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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

Case No. 8:09-cv-00456-SDM-MAP

GUNDER'S AUTO CENTER,
Plaintiff,

vs.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,
Defendant.

DEPOSITION OF BOB DAVIS
VOLUME I (PAGES 1-181)

Taken on Behalf of the Plaintiff

DATE TAKEN: NOVEMBER 4, 2009

TIME:

PLACE: TOSER REPORTING
206 EASTON DRIVE, SUITE 108
LAKELAND, FLORIDA 33803

Examination of the witness taken before:

Sonya Y. Toser
Florida Professional Reporter

24

25

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(863) 682-4422

2

1 APPEARANCES

2

3 Counsel for Plaintiff:

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Also Present: Ray Gunder

13

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3

1 I N D E X

PAGE

2 WITNESS

3 Called by the Plaintiff:

4

4 DIRECT EXAMINATION BY MR. GEOHAGAN.....

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5 CERTIFICATE OF REPORTER OATH.....

289

6 CERTIFICATE OF REPORTER.....

290

7 WITNESS READ & SIGN LETTER.....

291

8 ERRATA SHEET.....

9

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11

E X H I B I T S

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(None)

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1 THEREUPON, the following proceedings were had
2 and taken 9:00 a.m.:

3 THE COURT REPORTER: Do you solemnly swear or
4 affirm the testimony you are about to give will be
5 the truth, the whole truth, and nothing but the
6 truth?

7 THE WITNESS: I do.

8 DIRECT EXAMINATION

9 BY MR. GEOHAGAN:

10 Q. Mr. Davis, if you could please give us your
11 full and formal name for the record.

12 A. Robert Lee Davis, IV.

13 Q. And your current address Mr. Davis?

14 A. 9401 County Road 561, Clermont, Florida.
15 34711.

16 MR. GEOHAGAN: And let me go off the record
for
17 this one.

18 (Discussion off the record.)

19 MR. GEOHAGAN: Back on the record. Thank
you.

20 BY MR. GEOHAGAN:

21 Q. Okay. And your date of birth?

22 A. 4/21/61.

23 Q. And if you could please give us the benefit
of
24 your educational background.

25 A. I went to Winter Haven High School, Polk

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1 Community College, university of Central Florida, and
2 then finished my degree at Webber College.

3 Q. And in what year did you receive your high
4 school diploma at Winter Haven?

5 A. '79.

6 Q. And did you get a bachelor's degree at UCF or
7 Webber?

8 A. Webber I did.

9 Q. And what year did you get your bachelor's?

10 A. 85.

11 Q. And what was your bachelor's in?

12 A. Marketing and finance.

13 Q. And do you have any other degrees from any
14 other schools?

15 A. No, sir.

16 Q. Do you currently possess any licenses or
17 certificates?

18 A. Florida adjustor's license.

I 19 Q. And when did you receive that -- or obtain it
20 guess would be a better way of saying it?

21 A. 1985.

22 Q. And is that license still in good standing?

23 A. Yes, sir.

24 Q. And what do you have to do to get a Florida
in 25 adjustor's license or I guess what did you have to do

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6

1 '85 to get one?

2 A. It guess it's a little different now. It's
3 studies and testing, and now every two years you have
to 4 have continuing educational credits.

5 Q. And has the license ever lapsed since you
6 received it in 1985?

7 A. No, sir. No.

8 Q. Okay. And let me back up I should have done
9 this at the beginning. Have you ever had your

10 deposition taken before?

11 A. No.

12 Q. Let me kind of go through the -- and Mr.
Grim,

13 if you've spoken to him prior to coming in here today

14 probably went over there with you, but this is a

15 somewhat of an informal proceedings as compared to
some

16 of the proceedings we're involved in with judges and

17 jury. To did degree, though, if I do ask you a
question

18 and it solicits a yes or no answer, if you could
please

19 say "yes" or "no" as opposed to "uh-huh" or "huh-huh",

20 which we have a tendency to do in these days in

21 day-to-day conversations. Is that okay with you?

22 A. That's fine.

23 Q. And if I ask you a question and you either do

24 not hear me or you don't understand the question, if

25 you'll please ask me to either repeat the question or

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1 rephrase the question or ask me to do so in some other

2 form similar, that'll be fine. Otherwise we'll assume
3 that you understood the question. Is that okay?

4 A. Yes, sir.

5 Q. Okay. And then also, we also have a tendency
6 in day-to-day conversation as we're talking to one
7 another, someone starts talking and you know what
8 they're fixing to ask and you go ahead and answer.

9 Because, you know, one of the important things about
10 depositions is what she is taking down on the
11 transcript, and it's very difficult for a court
12 reporter, if not impossible at times, to take down

what

13 I'm saying and what you're saying if we start talking
14 over one another. So if you'll -- you know, this is

not

15 directed at you personally by any means. You know,

this

16 is every witness has to be directed to do this because
17 it's just a normal inclination. But if you'll wait

for

18 me to finish my question and then wait to answer my
19 question, that's make for a nice, neat transcript for
20 both myself and Mr. Grim. Is that okay?

21 A. Great.

22 Q. And so your Florida adjustor's license, since
23 you obtained it in 1985, has not ever lapsed --

24 A. No.

form? 25 Q. -- or been suspended in any way, shape or

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8

1 A. No, sir.

2 Q. And who did you go to work with after coming
3 out of Webber College?

4 A. State Farm.

when 5 Q. And what was your position with State Farm
6 you came out of Webber College?

7 A. Auto adjustor.

adjustor 8 Q. And what area did you cover as an auto
9 for State Farm at that time?

10 A. Just about everything from writing the
11 estimate, handling the PIP, the subrogation, the BI,
the

12 UM.

13 Q. Yes, sir. I apologize. What I really was
14 getting at was geographical area did you come out of?

15 A. Oh, I'm sorry.

16 Q. That's okay.

17 A. Fort Pierce. It would be Saint Lucie County,
18 Okeechobee County, Martin County, some of Indian River
19 County.

20 Q. And at that time did your geographical
21 territory include Polk County?

22 A. No, sir.

23 Q. Did your geographical territory ever change
as
24 an adjustor for State Farm?

25 A. No, sir.

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9

1 Q. Did your position with State Farm ever change
2 since becoming an auto adjustor at State Farm after
3 graduation from Webber in 1985?

4 A. Yes, sir.

5 Q. And when did that change?

6 A. In 1990 I moved to Orange County as an
7 Estimatics supervisor, and as the company
8 transitioned -- and I cannot recall a specific year.

I

9 think around '96 or '97 I moved to Estimatics team
10 manager.

11 Q. Okay. And what were your duties as an
12 Estimatics supervisor?

13 A. Many. A few that I could recall or off the
top
14 of my head are to manage personnel, personnel issues,
15 review their work, accountability, the meeting with
our
16 repairers, assigning work.

17 Q. Well, and what was the -- for purposes of the
18 jury anyway, what was the substantive area in which
you
19 addressed as part of an Estimatics supervisor?

20 A. A need a little more.

21 Q. And what I'm trying to get at here, for
22 purposes of those of us or those people who are not
23 familiar with the automobile insurance industry, I'm
24 trying to give them an idea of what an Estimatics
25 supervisor is dealing with as far as the substantive

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together
checking
which

1 aspects of it. So are you involved in putting
2 estimates or checking estimates or involving in
3 what adjustors are doing and what's the substantive
4 aspects of it? I appreciate what you did tell me,
5 is kind of the procedural aspects, managing personnel,
6 accountability. But managing personnel that are doing
7 what?

8 A. Writing estimates.

9 Q. Okay. For purposes of any claims that come
10 before State Farm; is that correct?

11 A. Yes, sir.

Estimatics

12 Q. And then in '96 or '97 you became an
13 team manager; is that right?

14 A. Yes, sir.

an
team

15 Q. And what were the changes in your duties as
16 Estimatics team manager as opposed to an Estimatics
17 manager?

18 A. It was mostly a reorganizational, you know,
19 redo our structure. Essentially the same operations,
20 gave me more personnel, more territory to deal with.

21 Q. And when you became the Estimatics supervisor
22 in Orange County in 1990, what was the geographical

23 territory that you were responsible for?

24 A. Orange and Osceola County.

25 Q. And did that include at all Polk County?

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11

1 A. No, sir.

at 2 Q. And did that geographical territory continue

3 least until 1996 or 1997 when you became an Estimatics
4 team manager?

5 A. Yes, sir.

territory 6 Q. And in '96 or '97 when you became the
7 Estimatics team manager, did the geographical

8 change?

9 A. Since that time it's changed quite a bit as
10 we've restructured, but the initial structure change
11 added portions of Seminole County. And then I've had
12 some widespread changes constant since that time.

positions 13 Q. Has your position as Estimatics team manager
14 changed at all? Have you entered into any new

1997? 15 since becoming Estimatics team manager in 1996 or

16 A. No, sir.

17 Q. At any time point in time did your geographical

of 18 territory change such that Polk County became a part

19 your territory?

20 A. Yes, sir.

21 Q. And when did that occur?

22 A. Specifically, I don't recall. We've had a lot

23 of changes. I would assume it was around 2002, 2003.

24 Q. And has Polk County been a part of your
25 geographical territory since around about 2002 or
2003?

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1 A. For a short period I was reassigned to some
2 other duties, and I really don't recall the length of
3 time. I would say six to 12 months I was assigned
some

4 other duties.

5 Q. And what was the reason for that
reassignments?

6 A. We had retirements. We were continuously
7 restructuring. I was covering areas where we had
8 retirements while we were restructuring our zones to
9 fill those needs.

10 Q. Okay. And during that 10- to 12-month period
11 Polk County was not a part of your geographical
12 territory; is that right?

13 A. Correct.

14 Q. And do you recall when those 10 to 12 months
15 were?

16 A. No, sir.

17 Q. You don't recall which year that might have
18 been? Year or years, if it went into another?

19 A. No, sir. I really couldn't. I'd have to go
20 back and look at the retirements to probably tell you
21 that.

22 Q. Okay. Since Polk County became your
23 geographical or a part of your geographical territory
24 round about 2002/2003, did you have the same duties
that
25 you described a few moments ago as far as being an

1 Estimating supervisor?

2 A. Estimating team manager, yes.

said

3 Q. Well, I mean, earlier you told me what the
4 duties were as Estimating supervisor, and then you

5 the duties were really the same as Estimating team
6 manager. You just had more personnel; correct?

7 A. Correct.

a

8 Q. So since becoming -- or Polk County becoming
9 part of your geographical territory, what have your
10 duties been since that time?

11 A. Territory wise?

thing

12 Q. No, just as far as -- it may be the same

13 that you've already told me previously, but I want to
14 know what those duties are, since Polk County became a
15 part of your territory.

16 A. I'm sorry. I talked over you.

17 Q. That's okay.

which

18 A. Pretty much the same duties. Of course with
19 technology and changes we've had program changes,

20 has required some other developmental skill in the

21 Estimatics department.

touched

22 Q. And let me go back to that, because we

23 on it. But what I have written down on here as far as

24 your duties is managing personnel; is that right?

25 A. Yes.

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14

you

1 Q. Accountability I think is one of the things

2 told me?

3 A. Right.

4 Q. Assigning work?

5 A. Yes, sir.

6 Q. And what else?

7 A. Pretty much the definition of management.

8 Planning organizing, directing, controlling, includes

9 budgeting.

10 Q. Anything else that you can recall as you sit

11 here today?

12 A. No, sir. You go through the management

13 process, and then those are the main features.

of

14 Q. Yeah. And I'm just trying to get the world

15 it. Maybe I'm -- and I'm certainly not holding you to

16 it, but to the best of your recollection those are the

17 things that are your duties since -- at least since --

18 and I know prior to that as well Polk County became a

19 part of your geographical territory; is that right?

20 A. Yes, sir. And, like I said, we've developed.

21 Technologies have developed. We've developed programs

22 that we've had to learn and develop as we go.

23 Q. Okay. But as you sit here today, other than

24 managing, personnel, accountability, assigning work,

25 planning, organizing, directing, controlling and

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15

1 budgeting, is there anything that you can add to that

as

2 you sit here today?

3 A. Off the top of my head, no, sir.

does

4 Q. Okay. As far as managing personnel, what

5 that entail?

6 A. Numbers, managing what I need for personnel,
7 placing personnel where they're needed, handling the
8 problems, reviewing their work, administering salary.

of
9 Q. Anything else you can think of for purposing
10 managing personnel as you sit here?

11 A. No, sir.

12 Q. Okay. Now, when you say personnel, what --
13 personnel for what? I mean, staffing, you know, staff
14 at the administrative office? What kind of personnel

15 State Farm are we talking about?

claim
16 A. Estimators, some clerical. I've had some
17 representatives off and on.

18 Q. Estimators, clerical, claims reps, any other
19 type of employees at State Farm?

20 A. That's pretty much the personnel that I deal
21 with in Estimatics.

that
22 Q. Now, just for purposes of the record, does
23 personnel include adjustors?

licensed
24 A. I have no adjustors now. I have some
25 people, but they're not in an adjustor capacity.

1 Q. Since becoming or since Polk County became a
2 part of your geographical territory, have you had any
3 adjustors under your supervision for purposes of the
4 personnel that you supervise?

5 A. No, sir. Like I said, just some licensed
6 people that are qualified to be adjustors.

7 Q. That happen to be licensed?

8 A. Right.

9 Q. Okay. And for the jury's purposes, can you
10 tell us what the difference is between estimators and

an

11 adjustor?

person

12 A. An estimator is typically an unlicensed
13 with technical abilities, knowledge of automobile
14 repair. They complete repair estimates on damaged
15 vehicles.

16 Q. Okay. As far as the duties that an estimator
17 has, I understand obviously one of the differences is
18 that they're unlicensed as compared to an adjustor who
19 would be licensed; correct?

20 A. Correct.

21 Q. Other than the licensing, is there any
22 differences in the duties that an estimator has as
23 compared to an adjustor?

24 A. A lot of differences.

25 Q. Okay. And what are those differences?

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1 A. Adjustors can negotiate claims with
customers.

2 They can discuss dollar amounts for payments of their
3 claims.

4 Q. An estimator cannot?

5 A. Correct.

6 Q. Okay. What else?

7 A. That's kind of a broad term what I gave you a
8 minute ago. It's negotiating claims.

9 Q. Right.

10 A. Review and negotiate claims, that kind of
11 encompasses the whole process.

12 Q. The difference --

13 A. Yes.

14 Q. -- between the two?

15 Okay. As far as what an estimator does and
an
16 adjustor does, is there any difference in where they
17 maybe during the day whether out in the field or in
the
18 office? Is there any difference to that degree?

19 A. Yes, sir. The estimators are typically in
the
20 field. They're basically classified as telecommuters.
21 They leave home and work in shops and residences and
22 parking lots all day, where claim representatives are
23 typically housed in the office.

24 Q. And when you say claim representatives,
you're
25 referring to adjustors?

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18

1 A. Yes, sir.

2 Q. And for the jury's purposes, a claim rep then
3 would constitute an adjustor but would not constitute
an

4 estimator; is that correct?

5 A. Say that again. I'm sorry.

6 Q. For the jury's purpose in light of -- to help
7 them with the understanding of the goings on and
8 whatnot, when you refer to a claim rep, you would be
9 referring to an adjustor?

10 A. Yes, sir.

11 Q. But when you refer to a claim rep, you would
12 not be referring to an estimator; is that correct?

13 A. It is possible. That's the way I started. I
14 was an estimator and an adjuster at the same time.
15 That's not the structure we use any longer.

16 Q. And how long have you had the structure
whereby
17 you do not use that any longer?

18 A. It changed over time depending on our
19 operations, locations and the needs for separating the
20 duties. In a small market you could have had somebody
21 like me that writes the estimate and handles the rest

of
22 the claim as well. Now with larger markets and larger
23 volumes, it makes sense to separate those duties. So
it

24 took several years and, again, changes in our
operation

25 and in the restructuring has consolidated our
operations

19

1 to larger zones and we over the years separated those
2 duties. So it's been over a span of time.

around

3 Q. Okay. And was that the case back in or
4 the 2002 or 2003 when Polk County became your
5 geographical or part of your geographical territory?

6 A. At that time they were separated.

would

7 Q. So going back to the duties for purposes of
8 managing personnel, you talked about what you need for
9 personnel, and if I understand you correctly, that
10 specifically be personnel as it relates to estimators,
11 some clerical and claim representatives; is that
12 correct?

of,

13 A. In that period of time I did have a couple

no

14 you know, adjustors off and on. At this point I have

15 adjustors.

how

16 Q. Okay. And as far as claim representatives,

17 many claim representatives do you have?

and 18 A. None. It's the same thing, claim adjustors
19 claim representatives.

a 20 Q. Right. Exactly. That's to make sure we have
21 clear record. That's why I asked you that.

22 A. Yes.

23 Q. And when you say clerical, I'm assuming you
24 mean maybe secretaries or assistants in the office and
25 whatnot; is that right?

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20

1 A. Yes, sir.

in 2 Q. Okay. You also said as part of your duties
where 3 managing personnel, it included placing personnel
4 needed; is that correct?

5 A. Yes, sir.

6 Q. What does that involve?

7 A. At different periods, especially in Florida,
8 when a residence -- different market areas will

9 experience different work levels and needs to meet our
10 customer's needs, we have to shift personnel to those
11 areas that get busy for whatever reason. So having
12 several markets or several counties, I'm able to shift
13 personnel that are close to those areas into the areas
14 where customers need them.

15 Q. Okay. And that's just a matter of how many
16 claims are coming out of any particular area, is that
17 basically what you use to gauge?

18 A. Yes. Sir, that's part of my management,
19 monitoring my markets and my volume and shift in
20 personnel where we could be there when customers need
21 us.

22 Q. You also said as part of your duties in
23 managing personnel is handling problems. What does
that
24 entail?

25 A. With so many people in any business, some of

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1 them, personal life, professional life, you could have

2 performance issues, you have personal issues. You try
3 to help them through.

4 Q. Anything else that would entail?

5 A. No, sir. I think I passed the basics, look
6 the professional help.

7 Q. You also stated that one of your duties in
8 managing personnel is reviewing work; is that correct?

9 A. Yes, sir, to some degree.

10 Q. And what does that entail?

11 A. Of course we have estimators. We have what
12 we

12 call property claim trainers that follow up on their
13 work. I follow up on their work. And periodically
14 through each day at each week I'll pull little
15 portions

15 of each party's work. Check the original and I check
16 the checker, determine whether I agree or not or see
17 trends and work with our groups to see where we might
18 need training, adjust trends, shift personnel,
19 whatever

19 it might be.

20 Q. And what type of work are you reviewing?

21 A. Estimates.

22 Q. And, I apologize, I didn't catch the term
23 that

23 you used in referring to the checker of those
estimators

that 24 before you checked it. What would the position of
25 person be?

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22

County, 1 A. We call them property claim trainers.
2 Q. And for purposes of these at least Polk
3 how many property trainers do you have under your
4 supervision?

5 A. For Polk County I have one.

6 Q. And who is that?

7 A. His name is Mark Elwood.

8 Q. And how long has he been your property claim
9 trainer for Polk County?

of 10 A. I believe he started in January or February
11 this year.

12 Q. And before Mark Elwood who was your property
13 claim trainer?

14 A. Thomas Colding.

15 Q. And how long was Thomas Colding your property

16 trainer?

17 A. Again, dates with the transitions to be
18 specific would be hard.

19 Q. Was he there since 2002 or 2003 when Polk
20 County became a part of your geographical territory?

21 A. When I left for that shored period of time
and
22 came back, he left with me due to retirement; and in
the
23 Polk County he assumed those duties.

24 Q. Got you. So since you came back since that
25 reassignment, Thomas Colding was your property claim

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23

1 trainer; correct?

2 A. Yes.

3 Q. And then after Thomas Colding it was Mark
4 Elwood; correct?

5 A. Yes, sir.

6 Q. Under what circumstances did Thomas Colding

--

7 well, let me ask you this. What occurred for Mark

8 Elwood to become the property trainer and Thomas
Colding
9 to no longer be the property trainer?
10 A. With restructuring more and more
11 responsibility. It just became obvious that we needed
a
12 property claim trainer to be able to check a sample
13 percentage of the work that was being completed in the
14 field. He was running hard, for lack of a better
word,
15 to try to keep up with them; and we saw a need to
16 separate my groups of people with two property claim
17 trainers so that we could get the training that they
18 provide adequately and look at an adequate number of
our
19 sampling of their work to evaluate them.
20 Q. So you have two property claim trainers?
21 A. I have two now in a different market because
I
22 cover different markets.
23 Q. Okay. Thomas Colding is in a different
market.
24 He's not in Polk County anymore?
25 A. No, sir. He covers Hillsborough County now.

who

1 Q. Okay. Got you. Prior to your reassignment
2 was your property claim trainer?

3 A. In Polk County?

4 Q. Yes, sir. I'm sorry.

5 A. Garry Hammond was his name.

6 Q. Garry Hammond?

7 A. Yes, sir. H-a-m-m-o-n-d. It was Garry with
8 two Rs.

9 Q. And was Garry Hammond your property claim
10 trainer when Polk County became a part of your
11 geographical territory in 2002 or 2003 at least for
12 purposes of Polk County?

13 A. Yes, sir. When I came to Polk County he was
14 there.

15 Q. So for purposes of Polk County and since it
16 became a part of your geographical territory, you had
17 Garry Hammond as a property claim trainer, then Thomas
18 Colding, and then Mark Elwood for purposes of Polk
19 County; is that correct?

20 A. Yes, sir.

21 Q. And this probably goes without saying at this
22 point, but for purposes of the record are the

estimators

claims, 23 for purposes of any claims, automobile insurance
-- 24 obviously as it relates to State Farm in Polk County
25 strike that.

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as 1 For purposes of the estimators who are
2 responsible for the Polk County geographical area and
3 it relates to automobile insurance claims, are you the
4 supervisor for these estimators?

5 A. Yes, sir.

6 Q. And other than your reassignment for 10 to
7 12 months, you have been their supervisor since
8 approximately 2002 or 2003; is that correct?

9 A. Yes, sir. I'm trying to place new people.
10 People have moved.

11 Q. No, no, I understand. We'll get to that in a
12 second. But I mean as far as whoever are the
estimators
13 for the Polk County geographical territory.

14 A. Yes, sir. And then we have some new folks
15 since that time. But the Polk County estimators in
16 place now report to me.

17 Q. Okay. And the only thing -- only person in
18 between you and the estimators for purposes of
19 supervision is the property claims trainer; is that
20 correct?

21 A. Correct. And I wouldn't necessarily -- and
we
22 go lengths to understand that they do not supervise
23 those estimators.

24 Q. Okay. The property claims trainer is not a
25 superior to the estimators; is that correct?

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26

1 A. It is sometimes assumed, but no, sir.

2 Q. Okay. And can you tell me to the best of
your
3 recollection -- I don't expect you -- I mean,
4 depending -- I mean, you maybe able to.

5 Since 2002 or 2003 who have your estimators
6 been for purposes of the Polk County geographical

7 territory?

8 A. Can you hold up for a second? I should have
9 printed a list. I have to think it through.

10 Q. For the record I'm not -- this is not a test.
11 It's not you get an A if you can remember all of them.

12 A. If I left somebody out they'd be offended.

13 Q. I hear you.

14 A. For some reason I think I forgot one, but

I'll

15 give you the list I have.

16 Q. Okay. Yeah.

17 A. Larry Swearengin.

18 Q. Can you spell his last name?

19 A. S-w-e-a-r-e-n-g-i-n. Greg.

20 Q. I'm sorry, S-w-e-a-r-e-n-g-i-n?

21 A. Right.

22 Q. Okay.

23 A. Greg Metzger, M-e-t-z-g-e-r. Steve Brannen.

24 Becki, with an I, Berbusse, B-e-r-b-u-s-s-e.

25 Q. I'm sorry. The last name again.

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covers

His

call

pay

that

is

1 A. B-e-r-b-u-s-s-e. Eloy Rodriguez. And Raul
2 Alvarez, A-l-v-a-r-e-z. I also have another estimator
3 that's assigned to Polk County, but he typically
4 Osceola County. He rarely comes into Polk County.

5 name is Marcell Paradis, P-a-r-a-d-i-s?

6 Q. P-a-r-a-d-i-e-s?

7 A. P-a-r-a-d-i-s. And then my property claim
8 trainer, Mark Elwood, is assigned to Polk County.

9 Q. Is he also an estimator?

10 A. There's a job classification change. They
11 don't call them an auto Estimatics inspector. They
12 them a property claim trainer, but he's in the same
13 category.

14 Q. But does he carry out -- I understand that he
15 has a separate duty, but does he also carry out the
16 duties that these other estimators do?

17 A. No, sir.

18 Q. Now, I'm assuming these are the estimators
19 are currently under your supervision in Polk County;

20 that correct?

21 A. Yes, sir.

have
22 Q. Okay. Are there any other estimators that
23 been under your supervision for purposes of the Polk
24 County geographical territory since approximately
25 2002/2003 that are no longer estimators for you?

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the
1 A. There are estimators for me but they're in
2 Hillsborough market now. Once's name is Mike Lantz,
3 L-a-n-t-z. The other one is Theodore Bommer,
4 B-o-m-m-e-r.

5 Q. Bommer?

6 A. Yes, sir. B-o-m-m-e-r.

7 Q. Okay.

8 A. I'm going through my Hillsborough list again.
9 I don't think any of the others have occasion to work
10 this markets. We usually shift these people to that
11 market as a busier market.

12 Q. All right. And other than Mike Lantz and
13 Theodore Bommer, are there any other estimators that

or

14 were under your supervision since approximately 2002
15 2003 in the Polk County market that are no longer
16 estimators in that market or territory?

17 A. No, sir. But let me backtrack one second. I
18 overlooked a group of people I have, which is called
19 our -- we have some -- two in-house estimators. One's
20 name is Dan Brady. One is Steve Wiezorek,
21 W-i-e-z-o-r-e-k.

22 Q. W --

23 A. -- i-e-z-o-r-e-k. And we had an estimator in
24 that same position retire a little over one year ago.
25 His name is Thomas Schwartz.

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1 Q. As an in-house estimator?

2 A. Yes, sir.

3 Q. And do you have any idea -- I know the others
4 are with you so that makes it easy, but with Thomas
5 Schwartz, do you know where he resides?

6 A. He lives in Winter Haven.

7 Q. Okay. And just go to the side here for one
8 moment. What are the differences in the duties of an
9 estimator that I'm assuming is out in the field and an
10 in-house estimator?

11 A. To streamline processes. We moved two inside
12 to be assistants to claims representatives, may or may
13 not have the technical skills or knowledge of some
14 issues. So they're there for training purposes as
15 as to review and possibly handle a large volume of
16 supplemental requests that come from around zones that
17 come in.

18 Q. Okay. Any other people that you can recall
19 that were estimators in the Polk County geographical
20 territory under your supervision since 2002 or 2003
21 are no longer estimators in that geographical
22 whether they left State Farm, were terminated or went
23 another geographical territory?

24 A. No, sir.

25 Q. And all of these people that you have named

well

that

territory,

to

1 either answer to you currently or answer to you in the
2 past; is that correct?

3 A. Yes, sir.

4 Q. And for the jury's purposes, do any of these
5 estimators -- do they estimators handle as a normal
6 course of their business anyway, phone calls from the
7 State Farm insurers that are filing claims for
purposes
8 of any collision?

9 A. They will generally receive an assignment to
10 inspect a car and will typically contact that customer
11 before seeing the car. If they can't get them, they
12 generally will leave their number and receive a call
13 back from them. And occasionally after they receive a
14 call somebody will call them with a question about
their
15 estimate.

16 Q. And to your knowledge for purposes of where
17 that car is taken for the repairs, whatever auto body
18 repair shop that it is being taken to, would that
19 discussion take place between the estimators and the
20 insured in a regular course of business or would that
be
21 some other personnel that would have that discussion,

22 given your knowledge?

23 A. Me as an estimator if I looked at somebody's
24 car, I would be inclined to ask them where are you
25 talking your car. My estimators, when they're

assigned

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1 an estimate/assignment, is generally given -- they're
2 going out because the customer has not made a choice.

of

3 Q. When a State Farm insured calls as a result

that

4 a collision to report a claim, what personnel would

5 insured be talking to initially?

6 A. Probably -- I don't have an exact percentage
7 for you, but a high percentage initial contact is with
8 their agent. The rest are handled by our claims
9 personnel, which would include what we call a claims
10 processor or a claims representative.

If

11 Q. So let me give you kind of a hypothetical.

12 I -- and I'm not -- I don't have State Farm Automobile
13 Insurance, which, I guess is probably appropriate

under

14 the circumstances, but if I were to take out my State
15 Farm Automobile Insurance card, would there be a
number

16 on it that I would call if I had a claim?

17 A. I would have to look at the current cards. I
18 get mine. I don't pay much attention.

19 Q. Right.

20 A. I assume it would have your agent's phone
21 number on there.

22 Q. Okay. So is it your understanding then that
23 when a State Farm insured has a claim, that they
24 actually call their agent as opposed to a 1-800 number
25 or some other number that would lead to someone other

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1 than their agent?

2 A. There are websites with 800 numbers for
claims.

3 Most people are familiar with their agent and that's
who

4 they tend to contact.

5 Q. And do you know, you may or may not, who the
6 agent would then send the insured to as a result of
that
7 phone call?

8 A. No, sir. I don't get involved in the agent
9 business.

10 Q. Well, no, I'm talking about when it comes
back
11 to the estimator, because at some point it gets to the
12 estimator. Maybe we can go backwards on it to get to
13 it. How does it get to the estimator?

14 A. The agent or our 800 number people taking
15 electronic claim. It's routed appropriately to the
16 office that services those markets. It's reviewed by
17 claim processor or claim representative, and they make
18 the assignment accordingly.

19 Q. And so if someone were to call, as you just
20 mentioned, the 800 number, who would that be calling?

21 A. I'm not familiar with the current path of
that
22 on after hours, actually when agents are off hours or
23 midnight, whatever. They forward their phones to
what's
24 called a customer response center with three or four
of
25 them around the country that are 24 hours. They take

1 the claim and direct them appropriately.

2 Q. And where -- do you know where these customer
3 response centers are located?

believe

4 A. Off the top of my head I know we have one in
5 Jacksonville. I think we have one in Texas. I

6 there's two more, but I couldn't tell you.

I

7 Q. If I'm in Florida and I call that 800 number,

is

8 could get somebody in Texas as well as Jacksonville;

9 that right?

10 A. Yes.

if

11 Q. And what is the position of the people that
12 take these calls if you were to call the 800 number,

13 you know?

14 A. I don't. I don't really know their
15 qualifications.

claim

16 Q. Are they -- just for the record, are they

17 reps?

18 A. I do not believe so.

19 Q. And at some point in time I would get to a
20 claim processor or a claim rep; is that correct?

21 A. Yes, sir.

22 Q. Okay. Are there any -- for purposes of State
23 Farm Automobile Insurance's structure, are these claim
24 processors or claim representatives assigned to a
25 particular geographical area?

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1 A. Again we're going through structure changes
2 currently.

3 Q. Yeah.

4 A. And for the past several years they used to
5 market or zoned oriented. In the last several years,
6 they have covered the whole zone.

7 Q. What's the whole zone? What does that mean?

8 A. State Farm is broken into zones. Florida is
9 its own zone.

10 Q. Okay. So the claim -- so let's say there's a
11 collision out here on Edgewood Drive in Lakeland and

The 12 ultimately the claim -- it's a State Farm insured.
a 13 claim goes to State Farm. It ends up in the hands of
14 claims processor or claims representative. At that
15 point in time could that claim processor or claim
16 representative be in Pensacola as well as Polk County
17 each though it occurred here in Polk County?

18 A. Yes, sir.

19 Q. And up until the last few years how was that
20 done? You said the last few years the zones was all
--

21 A. Several years -- it's rotated. There were
22 assigned areas we assigned agents in. Like I said
23 before, with volume spikes in different markets,
agents 24 with different policyholders, that was difficult to
25 segment those out for balancing workloads. So by

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from 1 encompassing the whole zone where they take claims
2 the whole zone, it's one, one, one. So it balances

the

3 workload so one group of claim representatives don't
4 receive an amount of work they can't handle, just
5 distribute it evenly.

here.

6 Q. Sure. But prior to this change was it a
7 situation where the claim -- for instance we had the
8 same collision that I just described as an example

9 Would the claim processor or claim representative be
10 from either Polk County or the central Florida area?

'90s.

11 A. That specific claim rep assigned market area
12 procedure was phased out, I would say, in the late

13 Q. Okay. Are there any particular claim
14 processors or claim representatives that, for whatever
15 reason, have more of the workload in Polk County than
16 other jurisdictions to your knowledge?

17 A. I wouldn't know.

18 Q. Do you have contact with claim processors and
19 claim representatives --

20 A. Yes, sir.

have

21 Q. -- other than what you described earlier when
22 you have a claim representative every once in awhile
23 under your supervision. But aside from that do you

24 contact with claims processors and claims
25 representatives?

36

1 A. Yes, sir.

2 Q. In what way?

3 A. I'm housed in the Winter Haven zone office
with
4 our largest group of claim representatives and claim
5 processors. I provide a lot of their training or
6 technical advice.

7 Q. Is there any particular place in Florida
where
8 training is done for purposes of claim representatives
9 and claim processors?

10 A. No, sir.

11 Q. How many claim representatives and claim
12 processors do you have in the Winter Haven office?

13 A. I have no idea.

14 Q. Is it five or more like 30 or -- I'm not
asking
15 you for exact number. I understand you --

16 A. In excess of 100.

17 Q. Okay. And if there was a claim in your

18 geographical territory that a particular claim
19 representative or claim processor became involved in,
20 would it be unusual for them to come to you in light
of
21 the fact that, for instance, Polk County is over in
your
22 geographical territory if there was a need to talk to
23 you?

24 A. They talk to me from claims from all over the
25 zone. The Estimatics team managers throughout the
state

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1 generally get calls on the shops that are in -- or
2 problems or estimators that are within their
management
3 zone.

4 Q. So it wouldn't be unusual, for instance, if
5 there was the -- same example hypothetical example I
6 give you -- for a claim representative, let's say out
of
7 Pensacola, who became responsible for that particular
8 claim for them to call you up and ask you questions

with

9 regard to anything related to that claim whether it
was

10 with regard to the estimator or the estimate; is that
11 right?

12 A. Right. If it came from my market, they tend
to
13 call me.

14 Q. And right now your market I know includes
Polk
15 County. What else does it include currently?

16 A. Hillsborough and Osceola County.

17 Q. And since 2002 or 2003 when Polk County
became
18 a part of your geographical territory, what other
19 territories have you had responsibilities for other
than
20 Hillsborough, Osceola and Polk County, if any?

21 A. Since 2002 and 2003?

22 Q. Yes, sir.

23 A. None.

24 Q. Okay. Going back to managing personnel and
as
25 part of that reviewing work and reviewing estimates,

1 what are you looking at when are you're reviewing the
2 work and reviewing the estimates that are written by
the
3 estimators?

4 A. I look for -- of course, a huge part of what
we
5 do is consistency, making sure that we're consistent.
6 So I'm looking for the consistency. My property claim
7 trainers are my technical skilled people. They're
8 pointing out technical inconsistencies to me. You
know,
9 I know enough to look at theirs and form an opinion
10 whether I agree with them or not. So I guess it's my
11 duty to way them out.

12 Q. And what do you mean as far as looking for
13 consistency? Consistency in what.

14 A. In how we do things. Are we writing good
15 complete estimates? Are we doing it the same way?
Are
16 they doing the things that we've taught them with
17 technical training?

18 Q. Anything else that you're looking at for
19 purposes of reviewing the work and reviewing the
20 estimates by the estimators, when you review the work
21 that is?

22 A. Those things I listed there is a large scope,
23 large -- you know, it's quite a bit of there you're
24 looking at for that consistency.

25 Q. Okay. Anything else you can recall, though,

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1 other than that?

2 A. No, sir.

3 Q. When you say writing good complete estimates,
4 what does that mean? What does a good complete
estimate

5 entail?

6 A. An estimate that's going to cover the damages
7 to that particular vehicle. It's going to, you know,
8 result in a quality repair to that vehicle.

9 Q. Anything else you're looking at for purposes
of
10 whether it's a good or complete estimate?

11 A. Again, that covers a large area in the -- it
12 all goes to their performance. When -- I'm sorry.

13 Q. No. I think I cut you off. Go ahead. You

14 were going to say something. Or maybe not. Maybe you
15 were done.

