him, but most of the time he would just
7 come to the office, and then if he'd come to the office, I'd
8 say, you know, did you get me any quotes yet? And I believe I
9 may have called him a couple of times to see if he came up with
10 any quotes, and at that point he really hadn't, so it was kind
11 of a nonstarter at that point.

12 Q. Had you ever gotten a text from Mr. Sutherland saying, I
13 have an alternate plan?

14 A. I can't recall.

15 Q. How about on January 11th, 2019, had you gotten a text
16 from Mr. Sutherland saying, I have alternate plans available?

17 A. I can't recall Mr. Sutherland, possibly David Egan, but
18 not -- I don't believe Mr. Sutherland.

19 Q. Mr. Egan's text messages between you and Mr. Egan are, I
20 believe, in evidence. Have you had a chance to look at those?

21 A. Yes.

22 MR. CONNELL: Okay. I think they're already in at
23 47. Isn't that right, Your Honor, 47?

24 MR. WATSON: I have 47 being admitted by stipulation,
25 but I don't think it was entered.

1 MR. CONNELL: Alright. Thank you.

2 BY MR. CONNELL:

3 Q. Let me show you 47.

4 A. Yes.

5 Q. Let me show you 47. Are those the text messages between
6 yourself and Mr. Egan?

7 A. Yes.

8 Q. Alright. Come down here and let me let you go over them
9 for the Jury for a minute, please. Let's take them from here.
10 Let's take them in order. Okay, you need to stand over here --

11 A. Oh, yeah.

12 Q. -- so they can see.

13 A. Sure.

14 Q. So take the text messages. Let's take this first page
15 first. I'll let you look at that.

16 A. Yes.

17 Q. Alright. And --

18 A. Got it.

19 Q. January 4th, 2018, 2019, was your -- was Mr. Egan's
20 address sent to you?

21 A. Yes, it appears that it was.

22 Q. And January 10th, you got a text message?

23 A. Yes.

24 Q. You said, just give me a call when you a get chance?

25 A. I think that's him.

1 Q. Okay.

2 A. I think I'm blue, he's peach, or whatever that color is.

3 Q. Alright. What happened next?

4 A. So you know, at one point, because, like I said, we were
5 down to the wire, and actually, that Monday at midnight, if we
6 didn't bind new coverage, we would have no coverage, and David
7 Egan or Joe Sutherland didn't really come up with a quote that
8 I was interested in at that point, so I had told them I'm going
9 to stick with my existing broker, and basically, I can't
10 remember, I think it was Friday morning that me and my son flew
11 to New York, and they called us when we were in the car on the
12 way back to the house in New York, and apparently, David Egan
13 had went, you know, beyond with his people trying to get a
14 better deal and was saying, you know -- well, I think at first,
15 I think he called one time saying, let me go to them and then
16 called again and was able to lower the price significantly and
17 then better the terms. So at that point, I was leaning more --
18 you know that Friday, I was definitely leaning towards Mr.
19 Egan.

20 Q. He was trying to reel you in, wasn't he?

21 A. Yes, he was, and -- and I was, you know, fighting
22 because --

23 Q. For a good deal.

24 A. Yeah. The terms sounded good, and obviously, I needed
25 to bind coverage. I didn't have a week, I didn't have days,

1 but of course, so it was an exhausting week. You know, I got
2 back to the house, and then he -- you know, you can see from
3 the text messages, he said that he did send it, and I don't
4 doubt it, but -- and I have to verify my own DocuSign, but I
5 may actually not have gotten that until Monday. I'm not sure,
6 it could be a technical thing, but I'm not doubting that. He
7 either thought he sent it or attempted to send it, just that I
8 -- I don't remember receiving it on Friday.