16 A. Go ahead.

17 Q. I'm sorry. Okay. You said it goes to their
18 performance. What do you mean it goes to their
19 performance?

20 A. For instance, if I identify they were not
21 writing complete estimates and other estimators were
22 having to follow up behind them on a regular basis to
23 complete additional items or supplement items because
of
24 things they had left off, which appear obvious and
25 necessary to do the work, then I would see they were

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1 being deficient in their duties and address it with
2 them.

3 Q. What would be an example of someone who
didn't
4 write a good and complete estimate given your
5 experience?

6 A. Again, that covers a lot.

7 Q. I'm not asking for an exhaustive list.

8 A. I've done it myself. As an estimator I put
the

9 hood up to start writing an estimate on the car and

10 forgot to write the hood several times. It's an
obvious

11 thing. It's a mistake but it's something as simple as

12 that. It could be a trend.

13 Q. And you said as part of that, you know,
whether

14 they're doing it the same way, what does that mean?

15 A. Consistencies. We want to be addressing
items,

16 the things we train and expect them to include in

17 estimates to provide a quality estimate, make sure

18 they're doing it and they're doing it consistently,
not

19 treating -- when you're dealing with a customer

20 differently than when you're dealing with this shop or

21 this shop.

22 Q. Well, doing it the same way with every shop;
is

23 that right?

24 A. Customer or shop market area.

25 Q. So the consistency would include dealing with

1 not only the customers the same way but the shops the
2 same way; is that correct?

3 A. Yes, sir.

4 Q. And is that something that you would address
5 for purposes of an estimator in the way -- or what
6 you're seeing as far as the estimates for this shop
7 versus this shop versus this shop?

8 A. No. I would see one estimator doing
something
9 other than what, you know, we teach or expect them to
do
10 within that market. For instance, in the state of
11 Florida there's no different way to repair a car. So
if
12 you're consistent in each market, you're consistent
13 throughout the zone, you're treating everybody the
same.

14 Q. And for purposes of how shops are treated,
what
15 is the standard that y'all use as far as what should
or
16 should not be paid for?

17 A. Each vehicle is a different case, so there is
18 no set rule for all cars. We expect quality estimates

19 to restore the car.

an
20 Q. Is there any reason why, if I shop incurred

and
21 expense for purposes of repairing a car, a vehicle,

22 the expense was otherwise considered to be reasonable,

23 why that expense would not be paid for?

24 A. Such as?

25 Q. Whatever it may be. I mean, that's what I'm

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a
1 saying. If there's a repair that needs to be done to

2 car -- let's say to a back bumper -- and you have been

3 presented with the invoice for purposes of the repair

4 work that has been done. You looked over the invoice

5 and you've come to the conclusion in that particular

6 instance that each of those expenses are reasonable in

shop
7 nature and were, in fact, occurred by the auto body

8 for purposes of doing the repair. Is there any reason

9 under those circumstances why any portion of that

10 invoice would not be paid?

at 11 A. I look at it a little differently or we look
12 it a little differently. Is it reasonable? Is it
13 necessary? Is it competitive in that market?

14 Q. Okay. And what do you look at to determine
15 whether it's reasonable?

16 A. Well, reasonable and necessary for that
17 particular job, yeah. Is it needed for that job?

Yes.

18 Is what's been allowed or what's been charged for
that,
19 is it reasonable? And then is it competitive in that
20 market.

21 Q. Okay. And what do you mean when you say is
it
22 competitive in the market? What does that mean?

23 A. Do a majority of the repairs in a particular
24 market charge for that process or what do they charge
25 for that process.

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1 Q. And why does -- why do you or why does State

purposes

2 Farm take into consideration whether or not for
3 of any expense incurred by an auto body repair shop,
4 whether other shops charge for that process?

5 A. Say that again. I'm sorry.

a

6 Q. Why do -- why does State Farm -- why do you
7 take into consideration whether other shops charge for
8 particular process? I mean, if it, in fact, is an
9 expense incurred for purposes of the repairs and is
10 charged as part of the repairs that are done, why

would

11 you look to see if other shops charge for it or not?

12 A. Consistency and fairness.

13 Q. Consistency and fairness for who?

14 A. All the shops and the customers.

15 Q. Well, if I want to go to get a dinner at
16 Applebee's as compared to McDonald's, Applebee's is
17 going to be a little bit more expensive, correct, than
18 McDonald's. Would you agree?

19 A. I would assume.

auto

20 Q. So if I want to go -- why can't I go to an
21 body repair shop that, just for hypothetical purposes
22 here, charges more for the repairs and what I expect
23 to get in exchange for that is better quality work than
24 maybe another shop? Can I not do that?

25 A. Every customer has a choice of where to get

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1 their car repaired.

2 Q. Okay. But why would State Farm not respect
3 that choice then even though they may -- one shop may
4 charge for a process that another shop or other shops
5 are not charging for?

6 A. We do --

7 MR. GRIMM: Object to the form of the
question.

8 THE WITNESS: I'm sorry.

9 MR. GRIMM: It's just a record matter. Go
10 ahead and give us your answer.

11 A. We do respect the decision that they make for
a

12 shop to repair the vehicle. We owe what it takes and
we

13 exact to pay for a quality repair. Our estimates are
14 prepared in a manner to provide for quality repairs.

So

15 when we write an estimate, we think that that is

16 competitive in the market to achieve a quality repair
17 regardless of what shops those customers choose.

18 BY MR. GEOHAGAN:

19 Q. For purposes of the policies, your
20 understanding anyway that you have with your
customers,
21 is it your understanding that they're able to choose
22 whatever shop they go to?

23 A. That's what we train and that's what we
expect.

24 Q. And is it your understanding for purposes of
25 that policy that State Farm is to pay for any
reasonable

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1 expenses associated with the repair of that vehicle?

2 A. Reasonable, necessary and competitive in the
3 market.

4 Q. And do you have an understanding as to
whether
5 or not as part of your policy that the terms of that
6 policy include the competitive -- that State Farm will
7 only pay for those expenses that are competitive in

the

8 market?

pricing.

9 A. Based on prevailing competitive market

what

10 Q. Okay. That's your understanding is as to

State

11 is in the policies between State Farm insureds and

12 Farm?

13 A. Yes, sir.

for

14 Q. So if you were paying for expenses associated

15 with repair of a vehicle as it relates to one shop,

16 your purposes you would expect that State Farm should

17 pay for those same expenses at another shop; is that

18 correct?

repair

19 A. When we complete our estimates, we complete

20 them in a manner that we expect a quality repair. We

21 don't control what shops do or don't do when they

22 the car. Again, that's the customer's choice to go to

23 the repairer that they want to.

aware

24 Q. All right. But if you're -- if State Farm --

25 say with regard to your estimators and what you're

shops
vehicle
repairs
expenses

1 of that's being paid out there for purposes of the
2 in Polk County let's say. If you're paying for a
3 particular expense associated with repairs of a
4 or vehicles at other shops that is a part of the
5 done, would it be your position that those same
6 be paid for at all shops in the same way?

same
we

7 A. Considering the same circumstance on that
8 type of vehicle or same type of collision loss, yes,
9 pay what's reasonable, necessary and competitive.

charge

10 Q. And for purposes of any process that is used,
11 you mentioned that one of the criteria is do they
12 for that process at other shops. If they're charging
13 for that process at another shop and State Farm is
14 paying for, would State Farm -- would it about your
15 position that State Farm should pay for that process
16 across the board all things being equal in the
17 geographical area at least?

18 A. All things being equal, same car, same

19 situation, same color, whatever it might be.

20 Q. Well, what do you mean by same situation?

21 A. Again, every collision is different. The
22 nature of the damage is different. The processes
23 necessary to repair those cars can differ from car to
24 car. So one car may require a process that another
does
25 not. Because we paid something here on this car
doesn't

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1 necessarily mean it was necessary on this car over
here.

2 Q. If, however -- let's say sand and buff.
You've

3 heard of that procedure; correct?

4 A. (Nods head.)

5 Q. Right?

6 A. Correct.

7 Q. Sand and Buff is being paid for on a regular
8 basis at another shop or shops. Should that same
9 process be paid for at all shops?

10 A. Again, unique to the job, my understanding.

11 Q. As long as -- and let me back up, and I
12 apologize for interrupting. As long as it's something
13 that is obviously necessary and reasonable for
purposes
14 of those repairs, is that something that you would
15 expect should be paid at all shops?

16 A. Color, sand and buff is broad. The
17 understanding -- my understanding of color, sand and
18 buff is to achieve texture. My opinion of that or our
19 opinion of that is that unless the car was
manufactured
20 with the texture that is we call a mirror finish or a
21 slick finish, that that's not a necessary step.

22 Q. But my question, though, is -- and I
apologize
23 for maybe that particular factual scenario interfering
24 with it. If there is a particular process that on a
25 frequent basis is being paid for at other shops, all

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1 things being equal, is it your position that all
things

long

2 being equal that should be paid for at all shops as
3 as the -- obviously the expense and the amount
4 associated with that endeavor is reasonable in nature?

market

5 A. To -- so there's no broad sweep, you know,
6 something that's simple, frontal alignment, that's
7 pretty consistent throughout markets and zone. If
8 alignment is necessary, we pay for that. There's

it

9 rates that are used that seem to be acceptable to
10 everybody. We wouldn't pay more for one person to do
11 than we would for another person to do it. And, there
12 again, there are differences in certain types of cars
13 where you may have to make those types of exceptions.

Polk

earlier,

14 Q. Given your supervision over the estimators in
15 Polk County and your experience with the claims in
16 County, is it your position that, as you put it
17 that all the auto body repair shops in Polk County are
18 treated the same way for purposes of estimates and
19 is paid for any particular claim?

what

my

20 A. Again, that's what we train. That's what we
21 expect. What individuals or groups of people beyond
22 group, what discussions they might have, I couldn't
23 really tell you.

your 24 Q. And I'm limiting it to you. I mean, is it
25 position, at least when it gets to you and aside from

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are 1 where it goes beyond you, that all body repair shops

2 to be treated the same way in the Polk County market?

3 A. Yes, sir.

body 4 Q. And when I say treated the same way as far as
5 any expenses all things being equal, an expense at one
6 shop, all things being equal, should be paid for there
7 just as well as it should be paid for at this auto

8 repair shop; is that correct?

9 A. Yes, sir.

they 10 Q. And you also said as far as whether -- being
11 competitive in the market, as to what the auto body
12 repair shops, other body repair shops -- aside from
13 whether they charge for that process but also what

14 charge for that process; is that correct?

15 A. Say that again. I'm sorry.

16 Q. When we were talking about whether or not a
17 particular endeavor utilized for the repair of a
18 vehicle, if it is something that would be paid for by
19 State Farm, you look whether it's reasonable,
necessary
20 and competitive in the market; correct?

21 A. Yes, sir.

22 Q. And as far as whether it's competitive in the
23 market, you look as to whether or not other shops
charge
24 in that process or what do they charge in that
process;
25 correct?

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1 A. A majority of the shops for that market,
what's
2 established for that market.

3 Q. And so, again, you use that. And the basis
for
4 using that is that you're allowed to look at what
other
5 shops charge and the amount they charge for that

process

6 because, at least your position and State Farm's
7 position, is that you don't have to pay for a
particular
8 expense if it's not competitive in the market;
correct?

9 MR. GRIMM: Object to the form of the
question.

10 A. The shops establish the rates and what's
11 competitive in the markets, and that's how we prepare
12 the estimates.

13 Q. Well if the shop says, I want to charge for
14 this expense, and you're telling me the shops are the
15 ones that are setting the price in the market, then if
16 he's setting the price in the market, why wouldn't you
17 just go ahead and pay it then?

18 A. The prevailing competitive market pricing is
19 set by the majority of the repairs in that market, not
20 an individual repair is get.

21 Q. And why, again, is it material as to what
other
22 shops are charging as compared to what that particular
23 shop is charging?

24 MR. GRIMM: Object to the form of the
question.

25 A. It's a competitive business, and shops can

51

for
State
them

don't
the
range

be
pay

1 charge what they want to prepare a quality estimate
2 our customer. And our common goal of the shop and
3 Farm is to complete a quality repair job. We write
4 consistently, prepare estimates in accordance with
5 achieving with what we expect to be a quality job, and
6 that's based on what a majority of the repairs in the
7 market is doing. And if you ask any one shop -- I
8 believe I have ever been into a shop that said, I'm
9 best. And they charge -- you know, there's a wide
10 of rates that they charge for what they do.

11 Q. And so even if the expense is considered to
12 reasonable and necessary, if, however, it is not what
13 you consider to be or State Farm considers to be
14 competitive in the market, then State Farm will not
15 on behalf of that insured for that particular expense;
16 is that correct?

question.

17 MR. GRIMM: Object to the form of the

somebody

18 A. We pay based on the prevailing competitive
19 price in the market. If there's a charge that

a

20 provides or an invoice somebody provides for a fee or
21 procedure outside of what's common to the marketplace,
22 we would resist that.

23 Q. And how do you determine what the majority of
24 the shops are charging for a particular procedure?

for

25 A. Surveys -- well, I take that back. Surveys

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1 body labor, frame labor, paint labor, paint materials,
2 markup on unused parts, discounts. There's a survey
3 that accounts for that. We write thousands of
4 estimates, and if you have questions, you call local
5 resources to obtain prices. If say, for instance,
there
6 was an operation or something that needed to be done
on
7 a new car that nothing had been established, people

are

take

are

older

to

State

8 going to start searching to see what it is going to
9 to fix it, what the cost of that is going to be. And
10 eventually you're going to get pricing. When things
11 new, they tend to be higher. When -- as they get
12 or the market floods, they tend to go lower. So you
13 adjust the pricing to what's acceptable to everybody.
14 Your initial one has to be a good faith effort to try
15 meet the needs both of the customer as well as provide
16 payment to the repairer.

17 Q. And just to make sure I'm clear on your
18 statement earlier, if I were to pull any policy of a
19 State Farm insurer, automobile insurance, it will
20 clearly state in there that you only pay for those
21 expenses for purposes of any collision or claim that
22 that insured may be involved in that, in addition to
23 other criteria, is competitive in the market; and,
24 therefore, if it's not competitive in the market,
25 Farm will not pay for it. Is that correct?

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to
1 A. I believe you find it out -- I wouldn't want
2 say definitely yes without looking at the current
3 policy.

4 Q. Well, I mean, the last time you looked at a
5 policy did you -- was that clearly -- I mean, have you
6 ever looked at a policy?

7 A. Oh, yes, sir.

expected
8 Q. And that's just for the predicate. I
9 you did. And after having reviewed that, did you
10 review -- the last time you reviewed a policy, did you
11 review the terms as to what the criteria are for
12 purposes of whether or not State Farm Automobile
13 Insurance will pay for certain expenses associated
with
14 repair of that vehicle?

you
15 A. The payment portion clause of the contract,
16 know, I recall that it says we will pay you in
17 accordance with what the prevailing competitive prices
18 charge in that market.

19 Q. And for your purposes, Mr. Davis, what does
20 prevailing competitive market prices mean?

21 A. The pricing charged by a majority of the
22 repairers in a market.

23 Q. Well, how -- if everyone's charging the same,
24 how is that competitive in nature?

25 MR. GRIMM: Object to the form of the
question.

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1 A. Everybody does not charge the same.

2 Q. But you just told me that you'll charge only
up
3 to what the prevailing -- or what the charges are for
4 any particular procedure; is that correct?

5 A. We'll pay up to the prevailing competitive
6 price established in that market by the repairers.

7 Q. Okay. But competition typically, I think
you'd
8 agree with me, means that there's going to be
9 differences in what, in any particular industry, that
10 competitors -- the difference in what each competitor
11 offers; correct?

12 A. Correct.

13 Q. And if the price is the same or if it's one
14 price that you're looking at, how is that competitive?

15 A. Of course, I don't get involved in the
16 calculation process or just general knowledge of how
17 that works, but all shops are surveyed. Then a
majority
18 of the shops at those rates are calculated. Once you
19 hit majority, that is the rate we use on our estimates
20 as a prevailing competitive rate. Most, if not all,
21 repairers accept that.

22 Q. So it's the prevailing rate. It's not the --
a
23 competitive prevailing rate; correct?

24 MR. GRIMM: Object to the form of the
question.

25 A. Differentiate.

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1 Q. Well, I mean, again, the prevailing rate -- I
2 understand if you said prevailing rate is what the
3 majority of the shops charge for a particular
procedure.

4 But when you add the adjective competitive prevailing

you're 5 rate, doesn't that change the definition of what
6 talking about?

surveys. 7 A. No, sir. They all provide competitive
8 Their pricing is competitive on their survey, what
they 9 think they need to run their business. And I don't
run 10 their businesses, so I don't know what it takes. You
11 know, small shops are different than big shops. They
12 obviously have different things they approach in their
13 needs for achieving their rate. They submit their
14 survey. All those competitive bids are compiled, and
15 the majority rate is what sets as prevailing
16 competitive.

will 17 Q. Now, is that put in the policy that, the
18 majority rate is what -- is the maximum of which we
19 pay for any particular expense associated with the
20 repair, or is the language that we will pay for any
21 competitive prevailing rate? Which one is it in the
22 policy?

question. 23 MR. GRIMM: Object to the form of the

really 24 A. Prevailing competitive market rate -- I
25 can't differentiate from what you're asking in the

56

1 question. It doesn't separate for me.

2 Q. For you it means the same thing?

3 A. Yes, sir.

4 Q. I mean, you can go to, would you agree with
me,

5 to McDonalds and they'll sell a Big Mac for -- to some
6 degree a different price than Burger King sells their
7 Whopper; correct?

8 A. Yes, sir. But they're different. There's
9 still differences.

10 Q. Well, yeah. And there's differences between
11 shops and how they go about their repairs and what
12 they -- the type of workmanship that's put into it.
You

13 know, I mean, different shops have different levels of
14 service and quality; correct?

15 A. Correct.

16 Q. Would you agree with me that between a Big
Mac

17 and a Whopper, that just because one is charged for

18 lesser of a price than the other, nonetheless both of
19 those prices are competitive pricing?

20 A. When you see one on sale, you see the other
one
21 on sale.

22 Q. Right.

23 A. They compete with each other.

24 Q. They compete. And the prices, even though
they
25 may be different, are competing with one another;
right?

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1 A. Then it's your choice whether -- which one
you
2 want to buy.

3 Q. But you would agree that those are competing
4 prices?

5 A. Yes, sir.

6 Q. And in the automobile industry if one auto
body
7 repair shop charges this much for an expense or for a
8 procedure and another auto body repair shop charges
this

9 much for a procedure, same thing, those are competing
10 prices for purposes of that same procedure; correct?

11 A. They compete. And when you do a survey
12 process, that prevailing rate of the majority is what
13 this is called. Why the term was chosen, I have no
14 idea.

15 Q. But, I mean, it's the insured who executes
the
16 policy after having read or supposedly read the policy
17 and the language therein; correct?

18 A. Correct.

19 Q. You also said for purposes of reviewing the
20 work and looking for consistency, you look to see
21 whether or not the estimators are doing things that
they
22 were taught with the tech training; is that correct?

23 A. Correct.

24 Q. Okay. What does that mean?

25 A. We -- auto repair business is constantly

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1 changing. Needs for completing those repairs and
2 materials for completing those repairs are constantly
3 changing. For instance, although a lot of change in
4 repairs in plastic now. There's some different
5 techniques and different materials, and we expect that
6 they include those on their estimates.

technology

7 Q. So you mean -- are you talking about
8 that is now being used for repairing vehicles or the
9 technology used in calculating the cost to the auto
10 repair shop in affecting any particular procedure or
11 both?

body

12 A. It can be all kinds of things. You know, a
13 tier tax, usage of tier tax in the different counties
14 they work in. Are they applying that properly? Are
15 they making good chases in repair versus replace? Are
16 they using the proper materials or applying the proper
17 materials based on current technology to fix that

bumper

18 or restore corrosion protection to the vehicle.

is

19 Q. Okay. Well, tell me this. If there's a new
20 technology -- and as you just stated, the technology
21 changing in the automobile, auto body repair industry;
22 correct? I mean always.

23 A. Right.

24 Q. Is that correct?

25 A. Yes. Constantly.

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1 Q. If there's technology that comes about such
2 that there are certain -- let me back up here.

3 If, you know -- and just by way of example so
4 you understand where I'm going, in my office there's a
5 copy machine, and there's wear and tear on that copy
6 machine every time it's used. Now, I'm going to

suggest

7 to you that copy machine is used for the benefit of my
8 clients. Now, I don't really have a good way, you

know,

9 of capturing the cost on the wear and tear. I can,

you

10 know, capture the cost of the copies themselves to

some

11 degree, but there's not really any technology in

place,

12 that I'm aware of anyway, that I can capture the cost
13 incurred as it relates to the wear and tear on that

copy

14 machine. Therefore, the cost is not passed along to

my

15 clients.

that

16 However, if there was some new technology
17 came about and they say they here's a new copier, it's
18 got the technology that can tell you the wear and tear
19 every time a copy is made for a particular client, it
20 can be prorated, passed along to your clients, I may
21 take that and pass it along to my clients.

customer,

22 Now, having said that, if in the automobile
23 repair industry if there were a particular procedure
24 over the course of time that most automobile repair
25 shops have not been able to pass along to the

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customer,

new

1 evenly though it's used for the benefit of the
2 and they've eaten that cost and then in the meantime
3 technology comes along that allows them to calculate
4 those costs in a more or less exact fashion such that
5 they can pass it along to the client, is that an

expense

6 based upon that new technology that you and State Farm
7 would agree should be paid on behalf of the insured to
8 the automobile repair shop?

9 A. And you're referencing?

10 Q. At this point I'm not referencing anything.
11 I'm just saying in general if that's the case of any
12 particular procedure.

13 A. Well, an example of your copier, to me
14 personally, that's the cost of doing business. You
15 can't have a law office without a copier. In the case
16 of a body shop, what are their costs of doing business
17 and how they have calculated those into their survey
18 pricing. And then, again, once the surveys are
19 calculated, what have the majority of the repairs in
20 that market asked for.

21 Q. Well, I can tell you that my clients do pay
for
22 the copies that I make. I think my client here today
23 can attest to that. I'm sure he's not, you know,
24 ecstatic about that. But nonetheless, we do and it's
25 something that we're able to pass on because we're
able

fact, 1 to take the position that, hey, this cost was, in
2 occurred for your benefit.
3 So if an automobile repair shop is able to
technology 4 calculate that such that, you know, there is
5 that has come about so that that cost can be
calculated 6 in some more or less exact fashion, is there any
reason 7 why you would take the position or State Farm would
take 8 the position that we're not going to pay for it
because 9 we think of it as a cost of doing business?
question. 10 MR. GRIMM: Object to the form of the
not 11 A. Well, the technology you're speaking of is
still 12 perfected and can be manipulated. And our process
13 is to work on what the majority of the shops in that
14 market charge, not what individual decides to pilot as
a 15 new technology.
16 Q. Well, are you referring to PMCLogic when you
17 say what I'm referring to?

18 A. Yes, sir.

19 Q. Well, how do you know PMCLogic is not exact
or
20 can be manipulated?

21 A. I am not an expert on PMCLogic, but there are
22 paint calculators from many sources out there. Those
23 figures that are put into those are put in by that
24 particular repairer or that particular paint company
for
25 what they say they paid for something. They can add
in

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1 there what they want, what their profit margins are.
2 There's no controls on that except by the person
3 providing their manufactured invoice.

4 Q. Well, if others are using PMCLogic or some
5 similar calculator, wouldn't you be able to compare
the
6 calculations at one shop versus another shop to
7 determine the validity of those calculations?

8 A. I have compared many and none have compared.

9 It's broad what they produce.

10 Q. Well, wouldn't that be the same, though, as
11 if -- you know, because you say that auto body repair
12 shop can say whatever, but that goes for anything they
13 do. I mean, you're not there on the premises to
monitor
14 what they're suggesting they did to make those
repairs.
15 So to some degree that's the case with everything they
16 put on the invoice once it's provided to State Farm;
17 correct?

18 A. The estimate that we provide is the estimate
19 they should work from when they repair the vehicle,
but
20 it's their choice. They're working for the customer.
21 They can provide the customer their own estimate and
22 say, This is the way I want to be paid. When they
23 provide us something after the fact beyond what's
24 prevailing competitive market price in the market,
that
25 is something we would not consider.

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1 Q. Well, you just said a few moments ago, if I
2 recall correctly, that technology changes; right?

3 A. It does.

4 Q. And there's different things that can either
be
5 captured through technology or whatnot and then you
6 adjust; correct?

7 A. Correct. And we were talking about repair
8 technology, not billing technology.

9 Q. So you will adjust with regard to repair
10 technology but not billing technology. You -- State
11 Farm and you take the position that when it comes to
the
12 repair technology, okay, we'll look at that. But when
13 it comes to the billing technology, we're not going to
14 look at that and whether or not there's new technology
15 in place that may have actually calculate things in a
16 more fashion exact fashion.

17 A. Pricing --

18 MR. GRIMM: Object to the form of the
question.

19 A. Pricing and billing practices are established
20 by the repairers in those market places.

21 Q. But if you have a new technology that can
more
22 exactly calculate it -- aside from whether it's
PMCLogic

23 or whatever else it may be -- why wouldn't State Farm,
24 if it's adjusting the technology with repairs, also
25 adjust with this new technology that can calculate the

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body 1 exact expenses that are being incurred by the auto

2 repair shop?

question. 3 MR. GRIMM: Object to the form of the

billing 4 A. We monitor the new technology as far as

5 and costs or pricing when a majority of the shops have
6 accepted that and used it.

it 7 Q. So in the meantime the first shop that uses

8 is going to suffer until the rest of the shops start
9 using the same technology; is that correct?

question. 10 MR. GRIMM: Object to the form of the

11 A. I wouldn't agree to that.

the 12 Q. You just told me that until the majority of

13 other shops start using the same technology, then

we're

14 not going to pay for it; is that right?

15 MR. GRIMM: Object to the form of the
question.

16 A. Until the majority of the repairs in that
17 market have established that is the way their billing
is

18 established, we would resist.

19 Q. Okay. So if there is ten shops and three of
20 those shops are using this new calculation technology,
21 then until at least three more shop use it, you're not
22 going to pay for it; correct?

23 MR. GRIMM: Object to the form of the
question.

24 A. With the exact numbers because of the way
25 the -- I'm not familiar with how the system
calculates,

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1 but when it hits the majority, that's when we would
pay

2 it then.

3 Q. And my question is in the meantime -- because

they're

4 somebody's got to use it first; right? I mean,
5 not all going to go out and buy it together; right?

6 A. Right.

it,

7 Q. So in the meantime, the shop that is using
8 the first shop or few shops that are using it, they

are

9 not going to be compensated based upon that technology
10 until a majority of the shops use it; correct?

paint

11 A. Correct. Because it's -- as simple as a
12 calculator sounds it's a broad -- there's a lot of
13 controls that go into that. Who puts in what they
14 were -- what were -- how does that shop leverage that
15 weight with their suppliers? What suppliers do they
16 deal with? What markup do they put in? That could be
17 broad.

estimator

18 Q. Okay. So for any particular claim on any
19 particular car, is there any reason why the estimator
20 cannot go, once he's received the expense using the
21 calculations by the auto body repair shop, the

me

22 cannot go to the repair shop and say, okay, you tell
23 what was put into this for purposes of getting the
24 calculation that came out? Is there any reason they
25 can't do that?

66

1 A. You could do that with any bill.

2 Q. Right.

3 A. And, like I said, hundreds of thousands of
4 estimates we write, you cannot manage to that -- where
5 you're having to reconcile every individual invoice on
6 an individual repair. It's not -- there's no perfect
7 way to establish that at this point.

8 Q. But is there any reason why -- and let me
back
9 up here. Is it unusual for either an estimator or an
10 adjustor to go to an auto body repair shop on any
11 particular procedure and say, how did you get to this?
12 Is that an unusual occurrence with anything? I'm not
13 talking necessarily that.

14 A. Again, we train and we expect that they have
15 discussions about their repair estimate with the
16 repairers when they're at the repair facility.

17 Q. Okay. So that being the case, why can't they
18 do the same thing with regard to what is being put
into

19 this calculation as we just talked about?

20 A. Because payment based on our policy is based
on
21 prevailing competitive price. They can't vary fro
22 prevailing competitive price.

23 Q. So aside from whether or not it's a
reasonable
24 expense, until everybody starts using that technology,
25 they're not even going to start asking what goes into

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1 that calculator; is that correct?

2 A. Yes, sir.

3 Q. For purposes of reviewing the work, is there
4 anything else that you'd be reviewing other than the
5 estimates and what we've just talked about related to
6 the estimates?

7 A. Again, each estimate they write is unique,
8 looking for consistency and estimating practices,
9 estimate completeness, make sure it's a quality
10 estimate, again, looking for trends, do we need to

we're
individual,
11 provide certain training to them on certain things
12 looking at. There's a lot to each -- being
13 there's a lot you can look for, but depending on the
14 vehicle.

for
15 Q. And beyond the consistency, as you put it,
16 purposes of how the estimator is putting together
17 estimates, is there any other criteria that you'd be
18 looking at?

19 A. Making sure they use proper labor rates.
20 Sometimes these guys will flip flop market. Make sure
21 they apply the right labor rates they're working in.
those
22 Taxes, like I mentioned, make sure they calculate
23 appropriately.

24 Q. What do you mean by proper labor rates? What
25 does that mean?

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1 A. Each market area establishes it's prevailing
2 competitive rates, and surveys are done in market

areas.

3 Those market areas are established by where do our
4 customers that have policies in those areas typically
5 get their cars repaired. So that establishes a
market.

6 Q. So, again, it's -- what you're looking at
7 there, as you put it, is the -- what did you call it,
8 the competitive market rate?

9 A. Prevailing competitive market rate.

10 Q. Prevailing competitive market rate. Okay.
So

11 even if a shop has a -- depending upon you have the
12 large shops and you have the smaller shops; right?

13 A. Right.

14 Q. And you would agree with me that as a result
of

15 sometimes a large shop and a small shop can have
16 different expenses as it relates to what they even
have

17 to pay their men; correct?

18 A. Correct.

19 Q. But even if you go to one shop or an insured
20 chooses to go to a shop where those labor rates are
21 somewhat higher than another shop, if those rates are
22 higher than what you have referred to as the
prevailing

23 competitive market rate, then you're not going to pay
24 for anything in excess of that prevailing competitive

25 market rate; correct?

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1 A. Yes, sir.

2 Q. Is that correct?

3 A. Yes.

4 Q. So it's not -- in that situation it's not,
you

5 know, where the rates may be more for purposes of any

6 particular procedure as the procedure was reasonable
an

7 necessary. It's not that the shop is overcharging for

8 those particular procedures. It's just that those
rates

9 are not the prevailing competitive market rate; is

that

10 correct?

11 A. Yes, sir. Or the procedure is -- say you had
a

12 procedure that nobody charged for in your market. You

13 wouldn't pay for that.

14 Q. Right. But what I'm asking, though, is in a

15 situation where others are charging for it. But, you

not
16 know, one shop is charging for it at a higher price,
17 exorbitantly higher but higher for whatever particular
18 reason, because it costs him more to pay his employees
Farm 19 versus another shop where he pays them less. State
20 and you are not going pay for any labor rate that's up
21 and above -- or the excess up and above the prevailing
22 competitive market rate not because that shop is not
23 overcharging but because it's not the prevailing
24 competitive market rate; correct?

25 A. Correct. We don't run their businesses. We

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1 don't know what their fixed costs are in there, what
2 they decide to pay their employees. That's what they
3 have to decide when they do their surveys and they put
to 4 their rates that they want to receive, how they want
5 be factored into the market.

6 Q. So you're not necessarily accusing them of
7 overcharging. It's just that they're over the

8 prevailing competitive market rate?

9 A. Absolutely not. Shops can charge what they
10 want. It's the customer's choice.

11 Q. Anything else you look at in reviewing their
12 work beyond what we've already talked about?

13 Consistency, proper labor rates. Anything else?

14 A. I mean, I look at groups of work, how they
15 planning their day, how efficient are they, they're
16 making the most use of their time to provide customer
17 service in an efficient manner. All of it goes
together
18 as a big picture thing.

19 Q. You said you also, for purposes of personnel,
20 are in charge of salary; is that right?

21 A. Yes, sir.

22 Q. How does that work?

23 A. Each employee's performance evaluated at the
24 end of the year, and of course we're given, you know,
25 allocations per zone, per department what we can spend

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We 1 in salary. We have to manage that to our employees.
2 get our piece, and percentages of that are awarded to
3 employees who have performed throughout the year.

4 Q. What do you look at -- what are all the
5 criteria you look at in determining how much salary a
6 performance particular employee should get? I mean, job
7 I know is one of them, but I know maybe there are
8 constraints somewhere else. What do you look at that
9 point?

10 A. Job performance if they're given a job. What
11 have they done beyond? Have they done some additional
12 developmental work? Have they done community work?
13 departments Have they offered their assistance to other
14 to assist them in training? Or in the case of my
15 licensed representatives, helping them work some of
16 their queues.

17 Q. Are there any constraints outside of the
18 placed performance of the particular employees that are
19 to upon you from maybe your higher-ups in State Farm as
20 how much of a salary increase either you or your
21 employees can get?

22 A. Is there a limited amount?

on
instance,
23 Q. Is there any other limits or constraints put
24 you as far as whether or not -- you know, for
25 and among other things, is if you're -- if you and the

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as
1 folks that you supervise are able from a performance
2 standpoint do something, does that have, as a group,
3 does that have an impact on what you're allowed to do
4 far as raising salaries?

5 A. There's no constraints for --

6 Q. Constraints or liberties. Either way?

do
those
7 A. The constraints are based on how much money
8 you have budgeted for salary and based on whether
9 people are in their salary ranges. There's different
10 ranges within that percentage that person can work in
11 until they max out their salary range. That's really
12 the only constraint.

it's
13 Q. And obviously, you know, State Farm is --

14 not a non-profit organization; correct?

15 A. Correct.

16 Q. Okay. Are there any criteria that have been
17 identified for you from your higher-ups, if you will,
as

18 to what they expect from you and your group as it
19 relates to the amount of money that you either -- I
20 guess the best way of putting it is -- save for State
21 Farm?

22 A. Absolutely not.

23 Q. Is there ever any admonitions from the
24 higher-ups, whoever they may be, as to what State Farm
25 has to do from a budgeting standpoint as far as your

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1 group is concerned or as far as a larger group within
2 which your group is concerned or as far as State Farm
is
3 concerned?

4 A. Expense management as far as operating
expenses

5 are always looked at. Technology, again, how can we

be

6 more efficient? Where can we gain inefficiencies?

to

7 Don't take those overnight trips where you don't have

to

8 take those overnight trips. All of that relates back

9 the affordability of our product for our customers and

10 allowing us to be competitive in our marketplace.

of

11 Q. Are there any incentives in place for your

12 purposes and your group's purposes, to not, for lack

for

13 a better way of putting it, to not pay out too much

14 purposes of the claims that y'all are responsible for?

15 A. Never. I mean, we never -- there's not a

16 budget for expense for quality.

17 Q. I understand that. But, I mean, is there any

18 kind of directive for purposes of not paying out too

19 much for purposes of the claims that are your

20 responsibility or for that matter the entire zone,

or

21 Florida, and, you know, whether again it's your group

22 the entire zone?

question,

23 A. None. In the case of that particular

you

24 I could answer for enterprise wide. There's never,

25 know, guidance to reduce costs or expenses as far as

74

1 indemnities are concerned.

2 Q. Whether directly or indirectly?

you

3 A. Correct. You manage your claims, pay what

4 owe.

5 Q. Are your operating expenses nonetheless
6 dependent upon how much is being paid out on claims
7 whether independently or in the aggregate?

are

8 A. No, sir. Operating expenses and indemnity
9 separate.

10 Q. As far as how much money you're provided for
11 operating expenses; is that correct?

12 A. In money I'm provided for -- rephrase that if
13 you would.

how

14 Q. As far as how much money you are provided for
15 operating expenses, okay, which I'm assuming include
16 much is paid to your employees and otherwise; correct?

17 A. Correct.

18 Q. Okay. Is that -- are those operating

expenses

19 and the amount of money provided for either directly
or
20 indirectly, aside from whether or not you're directed
to
21 not pay out too much or not, either directly or
22 indirectly related to how much at the end of the day
is
23 paid out on claims in your particular geographical
24 territories?

25 A. No, sir. In fact, if I can show a business

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1 need, they'll provide the expense I need to satisfy
the
2 customer's needs.