9 Q. Alright. Let's look at the next one. It's a continuing
10 conversation, if you want to talk to me about that?

11 A. Yes. So this is also Friday afternoon, and he's telling
12 me, I'm going to send you the underwriter with the breakdown.
13 So basically what he sent me, it was kind of like a chart with,
14 like, property, liability, like a package, but just the price
15 and just generic property, you know, general liability, and
16 excess. And if I had to remember offhand, just based on
17 looking at the documents, I would say maybe somewhere like
18 142,000, if that's exact enough for you, but that's what I
19 remember. So I was thinking 142,000, I'm all in, I'll have
20 coverage, and like I said, I actually took my family the next
21 week on vacation. So, you know, I was looking forward to
22 finishing this up so that, you know, I could relax, because I
23 do work very hard and travel quite a bit, and you know, it
24 takes away from a lot of my family time, so.

25 Q. Alright.

1 A. Yeah.

2 Q. And this email, or text message, about the 1 percent,
3 was that a big deal for you?

4 A. That was kind of a big deal, because, again, 1 percent
5 means if I have a big loss, I'm not going to be paying out 5,
6 10 percent deductibles, which you'll see on a lot of policies
7 today, and it's a substantial amount, and I've even seen
8 policies where you have to hit, like, really high numbers on
9 each building to get there, so this to me was definitely a big
10 incentive.

11 Q. Let me let you look at that section right there.

12 A. Yes.

13 Q. Okay.

14 A. So obviously, Mr. Egan wanted to close the deal and sign
15 us up, but it was Friday afternoon, I was exhausted. I may
16 have printed out some of the stuff, possibly, but I doubt I
17 even looked at it. I don't recall getting the DocuSign, and
18 that was it. You know, we were supposed to speak over the
19 weekend, we ended up not speaking on the weekend, and from what
20 I recall, my Monday was fairly hectic, and I was on the phone
21 with Mr. Egan throughout the day, and of course, I'm doing this
22 all from memory, but I think I remember him telling me just
23 things he was adding, like benefits to the policy. Like, I
24 think he said, I'm giving you maybe winter and rain, or I'm
25 giving you water back up, I'm giving you this, so he was

1 marketing it as if it was, like, really a deluxe policy.

2 Q. Now, was there any discussion about the sprinkler system
3 and it not working at that time?

4 A. There was no discussion about the sprinklers.

5 Q. Was there any discussion with Mr. Egan about whether he
6 had knowledge that the sprinkler system was not working based
7 on what the person from the Mexican restaurant had said?

8 A. We didn't discuss that.

9 Q. Alright.

10 A. No.

11 Q. He didn't tell you that?

12 A. He didn't raise any discussions at all about the
13 sprinkler system.

14 Q. Was there any discussion about the email you've since
15 learned about, January 14th, that was sent by Ms. Nenna to
16 Amwins Access about the sprinkler system?

17 MR. RISER: They're leading, Your Honor. Objection.

18 THE COURT: Just rephrase the question.

19 BY MR. CONNELL:

20 Q. Were you aware of the email of January 14th?

21 A. No.

22 Q. At the time you were doing all this?

23 A. Yes.

24 Q. Alright. You weren't aware?

25 A. No, I wasn't.

1 Q. Alright. And I'm going to let you look at that. Now,
2 was the deal, was it done on Sunday, is that what I'm
3 understanding?

4 A. He -- so Mr. Egan wanted to wrap it up as fast as
5 possible. From what I recall, we did not speak at all on the
6 weekend, and it actually got pushed to Monday, I'm not sure
7 why, but I know it was definitely late in the afternoon, and
8 we're still discussing the policy and the binding.

9 Q. Again, was there any discussion about the sprinkler
10 system?

11 A. No, none whatsoever.

12 Q. Was there ever any discussion with him about the
13 protective services endorsement at all?

14 A. No, not at all.

15 Q. Was it any discussion --

16 A. Not at that time anyway.

17 Q. Was there any discussion after the fire with him about
18 the protective services endorsement and what it was?

19 A. So obviously, we did speak after the fire and even right
20 around the time of the fire, and he was not concerned at all.
21 He was like, you have no issues with coverage because,
22 basically, any entries regarding the sprinkler, his position
23 was, you have a sprinkler system. Because, you know, he had
24 asked me, he says, does it go throughout the building? I, of
25 course, told him the exact state, that it wasn't connected, but

1 he said, does it go throughout the building? I said, yes. And
2 I literally remember, he told me that when an agent shows up to
3 write coverage, they see pipes, they mark it down as
4 sprinklered, and I could tell you, any inspections that I've
5 ever seen for this building, those inspectors mark those
6 buildings as sprinklered.