3 Q. So do you know -- when do you find out what
4 you're allotted, assuming that's generally speaking
how
5 they go about this, for purposes of your operating
6 expenses for any fiscal year?

7 A. My counterparts and I, we just did our budget
8 for the upcoming year. We tell them what we need, and

9 unless they feel there's not a need for it, we get it.

10 Q. Whether or not it's the prevailing
competitive

11 market rate within State Farm?

12 A. Yeah. I don't think we have one of those.

13 Q. Yeah. Okay. That's nice, isn't it?

14 And as far as the salaries that you're able
to

15 provide your employees, is it the sky's the limit as
far

16 as that's concerned or what --

17 A. They have salary minimums and maximums.

18 Q. Okay. How about you, do you know whether or
19 not you have salary minimums and maximums?

20 A. Yes, sir, there's a minimum and maximum for
my

21 class as well.

22 Q. Who's your direct supervisor?

23 A. His name is Curt Neidlinger,

24 N-e-i-d-l-i-n-g-e-r.

25 Q. And what's his position?

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1 A. He's Estimatics section manager.

2 Q. And where does he work out of?

3 A. Our Orlando operation center.

that
4 Q. And that's who you answer to directly; is
5 right?

6 A. Yes, sir.

7 MR. GEOHAGAN: Can we go off for a second?

8 MR. GRIMM: Sure.

9 (A recess was taken from 10:54 to 11:15 a.m.)

10 BY MR. GEOHAGAN:

11 Q. Okay. Going back on the record, do you know,
12 Mr. Davis, what the -- what criteria is used for
13 purposes of whether or not your salary is raised or
14 whether or not you get a bonus, if there's even a
bonus
15 available?

16 A. What criteria my boss uses?

17 Q. Exactly. Do you know?

18 A. Not exactly.

19 Q. Do you ever get like a -- have you ever
20 received a raise?

21 A. Oh, yes.

22 Q. Okay. Have you ever received a bonus?

23 A. We don't get bonuses.

24 Q. Okay. When you have had your salary raise,

25 what reasons have been provided to you for your salary

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1 raise increase?

2 A. Involvement, initiative, helping, you know,
3 others. In the Winter Haven office I worked with a
lot
4 of other management and I'm kind of the conduit
between
5 our group and them, still take a lot of these
6 communications. I hope most of it is for doing a good
7 job.

8 Q. Right. What I'm trying to find out is what
9 constitutes a good job. Are your numbers ever
reviewed
10 for purposes of any salary increase?

11 A. My numbers as far as?

12 Q. As far as, you know, claims paid out, you're
13 paying too much in claims here as compared to our
other
14 territory or --

15 A. That has nothing to do with my raise.

as
16 Q. Okay. That's never been represented to you
17 something as to why you didn't either get a raise or
got
18 a raise; is that correct?

19 A. Right.

20 Q. Are the other estimators, are their salaries
or
21 if there's any kind of bonus structure, is there ever
22 any criteria for purposes that it would include
whether
23 and how much is being paid out in claims?

24 A. No, sir, because they have no payment
25 authority.

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1 Q. I'm sorry?

2 A. They have not payment authority. They have
no
3 control of what's being paid out other than being held
4 accountable for writing a quality estimate.

5 Q. I mean, they had some involvement and
influence
6 in it to some degree; is that correct?

7 A. Yeah. It is what it is. That car and that
8 estimate is what it is. As long as it's accurate,
then
9 that's what they're judged on is accuracy.

10 Q. Who was the person that was effectively in
your
11 position, whether it's called Estimatics team manager
or
12 otherwise, for Polk County prior to you taking on Polk
13 County in or around 2002 or 2003?

14 A. His name is Don Barnaby. He retired. He was
15 one of the reasons I came over.

16 Q. And do you know where Don Barnaby currently
17 resides?

18 A. Last I knew he had moved to Illinois.

19 Q. And did you have any discussions with Don as
20 you transitioned into that position as it related to
21 Polk County anyway?

22 A. No, sir.

23 Q. You are familiar with giving your position --
24 let me back up. I apologize. Strike that for the
25 moment.

1 Going back to your duties that you have
2 identified for purposes of your position as Estimatics
3 team manager, you talked about one of those being
4 managing personnel. We went through, you know, what
5 that entails. Another one you identified was
6 accountability. What would that entail, the
7 accountability?

Are

8 A. Accountability for the work that they do.
9 they writing good, complete quality estimates using
10 resources available to them and responsible for what
11 they do, interact, customer relations. They're
12 accountable for going out there. They're one of the
13 people that actually has contact in the -- on the
14 with customers, and they are our goodwill
15 representatives out there. So there's a huge burden
16 them to provide good customer service.

all

few

street

on

17 Q. And you're referring to the estimators?

18 A. Yes, sir.

entail?

19 Q. Anything else that accountability would

20 A. It's their overall job, the things they do.

To

21 list them I couldn't tell you off the top of my head.

22 Q. But nothing else as you sit here today that
you

23 can recall?

24 A. Nothing specific.

25 Q. And, again, we have to have a complete
record.

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1 Is there anything insignificant that you can recall
2 right now?

3 A. No, sir. I mean, each individual is
different

4 and the things that we hold them accountable for, the
5 issues we identify that they need to be accountable
are

6 different for each one. How do they plan their day?

7 How efficient are they in the field? Are they looking

8 at servicing two customers a day or are they servicing

9 ten customers a day? And regardless of what they're

10 doing, is that working between all quality work?

11 Q. Right. Okay. Anything else for purposes of

12 accountability that you can recall as you sit here?

13 A. No, sir.

14 Q. Okay. You also stated that as part of your
15 duties as Estimatics team manager is assigning work.
16 What does that entail?

17 A. Of course technology has changed when I first
18 started. I took all the raw assignments. Everything
19 was paper back then. Here's one for you, one for you,
20 one for you. I assigned them their work daily. They
21 turned it to me and I checked it off and checked their
22 work. Now it's an electronic process. It comes
through
23 the computers to one of my clerical people that's
called
24 an Estimatics coordinator, and she distributes the
work
25 through them.

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1 Q. Is there information for purposes of
2 electronic -- you said now things are more
3 electronically. Is that why now a claim rep in

that
can
4 Pensacola can handle the matter in Polk County? Is
5 part of the reason anyway that someone that far away
6 deal with a claim that's in Polk County?

7 A. Right. With telephone and cell phone
8 especially and computers, you don't have to be in that
9 location to handle those claims any longer.

10 Q. And is it a situation where, you know, for
11 instance, for purposes of any claim once a files is
12 created for it -- let me back up. Is a file created
13 once a claim comes about?

14 A. Each one is assigned a claim number and has
15 it's own electronic file.

16 Q. Okay. And is it a file that is accessible by
17 the estimator, yourself and the claim representative
18 adjustor?

19 A. Generally, yes.

20 Q. And so any information, any of those parties
21 related to the file could be included electronically
22 that file; is that correct?

23 A. Yes. There's an activity log for individual
24 handling.

25 Q. Okay. So is there anything else involved in

82

1 assigning work as far as your duties are concerned as
2 far as an Estimatics team manager?

all

3 A. No, sir. That direct assigning is basically
4 gone by way of the Estimatics coordinator now. It's
5 computerized. I monitor that assignment of work.

And,

6 like I said before, shift personnel if I see a need
7 to -- you know, we need more people to service

customers

8 in this area or in this care or this guy that's

covering

9 these ZIP codes over here is too busy, let me pull
10 somebody over here to help them that's not too busy.
11 That's really my extent of the assignment process.

12 Q. What is the Estimatics coordinator?

these

13 A. She simply sits there and receives all of
14 referrals, Estimatics referrals from the claim
15 representatives or claims processors and distributes
16 them to electronically to the estimators and then
17 follows up as they complete them on the system. She

being 18 monitors that they're coming off of her system as
issues, 19 completed, and she keeps me informed of workload
20 absences. She handles absences and shifting of work
21 from there.

22 Q. Is she located in the Winter Haven office for
23 your purposes anyway?

counterpart 24 A. No, sir. We actually -- between my
25 and I, we have -- I have one; he has three. They're

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1 housed in the same office in Tampa so that we can have
2 that as an uninterrupted process in the event that
3 there's one or more of them out.

4 Q. And who's your counterpart?

5 A. His name is Jerry Widener.

6 Q. And he's an Estimatics team manager?

7 A. Yes, sir.

8 Q. And just a different geographical territory?

9 A. He's in the Tampa office but has

responsibility

10 for Pinellas, Pasco, Hernando, on up through Lake and
11 Marion County.

12 Q. Who is your Estimatics coordinator?

13 A. Her name is Melanie Salch, S-a-l-c-h.

14 Q. S-a-l --

15 A. -- c-h.

16 Q. If you could for the jury's purposes kind of
17 walk us through how a typical claim would be
processed.

18 And let me kind of help start you off here. First
19 there's a collision, and then they would either call
the

20 1-800 number or their agent; correct?

21 A. Correct.

22 Q. What generally happens from there before a
file
23 is closed out?

24 A. The most part I'm familiar with is once we
25 receive that assignment, what my understanding is the

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1 claim representative reviews that, makes a first
contact
2 with the customer, ideally would verify their
3 information, you know, address, phone, you know, best
4 contact numbers, review the facts of the loss with
them,
5 all the coverages that apply to that policy, then
6 discuss their vehicle, make sure that was a vehicle
7 involved in the loss. Have they chosen a repairer?
And
8 advice them -- like I said, that they have the right
to
9 chose the repairer they want to have the vehicle.
We'll
10 explain our Select Service Program ideally. That's
what
11 we teach and expect. Then send an appropriate
12 assignment, whether it's a select service assignment
to
13 one of those repairers or to the proper Estimatics
team
14 to inspect the vehicle, wherever that might be.

15 Q. Okay. And so the claim rep would be involved
16 in it prior to your department; correct?

17 A. Yes, sir. They make that contact and explain
18 all the coverages and the important stuff first. You
19 know, were there any injuries.

20 Q. And then after that either one of your folks
21 would go out to the car to review the damage and write

22 an estimate; correct?

23 A. Correct.

24 Q. Or the insured would take their car to an
auto
25 body repair shop? Is that the either/or there?

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1 A. Correct.

2 Q. Okay. Well, let's look at both of those. If
3 the estimator goes out and looks at a car and gets an
4 estimate, what happens thereafter?

5 A. The estimate is uploaded electronically of
6 course. He'll give the customer a copy in most cases
7 unless there's some unusual circumstances. He'll
leave

8 them a copy of the estimate. Occasionally prior to
that

9 the claim rep will discuss the coverages with them.
If

10 they don't have a repairer in mind, economy being what
11 it is, some want to be paid based on their account,
they

12 want the money. If they give the estimator

13 authorization, he can leave them a draft for that
14 amount. If not, that estimate is uploaded
15 electronically into a review queue. The claim
16 representative has the responsibility to pull that
down,
17 review it, contact the customer and determine which
18 payment option under the policy they'd like.

19 Q. Okay. And then in the other scenario they
may
20 go ahead and take it to the repair shop; is that
21 correct?

22 A. Yeah. Sometimes they take the estimate and
23 take it to a shop.

24 Q. Okay. In that case when does the estimator
25 come into the picture?

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If
1 A. If he has not written an estimate -- okay.
2 we have looked at it at a residence, they'll take our
3 estimate to the shop. If it has gone to the shop,
same
4 assignment process. It goes to the EC. She assigns

5 that one to the estimator, and he goes to the shop to
6 look at it.

7 Q. And then he goes to the shop. And does he go
8 to the shop and look at it prior to the repairs being
9 initiated or after the repairs have been initiated?

10 A. No, sir. He looks at it prior to the repairs
11 for, hopefully in most cases -- and sometimes they
12 actually have to do a little bit of teardown on the

car

13 to get accurate estimates. Sometimes they might make
14 that arrangement with the shop to remove some parts to
15 see other things. They'll complete that, review it

with

16 the shop, and the shop will proceed from there with an
17 authorization from the customer to repair the vehicle.

18 Q. Okay. And so in either one of those

scenarios,

19 now you have it in the shop. And estimate has been
20 written in each of those scenarios. Is there ever at
21 that point in time any type of dialogue that occurs,

not

22 necessarily every time, but between the estimator and
23 the auto body repair shop and/or the insured?

24 A. Again, this was taught and expected and part

of

25 their accountability that, yes, that's being done.

1 You're there with the shop that's going to repair the
2 car. Discuss it with them. There's nothing that's a
3 secret.

would

4 Q. Well, in the other scenario, though, they
5 have already written the estimate and the estimate
6 be taken to an auto body repair shop.

would

7 A. Right.

an

8 Q. In those particular situations is there ever
9 occurrence where there's dialogue between the auto
10 repair shop and the estimator?

body

11 A. Not in every case. And I don't have the
12 percentage for you, but a huge portion of claim -- of
13 the ones that the customer has taken the money and

done

14 with it what they want, if they're getting the car
15 repaired sometimes they shop that estimate and it get
16 fixed and you never heard another word. In the case
17 there's some additional damage that's identified, the

18 estimator would have occasion at that point, if the
19 supplement hub could not handle it, Winter Haven, by
20 phone, the estimator would have an occasion to go out
to
21 the shop and discuss it with them, the additional
22 damage.

23 Q. And so the estimate is now, either way,
handed
24 either from the customer or from the estimator to the
25 auto body repair shop; is that correct?

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1 A. Yes, sir. I think at the residences I think
my
2 estimators are actually given them two copies, one to
3 provide to them and one to provide to the shop.

4 Q. Okay. And then the car is repaired
thereafter?

5 A. Yes, as far as we know.

6 Q. And then is there ever a point in time where
7 there's any invoicing that occurs from the auto body
8 repair shop to the customer that then is in some way,
9 shape or form effectively relayed to the estimators or

10 State Farm Insurance in some way, shape or form?

estimates

11 A. Well, the typical process and in our

they

12 if there's a supplement, you fax it to the supplement

13 hub. They determine if they can handle that or if

14 need to send it to the field if there's additional

15 damage that needs to be inspected. Sometimes the most

16 common one is a parts price invoice. There was a

those.

17 manufacturer pricing change there. We understand

18 We get them. They're simple to handle. There's no

19 reason to delay in getting somebody out there. We can

20 handle it in Winter Haven. Otherwise we go out and

21 review the additional damage with the repairer and add

22 it as a supplemental to our estimate.

23 Q. Okay. In those situations is the supplement

24 agreed to and paid for as a matter of course by State

25 Farm?

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1 A. If we have written the supplement?

2 Q. Uh-huh.

uploads

3 A. Yes. Generally the estimator -- if he
4 it, if he sees no issue with what we have -- sometimes
5 the claimant may call them for some technical
6 information. Is this accurate? It gets paid based on
7 his estimate.

what's

8 Q. Is there ever a situation where there is a
9 supplement, estimator goes out to take a look at
10 being requested for purposes of the supplement, and at
11 that point in time the estimator or your department
has
12 to make a decision as to whether or not you're going
to
13 approve the supplement?

up

14 A. Yes. We give our opinion. It's ultimately
15 to the claim representative to decide whether that's
16 something coverable under the policy depending what it
17 might be. You know, whether prior damage -- prior
18 related, prior unrelated damage, is it part of the
19 covered loss. We provide them our estimate. It's up
to
20 them to apply it to the facts of that loss in the
21 contract and pay it.

to

22 Q. But, I mean, the estimator has some
23 involvement, though, as to whether or not, you know --

24 well, let me back up. Is there a situation where a
25 supplement is submitted by the auto body repair shop
and

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relays 1 an estimator comes out and at some point in time
2 back to the auto body repair shop whether or not State
3 Farm is going to agree to that particular supplement
as 4 part of the repairs that are done?

5 A. Yes.

6 Q. Okay. And is the estimator -- or do any of
7 your estimators ever come to you for approval one way
or 8 the other as to whether or not those should be
approved?

9 A. They would ask opinions. Technical strength,
10 they're strong -- how do you say that? They're
stronger 11 technically than I am. Sometimes I have the bigger
12 picture side of it, and I give them my opinion. And
we 13 will provide that opinion or their opinion, my opinion

14 to the claim representative, and the final decision is
15 theirs.

16 Q. And for purposes, though, of what the
estimator
17 agrees or doesn't agree to at least on his level at
that
18 time, do you engage in -- ever engage in correcting
the
19 estimator as to, you know, in this particular
situation,
20 no, we're not going to do that or, yes, we're going to
21 do that in this situation?

22 A. In how we complete our work? Yes. I'll say,
23 you know, I'll give them a bigger picture side of why
we
24 should do that or give their technical opinion as to
why
25 we shouldn't.

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1 Q. Or why you shouldn't?

2 A. Shouldn't. And, again, we'll submit that to
3 the claim rep. The final decision is theirs, but

it

4 sometimes you just have to make a decision, put it on

owns

5 and leave the ultimate decision up to the team that

6 that particular file.

are

7 Q. Who is the -- what do you mean team? What

8 you talking about?

in

9 A. Well, we have individual claim handlers. We

10 have teams. Auto property claims is a large group of

11 claims representatives. Like I said before, somebody

12 Jacksonville can handle a claim in Winter Haven. And

13 the team, they're broken into teams for management

14 purposes that -- the team that may own that file may

15 have one or two claims representatives on that

16 particular team that you would contact to make a

any

17 decision. And they have a management person to pass

18 indecisions onto if they need help.

19 Q. Are there -- for purposes of the claims, are

20 you in a position such that you are considered

21 subordinate to the claim reps that otherwise would be

in

22 making decisions on any of the claims, for instance,

23 Polk County?

24 A. No. Clarify that a little more.

25 Q. Sure. I mean, what we're talking about here

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1 is, for instance, using a hypothetical, an estimator
2 goes out, looks at the supplement. You know, maybe he
3 thinks it should be approved or either way. Calls you
4 up. Hey, on this one I think it should be approved.

5 You say, no, for these reasons it shouldn't be
approved.

6 And then as I understand the way you're explaining it,
7 then it would go to a claims representative at that
8 point. And then he has a final approval at that point
9 in. Am I correct so far?

10 A. Correct.

11 Q. And so my question is, are you subordinate to
12 the claim representatives who ultimately make these
13 quote-unquote final decisions on these claims?

14 A. I have no claim authority. I can pass my
15 opinion on. I'm not subordinate to them, but they
have

16 the claim authority to make that decisions. They
17 override my decisions regularly, whether I agree with
18 them or not.

19 Q. But you're not subordinate to them?

20 A. No, sir.

21 Q. For purposes of claims you're subordinate to
22 them?

23 A. Not really. We don't report to them. We
24 provide a technical view for them to make a decision.

25 Q. What do they base their decision -- is there

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1 any other criteria they base their decision other than
2 what you base yours on?

3 A. Well, the technical information we give them
4 occasionally. I see them go to outside sources for
5 technical information. They might want another

opinion

6 or an independent source. Or they go -- sometimes

it's

7 just the policy, what that particular policy has. We
8 may be unaware of a prior loss that that customer had
9 that they're aware of. So that changes the decisions

we

10 made on the assessment, you know, how that was paid or

little 11 how that was resolved. So sometimes they have a
12 bigger picture in how they need to make their final
13 decision.

-- 14 Q. But ultimately they can disagree with you on
15 you base it on something and they just disagree with
16 your assessment; correct?

accurately, 17 A. Correct. Once we do our processes
18 give them our best professional opinion, we have done
19 our part. It moves to the next level.

it 20 Q. And do you know the reason for that? Why is
21 that, for instance, someone like yourself who is a
22 licensed adjuster who is checking off on any of these
23 claims, why there would need to be an extra level of
24 licensed adjusters or adjuster to determine whether or
25 not any particular expense associated with that claim

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checks

2 A. The separation of duties is a good thing for
3 our customers. It doesn't allow any one person to
4 establish policy. So it goes through a series of
5 and balances. The State requires a licensed person to
6 make those type of decisions. But it goes through
7 several hands and doesn't allow any one person to,
8 I said, set policy. It's a good thing.

like

9 Q. Would you say, though, that most of the time
10 the claim reps follow what you and your team's
11 recommendation is as far as the claims are concerned?

12 A. Well, my job -- I'm sorry?

13 Q. Oh, excuse me.

a

are

what

14 A. My job is probably like yours. You spend
15 80 percent of your time on 10 percent of your job. So
16 the things that I get involved in on a daily basis is
17 small percentage of our overall operation. So those
18 the things that I'll dealing with every day. And
19 sometimes it seems like it's a 50/50. They accept
20 I tell them sometimes or they make decisions based on
21 better information or policy or whatever it might be
22 against what I recommend.

23 Q. Do you know most of the claim reps?

24 A. Every time I go in there it's shifting.

We're

25 restructuring all the time. I know a lot of them.

I've

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1 been around a long time.

planning

2 Q. You also stated as part of your duties as an

3 Estimatics team manager that you're involved in

4 and organizing; is that correct?

5 A. Correct.

6 Q. What does that entail?

doing

7 A. That was purely a management definition,

8 planning, organizing, directing, controlling. You're

it,

9 planning what you're doing, organizing how you're

10 to do it. You direct your folks and try to control

11 again, for consistency like we talked about. You want

12 to control your consistency.

planning,

13 Q. Is there anything other than what you've

14 already described that would be a part of the

15 organizing, directing or controlling?

16 A. No, sir, not off the top of my head.

17 Q. And with regard to budgeting, what does that
18 entail?

19 A. Everything from salaries to copy paper. We
20 drive -- you know, we drive a lot of miles every year,
21 so our vehicle usage and gasoline.

22 Q. Anything else involved in the budgeting?

23 A. No, sir, just the long process.

24 Q. And does that budgeting in any way, shape or
25 form have anything to do with the amount of money paid

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the
1 out on claims during the course of a year or during
2 course of a month or whatnot?

3 A. No, sir. That's purely operational budget.

or
4 Q. Which also is not related in any way, shape
5 form to the amount of money paid out on claims in the
6 course of a year or month to month?

7 A. Nothing to do with indemnity.

few 8 Q. You mentioned the Select Service Program a
9 moments ago. Do you recall that?

10 A. Yes, sir.

Davis? 11 Q. What is the Select Service Program, Mr.

12 A. Simply a program where we have reached
13 agreements with repairers to write estimates for us,
and 14 we agree to pay them directly upon completion of the
15 repairers and upload of a final bill.

Select 16 Q. Okay. And why is there such a thing as
17 Service Program involving these agreements?

18 A. I don't know.

the 19 Q. I mean, are you familiar with the terms of
20 Select Service Program and the agreement?

21 A. Yes, sir. It's a lengthy agreement without
22 reading it specifically. It offers the customers some
23 benefits, free pick up and delivery, loss car before
24 delivery, limited lifetime warranty.

25 Q. Are these agreements between auto body repair

the 1 shops and State Farm or these are agreements between
2 customers?

3 A. Auto body repair shops and State Farm.

that 4 Q. All right. Well, you would agree with me
5 before you enter into an agreement you're going to
6 to get something out of it; correct?

7 A. Not necessarily.

8 Q. So -- well, let me ask it this way: In your
9 opinion do the auto body repair shops entering into a
10 legally binding agreement get anything out of these
11 agreements?

that 12 A. They constantly contact me to participate in
13 the program, so I assume they're seeing benefit of
14 program.

15 Q. Okay. You're familiar with this program;
16 correct?

17 A. Yes, sir.

18 Q. Okay. What benefits do these shops that are
19 involved in the Select Service Program get?

Obviously. 20 A. They think they get more business.

21 They call me. We think -- and I think it's to the
22 mutual. It basically streamlines the process. It
23 reduces time for them, reduces time for our customers.
24 It reduces rental loss of use expense by streamlining
25 the processes.

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1 Q. Anything else?

2 A. That's it that I can think of.

3 Q. One of the things you said, that they think
4 they get more business. Given your vast experience in
5 this area and your knowledge of the Select Service
6 Program, is it fair to say that given your position
7 that -- you're familiar with the Select Service

Program;

8 correct?

9 A. Yes.

10 Q. What are -- how would one get more business

out

11 of being in the Select Service Program?

12 A. I don't know. That's their interpretation or
13 their thoughts when they contact me. It's not

designed

14 to get them more business. It's designed for the
15 customer.

16 Q. Okay. So that's one. So I guess they think
17 they get more business, but you have no idea how they
18 get more business; is that correct?

19 A. No, sir. When we identify -- Select Service
20 repairers are approached and consider going -- in
21 entering into this agreement with a repair facility,
the
22 major concern is that, are your customers already
23 choosing that repairer? You know, are your customers
24 typically going to that job anyway? So if I have a
25 large percentage of my customers that are going there

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1 and I have personnel in there going four, five, six
2 times a week, it makes sense to me to add that shop if
3 everything else is in place.

4 Q. That still begs the question, though, as to
how
5 they would get more business.

6 A. I don't know their thought process.

7 Q. You know, I'm a lawyer and I have obligations
8 for my clients that are already in existence. I would
9 very well inter into an agreement with Joe Blow off

the
10 side of the street agreeing that I'm going to continue
11 to provide services to all my clients and in exchange
he

12 will give me something for it. That's what a contract
13 is, mutual consideration. But why would I do that if
I

14 already got the clients and there's nothing about
15 entering into that agreement that does anything for
me?

16 Now I'm in a legally binding agreement, at least from
17 the way you're talking, they're already obligated to
do.

18 They're already providing services but they want to be
19 in the Select Service Program. But how is it that by
20 being in the program they get more business?

21 MR. GRIMM: Object to the form of the
question.

22 I think he already said he doesn't know what their
23 thought process is.

24 MR. GEOHAGAN: Well, that's aside from that.
25 He's very familiar with it. He's already stated

1 he's familiar with it. To that degree he, because
2 of that familiarity, should have some knowledge as
3 to what they get in exchange of being included in
4 the Select Service Program.

5 THE WITNESS: First, it's an agreement. It's
6 not a contract.

7 BY MR. GEOHAGAN:

8 Q. Well, an agreement is a contract. I think
9 Mr. Grim will concur on that.

10 A. That's okay. That's for you guys to decide.

11 And it's able to be terminated by either party at
either
12 time. So that's part of the agreement. Why shops
has
13 decide, maybe associating with State Farm. Maybe it
and
14 to do with the fact that we write quality estimates
he
15 that's what they want to see. I don't really -- like
16 said, I don't really know their thought process.

17 Q. Okay. Let's hone on some of these. Given
your
18 familiarity with the program, being associated with

19 State Farm, how does that relate or translate, if this
20 is what you're suggesting, into more business because
21 they are associated with State Farm?

22 A. State Farm represents a brand that's widely
23 accepted. People know it. You know, things I'm
24 personally knowledgeable of, when I go to a majority
25 shops, even non-Select Service shops or shops that

of

want

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1 to be on our program, they say we want your business
2 because you write quality estimates and you are the
3 best. That's what they tell me. That's what I know
4 feel that's the reason they want to be in our program.

5 Q. You're talking about auto body repair shop?

6 A. Yes.

7 Q. Are you suggesting that auto body repair

8 don't want the business of other insurance companies?

9 A. I'm just telling you why I feel they want to

and

shops

do

10 State Farm's work.

11 Q. Well, let's break this down. I'm in this
12 Select Service Program. You know about it. I know
13 about it. If no one else knows about how, is my
14 affiliation with you going to translate into more
15 business?

16 A. It's word of mouth brand. We tell customers
we
17 have a Select Service Program when they report a
claim.

18 Q. So the customer find out about them being in
a
19 Select Service Program; right?

20 A. Right.

21 Q. Is that where this new or this more business
22 comes from potentially?

23 A. I guess there's a possibility. And of
course,
24 you know, prerequisite to that discussion of Select
25 Service they're advised you have a right to a repair

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1 facility of your choice. We do have a program. Here
2 are the benefits of it. Now you can make an informed
3 decision of where you want to have your car repaired.

Program?
4 Q. Okay. So what are the benefits as you just
5 mentioned -- let's get into that for a second. As I
6 understand, the customer advice who's advising these
7 customers, by the way, about the Select Service

8 A. It would be the claims representative or the
9 claims processor or their agent.

well;
10 Q. And how would a claim -- given the fact that
11 they, you know, could be in Pensacola -- I'm assuming
12 the claims processor could also be in Pensacola as
13 correct?

14 A. Uh-huh.

15 Q. Is that right?

16 A. Yes, sir.

list
17 Q. How would a claim representative or processor
18 or agent know anything about who is on a preferred
19 in Polk County if this guy is in Pensacola? How does
20 that work?

access
21 A. You can go to our -- any customer or
22 non-customer, anybody can go to statefarm.com and
23 a list of Select Service repairers.

24 Q. No, that's not what I'm talking about. You
25 said that the claim representative or claim processor,

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local 1 agent would tell them who is -- what shops in the
2 area are in the Select Service Program; correct?

3 A. That's one avenue.

rep 4 Q. Okay. If that occurs, how would that claim

5 or claim processor, agent know who is in the Select
6 Service Program in that particular area, particularly
if

7 you're dealing with a processor in Pensacola and the
8 claim's in Polk County?

9 A. Again, somebody in California -- they use the
10 same system as anybody, any citizen can do on
11 statefarm.com.

12 Q. Well, that's what I'm asking. What is the --

city, 13 A. We use the same locator which locates by

14 state and ZIP code.

15 Q. Okay. So what -- you know, again we don't

16 know. You've been working at State Farm a long time.
17 We haven't. And we're trying to find out how things
18 work. To that degree, so they get the call from the
19 insured, a processor then tries to assist them and as
20 part of that tells them which auto body repair shop
are

21 in the Select Service Program in that area; correct?

22 A. If they ask for assistance.

23 Q. Okay. Well, of course, if they ask for
24 assistance in their claim. To the degree that that
25 occurs, what would the claim processor actually do to

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the
1 determine which auto body claim repair shops are in
2 Select Service Program in that area?

I
3 A. I am not knowledgeable of what they do. What
4 we train and expect is they -- well, I would ask -- if

5 were handling, I would ask the customer, do you want
6 your vehicle repaired near your home or near your
7 business? You know, you can actually enter the

address

8 and ZIP code of that nearest location, and it will
give
9 you a list of providers out to, I believe, 70 miles
from
10 the closest to the furthest.

11 Q. And this is on the State Farm system I'm
12 assuming?

13 A. On the internet.

14 Q. But what do the State Farm --

15 A. They use that same location.

16 Q. They use the internet instead of using
17 something on --

18 A. They have access to that same site. There's
19 different ways they can access that same exact site
that
20 anybody can use.

21 Q. Okay. So somehow or another they go to the
22 site that anybody else can use, and then when they do
23 that, they look to find out who in the vicinity of
this
24 particular insured who has a claim, what auto body
25 repair shops are in the vicinity, and they can also

Select

1 determine in looking at that as to who is in the
2 Service Program; correct?

3 A. It lists Select Service providers.

4 Q. Okay. And so they can look at that and then
5 advise the insured as to who is in the Select Service
6 Program?

many

7 A. They can advise them, give -- ask them how
8 they want, how many names do they want, or they can
9 advise them how to get into the statefarm.com and look
10 at it themselves.

part

11 Q. Okay. But it's your understanding that as
12 of that discourse, one of the things that an auto body
13 repair shop in the Select Service Program would get is
14 the benefit of the claim processor or claim
15 representative actually mentioning their names as part
16 of the State Farm Select Service Program; correct?

17 A. Yes, if the customer asks for their help.

18 Q. Is that one of the benefits that an auto body
19 repair shop would get being in the Select Service
20 Program?

that

21 A. I would assume if I owned a body shop that

22 would be a benefit to me.

23 Q. Do you know, though, that that is what occurs
24 or not, or is there somebody else at State Farm that
25 would know better than you?

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1 A. Clarify the question.

2 Q. Well, what I'm asking is, if a claim
3 representative or a claim processor is talking on the
4 phone with an insured who's bring a claim to the
5 attention of State Farm, whether or not as part of an
6 auto body repair shop being in the Select Service
7 Program, that they can expect that during the course
8 that initial conversation that the State Farm
9 representative or processor is going to tell that
10 person, as long as it's in the immediate vicinity,
11 their auto body repair shop is a part of their State
12 Farm Select Service Program?

13 A. No, they can't expect that.

14 Q. I'm sorry?
15 A. They can't expect that.
16 Q. They can't expect that?
17 A. No.
18 Q. Okay. So that's not necessarily something
19 that's a part of their agreement, the auto body repair
20 shop --
21 A. No.
22 Q. -- with State Farm --
23 A. There's nothing promised in return except for
24 payment based on your final bill.
25 Q. But that's promised for non-Select Service

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1 Programs too.
2 A. No, sir.
3 Q. It's not?
4 A. No.
5 Q. Okay. How does that work?
6 A. Non-Select Service Program shops -- let me

make

7 sure I get it so you -- typically if we write an
8 estimate and a customer has not chosen a repairer, we
9 pay the customer, and, if necessary, you have to
protect
Occasionally
10 lienholders by statute on those payments.
11 within the process and time constraints they will
accept
12 what's called a direction to pay from that repairer if
13 time is an issue and everything is agreed to, that
they
14 will agree to make that payment to a body shop. We're
15 under no obligation to accept the direct to pay from a
16 body shop unless we've agreed to it.

17 Q. Let me just try to understand what you're
18 saying. As part of the Select Service Program, the
only
19 thing you promise to do is to pay?

20 A. Them directly.

21 Q. To pay them directly. Okay. But with a
22 non-Select Service entity, you may pay the insure as
23 opposed to paying --

24 A. Correct.

25 Q. -- the non-Select Service Program auto body

1 repair shop directly?

2 A. Correct.

3 Q. Okay. And you don't think it should be an
4 expectation of those that are in the Select Service
5 Program that their name is necessarily going to be
6 mentioned as part of the Select Service Program even

if

7 they are in the immediate vicinity of where that

person

8 wants to have their car serviced; correct?

9 A. Correct.

10 Q. Okay. Is there anything in writing that

you're

11 aware of that at least memorializes what is involved

in

12 the Select Service Program?

13 A. The benefits, customer benefits?

14 Q. Just, you know, if I was -- not the customer.

15 I'm talking about -- unless you're referring to auto

16 body repair shops as customers. Is there something in

repair

17 writing that if -- let's say I have an auto body

18 shop, Brent's Auto Body Repair Shop, and I came

19 across -- Bob, you know, I'm really interested in the

20 Select Service Program. Is there anything in writing

21 that I can look at to determine whether I want to be a
22 part of it?

23 A. Not that I'm aware of. They used to have --
24 for our old programs you used to be able to pull those
25 agreements and look. I, mean they're commonplace.

They

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1 they've been republished in trade magazines and things
2 like that. But we don't make them available for shops
3 to look at unless we feel there's a possibility that
4 might add them as a Select Service Provider.

we

5 Q. Well, that's what I'm asking you. Is there
6 say I become a part -- so, what, they don't get to
7 at it until they agreed to it?

--

look

8 A. No, no, no.

9 Q. That's a bad deal from the start.

10 A. No. And personally I think all the shops

know

11 what the Select Service Program is. It's been

published

12 everywhere.

13 Q. Yeah, maybe.

provide

14 A. And if we were interested in having your shop
15 as part of your Select Service Program, we will

16 you the agreement to look at it, discuss with your
17 attorney if you wanted to, you know, make your
18 decisions. So it's an --

19 Q. All I'm asking is, though, there's a document
20 that exists?

21 A. Oh, yeah.

at

22 Q. And do you have a copy of that document back
23 your office somewhere?

24 A. Somewhere I have one, yes, sir.

think

25 Q. Okay. All right. You said recently -- I

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1 you mentioned this as one of the benefits, that it

2 reduces time for the auto body shop; is that correct?

and

3 A. It streamlines the process for the customer
4 the shop.

name

5 Q. Well, right now I'm talking about why a shop
6 would want to enter into this thing. And so far what
7 I'm hearing is they get paid directly. They don't
8 necessarily -- they can't necessarily expect their

shop?

9 is going to be mentioned as being a part of the Select
10 Service Program. And it streamlines things. Now, how
11 does it streamline things for the auto body repair

with,

12 A. Working backward since we talked about that
13 already, the payment process. They're guaranteed
14 payment. Whether we pay the wrong party to begin

be

15 we're going to still turn around and pay them. During
16 the process if there's a supplement -- we talked about
17 those before. Now if there's a supplement that can't
18 handled by phone and we need to look at it, we need to
19 assign an estimator to get out there and look at that,
20 there's just a natural delay in things.

they

21 With a Select Service Provider, as soon as

can

22 have a repair authorization to repair the car, they
23 begin repairs and upload those supplements as they go.
24 They don't have to wait for somebody to come out. So

it

25 makes the process quicker for them and quicker for the

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1 customer.

2 Q. So if I understand you correctly, they don't
3 need approval from State Farm to go ahead and start.

If

4 they say, hey, we got a supplement here, let's just go
5 ahead and start working on it, we can expect that

State

6 Farm is going to pay us for this?

7 A. Right.

8 Q. Whereas a non-Select Service Program does not
9 get that benefit?

10 A. They would -- you know, we need to look at
11 those.

12 Q. Why do you need to look at those?

our

13 A. We're running a business. We're protecting
14 customers.

15 Q. I don't understand why you wouldn't want to

repair 16 protect the customer that's going to a auto body
17 shop in Select Service Program as much as the customer
18 going to the non-Select Service Program. What's the
19 difference?
20 A. Well, that program has been made available to
21 every customer, and the program actually -- it
22 streamlines that process. We're not prolonging it for
23 the customer who chooses to go by it. But there's a
24 responsibility to our customer to monitor those
expenses 25 and the charges being levied to protect their

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1 affordability of their products. So we need to see
2 those items we feel we need to see. Of course, some
of 3 them, like I said, we can do by phone. They're
simple.
4 Q. Well, why -- my question still remains,
though.
5 Why don't you need to see that with the Select Service
6 Program as much as with a non-Select Service Program.

7 What's the difference?

8 A. We have processes in place and agreements in
9 place with those repairers. We can review that bill
10 prior to the payment. There's a part of our agreement
11 that says we have a right to audit that prior to the
12 payment. We have checks and balances for auditing
13 vehicles after the repair to ensure that there was not
14 work billed for that was not performed. We have
15 place -- portions of the agreement that say if we
16 identify corrective repair issues that there they're
17 responsible to pay those back to us. We have
18 policyholder protections in there to protect them.

19 Q. I think I understand this. So if you're in
the
20 Select Service Program you can go ahead and start
work,
21 for instance, without approval on a supplement.
22 However, if we come back out there and we determine,
hey
23 this is not something you needed to do, this is extra,
24 you're either paying us back or we ain't paying you
for
25 that after the fact. Whereas, if you're in the

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1 non-Select Service Program, we have to come out
2 beforehand and either approve or not approve it. And
3 then -- so either way you're going to review whatever
4 extras are being done by the auto body repair shop
5 whether they're in Select Service Program or non-
6 Service Program?

Select

7 A. Right. When they're Select Service they're

--

8 it's called subject to review. If they're all

uploaded

9 electronically, they go into processes that make them
10 subject. We take a sampling of those and we review
11 them.

12 Q. Okay. And do you know why you would provide

--

13 why you would allow a Select Service Program to do

that

14 but not a non-Select Service auto body repair shop?

15 A. Because we have those provision in place to

have

16 follow up with a Select Service provider. We don't

17 any recourse or provisions in place to work with

18 non-program shops.

19 Q. I mean, if the customer has -- or the insured

20 is a customer of any auto body repair shop it goes to;

21 correct?

22 A. The insured is the customer of the shop.

23 Q. Right.

24 A. Correct.

25 Q. If the customer wants something done, then
they

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1 can have it done; correct?

2 A. Correct.

3 Q. I mean, they're the customer of -- and the
4 business relationship is between the customer and the
5 auto body repair shop; correct?

6 A. Correct.

7 Q. And if there is something that is necessary
to

8 be repaired on the car for purposes of whatever was
9 caused by the collision, then there's nothing
inhibiting

10 the non-Select Service auto body repair shop from
going

11 ahead and performing those tasks; correct?

their
12 A. Any insured can authorize any repairs to
13 car.
Select
14 Q. Okay. Are you telling me that if a non-
15 Service auto body repair shop goes ahead and does what
16 is necessary for the repair of the vehicle as it's
out
17 related to that collision, that if y'all didn't come
18 and approve it first, then you ain't going to pay it?
19 A. We may not.
20 Q. Because you didn't approve it first?
21 A. Because we didn't see it. We weren't able to
22 identify the damage. We weren't able to relate it to
23 the loss. If it's already repaired, you can't prove
24 there was anything wrong with it. A lot of times you
there
25 can look at a car and say it's tough to tell that

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1 was something done there, much less how much time was
2 spent.
3 Q. Well, you're talking about something extra.

4 How are you going to do that with the Select Service
5 Program if they go ahead and fix it? How are you
going
6 to know whether or not that was something that should
7 have been expended or not?

8 A. Well, they go up -- we look at vehicles -- we
9 have a process in place for inspecting vehicles. We
10 look at them prior to, during repair, after repair,
and
11 they have electronic data interchange with us.

Anytime
12 there is additional work, they are required to upload
a
13 supplement and photographs prior to completing that
work
14 so that we have an idea -- we can see what those
15 supplements were for.

16 Q. But even the non-Select Service Programs are
17 savvy enough and technologically advanced enough to
take
18 those same pictures; right?

19 A. We don't have provisions in place for
receiving
20 those.

21 Q. It doesn't matter. I mean, one way or the
22 other, the auto body repair shop can come down and
hand
23 it to you at your office in Winter Haven if you so
24 choose. There's one way or the other you can get it.

25 And if those digital photographs or whatnot are taken

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1 and even if the work has been performed, you can
2 certainly look at those digital photographs to
determine
3 whether or not this extra was necessary and
reasonable;
4 correct?

5 A. Photographs are never perfect.

6 Q. Well, no, they're not. But you're just
telling
7 me that the photographs are done by the Select Service
8 Program. To some degree you rely on them; right?

9 A. But they're subject to review, and at random
we
10 can look at those and make those decisions. We can
11 identify trends if they're writing excessive repair
12 times or using parts that shouldn't be used in certain
13 processes. We see trends by looking at random
samples.

14 We don't have those in place for non-program shops.
And

to 15 we have a right to inspect the damage if we're going
16 be expected to pay for it.

17 Q. So what I -- tell me this. So what is the --
18 as far as reducing the time for the auto body repair
customer 19 shop, what gets in the way of -- I mean, when a
20 chooses a non-Select Service auto body repair shop, is
21 there some delay in your ability to take care of that
22 claim as opposed to some customer that goes -- or an
23 insured that goes to a Select Service auto body repair
24 shop?

25 A. No, sir. We don't lengthen the process. We

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1 shorten the process through the Select Service.

2 Q. Well, that's --

3 A. And it's offered to everybody. It's the
4 customer's choice to go to the other process.

5 Q. But is there any delay if they go to the
6 non-Select Service auto body repair shop?

7 A. There's obviously the human factor delay.

You

8 know, we have goals on cycle time. How quick are we
9 getting to our assignments? I told you about
10 accountability before. So we get there as quick as we
11 possibly can to handle those.

with

12 Q. Well, tell me this: I mean, you've dealt
13 a lot of claims where insureds have gone to Select
14 Service auto body repair shops; correct?

15 A. Correct.

16 Q. And you've dealt with a lot of claims where
17 insureds have gone to non-Select Service auto body
18 repair shops; correct?

19 A. Correct.

just

20 Q. What is the delay comparatively speaking,
21 approximately, in a vehicle being repaired at a
22 non-Select Service auto body repair shop versus a
23 Service auto body repair shop?

Select

question.

24 MR. GRIMM: Object to the form of the

25 A. I'm thinking it through. Without specific

1 times -- I'll explain the process. If an agent takes
a
2 customer's claim and they've chosen a Select Service
3 Program and their car is at that shop, they send the
4 shop an assignment. If he has the owner's
authorization
5 to repair, he can order his parts and start the repair
6 that day. If they send it through -- of course even
7 with technology there's delay. If they send the
8 assignment through that claim representative to
review,
9 it goes through to them. There's obviously time that
10 elapses from sending until the claim rep works to
that,
11 makes the contact with the customer. They send an
12 assignment to the Estimatics coordinator. There's
13 obviously, even with the technical ability, there's a
14 delay there. And then she dispatches it to the
15 estimator, and he puts it in line with his other work.
16 So you possibly have a delay. Sometimes he looks at
it
17 immediately depending on what his workload is. But
18 sometime less than 24 hours, sometimes as much as two
to
19 three days depending on workload in that particular
20 market at the time that claim was reported.

Generally
out
that's

21 Q. So if I understand what you're saying or at
22 least what I think you were just saying, I think you
23 were responding to the question that I asked.
24 speaking the delay between a car being repaired and
25 to the customer between an auto body repair shop

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1 a part of the Select Service Program and an auto body
2 repair shop that's non-Select Service auto body repair
3 shop is between 24 hours and three days; is that
4 correct?

5 A. It's possibly as much. I've had them seen in
6 the same hour that they got them just because of the
7 work flow. On average I would say 24 to 48 hours.

8 Q. Twenty-four to 48 hours, and that's average?

9 A. That's if I had to guess, yes.

10 Q. And that's all because the -- if I understood
11 you correctly, the auto body repair shop, if they have
12 an extra that's part of the Select Service Program

13 anyway, they can go ahead and do it without approval;
14 but the non-Select Service auto body repair shop has
to
15 wait for approval, at least that's your testimony;
16 correct?

17 A. Yes, sir.

18 Q. And because of that right there, that's the
19 reason on average there's a 24- to 48-hour delay for
20 those cars going to the non-Select Service Programs
21 versus going to an auto body repair shop in the Select
22 Service Program; is that correct?

23 A. For an initial estimate, yes. Now, if
there's
24 an initial estimate -- we talked about reporting the
would
25 claim; correct? And then supplement process which

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1 streamline a little closer or narrow timeline because
2 that's not going through the initial repair process.
So
3 the supplement process would be the same day.

they

4 Q. And here's what I don't quite understand. I
5 mean, if you go to a non-Select Service Program and/or
6 auto body repair shop that's non-Select Service and
7 do the go ahead and do whatever is extra or any
8 supplements in the same way that a Select Service shop
9 would do, why do you feel as though you're, if I
10 understand your testimony correctly anyway, why do you
11 feel as though State Farm is obligated to pay the
12 or the supplements that the non-Select Service auto
13 repair shop went ahead and did without waiting for the
14 approval from State Farm?

extras

body

to

15 A. Because we have processes in place to manage
16 that, where we don't have processes in place to manage
17 to a non-program shop submitting a supplement.

to

18 Q. It begs the question, though. What is the --
19 why is the customer going to Select Service Program
20 benefitting and the customer going to the non-Select
21 Service auto body repair shop -- why is that working
22 their detriment?

processes.

23 A. Again, we're not lengthening the processes.
24 We're shortening them with the Select Service
25 Every customer is offered the Select Service processes

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1 with guaranteed with completion dates being one of the
2 benefits to them. That's explained. They have the
3 right to choose a repairer of their choice. These are
4 the benefits of this program that we have get your car
5 to you quicker because we have these checks and
6 in place with our Select Service providers.

balances

7 Q. I understand that -- well, you say the checks
8 and balances. I understand that, you know, you can
9 this benefit. My question is why you're providing
10 to someone who's saying, hey, I want to be in your
11 Select Service Program, that auto body repair shop,
12 not providing the same thing to the non-Select Service
13 auto body repair shop.

get

that

and

14 A. Again, because the processes that we have in
15 place to ensure compliance.

16 Q. But why don't you --

17 A. We owe what we owe.

18 Q. But why doesn't State Farm provide those same
19 processes to the non-Select Service auto body repair
20 shop so they can also benefit those customers who
choose
21 to go to those auto body repair shops?

22 A. You can't manage to that.

23 MR. GRIMM: Object to the form of the
question.

24 Q. Do what?

25 A. You can't manage to that. If you have -- of

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1 course part of it is efficiencies. You look into
2 efficiencies. You have to have a certain amount of
3 personnel to monitor those efficiencies with those
4 processes that we have in place that I spoke about.
5 If -- and I don't know how many non-programs shops
there
6 are in Florida. I would assume over a thousand, in
7 addition to the close to 700 that we do have on the
8 program. It's not cost-effective or efficient to try
to

9 manage to the situation that you're talking about.

10 Q. It sure would benefit to the customers going
11 there, wouldn't it?

12 A. Benefit in timeline versus benefit in
13 affordability of the product, maybe not. I don't --
14 it's beyond my capability.

15 Q. My understanding, though, if you're going to
16 one of these Select Service auto body repair shops,
17 you're going to save on average between 24 to 48 hours
18 on turnaround; correct?

19 A. (Nods head.)

20 Q. Right?

21 A. Yes.

22 Q. So if you did this, provided this to all
23 customers, these mechanisms that you're describing,

then

24 these customers would benefit whether they go to
25 non-Select or Select Service Programs; correct?

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1 A. No, sir.

question.

2 MR. GRIMM: Object to the form of the

3 Q. I'm sorry?

4 A. No, sir. We're missing each other here.

these

5 Q. Well, I mean, if you had the same thing,

6 mechanisms you're talking about. For instance for

7 whatever reason you allow Select Service Programs to

8 send you things that you're not allowing non-Select

9 Service auto body repair shops to send you. If you

10 allow for that, which seems like it would bring about

11 more efficiency, for that matter. If you allow for

12 that, that certainly would be beneficial to the

13 customer; correct?

14 A. If you could properly staff for it, it was

15 cost-effective and efficient, yes. It just cannot be

not

16 done. We have a lot of excellent repairers that are

17 on our program, whether they've chosen to be on the

the

18 program or not -- they've made a personal choice not

19 participate in the program even though we asked them.

20 There's a lot of good repairers, and we still have to

shop

21 look at these. You cannot put your trust in every

22 that sends you an invoice, whether an invoice or what

23 they're billing. They call them both.

24 Q. That would include the Select Service auto

body

25 shops as well?

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1 A. Again, checks and balances. We have those in
2 place with our Select Service Program.

3 Q. You would with the non-Select if you did the
4 same thing; correct?

5 A. It's cost prohibitive.

6 Q. Okay. So it's your position that it is
7 definitely cost prohibitive to provide the same type
8 mechanisms for the Select Service Program that you --

or

9 for the non-Select Service auto body repair shops that
10 you're providing to the Select Service Programs;
11 correct?

12 A. In my opinion --

13 MR. GRIMM: Object to the form of the
question.

14 A. In my opinion, yes. You couldn't staff to
that

15 need.

16 Q. Is there anything else involved in the --
17 strike that.

18 With regard to the Select Service Program, is
19 there any other benefits that you're aware of that a
20 shop would get out of being a part of the Select
Service
21 Program?

22 A. No, sir, not that I can think of.

23 Q. When did the quote-unquote Select Service
24 Program come about?

25 A. April of 2007.

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1 Q. And who would know best as to what is
2 represented to insureds when they call State Farm as
it
3 relates to anything that is related to those insureds
4 about Select Service Program?

5 A. What is taught and expected or what is
actually
6 said by each one?

7 Q. Well, do you know what person at State Farm,
at

to
the
8 least for purposes of Polk County, would know best as
9 what claim reps or claim processes are directed, to
10 extent that they are, to say about Select Service
11 Program or about auto body repair shops that are
12 non-Select Service auto body repair shops?

13 A. The section manager in charge of our auto
14 property claims. His name is Ray Etcheverry. I won't
15 spell that one.

16 Q. Etcheverry, E-c-h --

17 A. E-t-s-c-h-e-v-a-r-y. That's the best guess.

he
18 Q. Etcheverry, Ray Etcheverry. And where does
19 work out of?

20 A. Winter Haven, Florida's zone office.

21 Q. And what's his title again?

22 A. Auto claims section manager.

23 Q. And so you work out of the same office as Ray
24 Etcheverry?

25 A. Yes, sir.

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some

1 Q. And what is he over? What are -- what
2 department is he over to the extent that he's over
3 department?

4 A. It's called auto property claims.

5 Q. And what do his employees do?

6 A. They are claims representatives, claim
7 processors, claim team managers, clerical.

8 Q. And prior to there being a Select Service
9 Program that came into existence in April of 2007, was
10 there any other programs that shops could be a part of
11 as it relates to State Farm Automobile Insurance?

12 A. We had our Service First Program.

13 Q. And was that in existence up until April of
14 2007?

15 A. Yes, sir.

16 Q. And was it in existence in 2002 and/or 2003
17 when Polk County became a part of your geographical
18 territory?

19 A. Yes, sir.

20 Q. What is the difference between the Service
21 First Program an Select Service Program?

it

22 A. About six pages. For lack of a better term,
23 has more teeth in it, more of those checks and

balances

24 we talked about. More requirements for the shop so
that

25 we have those policyholder protections built in place.

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1 Q. More teeth in the Select Service Program?

2 A. Than the Service First Program.

3 Q. When you say more teeth, for the benefit of
4 the -- well, I'm not going to put it that way. In
what
5 way does it have more teeth?

6 A. I'm going into the big long list. Off the
top
7 of my head if a corrective repair is needed, of
course,

8 it's limited lifetime warrantee, whereas our Service
9 First agreement had a 12-month. We had to have a
10 minimum of a 12-month guarantee. So this has gone to
11 lifetime.

12 If a corrective repair is needed and we
13 determine it needs to go to another shop to get that
14 done, it says in the agreement you will pay us for

those

15 corrective repairs.

16 We talked about cycle time. If for some
17 unexplainable reason they delayed a car in repairs,
they

18 will pay rental.

19 Those are some of the major differences I can
20 recall.

21 Q. Are there any additional benefits associated
22 with the Select Service Program at least with auto
body
23 repair shops as compared to the Service First Program
to
24 your knowledge?

25 A. Benefits to the body shop?

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1 Q. Right.

2 A. No, sir.

3 Q. The benefits pretty much stayed the same
4 between the two programs?

5 A. Yes. Sometimes I ask what benefits to the

like

6 shop. It's a partnership ship the shops appear to

7 and they want to be on it.

from

8 Q. Yeah, because there's some benefit to them

9 it.

10 A. For whatever reason they might see, yes.

hope,

11 Q. Yeah. That's why I'm asking. Is there any

12 extra -- it's okay to a benefit. I mean, I would

13 again, someone would not enter into a contract unless

14 there's something they're getting back off of it. Is

15 there anything in addition that they're getting in the

16 Select Service Program that they otherwise were not

your

17 receiving as a part of the Service First Program to

18 knowledge?

19 A. No, sir. In most aspects I think it was more

20 limiting.

21 Q. Okay. You said you had -- there's a six-page

22 difference. Do you still have a copy of the Service

23 First Program somewhere in the midst?

24 A. No, sir. I think that's been removed from

25 everywhere.

Is 1 Q. Well, like it was destroyed, put in a fire.

2 there some old copy of it somewhere?

3 A. I don't have one.

4 Q. Okay.

We 5 A. Old program days if we didn't maintain shop
6 files -- I'm trying to recall. I'm always looking
7 ahead. I'm not really looking back. But as we
8 recognized needs, we go out and we dealt with them.

9 didn't keep pieces of paper on shops or Select Service
10 agreements way back then.

11 Q. Well, I imagine by April 2007 State Farm was
12 pretty electronically and technologically savvy;
13 correct?

14 A. More by the week.

somewhere 15 Q. Yeah. And so is it fair to say that Service
16 First Program, the agreement is on the system

17 in State Farm?

18 A. Somewhere or a paper copy. It's got to be
19 there somewhere.

20 MR. GEOHAGAN: Okay. Why don't we go off the

21 record.

22 (Discussion off the record.)

23 (Recess from 12:34 until 1:38 p.m.)

24 BY MR. GEOHAGAN:

25 Q. Mr. Davis, you were talking about the -- how
in

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1 your opinion it would be inefficient to utilize the
same
2 mechanisms that are in place for those auto body
repair
3 shops that are part of the Select Service program and
4 using those same mechanisms for those that are
5 non-Select Service auto body repair shops. Do you
6 recall that?

7 A. Yes, sir.

8 Q. How -- given your opinion, how would that be
9 inefficient or cost prohibited for State Farm to do?

10 A. Without knowing exact numbers it will be a
11 considerable amount of staffing, at the very least, to
12 handle that.

question

13 Q. Well what -- and that kind of begs the
14 for me like what is it with Select Service auto body
15 repair shops do you do that requires more staff than
16 none was in the Select Service programs?

if

17 A. Well we've been able to split the -- or
18 redirect the existing employees to those duties
19 associated with the Select Service program based on

that

20 percentage of the work that is going to those repair
21 facilities, we shifted the focus of those people away
22 from the direct estimate writing, which is being done
23 residences or our non-program shops.

at

24 So we split the forces where we needed them
25 to accommodate that new feature.

to

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have

1 Q. Well -- and just so I understand, you may
2 given me the answer in what you said. But that's why

I

would

3 don't -- what is it about what you do with the Select
4 Service auto body repair shops that you don't do with
5 the non-Select Service auto body repair shops that
6 require either more manpower or some other additional
7 resources to accomplish that?

8 A. Well with the -- of course subject to review.
9 We talked about that before.

10 Q. Yeah.

expect

11 A. And the processes we have in place. We

reviewed.

12 -- we have our system set to randomly select a certain
13 percentage of those as subject to review to be

14 We staff the manpower to review that percentage.

them

15 We also staff our estimators, proper, I guess
16 the ones that are still writing estimates, we staff

17 to meet the needs of the volume we see coming in from,
18 you know, other sources.

you

19 Q. But I'm just trying to understand. So are

amount

20 saying that if other auto body repair shops are in the
21 Select Service program that it would increase the

going

22 of claims you'd be dealing with? I mean, whether they
23 go to non-Select Service auto body repair shops or
24 Select Service auto body repair shops you're still

25 to have the same amount of claims, right, that doesn't

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1 increase the claims?

2 A. Right. But regardless of --you know, when we
3 write estimates that's tease time consuming.

4 Q. Sure.

5 A. You can spend ten minutes writing an estimate
6 or you can spend a day and a half writing an estimate,
7 depending on what you're looking at.

8 Q. Right.

9 A. So it would be most efficient by having our
10 Select Service shops we can receive more estimates and
11 review a portion of those as a subject to review and
12 leave our people in the field as efficient as they
can.

13 We're as lean as we can to be efficient within the
14 guidelines we want to be within to service our
15 customers.

16 Q. And I'm still trying to figure this out,
17 though, as far as how it becomes more efficient. Let

me

18 see if I understand you now. Are you saying that by

19 there being more of the claims going to the Select

of

20 Service programs, therefore you can concentrate more

into

21 the time, at least, of these estimators and others

22 these shops whereas if you had everyone as part of the

23 Select Service program where you were using the same

disperse

24 mechanisms somehow or another you would have to

as

25 these estimators more so such that they are scattered

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1 opposed to being mostly at one Select Service shop?

2 A. Well if you take our base number of claims.

3 Q. Right.

4 A. A certain percentage of those are never going

5 to get their cars fixed.

6 Q. Sure.

7 A. And we're going to have to write those with

8 staff people.

9 Q. Right.

10 A. If we had generated more we're going to have
to

11 -- and we're staffed now appropriately to handle those
12 people that are not getting their cars fixed.

13 Q. Okay. They wouldn't even go to Select
Service?

14 A. They wouldn't go anywhere. They would use
the
15 money for other purposes.

16 Q. Got you. That's a given, it's a variable not
17 affected by the variable that you have in place for
18 Select Service?

19 A. Right. But to shift those people out, the
20 people that are servicing those, people to shift them
21 over to handle these other needs, you would have to
22 actually have -- you would need to add people to do
23 that.

24 Q. And that's what I'm asking. What are the
25 additional needs? What are the estimators, or anyone

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extra
body
1 else at State Farm, doing actually doing, that is
2 for purpose of Select Service auto body repair shops
3 versus what they are not doing for non-Select auto
4 repair shops?

5 A. It's just different duties. It's a different
6 process. And they're going out and looking at cars
7 before or during and after. And if there's a concern
8 after, they're doing follow-up with the shops, or if
9 there's a concern with trends, management is following
10 up with the shops.

a
11 I have a certain amount of shops in my market
12 now, if we increase that number, we would have to add
13 management person to be able to be efficient in our
14 duties in managing it.

you're
15 Q. Are you managing the shops, is that what
16 saying?

17 A. Managing the program itself. We don't manage
18 the shops.

that's
way,
19 Q. And earlier we talked about the nature of the
20 program. And so far the only thing that I heard
21 of any material difference is, number one, in some
22 shape or forms they're mentioned by claims reps and

23 claim processors, and then when it comes down to
24 supplements or extras the auto body repair shops needs
25 to go ahead and do that without getting the approval
of

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1 the estimator; is that correct?

2 A. Select Service shops can do that.

3 Q. Okay. If that's the only difference then how
4 does that require more manpower if you're using the
same

5 mechanism, including being able to take digital photos

6 and get them to you from a non-Select shop just as
well

7 as a Select shop?

8 A. Unless you've ever tried to discern damage
from

9 photographs, it's not an exact science.

10 Q. Sure.

11 A. That's why we pick a random portion of those
to

12 look at. We go out and physically look at them. And

13 it's our choice to limit that number of repairers in

the

14 program to a level we can assign people to that
program.

15 Q. So is it more time consuming to go out to the
16 field -- go out into the field or more time consuming
to

17 review a digital photograph that's coming to you?

18 A. It's more time consuming any time you have to
19 go out into the field.

20 Q. So with the non-Select you're going to have
to
21 go out into field, correct?

22 A. Correct.

23 Q. With the Select in some instances you don't
go
24 out in the field; is that correct?

25 A. Sometimes we do.

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1 Q. But sometimes you don't?

2 A. They can continue to work. We may randomly
3 select that vehicle to look at.

4 Q. But it seems to me that if you did that with

5 everyone that you would actually create efficiency as
6 opposed to creating inefficiency because what I'm
7 hearing you say it's more time consuming to go out in
8 the field -- and you do that with all non-Select
9 clients, correct? Isn't that right?

10 A. Do we go out -- say that again.

11 Q. With all non-Select claims you go out into
the
12 field, correct?

13 A. Yes, sir.

14 Q. Okay. With Select ones, though, you don't
15 always go out into field, correct?

16 A. Correct.

17 Q. Okay. How does it make it more inefficient
if
18 you were to apply those same principals to all auto
body
19 repair shops, whether non-Select or select?

20 A. It it's a choice at that point. What keeps
the
21 program manageable for us. We have a lot -- like I
22 said, we have a lot of great shops. A lot of them are
23 friends of mine. I mean, most of the people in the
24 business that I know are friends, Select Service or
not.

25 But you don't open up your business to

1 everybody just because they're there and trust that
2 they're going to do the right thing for your customers
3 as well as your business. You have a duty to your
4 customers to manage their business and keep their
5 product affordable.

6 Q. Okay.

7 A. And that's the choice that -- and reasons why
8 are beyond me -- why our program is like it is.

That's

9 beyond what I know.

10 Q. Yeah. Well and that's what I'm getting at.

I

11 mean, do you really -- you said your opinion is it

would

12 be less efficient and cost prohibited. And what I'm

13 trying to get at, I mean, that may be your opinion,

but

14 what's the basis for your opinion that it'd be cost

15 prohibited. Because from everything that I'm hearing

16 thus far is that it sounds like for purposes of time

17 consumption and resources it'd actually be more

18 efficient if you applied the same principles and

19 mechanisms to all shops as opposed to only limiting it
20 to these shops that are in the Select Service program?

21 MR. GRIMM: Object to the form of the
question,

22 if there was a question in all of that.

23 MR. GEOHAGAN: I was going to follow up but
he

24 started answering and you objected.

25

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1 BY MR. GEOHAGAN.

2 Q. My follow-up to having said that is, what
then,
3 in your opinion, is the -- what then is the basis of
4 your opinion that it would be cost prohibited to apply
5 the same principles and mechanisms to all shops as
6 opposed to only doing so to with shops that are
7 otherwise identified as Select Service program shops?

8 A. If I had to choose one, I can look at my
9 position. If I -- if we added additional Select
Service

10 shops in my market, that would result in the need for
11 another management person.

12 Q. Okay. And that's what I'm getting at. Let
me
13 stop you there because this is what I want to get to.
14 What about your -- what about that would increase --
I'm
15 assuming you're saying it would increase your
workload,
16 correct?

17 A. Correct.

18 Q. How would it increase your workload? That's
my
19 question. What exactly would you be doing that would
20 increase your workload if that occurred?

21 A. Well any management in any job there's --
it's
22 called span of control. What span of control does my
23 company feel that I could be most effective? How many
24 people and how many shops can I effectively work with
25 and get the results we're looking for our customers.

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1 Q. Okay. Let me back up. Maybe you're saying
2 something that just hasn't been explicitly said then.
3 What are you -- are you doing something with these
4 that's adding to your duties?

shops

5 A. Oh, I visit with my shops on a quarterly
6 at very least. We -- I mean, it's a partnership; I

basis

get

7 information from them. That's how I learn the
8 and their side of the business is in talking and in
9 dealing with them, hearing the things that they're
10 experiencing or the new things they're learning and
11 sharing with ours. That's how I learned the business.
12 And that's the partnership is that I'm out with these
13 shops and that's what I enjoy doing.

business

14 Q. Is there something as part of the agreement
15 that requires you to go and do that with these shops?

16 A. It's a part of the program from the
17 side of it, yes. They want us to have contact with
18 shops.

management

our

19 Q. And what exactly is the purpose in having
20 contact with the shops, the Select Service shops?

this

21 A. Like I just explained it, I learn things,

they

22 learn things. I review their performance within the
23 program each quarter, identify those things where -- I
24 guess the easiest way to explain it, if you find that
25 list of differences or inconsistencies like we talked

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1 about, that gives them goals or something to look at.
2 Say, they continuously see I've missed that hood when
3 was writing estimates -- I put the hood up and forgot
4 write it. That's something that they don't forget.
5 you show them a trend and you review that with them,
6 hopefully they're going to make, by getting that hood
7 there, you know, the differences or inconsistencies
8 we saw are going to get smaller for the next time.

9 Q. It seems like you're talking about the
10 estimators when you're saying that. Are you talking
11 about estimators or the auto body repair shop?

12 A. The auto body repair shop. I review the same

13 type of thing with my estimators as well. So it's the
14 same process.

15 Q. Okay. So what would you be doing that if you
16 went out to Polk County auto body repair shop in the
17 Select Service program, in reviewing their
performance,
18 what are you looking at?

19 A. I look at the results of the inspections
we've
20 done on the pre, during and post repair process. I
look
21 at their cycle times. I look for those differences.

22 We found that are subjective differences or
in
23 objective differences we found in their estimating
24 processes or lapses in their estimatic skills.

25 Q. But couldn't you, Mr. Davis, you know I --
and

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1 I appreciate I think what you're saying is that I
think
2 we're looking at their cycles, the time duration
cycles,

3 their turnover, correct?

4 A. Uh-huh.

5 Q. And you're looking at the quality of their
6 repair work, correct?

7 A. Yes.

8 Q. And that's something you're doing so that you
9 can -- whenever you represent, I'm assuming, so that
10 whenever State Farm represents: Hey, these folks are
11 part of our Select Service program, and as part of us
12 telling you they're part of our Select Service program
13 we're telling you they're a quality repair shop,
14 correct?

15 A. Yes, sir.

16 Q. Okay. The question I still got, though, is
17 with regard to these other things that you do with the
18 shops, for instance, the -- you know, being able to

send

19 things to State Farm, that seems to me to just create
20 efficiency for everyone in addition to the manner in
21 which you do or address supplements and extras, why
22 can't you still apply those mechanisms, you know,

those

23 two as a for instance, to the non-Select shops without
24 including them on the Select Service list?

25 A. Again, management. I mean, we're not

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1 connecting on what you're looking for and what I'm
2 telling you. But it's a choice. The technology is
3 there to do it. It's a choice to limit our program.
4 Why we do that, I don't know.

what

5 Q. Do you know -- do you have knowledge as to
6 claim representatives and claim processors are either
7 directed or trained to say as it relates to those
8 that are a part of the Select Service program or as it
9 relates to what is said about any other non-Select
10 Service auto body repair shops when an insured
11 State Farm?

shops

contacts

question.

12 MR. GRIMM: Object to the form of the

were

13 Mr. Geohagan, I didn't understand what you
14 asking. I'm sorry.

15 MR. GEOHAGAN: Okay. Well, I mean, if he
16 doesn't understand, like I said in the beginning

--

17 and that's going to happen from time to time.

18 BY MR. GEOHAGAN:

19 Q. If you don't understand --

20 A. I'll ask, just clarify.

21 Q. Yeah. Well, I mean, it's -- yeah, I --

22 MR. GRIMM: I apologize for the interruption.

23 I just couldn't follow that one.

24 MR. GEOHAGAN: Yeah, that's perfectly fine.

25

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1 BY MR. GEOHAGAN:

2 Q. But you're a savvy, sophisticated businessman

3 so if you don't understand, you, yourself can tell me,

4 okay. Is that all right?

5 A. Let me tell you my understanding of your

6 question. How about that?

7 Q. Well, I'll go ahead and rephrase it.

8 A. Okay.

9 Q. Are you aware as to what, if anything, claim
10 representatives and/or claim processors are trained or

repair 11 directed to say as it relates to those auto body
shops 12 shops that are in the Select Service program and/or as
shops 13 it relates to non-Select Service auto body repair
14 when insurers contact State Farm?
15 A. I know what we teach and what we expect.
16 Q. And what do you teach?
17 A. The initial portion of all the training that
I 18 teach includes -- and word tract this is: You have
the 19 right to choose the repair of your choice.
20 Q. And is that all?
21 A. The second part of that without the --
precise 22 to each time I've heard it applies to: We have a
Select 23 Service program. Would you like to hear about it?
24 The third part of that is if a customer
25 indicates they've chosen a repair facility, you're
done.

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1 You don't go to the next step.

2 Q. I'm sorry. Say that last part.

3 A. If a customer indicates they have chosen a
4 repair facility, you do not go to the next step.

5 Q. Okay. Is there anything else that claim
6 representatives or claim processors are trained or
7 directed to say as it relates to auto body repair

shops

8 in the Select Service program or as it relates to
9 non-Select Service auto body repair shops, to your
10 knowledge?

11 A. No, sir. The only part after that would be:
12 Would you like me to help you locate one, if they
13 indicate the wish for the claim representative to help
14 them locate a Select Service repairer near them.

15 Q. Is there anything else to your knowledge that
16 they are trained or directed to say in that regard?

17 A. No, sir.

involved

18 Q. And did you say that you actually are

claim

19 in the training of these claim representatives and
20 processors as it relates to that word tract?

21 A. We actually do what we call a follow-up
22 training to the claim school that they go to just to
23 answer their questions, follow-up on things we

right

24 specifically -- I want to make sure they have them
25 where they discuss things, such as Select Service with

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1 our customers.

2 Q. Is this word tract something that is actually
3 written down for the claim representatives or claim
4 processors?

5 A. Somewhere there is a word tract with -- but
6 like any word tract, it's impersonal. And as long as
7 that information is covered in there there's
8 differences.

9 Q. Do you have this word tract in your
possession

10 at the office?

11 A. No, sir. It's accessible somewhere.

12 Q. It's on the system?

13 A. I believe so.

14 Q. Is there anything else that, aside from the
15 word tract, that claim representatives and claim
16 processors are directed to say or not to say as part

of

17 their discussion of the insured's choice of auto body
18 repair shops?

19 A. Not that I'm aware of.

from

20 Q. And currently you're involved in, at least

tract

21 time to time, in this training as far as that word

22 is concerned?

trainers

23 A. Yes, sir. And then our property claim

24 get involved in that quite a bit.

25 Q. How do you monitor what these claim

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saying

1 representatives or claim processors are actually

2 when push comes to shove?

3 A. I don't monitor them.

4 Q. How does State Farm monitor them?

5 A. I don't know what their process is at this
6 point.

7 Q. Do you know whether or not they record the

8 discussions with the insureds?

9 A. I don't believe -- I don't know.

10 Q. Who would know how these claim
representatives

11 and claim processors are monitored as it relates to

12 these word tracts and these discussions related to the

13 auto body repair shop that the insured is going to go
to

14 for the repairs?

15 A. The Auto Property Claims Section Manager.

16 Q. Is that Ray Etcheverry?

17 A. Etcheverry.

18 Q. Etcheverry. Ray Etcheverry, is that who that
19 is?

20 A. Yes.

21 Q. And is there anything, whenever a claim
22 representative or claim processor is looking at the
area

23 where the collision occurred and where the, in

24 particular, where the insured either resides and works

25 in determining what auto body repair shops are in the

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body

1 vicinity that would allow them to identify an auto

is

2 repair shop that State Farm may otherwise believe it

3 not a place that the State Farm insured should go?