7 Q. Alright. So what day -- I'm going to let you look at
8 the rest of these. Were there some discussions about adding
9 some additional properties?

10 A. So the only property, you know, after he'd constantly
11 been saying, oh, we made these changes, et cetera, the only
12 change was that one of our properties sitting on the property,
13 is a house. We just wanted to make sure that that house would
14 be covered as part of the coverage, so they entered that
15 address because the property fronts on Business 17, the house
16 fronts on 30th, so it has its own address. So we just told
17 them, make sure you add that address, and everything else was
18 just dirt because the other properties that I see were not
19 actually property coverage, it was liability coverage, because
20 we didn't have buildings on those. We were not insuring the
21 buildings on those sites, and I can tell you exactly which
22 those are if anybody wants to know about them.

23 Q. Okay. Alright. Now, when did you pay Mr. --

24 A. Right. So --

25 Q. How did that work?

1 A. Right. So I was actually on the West Coast, I think if
2 I remember from memory, as early as the 15th or 16th, probably
3 closer to the 16th, and I was still talking with Mr. Egan on
4 the phone. In fact, my wife was upset with me because we're on
5 vacation, but nevertheless, I felt it was important, and I
6 wanted to make sure that he had what he needed and that we had
7 what we needed, and really, there didn't seem to be any
8 concerns. I made sure that he got checks for the down payment.
9 He came and picked them up from my office. We spoke on the
10 phone. There was never any mention that anything else had to
11 be done.

12 Q. Alright. Who put the 100 percent in the application for
13 a sprinkler on 1901 North Kings Highway?

14 A. So I can't tell you exactly who put it in there.

15 Q. Did you put it in there?

16 A. Absolutely not. In fact, I could tell you this,
17 despite, you know, and I've heard what's been said that all
18 these years experience buying insurance, but McGriff apparently
19 does things very differently, because my agent at McGriff would
20 basically handle our account. She, the only thing in my
21 recollection, she would bring two forms and say, Abe, decline
22 flood, decline terrorism, and just sign these, and that's all I
23 really had to sign, and she did all the coverages. So, you
24 know, I had actually never seen any of these ACORD forms that
25 y'all have seen. Like, you've probably seen way more in this

1 trial than I saw, you know, in my lifetime prior to, because I
2 don't think I'd ever seen these applications, and basically,
3 the first time I saw this application, to my recollection, is
4 January 14th, right before we bound.

5 Q. Alright. And did you ever get a copy of the policy?

6 A. After the fire.

7 Q. When did you get a copy of the policy?

8 A. So the fire was February 24th, so I would say 26th or
9 27th.

10 Q. Alright. How about this big schedule of values? Do you
11 have any involvement in input the big schedule of values?

12 A. Not at all. I actually was not even familiar with the
13 schedule, and what happened is, I could speak about my
14 experience, I'm saying as far as after the fire, I started
15 getting phone calls, so I got a phone call from --

16 MR. WATSON: Objection, Your Honor.

17 BY MR. CONNELL:

18 Q. Yeah, don't --

19 A. Is that --

20 Q. Unless it's one of the Defendants, you can't talk about
21 it.

22 A. Okay, okay, okay. So as far as this schedule of values,
23 I did not have this until I retained the public adjuster when
24 -- and then he asked me, where's your schedule values? I said,
25 you know, I don't have that. And then he reached out -- either

1 he reached out for me or I reached out to Mr. Egan, and that's
2 when I got them.

3 Q. Alright. Now let me ask you this: The binder has been
4 presented in evidence. You've seen that, right?

5 A. Yeah.

6 Q. And the binder, does the binder have on it a list of all
7 the 23 properties?

8 A. No.

9 Q. Does the binder have on it, now that you've looked at in
10 detail, does the binder have on it the protective services
11 endorsement?

12 A. No.

13 Q. Okay. Does the binder describe which properties are
14 going to be unsprinkled and which properties are going to be
15 sprinkled?