4 A. Clarify. If the customer asked about a shop?

5 Q. Well, I mean, whether they do or they don't,

6 and/or. I don't know. I'm just asking is there

7 anything, whatsoever, if a circumstances arises, or

to

8 however one might go about it, to where they are able

know,

9 identify for a State Farm insured that: Hey, you

there

10 this shop is really bad or -- and you shouldn't go

State

11 at all. Is there anything to that degree that the

12 Farm claim representatives or claims processors are

13 trained or directed to do?

like

14 A. No. There's no way to identify them. And

15 you said earlier, now that we handle claims -- people

and

16 from all over the state handle claims, they don't --

17 some of them don't know the shops that are down the

18 street. They're not familiar with them.

would

19 Q. But you have a system, I'm assuming, that

whether 20 allow for the identification of certain things,
21 good or bad, in a particular geographical location,
22 correct?

23 A. No, sir.

use 24 Q. No? Okay. Do y'all and State Farm, do you

25 any codes to identify particular shops, aside from

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you 1 referring to them as, you know, Stewart's Auto Body
2 Repair Shop or Douglas' Collision. But, otherwise,
3 know, if there's a code in there it lines up with that
4 particular auto body repair shop. So, for instance --
5 and this is just pure example. A One represents

Douglas

6 Collision, or, you know, 101-BB represents Stewart's
7 Auto Body Repair Shop. Do you have any type of codes
8 that are used on the system for those purposes in any
9 way, shape or form?

10 A. Not for the purposes of identifying
11 performance, I guess you would say.

12 Q. Well I'm not necessarily asking that.

13 A. They have -- I'm sorry.

14 Q. I'm not necessarily asking that, Mr. Davis.

15 I'm just asking whether or not you have codes at all
16 that are used in any way, shape or form to that
degree.

17 A. There's an identification code that each is
18 given so that they can access the State Farm website
and

19 complete their surveys.

20 Q. Right. But is there identification code that
21 can be used if a State Farm employee chooses to do so
22 for internal purposes on the system?

23 A. Nothing that would benefit the claim
24 representative.

25 Q. And aside from whether it benefits them, I

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1 mean, is there a code that they otherwise could use to
2 identify a particular auto body repair shop, whether
for
3 good reasons, bad reasons or mutual?

assigned

individual

and

it,

4 A. Well if a shop calls in and says -- well, I
5 don't even know -- there's usually a four digit
6 to a market and a four digit assigned to the
7 shop basically for, again, this electronic data
8 interchange. If they said -- if a shop called in and
9 said, I want -- because we'll get some shops with the
10 same number, which is a good example.

11 We have ABC here and we have an ABC down in
12 South Florida. And the claim rep says: Which ABC are
13 you? And he says: I'm 1ZCJ, they can punch that in
14 it'll pull up the right shop with the address and
15 everything for them.

16 Q. And is there any list on the, as you called
17 electronic data interchange of the auto body repair
18 shops that shows the code and which auto body repair
19 shop that represents?

20 A. Almost anything you print out on a shop is
21 going to have that eight digit code I just told you
22 about.

23 Q. And in what ways would those codes be used?

24 A. Like I said, for the most part it's for data
25 interchange. If we set that process up with the

150

are
1 Estimatics vendor -- I mean, with three vendors that
2 approved for data interchange -- they use those codes.
3 That's why they're set up so they can do that data
4 interchange.

5 And the only other reason is for the shops to
6 access their prevailing competitive price pricing
7 survey.

8 Q. What is an Estimatic vendor?

9 A. The soft -- our hardware vendor, program
vendor
10 for estimates. There's CCC, there's Auto Tech, and
11 there's Mitchell, are the three accepted electronic
12 Estimatics forms that we accept.

13 Q. And Mitchell's, is that what you said?

14 A. Mitchell.

15 Q. Mitchell. And can those codes be used
16 internally -- well, are those codes internally --
strike
17 that. For what reasons would those codes be used
18 internally?

19 A. The two I gave you was it.
20 Q. That's it, that's the world of it?
21 A. That's it.
22 Q. We had talked a little earlier about color,
23 sand and buff. Do you recall that limited discourse?
24 A. Yes, sir.
25 Q. And I think you had stated that it's more

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end

there

or

1 appropriately used for what you consider to be high-
2 vehicles; is that right?
3 A. There are some eluding me right now. But
4 are some vehicles that have what we call slick finish
5 mirror finish from the factory over the years. Mostly
6 now that's higher end vehicles -- at the higher end of
7 their categories.
8 Q. And what do you base your opinion on that the
9 color, sand and buff should only be used for slick or
10 mirror finishes?

process 11 A. Experience and my understanding of that

12 that is used to achieve texture.

13 Q. And how did you come to that understanding of
14 the process?

15 A. That was in place long before I came into the
16 business and that's the way it's always been.

17 Q. I mean, how did you learn it though? How did
18 you learn -- how did you come to that understanding?
19 Where did it come from?

schools 20 A. When I first started we had Estimatics

a 21 that we went to. I wrote estimates at shops, learned

to 22 lot from the shops, property claim trainers that used

work 23 look at my work, management that used to look at my

24 that's been handed down through the business, not only
25 State Farm, but through the repair business for years.

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1 Q. And as a part of your experience you've

become,

models

average

really

of

for

mean,

probably

2 I'm assuming, familiar with the types of make and

3 of vehicles out there, probably more so than the

4 person, correct?

5 A. Most recently, the last few years that's

6 changed. I'd have a tough time, without going to one

7 those high-end dealerships and looking at their cars,

8 telling you which ones come that way now.

9 Q. Okay. But can you tell me whether or not,

10 instance, a Chevrolet Impala, it would be something

11 appropriate for color, sand and buff?

12 A. Best of my knowledge, no.

13 Q. How about a Toyota Matrix?

14 A. I don't know. I know the vehicle but I'm not

15 familiar with the -- I would have to look at those

16 individual cars.

17 Q. Well, I mean, that's what I'm asking. I

18 given your experience in this industry, I'm assuming

19 you're familiar with what a Toyota Matrix looks like?

20 A. Oh, yes.

21 Q. And to that -- and I'm assuming you've

22 dealt with repairs on a Toyota Matrix, correct?

23 A. Yes.

24 Q. Would that be appropriate for color, sand and
25 buff?

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cars 1 A. I would almost have to see the individual

2 to see what color that car was -- even though it's a
3 Matrix, Toyota has a lot of lines of paint. I would
4 have to see those to see if it's necessary.

5 Q. How about a Grand Am?

6 A. Same thing. One of the cars that was used in
7 the example in a outside training I went to once was a
8 Pontiac, like you're asking about. They asked about
9 color, sand and buff. And it was a trick because they
10 color, sand and buffed one door to a slick finish; the
11 rest of the car had orange peel. So without see a
12 particular vehicle, I wouldn't commit to one.

13 Q. I think before you said it would be the ones
14 with slick or mirror finish, correct?

15 A. Correct.

16 Q. You know of certain makes and models that
have
17 a slick or mirror finish, correct, I mean, given your
18 experience in this area?

19 A. Yes, but a traditional, say, Mercedes and
20 Porsche, they always had slick finishes. That's not
21 true anymore.

22 Q. Well what are -- I mean you continuously
worked
23 up until today for State Farm in the capacity that we
24 talked about, correct?

25 A. Correct.

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1 Q. Given what you know currently and the repairs
2 that you've -- I'm assuming you probably reviewed a
few
3 things this week already; is that right?

4 A. Estimates? I haven't looked at anything to
do
5 with color, sand and buff this week. I know of one
6 color we had that if I had written the estimate -- and
I

7 think we did anyway. And it wasn't an issue on this
8 particular claim -- it was a Bentley. We know that's
9 what it had. We put that on the original estimate.

It

10 was not an issue because everybody agreed.

11 Q. What type of cars, given your knowledge and
12 experience currently, would not be appropriate for
13 color, sand and buff? I'm not asking for an
exhaustive
14 list, but just an example of some that it would not be
15 appropriate.

16 A. I can't answer that question. I would have
to
17 see the individual car and the paint color and the
code
18 that's on it.

19 Q. How about a Dodge, a 1998 Dodge Neon?

20 A. You're asking me to guess.

21 Q. Is that really a guess for you?

22 A. I hate to assume -- I hate to assume
anything.

23 Q. Well it's not an assumption, though, if
you're
24 telling me that there's certain vehicles with a slick
or
25 mirror finish and you're aware of certain makes and

1 models that never have a slick or mirror finish,
2 correct?

3 A. Not typically.

4 Q. Okay. What are some of the cars that do not
5 typically have a slick or mirror finish?

6 A. Probably every car you've mentioned does not
7 typically have a slick or mirror finish on it.

8 Q. Okay. So if it didn't have slick or mirror
9 finish then it's your position that it does not
deserve
10 color, sand and buff, correct?

11 A. Correct.

12 Q. Okay. Are you -- at least since Polk
County's
13 become a part of your geographical district, have you
14 become familiar with the local auto body repair shops
in
15 the area?

16 A. Yes, sir.

17 Q. And when did you -- or have you ever become
18 aware of Gunder's Auto Center?

19 A. Never knew Mr. Gunder until I moved to

20 Lakeland.

21 Q. When did you become aware of Gunder's Auto
22 Center?

23 A. When my responsibilities took me to Lakeland.

24 Q. And did you -- do you recall when you first
25 became aware of Gunder's Auto Center after coming to

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1 Polk County?

I

2 A. Like each market that I have responsibility,
3 always make it a point to visit all of my shops.

4 Q. Okay.

5 A. When that was or where it fell in my initial
6 visits to these repairers I couldn't tell you.

7 Q. But you've dealt with claims that have come
8 through Gunder's Auto Center during and since the time
9 of 2002 or 2003 when you -- when Polk County became a
10 part of your geographical territory, correct?

11 A. Yes.

12 Q. Did you ever have any problems or issues with

13 Gunder's Auto Center as it related to any repairs to
14 your insured's vehicles?

15 A. Any quality -- are you talking about quality
16 issues?

17 Q. Anything. From A to Z.

18 A. And that's broad.

19 Q. Yeah, it is.

20 A. I would say, yes, then.

21 Q. And what are those problems and issues that
you
22 encountered with Gunder's Auto Center?

23 A. Like all of my shops, you know, we develop
24 rapport. Mr. Gunder and I met quite a few times, had
said,
25 pretty good rapport, didn't always agree. Like I

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1 debate is healthy. I learn from that. You know, I
2 learn their side and my side. Most of our debate was
3 regarding color, sand and buff, from what I recall.

4 Q. And what was the nature of that debate, to
your

5 recollection?

6 A. Whether it was reasonable or necessary.

7 Q. And what was your position with regard to
8 whether a color, sand and buff was reasonable and
9 necessary?

10 A. I felt it wasn't. And I don't recall if we
ran
11 across some individual cases where it may have been
12 necessary. And, you know, I've followed up with shops
13 many times and I found it was necessary for some
reason.

14 Q. Was or was not?

15 A. Was.

16 Q. What, since then or during that time?

17 A. My career.

18 Q. And do you recall Mr. Gunder's position with
19 regard to color, sand and buff?

20 A. It never changed. We had discussions because
21 he wanted it.

22 Q. And do you recall his reasoning for wanting
it?

23 A. He claimed it was necessary and reasonable to
24 complete that repair job. And it was necessary to do
it

25 for him to provide his warranty to his customers.

1 Q. And do you recall whether at that time
2 Mr. Gunder was a part of the Service First program?

3 A. I believe he was at that time, yes, sir.

4 Q. And do you recall whether or not there was a
5 meeting that included yourself and other State Farm
6 representatives, along with Mr. Gunder, as it related
to
7 the -- at least partially, anyway -- this color, sand
8 and buff issue?

9 A. We had -- I was in Mr. Gunder's shop several
10 times and I don't recall if I was in there with
11 inspectors or my property claim trainers or if I was
12 ever accompanied until the point that we terminated
that
13 agreement.

14 Q. Do you recall a meeting that included
yourself,
15 Eloy Rodriguez, Don Barnaby, Kurt Neidlinger, Travis
16 Gunder and Mr. Ray Gunder that included addressing
this
17 issue sometime between June and December of 2004?

18 A. The only time Kurt Neidlinger went was the
day

19 we discontinued the agreement. Don Barnaby was not
20 there, neither was Don Cartmill.

21 Q. Don, who?

22 A. Cartmill. C-a-r-t-m-i-l-l.

23 Q. C-r-a -- C-a-r-t?

24 A. M-i-l-l.

25 Q. And who is Don Cartmill?

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handled 1 A. He was the Estimatics Team Manager that

can't 2 Polk County for that period that I was out, that I

3 remember.

4 Q. And where is Don Cartmill currently?

terminally 5 A. He's retired and living in Brandon,

6 ill with cancer.

7 Q. Okay. So you do recall a meeting including

8 those persons, other than the fact that it did not

9 include Don Barnaby, but it included Don Cartmill; is

10 that correct?

yes, 11 A. Those are the people that I recall there,
12 sir.

occurred? 13 Q. And do you recall where that meeting

14 A. At Mr. Gunder's office.

15 Q. And who called that meeting?

to 16 A. You know, I really don't know. I was asked

17 attend because I had developed rapport with Ray. And

of 18 they wanted me there to be able to follow-up on some

19 the discussions we had, if it occurred. And it never

20 occurred, that I remember.

21 Q. Discussions regarding what?

to 22 A. Anything we had talked about when I had been

review 23 his shop on previous occasions, whether it was to

24 performance or an issue that popped up.

25 Q. An issue? What issue?

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1 A. I said, if an issue popped up.

2 Q. Oh, if an issue popped up.

3 A. And, specifically, I can't recall of any
4 that -- anything that was asked of me.

5 Q. Who asked you to be there?

6 A. It was either Mr. Cartmill or Mr. Neidlinger.
7 I don't recall who asked me to be there.

primary

8 Q. But you don't recall the purpose or the
9 purpose of the meeting?

10 A. I knew the purpose was to terminate the
11 agreement that day.

12 Q. So State Farm called this meeting?

13 A. I assume they did.

rapport

14 Q. And do you recall going into that meeting,
15 since you didn't know the purpose, and had this
16 with Mr. Gunder, what the basis for terminating the
17 agreement was?

--

18 A. I was there for -- and I knew the reason so
19 and the conversation was fairly short, from what I can
20 recall. And I do not recall who relayed to Mr. Gunder
21 the hows or whys. I just knew that was kind of --

is

22 Q. Yeah, I'm not asking, at this point, anyway,
23 what was relayed to Mr. Gunder. What I'm asking you
24 going into to the meeting, since you knew the

objective

25 of the meeting, and you were taken along in case there

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1 were some issues that came up, going into the meeting
2 what were the reasons relayed to you as to why the
3 agreement with Mr. Gunder was being terminated?

4 A. They will never -- it's -- internally, if --
my
5 boss is the only person that would know why I turn off
6 or discontinue an agreement. Because we don't want
that
7 discussion carrying out.

8 So the managing Estimatics Team Manager and
his
9 boss -- of course, anybody higher that wants -- you
10 know, any other upper management person that needed to
11 know, for some reason, they will tell them. But we
12 typically don't discuss reasons.

13 Q. So you would have no idea what reasons why
14 somebody would be terminated from a Select Service or
15 Service First program as it were back then?

stealing

16 A. They're, up again, broad reasons, from
17 to just poor performance or customer service. There's
18 all kind of reasons.

19 I know what Ray and I had discussed in the
20 past, but I don't know if that was the ultimate reason
21 for the --

Neidlinger,

22 Q. Well, I mean, your boss, being Kurt
23 is that --

24 A. Neidlinger.

25 Q. Neidlinger; is that correct.

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1 A. Yes.

2 Q. Okay. I'm assuming, from everything you've
3 told us up to this point, that you're the one that had
4 the direct contact with Mr. Gunder as it relates to
the
5 Service First program, correct?

know

6 A. While I was in that market, yes. I don't

7 what Mister -- contact Mr. Cartmill had with him for

his

8 interim time that he was in Polk County.

though

9 Q. Okay. So at least while you were there,

only

10 -- and if Mr. Cartmill had taken your place -- the

somebody

11 information, other than, you know, reports that

12 would see that would reflect only what a report would

13 reflect, would be communications from either you or

14 Mr. Cartmill to Kurt Neidlinger; is that correct?

15 A. Repeat -- say that again.

making

16 Q. The only way that -- I guess what I'm asking

17 is, the only way that Mr. Kurt Neidlinger, who is

that

18 this determination, would have information to base

a

19 decision on would be from someone such as yourself or

20 Don Cartmill, correct?

inspectors

21 A. Correct. Or the work product of the

22 that review the work of Gunder's auto body.

23 Q. Well, hold on a second. Who are these

24 inspectors?

25 A. They are those estimators, auto Estimatics

1 inspectors we talked about, where we repurpose them.
2 They're not running estimates anymore. They are
3 reviewing Select Service estimates.

4 Q. And what are they called, auto what?

5 A. Auto Estimatics inspectors. That's the
6 classification for all of our Estimatics. Or
7 estimators, what you would call estimators.

8 Q. So for purposes of that list that you give me
9 earlier in your deposition, the names, are any of
those
10 folks auto Estimatics inspectors?

11 A. Except for those property claim trainers and
my
12 clerical, those are all auto Estimatics inspectors.
13 Anyone listed -- or that you listed as an estimator is
14 auto Estimatics inspector.

15 Q. So they're also -- they're estimators as well
16 as auto Estimatics inspectors?

17 A. Correct.

18 Q. Okay. And any time they go to a shop, they
are
19 not only acting as estimators, but they're also acting
20 as auto Estimatics inspectors?

I
for
21 A. We've separated them out to some degree -- or
22 guess if you wanted to call them something different
23 purposes of separation here, we call them select --
24 well, back then Service First inspectors.
25 Q. Yeah.

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to
you
didn't
keep
write
1 A. Because their focus -- and all they had time
2 do with inspecting cars before, during and after
3 repairs, dealing with any issues that might pop up,
4 know, customers needing some additional assistance,
5 reviewing, providing these reports. They really
6 have time to continue to write estimates.
7 Q. Yeah.
8 A. Occasionally, we'll separate them back to
9 their skills sharp and we'll give them a day to go
10 estimates. You just write estimates. But for the

most

11 part, their focus at that point is consistency within
12 the Service First program at that time.

you

13 Q. Do you recall who the auto Estimatics
14 inspector, or inspectors, would have been for purposes
15 of Gunder's Auto Center up until the termination, as
16 put it?

inspector

just

17 A. Eloy Rodriguez was the Service First
18 for Polk County. And at some point, it was almost
19 before or just after the time of this agreement,
20 Becki Berbusse took on Service First responsibilities.

repair

21 Q. B-u-r-b-a-s?

22 A. B-e-r-b-u-s-s-e. I do not recall if she
23 actually had done any inspections of Mr. Gunder's
24 facility.

25 Q. Do these folks actually prepare an inspection

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1 report?

yes. 2 A. There's a -- yes. I guess for simplicity,
3 It's a form they fill out that does calculations for
4 them based on, you know, what we call estimate
5 difference. What did they see versus what the shop
did.

6 MR. GEOHAGAN: And, Mr. Grimm, that kind of
7 helps us out with the one where I think we were
told
8 the only thing, by way of inspection, in the
request
9 to produce were surveys. And it appears that
10 there's documents that involve inspection reports.

11 So we'd like to be able to get that as part
of
12 the request. Do you recall that one request that
it
13 asked for inspection reports?

14 MR. GRIMM: No, but I'll be glad to discuss
it
15 with you some time other than the deposition.

16 MR. GEOHAGAN: Well, I just want -- I mean,
17 it's for efficiency sake, so we don't have to
write
18 stuff back and forth.

19 BY MR. GEOHAGAN:

20 Q. Do you know whether or not, Mr. Davis, that
you
21 have those inspection reports in your possession?

22 A. No, sir. We, like I told you before, we did
23 not keep shop files at that time.

24 Q. Who is "we"?

25 A. Estimatics Team Managers.

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1 Q. Who kept them?

2 A. We never -- nobody kept shop files.

3 Q. So a file -- like a report would be generated
4 and then destroyed?

5 A. Reports were -- there's a -- we have what's
6 called a executive review. All the information that
7 comes electronically, numbers get populated to that
8 system. And we can go in and look at them. Some
9 storage database somewhere may have it.

10 Q. So as you sit here today, to the best of your
11 knowledge, anyway, if we wanted to find these
inspection
12 reports, at a minimum, you believe we'd be able to
find
13 it somewhere on some data -- electronic database; is
14 that correct?

15 A. Somewhere, at least the last report, because
16 they're rolling. You know, they roll.

17 Q. I don't know what that means. But okay --

18 A. As the data changes, whether they do it
daily,
19 weekly, monthly, quarterly the data changes as more
gets
20 pumped in to it.

21 Q. So if we wanted to find any -- how would we
22 find, Mr. Davis, inspection reports that were done on
23 Gunder's Auto Center -- because obviously it has not
24 rolled since then because he was terminated.

25 A. Right.

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1 Q. -- from the Service First program, or during
2 the time that he was in the Service First program?

3 A. I do not have a good answer for you.

4 Q. Who would know that?

5 A. I couldn't even tell you that. I would have
to
6 do some research myself.

being

7 Q. Okay. What was your understanding going into
8 that meeting, Mr. Davis, as to why Mr. Gunder was
9 terminated from the Service First program?

10 A. I was not told what the reason was.

some

11 Q. Well what was your understanding? Obviously,
12 you had contact with the client. You must have had
13 idea as to why -- well, let me put it this way to make
14 it easier for you. Why do you think he was terminated
15 from the program?

16 A. I would have to say non-competitive --
17 non-competitiveness.

very

18 Q. What does -- since that word has become a
19 -- has an interesting connotation, what is the -- in
20 this deposition -- how was Mr. Gunder being
21 non-competitive?

22 A. Charging for operations or materials or
23 processes that were outside of what prevails in that
24 market.

25 Q. And did -- to your knowledge, did State Farm,

1 you, or anyone from State Farm, ask Mister -- request
2 that Mr. Gunder or Gunder's Auto Center stop charging
3 for any operations and materials and/or processes
4 outside of what prevails in that market?

5 A. We never tell anybody to stop. We tell them
6 it's non-competitive and it may set them aside from
7 other repairers on the market that are on the program.

8 Q. Okay. Was he advised of that at least?

9 A. I know I -- he and I, without -- you know,
10 again, I can't recall specifically. I'm sure we
11 discussed competitiveness and non-competitiveness in
12 that market based on that program being a
13 competitive-based program.

14 Q. Right. But was he -- but did y'all request
15 was he told, either, you know: Would you please stop
16 charging for operations and materials or processes
17 outside of what prevails in that market, or in this
18 market, or was he told: Hey, you need to stop
19 for operation and materials or processes outside of
20 prevails in this market because we can't keep you on

the

or

charging

what

the

21 Service First program otherwise?

22 A. Again, we never tell people they can't do
23 anything. You know, our agreement says: We'll pay
you
24 based on your final bill. I'm -- and, again, without
25 being specific, I'm sure he and I discussed

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1 competitiveness and that if you're not competitive you
2 may not be able to be on the program. And what terms
we
3 discussed that, I don't recall.

4 Q. Okay. To your knowledge and since you had
5 contact and rapport with Mr. Gunder at the time and
6 Gunder's Auto Center, what operations, materials or
7 processes outside of what prevailed in the market at
the
8 time was Mr. Gunder or Gunder's Auto Center charging
9 for?

10 A. The things that we discussed.

11 Q. To your knowledge -- well, whether you
12 discussed it or you didn't discuss it, to your
knowledge

What 13 -- and I'm not asking you to identify the vehicle.
14 I'm asking is, in general, what type of operations,
15 materials and/or processes outside of what prevails in
16 that market was Mr. Gunder charging for at that time?
17 A. The only thing that I can recall that was the
18 recurring issue was paint materials charge and the
19 color, sand and buff procedure.
before, 20 Q. And going back to what we talked about
21 these, apparently, they were things that, when you
22 looked at the majority of the other shops in the
23 community, they were not charging for paint materials
or
24 color, sand and buff procedures the same way Mr.
Gunder
25 or Gunder's Auto Center was, correct?

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broadly, 1 A. Correct. I mean, there's a -- again,
2 when you compare the shops within the market, you
3 breakdown all the categories they have. Some are on

the

4 higher end of paint. Some are on the lower end of
5 paint. Estimate difference would be color, sand and
6 buff charge that was not needed. You weigh all those
7 things when you're evaluating the performance of a
8 repair.

9 Q. And I'm assuming -- well, let me ask you. I
10 mean, just as a matter of course, if State Farm were
11 have to pay for something that is not being charged by
12 other shops, then, of course, that would mean that
13 type of operations, procedures and materials could
14 create a situation where, generally speaking, on these
15 claims State Farm would be paying more out; is that
16 correct? Just as a matter of course.

17 A. Clarify. If some entity said: You have to
18 pay
19 this. Period. Flat.

20 Q. Yeah.

21 A. This is the way it is. You're going do it.

22 Q. Yeah.

23 A. Of course, you're ultimate average is going
24 to
25 go up by whatever that might affect your overall
26 percentage of your estimates.

27 Q. Right. And, thereby, on the average you
28 would

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1 end up having to pay more out on claims than you
2 otherwise would if not for procedures such as paint
3 materials and color, sand and buff procedure being
paid
4 for, correct?

5 A. Obviously.

6 Q. Obviously, yes, right?

7 A. Yes.

8 Q. Can you tell me whether or not currently
color,
9 sand and buff procedures are, as we sit here today and
10 in the year 2009, if you will, color, sand and buff
11 procedures are being paid for by State Farm more so
than
12 they were -- and I'm not talking about Gunder's Auto
13 Center right now. I'm just talking about in the Polk
14 County market. Let's just limit it to that. But
color,
15 sand and buff procedures are now being paid for more
16 than they were by State Farm on average back in 2004?

about 17 A. No. My personal opinion is we heard more
18 it in 2004 than we do now.

19 Q. Okay. Can you tell me whether or not paint
20 materials are being paid for more now, on average, in
21 the Polk County market, by State Farm than they were
22 back in 2004?

calling 23 A. The progressive cost of living, are you
24 it? The cost of those materials along with other
25 materials have steadily gone up since that time. So

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1 without the specific numbers, yes, they --

inflation. 2 Q. Well, no, I'm not just talking about --
3 Mr. Davis, I'm not talking about the cost of

the 4 I'm talking about the fact that, isn't it true that
paid 5 paint material expenses now, on average, are being
6 for, at all, more now than they were back in 2004?

mean, 7 A. I mean, are we paying more paint and -- I

paint 8 additional, is that what you're asking, additional
9 and materials?

10 Q. Are you paying for the expenses and the
11 calculation of the expenses incurred for paint
12 materials, more now than you were, State Farm, that
is,
13 in 2004?

14 A. Meaning, if somebody provides us a bill or an
15 invoice for additional paint and materials, we're
paying
16 it more now?

17 Q. Well, let me back up. What about the paint
18 materials expenses was causing a problem for State
Farm
19 as it related to Gunder's Auto Center?

20 A. Compared to the market and compared to the
21 zone, at one point we done some research -- and I
22 believe I did talk to Mr. Gunder about that -- his
paint
23 and materials nearly doubled what the average for his
24 market as well as the whole zone.

25 Q. Did he ever give you anything or tell you

1 anything to justify why he was passing along that
2 expense for paint materials, do you recall?

3 A. Constantly.

4 Q. Okay. And what was it?

5 A. Because I need it. This is what I'm paying
6 for. This is what this cost me and this is what this
7 cost me.

8 Q. But what was he giving you something to
justify

9 that, in fact, he was incurring that expense?

10 A. No, the only thing that I received -- and
11 that's come about with this litigation -- was -- and
led

12 up to it -- was the use of this PMCLogic.

13 Q. Okay. And at the time in 2004, were other
14 shops, to your recollection using any type of
15 calculating system that used that type, or similar
16 technology, to the PMCLogic?

17 A. I don't recall ever receiving a bill with any
18 paint calculator system breakdown attached to it prior
19 to this litigation.

20 Q. Okay. You mean, from Gunder's Auto Center
or?

21 A. Anybody.

22 Q. Now is there -- for purposes of -- and you
23 identified, as you put it, for non-competitiveness,
that
24 Gunder's Auto Center was charging for operations
25 materials and/or processes outside of what prevails in

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1 the market, correct?

2 A. Correct.

3 Q. And then to that degree, the things that you
4 identified that he was charging were paint materials
and

5 color, sand and buff procedure, correct?

6 A. Those were things we had discussed, yes.

7 Q. Okay. Is there anything else you know of,
8 other than that?

9 A. Not that I recall.

10 Q. Okay. And to your recollection, aside from
11 whether or not State Farm was willing to pay for that,
12 is it your position that Mr. Gunder or Gunder's Auto
13 Center either was charging for it and had never done
it

they 14 as part of the repair or that they had done it but
15 were overcharging for purposes of what the actual
16 expense incurred by Gunder's Auto Center was?

question. 17 MR. GRIMM: Object to the form of the

18 THE WITNESS: I don't recall whether it was
19 ever charged for and not done. And if it was
20 charged for and not necessary, was the big issue.
21 Whether it was charged and it was appropriate and
it 22 was overcharged, I do not recall.

23 BY MR. GEOHAGAN:

there, 24 Q. So for you, if I understand your answer
25 the big thing was being charged for it even though it

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1 was not necessary; is that correct?

2 A. Correct.

3 Q. And does that go for the paint materials as
4 well?

5 A. That was just excessive compared to the

6 competitive market for the vehicles you're repairing.
7 You're billing us for more materials, almost double
from
8 what your competitors are doing. That's just one part
9 of the processes and charges you look at. But that
was
10 a significant one.

11 Q. But are -- for purposes of those paint
12 materials, though, do you have any information or
13 knowledge that when Mr. Gunder submitted those paint
14 material expenses to be paid, that those paint
material
15 expenses were not actually and reasonably incurred by
16 Gunder's Auto Center for any particular repair job?

17 A. Say that again. I'm sorry.

18 Q. Do you have any information or knowledge,
aside
19 from the fact that they were above those, you referred
20 to it, the prevailing competitive market rate. Okay,
21 putting that aside for one moment. Aside from that,
and
22 putting aside that State Farm is not going to pay for
23 something in excess of the prevailing competitive
market
24 rate, do you have any information or knowledge that
with
25 regard to any of those paint material expenses that at

along

1 any time Mr. Gunder or Gunder's Auto Center passed
2 that expense when it was not, in fact, actually and
3 reasonably incurred as an expense by Gunder's Auto
4 Center?

5 A. I have -- I don't know what he pays for his
6 shop materials, paint material. I don't know what he
7 pays so I don't know what he reasonably incurred. And
8 what would you consider reasonably?

any

9 Q. Well, that's what I'm asking. Do you have
10 information or knowledge that he did not actually
11 incur
12 those expenses, aside, again, from whether or not it
13 was
14 in excess of the prevailing competitive market rate,
15 as
16 you put it?

17 A. No. But I have no proof he did either.

18 Q. Well did you go to him to ask him how he came
19 to any of that?

20 A. No, sir.

18 Q. Okay. Well, if you had done that you might
19 have gotten some proof, correct?

20 A. Well, if somebody submits an invoice to me, I
21 wouldn't expect that I would have to go -- if they
22 wanted to be paid for something, I would expect that
23 they supply the supporting documentation to support
24 their bill.

Gunder's 25 Q. Are you suggesting that Mr. Gunder and

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1 Auto Center did not?

2 A. I've never seen an invoice.

3 Q. What do you mean, you've never seen an
invoice?

4 A. For these -- well, one of the things we're
5 talking about, paint and materials. I see a paint and
6 material calculator bill but that's not an invoice.

7 Q. Okay. What's the difference to you between a
8 bill and an invoice?

9 A. An invoice came from the person you purchased
10 goods from. Billing is what you provide me of what

you

11 want me to pay you.

reasonably

materials

12 Q. Interesting. Okay. That being the case, do
13 you have any knowledge or information, anything to
14 indicate that Mr. Gunder did not actually and
15 incur those expenses associated with the paint
16 that were at issue leading up to that termination
17 meeting?

costs

18 A. No, sir. I don't have any idea what his
19 are.

the

20 Q. Is it fair to assume, Mr. Davis, that if any
21 other repair shop, during that time you had been on
22 Service First program, had done the same thing, had
23 charged paint materials the same way and/or had
24 attempted to provide color, sand and buff for purposes
25 of any repair, that it would be looked upon the same

way

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1 by State Farm as State Farm looked at Gunder's Auto
2 Center?

3 A. That's what we try to do, be consistent. In
my
4 markets, I deal with one shop the same way I deal with
5 the next shop.

6 Q. And are most of the shops in your Select
7 Service program, or at that time your Service First
8 program, aware of the fact that -- of how State Farm
9 approaches these expenses and charges for purposes of
10 what State Farm will or will not pay?

11 A. I make it -- my personal practice is, I make
it
12 a point -- that's why I visit the shops. I make it a
13 point to let them know how we're evaluating their
14 performance. You know, what we're looking for.

15 And if we see differences, that it's not a
16 one-way street to eliminate them from the program,
it's
17 opportunity to improve. Stay on the program.

18 Q. But, I mean, are you fair to the other shops,
19 and particularly those that are in the Select Service
20 program currently and at that time Service First
21 program, and informing them and educating them on the
22 fact that: Hey, your prices need to be competitive,
as
23 you put it, or at a prevailing competitive market
rate?

24 A. Yes.

25 Q. Do you think maybe if shops are aware of
that,

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along 1 that they're probably a bit inhibited from passing
2 or attempting to pass on an expense that they actually
3 incurred but is in excess of what you call the
4 prevailing competitive market rate?

5 A. I don't know what --

6 MR. GRIMM: Object to the form of the
question.

7 THE WITNESS: I don't know what their thought
8 process is.

9 BY MR. GEOHAGAN:

10 Q. Okay. Well where do you think -- using
common
11 sense and also natural human inclinations, do you
12 think
13 that someone, who otherwise feels they're benefiting
14 from being in the Select Service program, or back then
the Service First program, would be somewhat inhibited

15 from coming to State Farm and attempting to pass along
16 an expense in excess of what State Farm is suggesting
is
17 the prevailing competitive market rate?

18 MR. GRIMM: Object to the form of the
question.

19 THE WITNESS: What I observed and their
20 interactions with their other repair -- or other
21 insurers they do business for, that could be a
22 legitimate fear.

23 You know, I feel with my shops I have that
24 rapport. And I know by the phone calls that I get
25 they're not afraid to question me because they
know

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1 -- or I hope they know that I'm going to be fair
2 with them and give them my opinion.

3 BY MR. GEOHAGAN:

4 Q. Do you -- you know the automobile -- I mean,
5 you're in insurance. But would you take the position
6 that you have a familiarity with the, at least the

local

7 Polk County automobile repair industry?

8 A. Yes, sir.

9 MR. GEOHAGAN: Go off the record.

10 (Discussion off the record.)

11 MR. GEOHAGAN: Let's take just a five minute
12 break.

13 MR. GRIMM: Sure.

14 (Recess from 2:53 until 3:02 p.m.)

15 (Proceedings continued in Volume II)

16

17

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19

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21

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1 (Proceedings continued from Volume I)

2 MR. GEOHAGAN: Back on the record.

3 BY MR. GEOHAGAN:

4 Q. Where I was going with that last line of
5 questioning, Mr. Davis, I was asking you whether or
not,
6 given your position and experience over -- at least
7 between 2002 and 2003, you are familiar with the auto
8 body repair shops in the Polk County area, correct?

9 A. Correct.

10 Q. And given your just experience since being
with
11 State Farm in 1985, has it come to your knowledge that
12 some auto body repair shops tend to be more dependent
13 upon business that is otherwise generated in some way,
14 shape or form through insurance companies than are
other
15 shops?

16 A. I really don't know the makeup of their
17 business. Being all individuals.

18 Q. No, I'm just asking. I mean, you know,
19 obviously you talk. There's trade talk. You go to --
20 I'm assuming you go to seminars here and there and you
21 become intimately familiar with the going-ons in your
22 industry, correct?

23 A. Correct.

24 Q. And given that, I mean, haven't you come to
25 understand that there are some auto body repair shops,

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1 depending upon how long they've been around or their
2 quality work is or whatever other variables come into
3 the equation, that tend to be more dependent on
business
4 generated as part of, for instance, being a part of a
5 preferred program with an insurance company or
insurance
6 companies as compared to other shops that are not as
7 dependent?

8 A. I would -- my opinion is the majority of the
9 work that I see in most shops is ultimately paid by an
10 insurance carrier.