16 A. No.

17 Q. Does the binder tell you anything about each of these
18 individual properties and what the insurance is?

19 A. No. It actually gives you just the sum total of what
20 the coverages are.

21 Q. So you know what the total amount of the insurance is?

22 A. Right.

23 Q. And that's all you know?

24 A. Pretty much, yeah.

25 Q. And the policy --

1 A. And the type of risks that -- that the insurer is
2 insuring, meaning fire, wind, et cetera, whatever risks they're
3 covering.

4 Q. Alright. You can go back to you seat now.

5 A. Thank you.

6 Q. Alright. Now, let me take you to after the fire. Let
7 me talk to you about that.

8 A. Sure.

9 Q. So you got a call about the fire, and you came to the
10 theatre.

11 A. Came to the scene.

12 Q. And Mr. Egan beat you there?

13 A. He did.

14 Q. And what did he say?

15 A. So, you know, I -- we never had a disaster quite like
16 this, but, you know.

17 Q. You never had a large fire before?

18 A. Not --

19 Q. In one of your buildings?

20 A. Not a structural fire to this extent. No way. The only
21 fire, like I said, I can recollect, was a neon sign that caught
22 fire, or it was smoking, really, and it did a tremendous amount
23 of smoke damage. It didn't affect the integrity of the
24 structure. It was just whatever was inside the building was
25 smoke damaged, so that's the biggest fire, thank God, well,

1 prior to this, that I actually ever experienced.

2 Q. What did Mr. Egan and Mr. Sutherland say, if anything,
3 about whether or not they thought the loss was covered?

4 A. They told me that they didn't have any concerns.

5 Q. Why? What did they say they were doing there?

6 A. So first of all, Mr. Egan said, you're covered, and
7 that, you know, whatever information he gave the underwriters
8 or insurers was the correct information. We really didn't have
9 any concerns. It wasn't until I started having communications
10 later on, you know, with, I guess, the representatives of the
11 insurers that I started to be concerned.

12 Q. Alright. Now, what, if any, conversations did you have
13 with Mr. Sutherland about the same issue about whether he
14 thought you were covered or not?

15 A. So I spoke to Mr. Sutherland, and he actually, I think,
16 was trying to be helpful, and you know, he mentioned -- he
17 mentioned to me that, I think, that either there was an
18 inspection or a phone call where -- or a communication of some
19 type, where he alerted what he said is the insurance people of
20 a -- a non-functioning sprinkler. So he's like, I don't think
21 it's an issue, and plus they were told. So A, it's not an
22 issue, b, we told them, so, you know, he didn't seem to be
23 concerned. I guess, you know, he kind of seems to be, you
24 know, a kind of laid back fellow anyway, but you know, I didn't
25 see reason to be really concerned.

1 Q. Now, were you actually given the infamous January 14th
2 letter, or January 11th letter from Nenna by Mr. Egan?

3 A. Ultimately, yes, it was several months after the loss
4 forgive me -- after we'd gone through a couple of months of
5 kind of like, just no answers.

6 Q. So why did Mr. Egan give you this letter that's in
7 evidence? Why did he --

8 A. I believe --

9 Q. Or email, I should say.

10 A. Yes. So I believe that he felt it would help me get
11 paid on the claim.

12 Q. Alright. Was that what he said to you?

13 A. That was my understanding, yeah.

14 Q. And what did he tell you about what was told to Amwins
15 about the 100 percent sprinkler issue?

16 MR. WATSON: Objection, Your Honor. Amwins, can you
17 specify if we know the company name, please?

18 MR. CONNELL: That's what it says, Your Honor, Amwins
19 on it. Amwins.com.

20 THE COURT: Just say Amwins.com then.

21 BY MR. CONNELL:

22 Q. Alright. What did he tell you about why he thought this
23 was helpful to you, Exhibit Number 23?

24 A. So I remember I had a -- well, of course, I had the
25 conversation with Mr. Sutherland, and since nothing was

1 happening and I wasn't getting answers, of course, I did -- I
2 did ask Mr. Egan to follow up. I said, if you can get this
3 communication, or at least, you know, who would you speak to?
4 Who are the people involved? Let's try and clear the record so
5 that we can get this claim paid, which, of course, is my
6 responsibility, and I wasn't really getting, you know, a
7 response on that, and I believe that, you know, Mr. Egan was
8 trying to help with obtaining whatever he could, and I think
9 that he believed, and as I did, that if we can establish that
10 if somebody at the offices were alerted to this, that, you
11 know, that that would be the end of it.