11 Q. Okay. And I can appreciate that. But given
12 that, is it your experience, given your having been in
13 the industry for over 20 years now and having been
able
14 to, as you already stated, going out to the field and

you
them
insurance

15 going to the shops and them asking you questions and
16 asking them questions and you learning things from
17 and them learning things from you; during all of that,
18 you have been able to become aware of the fact that
19 there are some automobile body repair shops that are
20 more dependent on business generated from the
21 companies, or company, as compared to other shops that
22 are not as dependent?

23 A. No. I --

24 Q. You don't think so?

25 A. No. I think a majority of body shop repairs

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not,

1 are paid for by an insurance carrier.
2 Q. That's not what I'm asking. This is my
3 questions, I'm saying -- I'm asking you whether or
4 given this over 20 years of experience, you've become
5 aware that more -- that there are some automobile body
6 repair shops that are more dependent on the business

an
7 they get being generated from their relationship with
8 insurance company, or insurance companies, than are
9 other, some other automobile body repair shops?

other
10 A. Well since 1985 -- and I can't speak for
11 insurance carriers -- but all of these programs,
12 regardless of their name, have evolved over this
period
13 of time. And the more they have evolved the tighter
14 that relationship has been with those particular
15 carriers they do business with.

16 Q. Right.

17 A. But I can't speak to what percentage of each
18 repairer's work is.

19 Q. No, I'm not asking that. I'm basing this
20 testified
21 purely on the extensive experience you already
22 to, being in this industry, your rapport with the auto
23 body repair shops. That's what I'm basing it on. I'm
24 not asking for a percentage, by any means, okay.

you
25 And just by way of example, what I'm asking
26 is whether or not in your experience there are some

1 shops, for instance, that if they were not a preferred
2 shop, whether it be State Farm or another insurance
3 company, that they would not have near as much
business
4 as they otherwise would have or not have if they were
5 not a part of the preferred program?

6 A. Again, that's a broad statement.

7 Q. Absolutely it is. But you've --

8 A. Some repairers -- and I've heard the word:
Put

9 all their eggs in one basket. They pair up with
10 somebody on some program and all they'll cater to is
11 that insurer or that company. I mean, it doesn't have
12 to be an insurer, it could be Publix here in Lakeland.
13 All I want to do is Publix work.

14 If Publix changes their mind at some point it
15 might leave that shop in trouble.

16 Q. And that's what I'm asking. And there are
some
17 shops that are more dependent on a particular entity,
18 and in your experience, with some insurance companies
19 and their relationship with that insurance company is
20 for the business they actually get than are some other

21 auto body repair shops, correct?

is
22 A. Right. And I mostly look at where insurance
23 involved versus what they're doing. Because I don't
24 know the other carrier's programs. I don't know how
25 their work or their agreements with those shops work.

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1 Q. You have no idea?

--
2 A. They are all over. They all have different
3 you know, I don't try to guess what their methods are.

industry?
4 Q. Well, aren't you competitive in your

think
5 A. That's why we have our program because we
6 it's better.

7 Q. Well in order to think it's better you've got
8 to know something about the other programs so...

9 A. That's beyond me. And to me, it would be
10 speculation.

11 Q. I'm not suggesting that you've got any
12 confidential documents in your possession. But I mean

found 13 to some degree you've talked to the other side and
14 out what's being offered by other insurance companies,
15 correct, as part of their preferred programs?
16 A. I know the business but I don't know the
17 particulars of any one program, other than our own.
just 18 Q. But needless to say, in light of what you
19 testified to, though, there are going to be some, at
20 least some auto body repair shops that are going to be
21 more careful to facilitate and nurture their
that 22 relationship with any particular insurance company
23 they may otherwise be involved in as part of a
preferred 24 program so that they can maintain that flow of
business 25 coming from that particular insurance company,
correct?

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1 A. Testifying about what I know?
2 Q. Yes.

3 A. My shops -- or my shops -- our shops in my
4 market are not afraid to confront me with things like
5 that.

6 Q. As far as you know, right?

7 A. I think we have a pretty good -- even with
some
8 non-program facilities, I think I have a pretty good
9 relationship with most shops in my markets.

10 Q. Well it wouldn't bother you, though, if they
11 kept their prices down as opposed to increasing their
12 prices, correct?

13 A. No.

14 Q. I mean, just as a matter of course?

15 A. No, sir. I've told them I don't care what
16 their rate is. Competitive is -- that's on the
street.

17 I don't care what your price is, you've got to be
18 competitive in your market.

19 Q. Well have you ever stopped and thought that
20 maybe that's self-perpetuating. If you have a group
of
21 shops, Mr. Davis, that otherwise are getting a number
of
22 customers from State Farm Insurance, or at least
23 customers coming to them who happen to be State Farm
24 insureds, and a number of these shops to some degree
are
25 dependent upon the business otherwise generated

through

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1 State Farm. Now let me back up for a second.

2 State Farm Automobile Insurance, I mean are
3 y'all the biggest automobile insurance company out
there

4 or one of the biggest or do you even know that?

5 A. To the best of my knowledge, that's what I've
6 been told.

7 Q. You're the biggest, right?

8 A. Yes.

9 Q. So it stands to reason that you're going to
10 have more people when they have claims going out to
the
11 auto body repair shops here in Polk County than are
the

12 other insurance companies, correct, as a matter of
13 course?

14 A. That are other -- that go to other repairers,
15 is that what you're saying?

16 Q. No. No. You're going to have -- in Polk

who

17 County you're going to have more people with claims
18 are insured by State Farm than any other automobile
19 insurance company, correct?

20 A. Now that I do not know for a fact. Certain
21 states we are not the largest. Certain counties in
22 Florida we are not the largest. I couldn't tell you

--

state

23 Q. Do you know if you're the largest in the
24 of Florida?

25 A. I believe so. I believe so.

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1 Q. Okay. All right. That being the case, and
2 let's say there's no difference for purposes of this
3 question in Polk County, if you have that many people
4 that are insured with you that have claims, correct?

5 A. Correct.

car

6 Q. That are coming out and need to have their
7 repaired somewhere -- and that's going to be an auto
8 body repair shop, correct?

9 A. Correct.

10 Q. If you have certain shops, as we just
11 discussed, that are more dependent upon the business
12 being generated from State Farm than are other shops,
13 wouldn't you expect that those shops are going to be
14 more careful not to have prices that are in excess of
15 the, as you put it, prevailing competitive market
rate?

16 MR. GRIMM: Object to the form of the
question.

17 THE WITNESS: They help set those rates.
They
18 have their input in the survey process. We don't
19 generate work, except in their minds how they
think
20 we generate that work, in that the entire body
shop
21 community participates in the survey. We handle
our
22 claims based on the result of that overall survey
in
23 those shops.

24 BY MR. GEOHAGAN:

25 Q. Who -- to your knowledge, have you reviewed
the

1 surveys that have been performed here in the local
2 market in Polk County?

through

3 A. I have to look at every one that comes
4 and forward it on.

Service
that

5 Q. And have you made sure that all automobile
6 repair shops, aside from whether they're Select
7 or not, are actually providing you the information
8 is requested on these surveys?

market

9 A. We make sure that -- in fact, I get a couple
10 surveys a week. But we identify new repairers or
11 repairers that previously didn't meet requirements of
12 the survey, meaning they have equipment to open a body
13 shop. As soon as their on equal ground with the
14 that they complete a survey, we enter those into the
15 system. We provide them -- if they will complete --
16 some people we approach and they don't want to
17 or participate in our survey process.

complete

ground

18 Q. What do you mean once they are on equal
19 with the market?

There's
to
the
That

20 A. I'm sorry. I left that kind of vague.
21 basic minimum criteria on the survey that allows them
22 compete with shops like Gunder's Auto body, some of
23 other shops. Frame equipment, welding equipment.
24 type. There's some minimum requirements to get weight
25 in the survey.

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shops?

1 Q. And do the other shops get to see what these
2 rates are as provided in the surveys by the other
3 A. No, that'd be anti-trust.
4 Q. It would be?
5 A. Yes.
6 Q. How would that be anti-trust?
7 A. You can go in and see somebody else's rates
8 before you complete yours.
9 Q. I'm not sure that it would be anti-trust. My
10 question wasn't even that though. My question is

11 whether or not, once the surveys are done, do you
12 provide the other shops with the other market rates
that
13 are being provided? I mean, are they able to look and
14 see exactly what you're looking at --

15 A. No.

16 Q. For purposes -- okay. So all we have to
trust
17 that Mr. Davis is actually telling us the truth as to
18 what the prevailing competitive market rate is,
correct?

19 A. Correct.

20 Q. By the way, do you know anything about rates
21 that are otherwise not made public knowledge?

22 A. As far as?

23 Q. Any auto body repair shop. I mean, is there
24 anything about the rates from an auto body repair shop
25 that are private and confidential in nature?

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1 A. That's up to them, whether they want to
share.

2 Again, you cross the line with anti-trust and sharing

3 those with other repairers. I'm not an attorney,
4 they're familiar with the federal law.

being
5 Q. Well, no, that's not even what I'm -- I'm
6 more practical now. I'm not asking for a legal
7 conclusion. I'm saying is there -- if I call up an
8 auto
9 body repair shop right now and asked them their rates,
10 any
11 reason why they wouldn't tell me what their rates are?

12 A. Not really. I mean, there are some repairers
13 shops
14 that I've seen in my course of going through body
15 their
16 that won't take people off the street to repair their
17 cars. They feel they have enough business through
18 processes to -- but most of them have a posted rate
19 board in their front lobby and anybody can walk in and
20 see that.

21 Q. Exactly. There's nothing private or
22 rates
23 confidential about, generally speaking, about the
24 like
25 that are charged by an auto body repair shop. It's
26 going to McDonalds, you can look at the sign up there
27 and Burger King -- or McDonalds can't say: Oh, no,
28 that's private and confidential. Don't let Burger

King

24 know about it. I mean, they see the rates, correct?

25 A. There are public rates and then there are
rates

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1 arrived at by whatever methods or agreements they with
2 other parties.

3 Q. And if I were to call up an automobile body
4 repair shop and ask them: Hey, how much does it cost
5 you to affect this particular procedure, do you know
6 whether or not automobile body repair shops typically
7 would not share that information or whether they
would?

8 A. What would it cost for this part or this?

9 Q. Or anything. I mean, do you know of any --

10 A. Well you can call any service department and
11 say: How much to change my oil? You might get --
call

12 20 places and get 20 different prices.

13 Q. Sure. But it's publically disseminated,
14 correct?

15 A. Yes, sir.

the
16 Q. Do you recall any other meeting, other than
17 one that we were just discussing that occurred out at
18 Mr. Gunder's that actually included Don Barnaby that
19 took place other than at Gunder's Auto Center?

20 A. Don Barnaby or Don Cartmill.

21 Q. Don Barnaby.

22 A. No, sir. He had cycled and was retiring and
23 moved out of that market abruptly and took on some
other
24 responsibilities. So I really never interacted with
him
25 concerning the Polk market.

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1 Q. And you mentioned Eloy Rodriguez being in
2 attendance at that meeting, correct?

3 A. As far as I remember he was there.

4 Q. Okay. Did Eloy -- do you have any
recollection
5 of Eloy Rodriguez ever telling you anything about
6 Gunder's Auto Center, his opinion or otherwise or

7 voicing any disgruntlements as it related to Gunder's
8 Auto Center?

9 A. Nothing specific. In generalities, not just

--

10 you know, you pick up on your -- you say -- you talked

a

11 minute ago about knowing your market. When you're in

12 the market you hear things, you see things. At that

13 time we had claim representatives in our Lakeland

14 office. And, you know, it would be Eloy, because he

was

15 in Gunder's Auto body quite often. And if he had

16 concerns he brought them to me.

17 You know, some of the things you start

putting

18 together are when the claim representatives start

coming

19 to you, or other shops start calling you about

something

20 that body shop did. You start putting patterns

together

21 and you start watching for things.

22 Q. Okay. So what did Eloy Rodriguez start

telling

23 you or told you about Gunder's Auto Center?

24 A. Again, specifics -- I don't have anything

25 specific to one claim. Most of it was the estimate

Gunder 1 differences he identified and pointed out to Mr.
2 were met with resistance and not the typical shop
3 interaction you have when you identify estimate
4 differences, which we view as opportunities, weren't
5 treated that way.

6 Q. Okay. And what do you mean by estimate
7 differences?

8 A. When he would view Mr. Gunder's estimates,
9 again, back to your color, sand and buff, if he felt
10 that was not necessary for the estimate he would put
11 that into the sheet that calculated what was done,
what
12 was actually needed or what was not needed. And
that's
13 estimate difference.

14 Q. And you were talking about the way that
15 disagreement, if you will, was addressed between
16 Mr. Rodriguez and Mr. Gunder was not received as an
17 opportunity apparently by Mr. Gunder. What exactly
did

18 Mr. Rodriguez tell you about how it was received?

19 A. Similar to the interactions that I had with

20 Mr. Gunder. And when we had weeks or days or every
21 month that we visited and had, again, a debate, which
22 was good I think for both of us, and days that would
23 deteriorate. And, you know, with any business
24 relationship, I mean, you can have your estimate
25 difference and your paint materials difference. But

if

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1 you have a partner you're not getting along with and
2 you're spending a majority of your time with, you have
3 to take a look at that. Is that really working for
4 either one of you or our customers?

5 And that was the pattern that I -- without
6 specifics, because I don't recall any specific claims
7 that that occurred on, that was the trend I saw, not
8 only from Eloy, but through claim representatives and
9 other repairers.

10 Q. Did you ever -- is there anything you can

tell

11 me that Gunder's Auto Center has ever done to hurt its

12 customers?

13 A. No, sir, they are a good repair facility.

told
14 Q. Is there anything else that Eloy Rodriguez
15 you about Gunder's Auto Center by way of, you know, a
16 disgruntlement or a problem, concern or issue that you
17 can recall?

you
18 A. No, sir. Like I said, generality and one,
19 know, kind of a bucket there, the general things that
I
20 was able to put together after several reports from
Eloy
21 and others.

22 Q. That were -- that dealt with estimate
23 difference; is that correct?

24 A. Estimate difference, personality. And of
25 course because of the way it was perceived, it turned

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1 into a conflict of personality.

2 Q. Anything else?

3 A. No, sir.

4 Q. And you also said something about, you know,
5 when you start hearing things from other shops. Did
you
6 ever hear anything from other shops about Gunder's
Auto
7 Center?

8 A. Yes, sir.

9 Q. And what did you hear?

10 A. They continuously received faxes with --
there
11 was multiple things. One was about surveys, when we
12 used to do surveys. The content of, What are you
13 charging? Or, You need to charge for this.

Operations,

14 you need to charge for this.

15 And some of them, you know, took exception to
16 them perceiving this kind of interfering -- they felt
it
17 was interference in their business.

18 Q. How would it be interfering with their
19 business?

20 A. They just objected to somebody else telling
21 them what to do. Like I said earlier, I have never
been
22 in a shop, whether it's a one-man shop or 20-men shop,
23 they didn't feel they were the best. And when
somebody
24 tells them how they should be doing something,
sometimes

25 it rubs them wrong.

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1 Q. Was it relayed to you that Ray demanded that
2 they do something?

3 A. In some cases almost to that extent, the way
4 they told it to me.

5 Q. And who are "they", who are these shops that
6 you're referring to?

7 A. Oh, gosh, over the period of time.

8 Q. Ain't many of them.

9 A. Oh, yeah, there are.

10 Q. I mean, here in Lakeland there's not many of
11 them. What I'm saying is the pool of shops is not
many,
12 so which shops?

13 A. The pool of shops --

14 Q. The pool of shops here in Lakeland is not so
15 many that you can't remember.

16 A. Oh, no, I'm thinking --

17 Q. I mean if it's the whole -- all the shops,

then

18 let me know.

19 A. I've heard from almost every shop at some
time

20 or another. All the way from Arrington's to A&E Auto
21 Body to Cannon --

22 Q. Hold on. Hold on. Who?

23 A. Arrington's Auto Body.

24 Q. Arrington's?

25 A. A&E, Stewart's, Jenkins, Francisco's, Cannon

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1 Buick. Did I already tell you Cannon Buick?

2 Q. No.

3 A. To name a few.

4 Q. Well I mean, what are the other ones that
5 you've heard from?

6 A. Maurice's.

7 Q. Maurice's?

8 A. Chevrolet Center.

9 Q. Okay. Who else?

10 A. Did I say Jenkins Lincoln Mercury?
11 Q. Uh-huh.
12 A. Okay. I'd be grasping. I know those for
sure.
13 Q. Arrington's, A&E, Stewart's, Jenkins
14 Francisco's, Cannon Buick, Maurice's, Chevrolet
Center.
15 Anyone else?
16 A. Auto Tech. And go outside of the Select
17 Service program, I spoke to somebody at Auto Tech
18 recently.
19 Q. Okay. Who else?
20 A. Bartow Ford.
21 Q. Who else?
22 A. That's all I can recall right now.
23 Q. What do you recall Arrington saying about
24 Gunder's Auto Center?
25 A. Well some of them it was the faxes -- the
types

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you

2 processes to: I'm going to sue State Farm. I need
3 on board. That's from everybody consistently.

that

program

you

4 Q. Well, I mean, but I'm trying to find out
5 because I'm trying to find out whether or not at least
6 it's your impression, which again, these are people
7 are in agreement with you and the Select Service
8 other than Auto Tech and Bartow Ford, correct, that
9 just identified?

10 A. Right.

11 Q. So they have a business --

12 A. Well they don't always agree with me.

you,

13 Q. But they have a business relationship with
14 right?

15 A. Right.

16 Q. And apparently you can terminate them at any
17 point in time, correct? I'm assuming it's the same
18 arrangement as it was with Gunder's Auto Center?

19 A. Possibly, I mean I have to have support to
20 document my decision.

them,

21 Q. But you can -- State Farm could terminate
22 correct?

23 A. Correct.

24 Q. What did Arrington -- what do you recall, to
25 the best of your recollection, that Arrington said
about

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1 Gunder's Auto Center?

2 A. Several. I even have one of the faxes they
3 sent. And I don't even recall what that one was
about.

4 Mostly with rates, the e-mails about the leading up to
5 this litigation.

6 Q. Well what -- hold on. Let me --

7 A. Talking about --

8 Q. Let me back up. I understand they're
relaying
9 to you, and I appreciate that. In each of these
10 instances I'm assuming they have relayed to you
11 communications that Mr. Gunder has either faxed to
them
12 or somehow or another communicated with them about
some
13 disgruntlement, either he's having or about prices or
14 about what he's involved in with State Farm as far as

15 litigation or disputes are concerned, correct?

16 A. Right. And he has had so many over the years
17 that I'm not going to recall every instance, you would
18 have to go to them and, what are the things that we
19 have --

20 Q. Okay. That's what I'm trying to help with.

I

21 understand -- I'm not going to ask you what all was

said

22 by each one. That, for purpose of this question, is

not

23 that relevant to me.

24 What I do want to know, though, is with

regard

25 to any of these, were they -- did they all just send

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1 you: Hey, by the way, fyi, you know, Bob Davis at

State

2 Farm, here's what Ray's up to over there. Or were

there

3 some of these people who were actually saying: Bad,

4 Ray. No, Ray. That's what I'm trying to get at here.

5 Was there further commentary with any of these shops?

6 A. A little bit of everything you said.

7 Q. Okay. And what?

8 A. Here's what he sent me. Do you want me to
send
9 you this? He told me, you know, need to do this with
10 force.

11 Q. But, again, what I'm asking, though, is I
12 understand that they're relaying to you: This is what
I
13 got from him. Because they're, you know, Select
Service
14 program, you know, let's send Bob Davis some
information
15 that we have about somebody who's outside of the
Select
16 Service program. I get that part.

17 What I'm asking, though, is whether or not,
and
18 which one of these, actually had some disgruntlement
19 with Gunder's Auto Center as it either related to
those
20 communications or otherwise? And I mean, what I'm
21 saying is, aside from: Hey, here's some faxes. I
just
22 want to let you know this is what he's communicating.
23 Should I send this to you type deal.

24 What I'm asking you now is what
25 disgruntlements, if any, did these shops have with

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1 Gunder's Auto Center? What was the disgruntlement, if
2 any?

3 A. The major disgruntlement is they feel it's
4 interfering in their business processes. That was the
5 consistent -- the message.

6 Q. Who said that he's interfering with your
7 business process?

8 A. That was, again, my interpretation of the
9 things they're telling me based on the multiple
10 correspondence that you just --

11 Q. Well let's break that down. Did anybody, to
12 your recollection, explicitly say: He's interfering
13 with my business or he's interfering with my business
14 processes? Did anybody say it? That's a pretty
15 heavy --

16 A. That was my --

17 Q. Impression?

18 A. Impression of what they were trying to tell
me.

19 Some of them told me in pretty strong terms.

20 Q. And that's what I want to get to. Which --
21 Arrington's, A&E, Stewart's, Jenkins, Francisco's,
22 Cannon Buick, Maurice's, Chevrolet Center, Auto Tech,
23 Bartow Ford, of those -- and let's start with
24 Arrington's first. Did Arrington's have any
25 disgruntlement that they actually relayed to you as it

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1 relates to Gunder's Auto Center?

2 A. They're consistent in relaying information to
3 me that they're receiving and they're not happy about
4 receiving it.

5 Q. They're not happy about getting it. And what
6 did they say to you for you to come to the conclusion
7 they were not happy with it?

8 A. He's just telling me: We're not happy with
it.

9 He sent us some more stuff. We don't like it. That's
10 generalizations. I can't tell you specifics because
11 this has gone on for a long period of time.

12 Q. Well, but, you know, that's my job here is to

13 find out specifics as much as I can. You have to
14 understand that. And Mr. Grimm will have the same
15 opportunity with Mr. Gunder tomorrow.

they

16 A&E, what do you recall them saying? Did
17 voice any disgruntlements as opposed to just passing
18 along the information?

19 A. They're pretty hands-off. They just said:
20 Yes, we got it. We ignore it.

21 Q. Stewart's, did they voice any disgruntlement?

hear

22 A. They get it. And a lot of these repairers
23 agree with some of the things, you know, positions he
24 takes, they just don't like the interference. So I
25 those. They're not afraid to tell me what they agree

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1 with and what they disagree with.

2 Q. Well, I mean, and, again, you keep saying
3 interference so I'm going to keep stopping you when
4 you're saying it and ask you what do you mean by

information 5 interference? How in the world is relaying
6 or lobbying, for that matter, other shops to do
like 7 something as it relates to what Mr. Gunder may feel
8 is a valid procedure that State Farm just isn't paying
9 for. How is that interfering with their business?

opinion 10 A. I told you that was my opinion. And my
11 of it is that -- is what they were trying to tell me,
if 12 not relating it to anti-trust practices.

you 13 Q. Well, let me -- what is your understanding of
14 anti-trust practices? In what way do you think, if
engaging 15 do think, Gunder's Auto Center or Ray Gunder is
16 in anti-trust activity?

17 A. Any discussion of pricing.
18 Q. Any discussion of pricing is anti-trust?

Even 19 if Mr. Gunder is saying: Hey, State Farm isn't paying
20 for this, but I'm telling you here's a calculator that
exact 21 is legitimate and provides the reasonable and more
22 calculation of what the expense is. You ought to use
23 it. You should use this. Everybody use it. Is that
24 anti-trust in your opinion?

25 A. He's trying -- my opinion -- and, again, I'm

205

1 not an attorney. My opinion is if you're trying to
2 influence rates within a market, that's anti-trust.
3 That's all I know about it.

4 Q. Is it your position that State Farm doesn't
do
5 that?

6 A. We don't do that?

7 Q. Yeah. Is it your position that State Farm
does
8 not influence the rates in this market?

9 A. No, sir, other than the fact we send out a
10 survey.

11 Q. Do you ever talk to any of your Select
Service
12 shops about whether or not they feel like you
influence
13 the pricing in this market?

14 A. The only thing we discuss is that they're
15 meeting the rates they've agreed to per this program.
16 If there's changes or they've had changes in status

with

17 what they're receiving in other arrangements, we talk
18 about those and then they make them.

19 Q. Do you have any idea or has it ever been
20 honest communicated to you by these, as you put it, very
21 they and forthright Select Service programs, at least as
22 or relate to you in their communications, as to whether
23 not they would like to see some of these pricing
24 for mechanisms that Gunder's Auto Center engages in paid
25 by State Farm, do you have any idea?

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1 A. Well not necessarily State Farm but the
2 with industry. Like I said, they don't always disagree
3 what he's looking for. They disagree with the way he
4 goes about it.

5 Q. So at what point does that constitute the
6 market? majority of the industry, as you put it, or the

7 A. The prevailing competitive market?

8 Q. Right. Right.

9 A. If you influence -- again, I'm not an
attorney.

10 My understanding --

11 Q. It's not a legal question.

12 A. And I touch it, I handle it, like I probably
--

13 a little stronger than maybe what the law interprets,
I

14 don't know. But my understanding is if you influence
15 pricing throughout the market, that's anti-trust.

16 That's all I know.

17 Q. Has he influenced the pricing, as far as you
18 know?

19 A. I haven't seen it.

20 Q. Have your Select Service auto repair shops
21 flinched as far as what pricing they're demanding from
22 State Farm?

23 A. No. I've seen since and, again, like you
asked

24 prior, I haven't seen these paint calculator bills
until

25 the things leading up to this litigation. And I've
had

1 some go down that path.

2 Q. And do you know who in the local auto body
3 repair shop community was one of the first to use the
4 pain calculators?

5 A. Yes.

6 Q. Do you have any idea?

7 A. Stewart's.

8 Q. Stewart's used it -- do you know if Gunder's
9 Auto Center used it first?

10 A. I don't know.

11 Q. You would be able to know that, though, by
12 looking at your records for purposes of claims that
have

13 come through Gunder's Auto Center as compared to the
14 claims going to other shops as to who -- at least for
15 purposes of extras or supplements submitted, who was
16 using the calculator first, correct?

17 A. No, because a non-program shop would have
18 showed up as the billing with their printout.

19 Q. Right.

20 A. The Select Service shop would have just
21 submitted it as a dollar amount on their final bill.

22 Q. Okay. Would it surprise you if Gunder's Auto

paint

23 Center was the first in the local community, or the
24 local automobile repair community to have used the
25 calculator?

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1 A. No.

2 Q. With regard to Stewart's, did they have any
3 disgruntlements about Gunder's Auto Center?

4 A. Again, they're one -- and they have a paint
5 calculator. They check their business expenses. They
6 watch their business real close. They use that. They
7 would like to implement that.

8 Again, they don't like the way that it's been
9 handled.

10 Q. Don't like the way what's been handled?

11 A. The approach that Mr. Gunder's has taken in
12 getting this information to the community.

13 Q. And what has Stewart's said to you about the
14 way that he -- the approach he's taken?

15 A. They just think they're making it hard for

16 their business in general. I mean, specifically, I
17 don't know, they just -- it's an upset to the local
18 industry I guess. They have -- how do you explain
that?

19 It's upsetting the balance in the community.

20 Q. What do you mean by that? What is -- how is
21 Gunder's Auto Center, the way they're approaching, be
22 upsetting the balance of things in the community?

23 A. What the repairers -- a lot of them are in,
24 like you said, relationships that they depend on.
25 There's things they certainly would like to see.

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1 But they think, you know, it's something --
2 it's been approached -- the way this has been
approached
3 it makes it -- it reflects on them as a repairer
4 community.

5 Q. And what approach are they referring to, do
you
6 know?

7 A. Well, again, heavy handed, forcefulness of

the

8 way Mr. Gunder has presented this, the vocalness he's
9 had, the faxes he's sent.

shops

10 Q. Do you know whether or not some of these
11 would be using these paint material calculators were
12 not for Mr. Gunder using the paint material calculator
13 and assimilating the information and dispersing the
14 information relating to the validity of those paint
15 material calculators?

it

16 A. I have no idea.

17 Q. Now who at Stewart's was saying all this?

18 A. I speak with Dave Stewart.

19 Q. Okay. Who at Arrington's was telling you the
20 things that you told me that Arrington's was saying?

21 A. I speak with Mike Arrington there.

22 Q. Jenkins, have they voiced any disgruntlements
23 about Gunder's Auto Center?

these

24 A. They just acknowledged that they received
25 things.

1 Q. They didn't voice any disgruntlements?

2 A. Not that I recall.

voiced

3 Q. Okay. How about Francisco's, have they

4 any disgruntlements?

5 A. Plenty.

6 Q. Who at Francisco's?

7 A. Jeff and Steve.

8 Q. Jeff and Steve. And what have Jeff and Steve
9 said?

10 A. Specific -- you named them all a little while
11 ago. It was -- I really can't recall specifically.

my

12 Q. Well just generally tell me. I mean, that's
13 job here.

of

14 A. Well, again, specific I can't tell you. The
15 tone, the overall interference in the business, none
16 his business. Leave us alone. And that's not exact
17 words. That's my interpretation of what I heard from
18 them several times.

19 Q. And y'all have a great relationship with
20 Francisco's?

shops,

21 A. Like I said, personally with all of our

22 I have rapport -- I mean I consider a lot of them are
23 friends. They're good people. They have their own
24 issues with performance that we work on. And they
25 accept that and they work on those things.

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1 Q. Okay. Anything else you can recall Jeff and
2 Steve saying at Francisco's?

3 A. No, sir. I just know that --

4 Q. Disgruntlement wise?

5 A. Just they're disgruntled.

6 Q. Cannon Buick. Any disgruntlements come from
7 Cannon Buick?

8 A. He receives them. He, kind of, hands off.

9 Q. Maurice's?

10 A. He receives them. Doe his own thing.

11 Q. Not necessarily any disgruntlements from

Cannon

12 Buick or Maurice's?

13 A. No, sir.

14 Q. How about Chevrolet Center?

15 A. Had a few. Mostly just that we got. We got
16 these faxes or these phone calls, whatever it might
have
17 been. And that was from their old manager. They have
a
18 manager change there in the last six months. And I
19 haven't heard anything from the new management.

20 Q. Well what was the old management disgruntled
21 about, anything?

22 A. The same thing, we're just receiving them.
Not
23 really disgruntled. Hands off. And I keep getting
24 contacted. I don't like the contact.

25 Q. And who was at the Chevrolet Center at the
time

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1 saying they did not like the contact?

2 A. John Madley. I had from him as well as he
had
3 some contact with Mr. Stewart, too, and he didn't care
4 for that, along the same lines.

5 Q. He didn't care for the contact from

6 Mr. Stewart?

7 A. Right.

8 Q. What contact was that?

paint

9 A. There were some of the same issues about

10 materials that was being discussed.

Center

11 Q. Stewart was communicating with Chevrolet

12 about some of the same issues?

13 A. Right.

14 Q. Even though you told me a little bit ago that

15 Stewart's didn't have any disgruntlements with Ray?

16 A. He's not disgruntled. He's just upset at the

17 -- again, the way -- they keep telling me the way that

18 he goes about it. That's all I hear.

19 Q. How about Auto Tech. Do they have any

20 disgruntlements?

21 A. I had just had occasion to meet with them

22 actually last week. And they were real upset that

for

23 Mr. Gunder had questioned an estimate they prepared

24 a customer that was lower than the prevailing

25 competitive pricing in the market.

1 Q. Upset because he questioned an estimate that
2 they did?

3 A. An estimate they completed for another
4 insurance carrier that apparently their customer took
5 over to Mr. Gunder's shop and decided to have him
repair
6 the car.

7 Q. And he was upset that the estimate was too
low?

8 A. That the prevailing competitive rate, the
labor
9 rates, their market rates they listed on that estimate
10 were lower than what prevails on this market.

11 Q. And that's what Ray communicated to them?

12 A. That's what they told me.

13 Q. So they just -- that's an interesting
14 conversation. How did that conversation come about?

15 A. Polk County, the size that it, is a small
16 community. You know, I grew up in Polk County. I
know
17 a lot of these people. And since all this litigation
18 evolved there's nowhere I've been that I haven't been
19 asked about what's happening with Mr. Gunder. It's
20 like: Time out. We're not talking about that. But

21 sometimes they continue to provide information.

22 Q. So, what, were you visiting Auto Tech or
23 something?

24 A. Yes. I went over with my property claim
25 trainer to talk to them. They asked me to come visit

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1 their shop because they're certified repairer were BMW
2 and Mercedes now.

3 Q. What is that, for purposes of being a part of
4 the Service Select program or?

5 A. Possibly. I know the owner's name is Charlie
6 Brown. And I know Shannon Lambetter, who's the
manager.

7 She's been on our program in different locations in
Polk
8 County. I've just known her for awhile and I promised
9 her I would go visit and check her shop. And that's
10 what I did.

11 Q. And surely Charlie Brown and Shannon know
that
12 you're not real happy about the litigation initiated
by

13 Gunder's Auto Center?

14 A. I'm sure everybody assumes that.

15 Q. So certainly there's nothing gratuitous in
16 telling you they're upset because there were questions
17 on an estimate that Mr. Gunder felt like it was below
18 the prevailing competitive market rate?

19 A. Right.

20 Q. Bartow Ford, have they voiced any
21 disgruntlements?

22 A. No. Mike acknowledges. He receives it, kind
23 of hands-off.

24 Q. Mike, who?

25 A. I could not tell you his last name. It's a

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1 hard one to spell too.

2 Q. Well if you remember it, you'll tell me,
right?

3 A. Yes.

4 Q. How about Douglas -- Sean Douglas with
Douglas

5 Collision?

6 A. I know he receives them. I know he has
7 communications with Mr. Gunder.

8 Q. Any disgruntlements from Douglas Collision?

9 A. No. I know they're -- you know, again,
knowing
10 the market, knowing the people, I know they have a
11 relationship. And I deal with Sean Douglas the way I
12 deal with my other shops. And I have a pretty good
13 rapport with them. I don't step in on that.

14 Q. How about Meisners. Anything from Meisners?

15 A. I know they receive it. Again, they agree
and
16 with, you know, some of Mr. Gunder's points of view
not
17 I know they have a relationship as well. And I try
18 to cross the two.

19 Q. So no -- generally speaking, no
disgruntlements
20 from Meisners; is that correct?

21 A. Not that they voiced to me.

22 Q. How about Lakeland Chrysler?

23 A. I know they receive those. Is that one I
24 listed?

25 Q. Sorry?

1 A. Is that one I gave you on the list?

2 Q. I don't think so. Let me look. I don't
think

3 -- unless it would be Jenkins or Cannon Buick, I don't
4 think that's one of those.

5 A. Oh, okay. I'm sorry. They've changed
6 management. You know, Shannon Lamb-- -- the lady we
just

7 about was there for awhile, another manager was there,
8 and now another manager is there. And I have not
heard

9 a thing from the last two.

10 Q. How about Bernie's?

11 A. Paul acknowledges he receives it. Just
general

12 displeasure in receiving it. And then some of these
are

13 follow-ups from the subpoenas they recently received
and

14 everyone contacted me. But typically he's hands off.

15 Q. So other than displeasure in receiving the
16 subpoena, or at least as it was related to you, is
there

17 any other disgruntlements that Bernie's has relayed to

18 you?
19 A. Just in general that they don't like
receiving
20 those stuff.
21 Q. Did you get any disgruntlements from other
22 shops back before Ray was -- as it relates to Gunder's
23 Auto Center anyway, back before Gunder's Auto Center
was
24 terminated from your Service First program?
25 A. I don't recall the timelines. Pretty much
from

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1 the short period of time after I arrived in Lakeland,
2 since that time, periodic faxes, periodic phone calls
3 I've been made aware of. Timelines as to when in that
4 process, I don't know.
5 Q. I mean, as you sit here, do you recall there
6 being any complaints from the shops prior to him being
7 terminated from the Service First program?
8 A. Again, I can't recall the timeline whether or
9 not that was prior to the termination of Gunder's.

10 Q. And let me ask you this. You said as part of
11 the termination, at least you thought, because, again,
12 you were not told, that it was due to him charging for
13 operation materials and/or processes outside of what
14 prevails in the market, correct?

be

15 A. Again, that was my opinion of what it might
16 related to because they asked me to be there.

17 Q. Gotcha. Now do you recall that that occurred
18 in 2004?

19 A. Yes, sir. That's the time you have.

20 Q. You mention color, sand and buff as one of
21 those charges, but you also mentioned paint materials.
22 Isn't it true that Mr. Gunder didn't charge -- due to
23 paint material invoicing that you're speaking of --
24 until 2008?

25 A. I don't know when he started the paint

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1 materials calculation.

2 Q. Right.

3 A. But at that point there was still an issue.
4 Competitiveness-wise on his billings of his paint
5 materials compared to what that competitive market was
6 doing at the time.