12 Q. And to your knowledge, was Mr. Egan aware of the
13 protective services endorsement prior to the fire?

14 A. No, no, he wasn't.

15 Q. And why do you say that?

16 A. He told me.

17 Q. What did he say?

18 A. He -- so he basically, you know, going back to his
19 earlier statements, said that, you know, according to just, you
20 know, filling out an application, if -- if you have a visible
21 sprinkler pipes and everything else, you're considered
22 sprinklered, and as I said previously, any inspection that I've
23 seen for this building, the inspectors marked it as
24 sprinklered. My area is real estate. I'm not really an
25 insurance person. I've had to learn way more about insurance

1 than I ever set out to learn, and like I said, so if I'm going
2 to agents that hold numerous licenses and continuing ed, which,
3 as you know, is a requirement, and they're seasoned --

4 Q. Well, you weren't really going to them. Weren't you
5 being solicited by them?

6 A. Absolutely, yes.

7 Q. Did you ever go to their office and ask them something?

8 A. No, not until way -- like, way later after the fire.

9 Q. You were getting calls?

10 A. Yes.

11 Q. Now, the policy, what is your understanding about what
12 the value of the policy is?

13 A. So I've seen it so many times at this point, but
14 22,155,000, I think that's roughly.

15 Q. What about for the Camelot Theatre? What is the value
16 of it?

17 A. So it's listed on those forms or on the ACORD 140, as we
18 know it as now, it has a value of two-and-a-half million, and
19 that doesn't include the other coverages.

20 Q. Alright. And there are other coverages that make it a
21 total of how much?

22 A. 2,850,000.

23 Q. Now, you hired a public adjuster. Why?

24 A. So I was having some concerns, and what happens,
25 everything after you have a fire, your phone sort of like rings

1 off the hook with these adjusters and so one of these adjusters
2 came to me and, you know, said, you should let us handle the
3 claim, and the primary reason was, it's actually very difficult
4 to adjust the claim. You need skill in estimating. Well, you
5 know, you have to know a lot of things about construction. You
6 have to know a lot of things about value. And this company
7 that came to me, which was GGG, they have an entire team, and
8 this is what they do, and of course, since I never had -- I
9 never had a loss this size, so I decided that I really probably
10 should get an adjuster, which I did.

11 Q. Now, as an owner, what is your opinion as to what it
12 would cost to rebuild it today, some almost five years later?

13 MR. WATSON: Objection, Your Honor. Foundation.

14 MR. CONNELL: Your Honor, you want to talk about
15 that?

16 THE COURT: Yes.

17 **(Off the record discussion was held at the bench by**
18 **Court and counsel.)**

19 BY MR. CONNELL:

20 Q. Alright. The question on the floor was, in your opinion
21 as an owner, what's the cost of rebuild today some five years
22 later?

23 A. So I've seen estimates, and I'm not an estimator, and I
24 can tell you, you know, construction's not my exact forte,
25 although I've done some construction, but my understanding, you

1 know, based on the size and square footage, the rebuild's
2 running into roughly like 8 million-plus for this building, and
3 I think, to be honest, I don't -- I can't even tell you if
4 that's the structure or also the built-out interior because it
5 could exceed that, theoretically, depending on what you were --
6 were actually doing in the interior.

7 Q. Well, it was a lot less in 2019?

8 A. Yes.

9 Q. Inflation has caused a lot of problems.

10 A. Yes, COVID, right? As we all know, wrenches like 30
11 bucks, et cetera, you know, so.

12 Q. Have you been in the building, obviously, you go by
13 there, I know, and check on it. Have you been in the building
14 to see what it looks like on the inside?

15 A. I have to be honest, I have not been in there for quite
16 a while. I limit my inspections to when I need to go there to
17 meet somebody, and the truth is we have the building fairly
18 secured to where, you know, I wouldn't even go in myself. I
19 would go in with, like, my contractor, and it's really not
20 suitable to walk around in there.

21 Q. There's no power in the building; is there?

22 A. No power, no water, et cetera.

23 Q. You have a protective fence that's built around it to
24 keep people from trying to get in?

25 A. Yes, and we pay for that fence every month, so, yes.

1 Q. A monthly charge?

2 A. Yes.

3 Q. Is that part of the A. Tebele payments that's part of
4 what's happening?

5 A. It's -- oh, unfortunately, it's going on the company
6 card like every month, so, yes.

7 Q. And you were in the process, I believe, of evicting the
8 people from the Mexican restaurant; would that be right?

9 A. Yeah. So there was a lot of interruption with the
10 operation, and, you know, there's some seasonality to a lot of
11 the businesses in Myrtle Beach, but apparently, this was more
12 of an operational issue because, and I think you saw in the
13 application before, was signed by a gentleman by the name of
14 Alan Campos (phonetic,) and he was fairly, you know, a nice
15 gentleman. He was either the domestic partner, spouse, et
16 cetera, of Ms. Garcia, and my impression was she relied on him
17 for a lot of the operations, and unfortunately, it sounds like
18 they had a falling out, and after that, she was left to sort of
19 fend on her own, and since he was the primary operational
20 person, things were not really working there, and they were
21 falling --

22 Q. So let's talk about the loss of rent.

23 A. Yes.

24 Q. You had -- she was paying you how much a month?

25 A. So she was paying 7,000 a month and due to increase to

1 9,000 a month in, I think, '19 because I believe even though
2 her lease -- I think her lease was signed probably in '16, but
3 I think she commenced in '17 just because there was so much red
4 tape trying to get approvals and everything else, so she was
5 due to increase.

6 Q. Now, if the building had not caught on fire and burned,
7 and the people are going to put in the outdoor hydrant, or
8 whatever it was they were going to do, if they got to the point
9 where that was going to be done, were you going to try to rent
10 both sides of the building?

11 A. Absolutely, yeah. We would have been able to,
12 hopefully, lease both sides of the building.

13 Q. And was that the plan to do that after this?

14 A. Yes.

15 Q. And so if -- tell me about after the fire, did the Tap &
16 Bore people come to the building, and they were ready to go
17 ahead and set it up, the sprinkler system?

18 A. So it's funny, but it's not, and my assistant sort of
19 got, you know, a chuckle, it was a very sobering chuckle,
20 because we obviously wish that they got there in advance, but
21 they showed up with a pipe that Tuesday when we were at the
22 property, and they had the pipe to actually make the
23 connection, so they were literally that close at that point.

24 Q. They had to tell them to hold off, there was no reason
25 to do that at that point?

1 A. Yeah, exactly, and I think that the workmen were
2 shocked, like, they had no idea what was going on.

3 Q. Alright. Now, so are you claiming loss of rent from the
4 date of the fire coming forward?

5 A. Yes. What I would say is we've lost a substantial
6 amount of rent, and I heard it brought up -- I heard it brought
7 up and raised where people said, oh, you know, speculative
8 numbers. So what I did is I went to my office, and I ran five
9 years of revenue the last time the building was fully occupied,
10 and I used those numbers to say, well, this is what I was
11 getting -- in the nearest five-year period where the building
12 was fully occupied, these are my numbers, and I'm happy to
13 share those numbers.

14 Q. And what was that number?

15 A. So the numbers were roughly 975,000 in revenue, and I
16 think that was roughly from the beginning of 2010 to the end of
17 '14, and I think the net income, and I'm doing this from
18 memory.

19 Q. And net means after payment or --

20 A. After --

21 Q. -- insurance, et cetera?

22 A. Right. After expenses, I believe it was about like
23 750,000 -- 4,000, something like that, if I had to remember.

24 Q. Now, did you have any tenants, perspective tenants at
25 the time?