7 Q. And it's your recollection that those paint
8 material -- that the paint material invoicing from
9 Gunder's Auto Center at that time and leading up to
the
10 termination of Gunder's Auto Center from the Service
11 First program was doubled what the other shops were
12 charging?

13 A. I remember specifically running those numbers
14 and discussing those with Ray that he was nearly
double
15 what his market was.

16 Q. And what did Ray say to that?

17 A. Specifics, again, and --

18 Q. Well I mean as specific as you can get.

19 A. You know, I don't believe that. Maybe it was
20 kind of I got his attention. That wasn't something we
21 argued about at that point. It was a fact I was
22 providing him in hopes that he maybe -- it was an
23 opportunity for him to check that -- where that was
24 happening. I don't remember that being a --

25 Q. What is your -- given your position, if
there's

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1 a shop that's incurring a particular expense for any
2 particular procedure, and it is realistically being
3 incurred, what is your recommendation to that shop if
4 that expense is in excess of the prevailing
competitive
5 market rate?

6 MR. GRIMM: Object to the form of the
question.

7 Q. What should they do?

8 MR. GRIMM: Sorry. Object to the form of the
9 question.

10 THE WITNESS: That's broad. We don't control
11 who they buy their parts from, who they do
business
12 with, for instance, where they send their service
13 work if they need to, where are they buying their
14 paint and materials. We don't control that. It's
15 their responsibility to manage their business and
16 make those business arrangements with those
vendors
17 they use that's going to produce them the most

18 profit margin.

19 So if a -- back to front-end alignments again
20 because I've seen that everywhere. If the market
21 typically charges, say, \$50 for a front-end
22 alignment, but I got some kind of agreement with
23 this guy over here and he's charging me 65 and
he's
24 paid that and passed it on. That's not
competitive.
25 We can't control those agreements that

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1 individual repairers make with the vendors they do
2 business with.

3 BY MR. GEOHAGAN:

4 Q. Do you think that should apply in every
5 industry or is this just something that's specific in
6 the automobile repair industry and insurance related
to
7 it?

8 A. I think it applies to any business. You're
9 going to make the best business decisions that affect

10 your bottom line and keep your business relationships
11 afloat, otherwise you fail as a business.

12 Q. That makes sense. But I mean, I'm talking
13 about this competitive -- what we keep going back to,
14 the prevailing competitive market rate. And, you

know,

15 for instance -- and this has been talked about before
16 off the record -- but if you go into Walgreens, you

pick

17 up a magazine, you take it to the counter, give it to
18 the clerk and the magazine says \$10. And you tell the
19 clerk: Hey, you know, I've been up and down the

street

20 here, Wal-Mart, CVS, 7-Eleven, this same magazine goes
21 for \$7 along here. I ain't paying you the \$10. I'm
22 only going to pay you the \$7 because that's the
23 prevailing competitive market rate, at least as you

put

24 it.

25 Do you think even in that type of industry,

the

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someone

1 retail industry as it relates to magazines that

for

2 selling that magazine should only therefore sell it

3 \$7 or that you shouldn't have to buy it for \$7 dollars

4 if you so choose to do so?

I

5 A. No offense, you answered your own question.

seller

6 have the right to buy that or not buy it. As the

7 of that magazine, I might see it not disappear from my

8 shelf and I might not buy it from my vendor anymore.

you

9 Q. But if you come in and get the magazine and

him

10 want to leave the store with it, you're going to pay

11 \$10, correct?

12 A. That's your decision at that point.

13 Q. Would you agree with me that before you're

14 going to leave that Walgreens you're going to give him

15 \$10, not \$7?

16 A. If you decide you're going to purchase that

17 magazine, yeah.

freedom

18 Q. So if one of your insureds, who has the

19 to go to any shop they want to, is charged something

20 that otherwise is not an unreasonable expense, that is

there?

21 actually incurred, should they not be free to go

they're 22 And then should Gunder's Auto Center expect that
23 going to be paid for what they've charged? Just like
24 the Walgreens charged the \$10 magazine, even though,
as
25 you put it, the prevailing competitive market rate is

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1 less than that.

2 A. We have a contract with our policyholder to
pay
3 based on prevailing competitive price. That owner
4 contracts with Gunder's auto body to fix the car at
what
5 they're willing to pay.

6 Q. Right.

7 A. If that's different than what our contract
is,
8 we've met our obligation in paying them prevailing
9 competitive rate. It's up to them, based on their
10 contract with Mr. Gunder, to pay them the difference.

11 MR. GEOHAGAN: Okay. Let's take a five here
if

12 it's okay with everybody. A five minute break.

13 MR. GRIMM: Sure.

14

15 (Recess from 4:00 until 4:18 p.m.)

16 BY MR. GEOHAGAN:

17 Q. Mr. Davis, are you aware of any comments that
18 have been made about Gunder's Auto Center, which
19 comments were made by any State Farm employee or
20 representative, as it relates to a State Farm
insured's
21 choice of using Gunder's Auto Center for its repair
22 needs.

23 A. No, sir.

24 Q. Are you aware of any State Farm
representative
25 ever telling a State Farm insured, in particular a

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but
1 Mr. David Page, that State Farm didn't have any idea
2 if -- as to whether or not Mr. Gunder had a warranty
--
3 but if he took his car, Mr. Page that is, into his

Farm

4 non-preferred shop, meaning Gunder's Auto Center, for
5 repair and it went in blue and came out pink, State
6 would not have any recourse?

know

7 A. I don't know either one or the -- I don't
8 that party. I never heard that.

9 Q. Have you ever relayed to any State Farm
10 representatives that they should either represent or
11 take actions to relay information to insureds who are
12 potentially taking their cars to Gunder's Auto Center
13 for repairs, that they should tell those insureds
14 anything as it relates to Gunder's Auto Center?

or

going

15 A. Since litigation, when claim representatives
16 claims processors asked me were we aware of claims
17 to Mr. Gunder's, I was specific to follow-up to make
18 sure that they were consistent in handling claims that
19 were Mr. Gunder's shop.

when

20 Q. And what do you mean or what did you mean
21 you told these claim reps that they should be
22 consistent? What does that mean?

car

23 A. Make sure that, you know, if they knew the
24 was going to Mr. Gunder's they were done with
25 conversations about Select Service. That, you know,

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1 nothing should be said outside of what we teach and
2 expect.

3 Q. Are you aware of a State Farm representative
4 when told by an insured that had a claim that he
wanted

5 to go to Gunder's because they had repaired his fender
6 on his vehicle in the past, that, quote, we don't deal
7 with Gunder's anymore, end quote?

8 A. No, sir.

9 Q. Is that true that State Farm does not deal
with
10 Gunder's anymore?

11 A. No, sir.

12 Q. And you have no knowledge of any such
comment?

13 A. No, sir.

14 Q. Are you aware of a State Farm representative
15 telling a State Farm insured that he could not have
his

16 car repaired at Gunder's Auto Center through their
17 insurance company and telling the insured that

Gunder's

18 Auto Center was overcharging customers and that
Gunder's
19 Auto Center was taken off of their preferred list?

20 A. I wasn't a party to the conversation. I
never
21 heard that before.

22 Q. Were you aware in general, at any time point
in
23 time, whether after this litigation or prior to this
24 litigation -- well, let's just start with prior to
this

25 litigation that any comments that were not necessarily

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1 favorable were being made by State Farm
representatives

2 to insured who were potentially taking their vehicles
to
3 Gunder's Auto Center for repair?

4 A. No, that's not what we train or expect. So,
5 no.

6 Q. Do you have any idea where such comments
would

7 come from for purposes of a claim representative or a
8 claim processor?

9 A. No, sir. Again, I would have to know where
10 those came from and was it something somebody
11 interpreted after a conversation with a claim
12 representative. I just don't know. There's nothing
13 that we would promote that would be said about a
14 non-program repairer.

15 Q. Who would be best situated, Mr. Davis, to
know,
16 at least globally, as to the genesis of any such
17 comments, if they were made?

18 A. I would have to know the name of the person
who
19 made those comments.

20 Q. Well, no. Again, if a claim rep -- we've
21 already talked about the set up and structure right
now.

22 And that structure has been in place since April of
23 2007, correct?

24 A. Correct.

25 Q. And even before that the structure was set up

1 to where an insured would at some point in time be
2 talking to either a claim representative or a claim
3 processor, correct?

4 A. Correct.

5 Q. Okay. Let's assume for one second that it
came

6 from different State Farm representatives, these
7 comments, okay, for purposes of this question. Okay?

8 A. Okay.

9 Q. And if that were the case, who, at State
Farm,

10 would have the best knowledge as to the genesis of
these

11 comments, if they were being made?

12 A. I could not tell you.

13 Q. Who would know how -- if these are claim
14 representatives and claim processors saying this --

15 A. Yes.

16 Q. Who would have supervision over these people
as

17 far as the comments that they would be making to
18 insureds that potentially could be taking their
vehicle

19 to Gunder's Auto Center for repairs?

20 A. In what we train and what we expect is what
any

21 contact person who's in -- who's charged with the
22 training of those people would tell you. Those
comments
23 -- it would be next to difficult to identify without
24 names from the person that's provided those
statements.
25 Q. And that's not going to be difficult to do.

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1 You have the claim rep number associated with each of
2 these claims, correct?

3 A. Right. That's somebody's interpretation of
--

4 Q. No, that's your opinion.

5 A. -- what was explained to them.

6 Q. That's your opinion. At a certain point it
7 becomes a little -- you know, where there's smoke
8 there's fire. And you start with one or two, but
9 there's more than that. And that's beside the point.

10 I'm asking you to assume for purposes of this
11 question that in fact these were made, if in fact they
12 were made. Who -- all I'm asking you right now is who

13 at State Farm is best situated to have knowledge as to
14 where these statement could be coming from?

15 MR. GRIMM: Object to the form of the
question.

16 Q. If they were being made?

17 MR. GRIMM: Object to the form of the
question.

18 THE WITNESS: I have no idea.

19 BY MR. GEOHAGAN:

20 Q. Who has supervision over these claim
21 representatives and claim processors that would be in
22 contact with these insureds?

23 A. Ray Etcheverry.

24 Q. And that's the fellow you mentioned
previously,
25 correct?

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1 A. Correct.

2 Q. Do you have any knowledge of a statement from
a
3 State Farm representative, quote, oh, no, you can't
take

4 it there -- meaning, Gunder's Auto Center -- we don't
5 have them on our list. Do you have any knowledge of
6 that?

7 A. No, sir.

8 Q. And would it help you if I were to identify
the
9 insured or would that help you at all?

10 A. No, sir.

11 Q. Do you have any knowledge of that in any way,
12 shape or form as to either where that came from or how
13 or if someone directed someone to say that about
14 Gunder's Auto Center?

15 A. Again, it's not taught, expected or known who
16 said or who interpreted the comments you're providing.

17 Q. Do you train -- I mean you said you're
involved
18 with the training, correct?

19 A. Some of it.

20 Q. Is part of the training to make sure that
21 you're clear with your insureds so that they don't
have
22 any misinterpretation as to what they're saying, is
that
23 part of the training?

24 A. Yes, sir. That's why we start with: You
have
25 the right to take your car to the repairer you want to

229

1 repair it.

2 Q. And that's what you train them to do. That's
3 what you train them to do.

4 A. That's what we train and what we expect.

training

5 Q. Are you always present at every single
6 session that these claim representatives and claim
7 processors are involved in?

8 A. No, sir.

these

9 Q. Are you privy to every conversation that
10 claim representatives and claim processors are
11 in as it relates to their superiors?

involved

12 A. No, sir.

13 Q. So do you know for a fact that they've never
14 been directed by anyone at State Farm or trained
15 otherwise by anyone at State Farm to say these things,
16 if they were said, as it relates to Gunder's Auto
17 Center?

18 A. I have no idea.

19 representative

Q. Are you aware of any State Farm

20 quote,

telling an insured that Gunder's Auto Center was,

21 too busy to handle his collision need?

22 A. No, sir.

23 have

Q. And do you have any idea where that would

24 come from?

25 A. No, sir.

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been

1 Q. Are you aware of any information that has

2 disseminated internally in and amongst State Farm, no

Auto

3 matter how vast or how limited, regarding Gunder's

4 Center?

5 A. No, sir.

6 Q. Do you know who a Tammy, Team Number 40 is?

7 A. No, sir. That we could find out.

to

8 Q. Well I know that. That's why I'm asking you

9 see if I can't find out right now. But you don't know
10 who Tammy at Team Number 40 would be?

11 A. No, sir.

12 Q. Have you, in preparation for this deposition,
13 reviewed the First Amended Complaint?

I've
14 A. No, sir. I've not seen -- I don't believe
15 seen the Complaint.

16 Q. Okay. Well let me -- are you aware of any
17 State Farm representative ever relaying to an insured
18 that Gunder's Auto Center overcharges or is
overcharging

19 customers?

20 A. No, sir.

21 Q. Are you aware of any State Farm
representative

22 saying to an insureds as it relates to Gunder's Auto
23 Center that Gunder's Auto Center does not repair its
24 customers vehicle in a timely and efficient way?

25 A. No, sir.

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1
representative

Q. Are you aware of any State Farm
2 stating to insureds that Gunder's Auto Center causes
3 unnecessary delays?

4 A. No, sir.

5
representative

Q. Are you aware of any State Farm
6 stating to a State Farm insured that Gunder's repair
7 equipment does not pass State Farm's inspection and is
8 lacking in quality?

9 A. No, sir.

10
representative

Q. Are you aware of any State Farm
11 stating to a State Farm insured that there are issues
12 associated with Gunder's Auto Center?

13 A. No, sir.

14
representative

Q. Are you aware of any State Farm
15 stating to a State Farm insured that State Farm has
16 had
17 real problems with Gunder's Auto Center?

18 A. No, sir.

19
stating

Q. Are you aware of any State Farm insured
20 -- I'm sorry. Are you aware of any State Farm
21 representative stating to any State Farm insured that
22 Gunder's Auto Center performs substandard vehicle
work?

23 A. No, sir.

24 Q. And with regard to any of these statements
that

25 I just asked you about, do you know whether or not,

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1 given your knowledge of Gunder's Auto Center, that
2 there's any truth to any of those statements?

3 A. Personally, I think there is probably some
4 truth but not in the context you've provided.

5 Q. Well what is the "some truth"? Tell me about
6 that.

7 A. Okay. We've had a problem, obviously.

8 Q. And what is the problem then?

9 A. Litigation, to be begin.

10 Q. Well other than the litigation, what is the
11 problem then?

12 A. Charging rate for rates or processes that are
13 not competitive in the market.

14 Q. Well I thought you told me a few moments ago,
15 and tell me which one is your testimony here, that

16 you're not telling and State Farm is not ever going to
17 tell someone they can't charge something; is that
18 correct?

19 A. Right.

20 Q. So if Gunder's Auto Center wants to charge
for
21 paint materials based upon PMCLogic, State Farm is not
22 going to tell them he can't do that, correct?

23 A. Again, it's in the context of who they told
24 that to, why we explain to them that these charges are
25 beyond the prevailing competitive price. They may
have

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1 agreed to pay Mr. Gunder what he charges in their
2 contract with him. And then they may have come to us
3 asking for reimbursement and we said: Sorry, that's
4 outside of the prevailing competitive prices in your
5 market. That's between you and Mr. Gunder.

6 So context of this information provided --

7 Q. But you don't know the context of those

8 conversations, correct?

9 A. I'm structuring it for my answer based on
what
10 parts of these had truthfulness to them.

11 Q. Well, let me go back through them and you
tell
12 me the truthfulness of them. Well, you tell me this,
to
13 your knowledge, does Gunder's Auto Center repair its
14 customers' vehicles in a timely and efficient manner?

15 A. I do not know at this point.

16 Q. How do you not know? I mean Gunder's -- you
17 still get claims that go through Gunder's Auto Center,
18 correct?

19 A. We get claims but I am not tracking
information
20 on his claim right now.

21 Q. Well, let me ask it this way. Do you have
any
22 knowledge or information to support an assertion that
23 Gunder's Auto Center does not repair its customers'
24 vehicle in a timely and efficient way?

25 A. No, sir.

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1 Q. Do you have any information or knowledge that
2 Gunder's Auto center causes unnecessary delays?

3 A. No, sir.

4 Q. Do you have any information or knowledge that
5 Gunder's repair equipment does not pass State Farm's
6 inspection?

7 A. No, sir.

8 Q. Do you have any information or knowledge that
9 Gunder's Auto Center is lacking in quality?

10 A. No, sir.

11 Q. Do you have any information or knowledge that
12 there are issues associated with Gunder's Auto Center?

13 A. Again, context of my understanding, or what
you
14 ask might be the bit of truth in that is, yes, there
is
15 an issue.

16 Q. Well, if, let's say, you're an insured and
you
17 know nothing about the automobile insurance industry
for
18 one moment. And you call up State Farm and you say:
19 Hey, I have this claim and I want to take it to
Gunder's
20 Auto Center. And the claim rep or claim processer
says:

you 21 Well, we have issues with Gunder's Auto Center. Do

22 think they have the context in which --

I 23 A. No, sir. You asked me if I thought there was
24 any truth to any of those statements. That is nothing

25 would train or expect the claim rep to tell to a

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1 customer.

customer, 2 Q. And it's your position that a claim rep or a
3 claim processor should not be saying that to a

4 correct?

people 5 A. They shouldn't. It is not taught. It is not
6 expected. And like we discussed earlier, these claim
7 reps could be from anywhere in the state. Those

8 don't know anything about Gunder's auto body. There's
9 no incentive or motivation for them to tell somebody
10 that.

11 Q. Well, given that you're a part of State Farm
12 and you're familiar with Gunder's Auto Center, do you

And 13 have any idea where these comments are coming from?
14 I'm not -- you know, we've got a pile here and more to
15 come. I mean, where are they coming from, do you have
16 any idea?
17 A. No, sir. Again, I was not a party to the
18 conversation, what was said and what was interpreted
by 19 the receiver.
20 Q. I got you. But you just said that these
claim 21 reps and claim processors are somewhere else in
another 22 part of the state, correct, some of them?
23 A. Possibly. We talked about that earlier.
24 Q. So if this is being said, one after the
other, 25 my question is, given who you are in this area, and

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1 overseeing estimators and overseeing those estimates
2 that come through Gunder's Auto Center.
3 A. Right.

4 Q. Do you have any idea, given your position,
5 where these comments could be coming from, from
6 different claim reps, as you've even put it yourself

--

7 A. No, sir.

8 Q. -- from around the state?

9 A. Like I said, I have no idea what the
motivation

10 for those people to make those statements to you might
11 have been. What the State -- what the conversation
12 between the claim rep or claim processor and that
13 particular customer was, that's all conjecture to me.

I

14 wasn't a party to it. I don't know.

15 Q. And, again, aside from whether or not you
were

16 a party to it. Putting that aside. I get that part.
17 That's clear. I'm still asking you, if these comments
18 were made, do you have any idea where they may have

come

19 from? Taking into consideration that you were not
privy

20 to the conversation. I get that part.

21 A. No, sir. There is nothing -- I have no idea.

22 Q. Is there any information or knowledge you
have

23 to support the assertion that State Farm has had real
24 problems with Gunder's Auto Center?

To 25 A. Again, what I know -- what's real problems?

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1 me, this is real problems. But that's nothing a claim
2 rep would know and there'd be no motivation for them
to 3 relay to a customer.

4 Q. And can you understand that if you were an
5 insured and you called up and asked to take your car
to 6 Gunder's Auto Center and you were told that: We have
7 real problems with Gunder's Auto Center, how that

might 8 mislead to the insured if that's what they were told?

9 A. If I was told that, but I don't know what was
10 said.

11 Q. Right. If it was told, do you understand how
12 that could mislead the insured?

13 MR. GRIMM: Object to the form of the
question.

14 It's been asked and answered several times.

15 Q. Do you?

16 A. Again, if it I was told that, yes, there's no
17 motivation for that conversation to happen.

18 Q. And do you have any information or knowledge
to
perform
19 support the assertion that Gunder's Auto Center
20 substandard vehicle repair work?

21 A. No, sir.

22 Q. Mister -- when's the last time -- I'm sorry.
23 Strike that. Mr. Davis, when's the last time you saw
an
24 invoice or bill, because you have different
definitions
as
25 for those as I understand, from Gunder's Auto Center

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1 it relates to a claim, a State Farm insurance claim?

2 A. Two days ago.

3 Q. So you've seen a number of those as they
relate
4 to State -- I'm sorry, as they relate to Gunder's Auto
5 Center, correct?

6 A. Correct.

Auto

7 Q. Can you point to any one of those that
8 establishes in any way, shape or form that Gunder's
9 Center overcharges for the services that they perform
10 for their customers?

has

11 A. If I were to look at one of those bills he
12 provided with the printouts, yes, I could show you.

13 Q. Okay.

14 A. Again, I would have to see that particular
15 vehicle and look at that invoice.

has

16 Q. Well, go ahead, since you've seen a number of
17 them, as you just testified to. Here, lately, what
18 and how has Gunder's Auto Center overcharged?

six

I

that

19 A. Without knowing the specific workings of his
20 paint calculator, I assume that a percentage of all of
21 his business goods, supplies, what have you, are
22 apportioned to each claim. When I review those
23 estimates and I see three different kinds of Bondo,
24 different kinds of sandpaper, flex agent, things that
25 know are not on the vehicles, then I would consider

was

1 billing for work that was not -- work or goods that
2 not provided.

and

3 Q. So, just so I understand you, if -- when you
4 look at an invoice or bill from Gunder's Auto Center
5 you see something that's being charged that you know
6 not a part of the repair work, then that would be
7 overcharging, correct?

is

8 A. It would be billing for work you did not
9 perform. I think that's worse than overcharging.

10 Q. And it's your position that that, in fact, is
11 what Gunder's Auto Center has done in the past?

12 A. No, sir.

the

13 Q. Well, okay. Well, then tell me, if they
14 haven't done that, is there anything else you can tell
15 me, in light of the fact that you've seen these bills
16 and invoices, that would constitute overcharging on
17 part of Gunder's Auto Center?

18 A. Again, the overcharging is broad. What we
19 looked at was operations or pricing that's not within

20 the competitive market.

21 Q. That's when he was in the Select First
program.

22 A. You said in the past.

23 Q. Okay. Put that behind us now. Since the
24 termination -- because he's not in the Select First
25 program anymore, right?

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1 A. Service First.

2 Q. Service First. I apologize.

3 A. Correct.

4 Q. And since that time and based on what you
5 testified earlier, hey, we're not going tell you you
6 can't charge things, as I understood you, as long as
7 they're things that you're not charging for that you
8 either didn't do or, you know, charging \$50 for a
piece
9 of tape, correct?

10 A. That's correct.

11 Q. Okay. To that degree and since the
termination

12 of Gunder's Auto Center in 2004 from the Service First
13 program, can you tell me whether or not Gunder's Auto
14 Center has overcharged for purposes of any invoice or
15 bill that you've gotten related to a State Farm claim?

16 A. Based on these paint calculator bills he's
17 provided, I would say, yes, it doesn't -- it doesn't
18 mean we haven't paid it. But we feel we've been
19 overcharged or billed for things that were not
necessary
20 on the vehicle or that those prices or billings were
21 outside the prevailing competitive prices.

22 Q. Putting aside the prevailing competitive
market
23 rates for one second, okay, if somebody tells you that
a
24 particular business is overcharging for something, as
25 opposed to their prices are higher than -- you know,

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1 McDonalds' prices are higher than Burger King's, okay.

2 But overcharging, the term overcharging, what
3 does that mean to you?

4 A. Again, it's broad. It's depending where I am
5 and what I'm purchasing.

6 Q. Sure.

7 A. If I got to Publix, my wife talked about
being
8 there on coupon day.

9 Q. Right.

10 A. And she comes home with her invoice they
didn't
11 give her her coupon discount or they charged her twice
12 for tuna fish, they overbilled -- overcharged her.

13 Q. Right. So overcharging is when somebody
either
14 charges you more than what they should have charged
you
15 based upon the expenses incurred or charges you for
16 something that they didn't incur at all, correct?

17 A. If they charged me for something they did not
18 incur or perform, you know, I go beyond -- that's not
19 overcharging to me.

20 Q. It's worse than overcharging to you?

21 A. That's fraud.

22 Q. Okay. But nonetheless it would be
overcharging
23 because you're still charging them something that was
24 not even a part of the service provided, correct?

25 A. Correct.

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1 Q. So you're overcharging, in addition to
2 committing fraud?

3 A. Right.

4 Q. Okay. To that degree then, and in light of
5 what we just discussed, are you aware of any -- do you
6 have any information or knowledge that Gunder's Auto
7 Center, in that context, has ever overcharged for the
8 services that it's provided to its customers in the
9 repair of its vehicles?

10 A. Again, if I look at these paint calculator
11 billings and some of the materials that are listed on
12 there that were not used in the repair of that
vehicle,

13 I would say he overcharged us.

14 Q. But you just told me a few moments ago that
15 you're not aware of Gunder's Auto Center ever doing
16 that?

17 A. No, sir, I don't believe I said that.

18 Q. Oh, what did you say then? I thought that
was

19 pretty clear. Tell me what you said.

these
20 A. No, we were discussing what my opinion of
21 billings were. Was -- did I see overcharges, and then
22 we differentiated between overcharging and fraud,
which
23 is -- we call that work billed not performed.

24 And I see that in these billings he has
25 provided us based on his paint calculator.

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1 Q. Okay. So it is your position then -- because
2 I've got something completely different?

3 A. I'm sorry.

4 Q. This was before that line of questioning you
5 were just referring to. Your position and your
6 testimony today is that Gunder's Auto Center has
7 actually charged customers for either materials or
8 services that it didn't even provide to customers?

9 A. My opinion, yes.

10 Q. And, please, give me the -- how many times
have

11 you seen this?

12 A. I can probably pull out every one of those
13 billings he has provided us with a paint calculator
14 printout and find something necessary on that repair.

15 Q. No, that's not what you said. Now, we're not
16 talking about this --

17 MR. GRIMM: Actually it was what he said.

18 MR. GEOHAGAN: No.

19 THE WITNESS: That's exactly what I said. =

20 MR. GEOHAGAN: No.

21 MR. GRIMM: There's no need to get into an
22 argument about this.

23 MR. GEOHAGAN: Okay. I'm not getting into an
24 argument.

25 MR. GRIMM: The testimony is what it was.

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1 MR. GEOHAGAN: I disagree with that.

2 MR. GRIMM: That's not what you said.

3 MR. GEOHAGAN: He didn't say "not necessary".
4 He said "wasn't used". He said that with regard

to

5 these materials, they weren't used. He didn't say
6 not necessary. That's a huge difference. Because
7 there's -- I understand there's a disagreement
8 between State Farm as to what's necessary and
9 Gunder's Auto Center. That's one thing.

10 BY MR. GEOHAGAN:

11 Q. But what you said was that when you see
12 materials that are a part of this paint material
13 calculator that you know were not used for purposes of
14 that repair --

15 A. Correct.

16 Q. Okay. Thank you. Now, is that, in fact,
17 you've seen with any Gunder's Auto Center repair that
18 he's actually used materials or provided services,
19 listed, anyway, on the invoice or bill, that, in fact,
20 you know were not used for purposes of that repair?

21 A. Again, that's where that overlap and our
22 disagreement is, necessary and used. If he put
23 something on there that wasn't used, it wasn't
24 to fix that part and it wasn't used anywhere in that
25 repair, it overlaps. And to me, there again --

necessary

my

of

its

know

1 Q. I understand in your mind it overlaps. But
2 question right now is, do you know, as you sit here,
3 that Gunder's Auto Center has actually put in as part
4 an invoice and billing something that it's charging
5 customer, either a material or a service, that you
6 either that material was not used or that service was
7 not provided?

8 A. Yes, sir.

9 Q. What was that? Give me an example of what
10 Gunder's Auto Center -- because a few moments ago you
11 told that's fraud. So this is a pretty big deal. So
12 tell me what that was.

13 A. I'd have to look at -- I mean, like I said, I
14 can look at any one of these estimates and find that
15 listing of materials. I've seen three different kinds
16 of Bondos, two different kind of hardeners, flex
17 agents,
18 flex
19 agent -- unless I said that already. There's numerous

those 19 items listed on those printouts that on any one of
20 given invoices I can probably identify something that
21 wasn't used on that car.

22 Q. And did you or one of your estimators ask
23 Mr. Gunder's or any representative of Gunder's Auto
24 Center whether or not -- I mean that's a pretty big
25 deal, right? I mean, if you're charging something
that,

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1 you know, was not even used. I mean, you would agree
2 with me, correct?

3 A. Yes, sir.

4 Q. Okay. Did you go to Gunder's Auto Center and
5 confront them with the fact that: Hey, you're saying
6 this is on there. I know, Mr. Gunder -- or whatever
7 representative, whoever you talked to -- that wasn't
8 used. Have you done that?

9 A. No, sir, because we've resisted the entire
10 bills to this point in most cases.

11 Q. Have you reported the fraud to the local law
12 enforcement agency?

13 A. No, sir, because we have, again, not
considered
14 a majority of these repair invoices for additional
paint
15 and materials.

16 Q. Well, either way, I mean, somebody's going to
17 pay for it, right? I mean, you've already said
18 yourself, the customer might have to pay for it,
right?

19 A. That, again, his contract was with that
20 customer. That might be the customer's
responsibility.
21 We're very careful with pointing that finger.

22 Q. Well, you've also been very careful about
23 talking about how you take care of your customers. It
24 seems to me that if State Farm, the insurance company
25 for one of these insureds, that you should go and
inform

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1 your insured that Mr. Gunder's actually committed
fraud

2 against them. Have you done that?

3 A. That's why we're here today. You're
4 questioning whether we've crossed that line in
advising
5 the customers what the issues we're aware of at
Gunder's
6 paint and body. There's a fine line between advising
7 them what you know and telling them something that's
not
8 true.

9 If you know something is going on, you have
an
10 obligation to that customer to tell them.

11 Q. Right.

12 A. In some cases that may have been true despite
13 what was truly said in these comments you said. But
to
14 him, that has crossed the line in giving customers
15 advice on whether or not to go there.

16 Q. Have you advised any of these customers?

17 A. I have not participated in those discussions.

18 Q. Has any -- have you directed anyone to advise
19 these customers that Gunder's Auto Center is
committing
20 fraud against you?

21 A. When they present me with issues that arise
as
22 they get them, yeah, I direct them with what is right

particular 23 and wrong on those particular -- about those
24 supplement requests. Beyond the estimating practice,
up 25 that's a claims practice or responsibility to follow

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1 with those insureds.
Farm 2 Q. Have you made sure that someone with State
Gunder's 3 has gone to your insured and advised them that
4 Auto Center is committing fraud?
5 A. No, sir.
6 Q. Why not?
the 7 A. We've resisted those bills. We've advised
8 customer up front that, you know, If the repairer you
competitive 9 choose charges prices beyond the prevailing
10 prices, you may be responsible for that. We've given
11 them the upfront as far as we're willing to push that.
12 From that point that contract is between them and
13 Mr. Gunder.

14 Q. And even though you are aware that Mr. Gunder
15 or Gunder's Auto Center has committed fraud against
one
16 of these insureds, you feel like that's all State Farm
17 is responsible so therefore you're not going to advise
18 them of the fraud?

19 A. Again, we provide the customers with the
20 information upfront. I mean, if you would prefer we
21 could do that at this point, but that wasn't our
intent
22 to do that.

23 Q. Well, certainly -- and I'll, you know,
whether
24 Mr. Gunder is my client or not, if someone is
committing
25 fraud I would hope that you -- and certainly if I'm --

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1 if my father's insured by you, certainly if one of
these
2 automobile repair shops is committing fraud against
him,
3 I'm sure he would like you to tell him since he's not

4 savvy to the process.

5 A. Right.

6 Q. And certainly if a loved one of yours had
some
7 kind of fraud committed against them, you would want
the
8 insurance company to advise of that at the time that
9 fraud occurs, correct?

10 A. Correct.

11 Q. But y'all have not done that at this point?

12 A. No, sir. And, you know, my opinion is that
13 Mr. Gunder didn't do that intentionally. It wasn't a
14 thought -- one of his thought processes in supplying
15 these bills or how he set up his paint calculator.

16 Like I said, we've resisted those in their
17 entirety. I just think that was something that was
18 missed in his application of that tool. That's why
it's
19 not a perfect tool.

20 Q. Okay. Other than the paint calculator how
21 else, in your opinion, has Gunder's Auto Center
the
22 overcharged, given what we talked about earlier, and
23 definition of overcharging, or committed fraud against
24 his customers?

25 A. Since 2003, 2004 whenever the termination of

since
has
question?

1 the Service First agreement was, the primary -- or
2 the initiation of this litigation, the primary issue
3 been paint and materials.

4 Q. Is there anything else, though, is my

5 A. Not that I can recall.

Gunder's
to
when

6 Q. Do you have any reason to believe that
7 Auto Center with regard to those paint materials is
8 relying on anything other than the PMCLogic and the
9 variables for which Gunder's Auto Center is supposed
10 input the information for purposes of that PMCLogic
11 it passes along the expenses associated with paint
12 materials?

13 A. I have no idea what his thought process is no
14 more than you do.

15 Q. I'm asking if you have any information or
16 knowledge to suggest otherwise?

17 A. No, sir.

done,
that

18 Q. And with regard to PMCLogic what have you
19 Mr. Davis, to research the voracity and validity of
20 paint material calculator?

21 A. From my personal knowledge I have looked at
22 estimates prepared using prevailing competitive prices
23 in the market versus some of the various paint
24 calculators used by some of the shops. I've talked to
25 some small shops and some large shops to see if
someone

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various

1 I know and trust and provide, you know, what their
2 returns are and what their profit margins are. What
3 they're seeing in their paint and materials. Are they
4 -- is the current process working for them versus what
5 they're seeing in the market with paint and materials.
6 Is it not working for them comparing them to the
7 paint calculators.

8 And I haven't found a huge difference.

9 Probably less than one in a hundred we find the
10 difference based on the prevailing competitive price
11 calculation versus the calculator. But beyond that,
12 that's a research and development for State Farm to
13 carry on.

14 Q. Well, you're accusing Mr. Gunder and Gunder's
15 Auto Center of overcharging, and at this point, fraud
as
16 it relates to the paint materials calculation with
17 the --

18 MR. GRIMM: Objection. He is not accusing
him
19 of that.

20 Q. -- with the use of PMCLogic. Have you done
21 anything to look into whether or not PMCLogic is a
valid
22 manner in which to calculate the expenses associated
23 with paint materials, aside from what you just
24 mentioned? But have you done anything to find out
25 whether or not that particular calculator is valid?

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provides

1 A. I have done research. To me, what it
2 is not valid. That's not my responsibility to approve
3 or disapprove that tool.

pay

4 Q. You're telling somebody you're not going to
5 something. That seems to me it's your responsibility,
6 would you agree?

question.

7 MR. GRIMM: Object to the form of the

8 THE WITNESS: No, sir.

9 BY MR. GEOHAGAN:

is

10 Q. It's not your responsibility to determine the
11 voracity of expenses incurred by an auto body repair
12 shop in the repair of one of your insured's vehicle,
13 that what I'm hearing you say?

14 A. Yes, sir.

research

15 Q. Other than what you've just told me, going to
16 other shops and looking at how they do it, using their
17 own calculators, have you done anything else to
18 the validity and voracity of the PMCLogic calculator?

19 A. No, sir. My responsibility is prevailing
20 competitive price. And I know we keep going back to
21 that, but that is what it is.

22 Q. So until -- if and until other shops start
23 using PMC, like the majority of the shops in the local

24 area start using PMCLogic then that will not be
25 something that you'll pay for, correct?

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this 1 A. It's my understanding of our procedure at
2 point.

which 3 Q. What is it about the other calculator --
was 4 when's the first time -- you said Stewart's earlier
5 the first one that you saw, anyway, using a calculator
6 for paint materials, correct?

7 A. I don't know who was first. But I assume --
8 maybe I misunderstood. At about the same time I saw
9 paint calculator usage occurring. At the same time
10 Mr. Gunder's did it, Mr. Stewart had a few, a couple
11 other shops have tried different methods and tried
some 12 different things.

13 Q. And what was it that was magical about the
14 other shop's calculators as compared to the PMCLogic?

them

15 A. There is none. We don't agree with any of
16 at this point.

17 Q. You don't agree with any of them?

18 A. No.

19 Q. So with regard to any of these paint material
20 calculators, as far as you're concerned, the use of
21 those is overcharging; is that right?

22 A. Use of those is --

23 Q. At least overcharging.

24 A. We're back to that again.

25 Q. So the use of any of those is not being

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1 competitive, correct?

2 A. Correct.

3 Q. Until the majority of the shops use them,
4 correct?

5 A. Correct.

paid

6 Q. Do you know whether or not State Farm has
7 for paint materials incurred by another local shop

using

8 a paint calculator?

9 A. Yes, sir.

10 Q. Okay. Have they?

11 A. Yes, sir.

ago

12 Q. Okay. I thought you told me a few moments

13 that you don't agree with the use of the paint

14 calculators?

15 A. We've discussed that issue with those

16 repairers.

17 Q. And what's magical about those repairs as

18 compared to Gunder's Auto Center?

19 A. They addressed -- took the opportunity to

20 address their issue and do what the market does.

21 Q. Well, what's the difference between their use

22 of a paint calculator and Gunder's Auto Center,

23 Mr. Davis?

24 A. There's nothing. There's no difference.

25 Q. Then why aren't you paying for the paint

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1 material expenses incurred by Gunder's Auto Center?

those

2 A. Again, these are based on -- these are Select
3 Service estimates, I'm sure you're looking at, and

know

4 were submitted as final bills. It may or may not have
5 been reviewed as in the process of our reviews. I

6 every shop that has done them. And we visited about
7 prevailing competitive price. And they've corrected
8 that issue.

9 Q. How have they corrected it?

10 A. They're using prevailing competitive and
11 they're not using paint calculator in the final bills.

12 Q. They're not?

13 A. No, sir.

14 Q. You're sure about that?

we

15 A. Oh, I'm sure they're trying some. And when

16 find them -- and the other things even out in those
17 inspections that we do, then we'll address it again.

for

18 Q. Are you aware that currently, for purposes of
19 the repair work that's done by Gunder's Auto Center,

that

20 a customer that happens to be a State Farm insured

21 you are capping Gunder's Auto Center, or capping that

22 customer as it relates to their relationship with

23 Gunder's Auto Center at \$500?

24 A. No, sir.

25 Q. You're not aware of that?

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1 A. We never cap.

at 2 Q. Are you paying for paint materials expenses
3 other shops where they have used a paint calculator?

4 A. We have paid them, not willingly, but we paid
5 them in the course of them submitting their final
bills.

6 Q. Okay. Have you paid Gunder's Auto Center for
7 paint materials expenses when using a paint
calculator?

8 A. I can't answer that.

9 Q. Why can't you answer that?

10 A. Sometimes through other channels claim reps
11 will receive a supplement and, not knowingly, we'll
pay

12 something. So I can't say nothing was ever been paid.

13 Q. To your knowledge, Mr. Davis, have you or
State

14 Farm ever paid Gunder's Auto Center for paint material
15 expenses using a paint calculator, to your knowledge?

16 A. No, sir, not to the calculations of that
17 calculator. I mean, we've negotiated paint charges
18 before for speciality situations; but not based on the
19 paint calculator.

20 Q. As opposed to, for instance, Meisners --

21 A. Yes.

22 Q. -- where you have paid for paint material
23 expenses using a paint calculator, correct?

24 A. Yes.

25 Q. And have you ever paid another local auto

body

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1 repair shop for paint material expenses using a paint
2 calculator where State Farm's position is that the
3 cost of paint materials exceeds the normal paint
4 formula?

true

5 A. Say that again.

in

6 Q. Have you ever paid an auto body repair shop
7 the local community, Polk County, other than Gunder's
8 Auto Center, for paint material expenses using a paint
9 materials calculator, even though the true cost of the
10 paint materials exceeds the normal paint formula?

11 A. I don't know. I'd have to look at that
12 circumstance.

13 Q. Do you have any knowledge of ever doing that?

14 A. I know we paid beyond and we've had bills
15 submitted based on paint calculators. Again, not
16 willingly and we have addressed with those repairers.

paint

17 Q. Have you ever paid Douglas Collision for
18 material expenses using a paint materials calculator?

19 A. Not that I'm aware of. I didn't know Douglas
20 used a paint calculator.

21 Q. You're not aware of that?

22 A. No, sir.

addition

23 Q. What other shops are you aware of, in
24 to Meisner's, since you don't recall ever doing that
25 with Douglas Collision -- as you sit here today and

materials 1 having paid the paint materials using a paint

2 calculator?

3 A. I believe I had some discussion with Doc
4 Jenkins, Doc Jenkins at Jenkins here recently. Dave
5 Stewart, we've had some conversations with him. Those
6 are the ones I recall right now.

7 Q. Do you think that Meisner's or Douglas
8 Collision or Jenkins Lincoln Mercury overcharged?

9 A. Again, the term overcharged, they're charging
10 beyond what's prevailing competitive price.

11 Q. Do you think, you just opined earlier,
12 testified that, at the very least, that it's your
13 testimony that Gunder's Auto Center overcharges. And

we

14 went into the whys of that.

15 Now I want to know do you think that Douglas
16 Collision, Jenkins Lincoln Mercury or Meisner's
17 overcharges based on what we've already talked about?

18 MR. GRIMM: Object to the form of the
question.

19 THE WITNESS: The term overcharging, I
disagree

20 with how you're applying that. But not being

in 21 competitive within the Select Service environment

22 their market, that concerns me.

23 BY MR. GEOHAGAN:

24 Q. My question is are they -- it's a simple

25 question. You very easily testified to it regarding

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1 Gunder's Auto Center. My question is, is Jenkins
2 Lincoln Mercury, Meisner's and/or Douglas Collision
3 overcharging or have they overcharged to your
knowledge?

4 MR. GRIMM: Object to the form of the
question.

5 Q. It's yes or no.

6 A. Yes. To use your term, yes, it's
overcharging

7 for our program.

8 Q. Do you think that Jenkins Lincoln Mercury,
9 Meisner and/or Douglas Collision is passing along an
10 expense that it didn't actually incur or that it
wasn't

11 otherwise reasonable in nature?

question. 12 MR. GRIMM: Object to the form of the

13 THE WITNESS: I don't know.

14 BY MR. GEOHAGAN:

15 Q. Do you have any knowledge, information, or
16 anything, to suggest that Meisner's, Douglas Collision
17 and/or Jenkins Lincoln Mercury have passed along an
18 expense that was not reasonably incurred by them or
any
19 one of them?

20 MR. GRIMM: Object to the form the question.

21 THE WITNESS: I have no idea.

22 BY MR. GEOHAGAN:

23 Q. My question now is do you have any
information
24 or knowledge to support that they have charged you or
25 charged their customer, it happens to be a State Farm

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1 insured, for an expense that they did not reasonably
2 incur as part of the repair work?

3 MR. GRIMM: Object to the form of the
question.

4 Asked and answered several times.

5 THE WITNESS: I have no evidence --

6 MR. GEOHAGAN: No, it's not. He hasn't
7 answered the question.

8 THE WITNESS: I have no evidence that they
have
9 done anything or incurred charges nor do I know
what
10 they paid for what they use. So...

11 BY MR. GEOHAGAN:

12 Q. I understand that. Mr. Davis, I understand
13 that. But all I want to know is, do you have any
14 information or knowledge to suggest that they have.

15 MR. GRIMM: Object to the form of the
question.

16 Asked and answered.

17 MR. GEOHAGAN: No.

18 BY MR. GEOHAGAN:

19 Q. Charged you any expenses that they did not
20 reasonably incurred as part of the repairs?

21 MR. GRIMM: Object to the form of the
question.

22 Asked and answered.

23 THE WITNESS: No.

24 MR. GEOHAGAN: Thank you. Now it's answered.

25 BY MR. GEOHAGAN:

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1 Q. And you're not aware of any \$500 cap that's
2 been placed on Gunder's Auto Center by State Farm?

3 A. No, sir.

4 Q. Who would know about that, if you don't,
5 anyone?

6 A. If it was there I would know about it.

7 Q. Are your estimators, by the way, given that
8 you're their superior, familiar with the going-ons and
9 the manner in which the local auto body repair shops
10 perform their services here in Polk County?

11 A. The general body shop business?

12 Q. Well, I mean are they familiar with each of
the
13 auto body repair shops that do business in Polk
County?

14 A. Most of them.

15 Q. And they're familiar with the manner in which
16 each of those auto body repair shops charge and how
they
17 go about their work, at least generally; is that
right?

18 A. In general, if they've been to those shops
19 before they know.

20 Q. Let me ask you this specifically. I mean,
21 they're familiar with Douglas Collision?

22 A. Yes, sir.

23 Q. Francisco's?

24 A. Yes, sir.

25 Q. Bernie's?

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1 A. Yes.

2 Q. Jenkins Lincoln Mercury?

3 A. Yes.

4 Q. Lakeland Chrysler?

5 A. Yes.

6 Q. Stewart's?

7 A. Yes.

8 Q. And Meisner's?

9 A. Yes. I don't spend a great deal of time at
10 those shops any longer because they don't write
11 estimates at those shops for the most part.

12 Q. Is that because those shops are in the Select
13 Service program?

14 A. Yes, sir.

15 Q. But they, nonetheless, get documentation and
16 familiar with at least the way they charge and what
17 they're charging for and those types of things; is
that
18 correct?

19 A. They don't really need to know that.

20 Q. But, I mean, you still -- what, you just get
21 the -- whatever they charge and pass it along and no
one
22 checks it whatsoever or how does that work?

23 A. If we prepare an estimate -- if they prepare
an
24 estimate somewhere, they prepare that estimate based
on
25 prevailing competitive price.

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1 Q. Who? Who are you talking about?

2 A. The estimators.

3 Q. Yeah.

4 A. You were asking about the estimators.

5 Q. Right.

6 A. So if they're preparing an estimate, they're
7 preparing their estimate based on prevailing
competitive
8 price.

9 Q. And you already stated that, apparently, the
10 prevailing competitive market rate is based upon those
11 shops, right, and what they charge, correct?

12 A. Right.

13 Q. Okay. So you have to be familiar with how
14 those shops charge to have some familiarity with what
15 you call the prevailing competitive market rate?

16 A. Estimators have access to that information
when
17 they pull up a shop they can see what their rates are.
18 But we generally provide them the PCP for the market.
19 It's entered into their estimating laptops. It's done
20 for them, for completing -- for estimating purposes.

21 Q. But generally speaking, they're familiar with
22 the services and charges of the shops that I just
23 identified; is that correct?

24 A. Sure. Any of the personnel, they know
they're
25 business operation. They're familiar with it.

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1 Q. Do you know whether or not you or anyone else
2 has any documentation from the meeting that we
discussed
3 earlier between Mr. Gunder and Mr. Neidlinger, Eloy
4 Rodriguez and yourself?

5 A. When there was a shop termination under the
6 Service First program there was a one-line letter that
7 was sent to the repair facility confirming we've
8 discontinued the Service First program. That, as far
as
9 I know, would be the only documentation, which
10 Mr. Gunder should have received.

11 Q. Okay. There would not be anything supporting
12 that that you're aware of, any reasons given that
would
13 be documented?

14 A. No, sir, because regardless of the reason,
the
15 allowed reason is either party can terminate the
16 agreement at any time for any reason.

17 Q. Does State Farm have a procedural manual that

18 is used by the claim representatives and claim
19 processors, or at least, is provided to them?

20 A. They have available their claim's manual,
which
21 is electronic.

22 Q. And for purposes of that claims manual, would
23 there be directives in there or if not directives, at
24 least areas in there addressing how and what they
should
25 say or not say as it relates to talking to insureds

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1 about their choice of auto body repair shops?

2 A. There's sample letters of all the letters
that
3 they use back and forth. I do not recall if the word
4 track we discussed earlier is in that claim manual.

5 Q. And is it the same claim manual that you
would
6 have, or do you have a different claim manual?

7 A. I have access to that same claim manual.

8 Q. Right. But do -- as the -- and I can't
9 remember what you're title is now, Estimatics --

built

10 A. Team manager.

11 Q. -- team manager, do you have --

12 A. Management --

13 Q. -- manual that is provided to you?

14 A. Management responsibilities or guides is

15 in to the same manual.

16 Q. The estimators have the same manual?

17 A. Yes, sir.

18 Q. And do you have that in your possession?

19 A. It's electronic.

20 Q. Well, either way, I'd like -- these days,

21 particularly in discovery, even if it's electronic and

22 you have access, it's in your possession. Do you have

23 that in your possession?

24 A. Now right now.

25 Q. Well, at your office?

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1 A. Yes, sir.

2 Q. And as far as surveys are concerned, do you

3 have all surveys that have been performed, for
purposes
4 of -- through State Farm of course -- with the local
5 auto body repair shops in Polk County?
6 A. They're electronic as well. Once I review
them
7 and they move on, I do not have access to them.
8 Q. Are they still on the system somehow or
another
9 and you just don't have access or what?
10 A. I don't have access. I don't know -- I'm
going
11 to have to research through who I might have to get
12 access or have them provide information.
13 Q. Have you ever provided a survey with regard
to
14 AC charges?
15 A. No, sir.
16 Q. What kind of surveys have y'all provided to
the
17 local auto body repair shops in Polk County?
18 A. What kind of surveys?
19 Q. Right. Is there just one survey?
20 A. Just the prevailing competitive price survey.
21 Q. Okay. There's no other type of survey, other
22 than that?
23 A. No, sir.
24 Q. And how often do you submit that to the local

25 auto body repair shops in Polk County?

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1 A. The prevailing competitive price survey, they
2 can do it daily.

3 Q. Well, how often do you, on average, get those
4 surveys from the shops?

5 A. It fluctuates. Some I get yearly. I get
some
6 that update it almost every month. I've got some that
7 have been on there for three to four years. They
don't
8 want to leave it alone.

9 Q. And as of right now the only surveys that you
10 have are ones -- would be the ones that were most
11 recently performed by the auto body repair shops in
Polk
12 County; is that correct?

13 A. No. Even Mr. Gunder just completed one, once
I
14 submit that electronically I don't have it any longer.

15 Q. Who has it?

is 16 A. It goes into electronic space, wherever that
17 stored.

18 Q. It's stored somewhere on the State Farm
system?

19 A. Yes, sir.

20 Q. Do you maintain any correspondence that you
21 otherwise would have with other State Farm
22 representatives, whether they be your superiors or
other
23 estimators or claim representatives or claim
processors?

24 A. What kind of correspondence?

25 Q. Whether it be e-mail or letters, anything to

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1 that degree?

2 A. Just items that would be subject to records
3 retention. Nothing that I can recall that would
pertain
4 to Mr. Gunder.

5 Q. Well I'm just asking in general though. I
mean

6 you do engage in e-mails internally; is that correct?

7 A. Yes, sir.

8 Q. And you would have those e-mails, one way or
9 the other, whether they're in, as you put it,
electronic
10 space or otherwise, readily accessible, correct?

11 A. It depends if it's one of those subject to
12 records retention.

13 Q. If you sent an e-mail today, it's not on
there
14 anymore because it's not subject to record retention,
15 what does that mean, subject to records retention?

16 A. There's record retention schedules, how long
17 you have to keep things based on hold orders, company
18 procedures, what have you. So you have to have
records
19 management. If I send you an e-mail that says: Good
20 morning, that's not something that has business
content
21 or subject to business retention.

22 Q. So you are required to immediately deplete
23 that?

24 A. No, sir. It's just something you don't have
to
25 keep.

1 Q. Well, I'm not asking what you have to keep or
2 don't have to keep. I'm just asking whether or not
you

3 would have to have those e-mails in your possession?

4 A. Which e-mails though?

5 Q. Any e-mails. I'm just asking -- right now
it's

6 just a general broad question. First of all I was
7 asking whether or not you e-mail internally. And if I
8 understand you correctly, yes, you do. And my next
9 question is, are those e-mails on your system

currently,

10 at least some of them?

11 A. Ninety percent of what I get today will be
gone

12 tomorrow? There's nothing I need to keep.

13 Q. But otherwise -- there's no reason for you to
14 believe it would not otherwise be on the hard drive
15 somewhere.

16 A. I'm sure somebody could find it somewhere.

17 Q. Do you recall there ever being any
18 disgruntlements with Gunder's Auto Center prior --
well,

19 let me back up. Do you recall any claim
representatives

Gunder's 20 or estimators that had any disgruntlements with
21 Auto Center prior to his termination from the Service
22 First program in 2004, other than Eloy Rodriguez?

23 A. I know I heard from claim representatives. I
24 couldn't tell you who at this point.

25 Q. And what do you recall those claim

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1 representatives saying about Gunder's Auto Center?

into 2 A. Just combative situations they had gotten
3 with him over one situation or another.

not 4 Q. On what situations do you recall? And I'm

5 asking for specific claim or anything like that. I'm
6 talking about as we discussed earlier, what issue?

What 7 subject?

give 8 A. Even that, it would be a guess if I was to
9 you some categories.

10 Q. Well obviously I don't want you to guess.

You

11 just can't recall what the subject -- I mean, you've
12 already discussed previously about the sand and buff
13 then with Eloy Rodriguez you discussed how there was
14 estimate differences. Are those the things that you
15 recall or is there anything else?

I'm

16 A. Those were just the consistent things that
17 positive about.

18 Q. Okay.

There's

19 A. Like you said earlier, there's smoke.
20 fire. I saw smoke.

21 Q. And then once you see the smoke you've got to
22 determine where the fire is coming from, correct?

23 A. Yes, sir.

anything

24 Q. And hope you call it right. Is there
25 else you can recall, as you sit here today, other than

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1 estimate differences or sand and buff?

2 A. Prior to --

3 Q. Leading up to the termination --

4 A. No, sir.

5 Q. -- of Gunder's Auto Center?

6 A. No, sir.

7 Q. Have you heard of any disgruntlements since

8 this termination from any claim representatives or

9 estimators about Gunder's Auto Center?

10 A. Yes, sir.

11 Q. Who?

12 A. Again, I can't -- my estimators, they like

Ray.

13 They work with Ray fine from what I understand -- and

I

14 haven't -- they're like the other shops. They don't

get

15 -- they're not in the -- have nothing to say about it.

16 They're getting their thing done with Ray and they go

on

17 with it.

18 Q. Right.

19 A. When we got into, initially, with some of

these

20 claims where paint materials billings popped up, I

21 believe there was some conversation with Mr. Gunder

22 about: I'm not releasing this car unless I get this

23 money. And I don't know who those claims reps were; I

24 just know the situation. They came to me and said:
25 What do I do? So that had them excited.

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1 Disgruntlement, if you want to call it.

2 Q. Any other area of disgruntlement?

3 A. As we already discussed what some of the
shops
4 gave me as feedbacks.

5 Q. Well I'm talking about right now, any other
6 estimators or claim representatives with regard to any
7 other area, other than the paint materials?

8 A. No, sir.

9 Q. You were talking earlier about auto
Estimatics
10 inspectors, correct?

11 A. Yes, sir.

12 Q. And do these folks perform inspections of the
13 other auto body repair shops in the local area as
well,
14 in the Polk County area?

15 A. Select Service repairs?

16 Q. Yes, sir.

17 A. We have still the two people assigned that
18 review Select Service while our other auto Estimatics
19 inspectors write State Farm estimates at non-program
20 repairs and residencies.

21 Q. And I think you may have already told me
their
22 names, but can you remind me what their names are?

23 A. If we separate two by terms Select Service
24 inspectors?

25 Q. Yes.

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1 A. Becki Berbusse and Eloy Rodriguez.

2 Q. And would they be the ones that would
maintain
3 the inspection reports that are performed?

4 A. They are, again, electronic. When they
5 complete them it goes electronically.

6 Q. So electronically they would be in the
7 possession of State Farm, I guess?

8 A. Right. And like I said before, and Mr.

Gunder

9 may be able to answer this because he probably dealt
10 with them. I don't know if Becki was involved with
11 Service First prior to the discontinuing with the
12 agreement.

13 Q. Who was?

14 A. Who was?

15 Q. Who was the inspector during Service First
and

16 leading up to --

17 A. Eloy was the lone inspector, Service First
18 inspector at that time up to a point where it grew to
19 needing two inspectors.

20 Q. So from 2002 to 2003 up until the
termination,

21 at least up until the termination of Gunder's Auto
22 Center in 2004, Eloy Rodriguez would be the auto
23 Estimatics inspector?

24 A. Again, he did the majority of work with Ray.
25 I'm not sure if Becki was involved at that point.

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that

1 Q. Yes, sir. Do you have any information or
2 knowledge that would support any type of assertion
3 Gunder's Auto Center fails or refuses to honor its
4 lifetime warranty for parts, labor and/or materials
5 it's using in its repairs?

that

6 A. No, sir.

7 Q. And you're unaware of whether or not when a
8 claim representative or a claim processor or any other
9 State Farm representative is speaking over the phone
10 with an insured, whether or not any of those
11 conversations are recorded; is that correct?

12 A. I do not believe so. I cannot verify.

13 Q. And, again, that would be the fellow you
14 mentioned?

15 A. Ray Etcheverry.

16 Q. Okay.

17 THE WITNESS: Can we go off for a second?

18 MR. GEOHAGAN: Sure.

19 (Discussion off the record.)

20 BY MR. GEOHAGAN:

to

21 Q. And do you have any information or knowledge
22 support any assertion that Gunder's Auto Center
23 overcharges for parts or labor prices, labor rates?

24 A. No, sir.

25 Q. And are you aware of any video recordings
that

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1 otherwise would have been made as it relates to State
2 Farm insureds and their communications with either
State
3 Farm claim reps, claim processors or any other State
4 Farm representative?

5 A. No, sir. No clue.

6 Q. Who makes the ultimate decision -- you know,
7 we're talking about these paint materials. Are you
the
8 one that ultimately makes the decision as to whether
or

9 not those, at least generally. Okay, I mean you've
10 stated your possession on the record here. And for
11 purposes of the Polk County area, are you the one, in
12 stating your position on the payment of paint
materials

13 based on a paint material calculator, is that a
decision

14 that you've come to or is that a decision someone else

15 came to and they passed along to you and that's where
16 you're coming to your conclusion?

17 A. My understanding in training with Select
18 Service program is we paid based on prevailing
19 competitive pricing in the market. Period. So that
20 eliminates the paint calculator issue.

21 Q. Okay. I mean, but what I'm asking -- well,
22 maybe you answered it. You were testifying to that
23 based upon your training; is that correct?

24 A. Yes, sir.

25 Q. And when you say your training, is that like,

I

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1 mean, you go to a class and somebody's telling you:
2 Hey, this is how we do our estimating and what we pay
3 and what we don't pay; is that kind of the context?

Or

4 when you say training, do you mean when you go to the
5 office of Kurt Neidlinger and he tells you and he's
6 training you at that moment, what does this training

7 entail?

8 A. Since I started with the company the -- he
9 learned the contract. Contract says we pay prevailing
10 competitive price based on the service. We roll out
the
11 program, we discuss prevailing competitive price, our
12 pricing structures of shops with those repairers. And
13 that's what we're going pay. There's never a mention
of
14 -- except for, We'll pay you this, or except for,
We'll
15 pay you this. There's no exception to pricing.

16 Q. Okay. Well all I'm wanting to know right
now,
17 though, is where do you come to that conclusion from?
18 Is it from your review of the contract? Where does it
19 come from? And just to cut to the chase, is there
20 anybody saying to you, some other person saying: Hey,
21 Bob, you know, this is how we look at this. And so
22 that's what you're going to -- that's the position
23 you're going to take?

24 A. Well I've been, over and over again, for
25 whatever reason, as we go through changes with the

1 market structures, I mean I've asked my boss is this
2 appropriate? Is this the way it is? Yes. I've asked
3 our Bloomington people: Am I doing this right?

4 Q. Your what people?

5 A. Bloomington people. Bloomington is our home
6 office.

7 Q. Yeah.

8 A. Am I right, we are at -- our policy contract
9 says we pay prevailing competitive price, yes.

Nothing

10 has ever changed in that.

11 Q. Anyone else that you would go to, other than
12 Kurt Neidlinger and your Bloomington people?

13 A. No, sir.

14 Q. And who are your -- who, specifically, are
your
15 Bloomington people?

16 A. It's called an Estimatics consultant.

17 Q. Okay. And I'm assuming that's a person?

18 A. Yes, sir. His name is David Cook.

19 Q. And does it make a difference to y'all
whether

20 or not other insurance companies are paying for a
21 particular procedure? I mean, do you -- I know you're

22 looking at the, as you described it, the prevailing
23 competitive market rate as far as, you know, the shops
24 in the local area and those in your Select Service
25 program. But do y'all ever take into consideration,

or

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1 even maybe consider taking consideration, whether
2 insurance companies are paying for a particular
3 procedure or in this instance paint materials, using a
4 paint materials calculator?

5 A. No, sir.

6 Q. And why not?

7 A. As far as I'm aware, we're the only company

in

8 the country that does a PCP survey.

9 Q. Oh, you mean the survey you've been referring
10 to previously?

11 A. Yes, sir. And my entire career, shops have
12 asked me to provide them information to provide to

other

13 carriers who want to know what we're doing. We look

--

to

what

14 I look at us as the leader in the industry, they come
15 the shops and us and establish their rates based on
16 we do for some reason. And that is something we don't
17 want any part of.

keep

18 We want to establish our own processes to
19 service our customers in the best possible way, to
20 our product affordable to them. And that's all I want
21 to do.

vast

22 Q. If I were to tell you that, you know, the
23 majority of the insurance companies that Gunder's Auto
24 Center deals with, it pays for paint materials using
25 paint materials calculator, wouldn't that maybe make

the

you

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1 think that: Hey, this may be a legitimate process and
2 technology?

3 A. No, sir.

4 Q. Really?

5 A. (Shakes head.)

6 Q. Why not?

7 A. Because I've -- to me, so far it's a
8 self-serving statement. I've seen no proof of that.

all

9 And in discussions I've had with repairers I've had
10 over my market, nobody else has indicated that's
11 happening.

other

12 So I don't know what his agreements with
13 providers is or are. I like consistency. I talked
14 about that before. There's no consistency in what I'm
15 being charged.

it

16 Q. I understand you like consistency. But have
17 you ever considered fairness? I mean, is that -- is
18 always about consistency or to heck with fairness?

or

19 A. Are you talking about fairness to Ray Gunder
20 fairness to an entire market?

21 Q. Both.

the

22 A. If I'm -- I got to pick what's the best for
23 most? The best benefit to the most is PCP right now.
24 Mr. Gunder is the minority in that case.

25 Q. Or at least that's what you know?

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State 1 A. That's what I know based on my market in
2 Farm business.

3 Q. Based upon your surveys that you send out and
4 your Select Service program auto body repair shops,
5 correct?

6 A. Yes, sir.

7 Q. Who have an agreement with you?

8 A. Say that again.

have 9 Q. The Select Service auto body repair shops
10 an agreement with State Farm, correct?

11 A. Yes, sir.

benefit, 12 Q. And many of them feel like they get a
13 as in any contract, from being in that Select Service
14 program, correct?

15 A. Apparently.

Center 16 Q. And many of them know that Gunder's Auto
17 was terminated from the Select Service program at one

18 point, correct?

19 A. We don't announce that.

20 Q. You may not announce it, but, come on, you've
21 been in the industry for awhile. Again, you go to the
22 shops, you talk with them, you learn things from them
23 and they talk to you and they learn things from you.

Select

24 You go to a shop that's not even in the

you're

25 Service program, Auto Tech or whatever it is, and

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do

1 talking about something that doesn't have anything to
2 with paint materials.

that

3 So I mean, are you aware that people know
4 shops such as Gunder's Auto Center has been terminated
5 by State Farm from a preferred program?

6 A. Well, yes, I guess news travels.

7 Q. Yeah?

8 A. Whether it was provided by Mr. Gunder or

Gunder's 9 whoever. I've been asked in every market about
10 paint and body.

shops 11 Q. So it's fair to say that auto body repair
12 in the Select Service program are aware they can be
13 terminated from the program?

14 A. I tell them that.

anything 15 Q. Okay. All right. Do you know -- we went
16 through some of these statements. Do you know
17 at all, in any way, shape or form, about any comments
18 that have been made about Gunder's Auto Center by any
19 State Farm representative that have been negative in
any 20 way, shape or form in nature?

21 A. To customers?

22 Q. Yes. To insureds?

23 A. No, sir.

and 24 MR. GEOHAGAN: Can we just take one second
25 we're done. Okay?

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1 MR. GRIMM: Okay.

2 (Recess from 5:49 until 5:59 p.m.)

3 MR. GEOHAGAN: All right. Let's go.

4 BY MR. GEOHAGAN:

5 Q. Mr. Davis, do you have any knowledge, I mean
6 since you've been doing this in the Polk County area
7 since 2002, 2003, have you become aware of whether or
8 not since Mister -- or Gunder's Auto Center's
9 termination from the Select or the Service First
10 program, whether or not there has been a decrease year
11 to year in the number of State Farm insureds that are
12 taking their claims to Gunder's Auto Center?

13 A. I do not know that.

14 Q. You wouldn't -- you don't have any kind of
15 reading, you don't have anything that shows where --
16 what shops these people are going to that you look at
17 year to year, month to month?

18 A. No, sir, because a larger percentage of the
19 customers where the State Farm staff estimator writes
20 that estimate, the customers pay. We aren't able to
21 track where those ultimately ended up or whether they
22 were ever repaired.

23 Q. Do you do any tracking as to the number of
24 State Farm insureds, whether they're paying the

insured

25 or not, are going to what shop and how many?

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1 A. We know that by records with Select Service
2 shops because they upload their estimates to us.
3 There's counts there. We don't count for -- we don't
4 try to track them money with the estimate after we
write
5 a staff estimate to a customer who wants a check.

6 Q. Do you know the number of insureds that have
7 claims that are going to non-preferred shop?

8 A. Well I'm sure there's a number of total
9 estimates written. How many estimates went through
10 Select Service, how many were paid that did not go
11 through Select Service but we don't know what portion
of
12 those were --

13 Q. I understand that part. Take them off the
14 board for a second. Just with regard to those that
were
15 not paid directly and were otherwise paid, have you
kept

16 track in any way, shape or form the number of insureds
17 on a month-to-month, year-to-year basis that are going
18 to each shop in the Polk County area?

19 A. No, sir.

shape

20 Q. Okay. Y'all don't track that in any way,
21 or form?

one

22 A. Except for Select Service, that's the only
23 that is tracked.

24 Q. So you only know how many are going to each
25 Select Service shop, correct?

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1 A. Yes, sir.

how

2 Q. Okay. And the only way you could find out
3 many are going to non-Select Service shops, or which
4 non-Select Service shops are going to, would be to
5 pull the documents and start divvying them out and
6 seeing which shop they're going to; is that correct?

just

7 A. The documents wouldn't tell you. You'd have

to

8 pull every claim that did not go Select Service and
9 contact --

10 Q. That's not what I mean.

11 A. -- the customers and say: Did you fix your
12 car?

13 Q. Okay. So you don't have any documentation
14 which would represent which shop they went to?

15 A. No, sir.

Select

16 Q. Do you know, since 2004, when Mr. Gunder was
17 terminated from the Service First program, which

more

18 Service program auto body repair shops are getting
19 customers or more insureds coming to their shop?

20 A. No, sir.

go

21 Q. I mean the only way you'd be -- you have to
22 back to I guess 2005 and then just track it from

there;

23 is that right?

that

24 A. Track it and then all things being equal,

into

25 would be fine. But, you know, our-one year turned

So
dropped

1 a four-year lull or five-year with the business now.
2 there's all kind of factors of why business has

3 off in the majority of the repairs.

in
you

4 Q. Okay. And do you have any reason to -- if,

5 fact, there have been -- assuming -- I'm not asking

6 to testify to this. I'm asking for purposes of this

7 question for you to assume this. Assuming that there

State
do

8 have been remarks made by claim representatives of

9 Farm or claim processors of State Farm that have been

10 negative in nature to -- about Gunder's Auto Center,

11 you have any information or knowledge to suggest that

12 that didn't otherwise damage Gunder's Auto Center?

occurred.

13 A. I wouldn't want to assume that those

14 Q. That's what I'm saying. For purposes of the
15 question, I'm asking you to assume that. If, in fact,

you
16 it occurred, okay, because you've already testified

17 don't know from Adam's house cat, if, in fact, it

18 occurred, though, and given that you're in this

industry

19 and you know how it works and when you tell a customer
20 this or that, do you have any information or knowledge
21 that would suggest that Gunder's had not been damaged
22 if, in fact, it occurred?

23 MR. GRIMM: Object to the form of the
question.

I 24 THE WITNESS: I don't have any knowledge and

25 don't know if those people ultimately had Gunder's

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1 auto body repair their vehicle.

2 BY MR. GEOHAGAN:

3 Q. Okay. Given your experience in this
industry,

4 though, if those comments were made in that fashion to
5 people about -- or let's just say it's another shop,
you

6 know, say it's Francisco's. Given your experience, do
7 you believe that that would have an impact, a negative
8 impact on Francisco's if those comments were being
said?

was

9 A. Both ways I've seen it where a shop said it
10 told to a customer and they had their car repaired
11 there. And I've seen them say they had lost business
12 because of it. Black and white I would assume that
13 might change the customers's opinion.

14 MR. GEOHAGAN: That's all I have.

15 MR. GRIMM: No questions.

16 THE COURT REPORTER: Read or waive?

17 MR. GEOHAGAN: Oh, he's got that.

records

18 But, yeah, and just for the record there is a
19 currently an ongoing discovery dispute over

resolution

20 or documents that have been requested by my client
21 of State Farm Insurance, or the defendant in this
22 case, and to that degree and pending the
23 of those outstanding discovery issues and the type
24 of documents, if any, that are ultimately produced
25 by State Farm, we would reserve the opportunity to

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1 CERTIFICATE OF REPORTER OATH

2

3 STATE OF FLORIDA

4 COUNTY OF POLK

5 I, Sonya Y. Toser, Florida Professional

6 Reporter, and Notary Public in and for the State of

7 Florida at large, hereby certify that the witness

named

8 herein appeared before me on November 4, 2009, and was

9 duly sworn.

10 WITNESS my hand and official seal this 13th

day

11 of February.

12

13

14

15 SONYA Y. TOSER, FPR

16 NOTARY PUBLIC – STATE OF FLORIDA

17 MY COMMISSION NO. DD941211

18 EXPIRES: 11/18/2013

19

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21

22

23

24

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1 CERTIFICATE OF REPORTER

2 STATE OF FLORIDA

3 COUNTY OF POLK

4 I, Sonya Y. Toser, Florida Professional

and

5 Reporter, do hereby certify that I was authorized to

6 did stenographically report the examination of the

7 witness named herein; that a review of the transcript

8 was requested; and that the foregoing transcript is a

9 true record of my stenographic notes.

10 I FURTHER CERTIFY that I am not a relative,

11 employee, or attorney, or counsel for any of the
12 parties, nor am I a relative or employee of any of the
13 parties' attorney or counsel connected with the
action,
14 nor am I financially interested in the outcome of this
15 action.

16 DATED THIS 13th day of February, 2010 at
17 Lakeland, Polk County, Florida.

18

19

SONYA Y. TOSER, FPR

20

21

22

23

24

25

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1 GUNDER'S AUTO CENTER VS STATE FARM INSURANCE
2
3 IN RE: DEPOSITION OF BOB DAVIS
TAKEN NOVEMBER 4, 2009

4 TO: REED W. GRIMM, ESQUIRE
5 TAYLOR, DAY, CURRIE, BOYD & JOHNSON
6 50 North Laura Street
7 Suite 3500
8 Jacksonville, Florida 32202

8 The referenced transcript has been completed
9 and awaits review and signing of the errata sheet.

10 Thank you for agreeing to handle the reading
11 and signing process. Today's date is February 13,
12 2010.
13 Please complete the reading and signing by March 20,
14 2010.

15 The original transcript of this deposition
16 has been delivered to A. Brent Geohagan, Esquire, and the
17 errata sheet, once completed, should be forwarded to
18 all ordering parties as listed below.

19 Thank you.

20 _____
21 Sonya Y. Toser, FPR

22 cc: A. Brent Geohagan, Esquire

23

24

25

1 ERRATA SHEET
DO NOT WRITE ON TRANSCRIPT - ENTER CHANGES ON THIS
2
3 IN RE: GUNDER'S AUTO CENTER VS STATE FARM INSURANCE
4 CASE NO.: 8:09-cv-00456-SDM-MAP
5 DEPOSITION OF BOB DAVIS
6 TAKEN NOVEMBER 4, 2009

7 PAGE #/LINE # CHANGE REASON

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Under penalties of perjury, I declare that I have read the foregoing document and that the facts stated in it are true.

20

21

BOB DAVIS

DATE

22

23 cc: A. Brent Geohagan, Esquire
Reed W. Grimm, Esquire

24

25

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